

# Defendants' Exhibit: Administrative Record Part I

(In Support of Defendants' Motion for  
Summary Judgment)



U.S. DEPARTMENT OF STATE  
U.S. CONSULATE GENERAL, TORONTO  
360 University Avenue, Toronto, ON M5G 1S4 Canada  
Email: [torontopassport@state.gov](mailto:torontopassport@state.gov)  
Website: [toronto.usconsulate.gov](http://toronto.usconsulate.gov)

March 2, 2017

Mr. Andrew Mason Dvash-Banks  
[redacted] Ave, Apt# [redacted]  
Toronto, Ontario  
M6B 4C6

Dear Mr. Dvash-Banks

I am writing in reference to your recent application for a Consular Report of Birth Abroad and passport for E [redacted] J [redacted] D [redacted]-B [redacted], who was born on September 16, 2016 in Toronto, Canada.

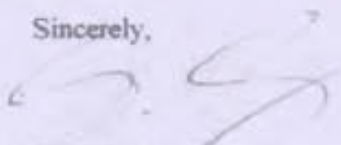
I regret to inform you that after careful review of the evidence you submitted with your child's application, it has been determined that his claim to U.S. citizenship has not been satisfactorily established, as you are not his biological father.

The Immigration and Nationality Act (INA) of 1952, as amended, requires, among other things, a blood relationship between a child and the U.S. citizen parent in order for the parent to transmit U.S. citizenship.

In view of the above, it does not appear that E [redacted] J [redacted] D [redacted]-B [redacted] acquired U.S. citizenship through you. Therefore, your child is not entitled to U.S. Consular Report of Birth Abroad and passport, therefore the applications are denied.

We suggest that you contact the nearest office of U.S. Citizenship and Immigration Services regarding your citizenship status. All documents submitted as part of the application are enclosed. By law, application fees are non-refundable.

Sincerely,

  
Terri N. Day,  
Vice Consul

Defendants' Exhibit:  
Administrative Record Part II

(In Support of Defendants' Motion for Summary  
Judgment)



The United States Department of State - Bureau of Consular Affairs

ACS Activity Log

Report by LEHNEID on November , 02ND 2018 10:06 ET

~~Sensitive But Unclassified (SBU) - Information Protected under The Privacy Act of 1974 (5-  
USC 552a as amended)~~

**Activity Log**

- Log Type:** Status Update    **Source:** System    **Assigned To:** Fazil, Aneela    **Date Completed:** 24-JAN-2017

**Name:** New Case Created

**Description:** New Case Created Case ID: TRT20170240541888Z
  
- Log Type:** Status Update    **Source:** System    **Assigned To:** Fazil, Aneela    **Date Completed:** 24-JAN-2017

**Name:** New Service Created

**Description:** New Citizenship Service Created Service ID: TRT20170240541887Z
  
- Log Type:** Status Update    **Source:** System    **Assigned To:** Fazil, Aneela    **Date Completed:** 24-JAN-2017

**Name:** New Sub-service Created

**Description:** New CRBA Sub-service Created Subsrv ID: TRT20170240541889Z
  
- Log Type:** Name Check Results    **Source:** System    **Assigned To:** Fazil, Aneela    **Date Completed:**

**Name:** SSA Check not transmitted

**Description:** SSA Check was not transmitted due to an invalid social security number.
  
- Log Type:** Name Check Results    **Source:** System    **Assigned To:** Fazil, Aneela    **Date Completed:**

**Name:** SSA Check not transmitted

**Description:** SSA Check was not transmitted due to an invalid social security number.
  
- Log Type:** Name Check Results    **Source:** System    **Assigned To:** Fazil, Aneela    **Date Completed:**

**Name:** SSA Check not transmitted

**Description:** SSA Check was not transmitted due to an invalid social security number.
  
- Log Type:** Name Check Results    **Source:** System    **Assigned To:** Fazil, Aneela    **Date Completed:** 24-JAN-2017

**Name:** Name check executed 01/24/17 09:14 AM (UTC-05:00)

**Description:** Name Check batch 1 executed 1/24/2017 9:14:21 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D [REDACTED]-B [REDACTED], E [REDACTED]', received 1/24/2017 9:14 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for FatherAlias 'BANKS, ANDREW', received 1/24/2017 9:14 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for Father 'BANKS, ANDREW', received 1/24/2017 9:14 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 2 Total IPDB Hits: 0 Total MIV Hits: 4 Total SSA Hits: 0

**Log Type:** Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

**Name:** SSA Check not transmitted

**Description:** SSA Check was not transmitted due to an invalid social security number.

**Log Type:** Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

**Name:** SSA Check not transmitted

**Description:** SSA Check was not transmitted due to an invalid social security number.

**Log Type:** Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

**Name:** SSA Check not transmitted

**Description:** SSA Check was not transmitted due to an invalid social security number.

**Log Type:** Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

**Name:** Name check executed 01/24/17 09:15 AM (UTC-05:00)

**Description:** Name Check batch 2 executed 1/24/2017 9:15:45 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D■■■■-B■■■■ E■■■■', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for FatherAlias 'BANKS, ANDREW', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for Father 'DVASH-BANKS, ANDREW', received 1/24/2017 9:16 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 1 Total IPDB Hits: 0 Total MIV Hits: 2 Total SSA Hits: 0

**Log Type:** Case Note **Source:** User **Assigned To:** Processing, Automated **Date Completed:** 25-JAN-2017

**Name:** CCD CRBA Service Note

**Description:** Subject attempting to acquire citizenship through U.S. citizen father under section 301(g) INA. Submitted the following: Ontario birth cert; father's U.S. ppt, second parent foreign passport, parent's marriage cer; father's work and school records

**Log Type:** Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

**Name:** CCD CRBA Service Note

**Description:** DNA results received. Child does not have claim to U.S. citizenship through U.S. citizen father. Case recommended for denial.

**Log Type:** Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

**Name:** CON OFF CRBA NOTES

**Description:** CRBA for child born in wedlock to US citizen father Applicant submitted a timely filed Ontario birth certificate Parents submitted an Ontario marriage certificate, married 08/19/2010. Amcit Father presented a valid US passport. ISRL Father presented valid ISRL passport. App is the son of a male same sex couple. Because of the process of concieving the child, the fathers did not know who was the biological parent of A■■■■ (Applicant). They were advised to get a DNA test and given a list of testing sites to get the test done. Once the determination of biological parentage is done, it will be clear if A■■■■ has a direct genetic link to Amcit father, and if he automatically qualifies for US citizenship.

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Service status update

**Name:**

**Description:** CRBA service status updated Service ID: TRT20170240541887Z Sub-service ID: TRT20170240541889Z  
Status updated to: APPLICATION ACCEPTED By User: FAZIL Status Date: 02-MAR-17

**Log Type:** Attach File **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

**Name:** CRBA FILES

**Description:** Attached.

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

**Name:** Proof of Citizenship

**Description:** Citizenship Adjudicated for Case ID: TRT20170240541888Z Subject ID: TRT201702440978417  
Citizenship: US CITIZEN Date Adjudicated: 06-MAR-17 Adjudicated by: DAYTN (TRT)

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

**Name:** Proof of Citizenship

**Description:** Citizenship Adjudicated for Case ID: TRT20170240541888Z Subject ID: TRT201702440978447  
Citizenship: NON-CITIZEN Date Adjudicated: 06-MAR-17 Adjudicated by: DAYTN (TRT)

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

**Name:** Proof of Citizenship

**Description:** Citizenship Adjudicated for Case ID: TRT20170240541888Z Subject ID: TRT201702440978359  
Citizenship: NON-CITIZEN Date Adjudicated: 06-MAR-17 Adjudicated by: DAYTN (TRT)

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

**Name:** Service status update

**Description:** CRBA service status updated Service ID: TRT20170240541887Z Sub-service ID: TRT20170240541889Z  
Status updated to: DENIED By User: DAYTN Status Date: 06-MAR-17

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

**Name:** Service status update

**Description:** Service status updated Service ID: TRT20170240541887Z Status updated to: Closed By User: DAYTN  
Status Date: 06-MAR-17

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

**Name:** Case status update

**Description:** Service status updated Case ID: TRT20170240541888Z Status updated to: Closed By User: DAYTN  
Status Date: 06-MAR-17



The United States Department of State - Bureau of Consular Affairs

## ACS Activity Log

Report by LEHNEID on November , 02ND 2018 10:08 ET

~~Sensitive But Unclassified (SBU) - Information Protected under The Privacy Act of 1974 (5 USC 552a as amended)~~

### Activity Log

**Log Type:** Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 01-MAR-2017

**Name:** ECAS Status

**Description:** ECAS Status changed from: [Fraud Referred To ECAS] to [Fraud ECAS Case Transferred]

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

**Name:** New Case

**Description:** A new case was created. - TRT201702440978600

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

**Name:** New Citizenship Service Created

**Description:** New Citizenship Service Created.

**Log Type:** Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

**Name:** SSA Check not transmitted

**Description:** SSA Check was not transmitted due to an invalid social security number.

**Log Type:** Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

**Name:** Name check executed 01/24/17 09:16 AM (UTC-05:00)

**Description:** Name Check batch 1 executed 1/24/2017 9:16:17 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D [REDACTED] B [REDACTED] E [REDACTED]', received 1/24/2017 9:16 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 0 Total IPDB Hits: 0 Total MIV Hits: 0 Total SSA Hits: 0

**Log Type:** Case Note **Source:** User **Assigned To:** Day, Frankie **Date Completed:** 24-JAN-2017

**Name:** Pending -- DNA And School Transcripts

**Description:** CRBA for child born in wedlock to US citizen father Applicant submitted a timely filed Ontario birth certificate Parents submitted an Ontario marriage certificate, married 08/19/2010. Amcit Father presented a valid US passport. ISRL Father presented valid ISRL passport. App is the son of a male same sex couple. Because of the process of conceiving the child, the fathers did not know who was the biological parent of A [REDACTED] (Applicant). They were advised to get a DNA test and given a list of testing sites to get the test done. Once the determination of biological parentage is done, it will be clear if A [REDACTED] has a direct genetic link to Amcit father, and if he automatically qualifies for US citizenship. School transcripts needed to confirm Amcit father's physical presence in the US.

**Log Type:** Status Update **Source:** System **Assigned To:** Sackda, Joanna **Date Completed:** 25-JAN-2017

**Name:** Proof of Citizenship Data Updated

**Description:** Modified by user: SACKDAJ Critical Field Removed: Evidence of Citizenship Field Removed: Evidence of Citizenship - Passport Regular (PRI) Critical Field Removed: Evidence of Citizenship Field Removed: Evidence of Citizenship - Passport Regular (PRI)

**Log Type:** Status Update **Source:** System **Assigned To:** Sackda, Joanna **Date Completed:** 25-JAN-2017

**Name:** Photo Audit Scan Results

**Description:** <FQScores THRESH\_ID="FQT000000003" VERSION="2"><Enrollable ID="0" SCORE="0"/><CompArtifacts ID="1" SCORE="-1"/><AlignConfidence ID="2" SCORE="0"/><HeadSize ID="3" SCORE="-1"/><Contrast ID="4" SCORE="-1"/><ScanArtifacts ID="5" SCORE="-1"/><Interlaced ID="6" SCORE="-1"/><SensorNoise ID="7" SCORE="-1"/><DigConfidence ID="8" SCORE="-1"/><Centered ID="9" SCORE="-1"/><Cropping ID="10" SCORE="-1"/><Exposure ID="11" SCORE="-1"/><ExposureIsOver ID="12" SCORE="-1"/><ExposureRatio ID="13" SCORE="-1"/><Focus ID="14" SCORE="-1"/><MotionBlur ID="15" SCORE="-1"/><UnnaturalColor ID="16" SCORE="-1"/><PhotoConfidence ID="17" SCORE="-1"/><EyesClear ID="18" SCORE="-1"/><GlareFree ID="19" SCORE="-1"/><SunGlasses ID="20" SCORE="-1"/><EyesOpen ID="21" SCORE="-1"/><ShadowInEyeSockets ID="22" SCORE="-1"/><UniLighting ID="23" SCORE="-1"/><HotSpots ID="24" SCORE="-1"/><FacialShadows ID="25" SCORE="-1"/><BkgrndUniformity ID="26" SCORE="-1"/><BkgrndBrightness ID="27" SCORE="-1"/><BkgrndShadows ID="28" SCORE="-1"/><FrontalPose ID="29" SCORE="-1"/><SceneQConfidence ID="30" SCORE="-1"/><Faceness ID="31" SCORE="-1"/><Texture ID="32" SCORE="-1"/><AlgoQConfidence ID="33" SCORE="-1"/><EyeDistance ID="34" SCORE="0"/><Tilt ID="35" SCORE="0"/><Yaw ID="36" SCORE="-220"/><OverAll ID="37" SCORE="-1"/></FQScores>

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 28-FEB-2017

**Name:** Refer/View ECAS button selected

**Description:** The Refer/View ECAS button was selected to refer the subject/service to ECAS by DAY, Frankie Service ID: TRT201702440978604 Subsr ID: TRT201702440978607

**Log Type:** Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 28-FEB-2017

**Name:** ECAS Status

**Description:** ECAS Status returned: [Fraud Referred To ECAS]

**Log Type:** Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 01-MAR-2017

**Name:** ECAS Status

**Description:** ECAS Status changed from: [Fraud ECAS Case Transferred] to [Fraud ECAS Case Transferred]

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

**Name:** Proof of Citizenship Data Updated

**Description:** Modified by user: FAZIL Critical Field Added: Evidence of Identification Field Type Added: New Evidence of Identification P3319402, Issue Date: 09-Nov-2016, Place of Issue: ONTARIO BIRTH CERT. Critical Field Change: Citizenship Comments New Value: pg 405 261 919 ca Old Value: No Previous Value

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

**Name:** Product Deny Recommendation Comments

**Description:** Subject not born to U.S. citizen father as per DNA results.

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

**Name:** Product Status Changed

**Description:** The Passport US Full : Book's Product Status was changed to Recommended For Denial.

**Log Type:** Attach File **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

**Name:** PPT FILE

**Description:** Attached.

**Log Type:** Case **Source:** User **Assigned To:** Day, **Date Completed:** 06-MAR-2017



**Name:** Note Frankie  
**Description:** Rec Denial

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017  
**Name:** Product Denied Decision Comments  
**Description:** DNA shows no bio link between app and AmCit Father.

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017  
**Name:** Product Status Changed  
**Description:** The Passport US Full : Book's Product Status was changed to Denied.

**Log Type:** Snapshot **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017  
**Name:** Snapshot Generated On: 06-Mar-2017  
**Description:** Subject Information: ===== Name: D [REDACTED] -E [REDACTED], E [REDACTED] J [REDACTED] Personal Information: Aliases: Passport Information: SSN: Gender: Male DOB: 16-Sep-2016 Age: 0 POB: MISSISSAUGA, ONTAIRO CAN Mother's Maiden Name: Primary Household Contact: Yes Emergency Contact Provided: No Subject is Warden: No Decision Information: ===== Recommendation Date: 02-Mar-2017 Recommended Denial By: FAZIL, ANEELA Recommended Denial Comments/Overrides: Subject not born to U.S. citizen father as per DNA results. Decision Date: 06-Mar-2017 Decision Denial By: DAY, Frankie Decision Denial Comments/Overrides: DNA shows no bio link between app and AmCit dad. Passport Product Information: ===== Place of Birth to Appear on Passport: Canada Endorsements:

**Log Type:** Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017  
**Name:** Refer/View ECAS button selected  
**Description:** The Refer/View ECAS button was selected to refer the subject/service to ECAS by DAY, Frankie Service ID: TRT201702440978604 Subsr ID: TRT201702440978607

**Log Type:** Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 06-MAR-2017  
**Name:** ECAS Status  
**Description:** ECAS Status changed from: [Fraud ECAS Case Transferred] to [Fraud CLASS Lookout Associated]

**Log Type:** Attach File **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 06-MAR-2017  
**Name:** Denial Letter  
**Description:** Attached.

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 06-MAR-2017  
**Name:** Citizenship Service Closed  
**Description:** Citizenship Service was closed on 1/24/2017 8:16:10 AM by FAZIL Citizenship Service was closed by FAZIL on 3/6/2017 3:26:26 PM

**Log Type:** Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 06-MAR-2017  
**Name:** Case Closed  
**Description:** Closed Case: TRT201702440978600 - Citizenship Service was closed by FAZIL on 3/6/2017 3:26:26 PM

**Log Type:** Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 09-MAR-2017  
**Name:** ECAS Status  
**Description:** ECAS Status changed from: [Fraud CLASS Lookout Associated] to [No Fraud]

**Log Type:** Status Update      **Source:** System      **Assigned To:** Ramsay, Margaret      **Date Completed:** 21-MAR-2017  
**Name:** Refer/View ECAS button selected  
**Description:** The Refer/View ECAS button was selected to refer the subject/service to ECAS by RAMSAY, MARGARET  
Service ID: TRT201702440978604 Subsrv ID: TRT201702440978607

**Log Type:** Status Update      **Source:** System      **Assigned To:** Reffett, Larilyn      **Date Completed:** 05-FEB-2018  
**Name:** Refer/View ECAS button selected  
**Description:** The Refer/View ECAS button was selected to refer the subject/service to ECAS by REFFETT, LARILYN  
Service ID: TRT201702440978604 Subsrv ID: TRT201702440978607

# Defendants' Exhibit: Administrative Record Part III

(In Support of Defendants' Motion for Summary  
Judgment)

U.S. Department of State

OMB NO. 1405-0011  
EXPIRES: 03/31/2019  
Estimated Burden: 20 minutes

# APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD OF A CITIZEN OF THE UNITED STATES OF AMERICA

Registration Number

**DENIAL**

A. THIS SECTION TO BE COMPLETED BY THE CHILD'S PARENT(S) OR GUARDIAN(S) OR THE CHILD. (USE SECTION D CONTINUATION SHEET)

## INFORMATION ABOUT THE CHILD

1. Name of Child in Full  
 D [REDACTED] (Last/Surname) E [REDACTED] (First) J [REDACTED] (Middle)

2. Sex  M  F  
 3. Date of Birth 09/16/2016 (month) (day) (year)  
 4. Place of Birth MISSISSAUGA, CANADA (City) (Country)

NOTE: (If the U.S. citizen parent transmitting citizenship to the child is not present, he or she may complete State Department Form DS 5507 Affidavit of Parentage Physical Presence and Support and submit it separately. The parent completing this application should provide as much information on the parent completing the Form DS 5507 as he or she has.)

## INFORMATION ON MOTHER/FATHER/PARENT

5. Full Name  
 DVASH-BANKS ANDREW MASON (Last/Surname) (First) (Middle)

6. All Previous Legal Names Used  
 BANKS ANDREW MASON (Last/Surname) (First) (Middle)

7. Sex  M  F  
 8. Date of Birth [REDACTED] / 1981 (month) (day) (year)

9. Place of Birth  
 Santa Monica CA USA (City) (State/Province) (Country)

10. Current Physical Address (Do not list P.O. Box) (A.P.O. Address Permitted)  
 [REDACTED] AVE. # [REDACTED] (Address Line 1)  
 TORONTO, ON, CANADA M6B4G6 (City, State/Province, Country, Postal Code)  
 647-706-9556 (Phone Number(s))  
 [REDACTED]@gmail.com (Email Address)

Use this address if Consular Report of Birth will be mailed?  Yes  No

## INFORMATION ON MOTHER/FATHER/PARENT

11. Full Name  
 DVASH-BANKS ELAD AUSTIN (Last/Surname) (First) (Middle)

12. All Previous Legal Names Used  
 DVASH ELAD (Last/Surname) (First) (Middle)

13. Sex  M  F  
 14. Date of Birth [REDACTED] / 1985 (month) (day) (year)

15. Place of Birth  
 Ramat Gan ISRAEL (City) (State/Province) (Country)

16. Current Physical Address (Do not list P.O. Box) (A.P.O. Address Permitted)  
 [REDACTED] AVE. # [REDACTED] (Address Line 1)  
 TORONTO, ON, CANADA M6B4G6 (City, State/Province, Country, Postal Code)  
 647-289-4389 (Phone Number(s))  
 [REDACTED]@gmail.com (Email Address)

Use this address if Consular Report of Birth will be mailed?  Yes  No

17. Mailing Address (if different from Current Physical Address) (Do not list a P.O. Box.) (You may list an A.P.O. address)  
 \_\_\_\_\_ (Address Line 1)  
 \_\_\_\_\_ (City, State/Province, Country and Postal Code)

(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>	(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>
18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	19. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**MARITAL STATUS OF THE PARENTS**

20. Were you married to the child's other biological parent when the child was born?  Yes  No

21. Date and Place of Marriage to the child's other biological parent and current status

08/19/2010 Toronto ON Canada  
(month) (day) (year) (City) (State/Province) (Country)

Still Married  Divorced    /   /     Death    /   /     
(month) (day) (year) (month) (day) (year)

(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>	(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>
22. Please list any other marriages (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)	23. Please list any other marriages (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)
None	None

<p>24. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>From 12-18-2016</td><td>To 01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>From 10-21-16</td><td>To 10-23-16</td></tr> <tr><td>Los Angeles, CA</td><td>From 6-10-16</td><td>To 6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>From 2-19-16</td><td>To 2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>From 11-20-15</td><td>To 11-29-15</td></tr> <tr><td>Detroit, MI</td><td>From 9-4-15</td><td>To 9-8-15</td></tr> <tr><td>New Orleans, LA</td><td>From 5-21-15</td><td>To 5-24-15</td></tr> <tr><td>Los Angeles, CA</td><td>From 4-16-15</td><td>To 4-23-15</td></tr> <tr><td>Port St. Lucie, FL</td><td>From 1-17-15</td><td>To 1-21-15</td></tr> <tr><td>Los Angeles, CA</td><td>From 11-5-14</td><td>To 11-9-14</td></tr> <tr><td>Los Angeles, CA</td><td>From 1-18-81</td><td>To 6-1-92</td></tr> <tr><td>Los Angeles, CA</td><td>From 9-1-92</td><td>To 12-1-00</td></tr> <tr><td>Santa Barbara, CA</td><td>From 6-1-01</td><td>To 12-15-05</td></tr> <tr><td>Los Angeles, CA</td><td>From 6-1-06</td><td>To 1-1-07</td></tr> <tr><td>Los Angeles, CA</td><td>From 4-1-07</td><td>To 7-1-07</td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	From 12-18-2016	To 01-21-2017	Los Angeles, CA	From 10-21-16	To 10-23-16	Los Angeles, CA	From 6-10-16	To 6-19-16	Port St. Lucie, FL	From 2-19-16	To 2-22-16	Los Angeles, CA	From 11-20-15	To 11-29-15	Detroit, MI	From 9-4-15	To 9-8-15	New Orleans, LA	From 5-21-15	To 5-24-15	Los Angeles, CA	From 4-16-15	To 4-23-15	Port St. Lucie, FL	From 1-17-15	To 1-21-15	Los Angeles, CA	From 11-5-14	To 11-9-14	Los Angeles, CA	From 1-18-81	To 6-1-92	Los Angeles, CA	From 9-1-92	To 12-1-00	Santa Barbara, CA	From 6-1-01	To 12-15-05	Los Angeles, CA	From 6-1-06	To 1-1-07	Los Angeles, CA	From 4-1-07	To 7-1-07	<p>25. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>From 12-18-2016</td><td>To 01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>From 6-10-16</td><td>To 6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>From 2-19-16</td><td>To 2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>From 11-20-15</td><td>To 11-29-15</td></tr> <tr><td>Detroit, MI</td><td>From 9-4-15</td><td>To 9-8-15</td></tr> <tr><td>Los Angeles, CA</td><td>From 4-16-15</td><td>To 4-21-15</td></tr> <tr><td> </td><td>From</td><td>To</td></tr> <tr><td> </td><td>From</td><td>To</td></tr> <tr><td> </td><td>From</td><td>To</td></tr> <tr><td> </td><td>From</td><td>To</td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	From 12-18-2016	To 01-21-2017	Los Angeles, CA	From 6-10-16	To 6-19-16	Port St. Lucie, FL	From 2-19-16	To 2-22-16	Los Angeles, CA	From 11-20-15	To 11-29-15	Detroit, MI	From 9-4-15	To 9-8-15	Los Angeles, CA	From 4-16-15	To 4-21-15		From	To		From	To		From	To		From	To
Place (City, State)	Date (month-day-year)	Date (month-day-year)																																																																																
Port Saint Lucie, FL	From 12-18-2016	To 01-21-2017																																																																																
Los Angeles, CA	From 10-21-16	To 10-23-16																																																																																
Los Angeles, CA	From 6-10-16	To 6-19-16																																																																																
Port St. Lucie, FL	From 2-19-16	To 2-22-16																																																																																
Los Angeles, CA	From 11-20-15	To 11-29-15																																																																																
Detroit, MI	From 9-4-15	To 9-8-15																																																																																
New Orleans, LA	From 5-21-15	To 5-24-15																																																																																
Los Angeles, CA	From 4-16-15	To 4-23-15																																																																																
Port St. Lucie, FL	From 1-17-15	To 1-21-15																																																																																
Los Angeles, CA	From 11-5-14	To 11-9-14																																																																																
Los Angeles, CA	From 1-18-81	To 6-1-92																																																																																
Los Angeles, CA	From 9-1-92	To 12-1-00																																																																																
Santa Barbara, CA	From 6-1-01	To 12-15-05																																																																																
Los Angeles, CA	From 6-1-06	To 1-1-07																																																																																
Los Angeles, CA	From 4-1-07	To 7-1-07																																																																																
Place (City, State)	Date (month-day-year)	Date (month-day-year)																																																																																
Port Saint Lucie, FL	From 12-18-2016	To 01-21-2017																																																																																
Los Angeles, CA	From 6-10-16	To 6-19-16																																																																																
Port St. Lucie, FL	From 2-19-16	To 2-22-16																																																																																
Los Angeles, CA	From 11-20-15	To 11-29-15																																																																																
Detroit, MI	From 9-4-15	To 9-8-15																																																																																
Los Angeles, CA	From 4-16-15	To 4-21-15																																																																																
	From	To																																																																																
	From	To																																																																																
	From	To																																																																																
	From	To																																																																																



(Continued)

THIS SECTION TO BE COMPLETED BEFORE/BY CONSULAR OFFICER, NOTARY PUBLIC, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS

29. Affirmation: I SOLEMNLY SWEAR (OR AFFIRM) THAT THE STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Name of Person(s) Providing Information Relationship to the Child (Parent, Legal Guardian, Other (Specify)) Signature of Person(s) Providing Information

ELAD DVASH-BANKS Father

Andrew Dvash-Banks Father

Type Name and Title of Official Signature of Official City Date

TERRI N. DAY VICE CONSUL OF THE UNITED STATES OF AMERICA TORONTO JAN 24 2017 (month) (day) (year)

Subscribed to: (SEAL)

30. Approval of Consular Report of Birth

(Printed Name of Consular Officer)

(Signature of Consular Officer)

(Approving Post)

1/24/18 (month) (day) (year) (Date of Approval)

DENIAL (Registration Number)

C. FOR OFFICIAL USE

31. Documents Presented - Please mark accordingly and provide date of document. (If more space is required, list on separate page)

Child's Birth Certificate 11/09/2016 MISSISSAUGA Ontario Canada  
(month)(day) (year) (City) (Province) (Country)

Marriage Certificate 10/05/2010 / / Toronto Ontario Canada  
(month)(day) (year) (month)(day) (year) (City) (State) (Province) (Country)  
(File Date) (Date of Issuance)

Divorce Decree(s) (a) / / / / / / / /  
(month)(day) (year) (month)(day) (year) (City) (State)  
(File Date) (Date of Issuance)

(b) / / / / / / / /  
(month)(day) (year) (month)(day) (year) (City) (State)  
(File Date) (Date of Issuance)

(c) / / / / / / / /  
(month)(day) (year) (month)(day) (year) (City) (State)  
(File Date) (Date of Issuance)

Death Certificate(s) (a) / / / / / / / /  
(month)(day) (year) (City) (State)

(b) / / / / / / / /  
(month)(day) (year) (City) (State)

Mother/Father/Parent's Passport [REDACTED] 04/21/2010 Israeli citizen  
(Passport Number) (month)(day) (year) (Nationality)  
(Date of Issuance)

Mother/Father/Parent's Passport [REDACTED] 03/23/2010 US citizen  
(Passport Number) (month)(day) (year) (Nationality)  
(Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) \_\_\_\_\_  
(Name of the Citizenship Document) (Document Number) (month)(day) (year)  
(Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) \_\_\_\_\_  
(Name of the Citizenship Document) (Document Number) (month)(day) (year)  
(Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) \_\_\_\_\_  
(Name of the Identity Document) (Document Number) (month)(day) (year)  
(Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) \_\_\_\_\_  
(Name of the Identity Document) (Document Number) (month)(day) (year)  
(Date of Issuance)

Other (Legal Guardianship; Power of Attorney, etc.) custody documents FS-16-21123  
(Name of the Document) (Document Number) (month)(day) (year)  
(Date of Issuance)



D. CONTINUATION SHEET (USE THIS SPACE FOR ADDITIONAL INFORMATION)



Certified A True  
Photostatic  
Print of a Record

on file at the  
Office of the Registrar General  
Ontario, Canada

Registration Number:  
Numéro d'enregistrement

PAGE 1

Certificate number:  
Numéro de certificat **P3319402**

Nov 09 2016

Date issued:  
Date de délivrance

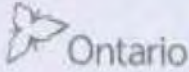
01599220-01

File number:  
Numéro de dossier

Office of the Registrar General  
Bureau du registraire général

Photocopie certifiée  
conforme d'un document

déposée aux dossiers du  
Bureau du registraire général  
(Ontario) Canada



**ServiceOntario**

Office of the  
Registrar General  
189 Red River Road  
PO Box 4500  
Thunder Bay ON P7B 5L3

**Statement of Live Birth  
Form 2**

Vital Statistics Act

This is a permanent legal record.  
Please read all instructions before completing this form.  
Type or print clearly in blue or black ink and complete all items.

**Section A - Child's Information (see instruction #1)**

Last Name [REDACTED]	Sex of Child Male
First Name [REDACTED]	Middle Name(s) [REDACTED]
Date of Birth (yyyy/mm/dd) 2016/09/16	Name of hospital (if not hospital give exact location where birth occurred) Credit Valley Hospital
Place of Birth (City/Town/Village/Township) Mississauga	Regional municipality, county or name PEEL

**Section B - Father's Information - (see instruction #2)**

Current Legal Last Name Dvash-Banks	Legal Last Name at Birth Banks	First and Middle Name(s) Andrew Mason	Any Other Legal Last Name(s)
Place of Birth (City/Town/Village/Township) Santa Monica	Place of Birth (Province/Country) California, USA	Date of Birth (yyyy/mm/dd) 1981 [REDACTED]	Age 35
Marital Status of Parent in Section B <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			

**Section C - Father's Information - (see instruction #3)**

Current Legal Last Name Dvash-Banks	Legal Last Name at Birth Dvash	First and Middle Name(s) Elad	Any Other Legal Last Name(s)
Place of Birth (City/Town/Village/Township) Ramat Gan	Place of Birth (Province/Country) Israel	Date of Birth (yyyy/mm/dd) 1985 [REDACTED]	Age 31
Marital Status of Parent in Section B <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			

**Section D - Birth Information**

Residence of Parent in Section B - Complete street address (City, town, village, township / if rural give Post Office or Rural Route address) [REDACTED] Avenue, Toronto	Postal Code M6B4C6					
Mailing Address of Parent in Section B (if different from above - Complete street address (if rural give Post Office or Rural Route address))	Postal Code					
Duration of pregnancy (in weeks) 32	Total number of children ever born to this parent including this birth 2	Of this Total, Number born live 2	Of this Total, Number stillborn 0	Weight of child at birth (Gms) 3550	Kind of Birth <input type="checkbox"/> Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/> Other	If multiple birth, state whether this child was born 1st, 2nd, 3rd, etc. 2nd
Name of Attendant at Birth Dr. Myckan, Kerry	<input checked="" type="checkbox"/> Physician <input type="checkbox"/> Midwife <input type="checkbox"/> Other, specify					

**Section E - Certification of Introment (Please read instruction #1 before signing)**

If you are choosing a last name that is not one of the parent's last names or combination of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes:

Cultural Heritage  Religious Heritage  Ethnic Heritage

I (We) certify the statements made on this form are true and correct. I am (We are) aware that it is an offence to willfully make a false statement on this form.

I (We) have agreed that the child's last name will be as shown in section A.

Yes  No

Signature of Father X [Signature]	Date (yyyy/mm/dd) 2016/10/08
Signature of Mother X [Signature]	Date (yyyy/mm/dd) 2016/10/08
Signature of Registrar (see instruction #15) X	Date (yyyy/mm/dd)

**Section F - Office Use Only**

I approve this statement and register this birth by signing this statement:

Signature of Manager  
X [Signature]
 Date (yyyy/mm/dd) 2016/11/03 |

UPDATED GEO CODE

11332E (2016/06) © Queen's Printer for Ontario, 2016

A True Copy of the  
Signed Original.

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*Alexandra Schmidt*

Alexandra Schmidt  
Deputy Registrar General  
Registraire générale adjointe

--CERTIFIED COPY--  
NOT VALID WITHOUT ALL PAGES







Certified A True  
Photostatic  
Print of a Record

on file at the  
Office of the Registrar General  
Ontario, Canada

Registration Number:  
Numéro d'enregistrement :

PAGE 1 of 1

Certificate number:  
Numéro du certificat : **P 1338811**

Date issued:  
Date de délivrance :

Oct 05 2010

Office of the Registrar General  
Bureau du registraire général

Photocopie certifiée  
conforme d'un document

se trouvant dans les dossiers du  
Bureau du registraire général  
(Ontario) Canada

File number:  
Numéro de dossier :

01076584-01-3

**Ontario** Ministry of Government Services Office of the Registrar General **Marriage Licence**

Licence number: **E 0689966**

This form is a permanent legal document and can only be used to register a marriage that takes place in Ontario. Please PRINT clearly in blue or black ink.

**Part 1 To be completed by the office issuing this licence**

1. Date this licence was issued (day) <b>19 Aug 2010</b>	2. Municipality where licence was issued <b>City of Toronto</b>
3. Name of licence issuer or deputy issuer <b>Catherine Masters</b>	4. Signature of licence issuer or deputy issuer <i>[Signature]</i>
5. Proposed place of marriage (township) <b>Toronto</b>	6. Proposed date of marriage (day) must be within 3 months of date of issue <b>19 Aug 2010</b>

**Part 2 Marriage Applicant (Form 4)**

Information about the applicant			Information about the joint applicant		
7. Last legal name before this marriage <b>Banks</b>	24. Last legal name before this marriage <b>Dvash</b>				
8. First and middle names <b>Andrew Mason</b>	25. First and middle names <b>Elad</b>				
9. Marital status: <input checked="" type="checkbox"/> never married <input type="checkbox"/> widowed <input type="checkbox"/> divorced	26. Marital status: <input checked="" type="checkbox"/> never married <input type="checkbox"/> widowed <input type="checkbox"/> divorced				
10. Court file number: City divorce granted in please provide the court file number.	27. Court file number: City divorce granted in please provide the court file number.				
11. Religious denomination <b>Jewish</b>	12. Age <b>29</b>	13. Date of birth (day) <b>1981</b>	28. Religious denomination <b>Jewish</b>	29. Age <b>25</b>	30. Date of birth (day) <b>1985</b>
14. Province where applicant was born (if outside Canada, state the country) <b>USA</b>	31. Father's name (last, first) <b>Dvash, Mordechai</b>			32. Mother's name (last name before marriage, first name) <b>Abail, Tova</b>	
15. Province where the applicant's father was born (if outside Canada, state the country) <b>Ontario</b>	33. Province where the joint applicant's father was born (if outside Canada, state the country) <b>Israel</b>			34. Province where the joint applicant's mother was born (if outside Canada, state the country) <b>Israel</b>	
16. Province where the applicant's mother was born (if outside Canada, state the country) <b>Ontario</b>	35. Province where the joint applicant's mother was born (if outside Canada, state the country) <b>Israel</b>				

18. Name in full of applicant  
**Andrew Mason Banks** and **Elad Dvash**

make oath and say Afferm as follows: That I believe there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage, and that the contents set forth herein are to the best of my knowledge, information and belief, true in every particular.

Solemnized before me at **City of Toronto** in the **Province** (city or town) of **Ontario**

This **19th** day of **August**, **2010**

Signature of license issuer *[Signature]* Signature of applicant *[Signature]* Signature of joint applicant *[Signature]*

19. Present address of applicant (post number and name) <b>Avenue</b>	20. City or town <b>Toronto</b>	21. Province <b>ON</b>	22. Telephone number <b>310-600-3568</b>	36. Telephone number <b>723-973-2339</b>
37. Present address of joint applicant (name, number and name) <b>Street</b>	38. City or town <b>Givatayim, Israel</b>	39. Province <b>Israel</b>	40. Postal code <b>53482</b>	41. Date of marriage (day) <b>19 August 2010</b>

**Part 3 Solemnization of marriage to be completed following the marriage ceremony (Form 2)**

42. Signature of applicant  
*[Signature]*

43. Signature of joint applicant  
*[Signature]*

44. Signature of witness  
*[Signature]*

45. Signature of witness  
*[Signature]*

46. Name of person who performed marriage (last, first, middle)  
**BONKALO, ANNEMARIE KAIKA**

47. Date (day)  
**19 August 2010**

48. Your status:  Clergy  Judge  Justice of the peace  Other

49. Address of person who performed marriage  
**ONE QUEEN ST. EAST STE 2300, BOX 91, TORONTO ON M5G 2M5**

50. Your registration number  
**J 2492**

51. Telephone number  
**416 323-5324**

52. Your denomination (if any)

For use of the Registrar General only:  
I am satisfied to the correctness of this statement and register this marriage  
Signature *[Signature]* Date (day)  
**AUG 25 2010**

A True Copy of the Signed Original.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*Judith M Hartman*

Judith M. Hartman  
Deputy Registrar General  
Registraire générale adjointe  
de l'état civil

11105(10/00)

---CERTIFIED COPY---  
NOT VALID WITHOUT ALL PAGES





ONTARIO  
Superior Court of Justice  
*(Name of Court)*  
at 393 University Avenue, Toronto, Ontario M5G 1E6  
*(Court office address)*

Court File Number  
FS-16-21123

Form 25: Order (General)  
 Temporary  
 Final

**Applicant(s)**

*(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)*  
**Elad Dvash-Banks and  
Andrew Dvash-Banks**  
[REDACTED] Avenue, Unit [REDACTED]  
Toronto, Ontario  
M6B 4C6

*Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).*  
**Michelle Flowerday**  
Flowerday Law | Fertility & Family  
158 McRae Drive  
Toronto, Ontario M4G 1S7  
T: 416.428.5511  
F: 647.341.5111  
E: [michelle@flowerdaylaw.ca](mailto:michelle@flowerdaylaw.ca)

**Respondent(s)**

*(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)*  
**Amanda Marie Anne Adams**  
[REDACTED] Avenue, Unit [REDACTED]  
Mississauga, Ontario  
L5A 2K7  
  
**Deputy Registrar General for the  
Province of Ontario  
Ministry of the Attorney General  
Legal Services Branch  
77 Wellesley Street West  
Ferguson Block, 6<sup>th</sup> Floor  
Toronto, Ontario M7A 1N3**

*Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).*

The Honourable  
*Harrison Young J.*  
Judge (Print or type name)  
September 28, 2016  
Date of order

The court read an application/motion made by *(name of person or persons)*

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

The following persons were in court *(names of parties and lawyers in court)*

Michelle Flowerday, Counsel for the Applicants

The court received evidence and heard submissions on behalf of *(name or names)*

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

Under the *Children's Law Reform Act*, Section 4(1), (2) and (3), and the *Courts of Justice Act*, Section 97,

1. It is declared that the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, are the parents of the child, E [REDACTED] J [REDACTED] D [REDACTED] B [REDACTED], born September 16, 2016 ("the child"), and that the Applicants are recognized for all purposes in law to be the parents of the child.
2. It is declared that the Respondent, Amanda Marie Anne Adams, is not the mother of the child.

A True Copy of the  
Signed Original.

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA



Under the *Vital Statistics Act*,

- 3. The Deputy Registrar General for the Province of Ontario is directed to register the birth of the child so as to show the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, as the parents of the child.

~~Under the *Consolidated Provincial Practice Direction of the Ontario Superior Court of Justice*, Section F, Paragraphs 106 and 107,~~

- ~~4. Service and filing of a notice of motion or application with respect to the relief granted under paragraphs 6, 7 and 8 of this Order are dispensed with.~~
- ~~5. Notice to the media with respect to the relief granted under paragraphs 6, 7 and 8 of this Order is dispensed with.~~


Under the *Courts of Justice Act*, Section 137(2),

- 6. The Registrar of the Ontario Superior Court of Justice is directed to seal and treat as confidential all documents filed in this proceeding.
- 7. No person shall publish or make public information that has the effect of identifying either Applicant or the other persons identified in the materials filed in this proceeding.
- 8. The name of this proceeding shall be amended to show only the initials of the parties and the Registrar of the Ontario Superior Court of Justice is directed to amend the records accordingly.
- 9. The Deputy Registrar General for the Province of Ontario is directed to seal and treat as confidential the Notice of Live Birth and all other records in its possession in connection with this case, including this Order, save and except for Form 2 (Statement of Live Birth) and the Birth Certificate.

Put a line through any blank space left on this page.

Sept 28, 2016  
Date of signature

Haroon Yousif  
Signature of judge or clerk of the court

  
**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

SUPERIOR COURT OF JUSTICE  
COUR SUPÉRIEURE DE JUSTICE  
ENTERED / ENTRÉ  
SEP 28 2016  
per/par Justin DiGirolamo  
LOCAL REGISTRAR / GREFFIER LOCAL

CONFIDENTIAL AGREEMENT

THIS IS AN AGREEMENT made on this 21<sup>ST</sup> day of December, 2015

AMONG:

ANDREW DVASH-BANKS

(herein called "Andrew")

-and-

ELAD DVASH-BANKS

(herein called "Elad")

-and-

AMANDA MARIE ANNE ADAMS

(herein called the "Gestational Carrier")

PART I  
BACKGROUND

1.1 Andrew and Elad (collectively called the "Intended Parents") are a same-sex married couple who require assisted reproductive technology to have a child.


1.2 The Intended Parents intend to conceive a Child by Transferring Ova supplied by a third party anonymous donor fertilized by Sperm supplied by Andrew and/or Elad to the Gestational Carrier.

1.3 The Gestational Carrier intends to act as the gestational carrier for the Child and to carry the Child until it is born. The Gestational Carrier has offered to carry the Child on an altruistic basis, and only those out of pocket expenses related to the surrogacy shall be reimbursed to her. The Gestational Carrier has ONE (1) child of her own and is not currently in a relationship of permanence.

1.4 Ova retrieved from the third party anonymous donor and Sperm supplied by Andrew and/or Elad will be incubated externally. Fertilization may occur during this incubation period when a Sperm penetrates the cell wall of an ovum and their nuclei join together creating a single cell fertilized ovum which develops into an embryo.

1.5 Unless in her sole discretion the Gestational Carrier agrees at the time to the insertion of a greater number of Embryos, a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier during each in vitro fertilization cycle.

A True Copy of the  
Signed Original.

  
TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

P.C.

1.6 The Intended Parents and the Gestational Carrier know that more than one child may result from this procedure and, if more than one child is born, "Child" in this Agreement, will mean "Children".

1.7 The Gestational Carrier believes that it would be in the best interests of the Child for the Child to be in the custody of the Intended Parents immediately upon Birth, and the Gestational Carrier hereby expresses her intention to waive all parental rights which she may have to any Child.

1.8 The Intended Parents will be recognized as the Child's parents immediately upon the Child's Birth.

1.9 The Intended Parents intend to assume full care of, and all parental responsibility for the Child, and the Gestational Carrier intends to allow the Intended Parents to assume this care and responsibility without reserving any care or responsibility to herself.

1.10 Immediately upon the Birth of the Child, the Gestational Carrier will give the Child into the permanent custody of the Intended Parents and as soon as reasonably possible thereafter the Intended Parents will make an application in the Ontario Superior Court of Justice seeking a declaration of parentage on their part, and a declaration of non-parentage on the part of the Gestational Carrier.

1.11 All Parties to this Agreement wish to maintain confidentialities between themselves, one to another, and between themselves and the public.

1.12 It is expressly understood that this Agreement is not intended in any way to represent a contract regarding payment in exchange for a child, or for the relinquishment of a child, and that the Parties acknowledge that no consideration has been offered to or accepted by the Gestational Carrier which would induce her to act as a surrogate.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and promises contained in this Agreement and with the intention of being fully bound by its terms, the Parties do hereby covenant and agree as follows.

**PART II  
DEFINITIONS**

Where used in this, unless the context otherwise requires, the following terms will have the following meanings:

- (a) "Attending Physician" means the physician or licensed midwife attending to the maternal care of the Gestational Carrier and attending at the Birth of the Child, as may be agreed to in writing by the Parties;
- (b) "Birth" means "birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario, and includes a "Full Term Still-Birth" unless otherwise stated;

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

ADJ  
EDB

- (c) **"Child"** means the child conceived by I.V.F. (defined below) as described in this Agreement and if there are multiple births means the children conceived by the procedure contemplated in this Agreement;
- (d) **"Clinic"** means The Toronto Institute for Reproductive Medicine, 56 Aberfoyle Crescent, Unit 300, Toronto, Ontario M8X 2W4;
- (e) **"Early Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception before the beginning of the twelfth (12<sup>th</sup>) week of gestation;
- (f) **"Embryo" or "Fertilized Ova" or "Fertilized Ovum"** means the product of I.V.F. (hereinafter defined). For clarification, Fertilized Ova may result from Sperm supplied by Andrew and Elad with the potential of the Gestational Carrier becoming Pregnant with Fetuses that are genetically connected to each of Andrew and Elad;
- (g) **"Fetus"** means the Embryo from the moment of the completion of the Transfer until the moment of Birth;
- (h) **"Full Term Still-Birth"** means a still-birth which occurs during or after the 36<sup>th</sup> week of gestation;
- (i) **"Guardians"** means Tova and Mordehay Dvash;
- (j) **"Hospital"** means Trillium Health Partners;
- (k) **"Intended Parents"** means ANDREW DVASH-BANKS and ELAD DVASH-BANKS;
- (l) **"Gestational Carrier"** means AMANDA MARIE ANNE ADAMS;
- (m) **"I.V.F."** means in vitro fertilization and embryo transfer which is a medical procedure whereby ova are inseminated with sperm and allowed to incubate so that fertilization occurs by a sperm penetrating the cell wall of an ovum and their nuclei joining together to create a single cell fertilized ovum. Several fertilized ova usually result from a single in vitro fertilization and after the single cell fertilized ova have started to divide to form an embryo, some will be Transferred into the uterus of the Gestational Carrier and some may be frozen for Transfer at a later date. The Embryo or Embryos that are Transferred pursuant to this may be from an Embryo or Embryos that have been incubated previously and frozen;
- (n) **"Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception between the twelfth (12<sup>th</sup>) and twentieth (20<sup>th</sup>) week of gestation. Miscarriage in this Agreement does not include an Early Miscarriage;

- (o) "Ova" means the sex cells of a third party donor;
- (p) "Parties" means the parties to this Agreement, being ANDREW DVASH-BANKS, ELAD DVASH-BANKS, and AMANDA MARIE ANNE ADAMS, and "Party" means any one of the Parties individually;
- (q) "Pregnancy" means the medical condition that occurs when the Fertilized Ovum or Embryo, resulting from the third party anonymous Ova and the Sperm of Andrew and/or Elad, has been transferred to the Gestational Carrier and successfully implants, resulting in a pregnancy being diagnosed based on blood test results and does not include a chemical pregnancy;
- (r) "Requested Termination" means: (i) a termination of the Pregnancy with the consent of or at the request of the Intended Parents; or (ii) a termination of the Pregnancy performed in accordance with the recommendation of the Transfer Physician and/or the Attending Physician because the Pregnancy poses a serious risk to the health or life of the Gestational Carrier;
- (s) "Special Expense Amount" means the amount reimbursable under the section called SPECIAL EXPENSE AMOUNT, below;
- (t) "Sperm" means the sex cells of Andrew and/or Elad;
- (u) "Still-Birth" means "still-birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario and does not include a Full Term Still-Birth unless otherwise stated;
- (v) "Term of this Agreement" means, subject to Section 25.1, the period commencing on the date of execution of this Agreement by the last Party to do so, and ending on the day which is the earlier of: (i) the date of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child;
- (w) "Transfer" and "Transferred" mean the manual deposit of one or more Fertilized Ovum or Embryo into the uterus of the Gestational Carrier; and
- (x) "Transfer Physician" means Dr. Alfonso Del Valle or, in the event that Dr. Del Valle is not available, another physician in the Clinic, as may be agreed to by the Parties.

### PART III PSYCHOLOGICAL ASSESSMENTS

3.1 The Gestational Carrier acknowledges that prior to the execution of this Agreement, she was assessed by a counsellor at the Clinic (the "Counsellor"), who determined that she is fit to undertake the obligation to carry the Child during a Pregnancy, and that she is willing to relinquish the Child on Birth to the Intended Parents and is competent to enter into this

Dvash-Banks and Adams Surrogacy Agreement | Final Version

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Agreement. The Gestational Carrier further acknowledges that for the purposes of this Agreement only, she has made an exception to the privilege of confidentiality to allow the Counsellor to advise the Intended Parents whether or not she is psychologically fit to fulfill the obligations she has assumed under this Agreement, and has consented, and does hereby confirm the consent to the release to the Intended Parents of such information only.

3.2 The Intended Parents acknowledge receipt of the advice of the Counsellor about the assessment of the Gestational Carrier, and acknowledge that they are satisfied with the assessment and that they accept the findings and conclusions.

**PART IV  
ACKNOWLEDGEMENTS AND UNDERTAKINGS**

4.1 Each Party acknowledges that the recitals are accurate, binding and form part of this Agreement.

4.2 Each Party acknowledges that he or she is fully informed about the I.V.F., egg retrieval and Transfer procedure and each understands the medical and legal issues involved.

4.3 In particular, the Gestational Carrier acknowledges that she has been informed by a physician specializing in fertility procedures of the risks to the Gestational Carrier involved in preparing her to receive the Transfer, the Transfer procedure itself, the Pregnancy and the Birth which may result, including the possibility of multiple births (or, alternatively, any termination or reduction of the Pregnancy) and further acknowledges that she understands these risks and releases the Intended Parents with respect to all such risks including, without limitation, the health of the Ova and any Embryos created with the Ova, which are transferred to the Gestational Carrier.

4.4 During the Term of this Agreement, each of the Parties agrees to inform each other forthwith, in writing, of any material change in their circumstances which may reasonably affect their performance of this Agreement in accordance with its terms. These changes include, but are not limited to, change in marital status, change of mailing address or email address, illness or death of a Party, loss of employment, changes in insurance coverage and exposure to communicable illness or any risk to health.

**PART V  
MEDICAL EXAMINATIONS**

5.1 Within a reasonable period prior to undertaking any medical procedure contemplated by this Agreement, the Gestational Carrier and the Intended Parents will undergo a thorough consultation and evaluation by the Transfer Physician, to determine whether the Gestational Carrier is physically healthy and capable of conceiving and carrying a Child to Birth and to determine whether the Intended Parents are fit to proceed with the procedures contemplated by this Agreement. The evaluation of all Parties will include testing for transmittable diseases, including, but not limited to, Hepatitis B and C and HIV in order to

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

ADD EDB

protect the health of the Gestational Carrier and the Child.

5.2 The Gestational Carrier warrants and represents that she has disclosed her full medical history to the Transfer Physician and has advised the Transfer Physician of any medications which she is currently taking.

5.3 The Gestational Carrier and the Intended Parents will undergo any medical testing that the Transfer Physician and/or the Attending Physician deem necessary, within the time frame specified by the referring physician, acting reasonably, during the Term of this Agreement, at the expense of the Intended Parents.

5.4 Each Party, for the purposes of this Agreement only, has made or hereby makes an exception to the privilege of confidentiality to allow information to be given to the other Parties and their solicitors, and has consented or hereby consents, to the release of the reports, test results, and all relevant information obtained in the examination or examinations and tests to each of the other Parties, or any one or more of them.

**PART VI  
COUNSELLING PROGRAM AND MEDIATION**

6.1 The Gestational Carrier acknowledges that she may choose to participate in a counselling program, or, she may choose to meet with a counsellor as required at any time during the Term of the Agreement. Any costs of this program will be included in the Special Expense Amount. Each Party for the purposes of this Agreement has made or hereby makes an exception to the privilege of confidentiality to allow information derived in counselling sessions to be given to the other Parties and their solicitors, and has consented or hereby consents to the release of relevant information pertaining to the wellbeing of the Pregnancy and obtained in the counselling sessions.

**PART VII  
SEXUAL ABSTINENCE**

7.1 During the time period set out in this Agreement, the Gestational Carrier will not engage in any sexual activity whereby semen could cause her to conceive a child, or risk the health of the unborn Child. To this end, she will abstain from sexual intercourse completely for a continuous period commencing TWO (2) weeks before each Transfer and ending on the earlier of: (i) confirmation by the Transfer Physician that a Pregnancy has not been initiated; or (ii) the date on which the first ultrasound examination after each Transfer has been performed, unless the Transfer Physician recommends a longer period of abstinence.

7.2 The Intended Parents acknowledge that the Gestational Carrier is single. The Gestational Carrier agrees that she will provide notice to the Intended Parents if that status changes, and further agrees as follows:

- (a) Prior to commencing a sexual relationship with a new partner, the Gestational Carrier covenants and agrees that she will ensure that such

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*[Handwritten initials]*  
DOB ENB

individual undergoes testing for transmittable diseases, and further agrees not to engage in a sexual relationship with such new partner until the testing confirms that he does not have any transmittable diseases;

- (b) At all times during the Term of this Agreement, the Gestational Carrier shall engage only in safe sexual practices in order to protect herself and the Fetus from infection by the HIV virus or any venereal or other transmittable disease and agrees not to engage in sexual intercourse unless her partner uses a condom; and
- (c) If, during the Term of this Agreement, the Gestational Carrier becomes involved in a common law relationship, or becomes married, the Gestational Carrier agrees that she will ensure that her spouse signs an amending agreement pursuant to which he acknowledges that: (i) he is not the Child's father; (ii) he will release the Intended Parents from any claims he may have; (iii) he will co-operate with respect to any post-birth process confirming the parentage of the Intended Parents; and (iv) he will abide by the provisions of this Agreement including the requirement to refrain from sexual activity with a third party outside of his monogamous relationship with the Gestational Carrier.

7.3 At all times during the Term of this Agreement, the Intended Parents will not engage in any sexual activity with a third party outside of their marital relationship to protect themselves, the Gestational Carrier and the Child from infection by the HIV virus or any venereal or other transmittable disease.

**PART VIII  
TRANSFERS**

8.1 The Gestational Carrier will hold herself available to receive Transfers under this Agreement to be scheduled at mutually convenient times for up to TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so, and will not perform any act or any thing which would interfere with the proper performance of her obligations under this Agreement.

8.2 The Gestational Carrier will accept a Transfer implanted by the Transfer Physician at the Clinic on as many as FOUR (4) separate occasions, including Transfers of frozen Embryos, if any, at times recommended by the Transfer Physician and approved by the Parties in order to achieve a Pregnancy subject to all Transfers being completed within TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so and thereafter the Gestational Carrier will have no obligation to accept any Transfer.

8.3 Unless the Parties mutually agree to a greater number of Embryos, on each Transfer a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier.

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*AD*  
*ARB ENB*



8.4 The Gestational Carrier will follow all medical instructions prescribed by the Transfer Physician prior to a Pregnancy and during the first trimester of a Pregnancy. The Gestational Carrier will continue to follow the protocol prescribed by the Transfer Physician, which will include stimulating the Gestational Carrier so that her uterine lining is prepared for the Transfer of Embryos. The Gestational Carrier will undergo all necessary testing (including blood testing and ultrasound testing) to determine the readiness of the Gestational Carrier's uterus for the Transfer of Embryos.


8.5 If a Pregnancy does not result after FOUR (4) Transfers (including Transfers of frozen Embryos) then this Agreement may be terminated by any Party giving notice in the manner prescribed by the section called NOTICE, below, to all other Parties at any time before a Pregnancy has occurred and, upon delivery of such notice, this Agreement will terminate and the Intended Parents and the Gestational Carrier will be released from all obligations under it, except the obligation to reimburse the Gestational Carrier's allowable expenses pursuant to the section called SPECIAL EXPENSES, below, which have been incurred to the time of the termination. If no such notice of termination is given, this Agreement will remain in full force and effect until a notice of termination is given.

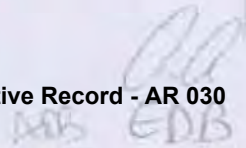
8.6 Notwithstanding anything contained in this Agreement, the Intended Parents or the Gestational Carrier may terminate this Agreement at any time after the first Transfer upon giving notice to the other Party, if a Pregnancy has not resulted from the Transfer. Upon such a termination the Intended Parents and the Gestational Carrier will be released from all obligations under this Agreement, except for the obligation to reimburse the Gestational Carrier for any expense incurred to the time of termination and payable under the section called SPECIAL EXPENSES, below.

8.7 If a Transfer results in a Pregnancy, the Gestational Carrier will use her best efforts to carry the Fetus to term. The Gestational Carrier will give Birth to the Child at the Hospital or such other hospital as may be agreed to in writing by the Parties.

8.8 The Gestational Carrier agrees to provide the Intended Parents with a weekly update with respect to the Pregnancy, and such update may be by email, Skype or telephone as agreed to by the Parties.

8.9 The Gestational Carrier agrees that either or both of the Intended Parents may accompany her to any obstetrical appointment, or pre-natal test or procedure. The Gestational Carrier further consents to the presence of the Intended Parents in the delivery room at the time of the Birth of the Child. In the event that the Hospital limits the number of visitors that may be present at the Birth of the Child, the Intended Parents acknowledge and agree that the Gestational Carrier shall be entitled to select one such visitor. The Gestational Carrier agrees to contact the Intended Parents at the first indication that labour has begun.

TERRI N. DAY   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA



**PART IX  
PRENATAL OBLIGATIONS**

9.1 The Gestational Carrier warrants and represents that:

- (a) she has never abused alcohol or drugs;
- (b) she has never taken any drugs, whether legal or illegal, which may impact upon the success of a Pregnancy contemplated by this Agreement and the Birth of a healthy Child;
- (c) she is not now using, and has not in the TWELVE (12) months previous to the date of this Agreement, used an illegal drug;
- (d) she will not, during the Term of the Agreement, use any illegal drugs; and
- (e) she has never been charged with a criminal offence.

9.2 The Gestational Carrier warrants and represents that she will strictly comply with all of her obligations set out in the following paragraphs:

9.3 The Gestational Carrier will follow all medical advice given by the Transfer Physician and the Attending Physician, and will undergo all medical procedures that either of them require to ensure that her obligations under this Agreement are safely and successfully performed for both the Gestational Carrier and the Child. Without limiting the generality of the foregoing, if the Attending Physician determines that a Caesarean Birth is advisable for the health and safety of either the Gestational Carrier or the Child, then the Gestational Carrier hereby consents to such procedure. The Gestational Carrier further consents to submit to amniocentesis and all other tests recommended by the Transfer Physician and the Attending Physician and those tests requested by the Intended Parents on the advice of the Transfer Physician, should she become Pregnant pursuant to the terms of this Agreement.

9.4 The Gestational Carrier will follow a prenatal medical examination schedule and prenatal procedures prescribed by the Transfer Physician and/or the Attending Physician who will be responsible for the Gestational Carrier's medical care during the prenatal period. If a medical illness or condition is suspected or diagnosed during the Pregnancy, the Gestational Carrier agrees that she will seek medical attention, and will follow all medical instructions and course of treatment as prescribed.

9.5 The Gestational Carrier covenants and agrees to have the integrated pre-natal screen (IPS), parts one and two:

- (a) at approximately 12 weeks, Part 1 of the IPS, which consists of a nuchal translucency ultrasound and associated maternal bloodwork; and
- (b) at approximately 16 weeks, Part 2 of the IPS, which consists of the appropriate

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

AUG ENB

maternal blood tests.

The results of the IPS will be forwarded to the Attending Physician.

9.6

- (a) The Gestational Carrier warrants that she does not smoke and will not smoke, or expose herself or allow herself to be exposed to second-hand smoke, for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (b) The Gestational Carrier warrants that she will not drink alcoholic beverages for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (c) The Gestational Carrier further warrants that she will maintain a proper diet and exercise regime as recommended by the Transfer Physician and/or the Attending Physician. All costs incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 9.6(c) shall, subject to the cap on the Special Expense Amount, be included in the Special Expenses.

9.7 The Gestational Carrier will obtain adequate prenatal medical care including, without limitation, the care contemplated by this Part IX in order to enhance the success of the Pregnancy and the Birth of a healthy Child.

9.8 The Gestational Carrier covenants and agrees that during the Term of this Agreement she will not:

- (b) not ingest, inhale, inject or absorb any drugs, pharmaceutical or herbal substances including, without limitation, over the counter medication, not prescribed or approved, in writing, by the Transfer Physician or the Attending Physician (with the exception of Tylenol consumed at or below the recommended dosage for pregnant women). If the Transfer Physician approves any such medications, the Gestational Carrier agrees to follow the instructions of the Transfer Physician and/or Attending Physician with respect to dosage of substances or medication;
- (c) not have any part of her body pierced or tattooed;
- (d) use her best efforts to avoid all exposure to radiation or toxic chemicals; and
- (e) avoid any potentially hazardous situations or activities that a reasonable person would conclude are likely to result in harm to herself or the Fetus.

9.9 Failure to comply with this Part IX will constitute a material breach of the Gestational Carrier's obligations under this Agreement.

Dvash-Banks and Adams Surrogacy Agreement | Final Version

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

9.10

- (a) After the Gestational Carrier becomes Pregnant with the Child, the Gestational Carrier and the Intended Parents will keep each other reasonably informed of their whereabouts.
- (b) From and after the first day of the 24<sup>th</sup> week of the Pregnancy, the Gestational Carrier may only travel outside of Canada: (i) in the event of a severe illness or death in her immediate family; (ii) if she has obtained the prior written consent of the Intended Parents, which shall not be unreasonably withheld; (ii) if she has the prior approval of the Attending Physician; and (iii) if she has a policy of travel health insurance covering her health care costs, the Birth of the Child and the Child's health care costs, which is in place prior to departure and for the duration of the travel.
- (c) From and after the first day of the 24<sup>th</sup> week of the Pregnancy, the Gestational Carrier shall not travel to or visit the Provinces of Quebec, Saskatchewan, New Brunswick and/or Prince Edward Island.
- (d) From and after the first day of the 28<sup>th</sup> week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel by airplane.
- (e) From and after the first day of the 34<sup>th</sup> week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel more than a FORTY (40) minute drive from a hospital.

9.11 The Gestational Carrier will and hereby consents to the Transfer Physician and the Attending Physician keeping the Intended Parents informed at all material times of whether a Transfer has resulted in a Pregnancy, the progress of the Pregnancy, the results of all tests and any recommendations arising from test results, including all information relevant to the health of the Gestational Carrier and the Fetus, and the expected date of Birth. The Gestational Carrier will give the Attending Physician any further consent, authority or directions necessary to comply with this obligation to keep the Intended Parents so informed.

9.12 The Gestational Carrier hereby gives her consent, and will sign any medical consent forms to allow the Transfer Physician, the Attending Physician or any other doctor or hospital agreed to by the Parties to treat her as may be required in respect of the Pregnancy.

**PART X  
CONDITION PRECEDENT**

10.1 The Parties each acknowledge that a finding by medical testing that either Andrew or Elad is a genetic parent of the Child is a condition precedent to the performance of the Intended Parents' obligations under this Agreement. For the purposes of determining the parentage of the Child, immediately after the Birth, the Intended Parents and the Gestational Carrier will submit to a DNA test and each Party consents to the immediate testing of the DNA

of the Child.

10.2 A finding that neither Intended Parent is a genetic parent of the Child will constitute a material breach of this Agreement unless the parentage is due to a clinical or physician's error in the fertilization or Transfer procedure. If there is a finding that neither Intended Parent is a genetic parent of the Child, and the same degree of testing confirms that the Gestational Carrier is not the genetic mother of the Child, a clinical or physician's error in the fertilization or Transfer procedure shall be deemed to have occurred and the Intended Parents shall assume responsibility for the Child as if it were their own.

10.3 If the Gestational Carrier is the genetic mother of the Child, the Gestational Carrier will refund, within THIRTY (30) days of the request, any Special Expense Amount paid on her behalf, or reimbursed to her, and will forego the reimbursement of any further allowable Special Expense Amount that would otherwise be, or become, reimbursable to her and the Intended Parents shall not be obliged to accept any responsibilities, social, legal or custodial, toward the Child, without prejudice to any of the rights that the Intended Parents are entitled to claim under this Agreement.

**PART XI  
WARRANTIES AND ACKNOWLEDGEMENTS**

11.1 The Gestational Carrier warrants that, to the best of her knowledge, she is physically capable of carrying the Fetus to term and is capable of carrying and bearing healthy, normal children.


11.2 The Gestational Carrier warrants that, to the best of her knowledge, she has no transmittable disease and will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.3 Andrew and Elad each warrant that, to the best of their knowledge, neither has a transmittable disease and each will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.4 The Gestational Carrier acknowledges that it will be in the best interests of the Child for the Child to be placed in the custody of the Intended Parents immediately upon the Birth of the Child and for the Gestational Carrier to forever waive all parental and other rights in and to the Child that she has or may acquire in the future immediately upon the Birth of the Child.

**PART XII  
EARLY TERMINATION OF PREGNANCY**

12.1 The Parties acknowledge that the Gestational Carrier has the right to have the Pregnancy terminated at any time she and either the Transfer Physician or the Attending Physician, in their absolute discretion, determine the Pregnancy should be terminated. However, the Gestational Carrier has assured the Intended Parents that it is not her intention to have an

**TERRI N. DAY**   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*P.A.*  
*AR 034*

abortion, unless the Intended Parents request that she does so in the circumstances set out below. The Gestational Carrier has further assured the Intended Parents that she will proceed with a Requested Termination at a time and place recommended by the Transfer Physician and/or Attending Physician if: (i) a test reveals that the Child is likely to have a serious genetic or congenital abnormality or defect; (ii) the Transfer Physician or the Attending Physician so recommends in writing; and (iii) the Intended Parents so request in writing. All costs incurred in connection with and directly related to the Requested Termination shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

12.2 In the interests of clarity, the Parties agree that any request to terminate the Pregnancy shall be in writing and signed by each of the Intended Parents.

12.3 The Gestational Carrier states that she does not intend to exercise her right to abortion:

- (a) except as set out in this Part XII, or
- (b) unless in the opinion of the Transfer Physician and/or the Attending Physician, terminating the Pregnancy is necessary to protect the Gestational Carrier's health or life, in which case the consent of the Intended Parents is not required.

12.4

- (a) The Gestational Carrier will undergo ultrasound, chorionic villus sampling, IPS, amniocentesis and similar tests and procedures to detect genetic and congenital abnormalities or defects in the Fetus, as recommended by the Transfer Physician and/or the Attending Physician.
- (b) The Intended Parents acknowledge the risks to the Pregnancy associated with any invasive testing and, provided that the Gestational Carrier is not otherwise in material breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from any invasive testing performed at the request of or with the consent of the Intended Parents.

12.5 The tests will be performed or interpreted by the Transfer Physician, the Attending Physician, a physician or a technician recommended by either or both of them that is satisfactory to the Parties to this Agreement.

12.6

- (a) If the Gestational Carrier is carrying a single Fetus and tests indicate that the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or if the Gestational Carrier is carrying a multiple pregnancy and the tests indicate that each Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, then the Intended Parents may, in accordance with Section 12.1, inform the Gestational Carrier that it is their wish that the Pregnancy be

terminated. The Gestational Carrier, in consultation with the Transfer Physician or Attending Physician, will follow the instructions of the Intended Parents to terminate the Pregnancy.

- (b) If the Gestational Carrier is carrying a multiple Pregnancy and the medical tests indicate that only one Fetus has or is likely to have, a serious genetic or congenital abnormality or defect, the Intended Parents may inform the Gestational Carrier that it is their wish that the Gestational Carrier undergo a selective reduction procedure and the provisions of Section 13.1 shall apply.

12.7 If the Gestational Carrier:

- (a) terminates the Pregnancy or undergoes a selective reduction procedure without the prior written approval of the Intended Parents where prior consent is required; or
- (b) refuses to terminate the Pregnancy, or to take all steps within her control to undergo a selective reduction procedure if requested to do so, within TWENTY (20) days of receiving notice of the Intended Parents' wish to have the Pregnancy terminated because the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or the multiple pregnancy poses a risk to the health or life of the remaining fetus(es) or the Gestational Carrier,

then the Gestational Carrier will be in material breach under this Agreement, and the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses incurred after the date of the termination or selective reduction in the event of Section 12.7(a), or the date of notice in the event of Section 12.7(b), and the Gestational Carrier will refund to the Intended Parents all amounts already reimbursed to her pursuant to the terms of this Agreement.

12.8 Subject to Section 12.1, if the Gestational Carrier refuses to terminate the Pregnancy or undergo a selective reduction procedure at the request of the Intended Parents and the Child is born with or without the serious genetic or congenital abnormality or defect detected or suspected from the tests referred to above, the Gestational Carrier will give the Child into the custody of the Intended Parents as provided in this Agreement and no expenses of the Gestational Carrier will be reimbursed after the date on which notice requesting termination or selective reduction was received, but all other terms of this Agreement will continue in full force and effect including, without limitation, the Intended Parents' obligation to take custody of and support the Child.

12.9 If the tests for congenital and genetic defects and abnormalities do not reveal any defects or abnormalities, but the Child is born with defects or abnormalities which do not result from the gross negligence of the Gestational Carrier, the Gestational Carrier will place the Child in the custody of the Intended Parents as provided in this Agreement and all other terms and obligations will remain in effect, including those in Section 26.

**PART XIII  
SELECTIVE REDUCTION**

13.1 If:

- (a) the Transfer of Embryos contemplated by this Agreement results in the Gestational Carrier becoming pregnant with THREE (3) or more Children; or
- (b) the Gestational Carrier is carrying a multiple pregnancy and the test(s) indicate that one or more Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, but at least one Fetus does not have any genetic or congenital abnormality or defect; or
- (c) in the opinion of the Transfer Physician and/or the Attending Physician, the multiple Pregnancy poses a risk to the Gestational Carrier's health or to one or more Fetus;

then if the Intended Parents so request under Section 13.1(b) or upon recommendation of the Transfer Physician and/or the Attending Physician under Section 13.1(a) or (c), the Gestational Carrier will undergo a procedure in any location specified by the Attending Physician within Canada to selectively reduce the number of Fetuses to twins or a single Fetus, as the case may be. If requested by the Intended Parents, the procedure will take place at the time and in a manner determined to be medically appropriate by the Attending Physician. The Gestational Carrier acknowledges and agrees that she will not undergo a selective reduction procedure if she is carrying two Fetuses without the consent in writing of the Intended Parents, unless the Attending Physician is of the opinion that such procedure is necessary to avoid a serious risk to the health of the Gestational Carrier or to the remaining Fetus or Fetuses. All costs incurred in connection with and directly related to the selective reduction procedure shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

13.2 The Intended Parents acknowledge the risks to the Pregnancy associated with a selective reduction procedure and, provided that the Gestational Carrier is not otherwise in breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from a selective reduction procedure performed at the request of or with the consent of the Intended Parents.

13.3 In the interests of clarity, any request to selectively reduce the Pregnancy shall be in writing and signed by each of the Intended Parents.

**PART XIV  
CUSTODY OF CHILD AND PARENTAL RIGHTS**

14.1 The Gestational Carrier has met or spoken with the Intended Parents and believes that the Intended Parents will be loving and caring parents to any Child born pursuant to this Agreement. She acknowledges that it is in the best interests of the Child that the Intended Parents have sole and exclusive custody and assume the legal and social parental responsibilities

Dvash-Banks and Adams Surrogacy Agreement | Final Version

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*Handwritten initials and signature*



for the Child, immediately upon Birth. For the purposes of this Agreement, "immediately upon birth" means as soon as the umbilical cord is cut.

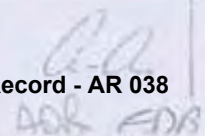
14.2 The Gestational Carrier acknowledges that the Intended Parents will show the surname and the given names of the Child to be the names chosen by the Intended Parents on any form required on the Birth of the Child.

14.3 The Gestational Carrier will, at the request of the Intended Parents, participate in any legal proceeding or application supporting the Intended Parents' custody and parentage of the Child and will facilitate proof by affidavit or by giving evidence in person of all material facts within their knowledge and will attend at any and all court hearings, as required either prior to or after the Birth of the Child, until the proceeding or application is finally disposed of. All expenses incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 14.3, shall be borne by the Intended Parents in addition to the Special Expense Amount.

14.4 The Gestational Carrier hereby expressly waives all parental, custodial and social rights that she has or may acquire to the Child.

14.5

- (a) The Gestational Carrier will, immediately upon the Birth of the Child, relinquish any and all custody rights she has or may have, and will make custody of the Child available to the Intended Parents forthwith upon the Birth of the Child. The Intended Parents will receive custody and assume the legal and social parental responsibilities for the Child;
- (b) The Gestational Carrier agrees that she will co-operate with the hospital staff and administration with respect to the agreement of the Parties as set out in Section 14.5(a) and, prior to the expected date of Birth, she will sign a joint letter of instruction and direction to the hospital staff and administration instructing the hospital to treat the Child as the Child of the Intended Parents immediately upon the Birth of the Child, to accept the instructions of the Intended Parents with respect to the Child's medical care, and to discharge the Child from the hospital to the custody of the Intended Parents; and
- (c) The Parties acknowledge that immediately upon Birth all medical decisions regarding the Child shall be made solely by the Intended Parents. The Gestational Carrier agrees that the Intended Parents shall be the persons authorized to care for and make treatment and any other decisions with respect to the Child from the moment of Birth and thereafter. Further, the Gestational Carrier agrees that if a health care provider recognizes her as a substitute decision-maker for the Child, she shall inform such person that she is not the parent of the Child and is therefore not willing to assume the responsibility of giving or refusing consent in accordance with Section 20(2)(e) of the *Health Care Consent Act*. The Gestational Carrier shall direct the health care staff to accept the instructions of

  
ADR FDR

the Intended Parents with respect to the health of the Child.

- (d) Notwithstanding the above, if the Intended Parents are not available to take physical custody of the Child, or make medical decisions with respect to the Child, immediately after Birth, the Gestational Carrier shall do so on a temporary basis until the Intended Parents are available and same shall not derogate from the Intended Parents' legal parental rights with respect to the Child.

14.6 The Intended Parents will receive the custody of the Child at Birth, or as soon thereafter as is practicable, and if not present at the same time either Andrew or Elad will be deemed to receive custody on behalf of both of them.

14.7 The Parties agree that the Gestational Carrier shall not under any circumstances breastfeed the Child without the permission of the Intended Parents obtained in advance. The Parties acknowledge that the Gestational Carrier has agreed to pump breastmilk for the Child, if feasible at the time, and that the Intended Parents shall cover the direct cost of doing so in addition to the Special Expense Amount.

14.8 Each Party to this Agreement will do what is reasonably necessary to facilitate and expedite the performance of this Agreement including all things such as completing consent forms, hospital and statistical records and obtaining birth certificates.

**PART XV  
RELATIONSHIP WITH THE CHILD**

15.1 The Gestational Carrier will avoid developing a parental relationship with the Child. The only time she will see the Child is in the Hospital before the Child is discharged, and thereafter upon the consent of the Intended Parents. After the Birth, the Gestational Carrier will not contact, nor attempt to contact, nor allow herself to be in contact with the Child in any manner whatsoever at any time, except with the express permission of the Intended Parents. At no time will the Gestational Carrier reveal or cause to be revealed to the Child the fact that the Gestational Carrier gave Birth to the Child, on the understanding that the Intended Parents shall have sole discretion about providing such information to the Child.

15.2 Notwithstanding the above, the Intended Parents hereby consent to allow the Gestational Carrier and her dependent child to spend time with the Child after Birth but prior to discharge from the Hospital, in the presence of the Intended Parents

**PART XVI  
WAIVER AND RELEASE**

16.1 The Gestational Carrier waives all rights that she has or may in the future have to the custody of, access to, or information about the Child and releases the Intended Parents and each of them from all claims that she has, or may in the future have to the custody of, access to, or information about the Child.

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*[Handwritten signature]*  
*[Handwritten initials]*

**PART XVII  
FURTHER AGREEMENT AS TO CUSTODY**

17.1 After the Birth of the Child, the Gestational Carrier will, at the request of the Intended Parents, enter into a further agreement with the Intended Parents confirming the Intended Parents' custody of the Child.

17.2 On her part, the Gestational Carrier will confirm and covenant, among other things, that she waives all rights she may have in respect of the Child, and without restricting the generality of the foregoing, her right to custody of the Child and all rights incidental to custody, including the right of access to the Child.

17.3 On their part, the Intended Parents hereby agree, among other things, that:

- (a) they release the Gestational Carrier from all obligations that she has or may in the future have to provide for the support and education of the Child for such period of time as the Child is entitled to support pursuant to the laws of the jurisdiction in which he/she is habitually resident;
- (b) each of them will charge his estate with the obligation to provide for the adequate support and education of the Child; and
- (c) provided that the Gestational Carrier has made physical custody of the Child available to the Intended Parents, each of the Intended Parents will indemnify the Gestational Carrier with respect to any expense incurred by her to provide for the support or education of the Child, including without limitation any legal or other expenses the Gestational Carrier pays in connection with the defence thereof.

**PART XVIII  
DEATH OF INTENDED PARENTS AND  
GUARDIANSHIP OF CHILD**

18.1 The Intended Parents shall each maintain a valid Will in good standing, recognizing the Child as their issue, naming a testamentary guardian for the Child and making adequate provision for the support and education of the Child.

18.2 If either Andrew or Elad dies before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the survivor. If both Andrew and Elad die before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the Guardians named below.

18.3 Each of the Intended Parents hereby declare that, in the event of both of their deaths during the term of this Agreement, the Guardians of any Child born pursuant to this Agreement are: Tova and Mordehay Dvash, who reside in Israel and who can be reached at +972- [REDACTED], +972- [REDACTED], +972- [REDACTED] or [REDACTED]@gmail.com or

*[Handwritten initials and signatures]*

██████████@bezeqint.net. The Guardians shall make any or all medical decisions with respect to the Child in the event that the Intended Parents are incapacitated and unable to do so.

18.4 The Gestational Carrier shall be entitled to rely on this Part XVIII without the requirement of any further evidence for the purpose of providing custody of the Child to the Guardians named herein in the event of the Intended Parents' death or for the purpose of the Guardians named herein making medical decisions for the Child in the event of the Intended Parents' inability to do so. The Intended Parents hereby warrant that they have not and will not enter into any conflicting document or agreement with respect to guardianship of the Child.

**PART XIX  
SEPARATION OR DIVORCE OF INTENDED PARENTS**

19.1 If the Intended Parents separate or divorce before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the care of either Andrew or Elad who will undertake to determine custody and any incidents of custody of the Child as between themselves by mutual agreement or by the Court.

**PART XX  
INCAPACITY OF GESTATIONAL CARRIER**


20.1 The Gestational Carrier agrees that, if she becomes incapable of making decisions for herself, or if she requires life support to sustain her life, then all decisions relating to her medical care shall be made by her Attorney for Personal Care ("Attorney") as appointed by her Power of Attorney for Personal Care or, if she does not have an Attorney, by her Substitute Decision-Maker. However, the Gestational Carrier hereby expresses her wish that if she is Pregnant at the time she is assessed as incapable, and the Attending Physician or another physician deems that the Child would benefit from prolonging her life by artificial means until it is deemed safe to deliver the Child, and that the Gestational Carrier is not enduring pain and suffering, then the Attorney, or the Substitute Decision-Maker, as the case may be, will consent to prolonging the life of the Gestational Carrier by artificial means until after the Birth of the Child.

20.2 The Intended Parents shall reimburse the Gestational Carrier for the legal expenses incurred in having a Will and a Power of Attorney for Personal Care prepared for the purpose of fulfilling Section 20.1 above, in addition to the Special Expense Amount to a maximum of Five Hundred Dollars (\$500.00).

**PART XXI  
LIFE INSURANCE POLICY FOR  
GESTATIONAL CARRIER**

21.1 The Gestational Carrier hereby acknowledges that she currently has a policy of Life Insurance in place with coverage in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00 Cdn.) on her life which will be kept in place for the period commencing on the date which is not later than the date of the first Transfer and shall end

Dvash-Banks and Adams Surrogacy Agreement | Final Version

**TERRI N. DAY**   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*Handwritten initials and "End" at bottom right.*

no earlier than the first to occur of the following dates (the "Insurance Termination Date"): (i) the date of termination of this Agreement; and (ii) the day which is TWO (2) months after the date of Birth. The Gestational Carrier may renew the life insurance, but the Intended Parents will have no obligation to pay for the cost of any premiums charged after the Insurance Termination Date.

21.2 The Intended Parents shall be named as revocable beneficiaries of SEVENTEEN PERCENT (17%) under the Life Insurance policy, and shall be removed as beneficiaries immediately following the earlier of: (i) the Birth; or (ii) the termination of the Agreement. The Gestational Carrier shall name the beneficiary of the remainder under the Life Insurance policy who shall hold same in trust for her children.

21.3 The Intended Parents may put an additional policy of life insurance into place on the Gestational Carrier's life and she shall take all reasonable steps to facilitate same.

**PART XXII  
ENFORCEMENT**

22.1 The Parties have a right to enforce this Agreement in the Ontario Court of Justice including the right to seek an interlocutory and permanent injunction enjoining behaviour that is contrary to or in breach of the Agreement. The Parties acknowledge that a breach of this Agreement will result in irreparable harm to the aggrieved Party and to the Child.

**PART XXIII  
VITAL STATISTICS**

23.1 The Gestational Carrier shall refrain from completing and filing the Statement of Live Birth after the Birth of the Child.

23.2 Upon confirmation by DNA tests, the Gestational Carrier will sign all necessary documents to obtain a legal declaration that she is not the genetic or intended mother of the Child, and that the Child was conceived through I.V.F. by the Ova fertilized with the Sperm.

**PART XXIV  
SUCCESSION**

24.1 The Parties agree that for the purposes of succession law, and any Wills or estates, the Child will, at all times, be a child of the Intended Parents.

**PART XXV  
EARLY TERMINATION**

25.1 If, without the fault of the Gestational Carrier, the Pregnancy ends in Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, then:

- (a) the Intended Parents will be entitled to terminate this Agreement and will be

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Handwritten initials and signatures, including "AIR" and "KAR".

released from all obligations under this Agreement;

- (b) the Gestational Carrier will be entitled to terminate this Agreement and retain any reimbursement of any Special Expense Amounts paid or payable up to and including the date of Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; and
- (c) the Gestational Carrier shall be entitled to reimbursement of the Special Expenses for TWO (2) weeks after the date of an Early Miscarriage or FOUR (4) weeks after the date of a Miscarriage, Requested Termination or Still-Birth.

25.2 If the Intended Parents choose not to terminate this Agreement after an Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, the Term of the Agreement shall continue and not be at an end, but the period for reimbursement of the Special Expense Amount shall be as set out above and shall be reset to the maximum Special Expense reimbursement of Twenty Thousand Dollars (\$20,000) and shall resume TWO (2) weeks prior to the next Transfer. If the Pregnancy ends in a Full Term Still-Birth without the fault of the Gestational Carrier, the Agreement shall terminate on the day which is SIX (6) weeks after the date of the Full Term Still-Birth.

25.3 Notwithstanding anything set out in this Agreement, if the Pregnancy is terminated, results in a Still-Birth, results in a Full-Term Still Birth, or produces a Child that has a congenital abnormality or defect as a result of the negligent action or omission of the Gestational Carrier, or if the Gestational Carrier materially breaches this Agreement, the Gestational Carrier shall return to the Intended Parents an amount equal to the Special Expenses reimbursed to the Gestational Carrier within FIVE (5) days of a demand therefor, without prejudice to the Intended Parents' rights at law and pursuant to this Agreement to seek damages from the Gestational Carrier.

**PART XXVI  
SPECIAL EXPENSES**

26.1 The Intended Parents will reimburse the Gestational Carrier for the following out of pocket expenses incurred by the Gestational Carrier in connection with the surrogacy to a maximum of Twenty Thousand Dollars (\$20,000.00 CDN) inclusive of all taxes (the "Special Expense Amount") for all such expenses:

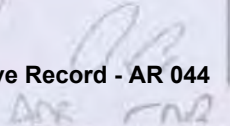
- (a) medical, pharmaceutical and laboratory expenses incurred by the Gestational Carrier as a result of the Transfer, Pregnancy or Birth not otherwise covered by the Ontario Health Insurance Plan ("OHIP") or any private health care insurance plan under which she is covered. However, it is understood and agreed that the Intended Parents will pay all expenses for the I.V.F. treatment directly to the Clinic and this cost will not be included in the Special Expense Amount;
- (b) the amount actually expended by the Gestational Carrier for groceries, prepared food and meals for her own consumption commencing two weeks prior to the date

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

AM FR

of the first Transfer and ending on the expiration or earlier termination of the Agreement;

- (c) a reasonable amount for automobile expenses incurred for local travel at the request of the Intended Parents or made necessary for the performance of her obligations under this Agreement calculated at a rate of \$0.54 per kilometre travelled and all related parking costs;
- (d) communication costs including, without limitation, the costs of an internet account, cellular telephone charges, and the costs of acquiring a cellular telephone, and long distance telephone charges, all incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (e) vitamins and supplements required to maintain a healthy Pregnancy;
- (f) child care costs for the Gestational Carrier's ONE (1) dependent child incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (g) housekeeping, snow shovelling and lawn care costs incurred by the Gestational Carrier in order to reduce the physical strain and incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (h) counselling for the Gestational Carrier and her ONE (1) dependent child, if so required;
- (i) all expenses incurred by the Gestational Carrier for suitable maternity clothing to be worn throughout the Pregnancy and following the Birth, up to a maximum amount of Seven Hundred and Fifty Dollars (\$750.00);
- (j) a reasonable amount for the Gestational Carrier's wellness expenses including, without limitation, costs incurred for acupuncture, massage, physiotherapy, naturopath, reflexology, chiropractic care, foot care, yoga membership and fitness membership, provided that participation in any of such activities is approved by the Transfer Physician and/or the Attending Physician;
- (k) the cost of a private Hospital room for the Gestational Carrier at the time of Birth, if one is available and which expense is not otherwise covered by OHIP or any private health care insurance plan under which the Gestational Carrier is covered; and
- (l) such other expenses as may be incurred by the Gestational Carrier as a result of the Pregnancy and as may be approved by the Intended Parents. The Parties agree that if the Gestational Carrier has already incurred expenses to the maximum limit



set out in this Section 26.1, the Intended Parents may, in their sole discretion, agree to pay the cost of any such other allowable expenses in addition to the Special Expense Amount.

26.2

- (a) The Parties acknowledge that for the purposes of Section 26, the Gestational Carrier's expenses incurred during the Reimbursable Period (as hereinafter defined) shall be reimbursed to her in accordance with Schedule "A" attached hereto and Part XXVI.
- (b) For the purposes of Section 26.2(c), the "Reimbursable Period" shall commence on the date of confirmation of the Pregnancy by blood test results and shall end on the earlier of: (i) the day of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child.
- (c) The Reimbursable Period shall be divided into TEN (10) stages (individually referred to as a "Stage"):
  - (i) the first month after the Second Beta (the "First Month");
  - (ii) the second month after the Second Beta (the "Second Month");
  - (iii) the third month after the Second Beta (the "Third Month");
  - (iv) the fourth month after the Second Beta (the "Fourth Month");
  - (v) the fifth month after the Second Beta (the "Fifth Month");
  - (vi) the sixth month after the Second Beta (the "Sixth Month");
  - (vii) the seventh month after the Second Beta (the "Seventh Month");
  - (viii) the eighth month after the Second Beta (the "Eighth Month");
  - (ix) the ninth month after the Second Beta (the "Ninth Month"); and
  - (x) the period commencing on the day after Birth and ending SIX (6) weeks thereafter (the "Post-Pregnancy").
- (d) Notwithstanding anything contained herein to the contrary, the amount of the Special Expenses incurred by the Gestational Carrier and which are eligible for reimbursement by the Intended Parents shall be subject to the maximum amounts set out in the schedule attached hereto as Schedule "A", and subject to Section 25.1, if this Agreement is terminated, the current Stage shall end on the day of



termination.

- (e) If the Special Expenses incurred by the Gestational Carrier in any Stage are less than the maximum set for that Stage, the difference between the maximum allowable and the amount claimed shall be added to the maximum available for the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Fourth Month is Three Thousand Dollars and the Gestational Carrier claims expenses of One Thousand Dollars, the unused balance of Two Thousand Dollars will be added to the maximum available to be claimed in the Fifth Month.
- (f) If the Special Expenses incurred by the Gestational Carrier in any Stage exceed the maximum set for that Stage, and if there is no unused balance to be carried forward pursuant to Section 26.2(e) or if there is insufficient unused balance to cover the excess, the amount of the excess can be claimed in the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Sixth Month is Three Thousand Dollars, and if there is no unused balance to be added to the Sixth Month maximum, and the Gestational Carrier claims expenses of Four Thousand Dollars, the excess of One Thousand Dollars may be claimed in the Seventh Month.
- (g) If, without fault of the Gestational Carrier, the Child is born: (i) prior to the beginning of the Eighth Month, the current stage shall end on the date of Birth and the post-Birth period shall commence on the day after the Child's Birth. The balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall not be available to be claimed and shall be deducted from the cap on the Special Expense Amount on the understanding that the Gestational Carrier's total out of pocket expenses related to the Pregnancy will be available only during the Pregnancy and the recovery period after Birth; or (ii) during the Eighth or Ninth Months of the Pregnancy, the current Stage shall end on the date of Birth and the balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall be added to the Post-Pregnancy Stage.

26.3 Subject to the cap set out in Section 26.1, the Gestational Carrier may be reimbursed for all Special Expenses incurred by her for the period commencing on the date of execution of this Agreement by the Gestational Carrier, and ending on the earlier of the date of termination of this Agreement, TWO (2) weeks after a Pregnancy ends in Early Miscarriage, FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth or SIX (6) weeks after the Birth of a Child, as the case may be. No receipts may be submitted to the Intended Parents after the end of the Term of the Agreement, and notwithstanding anything contained herein to the contrary, the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses which are submitted to the Intended Parents for reimbursement after the expiration of the Term of the Agreement, regardless of when such

Dvash-Banks and Adams Surrogacy Agreement | Final Version

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

expenses were incurred.

26.4 In addition to the amounts set out in Section 26.1 (the "Additional Expense Amount"), the Intended Parents shall directly cover, or shall reimburse the Gestational Carrier for, all expenses related to the Pregnancy or in the event of the circumstances described below, or so that the Gestational Carrier can fulfill her obligations under this Agreement as follows:

- (a) legal fees and disbursements incurred for obtaining independent legal advice relating to this Agreement to the date of execution of the Agreement, up to a maximum of One Thousand Three Hundred Dollars (\$1,300.00) plus HST;
- (b) life insurance premiums as set out in Section 21;
- (c) travel medical insurance premiums as set out in Section 9.10(c);
- (d) all travel costs incurred by the Gestational Carrier in order to attend at the Clinic at the request of the Intended Parents before the Pregnancy and for each Transfer, including the cost of mileage, parking, meals and child care;
- (e) all expenses incurred and related to the Gestational Carrier's participation in any Transfer which she undergoes at the request of the Intended Parents to a maximum of Five Hundred Dollars (\$500.00) for general reimbursable expenses, including prenatal vitamins and wellness expenses;
- (f) if the Child is delivered by way of Caesarean delivery, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the Post-Pregnancy Stage;
- (g) if a Pregnancy results in a multiple Birth of two or more Children, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the period commencing on the first day of the Seventh Month and ending on the last day of the Post-Pregnancy Stage. (Such Additional Expense Amounts shall increase the maximum amount of Special Expenses which may be incurred by the Gestational Carrier in recognition of the additional physical toll which a multiple Pregnancy or Caesarean delivery will exert on the Gestational Carrier and the increased need for assistance which will increase the Gestational Carrier's out of pocket expenses. In the interests of clarity, if two or more Children are born by Caesarean delivery, an additional total of Seven Thousand Dollars (\$7,000.00) shall be available for maximum reimbursement under Section 26.4(f) and (g)); and
- (h) if, in the written opinion of the Transfer Physician or the Attending Physician and, at the option of the Intended Parents, in the written opinion of a second physician of their choice, complete bed rest is required in order to protect the health of the Gestational Carrier or the Fetus (the "Disability"), the Gestational Carrier will be entitled to reimbursements for the period commencing on the date of the

physician's order and ending on the earlier of: (i) the date on which the physician lifts the order for bed rest; (ii) the date of Birth, Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; or (iii) the date of termination of this Agreement, for housekeeping and child care expenses for the Gestational Carrier's ONE (1) dependent child to a maximum of Four Hundred Dollars (\$400.00) per week under this Section 26.4(h).

26.5 Notwithstanding anything to the contrary, the Parties acknowledge that regulations to Section 12 of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, which govern the reimbursements to the Gestational Carrier under this Agreement, may come into full force and effect during the Term of the Agreement. If so, then all Parties agree to abide by these regulations even where they are not in accordance with this Agreement, so as not to contravene the law. The Gestational Carrier acknowledges and agrees that, as a result, she may not be entitled to reimbursement of all of the categories of expenses set out above.

**PART XXVII  
ADMINISTRATION AND PAYMENT OF SPECIAL EXPENSES**

27.1 The Gestational Carrier will obtain receipts for all expenditures and will deliver these receipts to the Intended Parents or to an agent on their behalf on a monthly basis and in any event within FIVE (5) days of a request therefor. If required by law, the Intended Parents will instruct the Clinic, or their agent, to reimburse the Gestational Carrier for all Special Expenses in accordance with the terms of this Agreement. The Parties acknowledge and agree that no Special Expenses will be reimbursed to the Gestational Carrier unless a receipt is provided to the Intended Parents or to their agent for the expenditure.

**PART XXVIII  
REMEDIES FOR BREACH**

28.1 If the Gestational Carrier materially fails to perform any of her obligations under this Agreement, or if any of the warranties made by the Gestational Carrier in this Agreement are not true then, without limiting the Intended Parents' remedies in equity or at law, and in addition to such remedies, the Gestational Carrier will, within THIRTY (30) days of request, refund to the Intended Parents all allowable expenses pursuant to the section called SPECIAL EXPENSES, above, which have been reimbursed to the Gestational Carrier by the Intended Parents, to the time of such failure.

28.2 If any Party materially violates any provision contained in this Agreement without legal excuse, such violation will constitute a material breach of this Agreement and, in addition to all other remedies available at law or equity, this Agreement may be terminated forthwith at the option of the aggrieved Party, without further liability on the part of the aggrieved non-breaching Party. If the Intended Parents terminate this Agreement pursuant to this provision, then not only will the Gestational Carrier refund all Special Expenses reimbursed to that date, the Intended Parents will be under no obligation to reimburse the Gestational Carrier for any expenses incurred after the date of the breach.

*ADH*  
*ADR*

28.3 If the Intended Parents materially breach this Agreement without legal excuse, but the Gestational Carrier has performed her obligations under this Agreement then she will be entitled to have all Special Expenses reimbursed in accordance with this Agreement and the Intended Parents will be responsible for the support of the Child and all of the Child's needs until the Child is no longer entitled to support pursuant to the laws in which the Child is habitually resident. Further, if the Gestational Carrier has made physical custody of the Child available to the Intended Parents, the Intended Parents shall indemnify the Gestational Carrier for any and all amounts she pays in connection with the support of the Child, including without limitation, any legal or other fees and disbursements incurred in connection with the defence thereof.

28.4 A breach will not be considered to be a material breach of contract if it is capable of being cured. If so, the Party committing the breach will be given written notice of the alleged breach and will be given a reasonable period of time to cure it, if possible.

28.5 A breach by either of the Intended Parents will constitute a breach by both of them.

28.6 Without limiting the generality of the foregoing, any breach of warranty contained in this Agreement will constitute a material breach of this Agreement.

28.7 Any breach of this Agreement by the Intended Parents on their part, or the Gestational Carrier on her part, will cause the other of them significant damages, including emotional suffering and trauma and shall provide a cause of action for damages to the wronged Party. Each of the Parties acknowledges that because of the nature of this Agreement, monetary damages may not suffice to remedy a breach of this Agreement and that an injunction and/or any other interim judicial relief may properly be obtained to enjoin and/or address a breach of this Agreement in addition to damages.

**PART XXIX  
ASSUMPTION OF RISK**

29.1 The Gestational Carrier assumes and accepts all risks related to the Transfer, Pregnancy and Birth, including but not limited to, the possibility of contracting AIDS, or other transmittable diseases, as a result of the exchange of body fluids and substances and all medical treatments, examinations and procedures involved, and any postpartum complications, and she hereby releases, indemnifies and saves harmless the Intended Parents (and each of them) from all liability, losses, costs and expenses arising, directly or indirectly, from the fulfilment of their obligations under this Agreement including, without limitation, any claim for illness, disfigurement, disability, death, funeral expenses, loss of the Gestational Carrier's future earnings or support for the Gestational Carrier's dependants, damages for loss of enjoyment of life and any other general damages, and for any legal expenses resulting from any dispute of this Agreement by the Gestational Carrier. The Gestational Carrier warrants and represents that she has independently consulted with a physician specializing in fertility procedures and has been made aware of all medical risks (including death), which may result from the procedures contemplated by this Agreement and further acknowledges that she understands these risks. The Gestational Carrier has undergone a thorough medical examination before undergoing any

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*[Handwritten initials]*  
AD/3 - NO

procedure contemplated by this Agreement.

**PART XXX  
CONFIDENTIALITY**

30.1

- (a) The Gestational Carrier warrants and represents that she will keep strictly confidential all information respecting the identity of the Intended Parents and the Child, the terms of this Agreement, and information respecting the activities contemplated or carried out under this Agreement (the "Confidential Information") forever. The Parties shall be entitled to discuss the terms of this Agreement with their legal advisors and with their counsellor, each of whom shall be advised of and requested to abide by the confidentiality provision in this Agreement. However, the Gestational Carrier shall be entitled to disclose that the Gestational Carrier intends to carry (or is carrying, if she is already Pregnant) a Child for a same-sex couple who require third party reproduction to have a Child, provided that no Confidential Information is disclosed. The Intended Parents also warrant and represent that they will keep strictly confidential all Confidential Information. However, the Gestational Carrier acknowledges and agrees that the Intended Parents shall disclose the existence and nature of this Agreement to the individual(s) whom they have named as Guardian(s) under their respective Wills.
- (b) Except as required by law and except as set out in this Agreement, none of the Parties will disclose the Confidential Information to any person or distribute it in any public forum whatsoever including, without limitation, newspapers, magazines, Internet, television or radio at any time. This covenant will survive the Birth of any Child conceived pursuant to this Agreement and the Parties acknowledge that a claim for damages, as well as injunctive relief may be sought if there is a breach of the warranties contained herein.

30.2 In order to maintain the confidentiality contemplated by this Agreement, if litigation arises out of this Agreement including, but not limited to, court applications for a custody proceeding, each of the Parties to this Agreement and their legal counsel, their heirs and representatives, agree to make all efforts to maintain such confidentiality as is intended by this Agreement including, but not limited to, requesting that the court records be sealed, requesting the court to invoke non-publication orders, requesting the court in its procedures and in the conduct of hearings to maintain confidential the identity of all of the Parties.

**PART XXXI  
ENTIRE AGREEMENT**

31.1 This Agreement sets forth the entire Agreement between the Parties pertaining to the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and communications, whether written or oral of the Parties.

Dvash-Banks and Adams Surrogacy Agreement | Final Version

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

**PART XXXII  
SEVERABILITY**

32.1 If any provision of this Agreement is held by the Court to be invalid or unenforceable, the remainder of the provisions of this Agreement will continue in full force and effect and will not be affected, impaired or invalidated thereby.

32.2 If a provision of this Agreement is held by the Court to be invalid or unenforceable due to its scope or breadth then it will be deemed to be valid to the extent permitted by the Court.

**PART XXXIII  
SURVIVAL**

33.1 Notwithstanding any termination of this Agreement pursuant to the terms herein, or the expiration of the Term of the Agreement, the Parties agree that the provisions of the sections called REMEDIES FOR BREACH, ASSUMPTION OF RISK and CONFIDENTIALITY, above, will remain in full force and effect after the termination or expiration of the Term of the Agreement, as the case may be.

**PART XXXIV  
WAIVER**


34.1 No supplement or modification of this Agreement will be binding unless executed in writing by the Party to be bound. No provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent excusing the breach is executed in writing by the Party to be charged with such waiver or consent. No waiver by a Party of any provision of this Agreement will be construed as a waiver of a further breach of the same provision and no waiver will be construed as a waiver of any other provision of this Agreement.

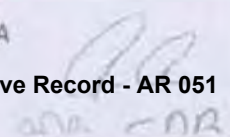
**PART XXXV  
GOVERNING LAW**

35.1 This Agreement will be governed by, subject to and construed in accordance with the laws of the Province of Ontario.

35.2 The Parties to this Agreement acknowledge and agree that it is their express intention and desire to comply with the laws of the Province of Ontario and the Federal Laws of Canada. If during the Term of this Agreement any obligation of any Party becomes prohibited, the Parties agree that such obligation shall be severed from the Agreement (including, but not limited to, the financial obligations set out in this Agreement) and, so long as all Parties are agreeable, this Agreement shall remain in full force and effect.

35.3 The Parties to this Agreement acknowledge and agree that the procedure contemplated by this Agreement are novel and new and that the law applicable to such procedures and relationships is developing and unsettled. Although the possibility exists that this

**TERRI N. DAY**   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA



Agreement may be declared void as against public policy, in whole or in part, and may be held unenforceable, in whole or in part, by an Ontario Court, all Parties nonetheless agree that they are entering into this Agreement with the intention of being fully bound by its terms. It is the intention of all Parties to comply with the provisions of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, to the extent such Act has been proclaimed into force.

**PART XXXVI  
INDEPENDENT LEGAL ADVICE**

36.1 The Gestational Carrier acknowledges that she has received independent legal advice in respect of this Agreement and acknowledges that she fully understands the intent and the purpose of this Agreement and her obligations under it.

36.2 The Gestational Carrier acknowledges that no coercion, force, pressure or undue influence has been used by any Party against her in making this Agreement.

36.3 The Gestational Carrier believes this Agreement to be fair, just and reasonable, that it will not result in circumstances that are unconscionable to any Party, and that it is in the best interests of the Child.

36.4 Each Party to this Agreement fully understands the Agreement and the legal consequences of this Agreement, and is signing the same freely and voluntarily. No Party to this Agreement has any reason to believe that the other Parties did not freely and voluntarily execute this Agreement.

**PART XXXVII  
INTERPRETATION OF AGREEMENT**

37.1 No provision of this Agreement is to be interpreted for or against any Party to this Agreement merely because that Party, or that Party's solicitor drafted the provision.

**PART XXXVIII  
FACSIMILE TRANSMISSION AND  
EXECUTION IN COUNTERPART**

38.1 The Parties hereby acknowledge that this Agreement may be executed through facsimile transmission and agree to treat these documents in the same manner and with the same legal effect as if they were original documents.

38.2 This Agreement may be executed in any number of counterparts and each such counterpart shall, for all purposes, constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart, provided that each Party has signed at least one counterpart.

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Handwritten initials and marks in blue ink, including "G. Q.", "AR", and "EDB".

**PART XXXIX  
NOTICE**

39.1 All communications which may be or are required to be given by any Party to the other herein will be in writing and delivered or sent by prepaid registered mail, by personal delivery, by facsimile transmission (where possible), or by electronic mail, to the Parties at the following respective addresses:

Gestational Carrier:

[REDACTED] Avenue, Apartment [REDACTED]  
Mississauga, Ontario L5A 2K7

Cell: 647 [REDACTED]  
Email: [REDACTED]@gmail.com

Intended Parents:

[REDACTED] Avenue, Apartment [REDACTED]  
Toronto, Ontario M6B 4C6


Elad Cell: 647 [REDACTED]  
Andrew Cell: 647 [REDACTED]  
Email: [REDACTED]@gmail.com  
Email: [REDACTED]@gmail.com

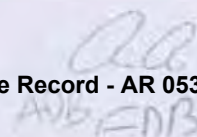
39.2 If any communication is sent by prepaid registered mail, it will, subject to the following sentence, be conclusively deemed to have been received on the TENTH (10th) business day following the mailing thereof and if delivered, sent by facsimile transmission, or sent by electronic mail, it will conclusively be deemed to have been received at the time of delivery or transmission.

39.3 Notwithstanding the foregoing provisions with respect to mailing, if it may be reasonably anticipated that, due to any strike, lock-out or similar event involving an interruption in postal service, communication will not be received by the addressee by no later than the TENTH (10th) business day following the mailing thereof, then the mailing of any such communication as aforesaid will not have been an effective means of sending the notice, but rather any communication must then be sent by an alternative method which it may reasonably be anticipated will cause the payment or communication to be received reasonably expeditiously by the addressee. Any Party may from time to time change its address or facsimile number hereinbefore set forth by notice to the other of them in accordance with this Section.

**PART XL  
ARBITRATION**

40.1 In the interests of the confidential nature of this Agreement and except as otherwise set out in this provision, if any dispute arises between the Parties in connection with any amounts referred to in Sections 26 or 27 of this Agreement and all matters related thereto, including, without limitation, enforcement of such provisions, the Parties agree that it shall be

TERRI N. DAY   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA





resolved by binding arbitration in accordance with the *Arbitrations Act* (Ontario).

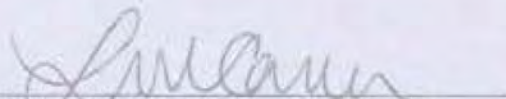
**PART XLI  
ENUREMENT**


41.1 The rights and obligations under this Agreement shall enure to and bind each of the Parties and their respective heirs, executors, administrators and assigns.

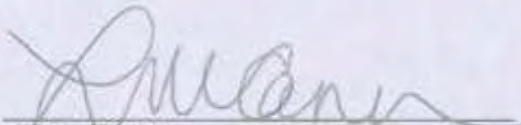
[The remainder of this page is intentionally blank.]

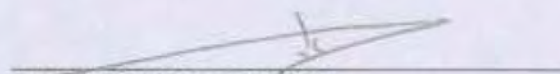
TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Agreement under seal before a witness.


SIGNED, SEALED AND DELIVERED in the presence of

  
Witness Signature


  
ANDREW DVASH-BANKS  
Date of Execution: 12/21/15

  
Witness Signature

  
ELAD DVASH-BANKS  
Date of Execution: Dec 21, 2015

  
Witness Signature


  
AMANDA MARIE ANNE ADAMS  
Date of Execution: Dec 21 2015


TERRI N. DAY   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

**SCHEDULE "A"**

Attached to and forming part of  
an Agreement dated the *21<sup>st</sup>* day of December, 2015 between  
Andrew Dvash-Banks, Elad Dvash-Banks and Amanda Marie Anne Adams

<u>Maximum Reimbursements – Special Expenses</u>	
Stage 1: First Month Following Second Beta Test	\$1,000.00
Stage 2: Second Month Following Second Beta Test	\$1,000.00
Stage 3: Third Month Following Second Beta Test	\$1,000.00
Stage 4: Fourth Month Following Second Beta Test	\$2,000.00
Stage 5: Fifth Month Following Second Beta Test	\$2,000.00
Stage 6: Sixth Month Following Second Beta Test	\$2,500.00
Stage 7: Seventh Month Following Second Beta Test	\$2,500.00
Stage 8: Eighth Month Following Second Beta Test	\$3,000.00
Stage 9: Ninth Month Following Second Beta Test	\$3,000.00
Stage 10: Post-Pregnancy	\$2,000.00
<b>TOTAL MAXIMUM REIMBURSEMENT:</b>	<b><u>\$20,000.00</u></b>

TERRI N. DAY   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

ADJ   
ENR

Form **8879**

**IRS e-file Signature Authorization**

OMB No. 1545-0074

**2015**

Department of the Treasury  
Internal Revenue Service

Do not send to the IRS. This is not a tax return.  
Keep this form for your records.  
Information about Form 8879 and its instructions is at [www.irs.gov/form8879](http://www.irs.gov/form8879).

Submission Identification Number (SID) ▶

Taxpayer's name <b>ANDREW BANKS</b>	Social security number [REDACTED]-4354
Spouse's name <b>ELAD DVASH-BANKS</b>	Spouse's social security number [REDACTED]-6984

**Part I Tax Return Information – Tax Year Ending December 31, 2015 (Whole Dollars Only)**

1 Adjusted gross income (Form 1040, line 38; Form 1040A, line 22; Form 1040EZ, line 4)	1	5.
2 Total tax (Form 1040, line 63; Form 1040A, line 39; Form 1040EZ, line 12)	2	
3 Federal income tax withheld (Form 1040, line 64; Form 1040A, line 40; Form 1040EZ, line 7)	3	
4 Refund (Form 1040, line 76a; Form 1040A, line 48a; Form 1040EZ, line 13a; Form 1040-SS, Part I, line 13a)	4	
5 Amount you owe (Form 1040, line 78; Form 1040A, line 50; Form 1040EZ, line 14)	5	

**Part II Taxpayer Declaration and Signature Authorization (Be sure you get and keep a copy of your return)**

Under penalties of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, 2015, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts from my electronic income tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the IRS and to receive from the IRS (a) an acknowledgment of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my federal taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account. This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization. To revoke (cancel) a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537. Payment cancellation requests must be received no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I further acknowledge that the personal identification number (PIN) below is my signature for my electronic income tax return and, if applicable, my Electronic Funds Withdrawal Consent.

**Taxpayer's PIN: check one box only**

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN [REDACTED] as my signature on my tax year 2015 electronically filed income tax return. ERO firm name Enter five digits, but do not enter all zeros

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box only if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature ▶ \_\_\_\_\_ Date ▶ 9/23/2016

**Spouse's PIN: check one box only**

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN [REDACTED] as my signature on my tax year 2015 electronically filed income tax return. ERO firm name Enter five digits, but do not enter all zeros

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box only if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Spouse's signature ▶ \_\_\_\_\_ Date ▶ 9/23/2016

**Practitioner PIN Method Returns Only – continue below**

**Part III Certification and Authentication – Practitioner PIN Method Only**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN. [REDACTED] Do not enter all zeros

I certify that the above numeric entry is my PIN, which is my signature for the tax year 2015 electronically filed income tax return for the taxpayer(s) indicated above. I confirm that I am submitting this return in accordance with the requirements of the Practitioner PIN method and Publication 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns.

ERO's signature ▶ Deborah Schwartz, E.A. Date ▶ 9/23/2016

ERO Must Retain This Form – See Instructions  
Do Not Submit This Form to the IRS Unless Requested To Do So

**TERRI N. DAY**

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

VICE CONSUL OF THE UNITED STATES OF AMERICA Form 8879 (2015)

410R104F000

Citibank Client Services 000  
 PO Box 6201  
 Sioux Falls, SD 57117-8201

000  
 CITIBANK, N. A.  
 Account

Statement Period  
 Nov 3 - Dec 4, 2016

ANDREW MASON BANKS  
 STREET APT  
 LOS ANGELES CA 90035-2947

Page 1 of 4

**CITIBANK ACCOUNT AS OF DECEMBER 4, 2016**

**Relationship Summary:**

Checking	\$5,412.12
Savings	\$0.00
Investments (not FDIC Insured)	-----
Loans	-----
Credit Cards	\$0.00

<b>Checking</b>	<b>Balance</b>
Regular Checking	\$5,412.12
<b>Savings</b>	<b>Balance</b>
Preferred Money Market	\$0.00
<b>Total Checking and Savings at Citibank</b>	<b>\$5,412.12</b>

Credit Cards	As of date	Credit Line	Amount Available	Amount You Owe
Citi®/AAAdvantage® Account XXXXXXXXXXXX8393	11/10/16	\$4,500.00	\$4,500.00	\$0.00

**SUGGESTIONS AND RECOMMENDATIONS**

Effective February 1, 2017, Citibank will no longer issue counter checks. We will continue to offer pre-printed checks and bill payment services.

**CITIBANK ACCOUNT RATES AND CHARGES**

When determining your rates and charges for this statement period, Citibank considered your average balances during the month of November in all of your qualifying accounts that you asked us to combine. If you have a Citibank secured credit card, then Citibank will also include the balance in your Collateral Holding Account or your Certificate of Deposit that secures your Citibank credit card. These balances may be in accounts that are reported on other statements.

Rates and Charges	Your Combined Balance Range \$6,000-\$9,999
Rates	Standard
Monthly Service Fee	\$25.00(Waived)

Ask about accounts eligible for preferred rates.

**TERRI N. DAY**  
 VICE CONSUL OF THE  
 UNITED STATES OF AMERICA

University of California, Santa Barbara

1/24/2017 12:47:14 PM

# Unofficial Transcript

Andrew Banks

Perm Number [REDACTED]

College/Objective/Major	Degree Status	Conferral Date
L&S/ BA/ GLOBL	Awarded	6/13/2003
L&S/ BA/ ITALS	Awarded	6/13/2003

## Fall 1999

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
EEMB 25 -HUMAN ANATOMY	P	13805	4.0	4.0	0.0	0.00	
ITAL 1 -ELEMENTARY ITALIAN	A-	23069	4.0	4.0	4.0	14.80	
POL S 1 -POL IDEAS MOD WORLD	C+	51821	4.0	4.0	4.0	9.20	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.00</b>		12.0	12.0	8.0	24.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.00</b>		12.0	12.0	8.0	24.00	

## Winter 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 8B -FRENCH CONVERSATION	A	17889	2.0	2.0	2.0	8.00	
GLOBL 1 -GLOBL HIS/CUL/IDEOL	A-	48306	4.0	4.0	4.0	14.80	
HIST 4B -WESTERN CIVILIZATIO	B-	21253	4.0	4.0	4.0	10.80	
MS 8 -20TH CENTURY WAR	A	31005	2.0	2.0	2.0	8.00	
POL S 7 -INTRO TO IR	B+	38695	4.0	4.0	4.0	13.20	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.42</b>		16.0	16.0	16.0	54.80	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.28</b>		28.0	28.0	24.0	78.80	

## Spring 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	W	52027	4.0	0.0	0.0	0.00	
HIST 4C -WESTERN CIVILIZATIO	B-	21154	4.0	4.0	4.0	10.80	
ITAL 2 -ELEMENTARY ITALIAN	A-	23218	4.0	4.0	4.0	14.80	
POL S 6 -INTRO COMP POLITICS	B-	37697	4.0	4.0	4.0	10.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.03</b>		12.0	12.0	12.0	36.40	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.20</b>		40.0	40.0	36.0	115.20	

## Summer 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ENV S 2 -INTRO ENV SCIENCE	P	09670	4.0	4.0	0.0	0.00	
HIST 132 -WAR AND SOCIETY	B-	04465	4.0	4.0	4.0	10.80	
ITAL 3 -ELEMENTARY ITALIAN	A+	04671	4.0	4.0	4.0	16.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.35</b>		12.0	12.0	8.0	26.80	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.22</b>		52.0	52.0	44.0	142.00	

## Fall 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	B+	48793	4.0	4.0	4.0	13.20	
ITAL 8A -ITALIAN CONVERSATN	P	23291	2.0	2.0	0.0	0.00	
POL S 121 -INTERNATL POLITICS	A-	38596	4.0	4.0	4.0	14.80	
POL S 186A -INTRO INTL POL ECON	A	54163	4.0	4.0	4.0	16.00	

1/24/2017

Unofficial Transcript - Printable Version

#.3288

<b>Quarter Total (Undergrad)</b>	<b>GPA 3.66</b>	14.0	14.0	12.0	44.00
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.32</b>	66.0	66.0	56.0	186.00

**Spring 2001**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL PV 23 -INTERMED ITALIAN	B+		16.0	16.0	16.0	52.80	
ITAL PV 30 -ITALIAN CULTURE	B+		6.0	6.0	6.0	19.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.30</b>		22.0	22.0	22.0	72.60	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.31</b>		88.0	88.0	78.0	258.60	

**Fall 2001**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 6 -INTERMEDIATE FRENCH	P	17764	4.0	4.0	0.0	0.00	
GLOBL 124 -GLOBAL CONFLICT	A-	20453	4.0	4.0	4.0	14.80	
GLOBL 197 -SPECIAL TOPICS	C+	54783	4.0	4.0	4.0	9.20	
ITAL 101 -ADV ITAL READ/COMP	B	22954	4.0	4.0	4.0	12.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.00</b>		16.0	16.0	12.0	36.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.27</b>		104.0	104.0	90.0	294.60	

**Winter 2002**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBL 2 -GLOBL SOC/ECON/POL	A-	20446	4.0	4.0	4.0	14.80	
ITAL 119 -ART OF TRANSLATION	A-	45328	4.0	4.0	4.0	14.80	
ITAL 114X -DIVINE COMEDY	B-	23119	4.0	4.0	4.0	10.80	
ITAL 8B -ITALIAN CONVERSATN	A-	23077	2.0	2.0	2.0	7.40	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.41</b>		14.0	14.0	14.0	47.80	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.29</b>		118.0	118.0	104.0	342.40	

**Spring 2002**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ART HIS 185 -HIST OF MODERNISM	B+		4.0	4.0	4.0	13.20	
INT 192DC-WASH CTR INTERNSHIP	P	22038	8.0	8.0	0.0	0.00	
INT 199DC-WASH CTR INDEP RES	A-	22046	4.0	4.0	4.0	14.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.50</b>		16.0	16.0	8.0	28.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.30</b>		134.0	134.0	112.0	370.40	

**Summer 2002**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GEOL 4 -INTRO OCEANOGRAPHY	P	13771	4.0	4.0	0.0	0.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 0.00</b>		4.0	4.0	0.0	0.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.30</b>		138.0	138.0	112.0	370.40	

**Fall 2002**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBE 194 -GROUP STUDIES	B	54619	4.0	4.0	4.0	12.00	
ITAL 144BB-GENDER & SEXUALITY	B+	53942	4.0	4.0	4.0	13.20	
ITAL 161AX-EUROPEAN UNION	B+	55384	4.0	4.0	4.0	13.20	
MS 12 -WMN/MIN IN THE ARMY	A	46201	3.0	3.0	3.0	12.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.36</b>		15.0	15.0	15.0	50.40	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.31</b>		153.0	153.0	127.0	420.80	

**Winter 2003**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GPS 196 -GPS SEMINAR	B	22103	4.0	4.0	4.0	12.00	
ITAL 109 -ADV. CONVERSATION	A	58438	4.0	4.0	4.0	16.00	
ITAL 142X -WOMEN IN ITALY	B+	52944	4.0	4.0	4.0	13.20	
WRIT 109SS-WRIT SOC SCIENCE	A	47076	4.0	4.0	4.0	16.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.57</b>		16.0	16.0	16.0	57.20	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.34</b>		169.0	169.0	143.0	478.00	

**Spring 2003**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL 112 -ITAL NARRATIVE FICT	B+	23523	4.0	4.0	4.0	13.20	
ITAL 121 -ITALIAN DRAMA	A+	23531	4.0	4.0	4.0	16.00	
ITAL 199 -INDEPENDENT STUDIES	A	66480	4.0	4.0	4.0	16.00	
SPAN 2 -ELEMENTARY SPANISH	A-	42705	4.0	4.0	4.0	14.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.75</b>		16.0	16.0	16.0	60.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.38</b>		185.0	185.0	159.0	538.00	
<b>Dean's Honors (L&amp;S )</b>							

Transfer Work Undergraduate Total: 28.0

UC & Transfer Work Undergraduate Total: 213.0





Tel: 1877-842-4827 Fax: 1855-897-2528

E-mail: [immigration@sponsordna.com](mailto:immigration@sponsordna.com) Web: [www.aabbimmigration.com](http://www.aabbimmigration.com)

30 January 2017

Petitioner: BANKS, ANDREW MASON

Beneficiary: D [REDACTED] B [REDACTED] E [REDACTED] J [REDACTED]

Our reference: [REDACTED]

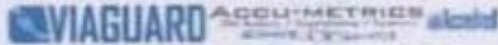
Collection Facility  
VIAGUARD ACCU-METRICS  
1232 Kingston Road  
Toronto, ON  
M1N 1P3  
4166914167

A paternity test was performed to prove a parent / child relationship between alleged father: BANKS, ANDREW MASON and child: D [REDACTED] B [REDACTED] E [REDACTED] J [REDACTED]

This is to confirm that the probability of paternity percentage of 0% represents a negative result.

The client contacted us directly. No third party vendor was used. This account is paid in full.

Thank you, Harvey Tenenbaum, Director of Operations



Immigration and Citizenship Relationship Testing

[immigration@sponsordna.com](mailto:immigration@sponsordna.com)

Toll Free: 1-877-842-4827

Fax: 1-855-897-2528



1232 Kingston Road Tel: 416-691-4167 Fax: 416-691-8112  
 Toronto, Ontario E-mail: immigration@sponsordna.com  
 Canada, M1N 1P3 Web: www.sponsordna.com

### DNA Test Report

This test was conducted in accordance with Standards for DNA analysis set forth by the American Association of Blood Banks.

Case ID: [REDACTED]	<b>Alleged Father</b>	<b>Child</b>
Track ID: [REDACTED]	<b>ANDREW MASON BANKS</b>	E [REDACTED] D [REDACTED]
Report Date: 2017-01-30	[REDACTED] 1	B [REDACTED]
Collection Date:	2017-01-24	[REDACTED] 2
		2017-01-24

Locus	Index	Allele Sizes	Allele Sizes
CSF1PO	[REDACTED]	[REDACTED]	[REDACTED]
TPOX	[REDACTED]	[REDACTED]	[REDACTED]
TH01	[REDACTED]	[REDACTED]	[REDACTED]
vWA	[REDACTED]	[REDACTED]	[REDACTED]
D16S539	[REDACTED]	[REDACTED]	[REDACTED]
D7S820	[REDACTED]	[REDACTED]	[REDACTED]
D13S317	[REDACTED]	[REDACTED]	[REDACTED]
D5S818	[REDACTED]	[REDACTED]	[REDACTED]
FGA	[REDACTED]	[REDACTED]	[REDACTED]
D8S1179	[REDACTED]	[REDACTED]	[REDACTED]
D18S51	[REDACTED]	[REDACTED]	[REDACTED]
D21S11	[REDACTED]	[REDACTED]	[REDACTED]
D3S1358	[REDACTED]	[REDACTED]	[REDACTED]
PENTA E	[REDACTED]	[REDACTED]	[REDACTED]
PENTA D	[REDACTED]	[REDACTED]	[REDACTED]
AMEL	[REDACTED]	[REDACTED]	[REDACTED]

**Interpretation:**  
 Combined Index: 0 **Probability of Paternity: 0%**

The Alleged Father is excluded as the biological father of the tested Child. Based on the testing results obtained from the analysis of the DNA loci listed, [REDACTED] and the Probability of Paternity is 0%. This Probability of Paternity was calculated by comparing to an unrelated, random individual of the Caucasian population (assumes prior probability equals 0.50).

Subscribed and sworn to before me on 2017-01-30



Sheldon Tenenbaum  
 Notary Public, Provincial  
 Barrister and Solicitor

I, the undersigned Laboratory Director, verify that the interpretation of the results is correct as reported on 2017-01-30

*Harvey Tenenbaum*  
 Harvey Tenenbaum, Ph.D. Kyle Tsui, Ph.D.

This DNA test was performed utilizing the PowerPlex 16 PCR amplification and the AB13730 DNA Analyser



ACCU-METRICS

DNA Analysis / Fingerprinting / Forensics



New York, United States of America / Ontario, Canada Toll Free: 1-877-842-4827 Fax: 1-855-897-2528

E-mail: [sponsorsordna@immigration.com](mailto:sponsorsordna@immigration.com) Web: [www.austbimmigrationdna.com](http://www.austbimmigrationdna.com)

USE A SEPARATE FORM FOR EACH DONOR SAMPLE

DONOR IDENTIFICATION

FULL NAME E [REDACTED] J [REDACTED] O [REDACTED] B [REDACTED] FILE# \_\_\_\_\_  
 TELEPHONE \_\_\_\_\_ EMAIL \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

IDENTIFICATION PRESENTED

DATE OF BIRTH 2016/09/16 GENDER (CIRCLE) MALE FEMALE  
 DONOR (CIRCLE) ALLEGED FATHER MOTHER CHILD AUNT/UNCLE OTHER  
 ETHNICITY (CIRCLE) ASIAN CAUCASIAN BLACK OTHER

I (CIRCLE) HAVE / ~~HAVE NOT~~ UNDERGONE A BLOOD TRANSFUSION OR STEM/BONE MARROW CELL TRANSPLANT IN THE LAST 3 MONTHS. IF SO EXPLAIN \_\_\_\_\_

CONSENT AND CERTIFICATION

I AGREE TO HAVING MY BIOLOGICAL SAMPLES UNDERGO DNA EXTRACTION AND ANALYSIS. I HEREBY CONSENT TO THE USE OF THE SPECIMEN PROVIDED FOR DNA ANALYSIS AND CERTIFY THAT IT REPRESENTS A TRUE AND ACCURATE SAMPLE OF A BODY FLUID/SECRETION FROM THE ABOVE NAMED DONOR

(PARENTS OR LEGAL GUARDIANS MUST SIGN ON BEHALF OF CHILDREN UNDER THE AGE OF 18 YEARS)

DONOR/PARENT/GUARDIAN NAME Andrew Masin Avash-Bent  
 SIGNATURE \_\_\_\_\_ DATE 24/1/17

--	--

GUARANTOR IDENTIFICATION AND CERTIFICATION

COLLECTION SITE Viaguard Accu-metrics  
 ADDRESS 1232 Kingston Road  
 TELEPHONE 1277 812 9277 FAX 1265 817 2528 EMAIL \_\_\_\_\_

I HAVE VERIFIED THE IDENTIFICATION OF THE DONOR REPRESENTED ON THIS FORM AND CERTIFY THAT THE SPECIMEN WAS TAKEN FROM THIS DONOR, AND WAS COLLECTED, LABELED, AND SEALED IN MY AND DONOR'S PRESENCE. THE SAMPLES NEVER LEFT MY POSSESSION OR CONTROL FROM THE TIME OF COLLECTION TO THE TIME OF DIRECTLY MAILING THEM TO VIAGUARD.ACCU-METRICS, OR SUBMITTING THEM TO A COURIER SERVICE FOR DELIVERY TO VIAGUARD.ACCU-METRICS.

COLLECTOR'S NAME DR. H Tenenbaum POSITION OR TITLE AUTHORIZED COLLECTOR  
 SIGNATURE [Signature] DATE 24/01/2017

TERMS AND CONDITIONS

Viaguard Inc./Accu-metrics maintains the privacy of our customers and never discloses personal information without prior customer knowledge and consent.

1. Provisions of services:

- 1.1 Viaguard Inc./Accu-metrics reserves the right to perform or have performed the testing and analysis using methods and processes Accu-metrics deems appropriate.
- 1.2 In the event that the samples provided are inadequate (by either/or quality or quantity) for the purpose of conducting an analysis, Viaguard Inc./Accu-metrics reserves the right to request further samples.
- 1.3 Viaguard Inc./Accu-metrics will take all reasonable steps to ensure that reports are provided within the advertised time frames but cannot accept any responsibility for delay however caused.

2. Viaguard/Accu-metrics Disclaimers and Liabilities

- 2.1 In no event, shall Viaguard/Accu-metrics, its employees, mandatories and/or associates be liable to the client for any indirect, incidental, special, punitive, or consequential damages exceeding \$100.00 for each test performed. Any such claim will not be accepted unless it is made in writing within six months of the test date.

3. The Client's Warranty and Indemnity

- 3.1 The client will indemnify Viaguard/Accu-metrics from any liability in connection with this test and its results.

DATE	CHAIN OF CUSTODY	SEALED	POSITION
<u>2017/01/24</u>	<u>[Signature]</u>	<input checked="" type="checkbox"/>	Collector
		<input type="checkbox"/>	Courier
<u>2017/01/24</u>	<u>[Signature]</u>	<input checked="" type="checkbox"/>	Viaguard / Accu-metrics





ACCU-METRICS

DNA Analysis / Fingerprinting / Forensics



New York, United States of America / Ontario, Canada Toll Free: 1-877-842-4827 Fax: 1-855-897-2528

E-mail: [sponsorsdna@immigration.com](mailto:sponsorsdna@immigration.com) Web: [www.aabimmigrationdna.com](http://www.aabimmigrationdna.com)

USE A SEPARATE FORM FOR EACH DONOR SAMPLE

DONOR IDENTIFICATION

FULL NAME Andrew Mason Duash-Banks FILE# \_\_\_\_\_  
 TELEPHONE 647- [REDACTED] EMAIL [REDACTED]@gmail.com  
 ADDRESS [REDACTED] Ave # [REDACTED]

IDENTIFICATION PRESENTED

DATE OF BIRTH 12/11 [REDACTED] GENDER (CIRCLE)  MALE  FEMALE  
 DONOR (CIRCLE)  ALLEGED FATHER  MOTHER  CHILD  AUNT/UNCLE  OTHER  
 ETHNICITY (CIRCLE)  ASIAN  CAUCASIAN  BLACK  OTHER  
 (CIRCLE) HAVE  HAVE NOT UNDERGONE A BLOOD TRANSFUSION OR STEM/BONE MARROW CELL TRANSPLANT IN THE LAST 3 MONTHS. IF SO EXPLAIN \_\_\_\_\_

CONSENT AND CERTIFICATION

I AGREE TO HAVING MY BIOLOGICAL SAMPLES UNDERGO DNA EXTRACTION AND ANALYSIS. I HEREBY CONSENT TO THE USE OF THE SPECIMEN PROVIDED FOR DNA ANALYSIS AND CERTIFY THAT IT REPRESENTS A TRUE AND ACCURATE SAMPLE OF A BODY FLUID/SECRETION FROM THE ABOVE NAMED DONOR

(PARENTS OR LEGAL GUARDIANS MUST SIGN ON BEHALF OF CHILDREN UNDER THE AGE OF 18 YEARS)

DONOR/PARENT/GUARDIAN NAME Andrew Mason Duash-Banks DATE 24/1/17  
 SIGNATURE [Signature]

--	--

GUARANTOR IDENTIFICATION AND CERTIFICATION

COLLECTION SITE Viaguard Accu-metrics  
 ADDRESS 1232 Kinross Road  
 TELEPHONE 1877 847 2527 FAX 1855 897 2528 EMAIL \_\_\_\_\_

I HAVE VERIFIED THE IDENTIFICATION OF THE DONOR REPRESENTED ON THIS FORM AND CERTIFY THAT THE SPECIMEN WAS TAKEN FROM THIS DONOR, AND WAS COLLECTED, LABELED, AND SEALED IN MY AND DONOR'S PRESENCE, THE SAMPLES NEVER LEFT MY POSSESSION OR CONTROL FROM THE TIME OF COLLECTION TO THE TIME OF DIRECTLY MAILING THEM TO VIAGUARD/ACCU-METRICS, OR SUBMITTING THEM TO A COURIER SERVICE FOR DELIVERY TO VIAGUARD/ACCU-METRICS.

COLLECTOR'S NAME DR. H. Tenenbaum POSITION OR TITLE AUTHORIZED COLLECTOR  
 SIGNATURE [Signature] DATE 24/1/2017

TERMS AND CONDITIONS

Viaguard Inc./Accu-metrics maintains the privacy of our customers and never discloses personal information without prior customer knowledge and consent.

1. Provisions of services

- 1.1 Viaguard Inc./Accu-metrics reserves the right to perform or have performed the testing and analysis using methods and processes Accu-metrics deems appropriate.
- 1.2 In the event that the samples provided are inadequate (by either for quality or quantity) for the purpose of conducting an analysis, Viaguard Inc./Accu-metrics reserves the right to request further samples.
- 1.3 Viaguard Inc./Accu-metrics will take all reasonable steps to ensure that reports are provided within the advertised time frames but cannot accept any responsibility for delay however caused.

2. Viaguard/Accu-metrics Disclaimers and Liabilities

- 2.1 In no event, shall Viaguard/Accu-metrics, its employees, mandates and/or associates be liable to the client for any indirect, incidental, special, punitive, or consequential damages exceeding \$100.00 for each test performed. Any such claim will not be accepted unless it is made in writing within six months of the test date.

3. The Client's Warranty and Indemnity

- 3.1 The client will indemnify Viaguard/Accu-metrics from any liability in connection with this test and its results.

DATE	CHAIN OF CUSTODY	SEALED	POSITION
<u>2017/01/24</u>	<u>[Signature]</u>	<u>—</u>	Collector
<u>[Signature]</u>	<u>[Signature]</u>	<u>—</u>	Courier
<u>2017/01/24</u>	<u>[Signature]</u>	<u>✓</u>	Viaguard / Accu-metrics



NOT ISSUED

APPLICATION FOR A U.S. PASSPORT

Please Print Legibly Using Black Ink Only

OMB CONTROL NO. 1405-0004  
OMB EXPIRATION DATE: 08-31-2019  
ESTIMATED BURDEN: 85 MIN

Attention: Read WARNING on page 1 of instructions

Please select the document(s) for which you are applying:

U.S. Passport Book  U.S. Passport Card  Both

The U.S. passport card is not valid for international air travel. For more information see page 1 of instructions.

Regular Book (Standard)  Large Book (Non-Standard)

Note: The large book option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.



RS0109003

D  O  Dep DOTS

End. # Exp.

1. Name Last

D [REDACTED]

First

E [REDACTED]

Middle

J [REDACTED]

2. Date of Birth (mm/dd/yyyy)

09 16 2016

3. Sex

M X

4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.)

MISSISSAUGA, ON, CANADA

5. Social Security Number

6. Email (Info alerts offered at [travel.state.gov](http://travel.state.gov))

[REDACTED]@gmail.com

7. Primary Contact Phone Number

647 706 9556

8. Mailing Address: Line 1: Street/RFD#, P.O. Box, or URB.

[REDACTED] AVE.

Address Line 2: Clearly label Apartment, Company, Suite, Unit, Building, Floor, in Care Of or Attention if applicable. (e.g. in Care Of - Jane Doe, Apt # 100)

Apt [REDACTED]

City

TORONTO

State

ON M6B 4E6

Zip Code

Country, if outside the United States

CANADA

9. List all other names you have used. (Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)

A.

B.

STOP! CONTINUE TO PAGE 2

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent on Second Signature Line (if identifying minor)

Driver's License  State issued ID Card  Passport  Military  Other

Name Elad Ovash

Issue Date (mm/dd/yyyy)

04 21 2010

Exp. Date (mm/dd/yyyy)

04 20 2020

State of Issuance

ID No. [REDACTED]

Country of Issuance

Israel

Identifying Documents - Applicant or Mother/Father/Parent on Third Signature Line (if identifying minor)

Driver's License  State issued ID Card  Passport  Military  Other

Name Andrew Mason Banks

Issue Date (mm/dd/yyyy)

03 23 2010

Exp. Date (mm/dd/yyyy)

03 22 2020

State of Issuance

ID No. [REDACTED]

Country of Issuance

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Name of counter company (if applicable)

Facility ID Number

Applicant's Legal Signature - age 18 and older

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Signature of person authorized to accept applications

Date

JAN 24 2017



For Issuing Office Only -> Bk Card EF Postage Execution Other

\*DS 11 C 09 2013 1\*

NOT ISSUED

Name of Applicant (Last, First, & Middle) **D [REDACTED] - B [REDACTED], E [REDACTED] J [REDACTED]** Date of Birth (mm/dd/yyyy) **09/16/2016**

10. Parental Information  
 Mother/Father/Parent - First & Middle Name **ANDREW MASON** Last Name (at Parent's Birth) **BANKS**  
 Date of Birth (mm/dd/yyyy) **[REDACTED] 1981** Place of Birth **Santa Monica, California, USA** Sex  Male  Female U.S. Citizen?  Yes  No  
 Mother/Father/Parent - First & Middle Name **ELAD AUSTIN** Last Name (at Parent's Birth) **DVASH**  
 Date of Birth (mm/dd/yyyy) **[REDACTED] 1985** Place of Birth **Ramat Gan, ISRAEL** Sex  Male  Female U.S. Citizen?  Yes  No

11. Have you ever been married? Yes  No  If yes, complete the remaining items in #11  
 Full Name of Current Spouse or Most Recent Spouse \_\_\_\_\_ Date of Birth (mm/dd/yyyy) \_\_\_\_\_ Place of Birth \_\_\_\_\_

U.S. Citizen?  Yes  No Date of Marriage (mm/dd/yyyy) \_\_\_\_\_ Have you ever been widowed or divorced? Yes  No  Widow/Divorce Date (mm/dd/yyyy) \_\_\_\_\_

12. Additional Contact Phone Number **647 289 4389** Home  Cell  Work  13. Occupation (if age 16 or older) \_\_\_\_\_ 14. Employer or School (if applicable) \_\_\_\_\_

15. Height **23'** 16. Hair Color **Black** 17. Eye Color **Brown** 18. Travel Plans  
 Departure Date (mm/dd/yyyy) **02/08/2017** Return Date (mm/dd/yyyy) \_\_\_\_\_ Countries to be Visited **USA, ISRAEL**

19. Permanent Address - If P.O. Box is listed under Mailing Address or if residence is different from Mailing Address.  
 Street/RFD # or URB (No P.O. Box) \_\_\_\_\_ Apartment/Unit \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

20. Emergency Contact - Provide the information of a person not traveling with you to be contacted in the event of an emergency.  
 Name **ANN BANKS** Address: Street/RFD # or P.O. Box **[REDACTED]** Apartment/Unit \_\_\_\_\_  
 City **Port Saint Lucie** State **FL** Zip Code **34986** Phone Number **885 [REDACTED]** Relationship **Grandmother**

21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? Yes  No  If yes, complete the remaining items in #21.  
 Name as printed on your most recent passport book \_\_\_\_\_ Most recent passport book number \_\_\_\_\_ Most recent passport book issue date (mm/dd/yyyy) \_\_\_\_\_  
 Status of your most recent passport book:  Submitting with application  Stolen  Lost  In my possession (if expired)  
 Name as printed on your most recent passport card \_\_\_\_\_ Most recent passport card number \_\_\_\_\_ Most recent passport card issue date (mm/dd/yyyy) \_\_\_\_\_  
 Status of your most recent passport card:  Submitting with application  Stolen  Lost  In my possession (if expired)

**PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY**

Name as it appears on citizenship evidence **E [REDACTED] J [REDACTED] D [REDACTED] . E [REDACTED]**

Birth Certificate SR CR City Filed Issued \_\_\_\_\_  
 Nat. / Citz. Cert. USC15 USDC Date/Place Acquired: A# \_\_\_\_\_  
 Report of Birth Filed/Place \_\_\_\_\_  
 Passport C/R S/R Per-PIERS #/DOI: \_\_\_\_\_  
 Other: \_\_\_\_\_  
 Attached: \_\_\_\_\_

PIC of Citz  PIC of ID  DS-71  DS-3053  DS-64  DS-5520  DS-5525  PAW  NPIC  IRL  Citz W/S

**CLASS CLEARED**

**DENIED**

**TORONTO** MAR 02 2017

\* DS 11 C 09 2013 2 \*



To whom it may concern:

I E. J. O. B. (print full name) declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration.

Executed on: 1/24/17  
(DATE)

Signature:   
(Sign using full name as indicated on the passport application)

Unauthorized  
Reproduction  
or Disclosure  
Prohibited

Class 2:18-cv-00523-JFW-JC Document 806-4 Filed 01/22/19 Page 63 of 66 Page ID #:3899

Last Name: [Redacted] Box of Child: [Redacted]  
 First Name: [Redacted] Middle Name(s): [Redacted]  
 Date of Birth (yyyy/mm/dd): 2016/05/16 Name of hospital (if not hospital give exact location where birth occurred): Credit Valley Hospital  
 Place of Birth (City/Town/Village/Township): Mississauga (Regional municipality, county or district): PEEL

Section B - Father's Information - (see instruction #2)

Current Legal Last Name: Dvash-Banks  
 Legal Last Name at Birth: Banks  
 First and Middle Name(s): Andrew Mason  
 Any Other Legal Last Name(s): [Redacted]  
 Place of Birth (City/Town/Village/Township): Santa Monica  
 Place of Birth (Province/County): California, USA Date of Birth (yyyy/mm/dd): 198 [Redacted] Age: 35  
 Marital Status of Parent in Section B:  Single  Married  Common Law  Divorced  Widowed

Section C - Father's Information - (see instruction #3)

Current Legal Last Name: Dvash-Banks  
 Legal Last Name at Birth: Dvash  
 First and Middle Name(s): Elad  
 Any Other Legal Last Name(s): [Redacted]  
 Place of Birth (City/Town/Village/Township): Ramat Gan  
 Place of Birth (Province/County): Israel Date of Birth (yyyy/mm/dd): 1965 Age: 34

Section D - Birth Information

Residence of Parents in Section B - Complete street address (City, town, village, township - if rural give Post Office or Rural Route address): [Redacted] Avenue, Toronto Postal Code: M6B4C6  
 Mailing Address of Parents in Section B (if different from above - Complete street address (if rural give Post Office or Rural Route address): [Redacted] Postal Code: [Redacted]

Duration of pregnancy (in weeks): 32	Total number of children ever born to this parent including this birth: 2 Of this Total, number born live: 2 Of this Total, number stillborn: 0	Weight of child at birth: 1350	Kind of Birth: <input type="checkbox"/> Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/> Other	If multiple births, state whether this child was born 1st, 2nd, 3rd, etc.: 2nd
--------------------------------------	---	--------------------------------	---	--

Name of Attendant at birth: Dr. Myckany, Kerry  Physician  Midwife  Other, specify: [Redacted]

Section E - Certification of Informant (Please read instruction #1 before signing)

If you are choosing a last name that is not one of the parent's last names or combination of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes:

Cultural Heritage  Religious Heritage  Ethnic Heritage

I (We) certify the statements made on this form are true and correct. I am (We are) aware that it is an offence to knowingly make a false statement on this form.

I (We) have agreed that the child's last name will be as shown in section A.  Yes  No

Signature of Father: [Signature] Date (yyyy/mm/dd): 2016/10/08  
 Signature of Mother: [Signature] Date (yyyy/mm/dd): 2016/10/08  
 Signature of Informant (see instruction #1): [Signature] Date (yyyy/mm/dd): [Redacted]

Section F - Office Use Only

I approve this statement and register the birth by signing this statement. Signature of Manager: [Signature] Date (yyyy/mm/dd): 2016/11/03

Office Use Only: UPDATED GEO CODE

11312E (2016/06) © Queen's Printer for Ontario, 2016

A True Copy of the Signed Original.

Prohibited

TERRI N. DAY  
 VICE CONSUL OF THE  
 UNITED STATES OF AMERICA

Alexandra Schmidt  
 Alexandra Schmidt  
 Deputy Registrar General  
 Registraire générale adjointe

---CERTIFIED COPY---  
 NOT VALID WITHOUT ALL PAGES



A True Copy of the Signed Original.

# Defendants' Exhibit: Administrative Record Part IV

(In Support of Defendants' Motion for Summary  
Judgment)

**To:** Day, Frankie (Terri)[DayTN@state.gov]  
**From:** Ramsay, Margaret S  
**Sent:** Tue 1/24/2017 3:00:43 PM (UTC)  
**Subject:** ART guidance

Case 2:18-cv-00523-JFW-JC Document 186-5 Filed 01/27/19 Page 12 of 12 PageID#13891

2014 Cable on ART cases

<http://repository.state.gov/archive/2014/01/31/19fc8100-1c46-4101-97ce-4a4286a6e39a/14-STATE-10952.eml.PDF>

7 FAM 1100 APPENDIX D

<http://fam.a.state.gov/fam/07fam/07fam1100apD.html#M1100>

Margaret S. Ramsay  
Consul  
U.S. Consulate General, Toronto  
Tel: 416-595-1700 ext. 466

**Official - Transitory**  
**UNCLASSIFIED**

Defendants' Exhibit:  
Administrative Record Part V

(In Support of Defendants' Motion for Summary  
Judgment)

---

**From:** SMART Archive  
**Sent:** 1/30/2014 8:21:55 PM  
**To:** svcSMARTBTSP06  
**Subject:** POLICY CHANGE RELATED TO CHILDREN BORN ABROAD THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY (ART)

**UNCLASSIFIED**



---

**MRN:** 14 STATE 10952  
**Date/DTG:** Jan 31, 2014 / 310123Z JAN 14  
**From:** SECSTATE WASHDC  
**Action:** TRIPOLI, AMEMBASSY *IMMEDIATE* ; JUBA, AMEMBASSY *IMMEDIATE* ; MINSK, AMEMBASSY *IMMEDIATE* ; ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *IMMEDIATE*  
**E.O.:** 13526  
**TAGS:** CASC, CPAS, CVIS  
**Subject:** POLICY CHANGE RELATED TO CHILDREN BORN ABROAD THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY (ART)

1. Summary: This ALDAC announces policy changes related to children born abroad through assisted reproductive technology (ART). Currently, only genetic mothers (egg donors) are able to transmit citizenship and immigration benefits to their children who are born abroad. Under the new policy, birth mothers (gestational mothers) who are also the legal parent of the child will be treated the same as genetic mothers for the purposes of citizenship and immigration benefits. Additional guidance will follow. End summary.

2. Transmission of Citizenship at Birth via Genetic or Gestational U.S. Citizen Legal Mothers: The Department of State and the Department of Homeland Security are now interpreting relevant U.S. law to permit acquisition of U.S. citizenship at birth based upon a genetic and/or gestational relationship to a U.S. citizen legal mother at the time and place of birth. See examples in paragraph 6.

3. Transmission After Birth under the Child Citizenship Act: Both departments are further interpreting the Immigration and Nationality Act (INA) Sections 101(c), 320, and 322 (8 U.S.C. Sections 1101(c), 1431, and 1433), such that a "parent" includes a genetic or gestational legal parent, and a "child" includes the child of a genetic or gestational parent who is also a legal parent at the time of the child's birth. This interpretation allows transmission of citizenship after birth by a U.S. citizen gestational, legal mother who is not the genetic mother of the child to whom she gave birth.

4. Immigration of Children of Gestational, Legal Mothers: Under the new interpretation, INA Section 101(b) (8 U.S.C. Section 1101(b)) treats a child as being born "in wedlock" under INA Section 101(b)(1)(A) when the genetic and/or gestational parents are legally married to each other at the time of the child's birth and both parents are the legal parents of the child at the time and place of birth. A "child legitimated" and a "legitimizing parent or parents" in INA Section 101(b)(1)(C) includes a gestational mother who is also the legal mother of the child.

The term "natural mother" in INA Section 101(b)(1)(D) includes a gestational mother who is the legal

mother of a child at the time and place of birth, as well as a genetic mother who is a legal mother of the child at the time and place of birth.

5. Retroactive Application: The new policy will be retroactive. There will be cases in which children born abroad to a gestational and legal mother were previously denied a citizenship or immigration benefit under the prior interpretation. In such cases, parent(s) must submit a new application for their child, if they wish to apply for a passport, Consular Report of Birth Abroad (CRBA), or other document. The application must include sufficient evidence demonstrating that they meet all relevant statutory and regulatory requirements as well all appropriate fees.

6. Case Examples:

A woman who gives birth abroad to a child that is not genetically related to her (i.e., the child was conceived using a donor egg), and who is also the legal mother of the child at the time and place of its birth, may transmit U.S. citizenship to the child under Section 301 and Section 309 of the INA (8 U.S.C. Sections 1401 and 1409).

A U.S. citizen who gives birth abroad to a child, but who is not the legal mother at the time and place of birth, (i.e., a gestational surrogate) may not transmit citizenship. In this example, the child also would not be born "in wedlock". Under the new interpretation, a child is considered to be born "in wedlock" for purposes of applying INA Section 301, when the child is born to persons who are:

- (1) legally married to one another at the time of the child's birth;
- (2) both the legal parents of the child at the time and place of the child's birth; and
- (3) the genetic and/or gestational parents of the child.

7. Forthcoming Additional Implementation Guidance. The FAM will be updated to reflect this policy change shortly, and a separate ALDAC will be distributed announcing the FAM updates. In the interim, use the guidance in this ALDAC.

8. CA will also post Frequently Asked Questions to the CAWeb under Overseas Citizen Services, Citizenship and Passports in the near future.

9. Contact Points for Questions: Send questions regarding citizenship cases involving children born abroad to a U.S. citizen gestational mother to Ask-OCS-L@state.gov. Please send questions relating to immigrant visas for children born abroad to a gestational and legal mother to Matt McNeil in CA/VO/L/A.

10. Minimize Considered.

**Signature:** Kerry

---

**Drafted By:** CA/OCS:Vogel, Lisa  
**Cleared By:** CA:Sprague, Brenda  
CA: Glazeroff, Josh  
CA/OCS:Pettit, James  
D  
CA/OCS:Bernier-Toth, Michelle  
CA/VO:Heflin, Don  
CA/FPP:Schwartz, David  
L/CA: Mitchell, Mary  
WHA/EX:Rodriguez, Karen  
EUR-IO/EX:Ballard, Juliana



EAP/EX:Stanton, Karen  
AF/EX:Tabler-Stone, Melinda  
M:Korhonen, Rachna  
SES-O: ARADETSKY  
WASHDC\RodgersGJ  
CA: Janice L. Jacobs  
IRM\_OPS\_MSO:Rodgers, George  
USAREUR POLAD HEIDELBERG GE

**Approved By:**

**Released By:**

**XMT:**

---

**Dissemination Rule:** Archive Copy

**UNCLASSIFIED**

Defendants' Exhibit:  
Administrative Record Part VI

(In Support of Defendants' Motion for Summary  
Judgment)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

## **7 FAM 1100 APPENDIX D**

### **ACQUISITION OF U.S. CITIZENSHIP AT BIRTH - ASSISTED REPRODUCTIVE TECHNOLOGY**

*(CT:CON-615; 12-15-2015)*  
*(Office of Origin: CA/OCS/L)*

#### **7 FAM 1110 APPENDIX D BIRTH ABROAD TO A U.S. CITIZEN GESTATIONAL MOTHER WHO IS ALSO THE LEGAL MOTHER AT THE TIME SHE GIVES BIRTH (BIRTH MOTHER, BUT NOT GENETIC MOTHER)**

*(CT:CON-615; 12-15-2015)*

- a. A child born abroad to a U.S. citizen gestational mother who is also the legal parent of the child at the time of birth in the location of birth, whose genetic parents are an anonymous egg donor and the U.S. citizen husband of the gestational legal mother, is considered for citizenship purposes to be a person born in wedlock of two U.S. citizens, with a citizenship claim adjudicated under INA 301(c).
- b. A child born abroad to a U.S. citizen gestational mother who is the legal parent of the child at the time of birth in the location of birth, whose genetic parents are an anonymous sperm donor and the U.S. citizen wife of the gestational legal mother, is considered for citizenship purposes to be a person born in wedlock of two U.S. citizens, with a citizenship claim adjudicated under INA 301(c).
- c. A child born abroad to a U.S. citizen gestational mother who is the legal parent of the child at the time of birth in the location of birth, whose genetic parents are an anonymous egg donor and the non-U.S. citizen husband of the gestational legal mother, is considered for citizenship purposes to be a person born in wedlock of a U.S. citizen mother and alien father, with a citizenship claim adjudicated under 301(g).
- d. A child born abroad to a U.S. citizen gestational mother who is the legal parent of the child at the time of birth in the location of birth, and who is not married to the genetic mother or father of the child at the time of the child's birth, is considered for citizenship purposes to be a person born out of wedlock of a U.S.

**7 FAM 1100 Appendix D** Page 1 of 4

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

citizen mother, with a citizenship claim adjudicated under INA 309(c).

## **7 FAM 1120 APPENDIX D BIRTH ABROAD TO A SURROGATE OF A CHILD WHO IS THE GENETIC ISSUE OF A U.S. CITIZEN MOTHER AND/OR U.S. CITIZEN FATHER**

*(CT:CON-615; 12-15-2015)*

- a. For purposes of this section, the term "surrogate" refers to a woman who gives birth to a child, who is not the legal parent of the child at the time of the child's birth in the location of the birth. In such a case, the surrogate's citizenship is irrelevant to the child's citizenship analysis.
- b. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen mother and her U.S. citizen spouse, is considered for citizenship purposes to be a person born in wedlock of two U.S. citizen parents, with a citizenship claim adjudicated under INA 301(c).
- c. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen mother and anonymous sperm donor, is considered for citizenship purposes to be a person born out of wedlock to a U.S. citizen mother, with a citizenship claim adjudicated under INA 309(c). This is the case regardless of whether the woman is married and regardless of whether her spouse is the legal parent of the child at the time of birth.
- d. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen mother and her non-U.S. citizen spouse, is considered for citizenship purposes to be a person born in wedlock of a U.S. citizen mother and alien spouse, with a citizenship claim adjudicated under INA 301(g).
- e. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen father and his non-U.S. citizen spouse, is considered for citizenship purposes to be a person born in wedlock of a U.S. citizen father and alien spouse, with a citizenship claim adjudicated under INA 301(g).
- f. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen father and anonymous egg donor, is considered for citizenship purposes to be a person born out of wedlock of a U.S. citizen father, with a citizenship claim adjudicated under INA 309(a). This is the case regardless of whether the man is married and regardless of whether his spouse is the legal parent of the child at the time of birth.
- g. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen father and the surrogate (mother) who is not married to the U.S. citizen father is considered for citizenship purposes to be a person born out of wedlock of a U.S. citizen father, with a citizenship claim adjudicated under INA 309(a). Note

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

that in such a case, despite the genetic and gestational connection, the surrogate mother is not the legal parent of the child at the time of birth, usually pursuant to a surrogacy agreement.

## **7 FAM 1130 APPENDIX D ANONYMOUS SPERM/EGG DONORS CANNOT TRANSMIT U.S. CITIZENSHIP TO A CHILD**

*(CT:CON-615; 12-15-2015)*

U.S. citizenship cannot be transmitted by an anonymous sperm or egg donor, even if a clinic, sperm bank, or intended parent(s) purport to certify that the sperm or egg was donated by a U.S. citizen. The applicant (or his or her parent, applying on behalf of a minor applicant) bears the burden of demonstrating the donor transmitting parent's U.S. citizenship and fulfillment of each other statutory requirement, and the evidence in support must be verified by the consular officer. This will require cooperation from the donor(s) to establish the possible claim to U.S. citizenship.

## **7 FAM 1140 APPENDIX D ESTABLISHING A BIOLOGICAL RELATIONSHIP IN AN ART CASE**

*(CT:CON-615; 12-15-2015)*

- a. In most cases involving assisted reproductive technology there is no shortage of documentation, and consular officers are free, as in any case, to ask for appropriate supporting documentation that fits the circumstances of the case.
- b. Examples of appropriate supporting documentation would be: certified hospital records or physicians' records where the procedure occurred and a sworn statement from the physician who performed the procedure; medical records documenting pre-natal care of the surrogate or the gestational mother; medical records documenting underlying medical conditions that caused parent to seek ART (i.e., infertility or injury); insurance documents or other types of receipts documenting the payments made for the various different procedures. DNA testing may be recommended depending on the other medical evidence and circumstances of the case. (See 7 FAM 1100 Appendix A.)
- c. In cases involving surrogacy, in addition to the medical records discussed above, the intended parents are likely to have signed contracts or other legal instruments with any of the following: fertility clinic, physician, laboratories, the surrogate mother, and/or egg / sperm donor. These legal documents should detail the various parties' intentions with respect to future parental rights and also about fees and payments to the various parties.
- d. If consular officers are not satisfied with other evidence presented, they may

**7 FAM 1100 Appendix D** Page 3 of 4

UNCLASSIFIED (U)

**UNCLASSIFIED (U)**

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

ask to interview the surrogate and/or her spouse or other family members.

- e. In cases involving a gestational and legal mother, in addition to the medical and financial records discussed above, an officer could ask for photographs taken during the pregnancy or following the birth or other physical mementos (such as hospital bracelets). If the records are insufficient or the consular officer suspects fraud, the officer may ask for a physical exam of the woman by a panel physician.
- f. Questions relating to family/genetic/blood relationships can be considered intrusive and contacts with families in these circumstances may become somewhat emotional. Interviews should always be conducted with consideration for privacy and the sensitivity of the issues. Of course, when there are fraud indicators, posts must ensure that discrepancies are reviewed and resolved.

## **7 FAM 1150 APPENDIX D THROUGH 7 FAM 1190 APPENDIX D UNASSIGNED**

**UNCLASSIFIED (U)**

# Defendants' Exhibit: Administrative Record Part VII

(In Support of Defendants' Motion for Summary  
Judgment)

## **7 FAM 1130**

# **ACQUISITION OF U.S. CITIZENSHIP BY BIRTH ABROAD TO U.S. CITIZEN PARENT**

*(CT:CON-674; 07-26-2016)*  
*(Office of Origin: CA/OCS/L)*

## **7 FAM 1131 BASIS FOR DETERMINATION OF ACQUISITION**

### **7 FAM 1131.1 Authority**

#### **7 FAM 1131.1-1 Federal Statutes**

*(CT:CON-349; 12-13-2010)*

- a. Acquisition of U.S. citizenship by birth abroad to a U.S. citizen parent is governed by Federal statutes. Only insofar as Congress has provided in such statutes, does the United States follow the traditionally Roman law principle of "jus sanguinis" under which citizenship is acquired by descent (see 7 FAM 1111 a(2)).
- b. Section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) gives the Secretary of State the responsibility for the administration and enforcement of all nationality laws relating to "the determination of nationality of a person not in the United States."

#### **7 FAM 1131.1-2 Applicable Statute**

*(TL:CON-68; 04-01-1998)*

The law applicable in the case of a person born abroad who claims citizenship is the law in effect when the person was born, unless a later law applies retroactively to persons who had not already become citizens. Instructions in 7 FAM 1130 will note when a law is retroactive.

#### **7 FAM 1131.1-3 Delegation of Authority**

*(TL:CON-68; 04-01-1998)*

Consular officers may decide cases involving acquisition of citizenship by birth abroad. Designated nationality examiners may also do so in connection with



providing passport and related services. If guidance is needed, a case may be submitted to the Department (CA/OCS) for decision or advisory opinion.

## **7 FAM 1131.2 Prerequisites for Transmitting U.S. Citizenship**

*(CT:CON-636; 02-24-2016)*

Since 1790, there have been two prerequisites for transmitting U.S. citizenship at birth to children born abroad:

- (1) At least one biological parent must have been a U.S. citizen when the child was born. The only exception is for a posthumous child.
- (2) The U.S. citizen parent(s) must have resided or been physically present in the United States for the time required by the law in effect when the child was born.

## **7 FAM 1131.3 Adoption By a U.S. Citizen Does Not Automatically Result in U.S. Citizenship for the Child**

*(CT:CON-636; 02-24-2016)*

- a. Adoption of an alien minor by a U.S. citizen does not, in and of itself, result in U.S. citizenship for the child. Adoption, however, is one way in which a U.S. citizen father may be able to legitimate his biological child born out of wedlock abroad for purposes of transmitting citizenship (see 7 FAM 1133.4-2 c(4)).
- b. For provisions that govern the naturalization of adopted children, see 7 FAM 1157.

## **7 FAM 1131.4 A Biological Relationship, or Blood Relationship, Is Required for a U.S. Citizen Parent of a Child Born Abroad to Transmit U.S. Citizenship to the Child**

### **7 FAM 1131.4-1 Establishing Blood Relationship**

*(CT:CON-636; 02-24-2016)*

- a. The laws on acquisition of U.S. citizenship through a parent have always contemplated the existence of a blood relationship between the child and the parent(s) through whom citizenship is claimed. It is not enough that the child is presumed to be the issue of the parents' marriage by the laws of the jurisdiction where the child was born. Absent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired. The burden of proving a claim to U.S. citizenship,

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

including blood relationship and legal relationship, where applicable, is on the person making such claim.

- b. Applicants must meet different standards of proof of blood relationship depending on the circumstances of their birth:
- (1) Section 309(a) INA (8 U.S.C. 1409(a)), as amended on November 14, 1986, specifies that the blood relationship of a child born out of wedlock to a U.S. citizen father must be established by clear and convincing evidence. This standard generally means that the evidence must produce a firm belief in the truth of the facts asserted that is beyond a preponderance but does not reach the certainty required for proof beyond a reasonable doubt. There are no specific items of evidence that must be presented. DNA tests are not required, but may be submitted and can help resolve cases in which other available evidence is insufficient to establish the relationship. For the procedures for establishing legal relationship to or legitimation by a citizen father once blood relationship has been proven, see 7 FAM 1133.4. (7 FAM 1100 Appendix A provides guidance regarding DNA tests.)
  - (2) The INA does not specify a standard of proof for persons claiming transmission of U.S. citizenship based upon birth (a) in wedlock to a U.S. citizen parent or (b) out of wedlock to a U.S. citizen mother. The Department's regulations also do not explicitly establish a standard of proof in these two circumstances. Where no other standard of proof is explicitly required by law, the Department applies the general standard of a preponderance of the evidence. This standard means that the evidence of the biological relationship is of greater weight than the evidence to the contrary. In such a case, the evidence is credible and best accords with reason and probability. Meeting the standard does not depend on the quantity of evidence presented.
- c. A man has a biological relationship with his child, or a "blood relationship" as required in the current text of INA Section 309(a), when he has a genetic parental relationship to the child. A woman may have a biological relationship with her child through either a genetic parental relationship or a gestational relationship. In other words, a woman may establish a biological relationship with her child either by virtue of being the genetic mother (the woman whose egg was used in conception) or the gestational mother (the woman who carried and delivered the baby). (See 7 FAM 1100 Appendix D.)
- d. Children born in wedlock are generally presumed to be the issue of that marriage. This presumption is not determinative in citizenship cases, however, because an actual biological relationship to a U.S. citizen parent is required. If doubt arises that the U.S. citizen "parent" is biologically related to the child, the consular officer is expected to investigate carefully. Circumstances that might give rise to such a doubt include, but are not limited to:
- (1) Conception or birth of a child when either of the alleged biological parents was married to another person during the relevant time period;

- (2) Naming on the birth certificate, as father and/or mother, person(s) other than the alleged biological parents; and
  - (3) Evidence or indications that the child was conceived at a time when the alleged father had no physical access to the mother.
  - (4) If the child was conceived or born when the mother was married to someone other than the man claiming paternity, a statement from the man to whom the mother was married disavowing paternity, a divorce or custody decree mentioning certain of her children but omitting or specifically excluding the child in question, or credible statements from neighbors or friends having knowledge of the circumstances leading up to the birth may be required as evidence bearing on actual natural paternity.
  - (5) The child was born through surrogacy or other forms of assisted reproductive technology. (7 FAM 1100 Appendix D provides guidance about acquisition of U.S. citizenship by birth abroad and assisted reproductive technology.)
- e. In such cases, it is within the consular officer's discretion to request additional evidence pursuant to 22 CFR 51.45.

## **7 FAM 1131.5 Suspected False or Fraudulent Citizenship Claim of Minor Child**

### **7 FAM 1131.5-1 General Guidance**

*(CT:CON-636; 02-24-2016)*

Questions of possible parentage fraud must be handled sensitively. Necessary efforts to enforce the citizenship laws may result in the Department being accused of threatening the family unit and of jeopardizing the welfare of the child. Cases of this kind often have public relations ramifications or give rise to congressional interest. All such cases must be handled in a timely manner with consideration for the family. Posts may provide information on visa eligibility in cases where it has been proven that the child has no claim to U.S. citizenship and the parents wish to take the child to the United States. Posts should suggest that parents consult a lawyer knowledgeable in family law and U.S. immigration law.

### **7 FAM 1131.5-2 Paternity Issues**

*(CT:CON-636; 02-24-2016)*

- a. Issues of False or Fraudulent Paternity Claims: Paternity fraud is an intentionally-filed claim to citizenship filed on behalf of a child said to have been born to a U.S. citizen father who is not, in fact, the biological father of the child. Paternity fraud is most commonly found in cases where the claimed biological mother is an alien. In some cases, the alleged father believes that he is the

biological father in which case the claim is properly considered false rather than fraudulent. In other cases, he knows that he is not the father, and intentional fraud is involved. Circumstances that might indicate false or fraudulent claim to paternity include, but are not limited to:

- (1) The child was conceived at a time when there is doubt that the alleged father had physical access to the mother;
- (2) The mother admits, or there is other evidence, that she had physical relationships with other men around the time of conception;
- (3) The child allegedly was born prematurely, but its weight at birth appears to indicate that it was a full-term baby;
- (4) The physical characteristics of the child and of the alleged father do not seem compatible; or
- (5) There are discrepancies in the birth records.
- (6) The record contains a DNA test that demonstrates that the putative father is not genetically related to the child.
- (7) The record contains a court order that indicates that another man is the child's father.

b. How to Resolve Doubts: To ascertain the true circumstances surrounding the child's conception and birth, the consular officer may wish to:

- (1) Obtain available records showing periods of time when the alleged father had physical access to the mother;
- (2) Interview the parents separately to determine any differences in their respective stories as to when and where the child was conceived. Often, in separate interviews, one party will admit that the U.S. citizen is not the parent;
- (3) Interview neighbors and friends to determine the facts as understood within the local community; and
- (4) Advise DNA testing if the couple continues to pursue the claim even though the facts as developed seem to disprove it. The propriety of requesting DNA testing is discussed in 7 FAM 1100 Appendix A. If post disapproves the application, enter the "N" lookout in the Consular Lookout and Support System (CLASS) using the Passport Lookout Tracking System (PLOTS) as explained in 7 FAM 1300 Appendix A and forward the application to Passport Services for scanning and record keeping in accordance with 7 FAM 1337.

## **7 FAM 1131.5-3 Maternity Issues**

*(CT:CON-636; 02-24-2016)*

a. Indications of Fraudulent Maternity Claims: Cases in which a U.S. citizen

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

woman intentionally and falsely claims a child as her biological child for citizenship purposes are relatively rare but can occur. The U.S. citizen woman, alone or in collaboration with her spouse, claims that a foreign-born child is her biological child, when instead she has adopted the child or otherwise, obtained physical custody of the child. The false claim that the child is hers is made to avoid full legal adoption and/or visa procedures and to instead fraudulently document the child as a U.S. citizen. Circumstances that might indicate a possibility of maternity fraud include, but are not limited to:

- (1) The alleged mother arrived in the foreign country a few days before the child's birth;
- (2) The alleged mother is beyond normal child-bearing years;
- (3) The child was born in a private home with the alleged mother unattended or with only a midwife present;
- (4) The alleged mother claims to have had no prenatal care and not to have known the baby's due date;
- (5) The alleged mother claims that the child was born prematurely in cases where the documentation does not suggest a premature birth (e.g. due to height/weight at birth) or the child's appearance suggests otherwise; and
- (6) The physical characteristics of the child and of the alleged parents do not seem compatible.

b. How To Resolve Doubts: If the post has any doubts about the child's parentage, further inquiry and documentation are required. Posts should take any of the following steps that seem appropriate or necessary:

- (1) Establish that pregnancy did exist by, for example, requesting copies of prenatal and post-natal records;
- (2) Request any authorization letter given to the woman by her physician stating that she could fly without endangering her health. Airlines may refuse to assume responsibility for a woman who has reached an advanced stage of pregnancy and may request such a letter before allowing a pregnant woman on board;
- (3) Investigate the clinic or hospital where the birth allegedly occurred to determine if it is a legitimate medical facility. Request medical records to determine whether the woman was a patient, and is the biological mother of the child;
- (4) When the consular officer strongly suspects that a newborn child is not the gestational child of the alleged mother, yet the alleged mother claims a gestational (but not genetic) relationship, was adopted, request that the woman undergo a physical examination as soon as possible by a physician whom the post believes to be reliable. Physical evidence of pregnancy and childbirth may be obvious for only a few weeks after the birth;

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

- (5) Contact the midwife or doctor who attended the birth to confirm statements given by the alleged parents; and
- (6) If doubts remain about the child's blood relationship to the alleged parents, DNA tests might be useful (see 7 FAM 1100 Appendix A.)

## **7 FAM 1100 APPENDIX E**

# **BIRTH IN WEDLOCK, OF WEDLOCK, VOID AND VOIDABLE MARRIAGES**

*(CT:CON-576; 05-05-2015)*  
*(Office of Origin: CA/OCS/L)*

## **7 FAM 1110 APPENDIX E INTRODUCTION**

*(CT:CON-521; 07-08-2014)*

This Appendix focuses on what birth in wedlock means as that term relates to acquisition of derivative U.S. citizenship through birth abroad.

### NOTE ABOUT TERMS:

- (1) For the purposes of acquisition of U.S. citizenship, filiation is the blood relationship or kinship which exists between a child and the child's biological parents;
- (2) A putative parent is an alleged parent; and
- (3) Issue of a marriage or child of the marriage or similar words indicate that the husband is the father of the child as a matter of law.

## **7 FAM 1120 APPENDIX E AUTHORITIES**

*(CT:CON-454; 04-15-2013)*

### a. Immigration and Nationality Act (INA):

- (1) INA 101 (a) Definitions (8 U.S.C. 1101) provides:
  - (a) INA 101(a)(35) "The term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated."
  - (b) INA 101(a)(39) "The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married."
- (2) INA 101(c) Definitions as Used in title III INA provides:
  - (a) INA 101(c)(1) "The term "child" means an unmarried person under

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption."

(b) INA 101(c)(2) "The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(3) INA 301(8 U.S.C. 1401) (c), (d), (e), and (g) refer to birth of a person outside of the United States "of parents ..." INA 301 does not mention marriage expressly but implicitly references marriage with respect to INA 301(c), (d), (e), and (g) and also INA 308(2) when viewed in context of the provisions of INA 309.

(4) INA 309 (8 U.S.C. 1409) refers to children born out of wedlock.

b. U.S. Domestic Law Regarding Marriage and Parentage: The Uniform Parentage Act of 2000 (UPA), last revised in 2002, includes provisions in Section 204 regarding the presumption of paternity. Uniform laws are model acts which U.S. states may enact in part or in their entirety. All states have not adopted the UPA so individual state laws may still vary. Section 204 of the UPA provides:

SECTION 204. PRESUMPTION OF PATERNITY.

"(a) A man is presumed to be the father of a child if:

(1) he and the mother of the child are married to each other and the child is born during the marriage;

(2) he and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation;

(3) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce, or after a decree of separation;

(4) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

(a) the assertion is in a record filed with state agency maintaining birth records;

UNCLASSIFIED (U)



UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

- (b) he agreed to be and is named as the child's father on the child's birth certificate; or
- (c) he promised in a record to support the child as his own; or
- (5) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.
- (b) A presumption of paternity established under this section may be rebutted only by an adjudication under Article 6."

## 7 FAM 1130 APPENDIX E REBUTTABLE PRESUMPTION OF PATERNITY

*(CT:CON-521; 07-08-2014)*

- a. All presumptions of paternity are rebuttable in appropriate circumstances. (Uniform Parentage Act (1973), Prefatory Note, 9B U.L.A. 379 (2001).)
- b. Many states have enacted paternity statutes establishing a rebuttable presumption of paternity where genetic test results report a paternity equal to or greater than a designated percentage. (See 7 FAM 1100 Appendix A for guidance about DNA testing.)
- c. When the mother is living with her husband at the time of the child's conception, and the husband is not impotent or sterile, there is a conclusive presumption under the laws of some states that the husband is the father of the child. However, DNA tests along with other credible evidence can possibly result in a finding of non-paternity.
- d. If there are indications that call into question the filiations, despite the existence of a marriage, the consular officer must consult the Fraud Prevention Manager and CA/FPP. See 7 FAM 1131.4 Blood Relationship Essential. If doubt arises that the citizen putative "parent" is related by blood to the child, the consular officer is expected to investigate carefully. Circumstances that might give rise to such a doubt include:
  - (1) Conception or birth of a child when either of the alleged biological parents was married to another;
  - (2) Naming on the birth certificate, as father and/or mother, person(s) other than the alleged biological parents; and
  - (3) Evidence or indications that the child was conceived at a time when the alleged father had no physical access to the mother.
- e. If the child was conceived or born when the mother was married to someone other than the man claiming paternity, a statement from the man to whom the mother was married disavowing paternity, a divorce or custody decree mentioning certain of her children but omitting or specifically excluding the child in question, or credible statements from neighbors or friends having

UNCLASSIFIED (U)

UNCLASSIFIED (U)  
7-1912U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

knowledge of the circumstances leading up to the birth may be required as evidence bearing on actual natural paternity. If the Department (CA) is not satisfied by a preponderance of the evidence that filiation exists, the putative parent(s) may submit DNA evidence following procedures in 7 FAM 1100 Appendix A and the CA Internet page on DNA and Parentage Testing. See 7 FAM 1160 Appendix E for further guidance on adjudication.

**NOTE:**

CA/FPP's CAWeb Intranet Relationship Fraud feature.

CA/FPP's Intranet Fraud Digest includes other information about relationship fraud. For example: Relationship Fraud in Yemen; Marriage Fraud Dangerous and Pervasive.

## 7 FAM 1140 APPENDIX E "IN WEDLOCK" AND "OF WEDLOCK"

*(CT:CON-521; 07-08-2014)*

- a. The term "Birth in Wedlock" has been consistently interpreted to mean birth during the marriage of the biological parents to each other.
- b. This includes a child conceived before the marriage but born during the marriage.
- c. To say a child was born "in wedlock" means that the child's biological parents were married to each other at the time of the birth of the child.
- d. In the case of a marriage terminated by dissolution, death, or annulment, the term "of wedlock" still includes a biological child conceived during the marriage and born within 300 days after termination of the marriage.
- e. If a married woman and someone other than her spouse have a biological child together, that child is considered to have been born out of wedlock. The same is true for a child born to a married man and a person other than his spouse.

## 7 FAM 1150 APPENDIX E VOID AND VOIDABLE MARRIAGES

*(CT:CON-576; 05-05-2015)*

- a. A marriage that does not conform to the laws of the country or state in which it was performed generally is voidable and may be declared void by an appropriate authority, usually a court in the jurisdiction where the marriage occurred.
- b. Prior to such a declaration, the marriage usually is considered valid for all purposes. Even after a marriage is voided, the children's status usually is not

**7 FAM 1100 Appendix E** Page 4 of 7

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

affected. In the United States, for example, every state considers children of a void marriage to be legitimate.

- c. Some marriages are considered void ab initio (from the beginning), as opposed to voidable. 7 FAM 1160 Appendix E provides further guidance about adjudication. Questions from posts abroad about this subject must be referred to Ask-OCS-L@state.gov.
- d. Except where Federal statute provides to the contrary, the U.S. Supreme Court held that marriages (not polygamous or incestuous, or otherwise declared void by statute) if valid by the law of the state where entered into, will be recognized as valid in every other jurisdiction (*Meister v. Moore*, 96 U.S. 76 (1878); *Travers v. Reinhardt*, 205 U.S. 423, 440 (1907)).
- e. U.S. embassies and consulates abroad must have available a copy of the consular district's local laws on marriage and legitimation:
  - (1) If for any reason a marriage does not appear to have been valid, legitimation is a determining factor in the citizenship claim and a U.S. domicile cannot be identified, the consular officer will consult local law in an attempt to determine if children born of a void marriage are considered legitimate (*see the Foreign Legitimation Law Chart on the CAWeb*);
  - (2) If the child is not considered legitimate, the consular officer must determine that the marriage was declared void by an appropriate authority before denying the child's claim;
  - (3) A post considering a case involving legitimation in a third country must seek information on the laws of that country from the embassy of that country or from the U.S. embassy or consulate in that country; and
  - (4) If any of the above inquiry are inconclusive or questionable, posts abroad must consult CA/OCS/L (Ask-OCS-L@state.gov) as soon as possible. 7 FAM 1160 Appendix E provides further guidance about adjudication. Domestic passport agencies and centers see 7 FAM 1170 Appendix E.
- f. A law that declares legitimate a child born during a void marriage presumes that the marriage ceremony took place before the child's birth unless the law specifically mentions children born before the marriage. Cases that involve void marriages occurring after a child's birth must be referred by posts abroad to CA/OCS/L (Ask-OCS-L@state.gov).

## 7 FAM 1160 APPENDIX E ADJUDICATION

(CT:CON-521; 07-08-2014)

- a. In most acquisition of U.S. citizenship by birth abroad cases, adjudication of whether a citizenship claim comes within the scope of INA 301 (8 U.S.C. 1401) or rather INA 309 (8 U.S.C. 1409) will be clear. The parents will present a marriage certificate certified by the civil registry authority responsible for

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

maintaining marriage certificates as proof of marriage, and adjudication will proceed in a straightforward way.

- b. On rare occasions, you may be confronted with an acquisition of citizenship adjudication in which a child is born during the course of a marriage but one or both the spouses advise that the biological father is another person not married to the biological mother. The following documents must be submitted:
  - (1) The child's birth certificate certified by the civil registry authority responsible for maintaining birth certificates;
  - (2) Form DS-5507 notarized Affidavit of Parentage, Physical Presence and Support executed by the mother and the person she claims is the father;
  - (3) An notarized affidavit executed by the husband denying paternity;
  - (4) Evidence of access by the putative father at probable time of conception including, for example, entry/exit stamps in passports, airline/hotel receipts, travel orders, etc.;
  - (5) Evidence of lack of access by the husband at probable time of conception. For example, evidence that the husband was not in the country such as overseas military assignment, imprisonment, etc.; and
  - (6) In addition, the family may submit DNA tests in accordance with procedures set forth in 7 FAM 1100 Appendix A.
- c. For posthumous children, see 7 FAM 1180.
- d. If there is indication of fraud, consular officers must consult post's Fraud Prevention Manager and CA/FPP. Domestic passport agencies and centers must consult their Fraud Prevention Managers in accordance with 7 FAM 1170 Appendix E.
- e. If a spouse contacts a post denying paternity after a passport or Consular Report of Birth of a U.S. Citizen Abroad has been issued, obtain a sworn statement from the individual and contact CA/OCS/L (Ask-OCS-L@state.gov) for guidance.
- f. If the foreign birth certificate lists the husband, post must include in analysis of the case whether it is possible to obtain an amended birth certificate. This is not feasible in all cultures. For example, in some cultures a woman could be killed for such an admission.
- g. Questions about void and voidable marriages, polygamy and common law marriage are extremely rare but usually complex. They may be brought to the attention of CA/OCS/L (Ask-OCS-L@state.gov).

## **7 FAM 1170 APPENDIX E PASSPORT AGENCIES AND CENTERS ADJUDICATION AND QUESTIONS**

UNCLASSIFIED (U)

UNCLASSIFIED (U)  
7.1922

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

(CT:CON-576; 05-05-2015)

The issues addressed in this Appendix arise primarily in the overseas adjudication context. Should such a question come to light in an application under consideration by a passport agency or center, follow the adjudication guidance provided in 7 FAM 1160 Appendix E, but consult Passport Services' *Office of Adjudication, Policy* Division (CA/PPT/S/A/AP) at AskPPTAdjudication@state.gov and your Fraud *Program* Manager for guidance.

## **7 FAM 1180 APPENDIX E AND 1190 APPENDIX E UNASSIGNED**

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

## **7 FAM 1100 APPENDIX A DEOXYRIBONUCLEIC ACID (DNA) TESTING AND CITIZENSHIP**

*(CT:CON-576; 05-05-2015)  
(Office of Origin: CA/OCS/L)*

### **7 FAM 1110 APPENDIX A INTRODUCTION AND AUTHORITIES**

*(CT:CON-335; 06-22-2010)*

- a. This Appendix provides guidance to passport agencies and centers and U.S. embassies and consulates abroad about citizenship adjudication and the use of DNA testing to establish the requisite relationship between the U.S. citizen putative or alleged parent and a child claiming derivative U.S. citizenship.
- b. 7 FAM 1130 provides guidance regarding adjudication of a citizenship claim for a child born abroad attempting to establish a derivative claim to U.S. citizenship through a U.S. citizen parent. 7 FAM 1160 (under development) provides guidance about citizenship and Assisted Reproductive Technology (ART).
- c. The statutory requirement that an applicant may use DNA testing to prove the relationship between the U.S. citizen parent and the child is in Section 1993 RS, Section 201(g) of the Nationality Act of 1940 (NA), and Section 301(g) INA ("a person born ... of parents"). Determining whether a claimant meets this statute to establish a derivative claim to U.S. citizenship can usually be accomplished by review of documentary evidence provided by the claimant.
- d. Genetic testing is most commonly used to verify a parent/child relationship in conjunction with a citizenship case or an immigrant visa application, when other forms of credible evidence are insufficient (9 FAM 42.44, Notes). However, due to the expense, complexity, and logistical delays inherent in parentage testing, genetic testing should be used only if other credible proof does not establish to the satisfaction of the adjudicating officer that the relationship exists.
- e. When genetic testing appears warranted, the consular officer or passport specialist (with concurrence of the supervisor) may advise the applicant that genetic testing may establish the validity of the relationship. Such testing is entirely voluntary, and all costs of testing and related expenses must be borne by the applicant and paid to the laboratory in advance. The applicant must be cautioned that submitting to testing does not at all guarantee the subsequent issuance of a U.S. passport, and that the results of DNA testing may rather preclude issuance. Standard language for communicating with applicants about

**7 FAM 1100 Appendix A** Page 1 of 12

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

DNA testing is available in the Passport Services' Information Request Letter (IRL). General guidance about CA requirements for DNA parentage testing is available on the CA Internet page.

- f. Who should be tested: If at all possible, the child, mother, and father should all be tested. In the event of the death of one or both parents, the AABB-accredited testing facility will provide specific guidance regarding the utility of testing of other relatives.

**NOTE:** Why test the mother? DNA relationship/parentage testing favors testing the child and both the mother and father to ensure that the child is actually the child of the two alleged parents—that is, to rule out cousins, unrelated children, etc. The Bureau of Consular Affairs (CA) follows this practice even if the citizenship claim is through the U.S. citizen father. Including the biological mother in any DNA paternity test strengthens test results. Whenever possible, the mother should submit DNA samples as a participant. Testing the mother's DNA increases the likelihood of a conclusive result for any DNA test, including DNA tests for paternity, siblings, grandparents, etc.

- g. 7 FAM 1100 Appendix A authorities are:
- (1) INA Section 301 (8 U.S.C. 1101);
  - (2) INA Section 309 (8 U.S.C. 1109);
  - (3) 22 CFR 50.2: Determination of U.S. nationality of persons abroad;
  - (4) 22 CFR 51.40: Burden of proof is upon the applicant to establish a claim to U.S. citizenship;
  - (5) 22 CFR 51.41: Every application shall be accompanied by evidence of the U.S. nationality of the applicant;
  - (6) 22 CFR 51.54: Requirement of additional evidence of U.S. citizenship;
  - (7) 22 CFR 51.28: Any adjudicating official may require additional evidence of identity;
  - (8) Section 201(g) of the Nationality Act of 1940 (NA); and
  - (9) Section 1993 of the Revised Statutes (RS).

## 7 FAM 1120 APPENDIX A BURDEN OF PROOF FOR ESTABLISHING U.S. CITIZENSHIP AND DNA TESTING

*(CT:CON-335; 06-22-2010)*

- a. Applicants for U.S. passports and Consular Reports of the Birth Abroad of a Citizen of the United States have the burden of proving by a preponderance of

7 FAM 1100 Appendix A Page 2 of 12

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

the evidence, also known as balance of probabilities, their identity (22 CFR 51.23) and that they are citizens of the United States (22 CFR 51.40). The standard is met if the proposition is more likely to be true than not true. Effectively, the standard is satisfied if there is greater than a 50 percent chance that the proposition is true. Nothing contained in 22 CFR 51.42 through 51.46 shall prohibit the consular officer or the passport specialist from requiring an applicant to submit additional evidence deemed necessary to meet this standard to establish U.S. citizenship or nationality (see 22 CFR 51.45).

- b. 8 U.S.C. 1409 (a)(1) (INA 309(a)(1)) provides that for a person born abroad out of wedlock to a U.S. citizen father, a blood relationship between the person and the father is established by clear and convincing evidence. This is an intermediate level of burden of persuasion sometimes employed in U.S. civil procedure. In order to prove something by "clear and convincing evidence" the party with the burden of proof must convince the trier of fact that it is substantially more likely than not that the thing is in fact true. This is a lesser requirement than "proof beyond a reasonable doubt" which requires that the trier of fact be close to certain of the truth of the matter asserted, but a stricter requirement than proof by "preponderance of the evidence," which merely requires that the matter asserted seems more likely true than not.
- c. DNA paternity/maternity testing reliability has advanced to the industry-accepted standard of 99.5 percent. When the mother and father of the child are tested, consular officers may only accept test results reporting a 99.5 percent or greater degree of certainty with respect to paternity/maternity in citizenship cases. However, a test that supports paternity/maternity to a degree less than 99.5 percent generally can be followed by retests to determine if the 99.5 percent accuracy can be achieved.

**NOTE:** It is also possible to reach 99.5% certainty or better on sibling tests, although it is not possible to do it consistently enough for the testing to be conclusive.

- d. In cases where an alleged mother or father are deceased, missing, or unavailable to participate in genetic testing, both of the paternal or maternal grandparents can be tested in order to determine the likelihood of grandparentage. In a case where both grandparents are not available to contribute samples, a Family Reconstruction Test must take place. Reconstruction can include any known biological family members of the possible father or possible mother, including their siblings. This type of DNA testing is referred to as avuncular DNA analysis. Unlike a DNA paternity test which will always provide a conclusive result, avuncular DNA tests are different. It is not possible to achieve a 99.5 percent result in avuncular DNA analysis. However, CA will accept as probative DNA test results involving siblings, grandparents, aunts and uncles, etc., for U.S. citizenship, if the testing facility confirms that such test is able to produce meaningful results.

UNCLASSIFIED (U)



UNCLASSIFIED (U)  
7-1920

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

**NOTE:** This differs from the 9 FAM 42.44 N4, paragraph c, policy guidance due to the differing burden of proof and evidentiary standard in citizenship cases.

## 7 FAM 1130 APPENDIX A SELECTION OF AN AABB LAB

*(CT:CON-407; 06-29-2012)*

- a. CA requires that any DNA for citizenship purposes must be processed by a lab that is accredited by the American Association of Blood Banks (AABB).
- b. Names of AABB accredited labs are available on the AABB Web page.
- c. The list of laboratories on that site is based on the physical location of the lab's headquarters but that the operations of most labs are not restricted to that location.
- d. Many of the laboratories operate nationally, therefore the applicant/parent should be able to choose from the full list of AABB laboratories which conduct DNA testing.
- e. Claimant must select and contact the AABB-accredited lab: The claimant must select an AABB-accredited laboratory, contact the lab directly, and make the necessary arrangements for conducting the genetic test, including payment for all tested parties.
- f. Third-party vendors prohibition:
  - (1) Under no circumstances can claimants use third-party vendors to select their lab, arrange appointments, or transport the specimens outside of the lab chain-of-custody controls;

For example: An applicant must independently choose his or her own AABB lab, make the appointment, and go to the collection site directly. The collection site must then send the specimen to the main AABB lab testing site directly, through the lab's internal controlled system.

- (2) Third-party vendors include, but may not be limited to, private companies or clearinghouses that serve as intermediaries to make appointments on behalf of claimants; and
  - (3) The authority for collecting DNA specimens in the United States resides exclusively with the AABB labs and their directly affiliated collection sites.
- g. Test kits may not be sent to claimants: Under no circumstances should claimants, including those in the United States, directly receive test kits for themselves or derivative claimants. The DNA samples for the claimant must be collected at the designated AABB testing site, lab, or clinic (generally in the

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

United States). The AABB laboratory selected by the claimant will send a test kit, including a pre-paid, pre-addressed return envelope and explicit sampling instructions, directly to the consular section for testing of a claimant.

- h. Reporting anomalies: Posts must report to CA/OCS/L any anomalies, such as claimants traveling unusual distances to get to a collection site when other collection sites are available closer to them. CA/OCS/L will coordinate with FPP in the event there are indications of possible fraud.

## **7 FAM 1140 APPENDIX A DNA TESTING COLLECTION METHOD**

*(CT:CON-335; 06-22-2010)*

- a. DNA testing is now used in over 99 percent of all parentage tests performed by AABB accredited labs.
- b. The types of tests used by the DNA scientific community continues to evolve, but currently, the Polymerase Chain Reaction-Short Tandem Repeat (PCR-STR) and the Restriction Fragment Length Polymorphism (RFLP) methods are the two tests that the Department believes to be the most advanced, offering the best results.
- c. Preferred specimen collection technique:
  - (1) The preferred specimen collection technique for DNA testing is by buccal (cheek or mouth cavity) swab. When buccal swabs are taken, cells are collected from the inside cheek using a long cotton swab. Cheek swabs are preferred over blood samples because they are easier to collect, noninvasive, painless, and easier to ship. The accuracy of a DNA test conducted with a cheek swab is equivalent to a test conducted using a blood test, and does not present the same biohazards as blood samples. Inform panel physicians and lab technicians that this is the preferred collection method for citizenship cases. The physicians or technicians collecting the specimens should follow the same CDC standards as they would if collecting swabs at their clinic or lab; and
  - (2) Under no circumstances should consular officers or domestic passport agencies or centers attempt to collect samples themselves.

## **7 FAM 1150 APPENDIX A STANDARDS FOR COLLECTION OF DNA SAMPLES ABROAD**

*(CT:CON-449; 03-25-2013)*

- a. Though advanced, DNA results are only accurate if strict standards are followed for every sample collected. The AABB establishes standards for relationship

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

testing, and the Department of State follows these standards for use in the collection of DNA samples abroad to verify relationships for citizenship purposes.

- b. There are four essential elements that must be understood and maintained to protect the integrity of the DNA collection and relationship testing procedures:
  - (1) As DNA testing is voluntary, the individual being tested must consent to the testing;
  - (2) The identity of the individual being tested must be verified and confirmed by a cleared American;
  - (3) The integrity of the sample must be maintained through a strict chain of custody; and
  - (4) The actual collection of the DNA sample must be witnessed by a cleared U.S. citizen Department of State employee.
- c. Effective immediately, all DNA collections abroad must take place at the embassy or consulate and not at the panel physician's office or other lab facility. Department of State medical officers may not collect biological samples for genetic testing purposes. Furthermore, under no circumstances should consular officers attempt to collect samples themselves. All sample collection must be done by medical personnel employed by the panel physician.
- d. Each panel physician's office must recommend several lab technicians who will then be cleared and approved by post. The completion of a CLASS name check and review of previous visa application(s) and RSO records is the minimum required clearance to approve a lab technician for operation inside the consulate. Post should take factors including multiple visa refusals into consideration prior to clearing the technician for conducting DNA testing.
- e. Post must choose a site in the consular section for collection of the buccal swab. The collection must be witnessed by the consular officer or another cleared American, and in certain circumstances, section management as well. Posts may wish to explore privacy options, including (but not limited to) privacy booths, interview windows with a curtain separator for privacy, or a regular interview window. Regardless of the final collection location, both the applicant and medical technician must be in the immediate presence of the cleared U.S. citizen employee witness at all times.
- f. Any U.S. citizen employee of the consular section, possessing a valid "Secret" or higher national security clearance may serve as the cleared U.S. citizen witness for DNA tests. At post's discretion, locally employed staff (LES) may accompany the cleared U.S. citizen to witness the collection. However, a cleared U.S. citizen must be the official witness of DNA testing procedures.
- g. Post must observe the guidelines outlined herein in order to maintain clear chain of custody, including a log to monitor accountability through all steps.

UNCLASSIFIED (U)

**UNCLASSIFIED (U)**

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

h. Sample DNA accountability log:

Date Kit Received	Case Number	Sur - name	Giv en Name	Kit Num ber and Lab Name	ACO Signat ure	Date of DNA Kit Sampl ing	Name and Initial s of Cleared American Witne ss Who Recei ved DNA Kit	ACO Sign a- ture	Date Kit Deliver ed to Shippi ng-Compa ny

- i. DNA procedures should be posted on the post's Web sites as general information to the public, and updated annually. Any questions about what should be included in this information should be directed to CA/OCS/L (Ask-OCS-L@state.gov).
- j. Any additional post-specific internal controls and procedures involving DNA testing, not included in this Appendix must be approved in advance by CA/OCS/L and CA/FPP.

## **7 FAM 1160 APPENDIX A GENETIC TESTING PROCEDURES**

*(CT:CON-335; 06-22-2010)*

- a. Selection of a laboratory: The applicant and others to be tested must select the AABB-accredited laboratory, contact the laboratory directly, and make the necessary arrangements (including payment) for conducting the genetic test. The use of an AABB-accredited laboratory is required for applications before domestic passport agencies and centers and U.S. embassies and consulates abroad.
- b. Domestic Passport Agency/Center procedures: Domestic passport agencies/centers do not observe the collection of samples and procedures established by the AABB-accredited testing facility should be followed for collection of testing samples domestically. This is the responsibility of the

**UNCLASSIFIED (U)**

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

laboratory conducting the testing in coordination with the facility collecting the sample. If a sample is to be collected from a family member abroad, the procedures outlined in this section should be followed.

**NOTE:** Domestic passport agencies/centers may only accept DNA tests conducted by an AABB-accredited testing facility performed on samples taken by local technicians approved/authorized by the AABB.

- c. DNA testing procedures at U.S. embassies and consulates:
- (1) The applicant/putative parent selects AABB-accredited lab;
  - (2) The selected AABB lab sends the applicant DNA testing kit(s) directly to the consular section;
  - (3) The accountable consular officer (ACO) checks in all test kits on the DNA accountability log upon receipt in the consular section. This consists of ensuring that the kit has not been opened or damaged and if the kit includes a seal, confirming the kit seal is intact, adding the kit to the accountability log stored in the ACO safe, and storing it in the ACO safe or a bar-lock cabinet. The safe where the DNA kits are stored must be accessible only to the ACO or designated backup;
  - (4) Once the ACO records receipt of the collection kit, the consular section must contact the applicant to schedule an appointment date for DNA collection and tell the applicant that he or she must bring his or her passport and a photograph;
  - (5) On the DNA collection appointment date, a lab technician from the panel physician's office must come to the consular section to collect the DNA sample(s);
  - (6) Immediately prior to the testing, the ACO checks the test kit out of the safe and gives it to the cleared U.S. citizen employee witness who will witness the collection, recording the cleared U.S. citizen employee witness's name in the accountability log. The witness verifies that the kit is unopened, and if applicable, the seal is intact. The cleared U.S. citizen employee witness is responsible for the custody of the testing materials until he or she applies the security seal to the mailing package;
  - (7) The cleared U.S. citizen employee witness should review the instructions sent by the AABB lab prior to the DNA collection, so as to be familiar enough with the sample collection technique to recognize if it is not being executed properly by the lab technician;
  - (8) At the time of testing, the cleared U.S. citizen employee witness must have the medical technician and applicant/beneficiary come to the interview window or designated location within the consular section, one applicant at a time;
  - (9) The cleared U.S. citizen employee witness must personally verify the

UNCLASSIFIED (U)

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

identity of the donor through:

- (a) Presentation of passport; and
  - (b) Verifying that the applicant signs on the back of his or her photograph for attachment to the chain-of-custody document(s);
- (10) Once the identity of the applicant has been confirmed, the cleared U.S. citizen employee witness must do the following:
- (a) Collect the signed applicant photograph and supporting documents from the applicant;
  - (b) Provide the sealed DNA kit to the lab technician or panel physician;
  - (c) Witness the collection of the buccal swab from the donor/applicant;
  - (d) Legibly record required information on chain-of-custody documents (this function may not be performed by LES or an outside party);

**NOTE:** Minimal chain of custody requirements include, but are not limited to:

Date and time of the sample collection;

Name and signature of lab technician conducting the swabs. Name is verified with the technician's ID badge or card;

Name and signature of the cleared American witness; and

Other specific information required by the AABB laboratory as indicated in the kit instructions.

- (e) Witness the lab technician placing the completed DNA sample into the protective sleeve or pouch provided by the lab, accept the specimen from the lab technician or panel physician, and personally seal and sign the sample in accordance with the kit instructions;
- (f) Seal the specimen in the pre-paid shipping envelope provided by the lab. The sample must be in the direct possession of the same cleared U.S. citizen employee who witnessed the sample collection until the return mailing envelope is sealed in accordance with the instructions from the lab or shipping company;
- (g) Record in the applicant's case notes:
  - (i) His or her name as witness to the collection;
  - (ii) Date and time of sample collection;
  - (iii) The name of the lab technician (from ID badge or card);
  - (iv) The name of the lab or panel physician where the technician is employed; and

UNCLASSIFIED (U)

**UNCLASSIFIED (U)**

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

- (v) A clear description of the relationship(s) being tested (e.g., probability that the tested mother or father is the mother/father of the child tested);
  - (h) Scan all chain-of-custody documents into the American Citizen Services (ACS) or Passport Lookout Tracking System (PLOTS) systems and associate them with the applicant's case. Be sure that the information provided to the AABB lab clearly defines the relationship(s) to be tested. The request should be specific, not "are the parties related?", but rather "is the individual the mother/father of the tested applicant?"; and
  - (i) The passport application (or Report of Birth Application) scanned into the Passport Issuance Electronic Record System (PIERS) must include the DNA test results and all associated documents; and
- (11) For reporting purposes, DNA cases must be annotated in the text/comments fields as referrals to the Fraud Prevention Unit (FPU) in both the ACS and TDIS systems. The case must indicate that the reason for the referral is that the case is pending DNA testing.

## **7 FAM 1170 APPENDIX A STORING AND SHIPPING OF DNA SAMPLES**

*(CT:CON-335; 06-22-2010)*

- a. Once the test is completed, the DNA samples must be placed into the pre-paid shipping envelope, sealed, and shipped as soon as possible—preferably the same day. The shipping envelope may not be shipped through the local mail services and must be shipped by a company similar to FedEx or DHL. The cleared U.S. citizen employee must ensure that all documentation, including supporting forms, photos of the donors, chain-of-custody documents, etc., requested in the test kit, accompany the specimen. Once the kit is sealed, the cleared U.S. citizen employee is responsible for delivering or ensuring pick-up of the test kit(s) by the mail service. He or she is responsible for the kits until they are turned over for shipment.
- b. All DNA samples must be shipped within 24-48 hours after collection is complete. If kits cannot be shipped on the same day the sample is collected, then the sample must be returned to the accountable consular officer (ACO) for storage until it is released for shipment. The DNA sample kit and all chain-of-custody materials are controlled items and must be stored securely, at minimum in a bar-lock safe, until the kit is shipped back to the U.S.-based lab.
- c. When the test kit is shipped, a receipt for all kits must be collected from the shipper, the shipment date and tracking number must be entered into the case notes, and the air bill must be scanned into the appropriate case records.

**UNCLASSIFIED (U)**

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

- d. Under no circumstances may posts use the diplomatic pouch or local mail services to return samples to the testing laboratory.

## **7 FAM 1180 APPENDIX A COMMUNICATING THE TEST RESULTS**

*(CT:CON-335; 06-22-2010)*

- a. In all phases of testing, communication of the results of the test must be directly between the laboratory and the consular officer and/or U.S. citizen State Department employee designated by the Assistant Secretary for Consular Affairs, including professional adjudication specialists at posts abroad or the senior passport specialist at a domestic passport agency/center and the laboratory.
- b. AABF laboratories will send all test results directly to consular sections or passport agencies/centers in envelopes sealed with the same type of security tape used when the samples are taken. Only a consular officer or U.S. citizen State Department employee designated by the Assistant Secretary for Consular Affairs, including professional adjudication specialists at posts abroad or the senior passport specialist at a domestic passport agency/center may open the sealed envelopes and perform step (1) below:
- (1) A cleared U.S. citizen receives and opens the sealed DNA results letter, and enters the results of the test into the case notes annotated on the application and citizenship worksheet, taking care to record the probability of relationship determined by the testing;
  - (2) After the results are entered into the case notes by a cleared American, the results must be scanned into the case record. For posts abroad, an LES may do the scanning provided that the results have already been entered into the case notes; and
  - (3) Since the applicant bears full financial responsibility for testing, we have no objection to that person also receiving a copy of the results directly from the laboratory or panel physician. Post should not give copies of DNA test results directly to applicant or other parties without express consent from the Department.

## **7 FAM 1190 APPENDIX A REPORTING POSSIBLE COMPROMISE OF DNA SAMPLE OR RESULTS**

*(CT:CON-576; 05-05-2015)*

- a. Under no circumstances can any other party, including those being tested, be permitted to carry or transport biological samples or test results.

UNCLASSIFIED (U)



**UNCLASSIFIED (U)**

U.S. Department of State Foreign Affairs Manual Volume 7  
Consular Affairs

- b. If the cleared U.S. citizen employee witness or any other member of the consular team observes or has any reason to suspect that the test specimen or results have been tampered with, or may have even momentarily or inadvertently been subject to a compromised chain of custody, immediately notify post management, CA/OCS/L and CA/FPP. In the case of an actual or suspected breach of custody, post must suspend processing of the citizenship case until it has consulted with, and obtained clearance from, CA/OCS/L and CA/FPP.
- c. For domestic applications, passport specialists must immediately advise the agency/center fraud prevention manager (FPM). In the case of an actual or suspected breach of custody, the agency or center must suspend processing of the citizenship case until it has consulted with, and obtained clearance from the fraud prevention manager and CA/PPT/L.
- d. Any procedural questions about this policy guidance should be directed to CA/OCS/L (Ask-OCS-L@state.gov) and CA/FPP for posts abroad; and to *the Office of Adjudication, Policy Division (CA/PPT/S/A/AP)* (AskPPTAdjudication@state.gov) for passport agencies and centers.

**UNCLASSIFIED (U)**

# Defendants' Exhibit 1

(Defendants' Motion for Summary Judgment)

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

8 Theodore Edelman (pro hac vice)  
9 edelmant@sullcrom.com  
10 Jessica Klein (pro hac vice)  
11 kleinj@sullcrom.com  
12 125 Broad Street  
13 New York, NY 10004-2498  
14 Telephone: (212) 558-4000  
15 Facsimile: (212) 558-3588

16 IMMIGRATION EQUALITY  
17 Aaron C. Morris (pro hac vice)  
18 amorris@immigrationequality.org  
19 40 Exchange Place, Suite 1300  
20 New York, NY 10005-2744  
21 Telephone: (212) 714-2904

22 *Attorneys for Plaintiffs*

23 UNITED STATES DISTRICT COURT  
24 CENTRAL DISTRICT OF CALIFORNIA

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

28 Plaintiffs,

v.

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

Defendants.

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

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

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

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

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

9 **Interrogatory No. 8:**

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

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

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

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

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

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

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

2 Plaintiffs incorporate their Objections by reference.

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

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

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

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

9 Plaintiffs incorporate their Objections by reference.

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

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

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

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

18 Plaintiffs incorporate their Objections by reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Plaintiffs incorporate their Objections by reference.

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

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

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

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

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

# Defendants' Exhibit 2

(Defendants' Motion for Summary Judgment)





1 **Request for Admission 10:**

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

5 **Response:**

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

14 **Request for Admission 11:**

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

20 **Specific Objection:**

21 Defendants object to this RFA because it calls for a legal conclusion, and  
22 because it is overly broad, particularly insofar as it seeks a response regarding  
23 U.S. passport applications, which include U.S. passport applications for  
24 naturalized citizens as well as for individuals who acquired citizenship at birth  
25 because they were born in the United States.  
26  
27  
28

1            Response:

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

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

20  
21           **Request for Admission 12:**

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

25           Response:

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

1            Response:

2            Based on the documents provided to Defendants in connection with Plaintiff  
3            E.J. D-B.'s CRBA and U.S. passport applications, and the CRBA and U.S.  
4            passport applications of A.J. D-B, Defendants admit this statement.

5            **Request for Admission 17:**

6            Admit that Andrew meets all residency requirements of Section 301(g).

7            Response:

8            Based on the documents provided to Defendants in connection with Plaintiff  
9            E.J. D-B.'s CRBA and U.S. passport applications, Defendants admit this  
10           statement.

11           **Request for Admission 18:**

12           Admit that Andrew and Ethan are California residents.

13           Response:

14           Based on the testimony provided by Plaintiff Andrew Dvash-Banks at his  
15           deposition, Defendants admit that Andrew and E.J. D-B are currently  
16           residents of California.  
17

18           **Request for Admission 19:**

19           Admit that Andrew and Elad are married.

20           Specific Objection:

21           Defendants object to this RFA to the extent it calls for a legal conclusion.  
22

23           Response:

24           Subject to and without waiving the above-stated objection, based on  
25           deposition testimony provided by Andrew Dvash-Banks, and the marriage  
26           certificate submitted to the Department of State with the application materials  
27  
28

# Defendants' Exhibit 3

(Defendants' Motion for Summary Judgment)

1 JOSEPH H. HUNT  
Assistant Attorney General  
2 JOSHUA E. GARDNER  
Assistant Director  
3 VINITA B. ANDRAPALLIYAL  
Vinita.b.andrapalliyal@usdoj.gov  
4 Trial Attorney  
LISA ZEIDNER MARCUS  
5 lisa.marcus@usdoj.gov  
Senior Counsel

6 UNITED STATES DEPARTMENT OF JUSTICE  
7 Civil Division  
Federal Programs Branch  
8 P.O. Box 883  
Washington, DC 20044  
9 Tel: (202) 514-3336

10 *Counsel for Defendants*

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

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

17 v.

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

) Case No. **2:18-cv-00523-JFW (JCx)**  
) **Defendants’ First Set of Responses to**  
) **Plaintiffs’ First Set of Interrogatories**  
)  
) October 5, 2018

21 Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules  
22 of the United States District Court for the Central District of California, Defendants,  
23 the U.S. Department of State and Michael R. Pompeo, sued solely in his official  
24 capacity as Secretary of State (collectively, “the Department” or “Defendants”),  
25 hereby respond to Plaintiffs’ First Set of Interrogatories (the “Interrogatories”).  
26  
27  
28

1 19. Defendants specifically decline to produce privileged information.  
2 Defendants further object to any requirement that it produce a privilege log for  
3 privileged material not otherwise properly within the scope of discovery and/or as  
4 to which no privilege log would be required pursuant to Federal Rule of Civil  
5 Procedure 26(b)(5).

6 20. Each and every response contained herein is subject to the above  
7 objections, which apply to each and every response, regardless of whether a specific  
8 objection is interposed in a specific response. The making of a specific objection in  
9 response to a particular request is not intended to constitute a waiver of any other  
10 objection not specifically referenced in the particular response.

11 21. Defendants specifically reserve the right to make further objections as  
12 necessary to the extent additional issues arise regarding the meaning of terms in  
13 and/or information sought by discovery.

14  
15 **III. OBJECTIONS AND RESPONSES TO SPECIFIC**  
16 **INTERROGATORIES**

17 **INTERROGATORY NO. 1**

18 *Identify each Person You believe to have been involved in any determination*  
19 *of, or Communications Concerning, any application for a CRBA or U.S. passport*  
20 *for Plaintiff Ethan Dvash-Banks. With respect to each such Person, Identify his or*  
21 *her role or involvement and any Communications responsive to this interrogatory.*

22 **Objections:**

23 Defendants object to this Interrogatory as unreasonably vague, overly broad,  
24 unduly burdensome, not relevant to any party's claim or defense, and  
25 disproportionate to the needs of the case because, for example, (a) it could be read  
26 as not limited in time to the period of the adjudication at issue, and (b) it could be  
27 read as asking Defendants to identify "each Person" Defendants "believe to be  
28 involved in any... Communications Concerning..." the Dvash-Banks applications  
for CRBAs and U.S. passports, regardless of whether such Persons were engaged in

1 the adjudication of the Dvash-Banks applications for CRBAs and U.S. passports, or  
2 even employed by Defendants, and thus would have Defendants identify Plaintiffs  
3 themselves, Plaintiffs' counsel, and other persons who were not actually involved in  
4 the adjudication of those applications. It is unreasonable to burden Defendants with  
5 ascertaining who outside of the Department of State might have been involved with  
6 communications concerning the applications. It is also unreasonable and not relevant  
7 to any party's claim or defense to burden Defendants with identifying persons who  
8 may have communicated about the applications after the adjudications had  
9 concluded, and/or to identify persons who may have communicated about the  
10 applications in the course of responding to this litigation. Defendants further object  
11 to this Interrogatory to the extent that it seeks the identification of non-fact witnesses  
12 who may nonetheless possess relevant knowledge, such as attorneys who act as  
13 agency counsel for the instant action. For the purposes of responding to this  
14 Interrogatory, Defendants construe the Interrogatory as seeking to know each  
15 Department of State employee or contractor involved in the underlying adjudication,  
16 and as further requiring that Defendants identify each such person's "role or  
17 involvement" and each such person's related communications.

18 Defendants further object to this Interrogatory to the extent that it seeks (a)  
19 communications or information protected by the attorney-client privilege or (b)  
20 communications or information protected by the deliberative process privilege.

21 **Answer:**

22 Subject to and without waiving the above-stated objections—including both  
23 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–  
24 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

25 On January 24, 2017, Consulate Toronto received an "Application for  
26 Consular Report of Birth Abroad of a Citizen of the United States of America" for  
27 Ethan Dvash-Banks ("the CRBA application"), and also received an "Application  
28

1 for U.S. Passports” for Ethan (the “U.S. passport application”) (collectively, the  
2 “applications”). The applications were adjudicated between the time of their receipt  
3 and March 2, 2017, at which time Consulate Toronto issued a letter denying the  
4 applications. That letter was disclosed to Plaintiffs in Defendants’ initial disclosures.  
5 The following staff were involved in the determination of, and communications  
6 about, the applications:

- 7 • Frankie Terri Day, Consular Officer, Consulate Toronto;
- 8 • Margaret Ramsay, Consular Officer, Consulate Toronto;
- 9 • Larilyn Reffett, American Citizen Services Chief, Consulate Toronto;
- 10 and
- 11 • Ann Marie Warmenhoven, Fraud Prevention Unit Officer, Consulate  
12 Toronto.

13 For the above listed persons, Defendants describe their role and diplomatic  
14 titles as follows. Ms. Day adjudicated the applications and in doing so consulted with  
15 her supervisor, Ms. Reffett. During the relevant time period, Ms. Day’s diplomatic  
16 rank was that of “Vice Consul.” Ms. Ramsay provided the adjudicating consular  
17 officer (Ms. Day) with relevant FAM references. During the relevant time period  
18 (and continuing through today), Ms. Ramsay’s diplomatic rank was that of “Consul.”  
19 Ms. Reffett supervises American Citizen Services functions at the U.S. Consulate in  
20 Toronto, and has served in this position since August 2016. With respect to the  
21 underlying adjudication, Ms. Reffett supervised Ms. Day and discussed the  
22 adjudication with her. During the relevant time period (and continuing through  
23 today), Ms. Reffett’s diplomatic rank was that of “Consul.” Ms. Warmenhoven  
24 reviewed DNA results submitted with the CRBA application and entered findings  
25 into the appropriate Department database, and advised the adjudicating consular  
26 officer (Ms. Day) of those results.





1 claim or defense to burden Defendants with identifying persons who may have  
2 general knowledge bearing on the process used by Consulate Toronto in specifically  
3 adjudicating the CRBA and U.S. passport applications for Ethan. Defendants further  
4 object to this Interrogatory to the extent that it seeks the identification of non-fact  
5 witnesses who may nonetheless possess relevant knowledge, such as attorneys who  
6 act as agency counsel for the instant action. For the purposes of responding to this  
7 Interrogatory, Defendants construe the Interrogatory as seeking to know each  
8 Department of State employee or contractor involved in the underlying adjudication,  
9 such that he or she would have knowledge or information concerning the process by  
10 which, the reasons why, or the basis on which, Consulate Toronto denied the  
11 applications; Defendants further construe the Interrogatory as requesting that  
12 Defendants identify each such person's "knowledge and/or the information he or she  
13 possesses."

14 Defendants further object to this Interrogatory to the extent that it seeks (a)  
15 communications or information protected by the attorney-client privilege or (b)  
16 communications or information protected by the deliberative process privilege.

17 **Answer:**

18 Subject to and without waiving the above-stated objections—including both  
19 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–  
20 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

21 Defendants identify the following persons as having knowledge or  
22 information concerning the process by which, or the reasons why, or basis on which,  
23 the Department—and in particular Consulate Toronto—denied the applications for  
24 a CRBA and U.S. passport for Ethan:

- 25 • Frankie Terri Day. Ms. Day served as the adjudicating consular  
26 officer for the underlying adjudication. Relevant knowledge or  
27 information possessed by Ms. Day is restricted to any knowledge or  
28

1 information she possessed in her official capacity as a Consular Officer,  
2 Consulate Toronto. Such knowledge would include awareness of the  
3 specific process by which the applications were adjudicated, and  
4 awareness of the reasons and basis for the denial of those applications.

- 5 • Margaret Ramsay. Ms. Ramsay provided the adjudicating consular  
6 officer (Ms. Day) with relevant FAM references. Relevant knowledge or  
7 information possessed by Ms. Ramsay is restricted to any knowledge or  
8 information she possessed/possesses in her official capacity as a Consular  
9 Officer, Consulate Toronto. Such knowledge would include general  
10 awareness of the process by which the applications were adjudicated.
- 11 • Larilyn Reffett. Ms. Reffett served as the supervisor for the  
12 adjudicating consular office (Ms. Day), and supervised the underlying  
13 adjudication, including by discussing the adjudication with Ms. Day.  
14 Relevant knowledge or information possessed by Ms. Reffett is restricted  
15 to any knowledge or information she possessed/possesses in her official  
16 capacity as American Citizen Services Chief, Consulate Toronto. Such  
17 knowledge would include awareness of the specific process by which the  
18 applications were adjudicated, and awareness of the reasons and basis for  
19 the denial of those applications. Additionally, as the Chief of American  
20 Citizen Services, Consulate Toronto, Ms. Reffett possess general  
21 knowledge regarding the process by which Consulate Toronto adjudicates  
22 CRBA and U.S. passport applications, as well as general knowledge  
23 regarding Consulate Toronto's interactions with U.S. citizens living in or  
24 visiting Toronto.
- 25 • Ann Marie Warmenhoven. Relevant knowledge or information  
26 possessed by Ms. Warmenhoven is restricted to any knowledge or  
27 information she possessed/possesses in her official capacity as Fraud  
28 Prevention Unit Officer, Consulate Toronto. Such knowledge would

1 include awareness of the basis for the denial of the applications, general  
2 awareness of the process by which the applications were adjudicated, and  
3 general awareness of fraud prevention concerns related to the adjudication  
4 of CRBA and U.S. passport applications.

5 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants  
6 state that the documents that Defendants will be producing in response to “Plaintiffs’  
7 First Set of Requests for Production of Documents” may identify additional persons  
8 responsive to this Interrogatory and/or the “knowledge and/or... information”  
9 possessed by persons responsive to this Interrogatory. Because the “Identif[ication]”  
10 of this information may be determined by examining, abstracting, or summarizing  
11 the documents and communications themselves, and because the burden of deriving  
12 or ascertaining this portion of Defendants’ answer will be substantially the same for  
13 either Defendants or the Plaintiffs, Defendants refer Plaintiffs to the documents that  
14 Defendants will be producing.

15  
16 **INTERROGATORY NO. 3**

17 *Identify and provide job titles and dates of employment at the State*  
18 *Department of each Person known to You (a) who is or was involved with or*  
19 *responsible for determining for the State Department the meaning or requirements*  
20 *of Section 301(g) or Section 309; or (b) who is or was involved with or responsible*  
21 *for drafting or approving protocols, procedures, practices, guidelines or policies*  
22 *(including provisions of the FAM) Concerning applications for a CRBA or U.S.*  
23 *passport for, or determinations of the citizenship status of, children born outside of*  
24 *the United States to United States citizens, between January 1, 2013 and the present.*

25 **Objections:**

26 Defendants object to this Interrogatory on the basis that it is compound and  
27 includes at least three discrete subparts: (A) “Identify and provide job titles and dates  
28 of employment... of each Person... who is or was involved with or responsible for  
determining for the State Department the meaning or requirements of Section  
301(g)...”; (B) “Identify and provide job titles and dates of employment... of each  
Person... who is or was involved with or responsible for determining for the State

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

1  
2  
3 ANDREW MASON DVASH-  
BANKS, et al.,

4 Plaintiffs,

5 v.

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

9 Defendants,

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

10  
11 Certification of Margaret S. Ramsay

12 I, Margaret S. Ramsay, declare that I assisted in the preparation of and  
13 provided information for the Department of State's responses to Plaintiffs'  
14 Interrogatory Nos. 1, 2, 3A, 3B, and 3C in the above-captioned case. The responses  
15 are based upon information gathered in the course of my inquiry and information  
16 maintained in the regular course of agency activities, supplemented in some  
17 instances with personal knowledge. On behalf of the Department, I furnish the  
18 answers to Interrogatory Nos. 1 and 2; also on behalf of the Department, I furnish  
19 those portions of the answers to Interrogatory Nos. 3A, 3B, and 3C that directly  
20 relate to the U.S. Consulate General, Toronto.

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

23  
24 M SRamsay  
25 Margaret S. Ramsay  
26 Consul

27  
28 10/5/18  
Date

1 JOSEPH H. HUNT  
Assistant Attorney General  
2 JOSHUA E. GARDNER  
Assistant Director  
3 VINITA B. ANDRAPALLIYAL  
Vinita.b.andrapalliyal@usdoj.gov  
4 Trial Attorney  
5 LISA ZEIDNER MARCUS  
lisa.marcus@usdoj.gov  
6 Senior Counsel

7 UNITED STATES DEPARTMENT OF JUSTICE  
Civil Division  
8 Federal Programs Branch  
P.O. Box 883  
9 Washington, DC 20044  
Tel: (202) 514-3336

10 *Counsel for Defendants*

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

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

16 Plaintiffs,

17 v.

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

20 Defendants,

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

November 16, 2018

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

**With respect to 14(A):**<sup>12</sup>

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

**With respect to 14(B):**<sup>13</sup>

Defendants lack knowledge with respect the rationale, governmental interests, and concerns of the Department of Homeland Security and its components.

---

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

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

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

ANDREW MASON DVASH-  
BANKS, et al.,

Plaintiffs,

v.

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

Defendants,

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

**Certification of Bennett S. Fellows**

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

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



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

11-16-18  
Date



# Defendants' Exhibit 4

(Defendants' Motion for Summary Judgment)

1 JOSEPH H. HUNT  
 Assistant Attorney General  
 2 ANTHONY J. COPPOLINO  
 Deputy Director  
 3 LISA ZEIDNER MARCUS  
 Senior Counsel  
 4 Tel: (202-514-3336  
 lisa.marcus@usdoj.gov  
 5 VINITA B. ANDRAPALLIYAL  
 Trial Attorney  
 6 Tel: (202) 305-0845  
 vinita.b.andrapalliyal@usdoj.gov  
 7 UNITED STATES DEPARTMENT OF JUSTICE  
 Civil Division, Federal Programs Branch  
 8 P.O. Box 883  
 9 Washington, DC 20044  
 10

11 *Counsel for Defendants*

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

15 ANDREW MASON DVASH-  
 16 BANKS, et al.,  
 17 Plaintiffs,  
 18 v.  
 19 MICHAEL R. POMPEO, in his  
 official capacity as U.S. Secretary of  
 20 State, et al.,  
 21 Defendants.

No. CV 18-523-JFW-JC

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

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

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

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

3 \*\*\*

4 **Frances Day, Terri Nathine, (Pages 79:25 to 80:17)**

5 79

6 By Ms. Goldsmith:

7 25 Q. Was it your usual practice to ask every

8 80

9 1 same-sex couple whether they used assisted  
10 2 reproductive technology?

11 3 A. I would say that it was my policy to  
12 4 ask as many people as possible if they used  
13 5 assisted reproductive technology, whether they were  
14 6 same-sex or not, because there was an attempt to --  
15 7 to -- for me personally to not single anyone out.  
16 8 So it kind of -- and I -- this was something that  
17 9 I -- I can't say that I did 100 percent of the  
18 10 time, just because there are a lot of -- there are  
19 11 a lot of steps to this whole process. But just  
20 12 asking, okay, as a point of -- you know, as a  
21 13 matter of course, like, did you -- did you at some  
22 14 point use ART when you were conceiving your child?  
23 15 Just as a normal kind of question to incorporate  
24 16 into my number of hundreds of questions that I  
25 17 probably asked parents.

27 **Frances Day, Terri Nathine, (Pages 94:22 to 95:25)**

28 94

1 22 BY MS. GOLDSMITH:

2 23 Q. So you stated earlier that you were  
3 24 personally involved in the adjudication of A.J.'s  
4 25 and E.J.'s applications for U.S. passports and

5 95

6 1 CRBAs; is that correct?

7 2 A. Yes.

8 3 Q. And what was your role?

9 4 A. I was the adjudicating officer. So I  
10 5 took in the -- I -- after the local staff took in  
11 6 the documents, I reviewed them and I certified  
12 7 copies. I gave an oath to the parents and had them  
13 8 sign the documents. I interviewed them, and then I  
14 9 was ultimately responsible for approving or denying  
15 10 those applications.

16 11 Q. Was anyone else involved in that  
17 12 adjudication? And we'll start with E.J.

18 13 A. Can I just say for both of them --

19 14 Q. Sure.

20 15 A. -- because they were -- they were  
21 16 treated as -- I mean, all the information that's  
22 17 true for one -- in the initial interview phase, as  
23 18 far as I knew, it would have been true for the  
24 19 other. So no one was -- I mean, I consulted with  
25 20 my manager about the case, and she brought in  
26 21 Maggie Ramsay as well. But during the -- and  
27 22 during the interview, at a certain point, Maggie  
28 23 Ramsay did speak to the family. So in that way,

1 24 people were involved, but the ultimate decision was  
2 25 mine.

3  
4 **Frances Day, Terri Nathine, (Pages 103:14 to 109:17)**

5 103

6 By Ms. Goldsmith:

7 14 Q. So can you walk me through step by step  
8 15 what happened on the day that the Dvash-Banks  
9 16 family came in for their interview, so if you did  
10 17 anything to prepare for their coming in and then  
11 18 what happened next.

12 19 A. So I can't tell you everything  
13 20 specifically because I just don't recall, and I  
14 21 also can't tell you everything that -- when they  
15 22 came in because they deal with the local staff  
16 23 first.

17 24 From my understanding -- the way that  
18 25 things normally work is there is a stack of cases

19 104

20 1 in manila folders between the two ACS officers.  
21 2 And we take one when we're finished with the one  
22 3 we've done before. So it's random how it comes up.  
23 4 You take it off the stack, you open it, and you  
24 5 have the documents, whatever documents that they've  
25 6 presented to you.

26 7 Like I said before, you certify the  
27 8 documents. You check -- you look for where they  
28 9 need to sign and you prepare whatever -- you start

1 10 thinking about what kind of questions you're going  
2 11 to have to ask, what information you may need,  
3 12 which they may be able to give you during the  
4 13 course of the interview or you may need to pend  
5 14 them for documentation.

6 15 If somebody didn't bring a birth  
7 16 certificate for their child, I'm looking through  
8 17 that and I'll make a note, okay, I need to ask them  
9 18 if they have a copy, or I'm going to prepare a  
10 19 pending document sheet and mark birth certificate  
11 20 before they even come up to the window, and -- and  
12 21 then I can give it to them or chuck it if we don't  
13 22 need it or I have it all -- I had it after all.

14 23 So then you call -- then I would call  
15 24 them up to the window. You, again, give them an  
16 25 oath. You determine that they are the person that

17 105

18 1 they -- that is on the application and the kids --  
19 2 you look -- you have to look at the kids. At the  
20 3 time the boys were infants. They're like little  
21 4 potatoes. You know, they don't look like anybody  
22 5 in particular. So I'm looking at a photo. I'm  
23 6 looking at the baby. The baby is like two times  
24 7 the size by now.

25 8 So I don't remember if I would have  
26 9 asked them to sit -- if I would have asked --  
27 10 because I know that there's one AMCIT parent. So  
28 11 sometimes I would ask the non-AMCIT parent and the

1 12 kids to sit down, if they wanted to. Sometimes  
2 13 they prefer to stay at the window. I always gave  
3 14 them a choice, even the kids, because sometimes  
4 15 they like to be at the window and see what's going  
5 16 on. Obviously, these were babies, so they didn't  
6 17 care, but -- and then you start asking them  
7 18 questions.

8 19 I don't remember exactly what order I  
9 20 asked them questions in, when the idea of the  
10 21 assisted reproductive technology might have come up  
11 22 or exactly, you know, how it came up. But after --  
12 23 during that interview, after it was clear to me  
13 24 that they had used assisted reproductive  
14 25 technology, I had to talk to them about the process

15 106

16 1 of it, how were the kids conceived, what was the  
17 2 process of donating the sperm, et cetera.

18 3 It's a sensitive subject, not just  
19 4 because it's a medical situation, it's a sensitive  
20 5 subject for the families as well. So anytime, you  
21 6 know, you're asking somebody about how their kid  
22 7 was conceived, you try to be mindful that it is a  
23 8 sensitive topic. And that was true for, you know,  
24 9 same-sex or opposite-sex couples.

25 10 And then -- and then when it became  
26 11 clear to me that it was a possibility that the two  
27 12 boys would have -- one would be biologically  
28 13 related to one of the dads and one would be

1 14 biologically related to the other dad, it became  
2 15 clear that I would need -- and this was -- by the  
3 16 way, I'm going back to Larilyn and I'm asking,  
4 17 "Okay, this is the situation. What do we think  
5 18 about this?"

6 19 It became clear that I would need to  
7 20 ask for DNA to determine the biological link to the  
8 21 kids. And they were very upset. I remember them  
9 22 telling me that they didn't know and they didn't  
10 23 want to know, which I totally understand and I  
11 24 totally appreciate, but, unfortunately, for our  
12 25 purposes, it wasn't -- we weren't able to -- you

13 107

14 1 know, that wasn't an answer that we could accept.

15 2 They were getting worked up. They were  
16 3 yelling, and I was -- I mean, I've been yelled at  
17 4 before, you know. I've been yelled at in my job  
18 5 before. I've been yelled at in ACS before. I  
19 6 don't -- you know, I'm -- in this particular case,  
20 7 as a person, as an LGBT person, as a person who,  
21 8 like, understands, you know, how these things can  
22 9 feel when, you know, you have -- you have -- you're  
23 10 othered in a way. I was -- I did feel emotional,  
24 11 but I also understood that this was not coming at  
25 12 me. This was coming at the process, which I  
26 13 completely appreciated.

27 14 So, yeah, there was times -- there was  
28 15 a point where I did step away from the window.



1 16 They were getting worked up, and I could feel that  
2 17 kind of coming back, and I had to step away from  
3 18 the window. And, you know, at this point we had  
4 19 been going for a long time. We had gotten to the  
5 20 point where I was saying, "Look, we have to have  
6 21 this. This is required for us to determine the  
7 22 biological link. We don't -- you know, because of  
8 23 the information that you've given me today, because  
9 24 of the things that we've talked about, we don't  
10 25 have a choice in this. If you don't want to do

11 108

12 1 it" -- and I understood if they didn't want to --  
13 2 if they were thinking they didn't want to do it.  
14 3 I -- you know, if you don't want to do it, I  
15 4 understand. You don't have to continue the  
16 5 application.

17 6 And I suggested other ways for them to  
18 7 have both boys, you know, documented as AMCITs, and  
19 8 just giving them -- you know, and I -- when I -- if  
20 9 I have a denial, a lot of the times, I want to give  
21 10 the family other options because I know they want  
22 11 to get their -- they want their family to be  
23 12 together. So I say, "Okay, well, this might not  
24 13 work, but here's another option that you can  
25 14 consider," or, "Here's another option that you can  
26 15 consider," and -- you know, because I am in the  
27 16 habit of -- of -- you know, the vast majority of  
28 17 cases were approved. So I'm in the habit of

1 18 approving people for their -- kids for their  
2 19 citizenship, and I like doing it. I want to do it.  
3 20 But I'm bound by U.S. -- the law. You know, so --  
4 21 by the FAM regulation and by the INAs.

5 22 So at that point, you know, I had to  
6 23 explain to them, we had re-explained. They had  
7 24 told me what they thought. You know, there was  
8 25 yelling, and I -- I had to step away from the --

9 109

10 1 from the window, and I went back to my desk, and I  
11 2 sat down, and I cried a little bit.

12 3 And Maggie, seeing kind of how it was  
13 4 affecting me, went over and said, you know, "Look,  
14 5 you know, this is what it is. We can't really do  
15 6 anything about it. We have to -- you have to --  
16 7 you know, this is kind of what's required. These  
17 8 are your choices."

18 9 And at that point, there was nothing  
19 10 really else she could explain to them. They were  
20 11 dissatisfied with the answer, and, you know, I  
21 12 don't blame them for that. But at that point, it  
22 13 was kind of out of -- it was kind of out of our  
23 14 hands, so we -- and as far as I know, they -- they  
24 15 left dissatisfied with the answer, and we, you  
25 16 know -- and that was it for the interviews for that  
26 17 day.

27  
28

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

2 116

3 By Ms. Goldsmith:

4 12 wouldn't be able to issue or deny without that --

5 13 that DNA test, they were not happy with that.

6 14 Q. And how did you know that they weren't

7 15 happy at that point?

8 16 A. Well, they seemed upset. They were --

9 17 specifically, I think I spoke the most with Andrew,

10 18 the AMCIT dad. He was raising his voice. He

11 19 was -- I believe he began crying at one point.

12  
13 **Frances Day, Terri Nathine, (Page 217:9 to 217:24)**

14 217

15 By Ms. Zeidner Marcus:

16 9 Q. You don't remember if you looked at the

17 10 Foreign Affairs Manual?

18 11 A. I don't recall this specifically. I do

19 12 know that -- I do recall that -- actually, I will

20 13 say that I do recall looking at this -- the -- the

21 14 FAM provision, specifically. Because I got --

22 15 because -- it was either Maggie or Larilyn,

23 16 someone -- I don't remember who -- sent it to me.

24 17 And I was looking at it as -- as I conducted the

25 18 interview because you can kind of go step by step

26 19 and say, "Okay. Does this apply to you?" or

27 20 whatnot. So I -- I do remember having that up.

28 21 Q. You specifically remember looking at a

1 22 FAM provision during the time that you were  
2 23 interviewing the Dvash-Banks family's adults?

3 24 A. Yes.

4  
5 **Frances Day, Terri Nathine, (Page 220:3 to 220:6)**

6 220

7 By Ms. Zeidner Marcus:

8 3 Q. And to be clear, you recall looking at  
9 4 a FAM -- you do recall looking at a specific FAM  
10 5 provision, but you don't remember which one?

11 6 A. Correct.

12  
13 **Frances Day, Terri Nathine, (Pages 224:18 to 229:16)**

14 224

15 By Ms. Zeidner Marcus:

16 18 Q. Ms. Goldsmith asked you a series of  
17 19 questions at different points during today's  
18 20 deposition where she used the word "parents." Do  
19 21 you recall that?

20 22 A. I do.

21 23 Q. And do you recall when -- whether, when  
22 24 Ms. Goldsmith used that word, you understood or not  
23 25 the specific manner in which she was using the

24 225

25 1 word?

26 2 A. Sometimes.

27 3 Q. And other times?

28 4 A. And other times, not.

1           5       Q. And there were some times during your  
2           6 testimony in response to Ms. Goldsmith where you  
3           7 asked her to -- you told her you didn't understand  
4           8 some of the questions that she was asking. Do you  
5           9 remember, generally, saying that you don't  
6           10 understand?

7           11       A. Yes.

8           12       Q. Briefly, at a high level, can you  
9           13 summarize, to the extent you recall, the kinds of  
10          14 questions or the questions that she asked earlier  
11          15 that you did not understand?

12          16       A. Did you -- for example, did you  
13          17 determine that Person A or Person B was the parent  
14          18 of Person C? Does this document state that these  
15          19 people are the parents of this person? Things like  
16          20 that.

17          21       Q. Why did you not understand those  
18          22 questions?

19          23       A. Because as far as my recollection goes,  
20          24 and as far as my interaction with the family that  
21          25 we're discussing, it wasn't my determination -- I

22                               226

23          1 didn't -- I wasn't there to determine who were the  
24          2 parents of whom. My determination was, who has  
25          3 a -- does the AMCIT father have a biological link  
26          4 to the person -- the child that he is applying for?  
27          5 So that's something that I didn't feel comfortable  
28          6 kind of speculating about -- about.



1 9 which Ms. Goldsmith has been asking you earlier.  
2 10 Do you understand the term "parent" to be broad  
3 11 only when used in relation to the Dvash-Banks  
4 12 family's applications?

5 13 A. No.

6 14 Q. Do you generally understand, from your  
7 15 work in ACS and/or NIV, the term "parent" to be  
8 16 broad?

9 17 A. I would say yes.

10 18 Q. And can you explain that at a more  
11 19 general level, not referring to a specific case,  
12 20 why you think that term is broad?

13 21 A. Because you can say, for example,  
14 22 somebody is -- the legal guardian of somebody is  
15 23 not necessarily -- or the -- the legal guardian of  
16 24 somebody might not necessarily be -- might be  
17 25 called the parent.

18 228

19 1 There could be all kinds of  
20 2 relationships to a child that would be called a  
21 3 parent in different circumstances. Not to say that  
22 4 one is more definitive than the other, but there  
23 5 might be a lot of different relationships to the  
24 6 child, and the person might be called a parent.

25 7 Q. And coming back to the Dvash-Banks  
26 8 family's applications, did you understand it to be  
27 9 your role to determine whether Andrew and Elad  
28 10 Dvash-Banks were the parents of -- however that

1 11 term is defined -- of E.J. and A.J.?

2 12 A. No.

3 13 Q. It was not your role?

4 14 A. No.

5 15 Q. Why do you say that?

6 16 A. Because my role is to -- to apply the

7 17 circumstances of the FAM to the relationship

8 18 between the AMCIT father and the applicant. But

9 19 however they define "parent" is not for me to say.

10 20 Q. And by "they" here, you're talking

11 21 about this family?

12 22 A. About the family. About the parent.

13 23 About -- about Andrew and Elad.

14 24 Q. Did that -- so did that mean that you

15 25 didn't -- that you deferred -- does that mean

16 229

17 1 that --

18 2 Let me ask you this: When Andrew and

19 3 Elad Dvash-Banks were at your interview window

20 4 January 2017, did they describe themselves as the

21 5 parents to E.J. and A.J.?

22 6 A. Yes.

23 7 Q. And --

24 8 A. To the best of my recollection.

25 9 Q. And did you make any judgment that they

26 10 were incorrectly referring to themselves as

27 11 parents?

28 12 A. No.



1           13       Q. Did you accept -- for this particular  
2           14       situation, you accepted their representation that  
3           15       they were the parents of these children?

4           16       A. Yes.

5  
6           **Frances Day, Terri Nathine, (Pages 230:21 to 233:18)**

7                               230

8           By Ms. Zeidner Marcus:

9           21       Q. Am I correct that you testified about  
10          22       your role, and can you state for the record for  
11          23       clarity purposes what your role was as the  
12          24       adjudicating officer for these particular  
13          25       applications?

14                              231

15          1       A. For this particular case, my role was  
16          2       to determine if the AMCIT father can transmit  
17          3       citizenship to one or both of the children.

18          4       Q. Okay. And was it your role to assess  
19          5       whether there was a biological relationship between  
20          6       the AMCIT father and one or both of the applicant  
21          7       children?

22          8       A. Yes.

23          9       Q. And you sound fairly clear about that.  
24          10       Are you clear about that?

25          11       A. Yes.

26          12       Q. But you also earlier said that you  
27          13       don't remember whether you considered -- you don't  
28          14       remember, sitting here today, whether you

1 15 considered these children to have been born in  
2 16 wedlock or out of wedlock; is that also correct?

3 17 A. Correct.

4 18 Q. And -- okay. Would it have been your  
5 19 role to assess whether there is a biological  
6 20 relationship between the AMCIT father and the  
7 21 applicant child under either the framework of  
8 22 wedlock or the framework of out of wedlock?

9 23 MS. GOLDSMITH: Objection. Form.

10 24 THE WITNESS: Yes, that -- yes.

11 25 BY MS. MARCUS:

12 232

13 1 Q. Do you understand that it was -- it  
14 2 would have been necessary, and it was necessary,  
15 3 regardless of whether the children were born in  
16 4 wedlock or out of wedlock -- let me start over.  
17 5 I'm sorry.

18 6 Regardless of whether the children were  
19 7 born in wedlock or out of wedlock, was it necessary  
20 8 for the children to have a biological connection to  
21 9 the AMCIT father in order for the children to  
22 10 acquire citizenship at birth?

23 11 A. Yes.

24 12 Q. So is it your testimony that it would  
25 13 not have made a difference to your final  
26 14 adjudication decision for these cases whether you  
27 15 had considered the children to be born in wedlock  
28 16 or whether you had considered them to be born out

1 17 of wedlock?

2 18 A. Yes, that's correct.

3 19 Q. To be clear, it would not have made a  
4 20 difference?

5 21 A. Correct, it would not have made a  
6 22 difference.

7 23 Q. Would it have made a difference whether  
8 24 you had adjudicated these applications under INA  
9 25 301 versus INA 309 for these cases?

10 233

11 1 A. No, it would not have made a  
12 2 difference.

13 3 Q. Why not?

14 4 A. Because the biological connection is  
15 5 still required.

16 6 Q. And your understanding that the  
17 7 biological connection is required, what is that  
18 8 understanding based on?

19 9 A. It's based on the FAM, what I read in  
20 10 the FAM.

21 11 Q. Is it based on anything else?

22 12 A. No.

23 13 Q. Was that something that you needed to  
24 14 seek clarity from, from your supervisor?

25 15 A. No.

26 16 Q. Was it something that you needed to  
27 17 consult with Maggie Ramsay about?

28 18 A. No.

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

2 233

3 By Ms. Zeidner Marcus:

4 19 Q. Was that the -- would you describe the  
5 20 lack of a -- sorry. Let me start over.

6 21 When you're talking about the FAM --  
7 22 when you've been talking today at various points  
8 23 about the FAM, do you understand the FAM to be  
9 24 something that is completely separated from the  
10 25 Immigration and Nationality Act of 1952?

11 234

12 1 A. No.

13 2 Q. You don't consider them completely  
14 3 separated?

15 4 A. I don't consider them completely  
16 5 separated.

17 6 Q. Does the FAM have quotations from the  
18 7 statute within it?

19 8 A. As far as my recollection goes, yes.

20 9 Q. Does it describe provisions as well in  
21 10 addition to quoting them?

22 11 A. As far as my recollection goes, yes.

23 12 Q. Would you say that the FAM -- let me  
24 13 start over. I'm sorry.

25 14 MS. MARCUS: Apologies to the court  
26 15 reporter and to everybody else.

27 16 BY MS. MARCUS:

28 17 Q. Would you say that there are FAM

1 18 provisions that incorporate the Immigration and  
2 19 Nationality Act of 1952?

3 20 A. To the best of my recollection, yes.  
4

5 **Frances Day, Terri Nathine, (Page 235:17 to 235:23)**

6 235

7 By Ms. Zeidner Marcus:

8 17 Q. Did you consult FAM provisions after  
9 18 the day of the interview during your work on the  
10 19 Dvash-Banks family's -- family's applications?

11 20 A. I don't recall that.

12 21 Q. But you do recall consulting on the day  
13 22 of the interview?

14 23 A. Yes.  
15

16 **Frances Day, Terri Nathine, (Page 237:9 to 237:15)**

17 237

18 By Ms. Zeidner Marcus:

19 9 Q. But did you also -- do you recall also  
20 10 seeing specific language of the INA within the FAM  
21 11 provisions that you consulted?

22 12 A. Yes.

23 13 Q. And you looked at that specific  
24 14 language?

25 15 A. Yes.  
26  
27  
28

1 **Frances Day, Terri Nathine, (Page 243:5 to 244:10)**

2 243

3 By Ms. Zeidner Marcus:

4 5 Q. If I -- do you recall testify -- sorry.

5 6 Did the use of assisted reproductive  
6 7 technology come up exclusively in situations in  
7 8 which the legal parents of an applicant child were  
8 9 in a same-sex marriage?

9 10 A. No.

10 11 Q. Did it also come up in situations in  
11 12 which the child's applicant -- the applicant  
12 13 child's parents were in an opposite-sex marriage?

13 14 A. Yes.

14 15 Q. Do you -- did you only ask same-sex  
15 16 couples about whether they had used assisted  
16 17 reproductive technology?

17 18 A. No.

18 19 Q. Did you also ask opposite-sex couples?

19 20 A. Yes.

20 21 Q. Do I correctly understand your  
21 22 testimony from earlier today that you generally  
22 23 tried to ask all applicants that question?

23 24 A. Yes.

24 25 Q. And by "all applicants" here, I'm

25 244

26 1 talking about applicants for CRBAs and first-time  
27 2 U.S. passports for minor children. So to be clear,  
28 3 in those situations, was it your general practice

1 4 in every situation, in every case to ask whether  
2 5 assisted reproductive technology was used by the  
3 6 family?

4 7 A. Yes.

5 8 Q. And was that true throughout your  
6 9 tenure in ACS?

7 10 A. Yes.

8  
9 **Frances Day, Terri Nathine, (Page 245:2 to 245:16)**

10 245

11 2 BY MS. MARCUS:

12 3 Q. Ms. Day, do you recall in sum and  
13 4 substance -- I'm sorry.

14 5 Do you recall testifying in sum and  
15 6 substance that it became clear that you would need  
16 7 to ask for DNA to determine the biological link  
17 8 between the AMCIT father and the children?

18 9 A. Yes. I recall saying that, yes.

19 10 Q. What did you mean by you would need to  
20 11 ask for DNA to determine the biological link to the  
21 12 AMCIT -- between the AMCIT father and the kids?

22 13 A. Because during the course of the  
23 14 interview, to the best of my recollection, it was  
24 15 determined that it was unclear which of the  
25 16 children had a biological link to the AMCIT father.

26  
27  
28

1 **Frances Day, Terri Nathine, (Pages 245:22 to 246:3)**

2 245

3 By Ms. Zeidner Marcus:

4 22 Q. Did you in your time in American  
5 23 Citizen Services only ask opposite-sex couples for  
6 24 DNA evidence?

7 25 A. No.

8 246

9 1 Q. Did you also ask same-sex couples for  
10 2 DNA evidence?

11 3 A. Yes.

12  
13 **Frances Day, Terri Nathine, (Pages 246:4 to 247:23)**

14 246

15 By Ms. Zeidner Marcus:

16 4 Q. Were there, if you recall, same-sex  
17 5 couples for which you did not ask for DNA evidence?

18 6 A. Yes.

19 7 Q. Do you have maybe one particular  
20 8 example in mind or more than one?

21 9 A. I can think of one particular example  
22 10 which was a same-sex couple. There were two women,  
23 11 and one was an AMCIT, and one was a Canadian  
24 12 citizen. And medical documents showed that --

25 13 Q. Let me pause you for a second.

26 14 A. Sorry.

27 15 Q. By "medical documents showed," before  
28 16 you explain what they showed, what medical



1 17 documents are you talking about?

2 18 A. The couple presented medical documents  
3 19 during the course of their interview to me  
4 20 regarding the conception of their child.

5 21 Q. Do you recall whether there was medical  
6 22 documentation included in their applications?

7 23 A. I do not recall.

8 24 Q. Do you specifically recall that they  
9 25 provided you during the interview phase?

10 247

11 1 A. I do not recall.

12 2 Q. So when you said they presented during  
13 3 the interview, what did you mean by that?

14 4 A. I mean that we -- it was brought -- we  
15 5 brought -- I brought it up during the interview, or  
16 6 it was -- we spoke about it during the interview.

17 7 Q. Okay. You don't remember how it came  
18 8 up?

19 9 A. No, I don't remember.

20 10 Q. And -- but in this situation, you did  
21 11 not ask for DNA evidence?

22 12 A. Correct.

23 13 Q. Why did you not ask for DNA evidence in  
24 14 that situation?

25 15 A. Because the medical documents that I  
26 16 was -- that they gave to me showed that the egg  
27 17 that made the baby was from the AMCIT mother and  
28 18 was gestated in the Canadian citizen mother.

1           19           Q. And in that situation, did you consider  
2           20 that sufficient evidence to show biological  
3           21 connection between the AMCIT parent and the child  
4           22 applicant?

5           23           A. Yes.

6  
7           **Frances Day, Terri Nathine, (Page 253:4 to 253:25)**

8                               253

9           By Ms. Zeidner Marcus:

10           4           Q. Do you recall whether you explained  
11           5 that option to Andrew and/or Elad?

12           6           A. I would not -- I don't recall. To the  
13           7 best of my recollection, I -- I told them that they  
14           8 had options, that they didn't have to get the DNA  
15           9 test if they didn't want to, but that it would --  
16           10 we wouldn't be able to approve the case without  
17           11 that information.

18           12           Q. I think in the very beginning of your  
19           13 answer just now, when you said, "I don't recall,"  
20           14 then you described some recollection, did you  
21           15 mean -- what did you mean when you first said, "I  
22           16 don't recall"?

23           17           A. I don't recall specifically what I said  
24           18 to them. I do remember -- I do recall  
25           19 explaining -- especially when it came to the point  
26           20 of when they wanted to cancel the application, I do  
27           21 remember explaining to them that if they, you know,  
28           22 didn't do anything, that the case would close.

1 23 Q. And that they had that option, to not  
2 24 do anything?

3 25 A. Yes.  
4

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

6 277

7 By Ms. Goldsmith:

8 12 Q. And you also stated in response to one  
9 13 of Ms. Marcus's questions that, in your opinion, it  
10 14 would not have made a difference whether you had  
11 15 adjudicated E.J.'s application under Section 301  
12 16 versus Section 309?

13 17 A. Based on my understanding, yes.

14 18 Q. What is the basis for your opinion that  
15 19 it would not have made a difference whether you had  
16 20 adjudicated E.J.'s application under Section 301  
17 21 versus 309?

18 22 A. Because both require the biological  
19 23 link -- both require the biological connection.

20 24 Q. And is your understanding that the  
21 25 basis for that requirement is a provision in the

22 278

23 1 FAM?

24 2 A. Yes.  
25  
26  
27  
28

# Defendants' Exhibit 5

(Defendants' Motion for Summary Judgment)

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  
6 VINITA B. ANDRAPALLIYAL  
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

11 *Counsel for Defendants*

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

15 ANDREW MASON DVASH-  
16 BANKS, et al.,  
17 Plaintiffs,  
18 v.  
19 MICHAEL R. POMPEO, in his  
official capacity as U.S. Secretary of  
20 State, et al.,  
21 Defendants.

No. CV 18-523-JFW-JC

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

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

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

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

4 \*\*\*

5 **Dvash-Banks, Andrew Mason - Vol. I, (Pages 14:25 to 15:12)**

6 14

7 By Ms. Zeidner Marcus:

8 25 Q Okay. And your parents, where were they

9 15

10 1 born?

11 2 A Toronto. Both of them in Toronto.

12 3 Q What is their citizenship?

13 4 A My father's deceased.

14 5 Q Sorry.

15 6 A Thanks. And my mother is a dual citizen.

16 7 Q Of what country?

17 8 A United States and Canada.

18 9 Q And what is your citizenship status?

19 10 A Dual citizen.

20 11 Q Of the same countries?

21 12 A Of the same countries, yeah.

22  
23 **Dvash-Banks, Andrew Mason - Vol. I, (Page 29:5 to 29:14)**

24 29

25 By Ms. Zeidner Marcus:

26 5 Q When did you get married?

27 6 A In August of 2010.

28 7 Q Where did you get married?

1 8 A In Toronto, Canada.

2 9 Q And you have children?

3 10 A I do.

4 11 Q EJ and AJ?

5 12 A Yes.

6 13 Q When were they born?

7 14 A In September of 2016.

8

9 **Dvash-Banks, Andrew Mason - Vol. I, (Page 36:15 to 36:20)**

10 36

11 By Ms. Zeidner Marcus:

12 15 Q So you believe that at some point in late

13 16 2016, you made the appointment at the Toronto

14 17 consulate?

15 18 A Yes.

16 19 Q How did you make that appointment?

17 20 A I believe we made it online.

18

19 **Dvash-Banks, Andrew Mason - Vol. I, (Page 38:6 to 38:20)**

20 38

21 By Ms. Zeidner Marcus:

22 6 Q Got it.

23 7 So were you living in Toronto when you

24 8 made the appointment at the consulate?

25 9 MS. LAWSON-REMER: Objection. Vague as to

26 10 "living."

27 11 BY MS. ZEIDNER MARCUS:

28 12 Q You can answer.

1           13       A    I'm -- I'm just not sure if we were  
2           14       physically in Canada when we made the appointment  
3           15       online or if we were physically in the U.S. We went  
4           16       to the U.S. in December of 2016. And I'm not sure  
5           17       if the appointment was made in, like, October or  
6           18       November when we were in Canada or in December when  
7           19       we were in the U.S. I just can't remember. I'm  
8           20       sorry.

9  
10           **Dvash-Banks, Andrew Mason - Vol. I, (Pages 82:1 to 83:3)**

11                               82

12           1    BY MS. ZEIDNER MARCUS:

13           2       Q    Sure. Let me rephrase.

14           3           Can you describe with broad strokes what  
15           4       occurred with respect to the surrogate from the time  
16           5       you spoke to the surrogacy agency until the children  
17           6       were born.

18           7       A    Can I describe with -- with -- what  
19           8       occurred with regard to the surrogate?

20           9       Q    Yes.

21           10       A    We -- from when we met the surrogate and  
22           11       then she selected us -- or I guess I should say,  
23           12       like, we selected each other. Probably better way  
24           13       of phrasing it. And then we "dated each other," in  
25           14       quotes, for a few months just to get to know each  
26           15       other and be comfortable with each other. And  
27           16       then -- oh, and then up until the birth you're --  
28           17       you want to know --



1 18 Q Yes.  
2 19 A -- like, the time line?  
3 20 Q Yes.  
4 21 A And then she went for medical testing at  
5 22 the fertility clinic and -- and then we did our  
6 23 embryo implantation. And then lots of tests along  
7 24 the way during the pregnancy, some scares along the  
8 25 pregnancy, but luckily everything was fine with my

9 83

10 1 twins. And then she gave birth to my twin boys in  
11 2 September. I hope that was, like, not too broad of  
12 3 a stroke.

14 **Dvash-Banks, Andrew Mason - Vol. I, (Page 84:14 to 84:16)**

15 84

16 By Ms. Zeidner Marcus

17 14 Q And you used the same egg donor for both  
18 15 of your sons?

19 16 A We only used one egg donor. Correct.

21 **Dvash-Banks, Andrew Mason - Vol. I, (Page 117:2 to 117:11)**

22 117

23 2 MS. ZEIDNER MARCUS: Thank you.

24 3 Q Did you make one or more applications  
25 4 during that visit?

26 5 A Yes.

27 6 Q How many total applications did you make  
28 7 during that visit?

1 8 A Four.

2 9 Q And of those four, you made two for each  
3 10 of your children?

4 11 A Yes.

5

6 **Dvash-Banks, Andrew Mason - Vol. I, (Pages 120:7 to 121:10)**

7 120

8 By Ms. Zeidner Marcus

9 7 Q Can you walk me through what occurred  
10 8 during the appointment. What did -- was the  
11 9 appointment scheduled in the morning or in the  
12 10 afternoon?

13 11 A I believe it was a morning.

14 12 Q And who went with you to the appointment?

15 13 A My husband.

16 14 Q Anybody else?

17 15 A And -- yeah, my twin boys. My twin sons.

18 16 Q And where was the appointment located?

19 17 A At the U.S. Consulate in Toronto, Canada.

20 18 Q And when you arrived at the U.S. Consulate  
21 19 in Toronto for the appointment, what were the steps  
22 20 that occurred during the appointment? What were  
23 21 the -- broadly speaking, what did the appointment  
24 22 consist of?

25 23 A It consisted of arriving and waiting  
26 24 outside with my twins in the cold for about 20  
27 25 minutes to get in through security and then getting

28 121

1 1 through security and then taking the elevator to --  
2 2 I don't know what floor -- and then arriving on that  
3 3 floor and -- this is just to the best of my  
4 4 recollection.

5 5 Q Sure.

6 6 A I mean, two years ago.

7 7 And then handing in our applications and  
8 8 paying the fees for the four applications. And then  
9 9 I believe we got a number and took a seat in the  
10 10 waiting area.

11  
12 **Dvash-Banks, Andrew Mason - Vol. I, (Page 152:10 to 152:13)**

13 152

14 By Ms. Zeidner Marcus:

15 10 Q Was it explained to you that you had 90  
16 11 days to provide anything additional to the consulate  
17 12 in connection with your applications?

18 13 A Yes. I believe so. Yes.

19  
20 **Dvash-Banks, Andrew Mason - Vol. I, (Pages 161:1 to 163:4)**

21 161

22 By Ms. Zeidner Marcus:

23 1 Q And do you know what legal claims you are  
24 2 pursuing in connection with this litigation?

25 3 A I'm aware of -- I mean, I'm not a lawyer;  
26 4 right? But I'm aware of my claims, yeah.

27 5 Q From your perspective, generally speaking,  
28 6 what are your claims against the Department of

1           7 State?  
2           8     A From my perspective, my claim against the  
3           9 Department of State is that my son EJ was refused  
4           10 United States citizenship by the U.S. state  
5           11 department. And my claim is that -- that we were  
6           12 wrong and treated unfairly, and that's an unfair --  
7           13 how do I say this? And -- and that he was refused  
8           14 American citizenship because he's considered a child  
9           15 born out of wedlock. And his twin brother born four  
10          16 minutes before him was granted American citizenship.

11          17           I know our claim is, like, many, many  
12          18 pages long. I hope I did an okay job in summarizing  
13          19 it.

14          20     Q It's not a test.

15          21     A Okay.

16          22     Q Do you have -- do you know whether you  
17          23 have a claim against the Department of State  
18          24 relating to a fundamental right that you have --  
19          25 that you believe that you have?

20                           162

21          1           MS. LAWSON-REMER: Objection. Calls for a  
22          2 legal opinion, but he can answer if he knows.

23          3           THE WITNESS: That I have a --

24          4 BY MS. ZEIDNER MARCUS:

25          5     Q Do you know whether you have any claims  
26          6 relating to any fundamental rights of yours?

27          7     A The claim, I believe, also addresses the  
28          8 discrimination aspects that we -- that we

1 9 experienced and that is part of the decision to  
2 10 reject my son's citizenship, if that answers your  
3 11 question.

4 12 Q Do you know whether you have any claims  
5 13 relating to your marriage?

6 14 A I believe the claim is related to our  
7 15 marriage in the sense that the state department has  
8 16 rejected my son's citizenship because they view him  
9 17 as a child born out of wedlock.

10 18 Q Do you think that that harms your  
11 19 marriage?

12 20 A Harms my marriage in what way?

13 21 MS. LAWSON-REMER: Objection. Vague.  
14 22 Ambiguous.

15 23 BY MS. ZEIDNER MARCUS:

16 24 Q Does it harm your ability to be married to  
17 25 your husband?

18 163

19 1 A It doesn't change the status of my  
20 2 marriage to my husband. It harms us in many other  
21 3 ways. But the marriage -- my marriage to my husband  
22 4 is solid.

23  
24 **Dvash-Banks, Andrew Mason - Vol. I, (Page 172:8 to 172:15)**

25 172

26 By Ms. Zeidner Marcus:

27 8 Q Mr. Dvash-Banks, did the application  
28 9 materials you submitted to the consulate Toronto

1           10 prior to your interview with -- by the consular  
2           11 officer identify that you and your husband used  
3           12 assistive reproductive technology to have your  
4           13 children?  
5           14       A Did the documents that we provided  
6           15 indicate -- I believe so. Yes, they did.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Defendants' Exhibit 6

(Defendants' Motion for Summary Judgment)

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  
6 VINITA B. ANDRAPALLIYAL  
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

11 *Counsel for Defendants*

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

15 ANDREW MASON DVASH-  
16 BANKS, et al.,  
17 Plaintiffs,  
18 v.  
19 MICHAEL R. POMPEO, in his  
official capacity as U.S. Secretary of  
20 State, et al.,  
21 Defendants.

No. CV 18-523-JFW-JC

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

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

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



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

3 \*\*\*

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

5 131

6 By Ms. Zeidner Marcus

7 22. . . . . Q. Do you know whether Ms. Day

8 23. considered Ethan Dvash-Banks to be born in wedlock,

9 24. as that term is used in the FAM and the INA?

10 25. . . . . A. I think initially, as evidenced by

11 132

12 1. her case notes, she may have considered them in

13 2. wedlock because she saw a marriage certificate, but

14 3. I believe after reviewing the guidance and as

15 4. evidenced by the final denial letter, ultimately

16 5. applied 309 of the INA to the decision-making.

17 6. . . . . Q. Is it your understanding, and if

18 7. you need to refer to the case notes to refresh your

19 8. memory on this, then you can do so and then point

20 9. me to that section, if you do so, but is it your

21 10. understanding that on the day that they visited,

22 11. the Dvash-Banks family visited the Consulate

23 12. Toronto that Ms. Day on that day considered them to

24 13. be a married couple, the adults in the family?

25 14. . . . . MS. GOLDSMITH: Objection, leading.

26 15. . . . . THE WITNESS: I think what may have

27 16. happened is when she was reviewing all the

28 17. documents and she saw a marriage certificate, she

1 18· started typing her notes, as we often do, and then

2 19· over the course of the interview discovered that we

3 20· would have to treat the case as a 309 case instead.

4 21· . . . . . BY MS. ZEIDNER MARCUS:

5 22· . . . . . Q· Do you know whether she

6 23· communicated to the Dvash-Banks family on that day

7 24· whether there was a particular provision that she

8 25· was going to be applying in the case?

9 133

10 1· . . . . . A· I believe she may have told them

11 2· about the provisions of INA 309.

12 3· . . . . . Q· What is that belief based on?

13 4· . . . . . A· I think I heard her talk to them

14 5· about the requirements for it and the requirements

15 6· for a biological relationship as well.

16 7· . . . . . Q· Is there a requirement for a

17 8· biological relationship under both 301 and 309, as

18 9· you understand and apply the -- let me start over.

19 10· The biological requirement that you were just

20 11· describing, what is that biological requirement?

21 12· . . . . . A· There must be, in order for a U.S.

22 13· citizen parent to transmit citizenship to a child

23 14· at birth, there must be a biological relationship

24 15· between parent and child.

25 16· . . . . . Q· Is that true for both INA 301 and

26 17· INA 309, in your understanding?

27 18· . . . . . A· Yes.

28 19· . . . . . Q· So would it have made a difference

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.

**Ramsay, Margaret, (Page 147:14 to 147:22)**

147

By Ms. Zeidner Marcus:

14 · . . . . . Q. · And did you also speak with the  
15 · Dvash-Banks family personally?

16 · . . . . . A. · Yes.

17 · . . . . . Q. · How long did that conversation  
18 · last?

19 · . . . . . A. · Probably about five minutes.

20 · . . . . . Q. · At what point did that  
21 · conversation take place?

22 · . . . . . A. · At the end of their interview.

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

# Defendants Exhibit 7

(Defendants' Motion for Summary Judgment)

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

6 VINITA B. ANDRAPALLIYAL  
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

11 *Counsel for Defendants*

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

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

17 Plaintiffs,

18 v.

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

21 Defendants.

No. CV 18-523-JFW-JC

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

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

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

1 Thursday, December 6, 2018, at the U.S. Consulate, 360 University Avenue, Toronto,  
2 Canada.

3 \*\*\*

4 **Reffett, Larilyn, (Pages 122:17 to 123:12)**

5 122

6 17. . . . . BY MS. KLEIN:

7 18. . . . . Q. Ms. Reffett, is it correct that

8 19. before we very briefly went off the record, you

9 20. testified that with the exception of a gestational

10 21. parent, a U.S. citizen must have a biological tie

11 22. to his child in order to transmit citizenship?

12 23. . . . . A. To transmit citizenship from

13 24. birth, yes, that is correct.

14 25. . . . . Q. And that is your understanding of

15 123

16 1. the INA?

17 2. . . . . A. I mean, you would have to -- if

18 3. you have a specific example that you wanted to

19 4. present for a specific case, but yes, in general we

20 5. establish the biological relationship between the

21 6. U.S. citizen parent and the child in order to

22 7. confirm that a parent has transmitted U.S.

23 8. citizenship to their child.

24 9. . . . . Q. And is that the case even if the

25 10. U.S. citizen parent is married to the child's

26 11. biological parent?

27 12. . . . . A. Yes.

28



13 · to us by the Department. · It is not my  
14 · interpretation. · It is the guidance as it is put  
15 · forward for officers who are adjudicating.

**Reffett, Larilyn, (Pages 156:10 to 156:19)**

156

By Ms. Klein:

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.

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

167

By Ms. Klein:

18 · . . . . Q. · What are other circumstances that  
19 · would give rise to doubt of putative parentage?  
20 · . . . . A. · I mean, every case is going to be  
21 · different and this is only putative parentage as  
22 · related by blood. · Other things that might cause  
23 · someone to question whether parentage as related by  
24 · blood was potentially something they should look



1 25 into, I don't want to make a huge list of these

2 168

3 1 because they are fraud concerns, but things like a

4 2 birth certificate that was amended later to add

5 3 potentially a parent or to change some biographical

6 4 information; that would be something that would be

7 5 considered a red flag for an adjudicating officer

8 6 and that would cause a line of questioning that

9 7 wouldn't be asked of other applicants.

10 8 . . . . . You know, other things about whether

11 9 there would be questions about whether a putative

12 10 parent is related by blood, again, anything that

13 11 would indicate the use of assisted reproductive

14 12 technology, that will raise other questions.

15 13 . . . . . Anything on a birth certificate that

16 14 would seem to indicate an adoption would raise

17 15 questions.

18 16 . . . . . These all are indicators that we look

19 17 at when we are looking at documents so that we are

20 18 asking the correct chain of questions to get the

21 19 information that we need to make the determination.

22  
23 **Reffett, Larilyn, (Pages 203:10 to 206:09)**

24 203

25 By Ms. Zeidner Marcus

26 10 . . . . . Q. Do you recall that earlier today

27 11 you testified regarding one or more conversations

28 12 you had with Frankie Day?

1 13. . . . . A. . Yes.  
2 14. . . . . Q. . And do you recall generally your  
3 15. . testimony that you spoke with her on the day that  
4 16. . the Dvash-Banks family presented applications at  
5 17. . the Toronto Consulate for CRBAs and U.S. passports  
6 18. . for Ethan and Aiden Dvash-Banks?

7 19. . . . . A. . Yes.  
8 20. . . . . Q. . And you testified that you spoke  
9 21. . to her, I believe, twice?

10 22. . . . . A. . The day of the application, I  
11 23. . believe twice was correct.

12 24. . . . . Q. . And Ms. Klein asked you that --  
13 25. . asked whether Ms. Day had conveyed to you that the

14 204

15 .1. . Dvash-Banks family included a same-sex couple, and  
16 .2. . you answered that; do you recall?

17 .3. . . . . A. . Yes.

18 .4. . . . . Q. . And she then asked you what did  
19 .5. . Ms. Day tell you. . Do you recall your testimony,  
20 .6. . that you said, quote:

21 .7. . . . . "She told me that she, as I  
22 .8. . . . . mentioned, she had a case involving  
23 .9. . . . . artificial reproductive technology,  
24 10. . . . . that the case involved two fathers  
25 11. . . . . but that the evidence did not  
26 12. . . . . establish which person was the  
27 13. . . . . biological parent of the children."

28 14. . . . . Then Ms. Klein asked you what else did

1 15· Ms. Day tell you during that conversation, and you  
2 16· answered, quote, "Nothing."  
3 17· . . . . . Thinking now about your answer to the  
4 18· question of what else did Ms. Day tell you during  
5 19· that conversation, is there anything that you have  
6 20· since recalled regarding what Ms. Day told you in  
7 21· addition to what you had previously testified  
8 22· about?

9 23· . . . . . A· Yes, when she told me that she was  
10 24· requesting the DNA test, she did mention that she  
11 25· asked the applicants about the biological

12 205

13 ·1· relationship and the donation of genetic material  
14 ·2· used for the conception of the children and that I  
15 ·3· don't know which -- she wasn't specific in this  
16 ·4· conversation with me. It was just as a preference  
17 ·5· --- this was the pre, sort of back story as to why  
18 ·6· she was asking about the DNA test. She said that  
19 ·7· when she asked about the biological relationship  
20 ·8· and the genetic material that was used in the  
21 ·9· conception, that one of the parents answered that  
22 10· both parents had donated sperm in this case. They  
23 11· did not know which was used and did not want to  
24 12· know. They did not want to know which in her mind  
25 13· was why they didn't, they hadn't sought that  
26 14· information prior to this.

27 15· . . . . . She said that as she said I'm  
28 16· requesting DNA. I asked them about the genetic

1 17. relationship. They told me they didn't know and  
2 18. didn't want to know but I am requesting DNA  
3 19. testing. How do I move forward with that.  
4 20. . . . . Q. And you understood what she told  
5 21. you to be that she had asked them whether they knew  
6 22. which, if either, father was biologically related  
7 23. to which, if either, child?  
8 24. . . . . A. My understanding was that she  
9 25. asked about the genetic circumstances of the

10 206

11 1. conception, who had donated sperm in this specific  
12 2. case to establish the biological relationship, and  
13 3. one of the parents said they had both donated sperm  
14 4. in this case and did not know which had been used.  
15 5. . . . . Q. Would that --  
16 6. . . . . A. It was not a lengthy conversation.  
17 7. It was just a very brief reference to -- basically  
18 8. as the precursor to the announcement that she was  
19 9. requesting DNA testing.

20  
21  
22  
23  
24  
25  
26  
27  
28

# Defendants Exhibit 8

(Defendants' Motion for Summary Judgment)

1 JOSEPH H. HUNT  
Assistant Attorney General  
2 ANTHONY J. COPPOLINO  
Deputy Director  
3 LISA ZEIDNER MARCUS  
Senior Counsel  
4 Tel: (202-514-3336  
lisa.marcus@usdoj.gov  
5 VINITA B. ANDRAPALLIYAL  
Trial Attorney  
6 Tel: (202) 305-0845  
vinita.b.andrapalliyal@usdoj.gov  
7 UNITED STATES DEPARTMENT OF JUSTICE  
Civil Division, Federal Programs Branch  
8 P.O. Box 883  
9 Washington, DC 20044  
10

11 *Counsel for Defendants*

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

15 ANDREW MASON DVASH-  
16 BANKS, et al.,  
17 Plaintiffs,  
18 v.  
19 MICHAEL R. POMPEO, in his  
official capacity as U.S. Secretary of  
20 State, et al.,  
21 Defendants.

No. CV 18-523-JFW-JC  
**Excerpts from the Deposition  
Testimony of Defendants’ 30(b)(6)  
Witness Paul Peek, Supporting  
Defendants’ Motion for Summary  
Judgment**  
Hearing Date: Feb. 4, 2019  
Honorable John F. Walter

22  
23 Pursuant to this Court’s Case Management Order, Defendants hereby file the  
24 instant document for deponent Paul Peek, who served as a 30(b)(6) witness for the  
25 Department of State. This document contains “only those questions and answers, and  
26 any objections made at the time of the deposition to those questions,” Order at 11 (Dkt.  
27 No. 52), that Defendants are relying on to support their partial motion for summary  
28 judgment, “with a citation to the appropriate page(s) and line number(s) in the deposition

1 transcript," *id.* Mr. Peek's deposition was taken Thursday, December 20, 2018, at 1700  
2 New York Avenue, Northwest, Washington, District of Columbia.

3 \*\*\*

4  
5 **Peek, Paul, (Pages 178:20 to 179:18)**

6 178

7 By Mr. Edelman:

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

14 179

15 1. . . . A. It depends.

16 2. . . . Q. What does it depend on?

17 3. . . . A. Whether the U.S. citizen parent also

18 4. contributed genetic material or was the gestational

19 5. parent.

20 6. . . . Q. Okay. So, again, I'm talking about two

21 7. men, sperm from one of them; that person not a U.S.

22 8. citizen. Question: Would the resulting child born

23 9. outside the United States be considered a U.S.

24 10. citizen at birth?

25 11. . . . A. Let me elaborate on why I'm saying "it

26 12. depends" in my answer.

27 13. . . . Q. Please.

28 14. . . . A. Because one of the two men could be

1 15· someone whose has transitioned and is now a man but  
2 16· is not always a man. So could theoretically have  
3 17· contributed genetic material or been the gestational  
4 18· parent.

5  
6 **Peek, Paul, (Pages 202:17 to 202:23)**

7 202

8 By Mr. Edelman:

9 17· . . . . Q· Are there circumstances in which the  
10 18· State Department treats children born into a  
11 19· same-sex marriage to be children born in wedlock?

12 20· . . . . A· Yes.

13 21· . . . . Q· And what are those circumstances?

14 22· . . . . A· If both parents had a biological  
15 23· relationship to the child.

16  
17 **Peek, Paul, (Pages 333:4 to 333:17)**

18 333

19 By Mr. Edelman:

20 4· . . . . Q· Sure. In what circumstances does a child  
21 5· born to a same-sex female couple acquire U.S.  
22 6· citizenship under INA section 301(g)?  
23 7· . . . . A· I am looking at 8 FAM 304.3-1, which I  
24 8· think would also answer your previous question. To  
25 9· read it aloud, paragraph (b), "A child born abroad  
26 10· to a U.S. citizen gestational mother who is the  
27 11· legal parent of the child at the time of birth in  
28 12· the location of birth, whose genetic parents are an



1       13. anonymous sperm donor and the U.S. citizen wife of  
2       14. the gestational legal mother, is considered for  
3       15. citizenship purposes to be a citizen born in wedlock  
4       16. of two U.S. citizens, with a citizenship claim  
5       17. adjudicated under INA 301(c)."

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

8                               335

9       By Mr. Edelman:

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

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

# Defendants' Exhibit 9

(Defendants' Motion for Summary Judgment)



*Embassy of the United States of America  
Bangkok, Thailand*

August 29, 2014

Dear **PII**

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

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

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

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

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

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

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

Regards,



signature

Elizabeth Susie Pratt  
Consul General  
U.S. Embassy Bangkok

# Defendants' Exhibit 10

(Defendants' Motion for Summary Judgment)



U.S. DEPARTMENT OF STATE  
U.S. CONSULATE GENERAL, TORONTO  
360 University Avenue, Toronto, ON M5G 1S4 Canada  
Email: [torontopassport@state.gov](mailto:torontopassport@state.gov)  
Website: [toronto.usconsulate.gov](http://toronto.usconsulate.gov)

January 24, 2017

Mr. Andrew Dvash-Banks  
135 Marlee Ave #1601  
Toronto, Ontario

Dear Mr. Dvash-Banks,

I am writing in reference to your application for a U.S. passport and a Consular Report of Birth Abroad for Aiden and Ethan Dvash-Banks, born on September 16, 2016, in Mississauga, Canada

The U.S. Consulate General in Toronto has considered the evidence you submitted and concluded that the blood relationship between a U.S. citizen parent and children have not been established by a preponderance of the evidence as required to support a claim to U.S. citizenship. The purpose of this letter is to provide you with information concerning DNA testing as an option to establish the requisite blood relationship between the child and the citizenship-transmitting U.S. citizen parent.

As noted above, in order to establish that both above mentioned children acquired U.S. citizenship by birth abroad to a U.S. citizen parent (and thus is eligible to apply for a CRBA and U.S. passport), the Immigration and Nationality Act (INA) of 1952, as amended, requires, among other things, proof of a blood relationship between the child and the U.S. citizen parent. Volume 22 of the Code of Federal Regulations, Section 51.40 provides that the burden of proof is upon the applicant to establish a claim to U.S. citizenship.

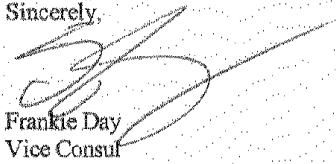
Should you wish to undergo DNA testing, which could conclusively establish whether both children are the biological children of a U.S. citizen parent, please review the enclosed flyer explaining DNA testing and the procedures under which the samples must be collected and the test conducted, including chain of custody procedures, in order for the results to be considered in connection with a citizenship claim. DNA testing must be conducted at a lab accredited by the American Association of Blood Banks in the United States. The laboratory conducting the tests must send the test results and an interpretation of the data to the U.S. Consulate General directly. All expenses are to be borne by the applicant, including shipping costs, and must be paid in advance.

If you choose to have DNA testing conducted in the United States, the sample collection, chain of custody procedures, and the conduct of the test must be in accordance with the joint AMA-ABA Guidelines and the guidelines set forth by the American Association of Blood Banks (AABB), as well as the guidelines of the Department of State. For DNA sample collection overseas, upon your request, the AABB accredited laboratory will provide sample collection kits, packing materials and instructions directly to the U.S. Consulate General in Toronto. DNA sample collection overseas must be done by an authorized lab technician in the presence of a designated U.S. citizen at the U.S. Consulate General Toronto, where the application is pending. The Consulate General will ship the samples directly to the AABB accredited

laboratory that you selected. Enclosed is a list of laboratories in the United States accredited by the AABB.

We appreciate you may not have considered DNA testing, but under the circumstances, it appears this may be the most expeditious way to establish children's claim to U.S. citizenship. You are, of course, free to submit any additional evidence you believe pertinent. Should you have any questions, please do not hesitate to contact us at [TorontoPassport@state.gov](mailto:TorontoPassport@state.gov).

Sincerely,



Frankie Day  
Vice Consul