

1 JOSEPH H. HUNT  
Assistant Attorney General

2 ANTHONY J. COPPOLINO  
Deputy Director

3 LISA ZEIDNER MARCUS  
Senior Counsel

4 Tel: (202-514-3336

5 lisa.marcus@usdoj.gov

VINITA B. ANDRAPALLIYAL

6 Trial Attorney

7 Tel: (202) 305-0845

vinita.b.andrapalliyal@usdoj.gov

8 UNITED STATES DEPARTMENT OF JUSTICE

Civil Division, Federal Programs Branch

9 P.O. Box 883

10 Washington, DC 20044

*Counsel for Defendants*

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 WESTERN DIVISION

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

16 Plaintiffs,

17 v.

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

20 Defendants.

Case No. CV 18-523-JFW(JCx)

**Parties' Joint Set of Declarations  
in Support of, and in Opposition  
to, Defendants' Motion for  
Partial Summary Judgment**

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

Honorable John F. Walter

21  
22  
23  
24  
25  
26  
27  
28

**INDEX / TABLE OF CONTENTS**

<b>TAB</b>	<b>DATE</b>	<b>DESCRIPTION:</b>	<b>EXHIBIT:</b>
<b>1</b> (ECF No. 80)	January 3, 2019	Administrative Record Certification, signed by Regina Ballard, Division Chief, Law Enforcement Liason Division, Office of Legal Affairs, Passport Services Directorate, Bureau of Consular Affairs, U.S. Department of State	Used to authenticate/certify Administrative Record Parts I–VII
<b>2</b> (ECF No. 89-3)	January 7, 2019	Declaration of Lisa Zeidner Marcus	Used to authenticate Exhibit Nos. 1–8
<b>3</b> (ECF No. 90)	January 7, 2019	Second Declaration of Lisa Zeidner Marcus	Used to authenticate Refiled Exhibit Nos. 1–8, and Exhibit Nos. 9–10
<b>4</b> (ECF No. 95-2)	January 14, 2019	Declaration of Alexa Lawson-Remer	Used to authenticate Exhibit Nos. 11–16
<b>5</b> (ECF No. 112-2)	January 22, 2019	Third Declaration of Lisa Zeidner Marcus	Used to authenticate Exhibit Nos. 17–21



United States Department of State

Washington, D.C. 20520

I, Regina Ballard, Division Chief, Law Enforcement Liaison Division, Office of Legal Affairs, Passport Services Directorate, Bureau of Consular Affairs, United States Department of State, certify under penalty of perjury that the enclosed documents are originals, or copies thereof, from the records of the U.S. Department of State. These documents relate to the subject matter in *Andrew Mason Dvash-Banks and E.J. D.-B. v. Michael R. Pompeo, et al.*, case number 2:18-cv-00523-JFW-JCx.

The record produced reflects all application documents and written guidance before the adjudicator as a part of Plaintiff E.J. D-B's passport and Consular Report of Birth Abroad applications. It also includes sections of the Foreign Affairs Manual which agency counsel have advised were relevant to and were in effect at the time of the adjudication at issue in the aforementioned case, and thus would have been considered directly or indirectly by the adjudicator.

Sincerely,

A handwritten signature in cursive script that reads "Regina Ballard".

Regina Ballard, Division Chief  
Law Enforcement Liaison Division  
Office of Legal Affairs  
Passport Services

Date: January 3, 2019

1 JOSEPH H. HUNT  
Assistant Attorney General

2 ANTHONY J. COPPOLINO  
Deputy Director

3 LISA ZEIDNER MARCUS  
Senior Counsel

4 Tel: (202-514-3336

5 lisa.marcus@usdoj.gov

VINITA B. ANDRAPALLIYAL

6 Trial Attorney

7 Tel: (202) 305-0845

vinita.b.andrapalliyal@usdoj.gov

8 UNITED STATES DEPARTMENT OF JUSTICE

Civil Division, Federal Programs Branch

9 P.O. Box 883

10 Washington, DC 20044

*Counsel for Defendants*

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 WESTERN DIVISION

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

16 Plaintiffs,

17 v.

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

20 Defendants.

Case No. CV 18-523-JFW(JCx)

**Declaration of Lisa Zeidner Marcus**

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

Honorable John F. Walter

21  
22 **DECLARATION OF LISA ZEIDNER MARCUS**

23 I, Lisa Zeidner Marcus, hereby declare:

24 I serve as trial attorney for the U.S. Department of Justice, Civil Division, Federal  
25 Programs Branch, a position I have held since October 2007. My colleague Vinita  
26 Andrapalliyal and I serve as co-counsel representing Defendants in the above-captioned  
27 case. The statements set forth in this Declaration are based on my personal knowledge as  
28 well as information provided to me in my official capacity.

1 I submit this declaration in support of Defendants’ motion for partial summary  
2 judgment, and specifically to authenticate deposition transcripts, written discovery  
3 responses, and the receipt of certain documents. My declaration also includes  
4 information regarding the Foreign Affairs Manual (“FAM”), and a chart showing  
5 present-day citations for the versions of FAM provisions in effect in the January to  
6 March 2017 time period, *i.e.*, the time during which the underlying adjudication being  
7 challenged in this litigation took place.

8 Attached hereto are true and correct copies of the following documents:

- 9 Ex. 1 Excerpts of Plaintiffs’ Responses to Defendants’ Requests for Admission,  
10 including all such responses Defendants cite in their Statement of  
Uncontroverted Facts.
- 11 Ex. 2 Excerpts of Defendants’ Responses to Plaintiffs’ Requests for Admission,  
12 including all such responses Defendants cite in their Statement of  
Uncontroverted Facts.
- 13 Ex. 3 Excerpts of Defendants’ Responses to Plaintiffs’ Interrogatories, including  
14 all such responses Defendants cite in their Statement of Uncontroverted  
Facts.
- 15 Ex. 4 Excerpts of the transcript of Day, including all such portions Defendants rely  
16 on in their Statement of Uncontroverted Facts.
- 17 Ex. 5 Excerpts of the transcript of Andrew Dvash-Banks, including all such  
portions Defendants rely on in their Statement of Uncontroverted Facts.
- 18 Ex. 6 Excerpts of the transcript of Margaret Ramsay, including all such portions  
19 Defendants rely on in their Statement of Uncontroverted Facts.
- 20 Ex. 7 Excerpts of the transcript of Larilyn Reffett, including all such portions  
Defendants rely on in their Statement of Uncontroverted Facts.
- 21 Ex. 8 Excerpts of the transcript of Paul Peek, including all such portions  
22 Defendants rely on in their Statement of Uncontroverted Facts.

23 In support of their motion for partial summary judgment, Defendants also rely on  
24 the Certified Administrative Record that I filed on the docket for this case, at ECF No.  
25 80. The documents I filed at ECF No. 80 (including ECF Nos. 80-1, 80-2, 80-3, 80-4,  
26 80-5, 80-6, 80-7, and 80-8) comprise a true and correct copy of the Certified  
27 Administrative Record that was provided to me by the Department of State, except that  
28 before filing the record I ran OCR’ing (optical character recognition) on it to make the

1 scanned pages text-searchable in accordance with the Local Rules of this Court, and I  
2 added Bates-stamping to identify the page numbers of the AR.

3 Many provisions of the Department of State’s Foreign Affairs Manual (“FAM”)  
4 were renumbered as of July 16, 2018. The following chart shows the current citations for  
5 the FAM provisions included in the Administrative Record:

<i>FAM Provision in Administrative Record</i>	<i>AR Page(s)</i>	<i>Current FAM Provision</i>
7 FAM 1130	AR 081–087	8 FAM 301
7 FAM 1100 Appendix A	AR 095–106	8 FAM
7 FAM 1110 Appendix D	AR 077–080	8 FAM 304.3-4
7 FAM 1100 Appendix E	AR 088–094	8 FAM 102.01

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed on January 7, 2019 at Pittsburgh, Pennsylvania.

14  
15           /s/ Lisa Zeidner Marcus          

16 Lisa Zeidner Marcus

1 JOSEPH H. HUNT  
Assistant Attorney General

2 ANTHONY J. COPPOLINO  
Deputy Director

3 LISA ZEIDNER MARCUS  
Senior Counsel

4 Tel: (202-514-3336

5 lisa.marcus@usdoj.gov

VINITA B. ANDRAPALLIYAL

6 Trial Attorney

7 Tel: (202) 305-0845

vinita.b.andrapalliyal@usdoj.gov

8 UNITED STATES DEPARTMENT OF JUSTICE

Civil Division, Federal Programs Branch

9 P.O. Box 883

10 Washington, DC 20044

*Counsel for Defendants*

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 WESTERN DIVISION

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

16 Plaintiffs,

17 v.

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

20 Defendants.

Case No. CV 18-523-JFW(JCx)

**Second Declaration of Lisa Zeidner  
Marcus**

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

Honorable John F. Walter

21  
22 **SECOND DECLARATION OF LISA ZEIDNER MARCUS**

23 I, Lisa Zeidner Marcus, hereby declare:

24 1. I serve as trial attorney for the U.S. Department of Justice, Civil Division,  
25 Federal Programs Branch, a position I have held since October 2007. My colleague  
26 Vinita Andrapalliyal and I serve as co-counsel representing Defendants in the above-  
27 captioned case. The statements set forth in this Declaration are based on my personal  
28 knowledge.

1           2.       This is my second declaration in support of Defendants’ motion for partial  
2 summary judgment. My first declaration listed eight exhibits intended to be filed as  
3 attachments to that declaration. The exhibits were filed out of sequence and/or  
4 inadvertently left out of the filing, so I am refileing them here for the sake of clarity, and  
5 also to fix the formatting.<sup>1</sup> Attached to this declaration are true and correct copies of the  
6 following:

- 7       Ex. 1   Excerpts of Plaintiffs’ Responses to Defendants’ Requests for Admission,  
8           including all such responses Defendants cite in their Statement of  
          Uncontroverted Facts.
- 9       Ex. 2   Excerpts of Defendants’ Responses to Plaintiffs’ Requests for Admission,  
10           including all such responses Defendants cite in their Statement of  
          Uncontroverted Facts.
- 11       Ex. 3   Excerpts of Defendants’ Responses to Plaintiffs’ Interrogatories, including  
12           all such responses Defendants cite in their Statement of Uncontroverted  
          Facts.
- 13       Ex. 4   Excerpts of the deposition transcript of Terri Nathine Frances “Frankie”  
14           Day, including all such portions Defendants rely on in their Statement of  
          Uncontroverted Facts.
- 15       Ex. 5   Excerpts of the deposition transcript of Andrew Dvash-Banks, including all  
16           such portions Defendants rely on in their Statement of Uncontroverted Facts.
- 17       Ex. 6   Excerpts of the deposition transcript of Margaret “Maggie” Ramsay,  
18           including all such portions Defendants rely on in their Statement of  
          Uncontroverted Facts.
- 19       Ex. 7   Excerpts of the deposition transcript of Larilyn Reffett, including all such  
20           portions Defendants rely on in their Statement of Uncontroverted Facts.
- 21       Ex. 8   Excerpts of the deposition transcript of Department of State 30(b)(6) witness  
22           Paul Peek, including all such portions Defendants rely on in their Statement  
          of Uncontroverted Facts.

23           3.       Also attached to this declaration are true and correct copies of the following  
24 documents, which Defendants cite in their Statement of Uncontroverted Faces, but which  
25 were not listed in my first declaration:

---

26  
27           <sup>1</sup> Formatting adjustments include adding cover pages, adding the specific footer  
28 required by the Court’s Case Management Order, *see* Order at 11 (Dkt. No. 52), and  
making line adjustments. Defendants intend and respectfully request that the Court use  
the reformatted copies submitted herewith.

1 Ex. 9 DEFS001648-49 (August 29, 2014 letter from Consul General, U.S.  
2 Embassy Bangkok, describing rationale behind DNA testing at Embassies  
and Consulates worldwide).

3 This document bears the seal of the Embassy of the United States of  
4 America, Bangkok, Thailand—a subdivision of the U.S. Department of  
State—and a signature of the Consul General who executed the letter; as  
5 such, the document is self-authenticating pursuant to Fed. R. E. 902(1).

6 Ex. 10 Dvash-Banks00000031 (letter from Vice Consul Frankie Day to Andrew  
Dvash-Banks, dated Jan. 24, 2017).

7 This letter was authenticated by the recipient, Andrew Dvash-Banks, in a  
8 declaration Plaintiffs filed today. See Dkt. # 83-20.

9  
10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on January 7, 2019 at Pittsburgh, Pennsylvania.

12  
13 /s/ Lisa Zeidner Marcus

14 Lisa Zeidner Marcus  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Alexa M. Lawson-Remer (SBN 268855)  
lawsonr@sullcrom.com  
2 SULLIVAN & CROMWELL LLP  
1888 Century Park East, Suite 2100  
3 Los Angeles, California 90067-1725  
Telephone: (310) 712-6600  
4 Facsimile: (310) 712-8800

5 Theodore Edelman (*pro hac vice*)  
edlemant@sullcrom.com  
6 Jessica Klein (*pro hac vice*)  
kleinj@sullcrom.com  
7 Lauren M. Goldsmith (SBN 293269)  
goldsmithl@sullcrom.com  
8 SULLIVAN & CROMWELL LLP  
125 Broad Street  
9 New York, New York 10004-2498  
Telephone: (212) 558-4000  
10 Facsimile: (212) 558-3588

11 Aaron C. Morris (*pro hac vice*)  
amorris@immigrationequality.org  
12 IMMIGRATION EQUALITY  
40 Exchange Place, Suite 1300  
13 New York, New York 10005-2744  
Telephone: (212) 714-2904  
14

15 *Attorneys for Plaintiffs*

16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION (LOS ANGELES)**

20 ANDREW MASON DVASH-  
BANKS AND E.J. D.-B.,

21 Plaintiffs,

22 v.

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

26 Defendants.  
27

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

**DECLARATION OF ALEXA  
LAWSON-REMER IN SUPPORT  
OF PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: February 4, 2019  
Courtroom: 7A

1 I, ALEXA LAWSON-REMER, declare as follows:

2 1. I am an attorney duly licensed by the State of California and am  
3 admitted to practice before this Court. I am an associate at Sullivan & Cromwell  
4 LLP and am one of the attorneys representing Plaintiffs *pro bono* in the above-  
5 captioned action (the “Action”). I submit this declaration in support of Plaintiffs’  
6 Opposition to Defendants’ Motion for Partial Summary Judgment, filed  
7 concurrently herewith. I have personal knowledge of the facts set forth in this  
8 declaration and, if called upon, could and would testify to those facts.

9 2. Attached to this declaration as Exhibit 11 is a true and correct  
10 copy of excerpts of the *Transcript of the Deposition of Paul Peek*, designated  
11 deponent of Defendant the United States Department of State under Federal Rule  
12 of Civil Procedure 30(b)(6), conducted on December 20, 2018, in Washington,  
13 D.C., as part of discovery in this Action.

14 3. Attached to this declaration as Exhibit 12 is a true and correct  
15 copy of excerpts of the *Transcript of the Deposition of Frances Terri Day*,  
16 conducted on December 20, 2018, in Charlotte, North Carolina, as part of  
17 discovery in this Action.

18 4. Attached to this declaration as Exhibit 13 is a true and correct  
19 copy of excerpts of the *Transcript of the Deposition of Andrew Dvash-Banks*,  
20 conducted on December 12, 2018, in Los Angeles, California, as part of discovery  
21 in this Action.

22 5. Attached to this declaration as Exhibit 14 is a true and correct  
23 copy of excerpts of the *Transcript of the Deposition of Margaret Ramsay*,  
24 conducted on December 7, 2018, at the United States Consulate in Toronto,  
25 Canada, as part of discovery in this Action.

26 6. Attached to this declaration as Exhibit 15 is a true and correct  
27 copy of excerpts of the *Transcript of the Deposition of Larilyn Reffett*, conducted  
28

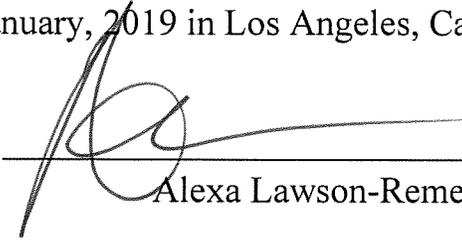
1 on December 6, 2018, at the United States Consulate in Toronto, Canada, as part of  
2 discovery in this Action.

3 7. Attached to this declaration as Exhibit 16 is a true and correct  
4 copy of excerpts of the *Administrative Record*, filed by Defendants on January 4,  
5 2019 as ECF No. 80 and authenticated by Defendants therein. Specifically, the  
6 portions attached as Exhibit 16 are:

- 7 a. AR 001: March 2 Letter from Frances Terri Day to Andrew  
8 Dvash-Banks; and  
9 b. AR 009-62: Application for Consular Report of Birth Abroad  
10 on behalf of E.J. D.-B., and supporting documents, including:  
11 i. AR 015-16: Statement of Live Birth for E.J. D.-B.;  
12 ii. AR 021-22: Order dated September 28, 2016 from the  
13 Ontario Superior Court of Justice declaring Elad Dvash-  
14 Banks and Andrew Dvash-Banks to be the parents of E.J.  
15 D.-B.;  
16 iii. AR 023-56: Surrogacy Agreement dated December 21,  
17 2015; and  
18 iv. AR 062: Letter dated January 30, 2017 from Viaguard  
19 A-M regarding the paternity test between Andrew  
20 Dvash-Banks and E.J. D.-B.

21  
22 I declare under penalty of perjury under the laws of the State of  
23 California that the foregoing is true and correct to the best of my knowledge.

24 Executed this 14th day of January, 2019 in Los Angeles, California.

25  
26   
27 \_\_\_\_\_  
28 Alexa Lawson-Remer

1 JOSEPH H. HUNT  
Assistant Attorney General

2 ANTHONY J. COPPOLINO  
Deputy Director

3 LISA ZEIDNER MARCUS  
Senior Counsel

4 Tel: (202-514-3336

5 lisa.marcus@usdoj.gov

VINITA B. ANDRAPALLIYAL

6 Trial Attorney

7 Tel: (202) 305-0845

vinita.b.andrapalliyal@usdoj.gov

8 UNITED STATES DEPARTMENT OF JUSTICE

Civil Division, Federal Programs Branch

9 P.O. Box 883

10 Washington, DC 20044

*Counsel for Defendants*

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

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

16 Plaintiffs,

17 v.

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

20 Defendants.

Case No. CV 18-523-JFW(JCx)

**Third Declaration of Lisa Zeidner  
Marcus**

In Support of: Defendants' Motion for  
Partial Summary Judgment

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

Honorable John F. Walter

21  
22 **THIRD DECLARATION OF LISA ZEIDNER MARCUS**

23 I, Lisa Zeidner Marcus, hereby declare:

24 1. I serve as trial attorney for the U.S. Department of Justice, Civil Division,  
25 Federal Programs Branch, a position I have held since October 2007. My colleague  
26 Vinita Andrapalliyal and I serve as co-counsel representing Defendants in the above-  
27  
28

1 captioned case. The statements set forth in this Declaration are based on my personal  
2 knowledge.

3 2. This is my third declaration in support of Defendants' opposition to  
4 Plaintiffs' motion for partial summary judgment. My first two declarations were  
5 docketed at ECF No. 89-3 and ECF No. 90, respectively. I submit this declaration to  
6 authenticate additional evidence submitted by Defendants with their reply brief and  
7 "Combined Statement of Facts."

8 3. Attached hereto are true and correct copies of the following documents:

9 Ex. 17 2012 Information Memo to the Secretary on Assisted Reproductive  
10 Technology (ART), Citizenship and Visa Law (DEFS001382).

11 Ex. 18 18 FAM 201.1 (Last updated September 19, 2018), available from  
12 <https://fam.state.gov/>

13 Ex. 19 AJ's CRBA

14 Ex. 20 Additional excerpts of the deposition transcript of the Deposition of Larilyn  
15 Reffett. excerpted by Defendants

16 Ex. 21 Additional excerpts of the deposition transcript of Department of State  
17 30(b)(6) witness Paul Peek, excerpted by Defendants

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on January 22, 2019 at Pittsburgh, Pennsylvania.

20  
21  
22  
23  
24  
25  
26  
27  
28  

/s/ Lisa Zeidner Marcus  
Lisa Zeidner Marcus