

# **EXHIBIT 11**

CONFIDENTIAL - PROTECTIVE ORDER  
PAUL PEEK #4015 12/20/2018

1 CONFIDENTIAL - PROTECTIVE ORDER  
 2 UNITED STATES DISTRICT COURT  
 3  
 4 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 5  
 6 ANDREW MASON DVASH-  
 7 BANKS and E.J.D.-B,  
 8  
 9 Plaintiffs,  
 10  
 11 v. Case No.  
 12  
 13 2:18-cv-00523-JFW-JCx  
 14  
 15 THE UNITED STATES  
 16 DEPARTMENT OF STATE,  
 17  
 18 and THE HONORABLE  
 19 MICHAEL R. POMPEO,  
 20 Secretary of State,  
 21  
 22 Defendants.

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18 Video Deposition of Paul Peek  
 19 Washington, D.C.  
 20 Thursday, December 20, 2018  
 21 9:15 a.m.  
 22  
 23 Job No.: NY-203388  
 24 Pages: 1 - 351  
 25 Reported by: Donna L. Linton, RMR-CLR

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

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Sullivan & Cromwell

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1700 New York Avenue, Northwest

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South Conference Room, Suite 800

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Washington, D.C. 20006

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(202) 956-7500

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Pursuant to Amended Notice of Rule 30(b)(6)

18

Deposition of Defendant United States Department of

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State and Federal Rules of Civil Procedure, before

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Donna L. Linton, Registered Merit Reporter,

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Certified LiveNote Reporter, and Notary Public in

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and for the District of Columbia.

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:

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A P P E A R A N C E S

(continued)

ON BEHALF OF THE DEFENDANTS:

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ALSO PRESENT:

Brian Mackey, Videographer

1 Department of Justice for Defendants.

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

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

6 Would the reporter please swear in the  
7 witness?

8 Whereupon,

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

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

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

20 MR. EDELMAN: Welcome.

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

23 Q Good morning Mr. Peek.

24 A Good morning.

25 Q Can we just, to identify you to the

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

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

5 Q I asked you about E.J.

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

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

11 A Yes.

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

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

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

19 A As opposed to biological parents.

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

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

1 A Yes.

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

5 A Uh-hum. Yes.

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

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

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

16 BY MR. EDELMAN:

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

19 A Uh-hum.

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

23 A Yes.

24 Q And who set those criteria?

25 A The Department of State.



1 Q Okay.

2 A So U.S. citizenship.

3 Q So --

4 A Excuse me.

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

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

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

13 A Both. They're very closely intertwined.

14 BY MR. EDELMAN:

15 Q What does that mean?

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

19 Q Okay.

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

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

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

4 A The FAM goes in -- yes.

5 Q What are those differences?

6 A The FAM goes into much greater detail.

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

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

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

14 A Yeah.

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

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

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

1 A In places, yes.

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

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

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

11 A Yes.

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

16 A Yes.

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

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

22 A Yes.

23 BY MR. EDELMAN:

24 Q What does it do?

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

1 BY MR. EDELMAN:

2 Q So what laws?

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

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

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

12 A Can you be more specific?

13 BY MR. EDELMAN:

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

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

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

23 BY MR. EDELMAN:

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

1 parents to each other"?

2 A Yes.

3 Q Do you see that?

4 A Yes.

5 Q And (c), "To say a child was born 'in  
6 wedlock' means that the child's biological parents  
7 were married to each other at the time of the birth  
8 of the child." Do you see that?

9 A Yes.

10 Q Is that the definition you had in mind  
11 when you were asking to consult any documentation?

12 A Yes.

13 Q Okay. What's the basis for the State  
14 Department's definition of "in wedlock" as embodied  
15 in the material we just looked at?

16 A Their interpretation of the Immigration  
17 and Nationality Act.

18 Q What in particular in the Immigration and  
19 Nationality Act?

20 A Section 301(g).

21 Q Okay. Now, if a married couple used  
22 assisted reproduction technology to give birth to a  
23 child during their marriage, does the State  
24 Department consider that child to have been born in  
25 wedlock?

1 A It depends on the circumstances.

2 Q Can you elaborate, please?

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

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

12 A Not by policy, no.

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

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

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



1 adjudication of citizenship.

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

5 A Correct.

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

13 A Yes.

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

17 A It depends.

18 Q Okay. And what does it depend on?

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

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

25 A The department's interpretation of the



1 A To require which result?

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

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

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

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

16 A Yes.

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

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

23 Q Okay. In my scenario --

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

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

6 A The donor egg is from a third party.

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

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

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

12 A The Immigration and Nationality Act.

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

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

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

1 A It depends.

2 Q What does it depend on?

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

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

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

13 Q Please.

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

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

21 A Born male.

22 Q Pardon?

23 A Born male.

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

1 A Sure.

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

5 A No.

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

9 A No.

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

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

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

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

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

25 A Right.

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

4 MS. ANDRAPALLIYAL: Objection.  
5 Argumentative.

6 BY MR. EDELMAN:

7 Q Is it not in the statute?

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

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

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

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

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

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

24 A I've reviewed the FAM, yes.

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

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

3 Q Yes.

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

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

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

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

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

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

1 always been male?

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

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

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

12 A Yes.

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

15 A Section 309.

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

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

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

1 requires a biological relationship?

2 A Correct.

3 Q Okay. Now, if they both require a  
4 biological relationship, then what's the difference  
5 between the two statutes -- the two sections?

6 A One section is specifying an  
7 out-of-wedlock birth. I mean, that's what the  
8 statute is addressing specifically is an  
9 out-of-wedlock birth. So -- and the other --  
10 one -- one specifies an out-of-wedlock birth.

11 Q All right. Look with me, if you will, at  
12 Plaintiffs' Deposition Exhibit 16.

13 A I'm sorry. Which one?

14 Q 16. It's section 309. It's the rescript  
15 of section 309.

16 A I have it.

17 Q So I'm in (a)(1). Do you see the  
18 reference to a blood relationship?

19 A Yes.

20 Q Okay. Now, we looked at Plaintiffs'  
21 Deposition Exhibit 15 previously, correct?

22 A I'm sorry?

23 Q We looked at Plaintiffs' Deposition  
24 Exhibit 15, which is the rescript of section 301,  
25 previously, right?



1 A Correct.

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

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

6 Q Okay. So would you agree with me that

7 Congress saw fit to include the term "blood

8 relationship" in 309?

9 A Yes.

10 Q And saw fit not to include it in

11 section 301(g) --

12 A Yes.

13 Q -- or 301, correct?

14 A Correct.

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

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

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

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

24 BY MR. EDELMAN:

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

1 would be the appropriate...

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

6 A Correct.

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

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

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

16 A Correct.

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

19 A Correct.

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

23 A Correct.

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



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

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

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

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

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

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

24 BY MR. EDELMAN:

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

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

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

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

13 A I apologize.

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

16 A Yes.

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

22 A Correct. And that --

23 Q Okay.

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

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

4 A No.

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

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

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

11 BY MR. EDELMAN:

12 Q Well, what would you say happened?

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

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

17 A Correct.

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

20 A Yes.

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

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

1 domain.

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

4 A No.

5 Q Is it subject to congressional approval?

6 A No.

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

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

11 MR. EDELMAN: I'm sorry.

12 BY MR. EDELMAN:

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

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

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

19 BY MR. EDELMAN:

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

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

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

1 formalities.

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

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

9 BY MR. EDELMAN:

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

12 A Yes.

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

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

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

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



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

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

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

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

21 Q Okay. What about the other two?

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

1 yes?

2 A Could you ask your question again?

3 MR. EDELMAN: Please read it back.

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

9 A Yes.

10 BY MR. EDELMAN:

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

15 A I'm sorry. What page?

16 Q Page 7.

17 A Page 7, paragraph 7.

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

20 A Uh-hum.

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

25 A Yes.

1 A Yes.

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

7 A Correct.

8 Q -- Andrew?

9 A Correct. I'm sorry.

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

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

16 A Yes.

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

20 A Yes.

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

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

1 A That's correct.

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

5 A Correct.

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

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

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

15 BY MR. EDELMAN:

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

18 A His legal parents, yes.

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

23 A Yes.

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

1 A The legal parent, yes.

2 Q Okay. And does the State Department

3 consider Andrew to be E.J.'s parent at birth under

4 Ontario law?

5 A His legal parent at birth, yes.

6 Q Okay. And you referred earlier today to

7 a court order, correct?

8 A Yes.

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

11 A Sure.

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

14 A Okay.

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

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

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

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

1 the scope.

2 A I don't know.

3 BY MR. EDELMAN:

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

10 A Yes.

11 Q And did that issue come up?

12 A Which issue?

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

15 A I do not recall it.

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

20 So is it the State Department's position  
21 that E.J. was born out of wedlock?

22 A Yes.

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

25 MS. ANDRAPALLIYAL: Objection. Exceeds

1 A -- shouldn't have done that.

2 Q So now we're talking about the State

3 Department's adjudication of the applications for

4 E.J. for a U.S. passport and a CRBA. Okay? In

5 connection with those adjudications, did the State

6 Department apply the criteria of section 309?

7 A Yes.

8 Q And just for the record, why did the

9 State Department determine that those were the right

10 criteria to apply?

11 A The State Department determined that INA

12 309 was the correct statute to apply because both of

13 the parents did not have a biological connection --

14 Q Okay.

15 A -- to the child.

16 Q Now, just so there's no confusion on this

17 point down the line, is it the State Department's

18 position that the adjudication by the consular

19 officer of E.J.'s applications was correct?

20 A Yes.

21 Q Okay. And some other things just to make

22 sure, you know, where we're on the same page and

23 where we're not.

24 Does the State Department dispute that

25 Andrew, the father, is a U.S. citizen?

1 A No.

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

6 A I believe that he did, yes.

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

10 A Yes.

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

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

19 Q Yes.

20 A -- male their entire lives --

21 Q Right.

22 A -- that is correct.

23 Q Correct. My bad. I should have made  
24 that clear. Yes. So putting aside the possibility  
25 of a transgender male -- man. So is it the State



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

6 A Correct.

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

11 A Okay.

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

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

19 Q Margaret?

20 A Margaret.

21 Q Ramsay.

22 A Yes. I'm sorry.

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

1 (Discussion off the record.)  
2 (Plaintiffs' Deposition Exhibit Number 25  
3 was marked for identification.)

4 THE VIDEOGRAPHER: We are back on the  
5 record. The time is 6:09 p.m.

6 BY MR. EDELMAN:

7 Q Okay. So we've placed before you a  
8 document that's been marked as Plaintiffs'  
9 Deposition Exhibit 25. It is a two-page document  
10 bearing the production numbers DVASH-BANKS, lots of  
11 zeros, 31 through 32. Have you seen this document  
12 before?

13 MS. ANDRAPALLIYAL: Do you have a copy  
14 for me?

15 MR. EDELMAN: Oh, I'm sorry. Yes. I beg  
16 your pardon (handing).

17 MS. ANDRAPALLIYAL: Thank you.

18 BY MR. EDELMAN:

19 Q So I believe I was asking you if you've  
20 seen this document before.

21 Are you looking for something specific?

22 A Yes. I'm looking through the documents  
23 that I reviewed because the document doesn't look  
24 familiar to me, and I just want to make sure that  
25 that's my faulty recollection rather than the fact

1 that I have not actually seen this before.

2 Q Okay. Do you know what this document is?

3 I want to just -- I want to be respectful of your  
4 time and not keep you going --

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

7 Q I would rather you --

8 A -- focus on reviewing --

9 Q -- focus on the document.

10 A Okay.

11 Q Do you know what this document is?

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

13 Q What is this document?

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

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

25 A That's what it says, yes.

1 Q And that is the position of the State

2 Department, correct?

3 A Correct.

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

6 A Correct.

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

10 A No.

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

13 A Correct.

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

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

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

23 BY MR. EDELMAN:

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

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

4 A Yes, I have seen this before.

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

7 A In preparation for this deposition.

8 Q Okay. Do you know what this is?

9 A Yes.

10 Q What is it?

11 A It is what we call a denial letter.

12 Q And denial of what?

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

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

19 A Correct.

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

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

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

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

3 A Yes.

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

6 A Correct.

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

9 A Yes.

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

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

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

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

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

25 BY MR. EDELMAN:

1 A Could you repeat the question?

2 BY MR. EDELMAN:

3 Q Sure. I'm just trying to understand

4 whether any aspect of the State Department's

5 interest in sustaining its interpretation of

6 section 301 is rooted in an effort to prevent fraud?

7 A No.

8 MR. EDELMAN: Okay. Let's do this. I  
9 don't think this is marked, so let's mark this as  
10 27.

11 (Plaintiffs' Deposition Exhibit Number 27  
12 was marked for identification.)

13 MR. EDELMAN: So we've placed before --  
14 did I give one to counsel? I may not have. I  
15 apologize. There we go.

16 MS. ANDRAPALLIYAL: Thank you.

17 MR. EDELMAN: We've placed before the  
18 witness a one-page document bearing production  
19 numbers DEFS000764, a letter dated October 2, 2017,  
20 from Carlos Hernandez of the United States  
21 Department of State to The Honorable Congressman  
22 Lieu, L-I-E-U.

23 BY MR. EDELMAN:

24 Q Have you seen this document before?

25 A Yes.

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

2 Q I thought you said earlier --

3 A I'm sorry. Go ahead.

4 Q No. Go ahead.

5 A I shouldn't be speaking in absolute.

6 Where -- it may happen in every case where the

7 officer is not sure that the blood relationship

8 between -- the biological relationship between the

9 U.S. citizen and the child had been established.

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

13 A No.

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

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

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



1 frequently the State Department asked applicants for  
2 a CRBA to undergo DNA testing?

3 A That's correct.

4 Q Okay. Now, if you look at the third  
5 paragraph beginning with the word "please," do you  
6 see it says, "Please be assured that recommending  
7 DNA testing is not a form of discrimination but a  
8 means of discouraging fraud"?

9 A That's what it says.

10 Q Right. And what is the relevance of  
11 fraud to the DNA testing request, given the  
12 conversation we were having just a few moments ago?

13 A If we could take every document at face  
14 value, we wouldn't need to look beyond them in any  
15 way, but sometimes documents are fraudulent or just  
16 incorrect and we can't always trust the veracity.

17 Q But should I understand you still to be  
18 saying that the State Department's view that the  
19 requirements for establishing the blood relationship  
20 between a U.S. citizen parent and a child born  
21 outside the United States is not tied really in any  
22 way to concern about fraud?

23 A Could you restate your question? I'm  
24 sorry.

25 MR. EDELMAN: Could you read it back,

1 please?

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

8 A Correct.

9 BY MR. EDELMAN:

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

14 Do you see that?

15 A Yes.

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

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

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

1 Certificate of Citizenship to USCIS, that that  
2 application would be granted?

3 A Could you repeat the question?

4 Q Yes. At the time that the State  
5 Department sent this letter, Exhibit 27, did the  
6 State Department have an expectation that if the  
7 Dvash-Banks family applied for a Certificate of  
8 Citizenship for E.J., that USCIS would grant that  
9 application?

10 A It was certainly within the realm of  
11 possibility.

12 Q But did it have an expectation that it  
13 would be granted?

14 A I don't know that it would be accurate to  
15 say that we had an expectation.

16 Q If the State Department didn't have such  
17 an expectation, why did it make this suggestion?

18 A Because given the facts of the case,  
19 again, other sections of the INA, such as 320 and  
20 322, do not require a biological relationship, so if  
21 there is no biological relationship and someone is  
22 the parent of -- a U.S. citizen is the parent of a  
23 child, that's kind of a stock answer, is to check  
24 with USCIS, if a document could be issued by them by  
25 any means.

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

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

8 A Okay.

9 Q -- finish up and get you home.

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

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

16 A I don't know.

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

19 A Can you be more specific?

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

23 A No.

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

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

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

3 A No.

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

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

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

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

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

20 BY MR. EDELMAN:

21 Q Do you know of any?

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

24 Q Okay.

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

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CERTIFICATE OF NOTARY PUBLIC

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



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

My Commission expires: June 30, 2019

# **EXHIBIT 12**

1 UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
3  
4 ANDREW MASON DVASH-BANKS )  
and E.J. D.-B., )  
5 )  
Plaintiffs, ) Case No.  
6 ) 2:18-cv-00523-JFW-JCx  
vs. )  
7 )  
THE UNITED STATES DEPARTMENT )  
8 OF STATE, and THE HONORABLE )  
MICHAEL R. POMPEO, )  
9 Secretary of State, )  
10 Defendants. )  
11  
12 VIDEOTAPED DEPOSITION OF TERRI NATHINE FRANCES DAY  
13 (Taken by Plaintiffs)  
14 Charlotte, North Carolina  
15 Thursday, December 20, 2018  
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23 Reported in Stenotype by  
24 Cindy A. Hayden, RMR-CRR  
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~ and ~

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Also Present: Bruce Weekly, Videographer

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

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I N D E X

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PREVIOUSLY MARKED EXHIBITS

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

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1	NEWLY MARKED EXHIBITS		
2	DAY		
3	NUMBER	DESCRIPTION	PAGE
4	EXHIBIT 1	Emails, top one dated 9/25/17,	123
5		Subject: DVASH-BANKS (REP.LIEU)	
6	EXHIBIT 2	Email dated 1/24/17, Subject:	126
7		Conversation with Reffett,	
		Larilyn	
8	EXHIBIT 3	Letter dated 1/24/17 to Andrew	135
9		Dvash-Banks	
10	EXHIBIT 4	CRBA application and supporting	154
		documents (color copy)	
11	EXHIBIT 5	Consular Report of Birth Abroad	165
12	EXHIBIT 6	Emails, top one dated 9/25/17,	254
13		Subject: DVASH-BANKS (REP.LIEU)	
14	EXHIBIT 7	Emails, top one dated 9/25/17,	255
15		Subject: DVASH-BANKS	
		(REP.LIEU), with attachment	
16			
17			
18			
19			
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21			
22			
23			
24			
25			

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

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

12 \* \* \*

13 TERRI NATHINE FRANCES DAY,  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 \* \* \*

17 EXAMINATION

18 BY MS. GOLDSMITH:

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

21 Have you ever been deposed before?

22 A. No.

23 Q. Have you ever testified in court?

24 A. No.

25 Q. Have you ever given testimony under

1 you explain a little bit?

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

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

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

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

20 Q. Can you describe that?

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

23 Q. What other units did you work for?

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

1 interviewing at the same time as I was.

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

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

16 A. Yes.

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

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

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

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

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

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

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

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

20 A. Yes.

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

25 THE VIDEOGRAPHER: We're going off the



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

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

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

25 Q. And you may have touched on this

1 BY MS. GOLDSMITH:

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

6 A. I would say no.

7 Q. Did you ever consult the FAM?

8 A. Yes.

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

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

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

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

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

1 same-sex couple whether they used assisted  
2 reproductive technology?

3 A. I would say that it was my policy to  
4 ask as many people as possible if they used  
5 assisted reproductive technology, whether they were  
6 same-sex or not, because there was an attempt to --  
7 to -- for me personally to not single anyone out.  
8 So it kind of -- and I -- this was something that  
9 I -- I can't say that I did 100 percent of the  
10 time, just because there are a lot of -- there are  
11 a lot of steps to this whole process. But just  
12 asking, okay, as a point of -- you know, as a  
13 matter of course, like, did you -- did you at some  
14 point use ART when you were conceiving your child?  
15 Just as a normal kind of question to incorporate  
16 into my number of hundreds of questions that I  
17 probably asked parents.

18 Q. And when you talk about whether you had  
19 a question as to the biological tie, was that a  
20 subjective determination that you made during the  
21 course of the interview, for example?

22 A. I would say no, because the -- from my  
23 understanding, the biological connection is  
24 required to transmit the citizenship. So if -- you  
25 know, someone -- so that's not really -- you can't

1 really argue that point to say, well, maybe -- you  
2 know, kind of make a judgment call. I think it's  
3 very clear what this -- what the guidelines are.

4 So I would say that if the parent  
5 indicated to me that -- which is normally, like I  
6 said, how that would go about. If the parent  
7 indicated to me that they had used assisted  
8 reproductive technology, then we would go down that  
9 line of questioning, if I thought that -- if I saw  
10 that this was something that had, you know, had  
11 happened.

12 Q. So you testified earlier that you're  
13 familiar with the FAM; is that correct?

14 A. Yes.

15 Q. So are you aware of the language in the  
16 FAM that says, "If doubt arises," and then, you  
17 know, something to the effect of, "Officers should  
18 investigate carefully if doubt arises as to whether  
19 or not there's a biological relationship between  
20 the U.S. citizen parent and the child applicant"?

21 Are you familiar with that?

22 A. If you're asking me if I remember that  
23 specifically, no. But I do -- that -- that sounds  
24 like something that I would have read to, you know,  
25 determine my adjudication -- you know, the

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

4 A. Yes.

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

9 A. 1764. Yes.

10 Q. What is this document?

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

13 Q. And have you seen this document before?

14 A. Yes, I have.

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

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

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

24 A. Yes.

25 Q. Did you consider this document to be

1 adequate proof that Andrew and Elad Dvash-Banks

2 were E.J.'s parents?

3 MS. MARCUS: Objection. Vague as to

4 the term "parents."

5 BY MS. GOLDSMITH:

6 Q. You can answer.

7 A. I need clarification on the term

8 "parents."

9 Q. Did you consider this document to be

10 adequate proof that Andrew and Elad Dvash-Banks are

11 E.J.'s legal parents?

12 A. I would say yes.

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

18 A. Okay.

19 Q. What is this document?

20 A. It is an Ontario -- it seems to be a  
21 copy of an Ontario court document that names Elad

22 and Andrew Dvash-Banks as the parents of E [REDACTED]

23 J [REDACTED] D [REDACTED] -E [REDACTED].

24 Q. And have you seen this document before?

25 A. I have, yes.

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

5 A. I would say yes.

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

10 A. You have to specify "child."

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

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

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

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

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

1 A. I do not recall that, no.

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

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

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

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

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

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

24 A. Yes.

25 Q. Sitting here today, do you remember the



**Andrew Mason Dvash-Banks, et al. vs The United States Dept. of State, et al.  
Terri Nathine Frances Day on 12/20/2018**

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1 STATE OF NORTH CAROLINA

2 COUNTY OF MECKLENBURG

3

4 REPORTER'S CERTIFICATE

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

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

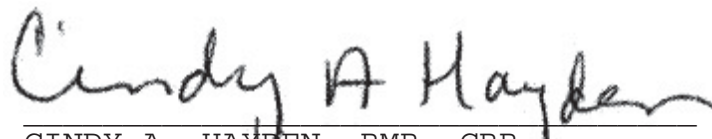
20 IN WITNESS WHEREOF, I have hereto set my  
21 hand, this the 21st day of December, 2018.

22

23

24

25



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

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# **EXHIBIT 13**

# ***In The Matter Of:***

***Andrew Mason Dvash-Banks***

***v.***

***Michael R. Pompeo***

---

***Andrew Mason Dvash-Banks VOL I***

***December 12, 2018***

---



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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

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

DEPOSITION OF ANDREW MASON DVASH-BANKS

Taken Wednesday, December 12, 2018

At 12:00 P.M.

At 1888 Century Park East

Los Angeles, California

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

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

7 APPEARANCES:

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\* \* \* \* \*

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14	(Attached For Reference Only)		
15	Exhibit 5		
16	Exhibit 8		
17	Exhibit 9		
18	Information Requested: (None)		
19			
20			
21			
22			
23			
24			
25			

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

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

9  
10 EXAMINATION

11 BY MS. ZEIDNER MARCUS:

12 Q Good afternoon, Mr. Dvash-Banks.

13 A Good afternoon.

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

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

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

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

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

4 A Yes.

5 Q When did you get married?

6 A In August of 2010.

7 Q Where did you get married?

8 A In Toronto, Canada.

9 Q And you have children?

10 A I do.

11 Q EJ and AJ?

12 A Yes.

13 Q When were they born?

14 A In September of 2016.

15 Q Just over two?

16 A Yes.

17 Q Very cute ages.

18 A The best.

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

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

23 A I do, yes.

24 Q Do you live with anybody else?

25 A No.



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

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

8 Q For a month or longer.

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

10 Q Was it one of your parents?

11 A Yes.

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

14 A No.

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

19 A That's correct.

20 Q Approximately when did you move?

21 MS. LAWSON-REMER: Objection. Vague.

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

1 BY MS. ZEIDNER MARCUS:

2 Q Right. I -- let me rephrase.

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

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

10 MS. ZEIDNER MARCUS: EJ, ever.

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

14 BY MS. ZEIDNER MARCUS:

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

19 A To best of my knowledge, yes.

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

24 A No.

25 Q At some point prior to the birth of your

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

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

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

8 MS. LAWSON-REMER: Objection. Vague.

9 THE WITNESS: What considerations did we  
10 have with respect to our children being born?  
11 Sorry. I just want to make sure I understand the  
12 question fully.

13 BY MS. ZEIDNER MARCUS:

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

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

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

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

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

25 Q At what point in your marriage did you

1 I'm getting you a correct answer.

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

5 A I do.

6 Q Which did you do first?

7 A We selected an egg donor first.

8 Q Generally speaking, what did that entail?

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

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

16 A Yes.

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

19 MS. LAWSON-REMER: Objection. Vague.

20 You can answer.

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

23 BY MS. ZEIDNER MARCUS:

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

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

4 Q That --

5 A But okay.

6 Q Thank you.

7 A Okay.

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

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

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

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

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

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

22 Q Yes.

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

1 embryos and to implant the embryos in our surrogate.

2 Totally broad strokes there.

3 Q Sure.

4 Were the embryos created after you

5 selected the surrogate and you selected each other?

6 A No.

7 Q At what point in time were the embryos

8 created, approximately?

9 A In July -- the end of July 2015, beginning

10 August 2015.

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

13 A Correct.

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

16 A We only used one egg donor. Correct.

17 Q Do you know how many embryos were

18 implanted in the surrogate?

19 A Yes.

20 Q How many?

21 A Two.

22 Q And did you at the time of implantation

23 know whether your genetic material were -- was used

24 to create either of those two embryos?

25 A Did I know prior to implantation?

1 Q Yes.

2 A I believed at the time I did.

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

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

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

10 A It did not have my genetic material.

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

13 A Yes.

14 Q Okay. Thank you.

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

20 A Uh-huh.

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

23 A It says --

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

25 / / / /

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

3 A Some of them are, yes.

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

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

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

17 MS. ZEIDNER MARCUS: Correct.

18 MS. LAWSON-REMER: Okay.

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

21 BY MS. LAWSON-REMER:

22 Q Yes.

23 A -- say --

24 Q Please state for the record.

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



1 top; right?

2 Q Yes, please.

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

6 Q I'm now -- we --

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

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

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

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

14 A Yeah, yeah, yeah.

15 Q The supporting materials --

16 A Got it.

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

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

20 Q Okay.

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

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

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

4 BY MS. ZEIDNER MARCUS:

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

8           MS. LAWSON-REMER: Inclusive of 1808?

9           MS. ZEIDNER MARCUS: Yes.

10          MS. LAWSON-REMER: Okay.

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

13 BY MS. ZEIDNER MARCUS:

14          Q     And we -- you skipped 1763.

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

17          Q     I see.

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

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

24          MS. LAWSON-REMER: Objection.

25 Mischaracterizes his testimony.

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

4 MS. LAWSON-REMER: Objection. Vague.

5 THE WITNESS: Was the birth certificate  
6 revised?

7 BY MS. ZEIDNER MARCUS:

8 Q Yeah.

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

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

15 MS. LAWSON-REMER: Objection. Vague.

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

18 BY MS. ZEIDNER MARCUS:

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

21 A Yes.

22 Q What was the result?

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

25 Q And -- may I borrow this?

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

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

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

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

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

20 Q It's not a test.

21 A Okay.

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

1 there ever an intention on your part for the  
2 surrogate to be a parent to your -- to the twins?

3 A Never.

4 Q Okay. Can you look at Plaintiff's Exhibit  
5 5, please. I will represent to you that this was --  
6 this packet that's Plaintiff's Exhibit 5 was  
7 attached to defendant's initial disclosures in this  
8 action and was identified by defendants as the  
9 passport file for EJ. Okay?

10 If you could just turn to the page that  
11 ends with the number 1767.

12 A All right. I'm here.

13 Q Okay. Do you recognize this to be a true  
14 and correct copy of your marriage license?

15 A It appears to be, yes.

16 Q All right. Do you have any reason to  
17 doubt its authenticity?

18 A I do not, no.

19 Q Does it look any different from the last  
20 time you saw it?

21 A No. I don't think so.

22 Q Okay. And it's a copy of the document  
23 that you submitted in connection with EJ's  
24 applications for CRBA and passport; is that correct?

25 A Yes, that's correct.

1 Q Okay. If we could back up a little bit.

2 In the same packet, Plaintiff's Exhibit 5, go to

3 1764.

4 A Okay. I'm here.

5 Q And do you recognize this to be a true and

6 correct copy of the statement of live birth for EJ?

7 A It appears to be, yes.

8 Q And does it list you as one of his

9 fathers?

10 A It does, yes.

11 Q And who does it list as the other father?

12 A My husband.

13 Q Okay. Do you have any doubt as to the

14 authenticity of this document?

15 A I do not, no.

16 Q Do you have any -- does it look any

17 different than the last time you saw it?

18 A It doesn't appear to, no. I would say

19 other than the stamp from Terri N. Day at the

20 bottom.

21 Q Other than that?

22 A No. It looks --

23 Q Earlier today Ms. Marcus asked you about a

24 family in Israel. Do you generally recall that area

25 of testimony?

1 June 2017; is that right?

2 A That's correct.

3 Q Okay. Are you a U.S. citizen?

4 A Yes.

5 Q Were you a U.S. citizen at birth?

6 A Yes.

7 Q Is it correct that you and Elad

8 Dvash-Banks were married on the day E [REDACTED] and A [REDACTED]

9 -- excuse me. I'll strike that.

10 Is it correct that you and Elad were

11 married on the day EJ and AJ were born?

12 A We were married on the day EJ and AJ were

13 born.

14 Q And what day was that?

15 A They were born on September 16th, 2016.

16 Q Okay. Does EJ live with you?

17 A Yes.

18 Q And -- and Elad?

19 A Yes.

20 Q Has he lived with you from the time he

21 left the hospital when he was born into -- to the

22 present?

23 A Yes.

24 MS. LAWSON-REMER: Okay. I'll just go off

25 the record for one minute, please.

1 UNITED STATES DISTRICT COURT )  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA ) ss

3 I, DONNA J. RUDOLPH, RPR, CSR No. 9652,  
4 Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place therein set forth,  
7 at which time the witness was put under oath by me;

8 That the testimony of the witness, the  
9 questions propounded, and all objections and  
10 statement made at the time of the examination were  
11 recorded stenographically by me and were thereafter  
12 transcribed;


13 That a review of the transcript by the  
14 deponent was requested;

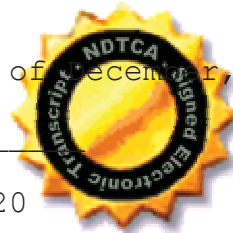
15 That the foregoing is a true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative  
18 or employee of any attorney of the parties, nor  
19 financially interested in the action.

20 I declare under penalty of perjury under  
21 the laws of California that the foregoing is true  
22 and correct.

23 Dated this 17th day of December, 2018.

24   
25 DONNA J. RUDOLPH, RPR  
CA CSR NO. 9652, NV CCR NO. 420





# **EXHIBIT 14**

#4111

In the Matter Of:  
Andrew Mason Dvash-Banks, et al v.  
The United States Department of State, et al

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MARGARET RAMSAY  
December 07, 2018

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Toronto, ON M5K 1A2  
1.888.525.6666 | 416.413.7755

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS and)  
E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED], ) COMPLAINT FOR  
Plaintiffs, ) DECLARATION AND  
INJUNCTIVE RELIEF  
v. )  
THE UNITED STATES DEPARTMENT) Docket No. Case  
OF STATE, and THE HONORABLE ) 2:18-cv-00523-JFW-JCx  
MICHAEL R. POMPEO, Secretary) JFW  
of State, )  
Defendants.)  
-----)

--- This is the Transcript of the Videotaped  
Deposition of MARGARET RAMSAY, taken at the U.S.  
Consulate, 360 University Avenue, Toronto, Ontario,  
MSG 1S4, on the 7th day of December, 2018.

-----  
Reported By: Deana Santedicola, CSR (Ont.), RPR,  
CRR

1 A P P E A R A N C E S:

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

3 and E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED]:

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12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

14 OF STATE, AND THE HONOURABLE MICHAEL R. POMPEO,

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

23 Also Present: Jeremy Weinberg, U.S. Department of

24 State, Office of the Legal Advisor

25

I N D E X

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WITNESS: MARGARET RAMSAY

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MARCUS..... 170

1 & Cromwell.

2 MS. KLEIN: Good morning, Jessica  
3 Klein, also from Sullivan & Cromwell, also  
4 representing the Plaintiffs Andrew and E [REDACTED]  
5 D [REDACTED]-B [REDACTED].

6 MS. ZEIDNER MARCUS: Good morning, I am  
7 Lisa Zeidner Marcus, Trial Attorney, U.S.  
8 Department of Justice, Civil Division, Federal  
9 Programs Branch. I represent the United States in  
10 this action and I represent the Defendants, the  
11 U.S. Department of State and the Secretary of State  
12 who was sued in his official capacity.

13 MR. WEINBERG: Jeremy Weinberg, U.S.  
14 Department of State, Office of the Legal Advisor.

15 THE VIDEOGRAPHER: Would the reporter  
16 please swear or affirm the witness.

17 MARGARET RAMSAY; SWORN.

18 EXAMINATION BY MS. GOLDSMITH:

19 Q. Good morning, Ms. Ramsay, thanks  
20 so much for being here today. I just have a few  
21 background questions before we get started in  
22 earnest. Have you ever been deposed before?

23 A. No.

24 Q. Have you ever testified in court?

25 A. No.

1 A. It is hard to say. There are many  
2 of them. They are quite specific, so I couldn't  
3 speak to all of them.

4 Q. And when you say they are quite  
5 specific, are they specific to your role of  
6 adjudicating passport applications and other  
7 applications?

8 A. Some of them are, yes.

9 Q. And when did you complete that  
10 training, if you remember?

11 A. I probably would have completed it  
12 in 2011, maybe. I'm not quite certain. I would  
13 have to go back through my training transcript.

14 Q. So it was before you came to  
15 Toronto?

16 A. Uhm-hmm.

17 Q. Did your training include teaching  
18 you the policies of the U.S. State Department in  
19 adjudicating applications for passports and  
20 Consular Reports of Birth Abroad?

21 A. Yes.

22 Q. And are the Toronto Consulate's  
23 policies for adjudicating applications for  
24 passports and Consular Reports of Birth Abroad the  
25 same as the State Department's policies?

1 A. Yes.

2 Q. You mentioned previously that part  
3 of your job involves adjudicating applications for  
4 U.S. passports and Consular Reports of Birth  
5 Abroad; is that correct?

6 A. Yes.

7 Q. Does your job involve your  
8 determining who is a U.S. citizen?

9 A. Yes.

10 Q. Do you review any other types of  
11 applications or adjudicate any other types of  
12 applications?

13 A. Can you clarify the question?

14 Q. Other than passport applications  
15 and applications for Consular Reports of Birth  
16 Abroad, do you adjudicate any other types of  
17 applications?

18 A. No.

19 Q. Does anyone report to you?

20 A. No.

21 Q. Who do you report to?

22 A. The Supervisor of the American  
23 Citizen Services Unit, Larilyn Reffett.

24 THE COURT REPORTER: I'm sorry, did you  
25 say a name?



1 A. I told her where to find the  
2 guidance in the Foreign Affairs Manual.

3 Q. Do you recall anything else from  
4 that conversation?

5 A. I believe that I told her, you  
6 know, oftentimes people have documentation from the  
7 clinic that can be helpful, so we usually ask for  
8 that in these cases.

9 Q. And do you recall anything else  
10 from that conversation?

11 A. No.

12 Q. Did you talk to Ms. Day while the  
13 Dvash-Banks family was still at the consulate?

14 A. Yes.

15 Q. And was that a separate  
16 conversation from the one we were just discussing?

17 A. Yes, I believe so.

18 Q. And can you describe that  
19 conversation?

20 A. I believe she told me that it  
21 wasn't clear who the biological parents were and I  
22 discussed with her that the DNA testing was an  
23 option in these types of cases.

24 Q. So just to make sure that I'm  
25 understanding, while the Dvash-Banks family was at

1 the consulate for their interview, you had a second  
2 conversation with Ms. Day about how she should  
3 proceed?

4 A. I offered some guidance to her as  
5 to, you know, how the case could proceed, but  
6 ultimately she made the decision herself.

7 Q. And what decision was that?

8 A. She made the decision to place the  
9 case in a pending status, pending additional  
10 information.

11 Q. Do you know if Ms. Day consulted  
12 with anyone else while the Dvash-Banks family was  
13 still at the consulate?

14 A. Yes, I believe she consulted with  
15 our Supervisor, Larilyn Reffett.

16 Q. Were you present for that  
17 conversation?

18 A. I don't believe so.

19 Q. Do you have any knowledge of what  
20 they discussed during that conversation?

21 A. Not specifically because I wasn't  
22 present for it.

23 Q. When you spoke to Ms. Day while  
24 the Dvash-Banks family was still at the consulate,  
25 did you advise her to seek Ms. Reffett's advice?

1 A. No.

2 Q. Did you play any role in the  
3 decision to seek additional evidence, DNA evidence?

4 A. Can you clarify the question?

5 Q. What, if any, was your role in Ms.  
6 Day's decision to seek additional medical evidence  
7 such as DNA testing?

8 A. I suggested it to her.

9 Q. Did you -- why did you suggest it?

10 A. Because it can be a useful tool in  
11 cases where it is not clear if a parent and child  
12 have a biological relationship.

13 Q. Did you play a role in any other  
14 decision relevant to the denial of E [REDACTED]  
15 D [REDACTED]-B [REDACTED]'s applications?

16 MS. ZEIDNER MARCUS: Objection to form.

17 BY MS. GOLDSMITH:

18 Q. You can answer.

19 A. No.

20 Q. Okay, I am going to move on to a  
21 slightly different subject. Do you ever look at  
22 U.S. statutes in your adjudication of passport  
23 applications or CRBAs?

24 A. Yes.

25 Q. And what statutes are those?

1     legally married, they don't have a marriage  
2     certificate.

3                   Q.     Have you reviewed the documents  
4     that the Dvash-Banks family submitted with their  
5     children's applications for a U.S. passport and a  
6     Consular Report of Birth Abroad?

7                   A.     I may have looked at them at the  
8     time. I don't quite remember. I don't remember  
9     looking at them very closely.

10                  Q.     Do you recall whether a marriage  
11     licence or other evidence of the Dvash-Banks  
12     marriage was submitted with those applications?

13                  A.     I believe that they had submitted  
14     a marriage certificate.

15                  Q.     And is it your understanding that  
16     under the State Department's policies and  
17     procedures, Andrew and Elad Dvash-Banks are  
18     considered to be a married couple?

19                  MS. ZEIDNER MARCUS:    Objection to form.

20                  THE WITNESS:       That is my understanding.

21                  BY MS. GOLDSMITH:

22                  Q.     And was that true in January of  
23     2017?

24                  MS. ZEIDNER MARCUS:    The same  
25     objection. You can answer.

1 Q. If a married man and woman came  
2 into the consulate for an interview and presented  
3 their marriage certificate, would you direct their  
4 attention to this sign and ask them to consider  
5 these questions?

6 A. Not generally, but sometimes.

7 Q. And if a same-sex couple came to  
8 the consulate for an interview and presented their  
9 marriage certificate, would you present this sign  
10 to them and ask them to consider these questions?

11 A. I would direct my line of  
12 questioning toward asking respectfully about the  
13 biological connection between a parent and child,  
14 so I would ask interview questions that pertained  
15 to that.

16 Q. And have you ever adjudicated a  
17 passport or CRBA application for a child whose  
18 legal parents are both men?

19 A. Can you restate the question?

20 MS. GOLDSMITH: Can you read the  
21 question back, please.

22 THE COURT REPORTER: "Question: And  
23 have you ever adjudicated a passport or  
24 CRBA application for a child whose  
25 legal parents are both men?"

1 Q. Are you aware of any changes that  
2 the State Department has made to its policy related  
3 to children born abroad through assisted  
4 reproductive technology during the period that you  
5 have been employed at the Toronto Consulate?

6 A. No.

7 Q. And are you aware that the State  
8 Department changed its policy to treat gestational  
9 mothers who are the legal parent of a child the  
10 same as genetic mothers for purposes of citizenship  
11 and immigration benefits?

12 A. Yes.

13 Q. And are you aware of why the State  
14 Department changed this policy?

15 A. No.

16 Q. So is it your understanding that  
17 this policy was changed before you arrived at the  
18 Toronto Consulate?

19 A. Yes.

20 Q. And are you aware of whether the  
21 change in policy was the result of an  
22 interpretation of the Immigration and Nationality  
23 Act?

24 A. I don't know.

25 Q. And do you know whether the State

1 first page is Bates-stamped 00070270-1757. Do you  
2 know what this document is?

3 A. It is the application for a  
4 Consular Report of Birth Abroad.

5 Q. And have you seen this document  
6 before?

7 A. I have.

8 Q. What is the purpose of this  
9 document?

10 A. It is to collect information ahead  
11 of a Consular Report of Birth Abroad application.

12 Q. And when you are adjudicating an  
13 application for a Consular Report of Birth Abroad,  
14 which fields would be relevant to your  
15 adjudication?

16 A. Relevant to the adjudication are  
17 especially the fields on page 2 concerning  
18 citizenship, marital status and then physical  
19 presence, periods of time in the United States.

20 Q. And is that the page 2 of 7 of  
21 this document that is indicated on the bottom right  
22 of this document?

23 A. Yes.

24 Q. And it is Bates-stamped  
25 00070270-1758?

1 A. Yes.

2 Q. Which fields specifically would  
3 you consider to determine the identities of the  
4 child's parents?

5 A. I don't quite understand the  
6 question.

7 Q. Looking at this document, who are  
8 E ██████ D ██████ -B ██████'s legal parents under State  
9 Department policy and procedure?

10 A. It would be the people listed on  
11 the child's birth certificate, so Andrew and Elad.

12 Q. All right, let's turn now to the  
13 document that is Bates-stamped 00070270-1764. It  
14 is page 7 of the same exhibit, Plaintiffs  
15 Deposition Exhibit No. 5.

16 I will represent to you that Plaintiffs  
17 Deposition Exhibit No. 5 is E ██████ D ██████ -B ██████'s  
18 application file which was provided to Plaintiffs  
19 by Defendants.

20 Now, looking at the document that  
21 starts on page 7 of Plaintiffs Exhibit No. 5, which  
22 is again Bates-stamped 00070270-1764, can you tell  
23 me what is this document?

24 MS. ZEIDNER MARCUS: Objection,  
25 foundation, form, the document speaks for itself.



1 BY MS. GOLDSMITH:

2 Q. Have you seen this document  
3 before?

4 A. Yes.

5 Q. And what does this document appear  
6 to be to you?

7 A. It appears to be an Ontario birth  
8 certificate.

9 Q. And is the form of this document  
10 consistent with other Ontario birth certificates  
11 that you have reviewed?

12 A. Yes.

13 Q. And earlier you testified about an  
14 Ontario birth certificate. Would this be an  
15 example of such an Ontario birth certificate?

16 MS. ZEIDNER MARCUS: Objection to form.

17 THE WITNESS: Yes.

18 BY MS. GOLDSMITH:

19 Q. Is this document entitled  
20 "Statement of Live Birth"?

21 A. Yes.

22 Q. And according to this document,  
23 who are E [REDACTED] D [REDACTED] -B [REDACTED]'s parents?

24 A. Andrew Mason Dvash-Banks and Elad  
25 Dvash-Banks.

1 Q. And when you adjudicate CRBA  
2 applications using a Statement of Live Birth in  
3 Ontario, do you look at those fields to determine  
4 who the child's parents are?

5 A. Yes.

6 Q. Under the State Department's  
7 policies and procedures, as you understand them, is  
8 this document sufficient proof of E [REDACTED]'s  
9 parentage?

10 MS. ZEIDNER MARCUS: Objection to form.

11 THE WITNESS: It shows who the legal  
12 parents are.

13 BY MS. GOLDSMITH:

14 Q. Okay, if you stay on this page but  
15 turn back to Plaintiffs Exhibit 6, I am going to  
16 ask you a question about that document. Plaintiffs  
17 Exhibit 6 is the ACS Activity Log for E [REDACTED]  
18 D [REDACTED]-B [REDACTED]'s CRBA application; is that correct?

19 A. Yes.

20 Q. And in the description field it  
21 refers to, quote, "a timely filed Ontario birth  
22 certificate"; is that correct?

23 A. Yes.

24 Q. And is it your understanding that  
25 the Statement of Live Birth which is page 7 of

1 officer, we need to look at legal and biological  
2 parentage.

3 BY MS. GOLDSMITH:

4 Q. I'll ask you now to turn to the  
5 page of Plaintiffs Exhibit No. 5 that is  
6 Bates-stamped 00070270-1766. Do you see that page?

7 A. Yes.

8 Q. Ms. Ramsay, please flip back one  
9 page. Please go two pages further into the  
10 document.

11 MS. KLEIN: Further.

12 BY MS. GOLDSMITH:

13 Q. Okay, the Bates stamp is hard to  
14 read, but this document has a number at the top  
15 corner that says P1338811; is that correct?

16 A. Yes.

17 Q. And what is this document?

18 A. It is an Ontario marriage  
19 certificate.

20 Q. And have you seen this document  
21 before?

22 A. Yes.

23 Q. And in adjudicating applications  
24 for passports or CRBAs, would you refer to this  
25 document as a marriage certificate?

1 A. Yes.

2 Q. And under the State Department's  
3 policies and procedures, is this document  
4 sufficient proof of Andrew's and Elad's marriage?

5 MS. ZEIDNER MARCUS: Objection,  
6 foundation, form.

7 THE WITNESS: Yes.

8 BY MS. GOLDSMITH:

9 Q. And does this document appear to  
10 be the marriage licence of Andrew Dvash-Banks and  
11 Elad Dvash-Banks?

12 A. Yes.

13 Q. And can you tell when it is dated?

14 A. To me it looks like 19th August  
15 2010.

16 Q. So it appears that sometime in  
17 August 2010 this document was issued; is that  
18 correct?

19 A. Yes.

20 Q. In your practice adjudicating  
21 applications, would an Ontario marriage licence  
22 such as this one sufficiently demonstrate a valid  
23 marriage?

24 A. Yes.

25 Q. And is it your understanding based

1 on this document that Andrew and Elad Dvash-Banks

2 are validly married?

3 A. Yes.

4 Q. And is it your understanding that  
5 under the State Department's policies and  
6 procedures, this document would be sufficient proof  
7 of Andrew and Elad's marriage?

8 A. Yes.

9 Q. All right, please flip three pages  
10 further into the document, and let me know when you  
11 are looking at document Bates-stamped  
12 00070270-1768.

13 A. Okay.

14 Q. And I'll represent to you that  
15 this document appears to continue on to another  
16 page, which is Bates-stamped 00070270-1769. Have  
17 you seen this document before?

18 A. Not this particular document.

19 Q. And from looking at the document,  
20 can you tell what this document is?

21 A. It looks like a court order  
22 regarding parentage.

23 Q. And does the form of this document  
24 appear to be consistent with the form of other  
25 documents you have seen from the Ontario Superior

1 Day, would have a better sense.

2 Q. In your practice, have you  
3 received applications that you have been  
4 adjudicating that contain within the application  
5 materials surrogacy agreements?

6 A. Sometimes.

7 Q. And are those usually provided on  
8 the day of the --

9 A. Sometimes, but not always.

10 Q. Okay. You testified earlier that  
11 you provided Ms. Day, the adjudicating officer,  
12 with certain FAM citations?

13 A. Yes.

14 Q. Why did you do that?

15 A. As a more experienced officer and  
16 working alongside her that day, I wanted to make  
17 sure that she had the relevant guidance for the  
18 case.

19 Q. Did you send her any provisions of  
20 the INA itself?

21 A. I don't believe so.

22 Q. Do you know whether Ms. Day  
23 considered E ██████ D ██████ -B ██████ to be born in wedlock,  
24 as that term is used in the FAM and the INA?

25 A. I think initially, as evidenced by

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

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

14 MS. GOLDSMITH: Objection, leading.

15 THE WITNESS: I think what may have  
16 happened is when she was reviewing all the  
17 documents and she saw a marriage certificate, she  
18 started typing her notes, as we often do, and then  
19 over the course of the interview discovered that we  
20 would have to treat the case as a 309 case instead.

21 BY MS. ZEIDNER MARCUS:

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

1 that in some cases, in some passport or CRBA  
2 adjudications, you or your colleagues consult with  
3 a desk officer located in Washington, DC; is that  
4 correct?

5 A. Yes, yes.

6 Q. Do you know whether you or any of  
7 your Consulate Toronto colleagues consulted with a  
8 desk officer in connection with adjudicating the  
9 Dvash-Banks family's applications for U.S.  
10 passports and CRBAs for their children?

11 A. I did not personally. I don't  
12 believe that my colleagues did. We normally reach  
13 out to Washington when FAM policy guidance is not  
14 clear, and it seemed to us in this case that it  
15 was.

16 Q. Why did you think that in this  
17 case the FAM guidance was clear?

18 A. Because the FAM guidance on  
19 assisted reproductive technology cases is clear  
20 with regards to a biological relationship  
21 requirement, and once we had that information after  
22 the DNA testing, it was relatively straightforward  
23 to make the decision.

24 Q. If any of your Consulate Toronto  
25 colleagues had consulted on this case with the desk



1 passport only. For the Consular Report of Birth  
2 Abroad we would have to go through the same process  
3 that we do for all CRBAs.

4 BY MS. KLEIN:

5 Q. And to your understanding, what is  
6 the difference, if any, in the legal effect of a  
7 Consular Report of Birth Abroad and a Certificate  
8 of Citizenship?

9 A. A Consular Report of Birth Abroad  
10 is a citizenship document that shows a child was  
11 born a U.S. citizen and received U.S. citizenship  
12 at birth because of a U.S. citizen parent. A  
13 Certificate of Citizenship can be issued at any  
14 time in an individual's life to show that they have  
15 acquired U.S. citizenship.

16 Q. So in my hypothetical where E [REDACTED]  
17 and his parents appear before you at the Toronto  
18 Consulate at some point in the future with a  
19 Certificate of Citizenship in hand, you would  
20 interpret that Certificate of Citizenship to mean  
21 that E [REDACTED] had acquired U.S. citizenship at some  
22 point after his birth?

23 A. Yes.

24 MS. KLEIN: I have no further questions  
25 at this time.

Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al  
MARGARET RAMSAY on December 07, 2018

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REPORTER'S CERTIFICATE.

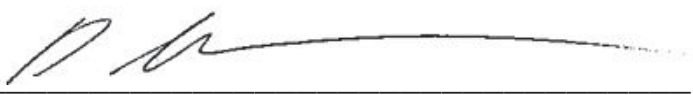
I, DEANA SANTEDICOLA, RPR, CRR,  
CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 12th day of December, 2018



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# **EXHIBIT 15**

In the Matter Of:  
Andrew Mason Dvash-Banks, et al v.  
The United States Department of State, et al

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LARILYN REFFETT  
December 06, 2018

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Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al  
LARILYN REFFETT on December 06, 2018

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS and)  
E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED], ) COMPLAINT FOR  
Plaintiffs, ) DECLARATION AND  
INJUNCTIVE RELIEF  
v. )  
THE UNITED STATES DEPARTMENT) Docket No. Case  
OF STATE, and THE HONORABLE ) 2:18-cv-00523-JFW-JCx  
MICHAEL R. POMPEO, Secretary) JFW  
of State, )  
Defendants.)  
-----)

--- This is the Transcript of the Audio-Recorded  
Deposition of LARILYN REFFETT, taken at the U.S.  
Consulate, 360 University Avenue, Toronto, Ontario,  
MSG 1S4, on the 6th day of December, 2018.

-----  
Reported By: Deana Santedicola, CSR (Ont.), RPR,  
CRR

Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al  
LARILYN REFFETT on December 06, 2018

Page 2

1 A P P E A R A N C E S:

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

3 and E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED]:

4 SULLIVAN & CROMWELL LLP

5 PER: Jessica Klein, Esq.

6 Lauren M. Goldsmith, Esq.

7 125 Broad Street

8 New York, New York 10004-2498

9 Tel. 1-212-558-4000

10 Email: goldsmithl@sullcrom.com

11 kleinj@sullcrom.com

12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

14 OF STATE, AND THE HONOURABLE MICHAEL R. POMPEO,

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

23 Also Present: Jeremy Weinberg, U.S. Department of

24 State, Office of the Legal Advisor

25

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I N D E X

WITNESS: LARILYN REFFETT

PAGE

EXAMINATION BY MS. KLEIN..... 6

REDIRECT EXAMINATION BY MS. ZEIDNER

MARCUS..... 201

1 Goldsmith of Sullivan & Cromwell. I'm also  
2 representing Andrew and E [REDACTED] D [REDACTED] -B [REDACTED].

3 MS. ZEIDNER MARCUS: I am Lisa Zeidner  
4 Marcus, trial attorney, U.S. Department of Justice.  
5 I represent the Defendants in this matter, the U.S.  
6 Department of State and the Secretary of State who  
7 was sued in his official capacity.

8 MR. WEINBERG: Jeremy Weinberg,  
9 Department of State, Office of the Legal Advisor,  
10 also representing the U.S. government in this  
11 matter, Department of State.

12 AUDIO-RECORDER: Would the reporter  
13 please swear or affirm the witness.

14 LARILYN REFFETT; AFFIRMED.

15 EXAMINATION BY MS. KLEIN:

16 Q. Good morning, Ms. Reffett.

17 A. Good morning.

18 Q. As you heard, I am Jessica Klein  
19 and I am representing the Plaintiffs in this  
20 matter. Have you ever been deposed before?

21 A. No.

22 Q. And have you ever testified in  
23 Court?

24 A. No.

25 Q. Have you ever given testimony



1 Q. Did your training that you have  
2 received in your career include training you in the  
3 policies of the Toronto Consulate in adjudicating  
4 applications for U.S. passports?

5 A. There is nothing Toronto-specific  
6 in training.

7 Q. So is it correct then that the  
8 policies of the United States State Department are  
9 one and the same with the policies of the Toronto  
10 Consulate in the adjudication of applications for  
11 U.S. passports?

12 A. The adjudications here in Toronto  
13 are done solely based on the guidance and the  
14 references that we are provided by the Department  
15 of State.

16 Q. Is there any Toronto  
17 Consulate-specific guidance concerning  
18 adjudications of U.S. passports?

19 A. No.

20 Q. What about Canada-specific?

21 A. No.

22 Q. So is it correct then that the  
23 training you have received on the adjudication of  
24 passport applications has been training that, to  
25 your understanding, would apply in any consular

1 a U.S. passport and Consular Report of Birth  
2 Abroad?

3 A. Making the determination? What do  
4 you mean by that? The case was adjudicated by  
5 Frankie Day -- Terri Day in this case.

6 Q. Am I correct that it is your  
7 understanding that Ms. Day interviewed E [REDACTED] and  
8 the Dvash-Bankses concerning these applications?

9 A. My understanding is that Terri Day  
10 did in fact interview the Dvash-Banks family, and  
11 based on her interview and based on the follow-up  
12 information that she requested, she denied these  
13 applications.

14 Q. And from the period of when the  
15 applications were initiated through March 2nd,  
16 2017, when this letter was dated, were you  
17 personally involved at all in these applications or  
18 their adjudication?

19 A. The day of the interview, Frankie  
20 asked me about -- she told me that she was going to  
21 request DNA testing. She asked me how she went  
22 about doing that. I explained to her that she just  
23 needs to ask a local staff to draft the letter.  
24 There is standard language that explains how to  
25 obtain a DNA test that is -- that meets the

1 requirements of the Department of State.

2 She asked for that letter and then  
3 presented it to the family, so I was aware at that  
4 point that she was requesting the DNA evidence. At  
5 that point, a case will go into pending status.  
6 Cases generally are allowed to remain in that  
7 status for up to 90 days without any further  
8 action. At the 90-day mark, we will review again  
9 to see whether or not we have received the  
10 information we have requested and try and proceed  
11 with the case.

12 Q. Ms. Day spoke to you on the date  
13 when the Dvash-Banks family came in about  
14 requesting DNA testing; is that correct?

15 A. Yes, she asked me to verify how  
16 the procedure works, what documentation needs to  
17 happen, because we aren't in charge of the DNA  
18 program as the adjudicating officers, so she wanted  
19 to verify that she was getting the right letter,  
20 giving them the right information about how to  
21 proceed with that testing.

22 Q. Did Ms. Day share with you the  
23 facts surrounding these applications for E [REDACTED] ?

24 A. She told me that she had a case  
25 that involved artificial reproductive technology.

1 She said that it was not clear from the  
2 documentation who was biologically related to who  
3 in the case and she was requesting the DNA in order  
4 to establish that.

5 Q. Did you ever meet any members of  
6 the Dvash-Banks family?

7 A. No.

8 Q. Did you ever see any members of  
9 the Dvash-Banks family?

10 A. I might have seen them through the  
11 interview windows. I generally walk up and down my  
12 section to check on how things are going and, you  
13 know, what is moving and what is not moving.

14 If they need additional assistance, for  
15 example, if there are too many cases and we need  
16 more interviews, I might be sort of checking on  
17 that, but nothing that would have stood out to me  
18 or that I realized, I mean, that I had seen this  
19 particular family, no.

20 Q. Did Ms. Day inform you that the  
21 Dvash-Banks family includes a same-sex couple?

22 A. She did.

23 Q. What did Ms. Day tell you?

24 A. She told me that she, as I  
25 mentioned, she had a case involving artificial

1            Oftentimes in those situations, the  
2 officers will make sure that all of the other  
3 officers know that this is pending because if, for  
4 example, the documentation came in while, for  
5 example, Frankie was on leave, we would need to be  
6 sure that we understood what we were waiting for.

7            Q.    I would like to focus on your  
8 conversations with Ms. Day about these applications  
9 for the next several questions.

10            When Ms. Day first spoke with you about  
11 E██████'s applications, had she already decided to  
12 give them pending status?

13            A.    When she came to me, she explained  
14 to me that the documentation did not establish the  
15 biological relationship, so she was going to  
16 request the DNA testing and she asked me about the  
17 proper procedure for doing that.

18            Q.    And did she ask you only what the  
19 procedure was or also whether to seek DNA testing?

20            A.    I don't recall the specific  
21 details of the conversation, but what the result  
22 was, and what -- I mean, what I recall was that I  
23 explained to her how to do this and this is -- you  
24 know, she told me I don't have in front of me in  
25 this interview or this application the information

1 Q. And are you referring to being  
2 notified of an inquiry that was made with  
3 congressional staff?

4 A. Generally speaking, if  
5 congressional staff have received an inquiry from a  
6 member of the public about a case or a consular  
7 service that is taking place at your post, that  
8 staff will email you and ask you either for comment  
9 or will just give you the just FYI this is what we  
10 have received.

11 I know we did have correspondence from  
12 a congressional office, but I don't remember the  
13 date of it.

14 Q. Is it your understanding that when  
15 Ms. Day signed this letter on March 2nd, 2017, the  
16 adjudication was final?

17 A. Yes, that is my understanding.

18 Q. And sitting here today, do you  
19 remember any involvement you had in the  
20 adjudication or processing of E [REDACTED]'s applications  
21 for a passport or Consular Report of Birth Abroad  
22 other than the three brief conversations with Ms.  
23 Day that you described?

24 A. No.

25 Q. Okay. Have you read E [REDACTED]'s

1 application materials?

2 A. No.

3 Q. So you don't have any view as to  
4 the authenticity or completeness of the application  
5 that was filed?

6 A. I have not seen the application.  
7 I have only heard what Frankie told me about the  
8 facts that she was presented.

9 Q. So sitting here today, what is  
10 your understanding of why Frankie Terri Day denied  
11 E [REDACTED]'s applications for a U.S. passport and  
12 Consular Report of Birth Abroad?

13 A. My understanding is that the  
14 applicants did not establish the biological  
15 relationship between the American citizen parent  
16 and the child, which is required by the Immigration  
17 and Nationality Act.

18 Q. And are you aware of any other  
19 reason why E [REDACTED]'s applications were denied?

20 A. No.

21 Q. And as you read the document  
22 marked DVASH-BANKS30, Plaintiffs Deposition Exhibit  
23 1, do you read it to state that there was no other  
24 reason for the denial of the applications?

25 A. That is correct. I read it to

1 adjudicating that case would then have reference  
2 material. They would be able to reference the  
3 previous application so that they could see what  
4 happened and where that case was -- how it  
5 terminated.

6 Q. Does Ms. Day's letter dated March  
7 2nd, 2017, reflect a final adjudication of E [REDACTED]'s  
8 applications for a U.S. passport and Consular  
9 Report of Birth Abroad?

10 A. As far as the applications that  
11 were submitted here in Toronto, that letter  
12 absolutely is a final determination. In the  
13 second-to-last paragraph:

14 "[...] therefore the  
15 applications are denied."

16 That is the termination of that case  
17 from that point forward.

18 Q. So how would you describe the  
19 status of that case for the Toronto Consulate  
20 today?

21 A. The case was denied and it is  
22 closed.

23 Q. And does your office prepare  
24 additional paperwork concerning the adjudication of  
25 a U.S. passport application beyond this letter?



1 about something that you are specifically looking  
2 at that might have changed, because there have been  
3 substantial changes.

4 Q. Are you aware of any changes to  
5 the biological relationship to a U.S. citizen  
6 parent requirement that have changed during your  
7 tenure at the Toronto Consulate?

8 A. I don't know the exact dates of  
9 changes as they have come and gone. I do -- we  
10 have touched on this issue earlier, but we have  
11 talked about the fact that the biological  
12 relationship does now include a gestational mother  
13 role, for example.

14 Being a gestational mother does in fact  
15 meet the biological -- does in fact qualify as a  
16 biological relationship. That has been a change,  
17 but when it happened, I honestly don't know. It is  
18 not something I keep track of.

19 Q. And other than the treatment of  
20 gestational mothers who are not genetically related  
21 to their children, are you aware of any other  
22 changes that have been made at the State Department  
23 in the requirements of a biological tie between a  
24 U.S. citizen and his child?

25 A. I am not specific -- I don't know

Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al  
LARILYN REFFETT on December 06, 2018

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1 REPORTER'S CERTIFICATE

2  
3 I, DEANA SANTEDICOLA, RPR, CRR,  
4 CSR, Certified Shorthand Reporter, certify;

5 That the foregoing proceedings were  
6 taken before me at the time and place therein set  
7 forth, at which time the witness was put under oath  
8 by me;

9 That the testimony of the witness  
10 and all objections made at the time of the  
11 examination were recorded stenographically by me  
12 and were thereafter transcribed;

13 That the foregoing is a true and  
14 correct transcript of my shorthand notes so taken.

15  
16  
17 Dated this 12th day of December, 2018

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