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9 *Counsel for Defendants*

10  
 11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 13 WESTERN DIVISION  
 14

15 ANDREW MASON DVASH-  
 16 BANKS and ETHAN JACOB  
 17 DVASH-BANKS

18 Plaintiffs,

19 v.

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

23 Defendants.  
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No. CV 18-523-JFW-JC

ANSWER

Honorable John F. Walter

1 Defendants the United States Department of State and Secretary of State  
2 Michael R. Pompeo, in his official capacity, through their undersigned counsel,  
3 respectfully respond to Plaintiffs' complaint as follows:

4 **PRELIMINARY STATEMENT**

- 5 1. The first sentence of paragraph one consists of Plaintiffs' characterization  
6 of their lawsuit, to which no response is required. The second sentence  
7 consists of Plaintiffs' legal conclusions, to which no response is required.  
8 Defendants lack knowledge or information sufficient to form a belief as  
9 to the truth of the allegations in the third sentence of this paragraph and  
10 admit the last sentence on information and belief.
- 11 2. On information and belief, admit the first sentence of paragraph two.  
12 Defendants lack knowledge or information sufficient to form a belief as  
13 to the truth of the allegations in the second sentence. On information and  
14 belief, Defendants admit the third sentence. On information and belief,  
15 Defendants admit that a surrogate carried Ethan and Aiden Dvash-Banks  
16 to term and that they were born on September 16, 2016, in Canada.  
17 Defendants admit that Andrew and Elad Dvash-Banks are listed as Ethan  
18 and Aiden Dvash-Banks's parents on their birth certificates; Defendants  
19 lack knowledge or information sufficient to form a belief as to the truth  
20 of the allegations in the rest of the fourth sentence and to the extent this  
21 sentence consists of a legal conclusion, no response is required.  
22 Defendants also lack knowledge or information sufficient to form a belief  
23 as to the truth of the allegations in the fifth sentence.
- 24 3. The first two sentences in paragraph three consist of legal conclusions, to  
25 which no response is required. Defendants admit on information and  
26 belief that Andrew Dvash-Banks is a U.S. citizen who lived in the United  
27 States for over twenty four years; the remainder of this paragraph  
28 consists of legal conclusions, to which no response is required.

- 1       4.     Admit that the State Department applied Section 309 of the INA with  
2           respect to the applications for Consular Reports of Birth Abroad  
3           (“CRBA”) submitted on behalf of Ethan and Aiden Dvash-Banks. The  
4           remainder of this paragraph consists of legal conclusions, to which no  
5           response is required. To the extent a response is required, deny that the  
6           State Department acted wrongly.
- 7       5.     The first clause of the first sentence consists of a legal conclusion, to  
8           which no response is required. Defendants admit the second clause of the  
9           sentence. The second sentence consists of a legal conclusion, to which no  
10          response is required. The third sentence does not set forth a claim for  
11          relief or aver facts in support of a claim to which an answer is required.
- 12       6.     Paragraph six consists of Plaintiffs’ legal conclusions, to which no  
13          response is required. To the extent a response is required, Defendants  
14          deny.
- 15       7.     The first two sentences of paragraph seven consist of legal conclusions to  
16          which no response is required. To the extent that a response is required,  
17          admitted. The third sentence is denied. The fourth sentence consists of a  
18          legal conclusion, to which no response is required. The fifth sentence  
19          does not set forth a claim for relief or aver facts in support of a claim to  
20          which an answer is required.
- 21       8.     The first four sentences of paragraph eight consist of legal conclusions, to  
22          which no response is required. The fifth sentence consists of a legal  
23          conclusion to which no response is required. To the extent a response is  
24          required, Defendants deny any violations of law and lack knowledge or  
25          information sufficient to form a belief as to the truth of the allegations in  
26          the rest of the sentence. Defendants lack knowledge or information  
27          sufficient to form a belief as to the truth of the allegations in the sixth  
28          sentence. To the extent the last clause of the sixth sentence states a legal

1 conclusion, no response is required. To the extent a response is required,  
2 Defendants deny.

3 9. Paragraph nine consists of a legal conclusion, to which no response is  
4 required. To the extent a response is required, denied.

5 10. Paragraph 10 consists of Plaintiffs’ characterization of their lawsuit, to  
6 which no response is required.

7 **THE PARTIES**

8 11. Admit the first sentence of paragraph one. Admit the first clause of the  
9 second sentence, but lack knowledge or information sufficient to form a  
10 belief as to the truth of the allegations of the second clause of that  
11 sentence.

12 12. On information and belief, admit the first sentence of paragraph 12 and  
13 the first clause of the second sentence. Defendants lack knowledge or  
14 information sufficient to form a belief as to the truth of the remaining  
15 allegations of the paragraph.

16 13. Paragraph 13 consists of Plaintiffs’ characterization of their lawsuit, to  
17 which no response is required.

18 14. Admit the first sentence of paragraph 14. Defendants further admit that  
19 the State Department oversees all U.S. embassies and sets policy, formed  
20 consistent with the law, that U.S. embassy employees follow in  
21 determining the citizenship status of persons applying to be documented  
22 as U.S. citizens.

23 15. Denied insofar as the Honorable Michael R. Pompeo is currently serving  
24 as the Secretary of State. Defendants admit the rest of this paragraph.

25 **JURISDICTION AND VENUE**

26 16. Paragraph 16 consists of Plaintiffs’ legal conclusion, to which no  
27 response is required.  
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1 17. Paragraph 17 consists of Plaintiffs’ legal conclusion, to which no  
2 response is required.

3 18. Paragraph 18 consists of Plaintiffs’ legal conclusion, to which no  
4 response is required.

5 19. Paragraph 19 consists of Plaintiffs’ legal conclusion, to which no  
6 response is required.

7 20. Paragraph 20 consists of Plaintiffs’ legal conclusion, to which no  
8 response is required.

9 **STATUTORY AND REGULATORY BACKGROUND**

10 **A. United States Citizenship at Birth**

11 21. Paragraph 21 consists of Plaintiffs’ legal conclusions, to which no  
12 response is required.

13 22. Paragraph 22 consists of Plaintiffs’ legal conclusions, to which no  
14 response is required.

15 23. Paragraph 23 consists of Plaintiffs’ legal conclusions, to which no  
16 response is required.

17 24. Paragraph 24 consists of Plaintiffs’ legal conclusions, to which no  
18 response is required.

19 25. Paragraph 25 consists of Plaintiffs’ legal conclusions, to which no  
20 response is required.

21 26. Paragraph 26 consists of Plaintiffs’ legal conclusions, to which no  
22 response is required.

23 27. Paragraph 27 consists of Plaintiffs’ legal conclusions, to which no  
24 response is required.

25 28. Paragraph 28 consists of Plaintiffs’ legal conclusions, to which no  
26 response is required.

27 29. Paragraph 29 consists of Plaintiffs’ legal conclusions, to which no  
28 response is required.

1       **B. The Constitutional Rights of Same-Sex Couples**

2       30. Paragraph 30 consists of Plaintiffs' legal conclusions, to which no  
3       response is required.

4       31. Paragraph 31 consists of Plaintiffs' legal conclusions, to which no  
5       response is required.

6       32. Paragraph 32 consists of Plaintiffs' legal conclusions, to which no  
7       response is required.

8       33. Paragraph 33 consists of Plaintiffs' legal conclusions, to which no  
9       response is required.

10      34. Paragraph 34 consists of Plaintiffs' legal conclusions, to which no  
11      response is required.

12      **C. The State Department's Restrictive Classification of Eligible Children**

13      35. The first sentence of paragraph 35 consists of Plaintiffs' legal  
14      conclusions, to which no response is required. Defendants deny the  
15      second sentence of the paragraph.

16      36. Defendants deny Plaintiffs' characterization in the first sentence of  
17      paragraph 36 that Defendants have imposed the policy described in the  
18      second sentence of paragraph 35. Defendants admit the second sentence,  
19      respectfully refer the Court to Exhibit A for a complete and accurate  
20      statement of the contents of the cited section of the Foreign Affairs  
21      Manual (FAM), and further aver that it does not constitute the entirety of  
22      Department guidance on this issue.

23      37. Admit the first sentence of paragraph 37. The second sentence of the  
24      paragraph consists of Plaintiffs' legal conclusions, to which no response  
25      is required.

26      38. Paragraph 38 consists of Plaintiffs' legal conclusions, to which no  
27      response is required.

28

**FACTUAL ALLEGATIONS**

**A. The Dvash-Banks Family**

- 39. Admit that Andrew Dvash-Banks is a U.S. citizen. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 39.
- 40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.
- 41. On information and belief, admit that Elad Dvash-Banks is an Israeli citizen. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 41. Defendants refer the Court to Exhibit B for a complete and accurate statement of its contents.
- 42. The first sentence of paragraph 42 consists of a legal conclusion, to which no response is required. Defendants also lack knowledge or information sufficient to form a belief as to the truth of the allegations in that sentence. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence paragraph 42. The last sentence of the paragraph consists of a legal conclusion, to which no response is required.
- 43. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43. The first sentence of this paragraph also consists of a legal conclusion, to which no response is required.
- 44. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.
- 45. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45.

1 46. On information and belief, admit that Ethan and Aiden Dvash-Banks  
2 were born on September 16, 2016, in Canada. Defendants admit the first  
3 clause of the second sentence. Defendants lack knowledge or information  
4 sufficient to form a belief as to the truth of the allegations in the last  
5 clause of the second sentence in paragraph 46, which also includes a  
6 legal conclusion to which no response is required.

7 47. Defendants admit the first sentence, on information and belief. With  
8 respect to the second sentence, on information and belief, Defendants  
9 admit that Aiden Dvash-Banks has a genetic relationship with Andrew  
10 Dvash-Banks, and Ethan Dvash-Banks does not have that same genetic  
11 relationship. Defendants lack knowledge or information sufficient to  
12 form a belief as to the truth of the remaining allegations in the second  
13 sentence; alternatively, the remainder of the sentence consists of a  
14 statement which does not set forth a claim for relief or aver facts in  
15 support of a claim, to which no response is required. The third sentence  
16 consists of a legal conclusion, to which no response is required. The  
17 fourth sentence consists of a statement that does not set forth a claim for  
18 relief or aver facts in support of a claim, to which no response is required.

19 **B. The Application of the State Department's Policy to the Dvash-Banks**  
20 **Family**

21 48. Admit that Andrew and Elad Dvash-Banks appeared at the U.S. consulate  
22 in Toronto on January 24, 2017 and applied for Consular Reports of Birth  
23 Abroad for Ethan Dvash-Banks and his brother Aiden Dvash-Banks and  
24 submitted both children's birth certificates, their marriage certificates,  
25 and payment for the application fees. Defendants lack knowledge or  
26 information sufficient to form a belief as to the remainder of the  
27 allegations in paragraph 48.  
28

1 49. Admit that a consular interview took place but Defendants otherwise lack  
2 knowledge or information sufficient to form a belief as to the allegations  
3 in paragraph 49.

4 50. Admit that the U.S. consulate in Toronto requested evidence of a  
5 biological connection between Andrew Dvash-Banks and his children in  
6 the form of a DNA test. Defendants lack knowledge or information  
7 sufficient to form a belief as to the remaining allegations in paragraph 50.

8 51. Defendants lack knowledge or information sufficient to form a belief as  
9 to the allegations in the first two sentences of paragraph 51. The  
10 remainder of this paragraph consists of a legal conclusion, to which no  
11 response is required.

12 52. Admit that DNA tests were submitted to the U.S. consulate in Toronto  
13 for Ethan and Aiden Dvash-Banks. Defendants further admit that Aiden  
14 met his burden to prove he was a U.S. citizen and consequently was  
15 issued a Consular Report of Birth Abroad and U.S. Passport. Defendants  
16 admit the fourth sentence and refer the Court to Exhibit C for a complete  
17 and accurate statement of its contents. Defendants admit that Ethan has  
18 not met his burden to prove he was a U.S. citizen but otherwise lack  
19 knowledge or information sufficient to form a belief as to the remaining  
20 allegations in paragraph 52.

21 53. Admit that Plaintiffs have accurately quoted a portion of Exhibit C  
22 referenced in paragraph 54 and further refer the Court to Exhibit C for a  
23 complete and accurate statement of its contents.

24 54. Admit that Plaintiffs have accurately quoted a portion of Exhibit C and  
25 further refer the Court to Exhibit C for a complete and accurate statement  
26 of its contents.

27 55. Defendants lack knowledge or information sufficient to form a belief as  
28 to the allegations in the first clause of the first sentence of paragraph 55.

1 With respect to the remainder of the paragraph, Defendants admit that, in  
2 response to an inquiry, the State Department's Office of American  
3 Citizen Services and Crisis Management sent a letter to Congressman  
4 Ted Lieu, dated October 2, 2017, and further refer the Court to Exhibit D  
5 for a complete and accurate statement of the letter's contents.

6 56. Defendants refer the Court to Exhibit D for a complete and accurate  
7 statement of the contents of the letter, referenced in paragraph 55, that is  
8 referred to by implication in the first sentence. Defendants lack  
9 knowledge or information sufficient to form a belief as to the allegations  
10 in the remainder of paragraph 56.

11 57. Admit the first sentence of paragraph 57. Defendants lack knowledge or  
12 information sufficient to form a belief as to the allegations in the  
13 remainder of paragraph 57.

14 58. Defendants lack knowledge or information sufficient to form a belief as  
15 to the allegations in paragraph 58.

16 59. Defendants lack knowledge or information sufficient to form a belief as  
17 to the allegations in the first sentence of paragraph 59. The remaining  
18 sentences do not set forth a claim for relief or aver facts in support of a  
19 claim to which an answer is required.

20 60. Defendants lack knowledge or information sufficient to form a belief as  
21 to the allegations in the first sentence of paragraph 60. Defendants admit  
22 the second sentence inasmuch as State Department policy set out in 7  
23 FAM 1140 Appendix E (Exhibit A) and elsewhere is applicable.

24 Defendants lack knowledge or information sufficient to form a belief as  
25 to the allegations in the third and fourth sentences of the paragraph. To  
26 the extent any further response is required, Defendants deny.

27 61. Paragraph 61 consists of Plaintiffs' legal conclusions, to which no  
28 response is required.

1 62. Paragraph 62 consists of Plaintiffs' legal conclusions to which no  
2 response is required.

3 63. Paragraph 63 consists of Plaintiffs' legal conclusions to which no  
4 response is required.

5 **C. The State Department's Policy Unconstitutionally Discriminates on the**  
6 **Basis of Sex and Sexual Orientation.**

7 64. Paragraph 64 consists of Plaintiffs' legal conclusions, to which no  
8 response is required.

9 65. Paragraph 65 consists of Plaintiffs' legal conclusions, to which no  
10 response is required.

11 66. Deny.

12 67. Paragraph 67 consists of Plaintiffs' legal conclusions, to which no  
13 response is required.

14 68. Paragraph 68 consists of Plaintiffs' legal conclusions, to which no  
15 response is required.

16 69. Paragraph 69 consists of Plaintiffs' legal conclusions, to which no  
17 response is required.

18 70. Paragraph 70 consists of Plaintiffs' legal conclusions, to which no  
19 response is required.

20 71. Paragraph 71 consists of Plaintiffs' legal conclusions to which no  
21 response is required.

22 **COUNT I**

23 72. Defendants incorporate by reference its answers to paragraphs 1 through  
24 71 of the Complaint.

25 73. Paragraph 73 consists of Plaintiffs' legal conclusion, to which no  
26 response is required.

27 74. Paragraph 74 consists of Plaintiffs' legal conclusion, to which no  
28 response is required.

1 75. Paragraph 75 consists of Plaintiffs' legal conclusions, to which no  
2 response is required.

3 76. Paragraph 76 consists of Plaintiffs' legal conclusions, to which no  
4 response is required.

5 77. The first two sentences of paragraph 77 consist of legal conclusions, to  
6 which no response is required. Defendants deny the third sentence of the  
7 paragraph.

8 78. Paragraph 78 consists of Plaintiffs' legal conclusions, to which no  
9 response is required.

10 79. Paragraph 79 consists of Plaintiffs' legal conclusion, to which no  
11 response is required.

12 **COUNT II**

13 80. Defendants re-incorporate by reference their answers to paragraphs 1  
14 through 71 of the Complaint.

15 81. Paragraph 81 consists of Plaintiffs' legal conclusion, to which no  
16 response is required.

17 82. Paragraph 82 consists of Plaintiffs' legal conclusions, to which no  
18 response is required. To the extent a response is required, Defendants  
19 deny.

20 83. Deny.

21 84. Paragraph 84 consists of Plaintiffs' legal conclusions, to which no  
22 response is required. To the extent a response is required, Defendants  
23 deny.

24 85. Paragraph 85 consists of Plaintiffs' legal conclusions, to which no  
25 response is required.

26 86. Paragraph 86 consists of Plaintiffs' legal conclusions, to which no  
27 response is required.  
28

1 87. Paragraph 87 consists of Plaintiffs' legal conclusions, to which no  
2 response is required.

3 88. Paragraph 88 consists of Plaintiffs' legal conclusion, to which no  
4 response is required.

5 **COUNT III**

6 89. Defendants re-incorporate by reference their answers to paragraphs 1  
7 through 71 of the Complaint.

8 90. Paragraph 90 consists of Plaintiffs' legal conclusions, to which no  
9 response is required.

10 91. Paragraph 91 consists of Plaintiffs' legal conclusions, to which no  
11 response is required.

12 92. Paragraph 92 consists of Plaintiffs' legal conclusions, to which no  
13 response is required.

14 93. Paragraph 93 consists of Plaintiffs' legal conclusions, to which no  
15 response is required.

16 94. Paragraph 94 consists of Plaintiffs' legal conclusions, to which no  
17 response is required.

18 95. Paragraph 95 consists of Plaintiffs' legal conclusions, to which no  
19 response is required.

20 96. Paragraph 96 consists of Plaintiffs' legal conclusions, to which no  
21 response is required.

22 97. Paragraph 97 consists of Plaintiffs' legal conclusion, to which no  
23 response is required.

24 **COUNT IV**

25 98. Defendants re-incorporate by reference its answers to paragraphs 1  
26 through 71 of the Complaint.

27 99. Paragraph 99 consists of Plaintiffs' legal conclusions, to which no  
28 response is required.

1 100. Admit that Andrew Dvash-Banks is a U.S. citizen born in the United  
2 States, and, on information and belief, that he has been physically present  
3 for a period of 24 years. Defendants lack knowledge or information  
4 sufficient to form a belief as to the allegations in the remainder of the  
5 paragraph.

6 101. On information and belief, admit the first sentence of paragraph 101.  
7 Defendants lack knowledge or information sufficient to form a belief as  
8 to the allegations in the second sentence of the paragraph.

9 102. On information and belief, admit.

10 103. Admit that Andrew and Elad Dvash-Banks are identified as Ethan Dvash-  
11 Banks's parents on his birth certificate. The remainder of paragraph 103  
12 consists of a legal conclusion, to which no response is required.

13 104. Paragraph 104 consists of legal conclusions, to which no response is  
14 required.

15 105. Paragraph 105 consists of legal conclusions, to which no response is  
16 required.

17  
18 The remaining paragraphs of the Complaint contain Plaintiffs' requested relief, to  
19 which no response is required. To the extent a response is required, Defendants  
20 deny the allegations contained in the remaining paragraphs of the Complaint and  
21 further aver that Plaintiffs are not entitled to any relief.

22 Defendants hereby deny all allegations in the Complaint not expressly admitted or  
23 denied.

24 WHEREFORE, having fully answered the Complaint, Defendants assert that  
25 Plaintiffs are not entitled to the relief requested and respectfully request that the  
26 Court enter judgment dismissing this action with prejudice and awarding  
27 Defendants costs and, such other relief as the Court may deem appropriate.

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Dated: July 16, 2018

Respectfully submitted,

Attorneys for Defendants

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Assistant Director

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**CERTIFICATE OF SERVICE**

Case No. CV 18-523-JFW-JC

I hereby certify that I am over the age of 18 and not a party to the above-titled action. I am employed as a Trial Attorney at the United States Department of Justice, Civil Division, Federal Programs Branch. My business address is 20 Massachusetts Ave., N.W., Washington, DC 20530.

On July 16, 2018, I served this ANSWER on each person or entity named below by uploading an electronic version of this document to the Court's ECF system:

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I declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

Executed on July 16, 2018, at Washington, DC.

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By: s/Vinita B. Andrapalliyal  
VINITA B. ANDRAPALLIYAL  
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