

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONFIDENTIAL - PROTECTIVE ORDER
UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-
BANKS and E.J.D.-B,
Plaintiffs,

v.

Case No.

2:18-cv-00523-JFW-JCx

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

Video Deposition of Paul Peek
Washington, D.C.
Thursday, December 20, 2018
9:15 a.m.

Job No.: NY-203388
Pages: 1 - 351
Reported by: Donna L. Linton, RMR-CLR

1 Video deposition of Paul Peek, the 30(b)(6)
2 witness herein, held at:

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Sullivan & Cromwell
1700 New York Avenue, Northwest
South Conference Room, Suite 800
Washington, D.C. 20006
(202) 956-7500

Pursuant to Amended Notice of Rule 30(b)(6)
Deposition of Defendant United States Department of
State and Federal Rules of Civil Procedure, before
Donna L. Linton, Registered Merit Reporter,
Certified LiveNote Reporter, and Notary Public in
and for the District of Columbia.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:

THEODORE EDELMAN, ESQUIRE (pro hac vice)
JESSICA KLEIN, ESQUIRE (pro hac vice)
Sullivan & Cromwell, LLP
125 Broad Street
New York, New York 10004
(212) 558-4000
kleinj@sullcrom.com

- and -

AARON C. MORRIS, ESQUIRE (pro hac vice)
Immigration Equality
40 Exchange Place, Suite 1300
New York, New York 10005
(212) 714-2904
amorris@immigrationequality.org

- continued -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

(continued)

ON BEHALF OF THE DEFENDANTS:

VINITA ANDRAPALLIYAL, ESQUIRE

EMILY NEWTON, ESQUIRE

United States Department of Justice

Civil Division - Federal Programs Branch

Post Office Box 883

Washington, D.C. 20044

(202) 305-0845

vinita.b.andrapalliyal@usdoj.gov

- and -

CHRISTINE L. McLEAN, ESQUIRE

United States Department of State

600 19th Street, Northwest

Washington, D.C. 20006

(202) 485-8000

mcleancl@state.gov

ALSO PRESENT:

Brian Mackey, Videographer

1 Department of Justice for Defendants.

2 MS. ANDRAPALLIYAL: Vinita Andrapalliyal,
3 Department of Justice, for Defendants.

4 THE VIDEOGRAPHER: The court reporter
5 today is Donna Linton.

6 Would the reporter please swear in the
7 witness?

8 Whereupon,

9 PAUL PEEK,
10 the witness herein, was called for examination by
11 counsel on behalf of Plaintiffs, and having been
12 sworn was examined and testified as follows:

13 MR. EDELMAN: Good morning. Just for the
14 record, since we have one other individual today,
15 could we just ask you to identify yourself for the
16 record so the transcript will reflect your
17 participation?

18 MS. McLEAN: Yes. I'm Christine McLean.
19 I'm here with the Department of State.

20 MR. EDELMAN: Welcome.

21 EXAMINATION BY COUNSEL ON BEHALF OF PLAINTIFFS
22 BY MR. EDELMAN:

23 Q Good morning Mr. Peek.

24 A Good morning.

25 Q Can we just, to identify you to the

1 Q Did you review the case file for E.J. --
2 not A.J. now -- E.J. D [REDACTED] - B [REDACTED] ?

3 A I did not review the application for A.J.
4 D [REDACTED] - B [REDACTED] .

5 Q I asked you about E.J.

6 A I did review the application for E.J.
7 D [REDACTED] - B [REDACTED] .

8 Q And were Andrew and Elad's names listed
9 on the birth certificate for E.J. D [REDACTED] - B [REDACTED] --
10 listed as his parents?

11 A Yes.

12 Q And does the State Department have any
13 reason to doubt that Andrew or -- and Elad are E.J.
14 D [REDACTED] - B [REDACTED] ' parents?

15 A His legal parents, there is no reason to
16 doubt.

17 Q When you say his legal parents, what do
18 you mean?

19 A As opposed to biological parents.

20 Q Okay. We'll come to that in a little
21 bit, but do you have any reason to believe, based on
22 the facts of these cases, that A.J. D [REDACTED] 's parents
23 are different from E.J. D [REDACTED] - B [REDACTED] ' parents?

24 MS. ANDRAPALLIYAL: Objection. Exceeds
25 the scope.

1 A Yes.

2 Q All right. Now I want to go back a
3 little bit to talk about the process of applying for
4 a CRBA.

5 A Uh-hum. Yes.

6 Q In 2017, January of 2017, did the Toronto
7 consulate have its own protocol or process for
8 applications for a CRBA, or was there a general
9 process that applied for all posts?

10 MS. ANDRAPALLIYAL: Objection. Form.
11 Objection. Exceeds the scope.

12 A The requirements for the issuance of a
13 CRBA are uniform worldwide, but the process may be
14 different just depending on staffing, layout of a
15 consulate, those sorts of things.

16 BY MR. EDELMAN:

17 Q Let's talk for a moment about the
18 elements or criteria of the application.

19 A Uh-hum.

20 Q Was there a -- in January of 2017 was
21 there a uniform set of criteria for issuance of a
22 CRBA?

23 A Yes.

24 Q And who set those criteria?

25 A The Department of State.

1 Q In Washington, D.C.?

2 A Yes.

3 Q Okay. Would it be fair to say that at

4 that time the Toronto consulate -- the State

5 Department expected the Toronto consulate to follow

6 the criteria set by the State Department in

7 Washington?

8 A Yes.

9 Q And would it be fair to say that at that
10 time the State Department expected that the Toronto
11 consulate would not depart from the criteria for
12 issuance of a CRBA set by the State Department in
13 Washington, D.C.?

14 A That is fair to say.

15 Q Okay. Are you familiar with the term
16 "desk officer" as it applies to the State
17 Department?

18 A Yes.

19 Q What do you understand that term to mean?

20 A It's a term used throughout the
21 department for bureaus that are divided.

22 Regionally, a desk officer is generally someone who
23 is answering questions that -- or handling issues
24 related to a specific region, like the Africa desk
25 or the Somalia desk or what have you.

1 Q Okay.

2 A So U.S. citizenship.

3 Q So --

4 A Excuse me.

5 Q I'm sorry. I didn't mean to talk over
6 you. Let's just unpack a little bit to make sure
7 that we understand your answer.

8 Does the -- do the training materials for
9 that course cover the INA or do they cover the FAM's
10 discussion of the INA?

11 MS. ANDRAPALLIYAL: Objection. Form.
12 Exceeds the scope.

13 A Both. They're very closely intertwined.

14 BY MR. EDELMAN:

15 Q What does that mean?

16 A I mean, the FAM guidance is based on the
17 INA and the INA is referenced throughout the FAM
18 guidance, so --

19 Q Okay.

20 A -- it's hard to talk about one -- it's
21 hard to talk about the FAM without talking about the
22 INA when you're talking about the citizenship
23 sections.

24 Q Are there any differences between the
25 language of the INA provisions relevant to

1 adjudications of passport applications and the
2 language of the FAM provisions relevant to
3 adjudications of passport applications?

4 A The FAM goes in -- yes.

5 Q What are those differences?

6 A The FAM goes into much greater detail.

7 Q By that -- when you say it goes into
8 greater detail, do you mean that the FAM includes
9 elements that the INA does not?

10 A The FAM gives guidance to a universe of
11 scenarios that are covered in the INA. Yeah.

12 Q I'm sorry. I'm not sure I understood.
13 Are there scenarios covered in the INA?

14 A Yeah.

15 Q Maybe I don't understand what you mean by
16 scenarios. So how are you using the term
17 "scenarios" in your answer?

18 A An example would be two U.S. citizens in
19 wedlock, two U.S. citizens out of wedlock, one U.S.
20 citizen -- parents I'm referring to, biological
21 parents -- in and out of wedlock would be different
22 scenarios, for instance.

23 Q Okay. And is the wording of the FAM
24 identical to the wording of the INA with respect to
25 those situations?

1 A In places, yes.

2 Q When you say, "in places, yes," does that
3 mean in places, no?

4 A The FAM goes into greater detail, so the
5 FAM is kind of, again, how to interpret different
6 situations in much greater detail than the INA goes
7 into.

8 Q So, again, the question is, when you say,
9 "goes into greater detail," does the FAM include
10 elements that the INA does not?

11 A Yes.

12 Q Now, does the State Department require
13 consular officials adjudicating applications for a
14 U.S. passport to be familiar with provisions of U.S.
15 immigration law applicable to those adjudications?

16 A Yes.

17 Q And does the State Department do anything
18 to train consular officials on those elements of
19 U.S. immigration law?

20 MS. ANDRAPALLIYAL: Objection. Exceeds
21 the scope.

22 A Yes.

23 BY MR. EDELMAN:

24 Q What does it do?

25 A The basic consular course -- that's the

1 sections 301(g) and 309. And you had indicated that
2 the State Department has consulted not only with
3 USCIS but others. And we didn't have an opportunity
4 to ask you what others you were referring to in your
5 answer.

6 A For instance, if there was a court case
7 about something that was effected by 301(g) of the
8 INA, they might consult with the Department of
9 Justice about that.

10 Q Okay. So this isn't abstract or
11 hypothetical, were there communications -- let's
12 just ask the fact yes or no: Were there
13 communications between the State Department and the
14 Department of Justice with respect to court cases or
15 court decisions relating to the application of INA
16 section 301(g) or 309?

17 MS. ANDRAPALLIYAL: Objection. Exceeds
18 the scope of the deposition.

19 A I don't know.

20 BY MR. EDELMAN:

21 Q Okay. So my question really is were you
22 referring to specific communications that you had in
23 mind when you gave your answer before lunch?

24 A No.

25 Q So let's just ask, to be clear, does the

1 State Department require a biological relationship
2 between a married U.S. citizen parent and a child
3 born outside the United States in order to establish
4 citizenship at birth of the child?

5 A Yes.

6 Q And what is the source of that
7 requirement?

8 A I'm sorry. What is the what?

9 Q What's the source? What's the basis for
10 that requirement?

11 A The Immigration and Nationality Act.

12 Q And what in particular?

13 A Section 301(g).

14 (Defendants' Exhibit Number 1 marked for
15 identification was introduced.)

16 BY MR. EDELMAN:

17 Q Okay. So just to put some texture around
18 it, I'm just going to show you Defendants'
19 Deposition Exhibit 1. This has already been marked,
20 so I'm just going to hand you a copy and one to
21 counsel and ask you if you know what this document
22 is.

23 A It looks like an excerpt of 7 FAM 1130,
24 Acquisition of U.S. Citizenship by Birth Abroad to
25 U.S. Citizen Parent.

1 BY MR. EDELMAN:

2 Q So what laws?

3 A The laws that govern the acquisition of
4 citizenship at birth derived of a U.S. citizen
5 parent when born abroad.

6 Q Okay. And has the State Department's
7 interpretation of what those laws require by way of
8 a blood relationship been constant throughout the
9 State Department's application of those laws?

10 MS. ANDRAPALLIYAL: Objection. Exceeds
11 the scope.

12 A Can you be more specific?

13 BY MR. EDELMAN:

14 Q Has the policy about what is considered a
15 blood relationship ever been reconsidered by the
16 State Department?

17 MS. ANDRAPALLIYAL: Objection. Exceeds
18 the scope.

19 A As I mentioned, the context of a
20 gestational parent was added to the scope of blood
21 relationship, or biological relationship, by the
22 department in 2014, I believe it was.

23 BY MR. EDELMAN:

24 Q So does that mean the State Department
25 for a period of time did not consider a gestational

1 purposes of adjudicating CRBAs?

2 A Yes.

3 Q What is that definition?

4 A I will find it and read it for you.

5 Q I just want you to answer the question.

6 MS. ANDRAPALLIYAL: Can we go off the
7 record?

8 MR. EDELMAN: No. I would like an answer
9 to the question.

10 MS. ANDRAPALLIYAL: This is not a memory
11 test. He's allowed to consult --

12 MR. EDELMAN: If the witness says he
13 doesn't know, then we'll show him something to
14 refresh his recollection.

15 BY MR. EDELMAN:

16 Q Could you answer my question, please?

17 A Could you -- what was your question
18 again? I'm sorry.

19 MR. EDELMAN: Could you read it back,
20 please?

21 THE REPORTER: "Does the State Department
22 have a definition of the term "in wedlock" for
23 purposes of adjudicating CRBAs?"

24 A Yes.

25 BY MR. EDELMAN:

1 Q What is that definition?

2 A If both biological parents -- if the two
3 biological parents are married, then the case would
4 be considered to be in wedlock.

5 (Plaintiffs' Exhibit Number 4 marked for
6 identification was introduced.)

7 BY MR. EDELMAN:

8 Q Okay. Now, let's put in front of you
9 Plaintiffs' Deposition Exhibit 4. This has been
10 previously marked. A copy for counsel.

11 Let me ask you if this is the document
12 for which -- that you had in mind?

13 A Yes.

14 Q Now, turn, please, to page 4. So it's
15 page 4 of 7. There's little page numbers at the
16 bottom.

17 A Uh-hum. Yes.

18 Q Okay. 7 FAM 1140 appendix E, In wedlock
19 and out of wedlock.

20 Do you see that?

21 A In wedlock and of wedlock.

22 Q Of wedlock, I beg your pardon. Sorry.

23 Now, is -- do you see (a), "The term
24 'birth in wedlock' has been consistently interpreted
25 to mean birth during the marriage of the biological

1 parents to each other"?

2 A Yes.

3 Q Do you see that?

4 A Yes.

5 Q And (c), "To say a child was born 'in

6 wedlock' means that the child's biological parents

7 were married to each other at the time of the birth

8 of the child." Do you see that?

9 A Yes.

10 Q Is that the definition you had in mind

11 when you were asking to consult any documentation?

12 A Yes.

13 Q Okay. What's the basis for the State

14 Department's definition of "in wedlock" as embodied

15 in the material we just looked at?

16 A Their interpretation of the Immigration

17 and Nationality Act.

18 Q What in particular in the Immigration and

19 Nationality Act?

20 A Section 301(g).

21 Q Okay. Now, if a married couple used

22 assisted reproduction technology to give birth to a

23 child during their marriage, does the State

24 Department consider that child to have been born in

25 wedlock?

1 A It depends on the circumstances.

2 Q Can you elaborate, please?

3 A If both parents were -- if both parents
4 were the biological parents or gestational parent --
5 a combination of -- if they were both the biological
6 parents, which can include the gestational parent,
7 and were married to each other, then the birth would
8 be considered in wedlock.

9 Q Okay. Now, has it always been the case,
10 by the way, that the gestational parent was included
11 in that definition?

12 A Not by policy, no.

13 Q Has it been that -- always the case that
14 the gestational parent was included in that
15 definition by any other means, policy or otherwise?

16 A As I said, I'm not certain of how any
17 individual case may have been adjudicated prior to
18 the implementation of the policy.

19 Q Now -- so the policy -- am I
20 understanding you correct that if a married couple
21 used assisted reproduction technology to give birth
22 to a child during their marriage using a gestational
23 surrogate to carry the fetus, the State Department
24 now would consider that child to have been born in
25 wedlock?

1 A If both of those parents were biological
2 parents of that child, yes.

3 Q What do you mean by biological?

4 A If both parents had contributed genetic
5 material.

6 Q Okay. What if the gestational surrogate
7 was not -- was one of the married -- one of the
8 spouses?

9 A I'm sorry. I don't understand your
10 question.

11 Q So I want to distinguish two things. The
12 situation where A and B are married and they go to C
13 to act as the surrogate --

14 A Yes.

15 Q -- and a situation where A and B are
16 married and the egg from A is implanted into B.

17 A If an egg from A was implanted into B,
18 then both parents would be considered to be
19 biologically related.

20 Q Okay. So in that circumstance, the State
21 Department does not consider one to be a surrogate
22 even though the egg moved from A to B?

23 A I believe that, medically, they would be
24 considered to be a surrogate, but they are also a
25 biological parent, which is more important to us for

1 adjudication of citizenship.

2 Q And that determination that they're a
3 biological parent is just a policy determination by
4 the State Department, correct?

5 A Correct.

6 Q Now, let's take a case where a married
7 couple use assisted reproduction technology to give
8 birth to a child during the marriage using a
9 gestational surrogate to carry the fetus. The child
10 is born outside the United States and only one of
11 the spouses is a U.S. citizen. Do you have that in
12 mind?

13 A Yes.

14 Q Okay. In that circumstance, would the
15 State Department recognize the child as a U.S.
16 citizen from birth?

17 A It depends.

18 Q Okay. And what does it depend on?

19 A Whether there was a biological
20 relationship between the child and the U.S. citizen
21 parent.

22 Q Okay. And what is the basis for the
23 State Department's position on that -- in that
24 scenario?

25 A The department's interpretation of the

1 A To require which result?

2 Q The result that we just talked about,
3 that in that circumstance that we've been talking
4 about the State Department would consider the child
5 to be a U.S. citizen at birth only if the U.S.
6 citizen parent contributed genetic material to the
7 child.

8 A If only one of the parents is
9 biologically related to the child, we would be
10 looking at INA 309 which states that a blood
11 relationship is required.

12 Q Okay. And -- maybe we'll come to that in
13 a minute, but let's just flesh out the issues.

14 Let's say you have two men married to
15 each other. Okay?

16 A Yes.

17 Q And they use sperm from one of them and
18 an egg from a donor to give birth to a child during
19 their marriage. Is that child considered to be born
20 in wedlock?

21 A If both parents did not contribute
22 genetic material, no.

23 Q Okay. In my scenario --

24 A And if neither one of them was the
25 gestational parent, I apologize.

1 Q Well -- okay. In my scenario we had one
2 of the parents -- it was the sperm from one of the
3 parents and a donor egg. Okay? In that
4 circumstance would the child be considered to have
5 been born in wedlock?

6 A The donor egg is from a third party.

7 Q Well, there's two men, so yes.

8 A The child would not be considered to be
9 born in wedlock.

10 Q And what's the basis for the State
11 Department's position?

12 A The Immigration and Nationality Act.

13 Q What in particular in the Immigration and
14 Nationality Act requires that result?

15 A Well, we would be looking at 309 for out
16 of wedlock, because 301(g) addresses a child born of
17 parents, which the department has interpreted to
18 mean both parents -- a blood relationship to both
19 parents, a biological relationship to both parents.

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

1 A It depends.

2 Q What does it depend on?

3 A Whether the U.S. citizen parent also
4 contributed genetic material or was the gestational
5 parent.

6 Q Okay. So, again, I'm talking about two
7 men, sperm from one of them; that person not a U.S.
8 citizen. Question: Would the resulting child born
9 outside the United States be considered a U.S.
10 citizen at birth?

11 A Let me elaborate on why I'm saying "it
12 depends" in my answer.

13 Q Please.

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

19 Q Okay. Let's simplify it and use a
20 situation where two men who were always men. Okay?

21 A Born male.

22 Q Pardon?

23 A Born male.

24 Q Okay. In that circumstance -- do you
25 have the rest of the scenario in mind?

1 A Sure.

2 Q Okay. In that circumstance, would the
3 State Department recognize the child as a U.S.
4 citizen at birth?

5 A No.

6 Q Okay. Would the State Department
7 consider the child to have been born in wedlock to
8 the married couple?

9 A No.

10 Q What is the basis for the State
11 Department's position?

12 A Again, the interpretation that
13 section 301(g) of the INA, when it uses the language
14 "born of parents," it is referring to a biological
15 relationship to both parents.

16 Q Okay. So -- and just to close that
17 circle, if you go back to Plaintiffs' Deposition
18 Exhibit 4, which probably is in front of you, 7 FAM
19 1140, appendix E on page 4 -- tell me if you're
20 there. I know this gets confusing --

21 A The whole thing is 7 FAM appendix E --
22 1140 appendix E. Right.

23 Q Okay. And page 4. We're in the in
24 wedlock and of wedlock.

25 A Right.

1 Q Okay. Part (a), "The term 'birth in
2 wedlock' has consistently -- has been consistently
3 interpreted to mean birth during the marriage of the
4 biological parents to each other," correct?

5 A Yes.

6 Q And is that -- I'm trying to close off
7 this circle here. Is that what you mean in your
8 last answer when you talk about the requirement that
9 the biological parents be married to each other?

10 A Yes.

11 MR. EDELMAN: Okay. Now, let's mark
12 as -- yeah. I'm going to mark -- I knew this would
13 happen. I have now lost track of what number. Are
14 we up to 15? Okay. So we're going to mark the
15 first document as 15 and the second document as 16.
16 And I'll hand copies to counsel in a moment. 15,
17 16.

18 THE WITNESS: I'm sorry. Since we're
19 between questions, can I just take a short break to
20 get some water?

21 MR. EDELMAN: Yeah, by all means. We
22 have got to go off the record first.

23 THE VIDEOGRAPHER: We're going off the
24 record. The time is 2:16 p.m.

25 (Discussion off the record.)

1 (Plaintiffs' Deposition Exhibit
2 Numbers 15 and 16 were marked for identification.)

3 THE VIDEOGRAPHER: We're back on the
4 record. The time is 2:17 p.m.

5 BY MR. EDELMAN:

6 Q Okay. So Mr. Peek, we've placed before
7 you two documents. One is Plaintiffs' Deposition
8 Exhibit 15, which is a rescript of section 301 of
9 the Immigration and Nationality Act of 1952, as
10 amended, 8 U.S.C. section 1401, and Plaintiffs'
11 Deposition Exhibit 16, which is a rescript of
12 section 309 of the INA, 8 U.S.C. 1409.

13 Let me direct your attention first to
14 section 301, so that's Plaintiffs' Deposition
15 Exhibit 15.

16 A Uh-hum. Yes.

17 Q And take as long as you want or as short
18 as you need to orientate yourself, and then I'm
19 going to ask you a question.

20 A Go ahead.

21 Q Okay. So just for the record, so we're
22 all singing from the same sheet, just point us,
23 please, to where in section 301 the words "in
24 wedlock" appear.

25 A I do not see it.

1 Q I don't understand. Surely, it must be
2 somewhere if the State Department says that this is
3 a requirement of section 301.

4 MS. ANDRAPALLIYAL: Objection.
5 Argumentative.

6 BY MR. EDELMAN:

7 Q Is it not in the statute?

8 A I don't see it in the statute.

9 Q Okay. So -- again, so we're talking
10 about the same thing, just show us where in 301 the
11 words "blood relation" appear?

12 A The words "blood relationship" do not
13 appear in 301.

14 Q So other than the FAM, what is the source
15 of the State Department policy that requires a blood
16 relationship, as we looked at for purposes of the
17 definition of "in wedlock" as set out in Plaintiffs'
18 Deposition Exhibit 4?

19 A I would have to look at the FAM to see
20 what that -- the background is.

21 Q Well, is that something you were prepared
22 to address in connection with your testimony here
23 today?

24 A I've reviewed the FAM, yes.

25 Q And so other than the FAM, are there any

1 A Affecting INA -- the interpretation of
2 INA 301(g)?

3 Q Yes.

4 A Correct. Can I go back to one other
5 point? I believe you asked what is the statutory
6 authority that leads the department to interpret
7 301(g) as requiring wedlock?

8 Q I don't think I asked that question but
9 let's ask that. Okay? And what is it you wanted to
10 tell us about that?

11 A That the fact that 309 specifies out of
12 wedlock implies that 301 is within wedlock, meaning
13 the fact that the law in this other area calls out
14 an out-of-wedlock birth.

15 Q Okay. I'll tell you what. Let's do it
16 this way. In the State Department's view, what
17 provision of the INA would apply to an application
18 for a CRBA by a married couple for a child born
19 during their marriage by means of assisted
20 reproduction technology using a surrogate to carry a
21 fetus?

22 A It depends on if -- whether one or both
23 of the parents contributed genetic material to that
24 child.

25 Q Okay. Tell us in each case. You say it

1 always been male?

2 Q Yes. Unless I specify otherwise, that's
3 always the premise of the scenarios.

4 A Okay. I will go with that premise going
5 forward. Can you repeat your question?

6 Q Yes. Application for a CRBA. Two men
7 married to each other. They apply on behalf of a
8 child born outside the U.S. during their marriage.
9 The child was born using the sperm from one of them
10 and the egg from a donor. Okay. That's the
11 scenario. Do you have that in mind?

12 A Yes.

13 Q And the question is what provision of the
14 INA would apply to that application?

15 A Section 309.

16 Q Okay. And what's the basis for the State
17 Department's position?

18 A As I said before, 301 -- the language of
19 301 has been interpreted to mean born of parents --
20 has been interpreted to mean born of two biological
21 parents.

22 Q Okay. Now, other than the FAM, what, if
23 any, sources -- any sources -- require the State
24 Department to take the position that it should apply
25 section 309 and not 301(g) of the INA to an

1 A Correct.

2 Q There is no similar reference there to a
3 blood relationship, correct?

4 A The term "blood relationship" is not
5 present in 301.

6 Q Okay. So would you agree with me that
7 Congress saw fit to include the term "blood
8 relationship" in 309?

9 A Yes.

10 Q And saw fit not to include it in
11 section 301(g) --

12 A Yes.

13 Q -- or 301, correct?

14 A Correct.

15 Q Okay. Now, what is the State
16 Department's understanding of the fact that the
17 words "blood relationship" appear in section 309 but
18 not in section 301?

19 MS. ANDRAPALLIYAL: Objection. It calls
20 for a legal conclusion.

21 MR. EDELMAN: It calls for the position
22 of the State Department.

23 A I'm sorry. Can you restate the question?

24 BY MR. EDELMAN:

25 Q Yes. We've agreed, correct, that the

1 would be the appropriate...

2 Q All right. Now, if two individuals who
3 were born men and are still men are married to each
4 other, would you agree that they cannot both be
5 biological parents of the same child?

6 A Correct.

7 Q Okay. So under the State Department's
8 policy, am I correct in understanding that two men
9 who are married to each other can never have a child
10 whom the State Department would consider to be born
11 in wedlock?

12 A Assuming they have both been men their
13 entire lives, that's correct.

14 Q Okay. Even though they're legally
15 married, correct?

16 A Correct.

17 Q And even though the child is born into
18 their family during their marriage?

19 A Correct.

20 Q Okay. And that is because of the way
21 that the State Department interprets the INA,
22 correct?

23 A Correct.

24 Q Okay. Now, are there circumstances in
25 which the State Department considers children of

1 BY MR. EDELMAN:

2 Q Okay. Are you familiar with the
3 legitimation laws of any country of the world?

4 MS. ANDRAPALLIYAL: Objection. Exceeds
5 the scope.

6 A Off the top of my head?

7 BY MR. EDELMAN:

8 Q Are you familiar with the legitimation
9 laws of any country? It's a yes or no question.

10 A Am I familiar with -- go ahead and repeat
11 it.

12 Q Are you familiar with the legitimation
13 laws of any country?

14 A Yes.

15 Q What laws are you familiar with?

16 A The United States.

17 Q And what do those laws provide?

18 A It depends if the child -- I -- I guess I
19 don't know off the top of my head. I wouldn't be
20 able to --

21 Q Okay.

22 A -- spout off the law.

23 Q I'm not going to fence with you. Isn't

24 it true that notwithstanding your efforts to

25 advocate to the contrary, the State Department's

Epiq Court Reporting Solutions - New York

1-800-325-3376

www.deposition.com

Epiq Court Reporting Solutions - New York
1-800-325-3376

www.deposition.com

1 position is that when two nontransgender men who are
2 married to each other have a child using assisted
3 reproduction technology and that child is born
4 outside the United States, the government of the
5 United States tells those men their child is not
6 legitimate unless some action happens down the line
7 to change the status of that child to legitimate?

8 MS. ANDRAPALLIYAL: Okay.

9 Mischaracterizes testimony.

10 BY MR. EDELMAN:

11 Q Yes or no?

12 A No.

13 Q It's not true?

14 A I do not agree with that statement.

15 Q And why do you disagree with that
16 statement?

17 A Again, I refer you to section 4(c). The
18 law of the applicant's country of birth may deem
19 them legitimate and the United States would honor
20 that.

21 Q Okay. I'll amend my question to say
22 absent the possibility that some law would recognize
23 the child as legitimate, the State Department
24 doesn't recognize the child as legitimate, yes or
25 no?

Epiq Court Reporting Solutions - New York
1-800-325-3376 www.deposition.com

Epiq Court Reporting Solutions - New York
1-800-325-3376 www.deposition.com

1 A It looks like a cable, an incomplete
2 cable but -- yeah.

3 Q Meaning a cable disseminated within the
4 State Department?

5 A Correct.

6 Q Okay. Focusing on the first sentence of
7 text of Plaintiffs' Deposition Exhibit 18, read
8 along with me, please, and make sure I do this
9 properly, "There has been a recent policy change
10 related to children born abroad through assisted
11 reproductive technology (ART)."

12 Did I read that correctly?

13 A Yes.

14 Q "The previous policy required that a
15 mother have a genetic connection to a child in order
16 to qualify as a parent for the purpose of obtaining
17 immigration benefits." Did I read that correctly?

18 A Yes.

19 Q "Under the new policy, birth mothers
20 (gestational mothers) who are also the legal parent
21 of the child will be treated the same as genetic
22 mothers for the purposes of immigration benefits."

23 Do you see that?

24 A Correct. Yes.

25 Q Okay. So would you agree with me that

1 Plaintiffs' Deposition Exhibit 18 indicates that the
2 State Department changed the policy with respect to
3 whether gestational mothers were considered to have
4 a blood relationship for purposes of the INA, in
5 particular, section 301 of the INA?

6 A Based on the fact that it says there's
7 been a recent policy change, I would agree with that
8 statement.

9 MR. EDELMAN: Okay. Now, let's mark as
10 Plaintiffs' Deposition Exhibit 19 the document you
11 were referring us to in the binder so we can talk
12 about that. So if you would be so kind as to give
13 that document to the reporter so the reporter can
14 apply the appropriate exhibit sticker, we can go
15 from there.

16 (Plaintiffs' Deposition Exhibit Number 19
17 was marked for identification.)

18 MR. EDELMAN: Let me just use yours for a
19 moment, please, sir, so I can identify it properly.

20 So the reporter has marked a three-page
21 document bearing production numbers DEFS001382
22 through 1384. I'm placing that document back before
23 the witness.

24 BY MR. EDELMAN:

25 Q And ask you, Mr. Peek, please can you

1 I could get your question I was answering at the
2 time I started looking for this.

3 Q The question, I believe, though I don't
4 represent to you that it was said exactly this way,
5 was how does the State Department know that USCIS
6 interprets section 301 of the INA to require a blood
7 relationship between the child and a U.S. citizen
8 parent?

9 A I'm just going to start reading the third
10 paragraph on the first page: CA and L -- which
11 refers to the Bureau of Consular Affairs and the
12 department's legal department -- in consultation
13 with DHS -- the Department of Homeland Security --
14 have been studying whether we can interpret the INA
15 to allow U.S. citizen parents to transmit U.S.
16 citizenship to their children born abroad through
17 ART in a broader range of circumstances, and in
18 other circumstances, amend visa requirements for
19 such children. Related to this, we are considering
20 how this would impact children born through ART
21 overseas to same-sex couples. Because we regularly
22 encounter people seeking to document children who
23 are not theirs, we use DNA testing to verify
24 parentage.

25 Q Okay. Now, just explain, if you will,

1 you see that?

2 A Yes.

3 Q Now, what consideration occurred with
4 respect to this issue?

5 A Consideration of the various scenarios
6 and how the broadening of the definition to include
7 gestational parents would affect same-sex couples.

8 Q But in particular what was the
9 consideration or was there a proposal to make a
10 change?

11 MS. ANDRAPALLIYAL: Objection. Exceeds
12 the scope.

13 MR. EDELMAN: The witness opened the
14 door, Counsel.

15 A Could you repeat your question?

16 BY MR. EDELMAN:

17 Q Yes. What specific consideration was the
18 State Department giving to assist you?

19 A What specific consideration was the State
20 Department --

21 Q It says, "We are considering how this
22 would impact children born through ART overseas to
23 same-sex couples."

24 So I'm asking you to describe the
25 consideration that was given.

1 A The consideration would have included the
2 impact of a change on various scenarios affecting
3 same-sex couples.

4 Q What scenarios in particular?

5 MS. ANDRAPALLIYAL: Objection. Exceeds
6 the scope.

7 A The universe of scenarios that could have
8 taken place.

9 BY MR. EDELMAN:

10 Q Okay. And one of them would be to read
11 section 301 -- by "read" I mean the State
12 Department -- for the State Department to read 301
13 as including the children born through assisted
14 reproductive technology to same-sex couples as
15 citizens at birth under section 301, correct?

16 A Correct.

17 Q Okay. And what happened with respect to
18 that consideration?

19 MS. ANDRAPALLIYAL: Objection. Exceeds
20 the scope of the deposition.

21 A I'm sorry. Can you repeat the question?

22 BY MR. EDELMAN:

23 Q Yes. What happened with respect to that
24 consideration?

25 A What happened -- can you be more

1 how it interprets the biological relationship
2 requirement of its policy as it relates to children
3 born through assisted reproductive technology
4 overseas to same-sex couples?

5 A The department did.

6 Q Did?

7 A Well -- I'm sorry. Could you repeat your
8 question?

9 MR. EDELMAN: Why don't we read it back?

10 THE REPORTER: "So am I correct in my
11 understanding that the State Department did not
12 change its policy with respect to how it interprets
13 the biological relationship requirement of its
14 policy as it relates to children born through
15 assisted reproductive technology overseas to
16 same-sex couples?"

17 THE WITNESS: I'm sorry -- could you read
18 that one more time? I'm sorry.

19 BY MR. EDELMAN:

20 Q Here. Let me see if I can make this
21 easier. So aside from the gestational parent issue,
22 okay, did the State Department change its
23 interpretation of when a biological relationship
24 between a child and a U.S. citizen parent is
25 required for purposes of citizenship at birth?

1 MR. EDELMAN: Let's just do this for the
2 record. We've just marked as Plaintiffs' Exhibit 20
3 a multipage document bearing production numbers
4 DEFS000650 through 52, which has an MRN number of
5 14 STATE 10952 dated January 31, 2014.

6 A I'm sorry. If you don't mind, I'll note
7 that on your Exhibit 18, that same 10952 number is
8 at the top of yours, but as you can see, yours is an
9 incomplete version.

10 Q Okay. Let's just do as much as we can,
11 and this is question and answer, so that the record
12 will be clear.

13 A I apologize.

14 Q You can keep that in front of you, but my
15 question was really referring to Exhibit 15. Okay?

16 A Yes.

17 Q And to answer my question, we have to
18 look -- we can look at Exhibit 20 for a minute to
19 say we've agreed already the State Department
20 changed the policy as it relates to gestational
21 mothers, correct?

22 A Correct. And that --

23 Q Okay.

24 A -- means I misstated my earlier
25 testimony.

1 Q Okay. Now, prior to or leading up to
2 that policy change, was there an amendment to
3 section 301?

4 A No.

5 Q Okay. So the State Department just
6 changed its interpretation, correct?

7 MS. ANDRAPALLIYAL: Objection. Exceeds
8 the scope.

9 A I would say it's incorrect to say that
10 the department changed its interpretation of 301(g).

11 BY MR. EDELMAN:

12 Q Well, what would you say happened?

13 A We expanded the scope of what was
14 allowable under 301(g).

15 Q Well, something previously wasn't
16 allowable and then it was, correct?

17 A Correct.

18 Q Okay. So the State Department changed
19 its mind, right?

20 A Yes.

21 Q Okay. All right. Now, would you agree
22 with me that the FAM is an internal State Department
23 document?

24 A Much of it is internal. There are
25 sections of it that are available in the public

1 domain.

2 Q Is it subject to approval by any
3 individual or entity outside the State Department?

4 A No.

5 Q Is it subject to congressional approval?

6 A No.

7 Q Are any provisions of the State
8 Department subject to public notice and comment?

9 MS. ANDRAPALLIYAL: Objection. Exceeds
10 the scope.

11 MR. EDELMAN: I'm sorry.

12 BY MR. EDELMAN:

13 Q The provisions of the FAM -- are any
14 provisions of the FAM subject to public notice and
15 comment?

16 MS. ANDRAPALLIYAL: Objection. Exceeds
17 the scope. Calls for a legal conclusion.

18 A No. I can't think of one.

19 BY MR. EDELMAN:

20 Q Okay. Would you agree with me that the
21 FAM does not have the force of law?

22 MS. ANDRAPALLIYAL: Objection. Calls for
23 a legal conclusion. Exceeds the scope.

24 A The FAM is guidance. I do not believe it
25 has the force of the law.

1 BY MR. EDELMAN:

2 Q Okay. All right. Now, you, I believe,
3 testified earlier -- and I'm asking you is it
4 correct -- that the principal consideration that the
5 State Department brings to bear in interpreting the
6 INA is a desire to be compliant with law; is that
7 correct?

8 A Correct.

9 Q Now, would you agree that the State
10 Department's requirement that there be a biological
11 relationship between a married U.S. citizen parent
12 and a child born outside the United States for
13 purposes of recognizing U.S. citizenship at birth --
14 would you agree that that requirement is
15 inconsistent with rulings by various federal
16 appellate courts?

17 MS. ANDRAPALLIYAL: Objection. Exceeds
18 the scope.

19 A I believe that it is, yes.

20 BY MR. EDELMAN:

21 Q Okay. So help us understand how --

22 A Can I clarify?

23 Q Yes. Of course.

24 A I'm not sure if it's appellate courts. I
25 can look at my documents and see if I have an

1 formalities.

2 (Plaintiffs' Deposition Exhibit Number 21
3 was marked for identification.)

4 MR. EDELMAN: We have now marked as
5 Plaintiffs' Deposition Exhibit 21 a two-page
6 document bearing production numbers DEFS001431
7 through 32. And I'm going to put that back in front
8 of the witness.

9 BY MR. EDELMAN:

10 Q Mr. Peek, do you now have Plaintiffs'
11 Deposition Exhibit 21 in front of you?

12 A Yes.

13 Q And could you please identify what that
14 is for the record?

15 A It is a cable from the Secretary of
16 State, via others, to a post answering a question
17 about adjudication of a citizen -- a citizenship
18 adjudication question.

19 Q Okay. Now, I had asked you about three
20 federal court decisions, and you wanted to refer us
21 to Exhibit 21 in responding to those, so please go
22 ahead.

23 A Starting with paragraph 5 of this cable,
24 "U.S. citizenship is transmitted from father to
25 child only when a blood relationship is established.

1 That the INA requires a blood relationship is
2 evidenced in the provisions that require both the
3 establishment of biological paternity and a legal
4 relationship for children born out of wedlock to
5 U.S. citizen fathers, INA section 309."

6 "Mr." -- redacted on my copy -- "also
7 points to the U.S. Court of Appeals for the 9th
8 Circuit recent opinion in Solis versus Espinoza
9 versus" -- I'm sorry -- "Solis-Espinoza v. Gonzalez
10 and argues that this case should be persuasive in
11 the department's adjudication of the children's
12 claim. As a court of limited geographic
13 jurisdiction, decisions of the 9th Circuit are not
14 binding upon the department's adjudication in
15 New Jersey or Mexico."

16 Q Okay. So my question to you was would
17 you agree that the State Department's interpretation
18 is inconsistent with those decisions?

19 A It sounds like it's inconsistent with
20 this decision, yes.

21 Q Okay. What about the other two?

22 A Let me see if I have the documentation of
23 the other two. I don't know -- I don't know that I
24 have any documentation of the other two
25 specifically.

1 Q Okay. Well, let's make sure this is as
2 clear as we can make it, in fairness to you.

3 So the question I asked, in its
4 completeness, is would you agree that the State
5 Department's requirement that it -- through its
6 interpretation of section 301 of the INA, that there
7 be a biological relationship between a married U.S.
8 citizen parent and his child born outside the U.S.
9 in order to recognize that the child acquired U.S.
10 citizenship at birth, that that interpretation is
11 inconsistent with the decisions that we looked at in
12 Plaintiffs' Deposition Exhibit 10?

13 MS. ANDRAPALLIYAL: Objection. Calls for
14 a legal conclusion.

15 A I believe that is the case.

16 BY MR. EDELMAN:

17 Q Okay. Now, should I understand your
18 reference to paragraph 6 in Exhibit 21 as suggesting
19 that the State Department's view is, notwithstanding
20 the inconsistency, it just doesn't believe it has to
21 follow those decisions?

22 A Again, the department has a worldwide
23 scope and are consistent regardless of geographic
24 location in our application of the INA.

25 Q So wouldn't the answer to my question be

1 yes?

2 A Could you ask your question again?

3 MR. EDELMAN: Please read it back.

4 THE REPORTER: Should I understand your
5 reference to paragraph 6 in Exhibit 21 as suggesting
6 that the State Department's view is, notwithstanding
7 the inconsistency, that it just doesn't believe it
8 has to follow those decisions?

9 A Yes.

10 BY MR. EDELMAN:

11 Q Okay. Now, let's go back to the
12 paragraph we were looking at on page 7 of
13 Defendant's Exhibit 10 -- I'm sorry. Plaintiffs'
14 Deposition Exhibit 10.

15 A I'm sorry. What page?

16 Q Page 7.

17 A Page 7, paragraph 7.

18 Q Right. Now, let's look -- right. Let's
19 look at lines 23 and 24.

20 A Uh-hum.

21 Q So we'll take them one at a time.
22 There's a decision there, Pavan versus Smith, which
23 is a United States Supreme Court decision from 2017.
24 Do you see the reference there?

25 A Yes.

1 A Yes.

2 Q Okay. And is it fair to say with a
3 little more specificity that the only reason the
4 State Department denied E.J.'s application was
5 because he did not share a biological relationship
6 with his U.S. citizen parent --

7 A Correct.

8 Q -- Andrew?

9 A Correct. I'm sorry.

10 Q Okay. All right. Now, let's just put
11 some context around this to make sure we're on the
12 same page.

13 Does the State Department agree that
14 Andrew and Elad, the spouses, that they were validly
15 married?

16 A Yes.

17 Q Okay. And does the State Department
18 agree that Andrew and Elad were validly married at
19 the time of E.J.'s birth?

20 A Yes.

21 Q Let's make sure we have commonality on
22 some other things.

23 Does the State Department agree that
24 Andrew and Elad are identified as E.J.'s parents on
25 E.J.'s birth certificate?

1 A That's correct.

2 Q And does the State Department agree that
3 no one other than Andrew and Elad has asserted
4 parental rights with respect to E.J.?

5 A Correct.

6 Q So does the State Department agree -- I
7 just want to make sure it's clear so we're talking
8 about the same thing. Does the State Department
9 agree that only Andrew and Elad are considered to be
10 E.J.'s parents?

11 MS. ANDRAPALLIYAL: Objection. Exceeds
12 the scope.

13 A I'm sorry. Could you restate your
14 question? I'm sorry.

15 BY MR. EDELMAN:

16 Q Does the State Department agree that only
17 Andrew and Elad are considered to be E.J.'s parents?

18 A His legal parents, yes.

19 Q Okay. And should I understand your last
20 answer as recognition that Andrew and Elad used a
21 gestational surrogate to carry E.J. and his twin
22 brother?

23 A Yes.

24 Q Okay. And are you aware that Andrew and
25 Elad had a written contract, agreement, with the

1 A The legal parent, yes.

2 Q Okay. And does the State Department
3 consider Andrew to be E.J.'s parent at birth under
4 Ontario law?

5 A His legal parent at birth, yes.

6 Q Okay. And you referred earlier today to
7 a court order, correct?

8 A Yes.

9 Q Okay. So let me show you a document and
10 make sure we're talking about the same thing.

11 A Sure.

12 Q So in Exhibit 5, which you have open in
13 front of you --

14 A Okay.

15 Q -- if you go to the page -- and we're
16 looking now at the top stamped page numbers --
17 ending dash 1768 and 1769. Tell me when you have
18 that.

19 A I do. Can I just take one more question
20 before we break?

21 Q Yes. Again, we'll accommodate whatever
22 your schedule is. If you want to break right now,
23 we can do that.

24 A You can ask your question; then I would
25 like to take a break.

1 the scope.

2 A I don't know.

3 BY MR. EDELMAN:

4 Q Okay. Did you -- in your communications
5 with Ms. Day or anyone else in preparation for
6 today's deposition, did you discuss the
7 circumstances of what transpired during the
8 application and interview process for E.J.'s
9 application for a CRBA?

10 A Yes.

11 Q And did that issue come up?

12 A Which issue?

13 Q Of where E.J. was at the time of the
14 issuance of this order.

15 A I do not recall it.

16 Q Okay. So let's see if we can streamline
17 some of this, given the hour. I just want to ask
18 you a bunch of propositions and see if that is the
19 State Department's position.

20 So is it the State Department's position

21 that E.J. was born out of wedlock?

22 A Yes.

23 Q And is it the State Department's position
24 that A.J., E.J.'s twin, was born out of wedlock?

25 MS. ANDRAPALLIYAL: Objection. Exceeds

1 A -- shouldn't have done that.

2 Q So now we're talking about the State
3 Department's adjudication of the applications for
4 E.J. for a U.S. passport and a CRBA. Okay? In
5 connection with those adjudications, did the State
6 Department apply the criteria of section 309?

7 A Yes.

8 Q And just for the record, why did the
9 State Department determine that those were the right
10 criteria to apply?

11 A The State Department determined that INA
12 309 was the correct statute to apply because both of
13 the parents did not have a biological connection --

14 Q Okay.

15 A -- to the child.

16 Q Now, just so there's no confusion on this
17 point down the line, is it the State Department's
18 position that the adjudication by the consular
19 officer of E.J.'s applications was correct?

20 A Yes.

21 Q Okay. And some other things just to make
22 sure, you know, where we're on the same page and
23 where we're not.

24 Does the State Department dispute that
25 Andrew, the father, is a U.S. citizen?

1 A No.

2 Q Okay. Is -- does the State Department
3 agree that Andrew Dvash-Banks sufficiently
4 demonstrated to the Toronto consulate that he met
5 the residency requirements of section 301?

6 A I believe that he did, yes.

7 Q Okay. And if I were to ask you questions
8 about the adjudication of A.J., would you say that
9 you haven't reviewed them?

10 A Yes.

11 Q Okay. So is it the State Department's
12 position that Andrew could not have a child born in
13 wedlock under the INA if he and another man are
14 listed as the parents on the child's birth
15 certificate?

16 A If the context of your question is the
17 same as it was earlier, that two men who have
18 been --

19 Q Yes.

20 A -- male their entire lives --

21 Q Right.

22 A -- that is correct.

23 Q Correct. My bad. I should have made
24 that clear. Yes. So putting aside the possibility

25 of a transgender male -- man. So is it the State

1 Department's position, assuming there is nobody in
2 the picture who is a transgender man, that Andrew
3 Dvash-Banks could never have a child born in wedlock
4 under the INA if he and another man are listed as
5 the parents on a child's birth certificate?

6 A Correct.

7 Q Okay. So I want to focus you now on the
8 State Department's position, if you will, of what
9 transpired in the application and interview process.
10 Okay?

11 A Okay.

12 Q And, first, what are the sources of your
13 information on that subject?

14 A The application itself and the attached
15 documents, a discussion that I had with Terri Day,
16 and the transcripts of -- I'm sorry. I'm forgetting
17 her name. The woman who was at the next window, her
18 deposition. Marybeth, Mary --

19 Q Margaret?

20 A Margaret.

21 Q Ramsay.

22 A Yes. I'm sorry.

23 Q So some questions, then, about all this.
24 Did Ms. Day ask the Dvash-Banks family how -- in
25 particular, Andrew and Elad -- how they created the

1 that I have not actually seen this before.

2 Q Okay. Do you know what this document is?
3 I want to just -- I want to be respectful of your
4 time and not keep you going --

5 A Sure. Would you rather -- do you want me
6 to focus on the document or --

7 Q I would rather you --

8 A -- focus on reviewing --

9 Q -- focus on the document.

10 A Okay.

11 Q Do you know what this document is?

12 A Give me just a moment to read it. Yes.

13 Q What is this document?

14 A It's a letter from the consulate in
15 Toronto to the applicant -- to Andrew Dvash-Banks
16 advising of the procedure for undergoing DNA testing
17 should he wish to do so.

18 Q Okay. Now, it says in the third
19 paragraph that -- three lines down or two lines down
20 in the third paragraph, "The Immigration and
21 Nationality Act (INA) of 1952, as amended, requires,
22 among other things, proof of a blood relationship
23 between the child and the U.S. citizen parent,"
24 correct?

25 A That's what it says, yes.

1 Q And that is the position of the State

2 Department, correct?

3 A Correct.

4 Q But that does not purport to be a
5 quotation from the INA, right?

6 A Correct.

7 Q Okay. Now, do consular officers ask all
8 same-sex couples with children born outside the
9 United States to get DNA testing?

10 A No.

11 Q So, again, is it just up to the
12 discretion of the consular officer?

13 A Correct.

14 Q I believe -- let's do this. Do you have
15 this?

16 MR. EDELMAN: Just so we're closing out
17 the discussion of what happened with respect to the
18 Dvash-Banks' application, I'm going to put before
19 you Plaintiffs' Deposition Exhibit 1. Here is a
20 copy for counsel.

21 (Plaintiffs' Exhibit Number 1 marked for
22 identification was introduced.)

23 BY MR. EDELMAN:

24 Q Again, I don't think you need to hunt
25 through your book because it's -- we'll just see

1 if -- have you seen this before? And if you don't
2 immediately -- if it doesn't immediately trigger a
3 recollection, we can just deal with it.

4 A Yes, I have seen this before.

5 Q Okay. And when did you see it for the
6 first time?

7 A In preparation for this deposition.

8 Q Okay. Do you know what this is?

9 A Yes.

10 Q What is it?

11 A It is what we call a denial letter.

12 Q And denial of what?

13 A In this instance, it is the denial of
14 consular report of birth abroad and passport
15 application for the child.

16 Q Okay. And did the State Department, in
17 fact, conclude that -- did, in fact, deny E.J.'s
18 application for CRBA?

19 A Correct.

20 Q And did it do so on the basis that it
21 concluded E.J. was not biologically related to his
22 U.S. citizen parent?

23 A I'm sorry. Could you restate that?

24 Q Did the State Department deny the
25 application because it concluded that there was no

1 evidence that E.J. was biologically related to the
2 U.S. citizen parent?

3 A Yes.

4 Q Okay. And that was the sole reason for
5 the denial, correct?

6 A Correct.

7 Q Okay. Now, did the State Department
8 conclude that E.J. had been born out of wedlock?

9 A Yes.

10 Q Did the State Department ever believe
11 that E.J. had been born in wedlock?

12 A I believe that Ms. Day made a case note
13 to that effect at the beginning of the process, but
14 I think she later -- later -- she left the case note
15 in but later determined that was not the case.

16 Q All right. Let's just mark the case note
17 so that we're not speaking in the abstract.

18 MR. EDELMAN: This will be Plaintiffs'
19 Deposition Exhibit 26. Oh, I'm sorry. I beg your
20 pardon. It's already marked as Plaintiffs'
21 Exhibit 6, at least Jessica points out, so no reason
22 to create more confusion and mark it twice.

23 (Plaintiffs' Exhibit Number 6 marked for
24 identification was introduced.)

25 BY MR. EDELMAN:

1 between the U.S. citizen and the child?

2 Q I thought you said earlier --

3 A I'm sorry. Go ahead.

4 Q No. Go ahead.

5 A I shouldn't be speaking in absolute.

6 Where -- it may happen in every case where the
7 officer is not sure that the blood relationship
8 between -- the biological relationship between the
9 U.S. citizen and the child had been established.

10 Q Does the State Department actually track
11 how frequently applicants are asked to undergo DNA
12 testing?

13 A No.

14 Q So on what basis did the State Department
15 conclude that it's common to ask them to do so?

16 A It would be -- I guess we're parsing out
17 the definition of common because, in the universe of
18 20 million passport applications annually, it is
19 certainly uncommon. In the much smaller subset of
20 people who are trying to establish U.S. citizenship
21 based on a birth abroad due to assisted reproductive
22 technology, it is much more common.

23 Q Okay. Would you agree with me that at
24 the time that Mr. Hernandez sent Plaintiffs'
25 Deposition Exhibit 27, he actually had no idea how

1 please?

2 THE REPORTER: "But should I understand
3 you still to be saying that the State Department's
4 view that the requirements for establishing the
5 blood relationship between a U.S. citizen parent and
6 a child born outside the United States is not tied
7 really in any way to concern about fraud?"

8 A Correct.

9 BY MR. EDELMAN:

10 Q Okay. Now, look, please, at the next
11 paragraph -- the last part of that paragraph -- "He
12 may also wish to consider applying for certificate
13 of citizenship directly from USCIS."

14 Do you see that?

15 A Yes.

16 Q Do you know why Mr. Hernandez included
17 that suggestion in Plaintiffs' Deposition
18 Exhibit 27?

19 A Because the child may also have a claim
20 under another section of INA, such as 320, that does
21 not require a biological relationship.

22 Q At the time that the State Department
23 sent Plaintiffs' Exhibit 27, did the State
24 Department have an expectation that if the
25 Dvash-Banks family submitted an application for a

1 Q Does the State Department provide
2 training regarding any -- specifically with
3 reference to applications for U.S. passports or
4 CRBAs by same-sex couples?

5 You know what? Let's come back to that
6 if you don't know, because I want to just sort of
7 see if we can --

8 A Okay.

9 Q -- finish up and get you home.

10 A I just wanted to make sure I was giving
11 you an accurate answer so I was...

12 Q Okay. Now, is an application for a U.S.
13 passport or CRBA more likely to be denied if the
14 applicant's parents are a same-sex married couple
15 than if they are an opposite-sex married couple?

16 A I don't know.

17 Q Does the State Department compile any
18 statistics relating to that subject?

19 A Can you be more specific?

20 Q Does the State Department keep track of
21 the rate at which CRBA applications on behalf of --
22 or by same-sex couples are granted or denied?

23 A No.

24 Q Does it keep track of any comparison
25 statistics as to the rate at which applications for

1 a CRBA by same-sex couples versus applications for a

2 CRBA by opposite-sex couples are granted or denied?

3 A No.

4 Q Other than this litigation, has the State
5 Department received any allegations of
6 discrimination against same-sex couples in the
7 adjudication of applications for U.S. passports or
8 CRBAs?

9 A I'm sorry. Could you repeat that?

10 Q Yes. Other than this litigation -- put
11 aside this litigation -- has the State Department
12 received any allegations that the State Department
13 discriminates against same-sex couples in
14 adjudicating applications for a U.S. passport or a
15 CRBA?

16 MS. ANDRAPALLIYAL: Objection. Exceeds
17 the scope.

18 A It's a very broad question, so I'll say
19 yes.

20 BY MR. EDELMAN:

21 Q Do you know of any?


22 A I can't think of a specific instance,
23 but, I mean, in 20 million applications there's --

24 Q Okay.

25 A -- you know, we get congressionals on a

1 CERTIFICATE OF NOTARY PUBLIC

2 I, DONNA L. LINTON, RMR-CLR, and a Notary
3 Public in and for the District of Columbia, before
4 whom the foregoing deposition was taken, do hereby
5 certify that the witness whose testimony appears in
6 the foregoing deposition was duly sworn by me; that
7 the testimony of said witness was taken by me in
8 Shorthand at the time and place mentioned in the
9 caption hereof and thereafter transcribed by me;
10 that said deposition is a true record of the
11 testimony given by said witness; that I am neither
12 counsel for, related to, nor employed by any of the
13 parties to the action in which this deposition was
14 taken; and further, that I am not a relative or
15 employee of any counsel or attorney employed by the
16 parties hereto, nor financially or otherwise
17 interested in the outcome of this action.

18 

19
20 

22 DONNA L. LINTON, RMR-CLR
23 Notary Public in and for
24 DISTRICT OF COLUMBIA
Dated: December 24th 2018

25 My Commission expires: June 30, 2019

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS)	
and E.J. D.-B.,)	
)	
Plaintiffs,)	Case No.
)	2:18-cv-00523-JFW-JCx
vs.)	
)	
THE UNITED STATES DEPARTMENT)	
OF STATE, and THE HONORABLE)	
MICHAEL R. POMPEO,)	
Secretary of State,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF TERRI NATHINE FRANCES DAY

(Taken by Plaintiffs)

Charlotte, North Carolina

Thursday, December 20, 2018

Reported in Stenotype by
Cindy A. Hayden, RMR-CRR

1 APPEARANCES

2 ON BEHALF OF THE PLAINTIFFS:

3 LAUREN M. GOLDSMITH, Esquire
4 Sullivan & Cromwell LLP
125 Broad Street
5 New York, New York 10004-2498
(212) 558-4023
6 goldsmithl@sullcrom.com

7 ~ and ~

8 REBEKAH T. RAYBUCK, Esquire
9 Sullivan & Cromwell LLP
1870 Embarcadero Road
10 Palo Alto, California 94303-3308
650.461.5674
11 raybuckr@sullcrom.com

12 ON BEHALF OF THE DEFENDANTS:

13 LISA ZEIDNER MARCUS, Esquire
Senior Counsel
14 U.S. Department of Justice
Civil Division, Federal Programs Branch
15 P.O. Box 883
Washington, DC 20044
202.514.3336
16 lisa.marcus@usdoj.gov

17 ~ and ~

18 Jeremy Weinberg, Esquire (Via telephone)
19 U.S. Department of State
Attorney-Adviser
20 Office of the Legal Adviser
600 19th Street NW
21 SA-17 Suite 5.550
Washington, DC 20036
22 202.485.8649
weinbergjm@state.gov

23
24 Also Present: Bruce Weekly, Videographer

25

1 VIDEOTAPED DEPOSITION OF TERRI NATHINE
2 FRANCES DAY, a witness called on behalf of the
3 Plaintiffs, before Cindy A. Hayden, RMR-CRR, Notary
4 Public, in and for the State of North Carolina,
5 held at the Hyatt Place Charlotte Airport/Tyvola
6 Road, 2950 Oak Lake Boulevard, Charlotte, North
7 Carolina, on Thursday, December 20, 2018,
8 commencing at 10:03 a.m.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	I N D E X	
2		PAGE
3	EXAMINATION BY MS. GOLDSMITH	7
4	EXAMINATION BY MS. MARCUS	182
5	EXAMINATION BY MS. GOLDSMITH	272

6

7 PREVIOUSLY MARKED EXHIBITS

8

9	NUMBER	DESCRIPTION	PAGE
10	EXHIBIT 1	Letter dated 3/2/17 to Andrew Mason Dvash-Banks	145
11	EXHIBIT 2	Document titled Do any of these	177
12		circumstances apply to you and	
13		your family?	
14	EXHIBIT 3	Email dated 1/9/17, Subject: Welcome to ACS!	64
15	EXHIBIT 5	CRBA application and supporting documents	151
16	EXHIBIT 6	ACS Activity Log	162

17

18

19

20 (Index continued on next page.)

21

22

23

24

25

DAY	NUMBER	DESCRIPTION	PAGE
	EXHIBIT 1	Emails, top one dated 9/25/17, Subject: DVASH-BANKS (REP.LIEU)	123
	EXHIBIT 2	Email dated 1/24/17, Subject: Conversation with Reffett, Larilyn	126
	EXHIBIT 3	Letter dated 1/24/17 to Andrew Dvash-Banks	135
	EXHIBIT 4	CRBA application and supporting documents (color copy)	154
	EXHIBIT 5	Consular Report of Birth Abroad	165
	EXHIBIT 6	Emails, top one dated 9/25/17, Subject: DVASH-BANKS (REP.LIEU)	254
	EXHIBIT 7	Emails, top one dated 9/25/17, Subject: DVASH-BANKS (REP.LIEU), with attachment	255

1 trial attorney, U.S. Department of Justice, Civil
2 Division, Federal Programs Branch. I represent the
3 United States. And in this action, I represent the
4 Department of State and the Secretary of State, who
5 is sued in his official capacity.

6 It's possible that at some point during
7 today's deposition, I may be joined telephonically
8 by an attorney colleague at the Department of
9 State. If so, if that does occur, I will have that
10 person introduce him or herself on the record at
11 that time. Thank you.

12 * * *

13 TERRI NATHINE FRANCES DAY,

14 having been first duly sworn, was examined and
15 testified as follows:

16 * * *

17 EXAMINATION

18 BY MS. GOLDSMITH:

19 Q. Ms. Day, thank you so much for being
20 here with us today.

21 Have you ever been deposed before?

22 A. No.

23 Q. Have you ever testified in court?

24 A. No.

25 Q. Have you ever given testimony under

1 you explain a little bit?

2 Q. Is it your understanding that the
3 policies that the Toronto consulate follows with
4 respect to how to adjudicate passport and CRBA
5 applications are the same policies that the State
6 Department follows?

7 A. According to my understanding, yes,
8 they are the same policies, as far as what I've
9 seen in the Foreign Affairs Manual, which is the
10 only thing I can attest to, really. And the
11 guidelines that have been given to me by Consular
12 Affairs, yes, they are the same.

13 Q. So I'd like to talk about your job
14 responsibilities when you were a Vice Consul at the
15 Toronto consulate. I know that you said -- my
16 understanding is that you said you were working in
17 the nonimmigrant visa unit; is that correct?

18 A. I worked in several different -- I
19 worked in several different units during that time.

20 Q. Can you describe that?

21 A. Working in the nonimmigrant visa unit
22 or working --

23 Q. What other units did you work for?

24 A. I also worked in the American Citizens
25 Services Unit.

1 interviewing at the same time as I was.

2 Now, because of transfer season and
3 things like that, people coming and going,
4 sometimes there would be gaps in the -- not gaps,
5 but sometimes there would be times when we needed
6 more adjudicators. So we would borrow adjudicators
7 from the fraud unit or we'd borrow them from the
8 nonimmigrant visa unit to help supplement our
9 interviews that we did upstairs and to get the wait
10 times down, because we had wait times for passports
11 and -- for CRBAs and things like that.

12 Q. You stated that your job
13 responsibilities at the consulate included the
14 adjudication of applications for U.S. passports and
15 CRBAs; is that correct?

16 A. Yes.

17 Q. And what was your role in adjudicating
18 those applications?

19 A. My role was to determine if the
20 applicant had a claim to U.S. citizenship either
21 through their parent or their place of birth or
22 whatever reason they were -- you know, whatever
23 reason they were claiming was their purpose for
24 getting it -- acquiring U.S. citizenship. So that
25 was my -- my job was to determine if that was --

1 according to Foreign Affairs Manual and the
2 guidelines that we had, if that was -- if they were
3 entitled to that citizenship.

4 Q. So am I correct in understanding, then,
5 that when you say "determine if an applicant had a
6 claim to U.S. citizenship," you mean that the
7 applicant was a citizen?

8 A. I will say -- I will restate and say
9 that it was to determine if the applicant would
10 qualify for U.S. citizenship and then approve or
11 deny that application accordingly.

12 Q. And did your job ever require you to
13 determine whether an applicant for a CRBA was a
14 U.S. citizen at birth?

15 A. Could you -- could you repeat that one
16 time? Sorry.

17 Q. Sure. Was part of your role as a
18 consular officer to make determinations as to
19 whether applicants were citizens at birth?

20 A. Yes.

21 MS. GOLDSMITH: So there has been a
22 request for a quick bathroom break. So let's go
23 off the record for a few minutes, and we'll
24 reconvene.

25 THE VIDEOGRAPHER: We're going off the

1 10:59. We are back on the record.

2 MS. GOLDSMITH: So to address defense
3 counsel's statement before we took our break,
4 plaintiffs are fine with Ms. Marcus's suggestion
5 that defendants review the transcript after the
6 deposition and designate any portions confidential
7 that they intend to at that time. We just ask that
8 they do so promptly and that they do so within
9 seven days, so that we can meet any other
10 court-ordered deadlines.

11 MS. MARCUS: I agree. And thank you.

12 BY MS. GOLDSMITH:

13 Q. Okay. So we were talking about the
14 process for adjudicating applications for passports
15 and CRBAs, and you were talking earlier about the
16 interview process; is that correct?

17 A. I -- yes, that sounds correct.

18 Q. And did you typically make the
19 determination whether to approve or deny an
20 application during the interview?

21 A. I can't say for certain. I don't
22 remember 100 percent of my cases. So I can't say
23 what was more prevalent than not, but I can say
24 that quite often there was -- there was -- before I
25 can make a determination, it would be pending for

1 further documentation, which would mean that the
2 decision, the determination, was not made during
3 the interview.

4 Q. And can you explain what you mean by
5 "pending"?

6 A. "Pending," meaning in process, not
7 determined yet.

8 Q. And was it common to put applications
9 into this pending status?

10 A. Could you be a bit more specific? What
11 do you mean by "common"?

12 Q. Sure. In your experience, adjudicating
13 applications for U.S. passports and CRBA, was it
14 your typical practice to put an application into
15 pending status?

16 A. If the application called for it, yes,
17 without a doubt I would have put it in a pending
18 status, which -- so pending -- pending
19 documentation could include a birth certificate, a
20 photo, a signature that needed to be done. It
21 could mean a whole list of things. So it was
22 definitely something that was -- that happened
23 fairly frequently.

24 Q. And is the -- is the process that
25 you're describing of adjudicating applications for

1 this? If somebody gives me a Sunday school list or
2 Sunday school graduation document, is that enough
3 to determine that they were in the United States
4 from the time that they said they were? Those
5 things are more judgment based, but -- so when I
6 talk about making the determination and making
7 judgment on that, it's definitely physical presence
8 concerns, but a lot of the things -- you know, your
9 name, the parents' name, the parents' citizenship,
10 those things are yes or no. There's no judgment
11 required with those.

12 Q. And I think before you referred to
13 there's a checklist you go through. Is that a
14 metaphorical checklist or is that a physical
15 checklist?

16 A. That is a metaphorical checklist. We
17 know based on the FAM what documents are required,
18 what things we need to know about the parent and
19 about the parents' relationship with the child. We
20 know that, but you're not going to go through the
21 FAM, you know, line by line. You're going to know
22 what it's asking you, and then you're going to --
23 you're going to say, "Okay, have I seen this?"
24 Yes. "Have I seen this?" No. Et cetera.

25 Q. And you may have touched on this

1 before, but who -- who specifically makes the final
2 decision whether to approve or deny an application?

3 A. The consular officer who does the
4 interviews makes the decision, the final decision
5 of whether to approve or deny the application.

6 Q. So in that window from January 2017 to
7 March 2017 when you were working at the Toronto
8 consulate, did you have authority to make a final
9 decision whether to approve or deny applications?

10 A. Yes.

11 Q. Who communicates to the applicant the
12 final decision to approve or deny the application?

13 MS. MARCUS: Objection. Compound.

14 BY MS. GOLDSMITH:

15 Q. You can answer.

16 A. I would say -- I'm sorry. Could you
17 repeat the question?

18 MS. GOLDSMITH: Can you just read back
19 the question, please.

20 (The following question was read back:

21 Q: Who communicates to the applicant
22 the final decision to approve or deny the
23 application?)

24 THE WITNESS: I would say that the --
25 that comes from -- there is a letter of -- there is

1 BY MS. GOLDSMITH:

2 Q. Did you ever consult any other
3 documents or guidance of any kind during the course
4 of your adjudication of U.S. passport and CRBA
5 applications?

6 A. I would say no.

7 Q. Did you ever consult the FAM?

8 A. Yes.

9 Q. Was there anything else that you ever
10 consulted?

11 A. I can't -- I can't say with 100 percent
12 certainty. I don't remember specifically, but in
13 my experience, the FAM is the -- is the guideline
14 that is followed. If there are changes and they
15 are communicated to us through our managers, be it
16 in NIV, IV or ACS.

17 Q. And can you clarify what those
18 abbreviations mean? I think I know, but --

19 A. Sorry. Through nonimmigrant visas,
20 immigrant visas and American Citizens Services. So
21 those are just the units that handle whatever that
22 thing is. So NIV means the unit that handles
23 nonimmigrant visas, et cetera.

24 Q. Are you aware of whether the State
25 Department follows the law of the U.S. Supreme

1 MS. MARCUS: For the record, if -- if
2 you ask a lot of questions distinguishing between
3 the two, you may also consider -- I'd ask you also
4 to consider referring to them generally as the
5 approved child's applications or the denied child's
6 applications, in case --

7 THE WITNESS: That would be very
8 helpful.

9 MS. MARCUS: -- in case Ms. Day gets
10 mixed up, because the initials E.J. and A.J. are
11 not completely dissimilar. So it's my view that
12 it's possible for any person reading the record or
13 hearing the questions to be confused as to which
14 specific child is being referred to at a given
15 time. So I'd put that on the record for
16 Ms. Goldsmith's consideration.

17 I would also put on the record for
18 Ms. Day's hearing that you -- if you don't know at
19 a given time which child is being referred to, you,
20 of course, are free to ask for clarification
21 regarding that. Thank you.

22 BY MS. GOLDSMITH:

23 Q. So you stated earlier that you were
24 personally involved in the adjudication of A.J.'s
25 and E.J.'s applications for U.S. passports and

1 CRBAs; is that correct?

2 A. Yes.

3 Q. And what was your role?

4 A. I was the adjudicating officer. So I
5 took in the -- I -- after the local staff took in
6 the documents, I reviewed them and I certified
7 copies. I gave an oath to the parents and had them
8 sign the documents. I interviewed them, and then I
9 was ultimately responsible for approving or denying
10 those applications.

11 Q. Was anyone else involved in that
12 adjudication? And we'll start with E.J.

13 A. Can I just say for both of them --

14 Q. Sure.

15 A. -- because they were -- they were
16 treated as -- I mean, all the information that's
17 true for one -- in the initial interview phase, as
18 far as I knew, it would have been true for the
19 other. So no one was -- I mean, I consulted with
20 my manager about the case, and she brought in
21 Maggie Ramsay as well. But during the -- and
22 during the interview, at a certain point, Maggie
23 Ramsay did speak to the family. So in that way,
24 people were involved, but the ultimate decision was
25 mine.

1 correct?

2 A. That is correct, yes.

3 Q. And do you recall in general what sorts
4 of documents you reviewed?

5 A. I don't recall that, no.

6 Q. And you may have answered this before,
7 but do you recall whether you consulted with anyone
8 before the family came in?

9 A. I don't recall that. Like I said
10 before, if their -- if their -- if they had
11 presented documents to us that said they used
12 assisted reproductive technology, especially Maggie
13 might have seen that and, you know -- because I was
14 fairly new in the section. So if -- if I don't
15 have a lot of experience doing cases like that,
16 then she's going to send me the FAM -- you know,
17 the FAM section and send me documents that could --
18 you know, those documents that would help me, you
19 know, any training -- you know, here's some review
20 of some training that you may have had about ART or
21 whatever, but I don't remember specifically.

22 Q. And then when you first met the
23 Dvash-Banks family, did you meet them in the
24 waiting room?

25 A. No. So I would call the family up to

1 my window. I -- we have an intercom. I would say,
2 "Dvash-Banks family to window C."

3 Q. And then I think you testified earlier
4 that at that point, you would have sworn the
5 parents; is that correct?

6 A. Uh-huh.

7 Q. And then what would happen next? What
8 happened next?

9 A. What would happen next is we would
10 begin the interview. They would sign documents,
11 specifically. We would get all the clerical stuff
12 out of the way, and they would sign documents. We
13 would -- I would -- I would confirm their identity
14 to the photos. I would look at the kids. All of
15 that -- those things that you have to do at the
16 very beginning are all clerical things.

17 And then I would determine -- now, the
18 section of the law that they would fall under is
19 already -- you know, we already know the situation.
20 So I'm coming into it with that mind-set. If
21 during the course of the interview I find something
22 out different, then, obviously, I would change.
23 But for the most part, you know, I would ask them
24 questions along the lines of, okay, you know, your
25 marriage certificate, when did you get married, et

1 cetera, and then talking about the kids, how they
2 were conceived. If I have any questions about
3 that, I would ask that at that time. And then
4 we -- and then that's when we would get into, okay,
5 how they were conceived, who -- you know, who's
6 biologically related to whom, and then -- and on
7 through.

8 Q. And to the best of your recollection,
9 is this what happened on the day that you
10 interviewed the Dvash-Banks family?

11 A. I would say yes.

12 Q. So after you called the family up to
13 the window, you got all of the clerical work out of
14 the way, is it correct then that you began to ask
15 them questions related to the documents that they
16 had presented you with?

17 A. I would say that normally that's how
18 that happens, yes.

19 Q. And to the best of your recollection,
20 is that what happened here?

21 A. I don't recall, but I don't -- unless
22 there was something else that -- you know, that
23 stuck out, I would -- that's the order I would have
24 followed.

25 Q. And I understand that you don't recall

1 that bubble of their kids and their family, which I
2 totally get. And so they were feeling -- possibly
3 feeling a little bit attacked because I was asking
4 for this information that is very personal,
5 extremely personal.

6 So it was probably around then that
7 they -- that the mood sort of changed into the
8 heightened emotional state that it got to.

9 Q. Do you remember anything that Andrew
10 and Elad said to you that made you feel like they
11 thought they were being attacked?

12 MS. MARCUS: This is going to maybe be
13 the last question before we take a break because
14 it's pretty -- three minutes left on the tape.

15 MS. GOLDSMITH: We'll finish the tape.

16 THE WITNESS: Do I remember -- can you
17 repeat the question? I'm sorry.

18 MS. GOLDSMITH: Can you read the
19 question back, please.

20 THE WITNESS: I'm sorry.

21 (The following question was read back:

22 Q: Do you remember anything that
23 Andrew and Elad said to you that made you feel like
24 they thought they were being attacked?)

25 THE WITNESS: I do remember them --

1 especially Andrew saying, you know, these are our
2 children. These are our sons. I'm the dad, and
3 this is -- you know, and Elad, I think is his name,
4 Elad is the dad. You know, we're the parents of
5 these boys. You know, they're -- those kinds of
6 things, which made me kind of feel like -- I mean,
7 they were feeling that they were, you know, being
8 attacked. And it was directed at me, you know, no
9 doubt, not -- not necessarily at the FAM. They
10 probably don't -- have never heard of it until now.
11 But, you know -- so, yeah, that was -- those were
12 the kinds of things that they were saying.

13 BY MS. GOLDSMITH:

14 Q. And do you remember asking Andrew and
15 Elad how they created their family?

16 A. Those specific words or --

17 Q. Or in substance how they created their
18 family.

19 A. I don't remember asking that. If I had
20 questions about the surrogate or about the
21 surrogacy, about the ART, I would have asked those
22 questions, yes. It's an awkward thing to try to
23 say, "Which of you donated sperm to put in an egg
24 for a baby?" So I might have said, like, you know,
25 "So how were the boys conceived?" Something like

1 that, along those lines, yes.

2 Might we have talked about, like, how
3 they met or something? I don't -- I don't recall.

4 MS. GOLDSMITH: Okay. All right. So
5 we can go off the record.

6 THE VIDEOGRAPHER: Stand by.

7 This marks the end of Disc 2. We are
8 going off the record. The time on the monitor is
9 1309.

10 * * *

11 (Whereupon, there was a recess in the
12 proceedings from 1:09 p.m. to 2:44 p.m.)

13 * * *

14 THE VIDEOGRAPHER: This is the
15 beginning of Media Unit Number 3 for the video
16 deposition of Frankie Terri Day. The time on the
17 monitor is 1424. We are back on the record.

18 BY MS. GOLDSMITH:

19 Q. Still discussing the day of the
20 interview, January 4th, 2017, your interaction
21 with -- January 24th -- excuse me -- your
22 interaction with the Dvash-Banks family on the day
23 of the interview, and we were talking before the
24 break about your conversation with the Dvash-Banks
25 family; is that correct?

www.huseby.com Huseby, Inc. Regional Centers 800-333-2082
Charlotte ~ Atlanta ~ Washington, DC ~ New York ~ Houston ~ San Francisco

www.huseby.com Huseby, Inc. Regional Centers 800-333-2082
Charlotte ~ Atlanta ~ Washington, DC ~ New York ~ Houston ~ San Francisco

1 A. Yes.

2 Q. So during the interview, did you tell
3 Andrew and Elad that their family was different?

4 A. Did I -- just for clarification, you're
5 asking if I used the exact words, "Your family is
6 different"?

7 Q. We can start with that.

8 A. To the best of my recollection, I don't
9 remember saying that.

10 Q. Do you remember in substance stating
11 that the Dvash-Banks family was different?

12 A. What do you mean "different"?
13 Different than what?

14 Q. Different than the typical family
15 applying for a passport or CRBA for their minor
16 child born abroad?

17 A. No, I don't recall saying that in
18 substance either.

19 Q. Did you tell Andrew and Elad that
20 heterosexual couples were not required to get DNA
21 tests?

22 A. No, I did not say that.

23 Q. Do you recall in substance telling them
24 that heterosexual couples were not required to get
25 DNA tests?

1 included fraudulent materials?

2 MS. MARCUS: Objection. Vague as to
3 the time of the concern that's being asked about.

4 BY MS. GOLDSMITH:

5 Q. At any point during your adjudication
6 of E.J.'s application for a U.S. passport or CRBA,
7 did you have any concern that they had provided you
8 with fraudulent materials?

9 A. To the best of my recollection, no.

10 Q. And in adjudicating E.J.'s application
11 for a U.S. passport and for a CRBA, did you ever
12 consider or apply the law of Ontario, to the best
13 of your recollection?

14 MS. MARCUS: Objection. Vague.
15 Compound.

16 THE WITNESS: You'll have to be more
17 specific than that.

18 BY MS. GOLDSMITH:

19 Q. Did you consider Ontario law to
20 determine whether Andrew and Elad were a married
21 couple?

22 A. In that I had a copy of their marriage
23 certificate from the Ontario government, I -- I
24 looked at that document as a -- as proof of their
25 marriage.

1 passport on or before January 24th, 2017?

2 A. That, I cannot say for certain. Just
3 because I made -- because the copy was made and I
4 stamped it doesn't mean that I received it on that
5 day.

6 Q. Well, on or before January 24th, 2017?

7 A. It could -- I don't know. If something
8 was presented to us afterwards and put with the
9 case file, it -- it could also be in here.

10 Q. Would you have stamped it if you
11 received it after the interview?

12 A. Possibly, if we made a copy of it.

13 Q. Can you turn, please, to the document
14 that is Bates-stamped 00070270-1767. And I'll
15 represent for the record that it's titled "Marriage
16 License."

17 A. Yes.

18 Q. What is this document?

19 A. It seems to be a marriage license.

20 Q. Thank you.

21 A. Uh-huh.

22 Q. Have you seen this document before?

23 A. Yes.

24 Q. And is this document Andrew and Elad's
25 Canadian marriage license?

1 A. It would seem to be a marriage license
2 from Ontario, yes. It has their names on it.

3 Q. And did you consider this document to
4 be sufficient proof that Andrew and Elad were
5 married at the time of E.J.'s birth?

6 A. Yes.

7 Q. And does this document refresh your
8 recollection that you determined that Andrew and
9 Elad Dvash-Banks were a married couple?

10 A. I don't believe you asked me
11 specifically if they were a married couple. I --
12 yes, that would prove that they are a married
13 couple.

14 Q. And in adjudicating E.J.'s application
15 for a U.S. passport, do you recall why you
16 determined that E.J. was born out of wedlock?

17 A. I do not recall.

18 Q. Ms. Day, you testified previously that
19 you have read INA Sections 301 and 309; is that
20 correct?

21 A. Yes, that's correct.

22 Q. And I believe you testified earlier
23 that it's your understanding that Section 309 of
24 the INA applies when a child is born out of
25 wedlock; is that correct?

1 So am I correct in understanding that
2 although it was your typical practice to determine
3 whether a child's parents were married in the
4 course of adjudicating an application for a CRBA or
5 passport, that you do not recall whether you made
6 that determination with respect to Andrew and Elad
7 Dvash-Banks?

8 A. No, that's incorrect.

9 Q. Okay. Can you clarify, please.

10 A. I -- I would have made the decision
11 before adjudicating the case at -- at some point,
12 but I can't specifically say in this -- in this
13 case at which point it would have happened.

14 Q. That's okay. At any point during the
15 course of the adjudication is what I'm asking.

16 A. At any point of the adjudication, did I
17 determine if they were in wedlock or out of
18 wedlock, the boys? Is that what your question is?

19 Q. First, at any point during the course
20 of the adjudication, did you determine that Andrew
21 and Elad Dvash-Banks were a married couple?

22 A. Oh, if they were a married couple? I
23 don't recall this specifically.

24 Q. And the marriage license document that
25 is Bates-stamped 00070270-1767 and is marked as

1 Day Exhibit 4, does that refresh your recollection?

2 A. It -- it does. It is a marriage
3 license that has Andrew and Elad's name on it. So
4 if I saw this, I would -- at this point in time I
5 see this, and I would make the determination that
6 they are married, which is -- yeah.

7 Q. And now, separately, in adjudicating
8 E. [REDACTED] -- strike that.

9 In adjudicating E.J.'s application for
10 a U.S. passport and a CRBA, do you recall whether
11 you made the determination that E.J. was born in
12 wedlock or out of wedlock?

13 A. I don't recall.

14 Q. Is there anything that would refresh
15 your recollection as to whether you made the
16 determination that he was born either in wedlock or
17 out of wedlock?

18 A. I don't know. I'm not sure.

19 (PLAINTIFF EXHIBIT 6, ACS Activity Log,
20 was previously marked for identification.)

21 BY MS. GOLDSMITH:

22 Q. So I've asked the court reporter to
23 hand you a document. It was previously marked as
24 Plaintiffs' Deposition Exhibit 6, and it is not
25 Bates-stamped because of the manner in which it was

1 A. I do.

2 Q. And what is this document?

3 A. It is a copy of a Consular Report of
4 Birth Abroad.

5 Q. And is this a Consular Report of Birth
6 Abroad for A.J. D [REDACTED]-B [REDACTED]?

7 A. It would seem to be, yes.

8 Q. And does this document state that the
9 child was -- that the child acquired U.S.
10 citizenship at birth?

11 A. Acquired United States citizenship at
12 birth, yes.

13 Q. And is this the CRBA that the consulate
14 issued to A.J. D [REDACTED]-B [REDACTED]?

15 A. It would seem to be, yes.

16 Q. So does this CRBA that the consulate
17 issued to A.J. reflect that he acquired U.S.
18 citizenship at birth?

19 A. Yes.

20 Q. Is this document, A.J.'s CRBA,
21 consistent, generally, with the form of a CRBA that
22 was in effect in March 2017, to the best of your
23 recollection?

24 A. As far as I recall, yes.

25 Q. And I believe you stated earlier today

1 Q. All right. Can you return, please, to
2 the passport file, the document that we labeled as
3 Day Exhibit 4.

4 A. Yes.

5 Q. And can you turn, please, to the
6 document that is Bates-stamped 00070270-1764. And
7 I'll represent for the record that the title of the
8 document is "Statement of Live Birth."

9 A. 1764. Yes.

10 Q. What is this document?

11 A. It seems to be a Statement of Live
12 Birth for E [REDACTED] J [REDACTED] D [REDACTED] -B [REDACTED].

13 Q. And have you seen this document before?

14 A. Yes, I have.

15 Q. And is this document E.J.'s Canadian
16 birth certificate?

17 A. It would seem to be, yes. A copy of
18 that.

19 Q. And in your review of this document
20 during the process of adjudicating E.J.'s
21 application, did you consider this document to be a
22 true and accurate copy of E.J.'s timely filed
23 Canadian birth certificate?

24 A. Yes.

25 Q. Did you consider this document to be

1 adequate proof that Andrew and Elad Dvash-Banks
2 were E.J.'s parents?

3 MS. MARCUS: Objection. Vague as to
4 the term "parents."

5 BY MS. GOLDSMITH:

6 Q. You can answer.

7 A. I need clarification on the term
8 "parents."

9 Q. Did you consider this document to be
10 adequate proof that Andrew and Elad Dvash-Banks are
11 E.J.'s legal parents?

12 A. I would say yes.

13 Q. And can you turn, please, to the
14 document titled "Final Order, Ontario Superior
15 Court of Justice." And it's Bates-stamped
16 00070270-1768, and it continues on to the page
17 Bates-stamped 00070270-1769.

18 A. Okay.

19 Q. What is this document?

20 A. It is an Ontario -- it seems to be a
21 copy of an Ontario court document that names Elad
22 and Andrew Dvash-Banks as the parents of E [REDACTED]
23 J [REDACTED] D [REDACTED] -B [REDACTED].

24 Q. And have you seen this document before?

25 A. I have, yes.

1 Q. Did you consider this document to be
2 adequate proof that Andrew and Elad were E.J.'s
3 parents at the time of E.J.'s birth? And, again,
4 I'm referring to legal parents.

5 A. I would say yes.

6 Q. In the course of adjudicating E.J.'s
7 applications for a U.S. passport and CRBA, did you
8 determine that E.J. was the child of Andrew and
9 Elad Dvash-Banks?

10 A. You have to specify "child."

11 Q. Did you determine that Andrew and Elad
12 Dvash-Banks were E.J.'s legal parents?

13 A. According to the documents that they
14 presented me, the courts of Ontario recognized E.J.
15 and Elad Banks [sic] as the legal parents of -- of
16 E [REDACTED], according to these documents they presented
17 to me.

18 Q. And during the course of the
19 adjudication, you determined that this was adequate
20 proof of his legal parentage?

21 A. It was adequate proof that the people
22 who presented to me could sign his documentation --
23 could sign his application.

24 Q. I'd like to turn again, please, to the
25 document that was marked previously as Plaintiffs'

1 A. I do not recall that, no.

2 Q. Do you recall looking at the Foreign
3 Affairs Manual -- let me be more clear.

4 Do you recall looking at any provisions
5 of the Foreign Affairs Manual during the time that
6 you were working on these applications?

7 A. I do not -- I don't remember. I don't
8 recall.

9 Q. You don't remember if you looked at the
10 Foreign Affairs Manual?

11 A. I don't recall this specifically. I do
12 know that -- I do recall that -- actually, I will
13 say that I do recall looking at this -- the -- the
14 FAM provision, specifically. Because I got --
15 because -- it was either Maggie or Larilyn,
16 someone -- I don't remember who -- sent it to me.
17 And I was looking at it as -- as I conducted the
18 interview because you can kind of go step by step
19 and say, "Okay. Does this apply to you?" or
20 whatnot. So I -- I do remember having that up.

21 Q. You specifically remember looking at a
22 FAM provision during the time that you were
23 interviewing the Dvash-Banks family's adults?

24 A. Yes.

25 Q. Sitting here today, do you remember the

1 Q. Do you understand that it was -- it
2 would have been necessary, and it was necessary,
3 regardless of whether the children were born in
4 wedlock or out of wedlock -- let me start over.

5 I'm sorry.

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

11 A. Yes.

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

18 A. Yes, that's correct.

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

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

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

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

3 Q. Why not?

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

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

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

11 Q. Is it based on anything else?

12 A. No.

13 Q. Was that something that you needed to
14 seek clarity from, from your supervisor?

15 A. No.

16 Q. Was it something that you needed to
17 consult with Maggie Ramsay about?

18 A. No.

19 Q. Was that the -- would you describe the
20 lack of a -- sorry. Let me start over.

21 When you're talking about the FAM --
22 when you've been talking today at various points
23 about the FAM, do you understand the FAM to be
24 something that is completely separated from the
25 Immigration and Nationality Act of 1952?

1 the legal guardians of the children, the legal
2 parents of the children the same individuals whose
3 names would appear on a CRBA that was issued by the
4 consulate?

5 A. As far as my recollection goes, the
6 legal guardians would be listed on the CRBA in
7 common practice.

8 Q. You stated earlier that you didn't
9 specifically remember the text of the provisions of
10 INA Sections 301 or 309; is that correct?

11 A. Yes, that's correct.

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

17 A. Based on my understanding, yes.

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

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

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

1 FAM?

2 A. Yes.

3 Q. You stated earlier that you don't know
4 which FAM provisions you specifically consulted on
5 the day of the Dvash-Banks family's interviews; is
6 that correct?

7 A. Correct.

8 Q. And you also stated earlier that you
9 don't recall which provisions of the INA -- strike
10 that.

11 You also testified earlier that you
12 don't recall specifically which provisions of the
13 INA are incorporated into the FAM; is that correct?

14 A. That's correct.

15 Q. You also testified earlier in response
16 to one of Ms. Marcus's questions that you do recall
17 that the INA was incorporated into the FAM
18 provisions that you reviewed on the day of the
19 Dvash-Banks family's interview; is that correct?

20 A. I don't recall saying that
21 specifically. I think the question was more broad.
22 Were there parts of the INA in the FAM? And there
23 are.

24 Q. So is it possible -- if I were to
25 represent to you that you stated earlier in sum and

1 STATE OF NORTH CAROLINA

2 COUNTY OF MECKLENBURG

3

4 REPORTER'S CERTIFICATE

5 I, Cindy A. Hayden, a Notary Public in
6 and for the State of North Carolina, do hereby
7 certify that there came before me on Thursday,
8 December 20, 2018, the person hereinbefore named,
9 who was by me duly sworn to testify to the truth
10 and nothing but the truth of his knowledge
11 concerning the matters in controversy in this
12 cause; that the witness was thereupon examined
13 under oath, the examination reduced to typewriting
14 under my direction, and the deposition is a true
15 record of the testimony given by the witness.

16 I further certify that I am neither attorney
17 or counsel for, nor related to or employed by, any
18 attorney or counsel employed by the parties hereto
19 or financially interested in the action.

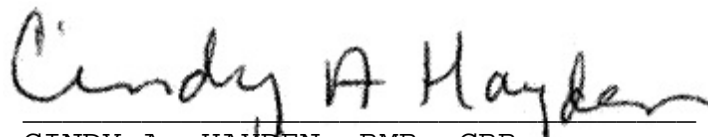
20 IN WITNESS WHEREOF, I have hereto set my
21 hand, this the 21st day of December, 2018.

22

23

24

25



CINDY A. HAYDEN, RMR, CRR
Notary Public No. 20020910053

EXHIBIT C

In The Matter Of:

Andrew Mason Dvash-Banks

v.

Michael R. Pompeo

Andrew Mason Dvash-Banks VOL I

December 12, 2018



17835 Ventura Blvd. Suite 310 Encino, CA 91316

P 888.272.0022 F 818.343.7119

www.benhyatt.com

BH CDR Job # **1090988**

number of pages 178

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-BANKS,)
et al.,) Case No.
) 2:18-cv-00523-JFW
) (JCx)
Plaintiffs,)
)
v.)
)
MICHAEL R. POMPEO, in his)
official capacity as U.S.)
Secretary of State, et al.,)
)
Defendants.)
_____)

DEPOSITION OF ANDREW MASON DVASH-BANKS

Taken Wednesday, December 12, 2018

At 12:00 P.M.

At 1888 Century Park East

Los Angeles, California

Reported by: DONNA J. RUDOLPH, RPR, CA. CSR NO.
9652, NV. CCR NO. 420

1 DEPOSITION OF ANDREW MASON DVASH-BANKS,
2 taken at 1888 Century Park East, Los Angeles,
3 California, on Wednesday, December 12, 2018, at
4 12:00 P.M., before Donna J. Rudolph, RPR, Certified
5 Shorthand Reporter, in and for the State of
6 California.

7 APPEARANCES:

8 For Plaintiff:

9 SULLIVAN & CROMWELL, LLP
10 BY: ALEXA M. LAWSON-REMER, ESQ.
11 1888 Century Park East
12 Los Angeles, California 91167
13 (310)712-6697
14 lawsonr@sullcrom.com

15 SULLIVAN & CROMWELL, LLP
16 BY: REBEKAH T. RAYBUCK, ESQ.
17 1870 Embarcadero Road
18 Palo Alto, California 94303
19 (650)461-5674
20 raybuckr@sullcrom.com

21 For Defendant:

22 UNITED STATES DEPARTMENT OF JUSTICE
23 BY: LISA ZEIDNER MARCUS, ESQ.
24 Civil Division
25 Federal Programs Branch
P.O. Box 883
Washington, DC 20044
(202)514-3336
lisa.marcus@usdoj.gov

* * * * *

1 I N D E X

2 ANDREW MASON DVASH-BANKS

3 Page

4 By Ms. Zeidner Marcus 4

5 By Ms. Lawson-Remer 164

6

7 E X H I B I T S

8 Number Description Page

9 Defendant's 2 Privacy Release Form 155

10 Plaintiffs' 9 Plaintiffs' Responses to

11 Defendants' First Set of

12 Discovery Requests, dated

13 11-19-18 168

14

15 Previously Marked Exhibits

16 (Attached For Reference Only)

17

18 Exhibit 5

19 Exhibit 8

20 Exhibit 9

21

22

23

24

25

Information Requested: (None)

1 LOS ANGELES, CALIFORNIA
2 WEDNESDAY, DECEMBER 12, 2018
3 12:00 P.M.

4
5 ANDREW MASON DVASH-BANKS,
6 called as a witness, being first duly sworn to tell
7 the truth, the whole truth, and nothing but the
8 truth, testified as follows:

9
10 EXAMINATION

11 BY MS. ZEIDNER MARCUS:

12 Q Good afternoon, Mr. Dvash-Banks.

13 A Good afternoon.

14 Q I am Lisa Zeidner Marcus, trial attorney,
15 U.S. Department of Justice. I represent the
16 defendants in this matter, the U.S. Department of
17 State and the Secretary of State, who is sued in his
18 official capacity.

19 I'm going to ask the other attorneys who
20 are present today to identify themselves for the
21 record.

22 MS. LAWSON-REMER: Good afternoon. Alexa
23 Lawson-Remer from Sullivan & Cromwell, appearing pro
24 bono on behalf of plaintiff Andrew Dvash-Banks and
25 the minor EJ DB, Dvash-Banks.

1 A Sorry. I just want to make --

2 Q -- if you have one.

3 A -- make sure, like, I fully understand
4 your question. So the substance -- the substance of
5 the deposition did I discuss with anyone other than
6 my attorneys or my spouse? The answer's no. The
7 substance.

8 Q You know, you might have talked about the
9 logistics that you had a deposition. But you
10 didn't -- do I understand you correct to say that
11 you didn't discuss the -- the substance of the case
12 with anybody prior -- in preparation for the
13 deposition prior to today other than your attorneys
14 and your spouse?

15 A Discuss in preparation for the deposition,
16 I did not. No.

17 Q Okay. This is a yes-or-no question. Did
18 you bring any documents with you today to the
19 deposition?

20 A No.

21 Q Mr. Dvash-Banks, can you tell us where and
22 when you were born.

23 A Yeah.

24 Q And where were you born?

25 A I was born in Santa Monica, California.

1 Q What year were you born?

2 A 1981.

3 Q Did you generally grow up in Santa Monica?

4 A No.

5 Q Can you quickly take us through the places
6 that you lived prior to leaving your parents' home.

7 A Prior to leaving my parents' home. What
8 do you mean by "leaving"?

9 Q You lived with your parents when you were
10 a child?

11 A Yes.

12 Q And in what locations did you guys live?

13 A We lived in a few different locations.

14 Primarily in Beverly Hills, California.

15 Q Before you were 18, did you ever live
16 abroad?

17 A Before I was 18, did I ever live abroad?
18 What do you mean by "live"? Like, really, like,
19 what do you mean by "live"?

20 Q Spent more than three months.

21 A More than three months, no.

22 Q Okay. Have a permanent residence abroad
23 at any time?

24 A No.

25 Q Okay. And your parents, where were they

1 born?

2 A Toronto. Both of them in Toronto.

3 Q What is their citizenship?

4 A My father's deceased.

5 Q Sorry.

6 A Thanks. And my mother is a dual citizen.

7 Q Of what country?

8 A United States and Canada.

9 Q And what is your citizenship status?

10 A Dual citizen.

11 Q Of the same countries?

12 A Of the same countries, yeah.

13 Q Okay. Can you take us through your

14 educational background briefly.

15 A Briefly? No.

16 Q Medium briefly?

17 A Okay. My educational background, I have a

18 high school degree, I have a bachelor's degree, and

19 I have a master's degree.

20 Q Where did you obtain your high school

21 degree?

22 A At Beverly Hills High School.

23 Q Where did you obtain your bachelor's

24 degree?

25 A UC Santa Barbara.

1 Q Okay. And how long did your -- what year
2 did you enroll in graduate -- in your graduate
3 studies?

4 A 2007.

5 Q Were you enrolled in a three-year program?

6 A No. It was a two-year program.

7 Q Did you -- I understood before you said
8 you obtained your degree in 2010. Did you take a
9 break during your studies?

10 A I did a third year to write my master's
11 thesis.

12 Q What was the topic of your master's
13 thesis?

14 A It was the Israeli-Syrian peace
15 negotiations and comparing -- a whole other topic.
16 I could go on and on about that, but --

17 Q Sure. Another time.

18 A Another time. Interesting stuff.

19 Q Definitely.

20 After you obtained your master's degree,
21 what did you do for work, if anything?

22 A After I obtained my master's degree, I
23 moved to Toronto, Canada.

24 Q Why did you move to Toronto?

25 A Because I couldn't at the time move to the

1 United States.

2 Q Why was that?

3 A Because I couldn't sponsor the man that I
4 had fallen in love with to immigrate to the United
5 States with me.

6 Q When did you meet this man?

7 A I met him in March of 2008.

8 Q What is his name?

9 A Elad Dvash-Banks.

10 Q And you're now married to Mr. Elad

11 Dvash-Banks; is that correct?

12 A Yes.

13 Q Congratulations.

14 A Thank you.

15 Q In March 2008, where did you meet?

16 A At a Purim party. Purim is a Jewish
17 Halloween.

18 Q I won't ask about your costume.

19 A Please don't.

20 Q Where -- in what country or --

21 A In Tel Aviv. At the University of Tel
22 Aviv.

23 Q Were you -- this is during the time that
24 you were a student --

25 A Correct.

1 Q -- working on your master's?

2 A Correct.

3 MS. LAWSON-REMER: Wait until she finishes
4 her question.

5 THE WITNESS: Okay.

6 BY MS. ZEIDNER MARCUS:

7 Q I will admit for the record and out loud
8 that sometimes I have the habit of talking slowly
9 while still thinking about what I am trying to say.
10 So that is why, you know, it may be hard to -- to
11 know always when I've stopped, but I will try to
12 look up and look at you when I'm finished with my
13 question.

14 A Okay.

15 Q What year did you move to Toronto?

16 A 2010.

17 Q Were you able to sponsor Elad as an
18 immigrant to Toronto, Canada?

19 A In 2010?

20 Q Yeah.

21 A I didn't sponsor him in 2010.

22 Q When did you -- did you sponsor him later
23 for -- for Canada?

24 A I'm not sure how the legal immigration --
25 like, the terminology, but in 2010, we submitted our

1 application, if that answers the question.

2 Q Sure.

3 A Yeah, okay.

4 Q I was trying to understand and reflect
5 back on an earlier answer that you gave to one of my
6 questions.

7 A Uh-huh.

8 Q When I asked you why you moved to Toronto,
9 I recalled that -- what you said then. Do you
10 recall what your testimony was as to why you moved
11 to Toronto?

12 A Yeah. Yes.

13 Q Do you recall that you said because you
14 couldn't sponsor Elad as an immigrant to the United
15 States at that time?

16 MS. LAWSON-REMER: Objection to the extent
17 it mischaracterizes the testimony.

18 BY MS. ZEIDNER MARCUS:

19 Q Do you recall saying that? You can answer
20 the question.

21 A I recall saying that, yeah.

22 Q Is that an accurate reason why you moved
23 to Toronto?

24 A Yes.

25 Q And I was trying to understand if you

1 had -- I was trying to understand how Canada
2 compared to the United States in 2010 such that you
3 made this choice.

4 MS. LAWSON-REMER: Is there a question?

5 BY MS. ZEIDNER MARCUS:

6 Q Can you explain that further?

7 MS. LAWSON-REMER: Objection. Vague.

8 BY MS. ZEIDNER MARCUS:

9 Q You can answer.

10 A In 2010, Canada had gay -- legalized gay
11 marriage. And in 2010, the United States did not.

12 Q Were you engaged to be married in or
13 before 2010?

14 A Yes.

15 Q What year did you get engaged to be
16 married?

17 A In 2010, yeah.

18 Q Do you recall approximately what month and
19 year you were engaged?

20 A Yes.

21 Q What was that?

22 A July 2010.

23 Q In what month and year did you move to
24 Toronto?

25 A August of 2010.

1 A I'd say so. I think so.

2 Q At some point you got married; is that
3 correct?

4 A Yes.

5 Q When did you get married?

6 A In August of 2010.

7 Q Where did you get married?

8 A In Toronto, Canada.

9 Q And you have children?

10 A I do.

11 Q EJ and AJ?

12 A Yes.

13 Q When were they born?

14 A In September of 2016.

15 Q Just over two?

16 A Yes.

17 Q Very cute ages.

18 A The best.

19 Q It keeps getting better, believe it or
20 not. But it -- it's all great.

21 Q And you -- do you currently live with your
22 husband and your children?

23 A I do, yes.

24 Q Do you live with anybody else?

25 A No.

1 Q Since the four of you have become a family
2 unit, have you lived with anybody else?

3 A Since the four of us have become a family
4 unit, have we lived with anyone else? And by "live"
5 you mean -- I just want to make sure I'm going to
6 answer the question correctly -- like, under the
7 same roof for any period of time?

8 Q For a month or longer.

9 A For a month or longer. Yes, we have.

10 Q Was it one of your parents?

11 A Yes.

12 Q Other than that, was there anybody else
13 that you've lived with as a family?

14 A No.

15 Q And approximately -- I understand that you
16 said earlier that it's hard to say exactly when you
17 moved from Toronto to the United States. Is that
18 correct?

19 A That's correct.

20 Q Approximately when did you move?

21 MS. LAWSON-REMER: Objection. Vague.

22 THE WITNESS: Approximately when did I
23 move. I mean, to give you the honest answer, there
24 were several times that we moved -- moved to the
25 U.S., like, entered, resided, and went back to

1 Q Have you lived in the United States, then,
2 since June of 2017?

3 A Yes.

4 MS. LAWSON-REMER: Well --

5 BY MS. ZEIDNER MARCUS:

6 Q And --

7 A I would say just -- I still had a
8 residence in Toronto.

9 Q Do you still currently?

10 A I do not currently, no.

11 Q When did you give up that residence?

12 A Two months ago.

13 Q And currently you live in Los Angeles?

14 A I do, yes.

15 Q Have you lived in Los Angeles since June
16 2017?

17 A Yes.

18 Q And some of the periods of time that you
19 were back and forth in the United States prior to
20 June 2017, you were spending time in Florida; is
21 that correct?

22 A Prior to June 2017, yes.

23 Q Since June 2017, you've lived in L.A.?

24 A Yes.

25 Q Why did you go back to Toronto in

1 BY MS. ZEIDNER MARCUS:

2 Q Right. I -- let me rephrase.

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

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

10 MS. ZEIDNER MARCUS: EJ, ever.

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

14 BY MS. ZEIDNER MARCUS:

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

19 A To best of my knowledge, yes.

20 Q And on the other entries when you were
21 with your family, December 2016, February 2017,
22 June 2017, were any other members of your family
23 selected for secondary screening on those occasions?

24 A No.

25 Q At some point prior to the birth of your

1 children, you and your husband, did you and your
2 husband decide to have children?

3 A At some point prior to the birth of my
4 children? Yeah.

5 Q On a general level, what considerations
6 did you have with respect to the logistics of
7 conceiving and having those children be born?

8 MS. LAWSON-REMER: Objection. Vague.

9 THE WITNESS: What considerations did we
10 have with respect to our children being born?

11 Sorry. I just want to make sure I understand the
12 question fully.

13 BY MS. ZEIDNER MARCUS:

14 Q Sure. Let me -- I'll rephrase. And I'll
15 come back to this.

16 Do you recall a particular point during
17 your marriage when you and your husband decided to
18 have children?

19 A I -- I can recall several conversations
20 that we had.

21 Q Was there a time when you both agreed that
22 you wanted to have children?

23 A Is there a specific time where we both
24 agreed? Yes.

25 Q At what point in your marriage did you

1 I'm getting you a correct answer.

2 Q Did you -- do you recall if you -- the
3 order in which you selected a surrogate and selected
4 an egg donor?

5 A I do.

6 Q Which did you do first?

7 A We selected an egg donor first.

8 Q Generally speaking, what did that entail?

9 A Generally speaking, it entailed signing up
10 with the egg donation agency and reviewing egg donor
11 profiles.

12 Q And I will represent for the record that
13 the complaint refers to use of an anonymous egg
14 donor. Was your -- do you understand that you used
15 anonymous egg donor?

16 A Yes.

17 Q And did you know anything about the egg
18 donor that you selected?

19 MS. LAWSON-REMER: Objection. Vague.

20 You can answer.

21 THE WITNESS: Did I know anything about
22 her? Yes, I did know things about her.

23 BY MS. ZEIDNER MARCUS:

24 Q Generally speaking, what did you know
25 about her?

1 twins. And then she gave birth to my twin boys in
2 September. I hope that was, like, not too broad of
3 a stroke.

4 Q That --

5 A But okay.

6 Q Thank you.

7 A Okay.

8 Q Have you had any other pregnancies other
9 than this one that you just described?

10 A I have not had any other pregnancies, no.

11 Q And have you -- has your genetic material
12 been used to -- in conceptions that led to any other
13 pregnancies other than the one that you just
14 described?

15 A To the best of my knowledge, no. And I
16 hope not.

17 Q And the -- could you describe in broad
18 strokes how you used the fertility clinic in the
19 process of having your children?

20 A Yes. We used the fertility -- in broad
21 strokes --

22 Q Yes.

23 A -- we used the fertility clinic to collect
24 our semen or sperm, to test it, to test us
25 medically, and to create embryos and to test those

1 embryos and to implant the embryos in our surrogate.

2 Totally broad strokes there.

3 Q Sure.

4 Were the embryos created after you

5 selected the surrogate and you selected each other?

6 A No.

7 Q At what point in time were the embryos

8 created, approximately?

9 A In July -- the end of July 2015, beginning
10 August 2015.

11 Q Prior to July/August 2015, you selected
12 the egg donor?

13 A Correct.

14 Q And you used the same egg donor for both
15 of your sons?

16 A We only used one egg donor. Correct.

17 Q Do you know how many embryos were

18 implanted in the surrogate?

19 A Yes.

20 Q How many?

21 A Two.

22 Q And did you at the time of implantation

23 know whether your genetic material were -- was used

24 to create either of those two embryos?

25 A Did I know prior to implantation?

1 Q Yes.

2 A I believed at the time I did.

3 Q And what was your understanding at the
4 time?

5 A From the information that was provided to
6 me from the fertility clinic, I understood that one
7 of the embryos had my genetic material.

8 Q And what was your understanding with
9 respect to the other embryo?

10 A It did not have my genetic material.

11 Q Did it have your husband's genetic
12 material?

13 A Yes.

14 Q Okay. Thank you.

15 I'm going to hand you something that's
16 been previously marked as Plaintiff's Exhibit 5. I
17 may have some questions for you -- more questions
18 for you about this document later. For now, I ask
19 you to flip towards the middle of this packet.

20 A Uh-huh.

21 Q Well, first, let's identify for the record
22 the front page of this document.

23 A It says --

24 MS. LAWSON-REMER: Is there a question?

25 / / / /

1 that are also part of those materials that you
2 submitted with the initial application?

3 A Some of them are, yes.

4 Q And I would like to identify for the
5 record, if you can, the page spans that are -- that
6 were submitted with the materials in -- with the
7 initial application to be distinguished from
8 anything that appears in Plaintiff's Exhibit 5 that
9 is not either the application that we just
10 identified or the initial application materials.

11 So my question for you is: Can you
12 quickly go through and identify the page spans for
13 the materials that you submitted with the initial
14 application, please.

15 MS. LAWSON-REMER: To the extent he knows
16 or remembers?

17 MS. ZEIDNER MARCUS: Correct.

18 MS. LAWSON-REMER: Okay.

19 THE WITNESS: Yeah. Are you asking me to,
20 like --

21 BY MS. LAWSON-REMER:

22 Q Yes.

23 A -- say --

24 Q Please state for the record.

25 A Like, the -- the four-digit number at the

1 top; right?

2 Q Yes, please.

3 A From, like, the beginning of the
4 application to where the end of the supporting
5 documentation is?

6 Q I'm now -- we --

7 A Basically, I just -- I don't want to have
8 to say every single number is what I'm asking you.

9 Q No, no. Right, right. Yes. Exactly. I
10 want the span, so --

11 A Okay. You want the span. Got it. Okay.

12 Q I'm looking for supporting materials.
13 We've covered the application itself.

14 A Yeah, yeah, yeah.

15 Q The supporting materials --

16 A Got it.

17 Q -- where do they start, where do they end?

18 A So supporting materials look like they
19 begin on 1764.

20 Q Okay.

21 MS. LAWSON-REMER: And just -- I'll just
22 make sure that I instruct you to look at every page
23 as you do this.

24 THE WITNESS: As I do this? Okay. I'll
25 look at every page as I do this.

1 So I believe -- this is just to the best
2 of my knowledge -- the supporting documentation
3 finishes on page 1808.

4 BY MS. ZEIDNER MARCUS:

5 Q Okay. And just to be clear, the materials
6 between 1764 and 1808 are materials that you
7 submitted with the initial application?

8 MS. LAWSON-REMER: Inclusive of 1808?

9 MS. ZEIDNER MARCUS: Yes.

10 MS. LAWSON-REMER: Okay.

11 THE WITNESS: Yes. To the best of my
12 knowledge, yes.

13 BY MS. ZEIDNER MARCUS:

14 Q And we -- you skipped 1763.

15 A I noticed that. I didn't see a 1763 in
16 here.

17 Q I see.

18 A Let me just double-check again. Yeah,
19 there's no 1763.

20 Q Okay. So you have just reviewed, is it
21 correct, and identified the first portion of
22 Plaintiff's Exhibit 5 as being -- as consisting of
23 your application and the supporting materials?

24 MS. LAWSON-REMER: Objection.

25 Mischaracterizes his testimony.

1 Do you know whether the Ontario equivalent
2 of a birth certificate for your children was revised
3 at any point?

4 MS. LAWSON-REMER: Objection. Vague.

5 THE WITNESS: Was the birth certificate
6 revised?

7 BY MS. ZEIDNER MARCUS:

8 Q Yeah.

9 A I don't -- I don't think the birth
10 certificate was revised.

11 Q Was there some other document that -- do
12 you understand this court order to be a precursor to
13 some action that was taken with respect to your
14 children?

15 MS. LAWSON-REMER: Objection. Vague.

16 THE WITNESS: Pre- -- what do you mean by
17 "precursor"?

18 BY MS. ZEIDNER MARCUS:

19 Q Do you have any under- -- do you know the
20 result of this court order?

21 A Yes.

22 Q What was the result?

23 A The result was affirming Elad and myself's
24 parentage to our twin boys.

25 Q And -- may I borrow this?

1 Exhibit 5 when he said some of the documents here.

2 MS. ZEIDNER MARCUS: Thank you.

3 Q Did you make one or more applications

4 during that visit?

5 A Yes.

6 Q How many total applications did you make

7 during that visit?

8 A Four.

9 Q And of those four, you made two for each

10 of your children?

11 A Yes.

12 Q And the application that is part of
13 Plaintiff's Exhibit 5, this is one of the four
14 applications; is that correct?

15 A Sorry. Say that first part again.

16 Q Is this application -- the application in
17 the beginning of Plaintiff's Exhibit 5, is that one
18 of those four applications?

19 A Yes.

20 Q What else did you do to prepare for the
21 appointment in addition to collecting documents?

22 A And making the appointment online?

23 Q Yes.

24 A I put our winter gear on and went to the
25 appointment.

1 I'm certain it was over an hour. I think it might
2 have been closer to two hours. But I -- I don't
3 want to say because I don't know. And then with the
4 kids and the screaming and dirty diapers, it's
5 like -- I mean, might as well have been eternity;
6 right?

7 Q Yes. I will say at another time after
8 this deposition, I'll share a story I'm recalling
9 now of a first adventure I had taking my two
10 children out and about with all those things that
11 you were just talking about.

12 And what was the next thing to happen
13 during the appointment?

14 A You mean after that prolonged period of
15 waiting?

16 Q Yes.

17 A We were called up to the window.

18 Q And was it a different window from the
19 first window that you were called up to?

20 A Yes.

21 Q And there was an individual on the other
22 side of the window?

23 A Yes.

24 Q Do you know the position that that
25 individual held?

1 A Do I know now? I know -- I know now what
2 that person's position was at the time.

3 Q Okay. And what was that person's
4 position?

5 A From my understanding, the person's
6 position was vice counsel.

7 Q And generally speaking, you understood it
8 -- this person to be a consular officer of the
9 Department of State?

10 A That's what I understood.

11 Q And were you interviewed by that person?

12 A Yes.

13 Q And do you have a sense, generally
14 speaking, of how long the interview took until the
15 next thing happened during your appointment?

16 A How long the interview took. So -- I
17 mean, 30 minutes is my best guess.

18 Q And after you and the consular officer
19 spoke, did you return to the waiting room?

20 A No. I don't -- I don't think we did.

21 Q Okay. What happened next?

22 A I remember that consular officer walking
23 away to, like, I guess you'd call it the back room.

24 Q Yes.

25 A And I remember waiting at the window.

1 us was can you tell me about -- I can't, like,
2 exactly quote her question because I don't remember
3 exactly how she phrased, but it was something along
4 the lines of can you tell me how you created your
5 family or how did -- yeah. I -- "created" is the
6 word that I believe she used.

7 Q And do you recall what your response was
8 to that question?

9 A I remember -- I'm trying to think. I
10 remember telling her we used a surrogate and an egg
11 donor and created our -- our family.

12 Q Do you remember any other questions that
13 she asked you?

14 A Yes.

15 Q What other questions do you remember?

16 A There were several. Obviously one really
17 sticks out to me just because it was a really
18 emotionally charged question. When she asked are
19 your children genetically connected -- she asked me,
20 Andrew, are your children both genetically connected
21 to you?

22 Q And when you say that this was an
23 emotionally charged question, what do you mean?

24 A I guess what I mean is that it's a very
25 intrusive question that I felt at the time and I

1 "differences."

2 MS. ZEIDNER MARCUS: I'll withdraw the
3 question. It's okay.

4 Q During the -- do you recall whether the
5 consular officer -- either one of the consular
6 officers that you interacted with at consulate
7 Toronto became emotional during the time of your
8 visit to the consulate?

9 A I don't believe they were emotional.

10 Q Do you recall whether either of them
11 displayed any emotions that you perceived during
12 that time?

13 MS. LAWSON-REMER: Objection. Vague as to
14 "perceived."

15 THE WITNESS: I believe their lack of
16 emotion in response to our extreme emotion, I would
17 consider that rude, in my opinion.

18 BY MS. ZEIDNER MARCUS:

19 Q And -- and you describe your emotions
20 being extreme emotion. Are you referring to
21 emotions that you displayed to them?

22 A Yes.

23 Q And can you describe how you would display
24 those emotions to the consular officer, please.

25 A It's not every day that you walk into your

1 home country's consulate to be told that you're
2 essentially not the parent of your child even though
3 you've produced a birth certificate showing that,
4 even though you've cut his umbilical cord, even
5 though you have, you know, fed him and stayed up all
6 night for -- what was that? Like, four months at
7 that point for him even though that you spent seven
8 months -- unfortunately, it was seven months. I
9 wish it was longer -- but seven months in utero --
10 at every single appointment to have a representative
11 of your country tell you that you're not his parent
12 or question that parentage.

13 So I guess to answer your question, like,
14 my emotions and my husband's emotions were derived
15 from that.

16 Q And do you -- did you display the emotions
17 in some way?

18 A Yes.

19 Q Did that include crying?

20 A Yes.

21 Q Did it include raising your voices?

22 A Yes.

23 Q What else did it include, if anything?

24 A It included just a very overall sense of
25 despair and frustration, shock. I mean, the list

1 Q And do you know what legal claims you are
2 pursuing in connection with this litigation?

3 A I'm aware of -- I mean, I'm not a lawyer;
4 right? But I'm aware of my claims, yeah.

5 Q From your perspective, generally speaking,
6 what are your claims against the Department of
7 State?

8 A From my perspective, my claim against the
9 Department of State is that my son EJ was refused
10 United States citizenship by the U.S. state
11 department. And my claim is that -- that we were
12 wrong and treated unfairly, and that's an unfair --
13 how do I say this? And -- and that he was refused
14 American citizenship because he's considered a child
15 born out of wedlock. And his twin brother born four
16 minutes before him was granted American citizenship.

17 I know our claim is, like, many, many
18 pages long. I hope I did an okay job in summarizing
19 it.

20 Q It's not a test.

21 A Okay.

22 Q Do you have -- do you know whether you
23 have a claim against the Department of State
24 relating to a fundamental right that you have --
25 that you believe that you have?

1 there ever an intention on your part for the
2 surrogate to be a parent to your -- to the twins?

3 A Never.

4 Q Okay. Can you look at Plaintiff's Exhibit
5 5, please. I will represent to you that this was --
6 this packet that's Plaintiff's Exhibit 5 was
7 attached to defendant's initial disclosures in this
8 action and was identified by defendants as the
9 passport file for EJ. Okay?

10 If you could just turn to the page that
11 ends with the number 1767.

12 A All right. I'm here.

13 Q Okay. Do you recognize this to be a true
14 and correct copy of your marriage license?

15 A It appears to be, yes.

16 Q All right. Do you have any reason to
17 doubt its authenticity?

18 A I do not, no.

19 Q Does it look any different from the last
20 time you saw it?

21 A No. I don't think so.

22 Q Okay. And it's a copy of the document
23 that you submitted in connection with EJ's
24 applications for CRBA and passport; is that correct?

25 A Yes, that's correct.

1 Q Okay. If we could back up a little bit.
2 In the same packet, Plaintiff's Exhibit 5, go to
3 1764.

4 A Okay. I'm here.

5 Q And do you recognize this to be a true and
6 correct copy of the statement of live birth for EJ?

7 A It appears to be, yes.

8 Q And does it list you as one of his
9 fathers?

10 A It does, yes.

11 Q And who does it list as the other father?

12 A My husband.

13 Q Okay. Do you have any doubt as to the
14 authenticity of this document?

15 A I do not, no.

16 Q Do you have any -- does it look any
17 different than the last time you saw it?

18 A It doesn't appear to, no. I would say
19 other than the stamp from Terri N. Day at the
20 bottom.

21 Q Other than that?

22 A No. It looks --

23 Q Earlier today Ms. Marcus asked you about a
24 family in Israel. Do you generally recall that area
25 of testimony?

1 was that true?

2 A Yes.

3 Q Okay. Let's turn to page 17 of
4 Plaintiff's Exhibit 9. In the middle of this --
5 this page starts with an "Interrogatory Number 2"
6 heading. And after that, it says "For each period
7 of time in which you, Andrew, have been physically
8 present in the United States, identify the addresses
9 at which you resided and the corresponding dates for
10 which you resided at those addresses." You see
11 that?

12 A Yes.

13 Q And then about halfway down the page,
14 starting on line 17 of page 17 of Plaintiff's
15 Exhibit 9, there are -- there's a statement that
16 says "Andrew resided in the United States from
17 January 18, 1981, day of his birth, to
18 October 2008." Is that statement true and correct?

19 A It is, yes.

20 Q Okay. And then the next sentence is "To
21 the best of his recollection, Andrew's cities of
22 residence and the approximate dates of his residence
23 for this period are below." And there -- it's a
24 bulleted list of locations and times from 1981
25 through October 2008. Do you see that?

1 June 2017; is that right?

2 A That's correct.

3 Q Okay. Are you a U.S. citizen?

4 A Yes.

5 Q Were you a U.S. citizen at birth?

6 A Yes.

7 Q Is it correct that you and Elad

8 Dvash-Banks were married on the day EJ and AJ

9 -- excuse me. I'll strike that.

10 Is it correct that you and Elad were

11 married on the day EJ and AJ were born?

12 A We were married on the day EJ and AJ were
13 born.

14 Q And what day was that?

15 A They were born on September 16th, 2016.

16 Q Okay. Does EJ live with you?

17 A Yes.

18 Q And -- and Elad?

19 A Yes.

20 Q Has he lived with you from the time he
21 left the hospital when he was born into -- to the
22 present?

23 A Yes.

24 MS. LAWSON-REMER: Okay. I'll just go off
25 the record for one minute, please.

1 UNITED STATES DISTRICT COURT)
2) ss
3 FOR THE CENTRAL DISTRICT OF CALIFORNIA)

4 I, DONNA J. RUDOLPH, RPR, CSR No. 9652,
5 Certified Shorthand Reporter, certify:

6 That the foregoing proceedings were taken
7 before me at the time and place therein set forth,
8 at which time the witness was put under oath by me;

9 That the testimony of the witness, the
10 questions propounded, and all objections and
11 statement made at the time of the examination were
12 recorded stenographically by me and were thereafter
13 transcribed;

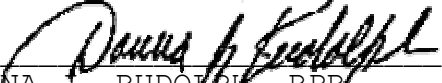
14 That a review of the transcript by the
15 deponent was requested;

16 That the foregoing is a true and correct
17 transcript of my shorthand notes so taken.

18 I further certify that I am not a relative
19 or employee of any attorney of the parties, nor
20 financially interested in the action.

21 I declare under penalty of perjury under
22 the laws of California that the foregoing is true
23 and correct.

24 Dated this 17th day of December, 2018.

25 
DONNA J. RUDOLPH, RPR
CA CSR NO. 9652, NV CCR NO. 420

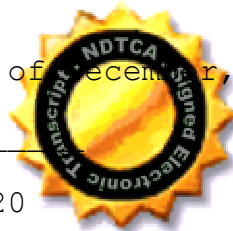


EXHIBIT D

In the Matter Of:
Andrew Mason Dvash-Banks, et al v.
The United States Department of State, et al

MARGARET RAMSAY
December 07, 2018

neelsons

77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3
4 ANDREW MASON DVASH-BANKS and)

5 E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED],) COMPLAINT FOR
6 Plaintiffs,) DECLARATION AND
7) INJUNCTIVE RELIEF

8 v.)

9 THE UNITED STATES DEPARTMENT) Docket No. Case
10 OF STATE, and THE HONORABLE) 2:18-cv-00523-JFW-JCx
11 MICHAEL R. POMPEO, Secretary) JFW
12 of State,)

13 Defendants.)

14 -----)

15
16 --- This is the Transcript of the Videotaped
17 Deposition of MARGARET RAMSAY, taken at the U.S.
18 Consulate, 360 University Avenue, Toronto, Ontario,
19 MSG 1S4, on the 7th day of December, 2018.

20
21 -----

22 Reported By: Deana Santedicola, CSR (Ont.), RPR,
23 CRR

1 A P P E A R A N C E S:

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

3 and E [REDACTED] J [REDACTED] D [REDACTED] -B [REDACTED]:

4 SULLIVAN & CROMWELL LLP

5 PER: Jessica Klein, Esq.

6 Lauren M. Goldsmith, Esq.

7 125 Broad Street

8 New York, New York 10004-2498

9 Tel. 1-212-558-4000

10 Email: goldsmithl@sullcrom.com

11 kleinj@sullcrom.com

12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

14 OF STATE, AND THE HONOURABLE MICHAEL R. POMPEO,

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

23 Also Present: Jeremy Weinberg, U.S. Department of

24 State, Office of the Legal Advisor

25

I N D E X

WITNESS: MARGARET RAMSAY

PAGE

EXAMINATION BY MS. GOLDSMITH..... 5

REDIRECT EXAMINATION BY MS. ZEIDNER

MARCUS..... 115

FURTHER EXAMINATION BY MS. KLEIN..... 159

RE-REDIRECT EXAMINATION BY MS. ZEIDNER

MARCUS..... 170

1 & Cromwell.

2 MS. KLEIN: Good morning, Jessica
3 Klein, also from Sullivan & Cromwell, also
4 representing the Plaintiffs Andrew and E [REDACTED]
5 D [REDACTED] - B [REDACTED].

6 MS. ZEIDNER MARCUS: Good morning, I am
7 Lisa Zeidner Marcus, Trial Attorney, U.S.
8 Department of Justice, Civil Division, Federal
9 Programs Branch. I represent the United States in
10 this action and I represent the Defendants, the
11 U.S. Department of State and the Secretary of State
12 who was sued in his official capacity.

13 MR. WEINBERG: Jeremy Weinberg, U.S.
14 Department of State, Office of the Legal Advisor.

15 THE VIDEOGRAPHER: Would the reporter
16 please swear or affirm the witness.

17 MARGARET RAMSAY; SWORN.

18 EXAMINATION BY MS. GOLDSMITH:

19 Q. Good morning, Ms. Ramsay, thanks
20 so much for being here today. I just have a few
21 background questions before we get started in
22 earnest. Have you ever been deposed before?

23 A. No.

24 Q. Have you ever testified in court?

25 A. No.

#3340

Page 17

1 A. It is hard to say. There are many
2 of them. They are quite specific, so I couldn't
3 speak to all of them.

4 Q. And when you say they are quite
5 specific, are they specific to your role of
6 adjudicating passport applications and other
7 applications?

8 A. Some of them are, yes.

9 Q. And when did you complete that
10 training, if you remember?

11 A. I probably would have completed it
12 in 2011, maybe. I'm not quite certain. I would
13 have to go back through my training transcript.

14 Q. So it was before you came to
15 Toronto?

16 A. Uhm-hmm.

17 Q. Did your training include teaching
18 you the policies of the U.S. State Department in
19 adjudicating applications for passports and
20 Consular Reports of Birth Abroad?

21 A. Yes.

22 Q. And are the Toronto Consulate's
23 policies for adjudicating applications for
24 passports and Consular Reports of Birth Abroad the
25 same as the State Department's policies?

1 A. Yes.

2 Q. You mentioned previously that part
3 of your job involves adjudicating applications for
4 U.S. passports and Consular Reports of Birth
5 Abroad; is that correct?

6 A. Yes.

7 Q. Does your job involve your
8 determining who is a U.S. citizen?

9 A. Yes.

10 Q. Do you review any other types of
11 applications or adjudicate any other types of
12 applications?

13 A. Can you clarify the question?

14 Q. Other than passport applications
15 and applications for Consular Reports of Birth
16 Abroad, do you adjudicate any other types of
17 applications?

18 A. No.

19 Q. Does anyone report to you?

20 A. No.

21 Q. Who do you report to?

22 A. The Supervisor of the American
23 Citizen Services Unit, Larilyn Reffett.

24 THE COURT REPORTER: I'm sorry, did you
25 say a name?

1 Q. And when Terri Day worked with you
2 at the consulate, would that have been true for her
3 as well?

4 A. Yes.

5 Q. Switching gears just a little bit,
6 were you in any way personally involved in the
7 adjudication of E [REDACTED] D [REDACTED]-B [REDACTED]'s application for
8 a U.S. passport or a CRBA?

9 A. Can you clarify?

10 Q. Are you aware of E [REDACTED]
11 D [REDACTED]-B [REDACTED]'s application for a passport and a
12 Consular Report of Birth Abroad?

13 A. Yes.

14 Q. Who was the officer assigned to
15 his case, if you know?

16 A. It was Frankie Day.

17 Q. And were you involved in any way
18 in the process of reviewing E [REDACTED]'s applications?

19 A. Yes.

20 Q. Can you describe in what ways you
21 were involved in that process?

22 A. I assisted my colleague Frankie by
23 sending her relevant guidance from the Foreign
24 Affairs Manual.

25 Q. Did she request that you send her

1 questions, but we often used the same questions
2 when interviewing these types of cases.

3 Q. Did you observe that both of the
4 parents in the Dvash-Banks family were men?

5 A. Yes.

6 Q. And did you hear any questions
7 during the interview that were related in some way
8 to the fact that they were both men?

9 A. Yes, in terms of asking about how
10 the children were conceived and how the children
11 came to be born in Canada.

12 Q. Do you recall anything about the
13 demeanour of the Dvash-Banks family during the
14 interview?

15 A. Yes.

16 Q. Can you describe what you recall?

17 A. They were answering questions, you
18 know, just like any other family would. I think
19 towards the end they were unhappy with how things
20 were proceeding and being asked for additional
21 things, and so they were upset towards the end of
22 the interview, if I recall correctly.

23 Q. Do you recall what about their
24 demeanour gave you the impression that they were
25 upset?

1 A. They were yelling and seemed to be
2 upset about -- about the case.

3 Q. Was anyone crying?

4 A. I don't believe so.

5 Q. Do you recall what was discussed
6 about how the children came to be born in Canada?
7 And we are still talking about during the
8 interview, just to clarify.

9 A. I don't recall specific questions.

10 Q. Am I correct that you testified
11 before that you overheard some of the conversation
12 during the interview about how the children came to
13 be born?

14 A. Yes.

15 Q. And what do you recall that
16 discussion was?

17 A. I recall that they said that they
18 used a surrogate in Canada to conceive the
19 children.

20 Q. Do you remember anything else?

21 A. I think that Frankie asked the
22 question about who contributed genetic material to
23 conceive the children.

24 Q. And do you remember anything else
25 about that conversation?

1 A. I told her where to find the
2 guidance in the Foreign Affairs Manual.

3 Q. Do you recall anything else from
4 that conversation?

5 A. I believe that I told her, you
6 know, oftentimes people have documentation from the
7 clinic that can be helpful, so we usually ask for
8 that in these cases.

9 Q. And do you recall anything else
10 from that conversation?

11 A. No.

12 Q. Did you talk to Ms. Day while the
13 Dvash-Banks family was still at the consulate?

14 A. Yes.

15 Q. And was that a separate
16 conversation from the one we were just discussing?

17 A. Yes, I believe so.

18 Q. And can you describe that
19 conversation?

20 A. I believe she told me that it
21 wasn't clear who the biological parents were and I
22 discussed with her that the DNA testing was an
23 option in these types of cases.

24 Q. So just to make sure that I'm
25 understanding, while the Dvash-Banks family was at

1 the consulate for their interview, you had a second
2 conversation with Ms. Day about how she should
3 proceed?

4 A. I offered some guidance to her as
5 to, you know, how the case could proceed, but
6 ultimately she made the decision herself.

7 Q. And what decision was that?

8 A. She made the decision to place the
9 case in a pending status, pending additional
10 information.

11 Q. Do you know if Ms. Day consulted
12 with anyone else while the Dvash-Banks family was
13 still at the consulate?

14 A. Yes, I believe she consulted with
15 our Supervisor, Larilyn Reffett.

16 Q. Were you present for that
17 conversation?

18 A. I don't believe so.

19 Q. Do you have any knowledge of what
20 they discussed during that conversation?

21 A. Not specifically because I wasn't
22 present for it.

23 Q. When you spoke to Ms. Day while
24 the Dvash-Banks family was still at the consulate,
25 did you advise her to seek Ms. Reffett's advice?

1 Q. And did you ever discuss the
2 Dvash-Banks applications again with Ms. Day before
3 the final adjudication?

4 A. I think I discussed it with her
5 when the results of the DNA testing came back.

6 Q. And what did she say?

7 A. She told me that one child was the
8 biological child of the U.S. citizen and one was
9 not.

10 Q. Do you recall anything else about
11 the conversation?

12 A. Not especially, no.

13 Q. And after that conversation and
14 the final adjudication, did you ever discuss the
15 Dvash-Banks family again with Ms. Day?

16 A. I think there was a news article
17 that someone saw and shared, and so we may have
18 discussed it at that point.

19 Q. And when you say "we," you are
20 referring to you and Ms. Day?

21 A. Uhm-hmm.

22 Q. Did you discuss it with anyone
23 else?

24 A. My Supervisor, Larilyn Reffett.

25 Q. And do you recall the content of

1 A. No.

2 Q. Did you play any role in the
3 decision to seek additional evidence, DNA evidence?

4 A. Can you clarify the question?

5 Q. What, if any, was your role in Ms.
6 Day's decision to seek additional medical evidence
7 such as DNA testing?

8 A. I suggested it to her.

9 Q. Did you -- why did you suggest it?

10 A. Because it can be a useful tool in
11 cases where it is not clear if a parent and child
12 have a biological relationship.

13 Q. Did you play a role in any other
14 decision relevant to the denial of E [REDACTED]
15 D [REDACTED]-B [REDACTED]'s applications?

16 MS. ZEIDNER MARCUS: Objection to form.

17 BY MS. GOLDSMITH:

18 Q. You can answer.

19 A. No.

20 Q. Okay, I am going to move on to a
21 slightly different subject. Do you ever look at
22 U.S. statutes in your adjudication of passport
23 applications or CRBAs?

24 A. Yes.

25 Q. And what statutes are those?

1 legally married, they don't have a marriage
2 certificate.

3 Q. Have you reviewed the documents
4 that the Dvash-Banks family submitted with their
5 children's applications for a U.S. passport and a
6 Consular Report of Birth Abroad?

7 A. I may have looked at them at the
8 time. I don't quite remember. I don't remember
9 looking at them very closely.

10 Q. Do you recall whether a marriage
11 licence or other evidence of the Dvash-Banks
12 marriage was submitted with those applications?

13 A. I believe that they had submitted
14 a marriage certificate.

15 Q. And is it your understanding that
16 under the State Department's policies and
17 procedures, Andrew and Elad Dvash-Banks are
18 considered to be a married couple?

19 MS. ZEIDNER MARCUS: Objection to form.

20 THE WITNESS: That is my understanding.

21 BY MS. GOLDSMITH:

22 Q. And was that true in January of
23 2017?

24 MS. ZEIDNER MARCUS: The same
25 objection. You can answer.

1 Q. Are you aware of any changes that
2 the State Department has made to its policy related
3 to children born abroad through assisted
4 reproductive technology during the period that you
5 have been employed at the Toronto Consulate?

6 A. No.

7 Q. And are you aware that the State
8 Department changed its policy to treat gestational
9 mothers who are the legal parent of a child the
10 same as genetic mothers for purposes of citizenship
11 and immigration benefits?

12 A. Yes.

13 Q. And are you aware of why the State
14 Department changed this policy?

15 A. No.

16 Q. So is it your understanding that
17 this policy was changed before you arrived at the
18 Toronto Consulate?

19 A. Yes.

20 Q. And are you aware of whether the
21 change in policy was the result of an
22 interpretation of the Immigration and Nationality
23 Act?

24 A. I don't know.

25 Q. And do you know whether the State

1 A. Yes.

2 Q. Which fields specifically would
3 you consider to determine the identities of the
4 child's parents?

5 A. I don't quite understand the
6 question.

7 Q. Looking at this document, who are
8 E [REDACTED] D [REDACTED]-B [REDACTED]'s legal parents under State
9 Department policy and procedure?

10 A. It would be the people listed on
11 the child's birth certificate, so Andrew and Elad.

12 Q. All right, let's turn now to the
13 document that is Bates-stamped 00070270-1764. It
14 is page 7 of the same exhibit, Plaintiffs
15 Deposition Exhibit No. 5.

16 I will represent to you that Plaintiffs
17 Deposition Exhibit No. 5 is E [REDACTED] D [REDACTED]-B [REDACTED]'s
18 application file which was provided to Plaintiffs
19 by Defendants.

20 Now, looking at the document that
21 starts on page 7 of Plaintiffs Exhibit No. 5, which
22 is again Bates-stamped 00070270-1764, can you tell
23 me what is this document?

24 MS. ZEIDNER MARCUS: Objection,
25 foundation, form, the document speaks for itself.

1 BY MS. GOLDSMITH:

2 Q. Have you seen this document
3 before?

4 A. Yes.

5 Q. And what does this document appear
6 to be to you?

7 A. It appears to be an Ontario birth
8 certificate.

9 Q. And is the form of this document
10 consistent with other Ontario birth certificates
11 that you have reviewed?

12 A. Yes.

13 Q. And earlier you testified about an
14 Ontario birth certificate. Would this be an
15 example of such an Ontario birth certificate?

16 MS. ZEIDNER MARCUS: Objection to form.

17 THE WITNESS: Yes.

18 BY MS. GOLDSMITH:

19 Q. Is this document entitled
20 "Statement of Live Birth"?

21 A. Yes.

22 Q. And according to this document,
23 who are E [REDACTED] D [REDACTED] -B [REDACTED] 's parents?

24 A. Andrew Mason Dvash-Banks and Elad
25 Dvash-Banks.

1 Q. And when you adjudicate CRBA
2 applications using a Statement of Live Birth in
3 Ontario, do you look at those fields to determine
4 who the child's parents are?

5 A. Yes.

6 Q. Under the State Department's
7 policies and procedures, as you understand them, is
8 this document sufficient proof of E [REDACTED]'s
9 parentage?

10 MS. ZEIDNER MARCUS: Objection to form.

11 THE WITNESS: It shows who the legal
12 parents are.

13 BY MS. GOLDSMITH:

14 Q. Okay, if you stay on this page but
15 turn back to Plaintiffs Exhibit 6, I am going to
16 ask you a question about that document. Plaintiffs
17 Exhibit 6 is the ACS Activity Log for E [REDACTED]
18 D [REDACTED]-B [REDACTED]'s CRBA application; is that correct?

19 A. Yes.

20 Q. And in the description field it
21 refers to, quote, "a timely filed Ontario birth
22 certificate"; is that correct?

23 A. Yes.

24 Q. And is it your understanding that
25 the Statement of Live Birth which is page 7 of

1 A. Yes.

2 Q. And under the State Department's
3 policies and procedures, is this document
4 sufficient proof of Andrew's and Elad's marriage?

5 MS. ZEIDNER MARCUS: Objection,
6 foundation, form.

7 THE WITNESS: Yes.

8 BY MS. GOLDSMITH:

9 Q. And does this document appear to
10 be the marriage licence of Andrew Dvash-Banks and
11 Elad Dvash-Banks?

12 A. Yes.

13 Q. And can you tell when it is dated?

14 A. To me it looks like 19th August
15 2010.

16 Q. So it appears that sometime in
17 August 2010 this document was issued; is that
18 correct?

19 A. Yes.

20 Q. In your practice adjudicating
21 applications, would an Ontario marriage licence
22 such as this one sufficiently demonstrate a valid
23 marriage?

24 A. Yes.

25 Q. And is it your understanding based

1 on this document that Andrew and Elad Dvash-Banks
2 are validly married?

3 A. Yes.

4 Q. And is it your understanding that
5 under the State Department's policies and
6 procedures, this document would be sufficient proof
7 of Andrew and Elad's marriage?

8 A. Yes.

9 Q. All right, please flip three pages
10 further into the document, and let me know when you
11 are looking at document Bates-stamped
12 00070270-1768.

13 A. Okay.

14 Q. And I'll represent to you that
15 this document appears to continue on to another
16 page, which is Bates-stamped 00070270-1769. Have
17 you seen this document before?

18 A. Not this particular document.

19 Q. And from looking at the document,
20 can you tell what this document is?

21 A. It looks like a court order
22 regarding parentage.

23 Q. And does the form of this document
24 appear to be consistent with the form of other
25 documents you have seen from the Ontario Superior

1 Day, would have a better sense.

2 Q. In your practice, have you
3 received applications that you have been
4 adjudicating that contain within the application
5 materials surrogacy agreements?

6 A. Sometimes.

7 Q. And are those usually provided on
8 the day of the --

9 A. Sometimes, but not always.

10 Q. Okay. You testified earlier that
11 you provided Ms. Day, the adjudicating officer,
12 with certain FAM citations?

13 A. Yes.

14 Q. Why did you do that?

15 A. As a more experienced officer and
16 working alongside her that day, I wanted to make
17 sure that she had the relevant guidance for the
18 case.

19 Q. Did you send her any provisions of
20 the INA itself?

21 A. I don't believe so.

22 Q. Do you know whether Ms. Day
23 considered E ██████ D ██████ -B ██████ to be born in wedlock,
24 as that term is used in the FAM and the INA?

25 A. I think initially, as evidenced by

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

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

14 MS. GOLDSMITH: Objection, leading.

15 THE WITNESS: I think what may have
16 happened is when she was reviewing all the
17 documents and she saw a marriage certificate, she
18 started typing her notes, as we often do, and then
19 over the course of the interview discovered that we
20 would have to treat the case as a 309 case instead.

21 BY MS. ZEIDNER MARCUS:

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

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

3 Q. What is that belief based on?

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

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

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

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

18 A. Yes.

19 Q. So would it have made a difference
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.

24 Q. Ms. Ramsay, do you have more than
25 one type of title?

1 that in some cases, in some passport or CRBA
2 adjudications, you or your colleagues consult with
3 a desk officer located in Washington, DC; is that
4 correct?

5 A. Yes, yes.

6 Q. Do you know whether you or any of
7 your Consulate Toronto colleagues consulted with a
8 desk officer in connection with adjudicating the
9 Dvash-Banks family's applications for U.S.
10 passports and CRBAs for their children?

11 A. I did not personally. I don't
12 believe that my colleagues did. We normally reach
13 out to Washington when FAM policy guidance is not
14 clear, and it seemed to us in this case that it
15 was.

16 Q. Why did you think that in this
17 case the FAM guidance was clear?

18 A. Because the FAM guidance on
19 assisted reproductive technology cases is clear
20 with regards to a biological relationship
21 requirement, and once we had that information after
22 the DNA testing, it was relatively straightforward
23 to make the decision.

24 Q. If any of your Consulate Toronto
25 colleagues had consulted on this case with the desk

1 Q. You testified concerning
2 Plaintiffs Deposition Exhibit 6 and 7, the ACS
3 Activity Logs; correct?

4 A. Yes.

5 Q. Did Ms. Ramsay -- excuse me, Ms.
6 Ramsay, did Ms. Day ever discuss with you whether
7 to apply Section 301 or 309 of the INA in
8 adjudicating E [REDACTED]'s applications?

9 A. I believe we discussed it as
10 appropriately looking at the case through the lens
11 of 309 due to the fact pattern of the case in terms
12 of artificial reproductive technology being used.

13 Q. And when did that discussion
14 occur?

15 A. The morning of the interview.

16 Q. And was this the first
17 conversation you had with Ms. Day concerning the
18 Dvash-Banks applications?

19 A. No, no.

20 Q. This was the second conversation
21 you had with her that day concerning the
22 Dvash-Banks family's applications?

23 A. I think after she had interviewed
24 them, I discussed with her the different FAM
25 guidance and how the case would be, because they

1 had used a surrogate, and how we would apply 309 to
2 the case.

3 Q. So it is now your testimony that
4 you discussed with Ms. Day on the day that the
5 Dvash-Bankses appeared for their interview which
6 section of the INA applied to their application?

7 A. I believe that was part of our
8 discussion, yes.

9 Q. And did you advise Ms. Day on
10 which section of the INA to apply?

11 A. I think so, yes.

12 Q. And what did you advise her?

13 A. I told her that these types of
14 cases are considered under INA 309.

15 Q. And you testified, in response to
16 questions from counsel for Defendants, concerning
17 the notations made on the ACS Activity Log marked
18 as Plaintiffs Deposition Exhibit 6; correct?

19 A. Yes.

20 Q. And you testified concerning the
21 notation CRBA for child born in wedlock to U.S.
22 citizen father applicant; correct?

23 A. Yes.

24 Q. And was it your testimony that you
25 believe Ms. Day had initially believed that E [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE.

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 12th day of December, 2018



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

CERTIFIED REAL-TIME REPORTER

EXHIBIT E

In the Matter Of:
Andrew Mason Dvash-Banks, et al v.
The United States Department of State, et al

LARILYN REFFETT
December 06, 2018

neesons

77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS and)
E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED],) COMPLAINT FOR
Plaintiffs,) DECLARATION AND
) INJUNCTIVE RELIEF
v.)
THE UNITED STATES DEPARTMENT) Docket No. Case
OF STATE, and THE HONORABLE) 2:18-cv-00523-JFW-JCx
MICHAEL R. POMPEO, Secretary) JFW
of State,)
Defendants.)

-----)
--- This is the Transcript of the Audio-Recorded
Deposition of LARILYN REFFETT, taken at the U.S.
Consulate, 360 University Avenue, Toronto, Ontario,
MSG 1S4, on the 6th day of December, 2018.

Reported By: Deana Santedicola, CSR (Ont.), RPR,
CRR

1 A P P E A R A N C E S :

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

3 and E [REDACTED] J [REDACTED] D [REDACTED] -B [REDACTED] :

4 SULLIVAN & CROMWELL LLP

5 PER: Jessica Klein, Esq.

6 Lauren M. Goldsmith, Esq.

7 125 Broad Street

8 New York, New York 10004-2498

9 Tel. 1-212-558-4000

10 Email: goldsmithl@sullcrom.com

11 kleinj@sullcrom.com

12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

14 OF STATE, AND THE HONOURABLE MICHAEL R. POMPEO,

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

23 Also Present: Jeremy Weinberg, U.S. Department of

24 State, Office of the Legal Advisor

25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS: LARILYN REFFETT

PAGE

EXAMINATION BY MS. KLEIN..... 6

REDIRECT EXAMINATION BY MS. ZEIDNER

MARCUS..... 201

1 Goldsmith of Sullivan & Cromwell. I'm also
2 representing Andrew and E [REDACTED] D [REDACTED]-B [REDACTED].

3 MS. ZEIDNER MARCUS: I am Lisa Zeidner
4 Marcus, trial attorney, U.S. Department of Justice.
5 I represent the Defendants in this matter, the U.S.
6 Department of State and the Secretary of State who
7 was sued in his official capacity.

8 MR. WEINBERG: Jeremy Weinberg,
9 Department of State, Office of the Legal Advisor,
10 also representing the U.S. government in this
11 matter, Department of State.

12 AUDIO-RECORDER: Would the reporter
13 please swear or affirm the witness.

14 LARILYN REFFETT; AFFIRMED.

15 EXAMINATION BY MS. KLEIN:

16 Q. Good morning, Ms. Reffett.

17 A. Good morning.

18 Q. As you heard, I am Jessica Klein
19 and I am representing the Plaintiffs in this
20 matter. Have you ever been deposed before?

21 A. No.

22 Q. And have you ever testified in
23 Court?

24 A. No.

25 Q. Have you ever given testimony

1 Q. Did your training that you have
2 received in your career include training you in the
3 policies of the Toronto Consulate in adjudicating
4 applications for U.S. passports?

5 A. There is nothing Toronto-specific
6 in training.

7 Q. So is it correct then that the
8 policies of the United States State Department are
9 one and the same with the policies of the Toronto
10 Consulate in the adjudication of applications for
11 U.S. passports?

12 A. The adjudications here in Toronto
13 are done solely based on the guidance and the
14 references that we are provided by the Department
15 of State.

16 Q. Is there any Toronto
17 Consulate-specific guidance concerning
18 adjudications of U.S. passports?

19 A. No.

20 Q. What about Canada-specific?

21 A. No.

22 Q. So is it correct then that the
23 training you have received on the adjudication of
24 passport applications has been training that, to
25 your understanding, would apply in any consular

1 for Consular Reports of Birth Abroad?

2 A. Yes, when I mentioned the
3 adjudication piece, we don't separate. Those
4 appointments are all at the same time. You just
5 take whatever comes as it comes in.

6 Q. So am I correct that in addition
7 to adjudications randomly selected for your review,
8 you sometimes adjudicate applications for Consular
9 Reports of Birth Abroad?

10 A. I do.

11 Q. And do you make determinations of
12 who is a U.S. citizen?

13 A. Yes, that is part and parcel of
14 the adjudication.

15 Q. Is a determination of who is a
16 U.S. citizen part and parcel of adjudicating a
17 Consular Report of Birth Abroad?

18 A. That is the purpose of the
19 Consular Report of Birth Abroad, is to determine
20 whether someone is a U.S. citizen.

21 Q. And is the purpose of a Consular
22 Report of Birth Abroad to determine whether someone
23 is a U.S. citizen from birth?

24 A. Correct.

25 Q. And is the determination of U.S.

1 I mean, it is just a chart that just kind of has
2 the relevant scenario and then the FAM section that
3 you would consult for that.

4 Q. Okay. Is it accurate to say that
5 in adjudicating U.S. passport applications, the
6 Toronto Consulate applies the Foreign Affairs
7 Manual?

8 A. Well, we comply with the
9 instructions in the Foreign Affairs Manual, yes.

10 Q. All right. Is there any way in
11 which you are aware that the Toronto Consulate does
12 not comply with the Foreign Affairs Manual in the
13 adjudication of U.S. passport applications?

14 A. No.

15 Q. And is that also the case for the
16 application of Consular Reports for Birth Abroad?

17 A. Correct.

18 Q. So the Toronto Consulate applies
19 the Foreign Affairs Manual in adjudicating Consular
20 Reports for Birth Abroad?

21 A. We consult the Foreign Affairs
22 Manual and follow all of the relevant guidance that
23 we are required to follow.

24 Q. Is there any way in which you are
25 aware that the Toronto Consulate does not follow

1 the Foreign Affairs Manual in adjudicating
2 applications for Consular Reports of Birth Abroad?

3 A. No.

4 Q. And am I correct that the same is
5 true for U.S. passport applications?

6 A. Correct.

7 Q. Is there a practice in the Toronto
8 Consulate of an officer placing her initials on
9 each page of a passport application that she
10 adjudicates?

11 A. Not on each page that you
12 adjudicate, but we are required when we have
13 certified true copies, we are required as the
14 officer to put our initials to verify that we saw
15 the original document and that it matches the copy.

16 Q. So am I correct that if an officer
17 places her initials on a page of a U.S. passport
18 application file, that means to you that she has
19 consulted the original document and compared it to
20 the copy for accuracy between the two?

21 MS. ZEIDNER MARCUS: I would like to
22 consult with my colleague about a potential
23 privilege and briefly go off the record.

24 AUDIO-RECORDER: We are going off the
25 record at 11:39 a.m.

1 looks like it.

2 Q. And whose name is listed as the
3 person sending or writing this letter?

4 A. The letter was signed by Terri
5 Day.

6 Q. And is it your understanding that
7 E [REDACTED] D [REDACTED]-B [REDACTED]'s applications for U.S. passport
8 and Consular Report of Birth Abroad were denied?

9 A. Yes.

10 Q. Who adjudicated those
11 applications?

12 A. It is my understanding that Terri
13 Day adjudicated those two cases.

14 Q. And did Ms. Day have authority to
15 make the ultimate determination of whether to deny
16 those applications?

17 A. Yes, she did.

18 Q. And was she employed at the
19 Toronto Consulate on March 2nd, 2017?

20 A. Yes.

21 Q. Okay. And what reason or reasons
22 does this document cite as the basis for those
23 denials?

24 MS. ZEIDNER MARCUS: Objection, form,
25 foundation.

1 a U.S. passport and Consular Report of Birth
2 Abroad?

3 A. Making the determination? What do
4 you mean by that? The case was adjudicated by
5 Frankie Day -- Terri Day in this case.

6 Q. Am I correct that it is your
7 understanding that Ms. Day interviewed E [REDACTED] and
8 the Dvash-Bankses concerning these applications?

9 A. My understanding is that Terri Day
10 did in fact interview the Dvash-Banks family, and
11 based on her interview and based on the follow-up
12 information that she requested, she denied these
13 applications.

14 Q. And from the period of when the
15 applications were initiated through March 2nd,
16 2017, when this letter was dated, were you
17 personally involved at all in these applications or
18 their adjudication?

19 A. The day of the interview, Frankie
20 asked me about -- she told me that she was going to
21 request DNA testing. She asked me how she went
22 about doing that. I explained to her that she just
23 needs to ask a local staff to draft the letter.
24 There is standard language that explains how to
25 obtain a DNA test that is -- that meets the

1 requirements of the Department of State.

2 She asked for that letter and then
3 presented it to the family, so I was aware at that
4 point that she was requesting the DNA evidence. At
5 that point, a case will go into pending status.
6 Cases generally are allowed to remain in that
7 status for up to 90 days without any further
8 action. At the 90-day mark, we will review again
9 to see whether or not we have received the
10 information we have requested and try and proceed
11 with the case.

12 Q. Ms. Day spoke to you on the date
13 when the Dvash-Banks family came in about
14 requesting DNA testing; is that correct?

15 A. Yes, she asked me to verify how
16 the procedure works, what documentation needs to
17 happen, because we aren't in charge of the DNA
18 program as the adjudicating officers, so she wanted
19 to verify that she was getting the right letter,
20 giving them the right information about how to
21 proceed with that testing.

22 Q. Did Ms. Day share with you the
23 facts surrounding these applications for E [REDACTED] ?

24 A. She told me that she had a case
25 that involved artificial reproductive technology.

1 She said that it was not clear from the
2 documentation who was biologically related to who
3 in the case and she was requesting the DNA in order
4 to establish that.

5 Q. Did you ever meet any members of
6 the Dvash-Banks family?

7 A. No.

8 Q. Did you ever see any members of
9 the Dvash-Banks family?

10 A. I might have seen them through the
11 interview windows. I generally walk up and down my
12 section to check on how things are going and, you
13 know, what is moving and what is not moving.

14 If they need additional assistance, for
15 example, if there are too many cases and we need
16 more interviews, I might be sort of checking on
17 that, but nothing that would have stood out to me
18 or that I realized, I mean, that I had seen this
19 particular family, no.

20 Q. Did Ms. Day inform you that the
21 Dvash-Banks family includes a same-sex couple?

22 A. She did.

23 Q. What did Ms. Day tell you?

24 A. She told me that she, as I
25 mentioned, she had a case involving artificial

1 Oftentimes in those situations, the
2 officers will make sure that all of the other
3 officers know that this is pending because if, for
4 example, the documentation came in while, for
5 example, Frankie was on leave, we would need to be
6 sure that we understood what we were waiting for.

7 Q. I would like to focus on your
8 conversations with Ms. Day about these applications
9 for the next several questions.

10 When Ms. Day first spoke with you about
11 E [REDACTED]'s applications, had she already decided to
12 give them pending status?

13 A. When she came to me, she explained
14 to me that the documentation did not establish the
15 biological relationship, so she was going to
16 request the DNA testing and she asked me about the
17 proper procedure for doing that.

18 Q. And did she ask you only what the
19 procedure was or also whether to seek DNA testing?

20 A. I don't recall the specific
21 details of the conversation, but what the result
22 was, and what -- I mean, what I recall was that I
23 explained to her how to do this and this is -- you
24 know, she told me I don't have in front of me in
25 this interview or this application the information

1 Q. And are you referring to being
2 notified of an inquiry that was made with
3 congressional staff?

4 A. Generally speaking, if
5 congressional staff have received an inquiry from a
6 member of the public about a case or a consular
7 service that is taking place at your post, that
8 staff will email you and ask you either for comment
9 or will just give you the just FYI this is what we
10 have received.

11 I know we did have correspondence from
12 a congressional office, but I don't remember the
13 date of it.

14 Q. Is it your understanding that when
15 Ms. Day signed this letter on March 2nd, 2017, the
16 adjudication was final?

17 A. Yes, that is my understanding.

18 Q. And sitting here today, do you
19 remember any involvement you had in the
20 adjudication or processing of E [REDACTED]'s applications
21 for a passport or Consular Report of Birth Abroad
22 other than the three brief conversations with Ms.
23 Day that you described?

24 A. No.

25 Q. Okay. Have you read E [REDACTED]'s

1 application materials?

2 A. No.

3 Q. So you don't have any view as to
4 the authenticity or completeness of the application
5 that was filed?

6 A. I have not seen the application.
7 I have only heard what Frankie told me about the
8 facts that she was presented.

9 Q. So sitting here today, what is
10 your understanding of why Frankie Terri Day denied
11 E [REDACTED]'s applications for a U.S. passport and
12 Consular Report of Birth Abroad?

13 A. My understanding is that the
14 applicants did not establish the biological
15 relationship between the American citizen parent
16 and the child, which is required by the Immigration
17 and Nationality Act.

18 Q. And are you aware of any other
19 reason why E [REDACTED]'s applications were denied?

20 A. No.

21 Q. And as you read the document
22 marked DVASH-BANKS30, Plaintiffs Deposition Exhibit
23 1, do you read it to state that there was no other
24 reason for the denial of the applications?

25 A. That is correct. I read it to

1 state that the denial was based on the
2 non-establishment of the blood relationship
3 required by the Immigration and Nationality Act.

4 Q. Do you know if anyone was involved
5 in the adjudication of those applications other
6 than Ms. Day?

7 A. In the adjudication, no.

8 Q. Do you know if anyone was involved
9 in processing the applications other than Ms. Day?

10 A. I do know that the same way that I
11 provided guidance on how to request a DNA test,
12 that my colleague Margaret Ramsay also provided the
13 relevant FAM citations, the Foreign Affairs Manual,
14 so that Frankie could consult if she wanted to, if
15 she needed to, the appropriate sections of the
16 Foreign Affairs Manual.

17 Q. Do you know of anyone else who was
18 involved?

19 A. No. Well, I mean, if you are
20 talking about the adjudication, I mean, there would
21 have been the receipt of the DNA, which that gets
22 received by the Fraud Prevention Officer, but it is
23 kind of a moving the mail.

24 Q. And do you know in what month and
25 year E [REDACTED]'s applications were submitted to the

1 citizen was the parent, that application was
2 approved.

3 Q. And were you personally involved
4 in the adjudication of that application?

5 A. No.

6 Q. Did Ms. Day ever speak with you
7 concerning the adjudication of that application?

8 A. Not separately. The two
9 applications were part of the same set of
10 circumstances, so when she informed me that she was
11 requesting DNA for one, she informed me she was
12 requesting DNA for the other as well. When the DNA
13 results came back and she informed me of the
14 results, she told me the results for each child.

15 Q. Is it your understanding that Ms.
16 Day was the person who granted A [REDACTED]'s application
17 for a U.S. passport?

18 A. It is my understanding that she
19 approved that application.

20 Q. And is the same true for A [REDACTED]'s
21 application for a Consular Report of Birth Abroad?

22 A. Yes.

23 Q. Under what circumstances does the
24 consulate ask for DNA evidence in support of an
25 application for a U.S. passport?

1 adjudicating that case would then have reference
2 material. They would be able to reference the
3 previous application so that they could see what
4 happened and where that case was -- how it
5 terminated.

6 Q. Does Ms. Day's letter dated March
7 2nd, 2017, reflect a final adjudication of E [REDACTED]'s
8 applications for a U.S. passport and Consular
9 Report of Birth Abroad?

10 A. As far as the applications that
11 were submitted here in Toronto, that letter
12 absolutely is a final determination. In the
13 second-to-last paragraph:

14 "[...] therefore the
15 applications are denied."

16 That is the termination of that case
17 from that point forward.

18 Q. So how would you describe the
19 status of that case for the Toronto Consulate
20 today?

21 A. The case was denied and it is
22 closed.

23 Q. And does your office prepare
24 additional paperwork concerning the adjudication of
25 a U.S. passport application beyond this letter?

1 earlier, and it is case-specific. Medical
2 documentation is one way that we can try and get to
3 a point where we understand the biological
4 relationships, but also in the interview that will
5 be a question that will be asked.

6 Based on the answers and based on the
7 conversation that the officer has with the
8 applicant, that will determine whether -- what
9 steps need to be taken next and what that entails,
10 if it entails DNA or something else.

11 Q. Is there any example or scenario
12 you are aware of in which two married men have
13 applied for a U.S. passport for their child born
14 abroad and not been asked to evidence the genetic
15 relationships of the child?

16 A. The biological relationship has to
17 be established, as we noted in the letter that you
18 have provided as Exhibit 1, the Immigration and
19 Nationality Act requires a blood relationship. We
20 have to establish that blood relationship in every
21 case.

22 Q. What is your understanding of in
23 what cases the Immigration and Nationality Act
24 requires a blood relationship between a child born
25 outside of the United States and a U.S. citizen?

1 A. If the U.S. citizen is
2 transmitting citizenship, there must be a
3 biological relationship between the child and the
4 parent, unless in the case of a female parent, if
5 you are the gestational parent, that also meets the
6 requirements. There must be a biological or
7 gestational relationship.

8 MS. ZEIDNER MARCUS: Can we go off the
9 record for a moment for me to confer with my
10 colleague, please.

11 AUDIO-RECORDER: We are going off the
12 record at 2:25 p.m.

13 -- RECESSED AT 2:25 P.M.

14 -- RESUMED AT 2:27 P.M.

15 AUDIO-RECORDER: We are now back on the
16 record at 2:27 p.m.

17 BY MS. KLEIN:

18 Q. Ms. Reffett, is it correct that
19 before we very briefly went off the record, you
20 testified that with the exception of a gestational
21 parent, a U.S. citizen must have a biological tie
22 to his child in order to transmit citizenship?

23 A. To transmit citizenship from
24 birth, yes, that is correct.

25 Q. And that is your understanding of

1 allow that U.S. citizen to confer citizenship upon
2 his child?

3 A. It is not the Toronto Consulate.
4 This would be the Immigration and Nationality Act.
5 It will require that the biological relationship is
6 established. Without the biological relationship,
7 the American citizen parent cannot transmit
8 citizenship.

9 Q. And you understand the Immigration
10 and Nationality Act to require that even if the
11 child's legal parents are married to each other?

12 A. That is not my understanding that
13 that is the guidance from the Department of State.
14 The Department of State, as referenced on our
15 website, as in all of the information that is
16 publicly available, requires that there be a
17 biological relationship between the U.S. citizen
18 parent and a child who is not born in the United
19 States.

20 Q. Regardless of whether the parents
21 are married?

22 A. Correct.

23 Q. And it is your understanding that
24 that is what the INA requires?

25 A. That is the Department's guidance

1 as to the Immigration and Nationality Act. We must
2 establish a biological relationship between the
3 U.S. citizen parent and the child.

4 Q. Are you aware of any difference
5 between the relevant provisions of the INA and of
6 the guidance from the State Department concerning
7 this issue?

8 A. No.

9 Q. And I believe you testified
10 earlier today that in adjudicating most passport
11 applications, the Toronto Consulate does not review
12 any legal or policy materials; is that correct?

13 A. In many cases, it is not required.
14 Most of the cases that we see here fall within a
15 very limited range of, you know, circumstances, the
16 things that we see on a very regular basis, and
17 doesn't require us to reference the Foreign Affairs
18 Manual every time that we see that type of case.

19 Q. And does the Toronto Consulate
20 ever reference the INA in adjudicating applications
21 for U.S. passports?

22 A. As I previously stated, the INA is
23 one source of information. If we have questions
24 about the case that is in front of us or the
25 parameters, we could consult with the INA. Every

1 The reason that that requirement is
2 specifically listed is to remind people who may not
3 remember that one random date so that when they
4 need to look at it and say, wait, what was the date
5 that the law changed, it is right there for them.
6 They can see very quickly what the differences are
7 between those two requirements.

8 The blood relationship did not change
9 on that date. It has always existed.

10 Q. A blood relationship has always
11 been required for a child born in wedlock to one
12 U.S. citizen parent?

13 A. If the U.S. citizen parent is --
14 yes, the one U.S. citizen parent has to have the
15 blood relationship in order to transmit the
16 citizenship to the child. That is applicable
17 before November 14th, 1986, as well as after
18 November 14th, 1986, which is why it is not spelled
19 out here, because that was consistent.

20 Q. And is there an exception for a
21 woman who is a gestational parent without a
22 biological relationship to the child?

23 A. Well, when I say a "biological,"
24 because we have been talking about fathers and, you
25 know, this particular, the row that you have

1 highlighted "Amcit Father out of Wedlock," we
2 weren't discussing mothers.

3 For mothers, the relationship has to be
4 either biological or gestational.

5 Q. And is the allowance for a
6 gestational mother who is not biologically related
7 to her child, as you understand it, in the INA?

8 A. I have not referenced the section
9 of the INA that would spell that out in some time.
10 I have seen the guidance from the Department. That
11 isn't one that I have had to pull up recently to
12 consult. I can't say with any confidence that I,
13 again, can recite that section of the INA.

14 Q. Is it the case that since you have
15 worked in the Toronto Consulate, there has been
16 allowance of a gestational mother U.S. citizen to
17 confer citizenship on a child who she is not
18 biologically related to?

19 A. I don't know about the word
20 "allowance." Whether somebody has transmitted and
21 had approved an application to transmit citizenship
22 as a gestational mother, I can't say for certain.
23 I suspect yes. This wouldn't be something that was
24 out of the unusual.

25 But again, I don't keep statistics on

1 about something that you are specifically looking
2 at that might have changed, because there have been
3 substantial changes.

4 Q. Are you aware of any changes to
5 the biological relationship to a U.S. citizen
6 parent requirement that have changed during your
7 tenure at the Toronto Consulate?

8 A. I don't know the exact dates of
9 changes as they have come and gone. I do -- we
10 have touched on this issue earlier, but we have
11 talked about the fact that the biological
12 relationship does now include a gestational mother
13 role, for example.

14 Being a gestational mother does in fact
15 meet the biological -- does in fact qualify as a
16 biological relationship. That has been a change,
17 but when it happened, I honestly don't know. It is
18 not something I keep track of.

19 Q. And other than the treatment of
20 gestational mothers who are not genetically related
21 to their children, are you aware of any other
22 changes that have been made at the State Department
23 in the requirements of a biological tie between a
24 U.S. citizen and his child?

25 A. I am not specific -- I don't know

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 12th day of December, 2018



NEESON COURT REPORTING INC. www.neesonsreporting.com
(416) 413-7755 • (888) 525-6666

PER: DEANA SANTEDICOLA, RPR, CRR, CSR
CERTIFIED REAL-TIME REPORTER

EXHIBIT F

SULLIVAN & CROMWELL LLP
Alexa M. Lawson-Remer (268833)
lawsonr@sullcrom.com
1888 Century Park East, Suite 2100
Los Angeles, CA 90067-1725
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

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

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

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-
BANKS and E [REDACTED] J [REDACTED]
D [REDACTED]-B [REDACTED],
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**

2 All of these documents were previously submitted to the State Department in
3 support of E██████████’s Consular Report of Birth Abroad (“CRBA”) and/or U.S.
4 passport applications. Plaintiffs do not intend this answer as a complete recitation
5 of all the support for the allegation about which Interrogatory No. 4 inquires, and
6 Plaintiffs reserve the right to modify or supplement their responses and objections
7 to Interrogatory No. 4.

8 **Interrogatory No. 5:**

9 Identify any and all “difficulties and humiliation” that the Dvash-Banks
10 family has endured due to the denial of a Consular Report of Birth Abroad and a
11 U.S. passport for E██████████, as alleged in paragraph 57 of your Complaint.

12 **Response to Interrogatory No. 5:**

13 Plaintiffs incorporate their Objections by reference and further object to
14 Interrogatory No. 5 on the grounds that the Complaint speaks for itself and refer
15 Defendants to the Complaint.

16 Subject to, and without waiver of, any of the Objections, Plaintiffs respond
17 as follows:

18 The Dvash-Banks family has endured a multitude of harm, difficulties and
19 humiliation as a result of the State Department’s improper denial of the CRBA and
20 U.S. passport applications for E██████████. That harm includes damage to Plaintiffs’
21 family life and unity, dignity, as well as the other forms of denigration and distress
22 that result from Defendants’ unwarranted denial of recognition of E██████████’s U.S.
23 citizenship at birth and branding of E██████████ as an illegitimate child born “out of
24 wedlock” to Andrew and Elad. Some, but by no means all, of the harm, difficulties
25 and humiliation include the following: Andrew and Elad have suffered dignitary
26 and stigmatic harm as a result of being treated differently based on their sexual
27 orientation, including the State Department’s refusal to recognize their marriage or
28 that they are entitled to the same marital rights and benefits as opposite sex

2 born “out of wedlock.” The stigma to E [REDACTED], still a young child, of being
3 characterized as illegitimate, differentiated from his twin brother A [REDACTED], and
4 treated as though he is not his father Andrew’s son, is expected to continue for as
5 long as Defendants fail to recognize his U.S. citizenship and the effects of
6 Defendants’ arbitrary and unjustified conduct may well extend in perpetuity. The
7 practical consequences for E [REDACTED] range from how he is treated when he travels,
8 including the passport he holds, to whether he will one day during his childhood
9 develop the anxiety of knowing that he could be forced to leave the country at any
10 time. Plaintiffs have been and continue to be plagued by the fear of having their
11 family ripped apart.

12 Plaintiffs have been hampered in their ability to travel. Plaintiffs were
13 forced to cancel a trip to Israel to visit Elad’s family because E [REDACTED] was limited to
14 only a travel visa, which had expired, and there was a serious risk that he would be
15 prevented from reentering the United States upon his return. Even though E [REDACTED]
16 now has an Advance Parole document that allows travel outside the United States,
17 the risk that E [REDACTED] may not be granted reentry continues, as mere possession of
18 Advance Parole does not guarantee admission into the United States. Specifically,
19 individuals who have been unlawfully present in the U.S. and subsequently depart
20 and seek reentry through a grant of parole may be inadmissible. *See*
21 [https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-](https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers)
22 [authorization-and-advance-parole-card-adjustment-status-applicants-questions-](https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers)
23 [and-answers](https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers). When the Dvash-Banks family returned home from a recent trip to
24 Mexico, Andrew and E [REDACTED] were diverted to a room for secondary inspection,
25 while Elad and A [REDACTED] were able to pass through ordinary immigration and
26 customs.

27 Plaintiffs have also been harmed financially. For example, when Plaintiffs
28 were filing their 2017 taxes, they wished to claim a dependent exemption for

2 have a social security number, Andrew and Elad had to pay an accountant to obtain
3 an individual taxpayer identification number (“ITIN”) for E████. This unnecessary
4 complication delayed payment of Plaintiffs’ tax refund, which they received only
5 recently. Plaintiffs also have had to expend substantial sums of money on E████’s
6 green card application, which would be entirely unnecessary had his CRBA
7 application not been denied.

8 Plaintiffs have also had to spend countless hours dealing with the
9 ramifications of the denial of E████’s CRBA and U.S. passport applications. For
10 instance, Plaintiffs have spent time on E████’s green card application (and
11 associated Advance Parole document application). Plaintiffs have also spent long
12 hours attending to this Action, which has caused them to divert time and attention
13 from other pursuits. Andrew and Elad have faced additional difficulties including
14 explaining to their health care provider why A████ has a social security number
15 while E████ does not, as well as the tax return issues described above.

16 Plaintiffs have had to deal with publicity they never wanted. Before this
17 lawsuit, Andrew and Elad had no intention of disclosing to their children, let alone
18 to the general public, which child was biologically related to which parent, let
19 alone the private details of E████ and A████’s conception.

20 Plaintiffs reserve the right to modify or supplement their responses and
21 objections to Interrogatory No. 5.

22 **Interrogatory No. 6:**

23 Identify who you consider to be “similarly situated persons” as alleged in
24 paragraph 71 of your complaint and implied throughout your complaint.

25 **Response to Interrogatory No. 6:**

26 Plaintiffs incorporate their Objections by reference and further object to
27 Interrogatory No. 6 on the grounds that it is premature. Plaintiffs are still
28 developing their legal arguments, a process that has been substantially inhibited by

2 further state that Andrew is listed as a parent of E█████ on E█████’s Statement of
3 Live Birth. Plaintiffs further refer Defendants to the Declaration of Parentage of
4 E█████, which declared Andrew and Elad to be E█████’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 E█████ D█████-B█████
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 E█████ was not established until September 28,
14 2016, twelve days after E█████’s birth.

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

16 Admit that you (Andrew) are not biologically related to E█████

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 E█████.

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 E█████ and A█████ were born, to
25 establish the parentage of E█████ and A█████.

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

2 and argumentative in that it assumes any DNA test was performed to “establish
3 parentage or non-parentage for E [REDACTED].” By responding to Request for Production
4 No. 11, Plaintiffs do not admit that the tests were performed to “establish the
5 parentage” of E [REDACTED]. Plaintiffs further object to Request for Production No. 11 to
6 the extent that it seeks the production of documents protected by the attorney-client
7 privilege and/or the work product doctrine. Plaintiffs construe the request as
8 seeking applications for and/or results of each DNA and/or paternity test
9 performed to establish whether E [REDACTED] was biologically related to either Andrew or
10 Elad, other than the documentation submitted with E [REDACTED]’s CRBA and U.S.
11 passport applications in January 2017.

12 In view of the foregoing objections and the other Objections, Plaintiffs will
13 not produce documents in response to Request for Production No. 11. Subject to,
14 and without waiver of, the Objections, Plaintiffs refer Defendants to Plaintiffs’
15 Response to Request for Admission No. 14, and state that they are available to
16 meet and confer with Defendants to discuss Plaintiffs’ objections to Request for
17 Production No. 11.

20 Dated: November 19, 2018

Respectfully submitted,

21 By: /s/ Alexa M. Lawson-Remer
22 SULLIVAN & CROMWELL LLP
23 Alexa M. Lawson-Remer (268855)
24 lawsonr@sullcrom.com
25 1888 Century Park East, Suite 2100
26 Los Angeles, CA 90067-1725
27 Telephone: (310) 712-6600
28 Facsimile: (310) 712-8800

Theodore Edelman (pro hac vice)
edelmant@sullcrom.com
Jessica Klein (pro hac vice)
kleinj@sullcrom.com
125 Broad Street
New York, NY 10004-2498

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Andrew Mason Dvash-Banks, declare as follows:

I am a named Plaintiff in this matter and I am authorized to make this verification on Plaintiffs' behalf. I have read the foregoing Plaintiffs' Responses to Defendants' First Set of Interrogatories and know their contents. On behalf of myself and E████ J████ D████-B████, I certify or declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge, the same are true and correct.

Executed on November 19, 2018 at Los Angeles, California.

A handwritten signature in black ink, appearing to be 'Andrew Mason Dvash-Banks', written over a horizontal line.