

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

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

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

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-
BANKS and ETHAN JACOB
DVASH-BANKS,

Plaintiffs,

v.

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

Defendants.

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

**NOTICE OF MOTION AND
MOTION TO COMPEL
PRODUCTION OF DOCUMENTS,
INTERROGATORY RESPONSES,
AND DEPOSITIONS**

Discovery cutoff date: January 2, 2019
Pretrial conference date: April 5, 2019
Trial date: April 16, 2019

Judge: Hon. Jacqueline Chooljian
Courtroom: 750
Hearing date: December 11, 2018
Time: 9:30 a.m.

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on December 11, 2018, at 9:30 a.m., or
 3 as soon thereafter as the matter may be heard in the United States District Court,
 4 Central District of California, located at Roybal Federal Building, 255 East Temple
 5 Street, Los Angeles, California 90012, Plaintiffs Andrew Mason Dvash-Banks and
 6 Ethan Jacob Dvash-Banks, through their undersigned counsel, will, and hereby do,
 7 move to compel further responses to their First Set of Requests for Production,
 8 First Set of Interrogatories, Notice of Deposition under Rule 30(b)(6), and Notices
 9 for the Deposition of Frankie Terrie Day, Larilyn Reffett, Margaret Ramsay, Ann
 10 Marie Warmenhoven, Carlos Hernandez, Karen Christensen, and Brian Egan. This
 11 Motion is made following several conferences of counsel pursuant to L.R. 37-1
 12 which took place, *inter alia*, on September 20, 2018, September 25, 2018,
 13 October 18, 2018, and October 23, 2018.

14 This Motion will be based upon this Notice of Motion and Motion, the
 15 accompanying Joint Stipulation under Local Rule 37-2, and such additional
 16 material as may be considered at the hearing

17
 18 Dated: November 19, 2018

Respectfully submitted,

19 By: Alexa M. Lawson-Remer

20 SULLIVAN & CROMWELL LLP
 21 Alexa M. Lawson-Remer (268855)
 lawsonr@sullcrom.com
 22 1888 Century Park East, Suite 2100
 Los Angeles, CA 90067-1725
 23 Telephone: (310) 712-6600
 Facsimile: (310) 712-8800

24 Theodore Edelman (pro hac vice)
 25 edelmant@sullcrom.com
 Jessica Klein (pro hac vice)
 26 kleinj@sullcrom.com
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 27 New York, NY 10004-2498
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amorris@immigrationequality.org
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New York, NY 10005-2744
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Attorneys for Plaintiffs

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 lawsonr@sullcrom.com
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 Telephone: (310) 712-6600
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 125 Broad Street
 New York, NY 10004-2498
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 New York, NY 10005-2744
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 THE UNITED STATES
 DEPARTMENT OF STATE,
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 MICHAEL R. POMPEO,
 Secretary of State,

 Defendants.

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

**JOINT STIPULATION
 REGARDING DISPUTE OVER
 PRODUCTION OF DOCUMENTS,
 INTERROGATORY RESPONSES,
 AND DEPOSITIONS**

Judge: Hon. Jacqueline Chooljian
 Hearing date: December 11, 2018
 Discovery cutoff date: January 2, 2019
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JOINT STATEMENT

Pursuant to Fed. R. Civ. P. 37 and L.R. 37-1, plaintiffs Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks (jointly, “Plaintiffs”) and Defendants The United States Department of State (“State Department” or “Department of State”) and The Honorable Michael R. Pompeo in his capacity as Secretary of State (jointly, “Defendants” and collectively with Plaintiffs, the “Parties”) have met and conferred regarding discovery of documents and information sought by *Plaintiffs’ First Set of Requests for Production of Documents* (“Document Requests”) and *Plaintiffs’ First Set of Interrogatories* (“Interrogatories”). (Declaration of Alexa Lawson-Remer, “Decl.”). The Parties disagree about the extent to which they met and conferred (if at all) regarding the Rule 30(b)(6) deposition notice (“30(b)(6) Notice,” Decl. Ex. 2) and seven individual deposition notices served by Plaintiffs on Defendants (the “Deposition Notices,” Decl. Ex. 12). The Parties have been unable to reach an agreement at this time, and respectfully submit their positions.¹

I. **PLAINTIFFS’ INTRODUCTORY STATEMENT PURSUANT TO L.R. 37-2.1**

Plaintiffs’ contentions in this submission reflect the state of discovery as of November 9, 2018, the date on which Plaintiffs provided their portions of this submission to Defendants’ counsel under Local Rule 37-2.2. On November 16, when Defendants were required by that rule to provide their portions of this submission to Plaintiffs, Defendants sent to Plaintiffs a letter regarding 30(b)(6)

¹ Plaintiffs state multiple times in this Joint Stipulation that Defendants have failed to take certain actions (*e.g.*, responding to meet-and-confer letters or discovery requests, or producing documents). These statements reflect Plaintiffs’ view of the state of affairs between the Parties as of November 9, 2018, when Plaintiffs’ portions of the Joint Stipulation were provided to Defendants. Defendants’ statements below reflect Defendants’ view of the state of affairs between the Parties as of November 16, 2018, when Defendants returned their portions of the Joint Stipulation to Plaintiffs in accordance with L.R. 37-2.2.

1 topics, an e-mail on deposition scheduling and document production, responses
2 and objections to interrogatories, and Defendants’ portions of this submission.
3 Because any substantive changes to the Joint Stipulation would potentially restart
4 the seven-day deadline under Local Rule 37-2.2 and threaten the ability to have
5 these disputes heard before the January 2, 2019 discovery cutoff date, out of an
6 abundance of caution, Plaintiffs have included in this Joint Stipulation the entirety
7 of the issues presented to Defendants on November 9. Plaintiffs will promptly
8 assess Defendants’ November 16 submissions and seek to meet and confer with
9 Defendants to identify any areas that can be resolved as a result of Defendants’
10 positions on November 16 and submit a supplemental brief.

11 Plaintiffs served reasonable discovery requests in this case (“Action”)
12 seeking important information relevant to Plaintiffs’ claims that the State
13 Department unlawfully refused to recognize the U.S. citizenship at birth of Ethan
14 Dvash-Banks (“Ethan”) and therefore denied him a Consular Report of Birth
15 Abroad (“CRBA”) and U.S. passport. Despite Plaintiffs’ repeated efforts to obtain
16 discovery, Defendants have failed to comply with their discovery obligations and,
17 at least until literally the eve of finalization of this submission, in some cases, have
18 refused even to respond to Plaintiffs’ entreaties to discuss the discovery requests or
19 ways to interpret or limit them. Instead, Defendants have stonewalled Plaintiffs’
20 efforts to conduct reasonable discovery. This approach appears to be no
21 happenstance: Defendants initially took the position that Plaintiffs are entitled to
22 no discovery whatsoever in the Action, but the Court’s *Scheduling and Case*
23 *Management Order* (“Scheduling Order,” Decl. Ex. 1) rejected that approach and
24 set out a relatively accelerated schedule for the conduct of discovery. Defendants
25 thereafter embarked on a campaign of delay and diversion essentially to achieve by
26 fiat and conduct what they failed to obtain by court order.² The parties are

27 ² Defendants contended in the Joint 26(f) report that Plaintiffs’ “declaratory
28 judgment claims and their APA claim would be subject to record review pursuant

1 therefore at an impasse on three discovery issues:

2 *First*, Defendants have unreasonably delayed in producing documents.
 3 Plaintiffs served the Document Requests nearly ninety days ago, on August 14,
 4 2018. Defendants served their responses and objections on September 18, 2018.
 5 After prodding Defendants on multiple occasions to begin producing documents
 6 (including in an October 2 meet-and-confer letter, Decl. Ex. 4, an email on
 7 October 5, Decl. Ex. 6, and another letter on October 16, Decl. Ex. 8), Defendants
 8 finally made themselves available to meet and confer on October 18 and October
 9 23 and, during those calls, agreed to begin producing documents on October 26,
 10 but have never given any clear indication of what categories of documents they
 11 will produce. To date, Defendants have served more than 90 pages of objections,
 12 but made one production (on October 26) consisting of a mere seven pages.
 13 Defendants refuse to confirm when their production will be substantially complete
 14 (or even to identify what responsive documents exist).

15 *Second*, Defendants have delayed in responding to Plaintiffs' Interrogatories.
 16 Plaintiffs served the Interrogatories more than seventy days ago, on August 28,
 17 2018. Despite requesting and receiving two extensions from Plaintiffs, Defendants
 18 belatedly served only partial responses to the first half of the Interrogatories on
 19 October 5. According to Defendants, the twenty numbered Interrogatories are
 20 comprised of forty-five discrete subparts and thus Defendants were required to
 21 respond only to the first twenty-five subparts. For reasons described below,
 22 Defendants' position is unreasonable; and they reneged on their commitment

23 to the APA." (See Dkt. No. 50, at 9.) Similarly, in Defendants' responses and
 24 objections to the Document Requests and Interrogatories, they asserted that review
 25 of this case is limited to the administrative record. The Court's Scheduling Order
 26 (which in no way limited discovery to the administrative record) impliedly rejected
 27 Defendants' position. In any event, Plaintiffs' constitutional claims merit
 28 additional discovery. See *Grill v. Quinn*, 2012 WL 174873, at *2 (E.D. Cal. Jan.
 20, 2012) ("A direct constitutional challenge is reviewed independent of the APA.
 [citation.] As such the court is entitled to look beyond the administrative record in
 regard to this claim.").

1 during meet-and-confer calls on October 18 and October 23 to respond to the
2 remaining interrogatories on or before November 2, 2018 and on their subsequent
3 undertaking to serve them during the week of November 5. Defendants have not
4 responded to Plaintiffs' correspondence about the Interrogatories and have ceased
5 all communication on the subject.³

6 Additionally, Defendants have construed the Document Requests and
7 Interrogatories unreasonably narrowly to limit the scope of discovery to the point
8 of near uselessness. Further, multiple interrogatory responses incorporate
9 documents that have not been produced, and Defendants' responses to the
10 Document Requests likewise are based on references to multiple interrogatory
11 responses that they have not provided. These circular and indecipherable cross
12 references leave Plaintiffs virtually empty-handed at the time when the Parties
13 should have finalized written discovery and be focused on depositions.⁴

14 *Third*, Defendants have frustrated Plaintiffs' attempts to take any
15 depositions, both of individuals and under Fed. R. Civ. P. 30(b)(6). Plaintiffs have
16 expressed their willingness to cut certain deposition topics (and narrow others), to
17 take combined 30(b)(6) and individual depositions where appropriate, and to be
18 flexible about timing and location. (Decl. Ex. 14.) None of these efforts has
19 prompted any concrete action from Defendants. Plaintiffs attempted to meet and
20 confer with Defendants regarding the discovery of information sought by the
21 30(b)(6) Notice and the Deposition Notices, but Defendants declined to make
22 themselves available for a meet and confer.⁵

23 ³ Plaintiffs requested a further meet-and-confer with Defendants on the
24 Interrogatories via letter on October 28, 2018, but Defendants did not respond until
nearly 4:00 p.m. on the deadline for returning their portion of this Joint Stipulation.

25 ⁴ Defendants similarly have impeded discovery by making numerous privilege
26 objections without confirming whether materials were withheld on that basis, and
failing to follow the procedural requirements for asserting certain privileges.

27 ⁵ During meet-and-confer calls, the Parties spoke generally about the scope of the
28 30(b)(6) topics and about the possibility of taking combined individual and

Defendants' conduct stymies not only Plaintiffs' efforts to take reasonable discovery, but also the Court's Scheduling Order. Plaintiffs have made essentially every reasonable effort to break this log jam, at every turn reminding Defendants of the short discovery period and offering to work cooperatively to conduct discovery in an orderly and efficient manner and to strive to avoid motion practice. All of this appears to have fallen on deaf ears, if not to embolden Defendants to perpetuate their obstructive pattern. Defendants should not be allowed to run out the clock in this way. Plaintiffs therefore are forced to seek the Court's assistance. In light of the looming Court-ordered discovery completion deadline of January 2, 2019, Defendants should be ordered to respond immediately and in full to Plaintiffs' Interrogatories and Document Requests; to produce a 30(b)(6) witness shortly thereafter to testify regarding the topics outlined in the 30(b)(6) Notice; and to work cooperatively to schedule promptly the other depositions noticed by Plaintiffs.

II. **DEFENDANTS' INTRODUCTORY STATEMENT PURSUANT TO L.R. 37-2.1**

Contrary to Plaintiffs' statements, Defendants have been diligently expending hundreds of hours responding to Plaintiffs' disproportional, voluminous discovery requests in this case, including by collecting thousands of pages of emails and other documents for review and potential production. Also contrary to Plaintiffs' statements, Defendants have fully complied with their meet and confer obligations regarding the outstanding discovery disputes and Plaintiffs' instant motion. *See infra* at 7–10; *see also* Marcus Decl.⁶ ¶¶ 3, 4; *id.* Ex. D; *id.* Ex. E; *id.* Ex. G; *id.* Ex. G. Moreover, notwithstanding the filing of this Joint Stipulation and

30(b)(6) depositions. Plaintiffs sent a letter on October 30, 2018, asking Defendants to meet and confer regarding the specific 30(b)(6) topics. Defendants did not respond until after 7:00 p.m. on November 16, 2018, the deadline for returning their portion of this Joint Stipulation.

⁶ The declaration of Lisa Zeidner Marcus is attached as Defendants' Exhibit 1.

1 Plaintiffs' Motion to Compel, Defendants have expressed their willingness to
2 continue meeting and conferring with Plaintiffs to further narrow the issues
3 outlined by the parties in this Joint Statement. See Marcus Decl. ¶ 4.

4 On September 18, 2018, Defendants timely responded in writing to
5 Plaintiffs' twenty-four broad requests for production of documents. Fully
6 consistent with Federal Rule of Civil Procedure 34, Defendants' written response
7 specified those portions of the document requests to which Defendants had valid
8 objections (including the reasons for such objections), described how Defendants
9 were construing vague requests, and stated that Defendants would produce copies
10 of documents or of electronically stored information instead of permitting
11 inspection. Defendants stated that they would produce non-privileged responsive
12 documents on a rolling basis, within a reasonable timeframe, as allowed by Rule
13 34. See Ex. A at ¶ 16. Defendants' written response also committed that
14 Defendants would produce privilege logs on a rolling basis in the course of
15 Defendants' rolling productions. *Id.* ¶ 17. Plaintiffs now complain that Defendants
16 have been slow in making productions, but Defendants have been diligently
17 working to search for, review, and produce responsive documents. Such search and
18 review necessarily takes time, particularly given (a) the breadth of the document
19 requests, and (b) Defendants' written response in which Defendants committed to
20 producing documents responsive to the vast majority of Plaintiffs' document
21 requests. Plaintiffs fail to explain why, in their view, it is taking Defendants an
22 *unreasonable* amount of time to complete the document productions.⁷

23 It is Plaintiffs who have served unreasonably broad discovery and
24 disproportional requests, not tailored to their specific claims that the March 2017
25 denial of Ethan Dvash-Bank's Consular Report of Birth Abroad ("CRBA") and
26

27 ⁷ As an initial matter, on August 16, 2018, Defendants produced 66 pages of
28 records as part of their initial disclosures under Rule 26(a)(1)(A).

1 U.S. passport applications violated the Administrative Procedure Act (“APA”) as
 2 well as Aiden Dvash-Banks’s and Ethan’s equal protection and substantive due
 3 process rights, and also not tailored to their claim for a declaration under 8 U.S.C.
 4 § 1503(a) that Ethan is a citizen.⁸ Then, in the course of meeting and conferring
 5 about Defendants’ extensive and reasonable responses, Plaintiffs neither
 6 acknowledged the burdens imposed by their requests nor worked with Defendants’
 7 counsel to tailor the requests in a way that would be less burdensome. Instead, they
 8 continued to press the same points, including through a series of lengthy letters
 9 suggesting incorrectly Defendants could not preserve privilege objections by
 10 stating such objections in the written responses and committing to providing
 11 privilege logs for documents withheld on the basis of the cited privileges. Most
 12 recently, Plaintiffs served Defendants with this 130-page document constituting
 13 Plaintiffs’ portion of this joint stipulation, leaving Defendants a mere four business
 14 days to formally respond, and requiring Defendants to prioritize this response over
 15 their efforts to make further progress with their document review and production
 16 efforts.

17 Defendants’ responses to Plaintiffs’ discovery requests have been
 18 reasonable, diligent, and extensive. In September and early October, Defendants
 19 timely served their detailed responses and objections to Plaintiffs’ request for
 20 production of documents and Plaintiffs’ first twenty-five interrogatories, including
 21 discrete sub-parts. Also during that time, counsel for Defendants served detailed
 22

23 ⁸ Although Plaintiffs are free to seek and obtain discovery—consistent with the
 24 Federal Rules of Civil Procedure—regarding any of their four claims, judicial
 25 review of APA claims is typically limited to the administrative record. Discovery
 26 is likewise limited in § 1503 cases. During discovery, the Department will provide
 27 Plaintiff with a copy of the evidence it has supporting its defense, *i.e.* that Plaintiff
 28 is not a U.S. citizen. Those are the only relevant and discoverable
 documents/information in the Department’s possession that are produced. Any
 attempted discovery into the Department’s investigatory and adjudicatory
 procedures is improper as such information is not relevant to Plaintiff’s claim of
 U.S. citizenship—the ultimate question at issue.

1 objections to Plaintiffs' third-party subpoena to the U.S. Department of Homeland
2 Security, which sought DHS records purportedly relevant to this case, and met and
3 conferred multiple times with Plaintiffs on the subpoena, eventually agreeing to
4 produce a limited set of documents. After serving their responses to Plaintiffs' first
5 twenty-five interrogatories, Defendants worked throughout October on responding
6 to the rest of Plaintiffs' burdensome interrogatories, despite the fact that
7 Defendants did not consent to the additional interrogatories, nor had the Court
8 allowed them. Defendants also worked throughout October and early November on
9 (1) collecting the documents for production that they had agreed to produce; (2)
10 serving topic-by-topic objections to Plaintiffs' insufficiently particularized notice
11 of a Rule 30(b)(6) deposition; (3) serving affirmative discovery on Plaintiffs; (4)
12 taking the lead in identifying a mediator and scheduling mediation in accordance
13 with the Court's order, *see* ECF No 51; (5) identifying appropriate deponents,
14 meeting with them, and figuring out their availability to sit for a deposition; and (6)
15 continuing to meet and confer with Plaintiffs when feasible.⁹ Defendants have
16 commenced their rolling production of documents, have now responded to all of
17 Plaintiffs' interrogatories and have proposed dates and locations for individual
18 depositions.

19 Defendants have also reasonably and appropriately identified time and
20 custodian limits for Defendants' searches, in an effort to bring Plaintiffs'
21 disproportionately voluminous requests in line with what is permitted under the
22 Federal Rules, and to respond in a manner consistent with Defendants' obligations
23 under those rules. The case at bar, in which there are only two plaintiffs—Andrew
24 Dvash-Banks and Ethan Dvash-Banks—is likely to ultimately turn on the legality

25 ⁹ Defendants have been engaging in these efforts while simultaneously litigating a
26 motion to dismiss a related case involving an overlapping set of plaintiffs' counsel
27 in the District of Columbia. Defendants filed their motion to dismiss on September
28 7, 2018, and filed their reply brief on November 7, 2018. *See* Docket, *Blixt v.*
Tillerson, 18-cv-124 (D.D.C.).

1 of the Department's statutory interpretations as applied to Ethan Dvash-Banks's
2 CRBA and U.S. passport applications. Even though discovery is not needed to
3 ascertain Defendants' statutory interpretations (for which it is likely the parties
4 could simply stipulate), and although review of administrative action is ordinarily
5 confined to the administrative record,¹⁰ Defendants have nonetheless diligently
6 participated in discovery on Plaintiffs' constitutional claims (nominally brought by
7 Plaintiffs pursuant to the Declaratory Judgment Act), by timely producing initial
8 disclosures, responding to all of Plaintiffs' written requests, and agreeing to make
9 certain employees of the Department available for deposition.

10 Defendants have reasonably indicated that they are limiting the scope of
11 their document searches to information possessed, generated by, *or available to* the
12 U.S. Consulate General Toronto ("Consulate Toronto"), which adjudicated the
13 Ethan Dvash-Banks's applications for a CRBA and U.S. passport. Defendants'
14 searches include documents generated by and located within the Bureau of
15 Consular Affairs, the Washington-based component of the Department of State
16 responsible for providing policy guidance to the field (including to Consulate
17 Toronto).

18 Defendants have also appropriately and reasonably limited the time frame
19 for their searches to a two-and-a-half year time span encompassing the two-month
20 period in which the adjudication of the Dvash-Banks's applications took place;
21 plaintiffs have offered insufficient reasoning for why discovery of information
22 generated four years preceding the adjudications and after June 2017 is relevant or
23 proportionate to the needs of the case. Defendants, on the other hand, have
24 established that they would incur substantial burdens in collecting and reviewing
25 the many thousands of potentially responsive documents over a six-year time

26
27 ¹⁰ See *Chiayu Chang v. United States Citizenship & Immigration Servs.*, 254 F.
28 Supp. 3d 160, 161 (D.D.C. 2017).

1 frame. Finally, Defendants have properly raised privilege objections and have
2 committed to producing a privilege log, obviating Plaintiffs' complaints on that
3 score. Plaintiffs' position on the appropriate scope of discovery is replete with their
4 (conclusory) views on what is relevant in this case, but notwithstanding a handful
5 of instances where they offer to pare back the scope of a deposition, is virtually
6 devoid of considerations of proportionality or burden—considerations that are of
7 magnified importance given the compressed schedule for discovery in this case.

8 III. CASE BACKGROUND

9 Plaintiffs' Statement:

10 Ethan is the son of Andrew and Elad Dvash-Banks (respectively, "Andrew"
11 and "Elad"). Andrew is a U.S. citizen, who was born and raised in California. In
12 2007, Andrew met his now-husband Elad, an Israeli citizen. Andrew and Elad
13 moved to Toronto, Canada in 2010, where they were married and decided to start a
14 family.

15 In 2015, Andrew and Elad chose an anonymous egg donor, and in 2016, a
16 gestational surrogate became pregnant with twins. One twin (Ethan) was
17 conceived using Elad's sperm and the other twin (Aiden Dvash-Banks ("Aiden"))
18 was conceived using Andrew's sperm. Ethan and Aiden were born in Canada on
19 September 16, 2016, one minute apart. Andrew and Elad are the only parents
20 listed on the twins' birth certificates, and they are the twins' legal parents for all
21 purposes under Canadian law.

22 Shortly after the twins were born, Andrew and Elad decided to move to
23 California. They appeared in person at the U.S. Consulate in Toronto (the
24 "Toronto Consulate") to apply for CRBAs and U.S. passports for Ethan and Aiden.
25 Andrew and Elad provided copies of the twins' birth certificates, identifying them
26 as the twins' legal parents, proof of Andrew's U.S. citizenship and residency, and
27 Andrew's and Elad's marriage license—all that the Immigration and Nationality
28

1 Act of 1952 (“INA”) requires to be declared a citizen at birth when the child
2 applicant is “born in wedlock” to a U.S. citizen parent.

3 After asking Andrew and Elad a litany of invasive questions about the twins’
4 conception and birth and, ultimately, requiring them to submit DNA tests for each
5 of the twins, on March 2, 2017, the State Department granted Aiden’s, but denied
6 Ethan’s, applications for a CRBA and U.S. passport. The letter denying Ethan’s
7 applications stated, “it has been determined that his claim to U.S. citizenship has
8 not been satisfactorily established, as you [Andrew] are not his biological father.”
9 Although the relevant section of the INA (Section 301(g))¹¹ does not define the
10 term “parent,” or require a biological tie between the child applicant and U.S.
11 citizen parent, the State Department relied on its Foreign Affairs Manual (“FAM”),
12 which does impose such a requirement. As a result, the State Department
13 determined that the twins were born “out of wedlock”—even though their legal
14 parents were married when they were born—and adjudicated their applications
15 under Section 309 of the INA¹² (which governs citizenship for children “born out
16 of wedlock” and requires a biological tie between the child applicant and U.S.
17 citizen parent).¹³

18 Plaintiffs subsequently initiated this Action in January 2018.¹⁴ As is
19 explained in more detail below, the Complaint broadly alleges that the State

20 ¹¹ Section 301(g) of the INA is codified at 8 U.S.C. § 1401(g). Plaintiffs refer to
21 this provision throughout this motion as “Section 301(g).”

22 ¹² Section 309 of the INA is codified at 8 U.S.C. § 1409. Plaintiffs refer to this
23 provision throughout this motion as “Section 309.”

24 ¹³ Following the denial of Ethan’s applications, Andrew and Elad reached out to
25 their congressman, The Honorable Ted W. Lieu, who, in turn, contacted the State
26 Department. In a letter to Congressman Lieu dated October 2, 2017, the State
27 Department’s Office of American Citizen Services and Crisis Management offered
28 no explanation for the denial of Ethan’s applications. (Complaint Ex. D)

¹⁴ Ethan entered the United States on a tourist visa. The stay authorized upon that
entry expired on December 23, 2017. Concerned that the Department of
Homeland Security (“DHS”) could deport Ethan, Andrew and Elad have also
submitted an application for a green card to United States Citizenship and

1 Department policy underlying the denial of Ethan’s CRBA and U.S. passport
2 applications conflicts with or misconstrues the applicable legal requirements of the
3 INA, as codified in Section 301(g) and unconstitutionally discriminates against
4 same-sex married couples and their children. The Complaint therefore alleges that
5 Defendants’ denial of Ethan’s application for recognition of his citizenship at birth
6 is unconstitutional (on substantive due process and equal protection grounds) and
7 violates the Administrative Procedure Act (“APA”) because it is “arbitrary,
8 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5
9 U.S.C. § 706(2)(A).

10 Defendants sought several extensions of the deadline for responding to the
11 Complaint in order to facilitate the prospect of settlement. The Court granted two
12 of the Parties’ joint extension requests but thereafter declined to order a further
13 extension and issued a case schedule requiring, among other things, that all
14 discovery in this Action be concluded by January 2, 2019 and set trial for April 16,
15 2019. (Decl. Ex. 1) Defendants answered the Complaint on July 16, 2018. In
16 light of the time sensitivity to resolving this dispute for Ethan, Plaintiffs served
17 their Document Requests in August (before initial disclosures were due) in an
18 effort to propel the litigation forward (followed shortly thereafter by the
19 Interrogatories).

20 **Defendants’ Statement:**

21 This Action challenges the Department of State’s denial of applications for
22 documentation of U.S. citizenship. Specifically, the Action challenges the State
23 Department’s longstanding legal interpretation and application of Sections 301(g)
24 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 1409
25 (“Section 301(g)” and “Section 309”). See Compl. 19–23 (stating counts). “Since
26 Immigration Services (“USCIS”) on Ethan’s behalf to minimize the risk of
27 deportation proceedings and having to face the choice of staying together as a
28 family or staying in this country.

1 1790,” federal law has required that “at least one biological parent must have been
2 a U.S. citizen when the child was born.” 8 FAM 301.4-1(B).¹⁵ Further, the State
3 Department has always understood that to be “born . . . of” parents for the purposes
4 of section 301(g) of the INA, a child’s “biological parents [had to be] married to
5 each other at the time of the birth. 8 FAM 304.1-2(c).

6 In accordance with its legal interpretation of the applicable statutes, the State
7 Department denied plaintiff Andrew’s applications for a CRBA and for a U.S.
8 passport filed on behalf of minor plaintiff Ethan. Ethan was born outside of the
9 country; his biological father is Andrew’s husband, who is not a U.S. citizen, and
10 his biological mother is an anonymous egg donor.

11 Plaintiffs challenge the State Department’s denials by bringing purported
12 claims under the Declaratory Judgment Act (for violations of the Fifth
13 Amendment’s Due Process Clause and its Equal Protection component), Compl.
14 19–21 (Counts I and II); the APA (arguing that Defendants’ interpretation of
15 Sections 301 and 309 conflict with the INA’s statutory language), *id.* 21–22 (Count
16 III); and 8 U.S.C. § 1503, which allows the court to conduct *de novo* review of the
17 denial of a citizenship claim, *id.* 22–23 (Count IV). Plaintiffs seek declaratory and
18 injunctive relief.

19 Defendants have served detailed responses for all discovery requests served
20 by Plaintiffs, including by specifying and explaining appropriate objections to
21 portions of those requests. Defendants’ discovery responses are fully consistent
22 with the Federal Rules of Civil Procedure. Where valid disagreement exists
23 between the parties, as detailed further below in Defendants’ portions of this
24 stipulation, the Court should side with Defendants because Defendants have
25 reasonably construed the discovery requests, and Defendants are diligently

26
27 ¹⁵ Formerly 7 FAM 1130. The FAM’s guidance on acquisition of citizenship was
28 recently renumbered as of July 16, 2018.

1 working to complete their outstanding document productions within a reasonable
2 timeframe.

3 **IV. LEGAL STANDARD**

4 **Plaintiffs' Statement:**

5 Federal Rule of Civil Procedure 26 broadly permits a party to obtain
6 discovery about any matter that is relevant and not privileged, as long as that
7 request is proportional to the needs of the case. *See Oakes v. Halvorsen Marine*
8 *Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal. 1998) ("Rule 26(b) is liberally interpreted to
9 permit wide-ranging discovery of all information reasonably calculated to lead to
10 discovery of admissible evidence."). Under the Federal Rules of Civil Procedure,
11 relevance "is construed very broadly, encompassing 'any matter that bears on, or
12 that reasonably could lead to other matter that could bear on, any issue that is or
13 may be in the case.'" *Miller v. Pancucci*, 141 F.R.D. 292, 296 (C.D. Cal. 1992)
14 (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). In
15 contrast, "[p]rivileges are narrowly construed because they impede the full and fair
16 discovery of the truth." *Pitts v. Davis*, 2014 WL 4635464, at *4 (E.D. Cal. Sept.
17 15, 2014).

18 Where there is a refusal to provide discovery, Federal Rule of Civil
19 Procedure 37 permits the party seeking discovery to move the court for an order
20 compelling that discovery. Once the moving party shows the relevance of the
21 requested discovery, the burden shifts to the opposing party to demonstrate that
22 discovery should be prohibited. *Pitts v. Davis*, 2014 WL 4635464, at *4; *see also*
23 *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002) ("The party who
24 resists discovery has the burden to show that discovery should not be allowed, and
25 has the burden of clarifying, explaining, and supporting its objections.").

26 **Defendants' Statement:**

27 Plaintiffs' statement of the legal standards relies on outdated case law; it
28 fails to sufficiently take into account the 2015 amendments to the Federal Rules of

1 Civil Procedure governing discovery. “No longer is it good enough to hope that the
2 information sought might lead to the discovery of admissible evidence. . . . Instead,
3 a party seeking discovery of relevant, non-privileged information must show,
4 before anything else, that the discovery sought is proportional to the needs of the
5 case.” *Gilead Scis., Inc. v. Merck & Co, Inc.*, No. 5:13–CV–04057–BLF, 2016 WL
6 146574, at *1 (N.D. Cal. Jan. 13, 2016); *see also Guerrero v. Wharton*, 2:16-CV-
7 01667-GMN-NJK, 2017 WL 7314240, at *1 (D. Nev. Mar. 30, 2017) (“[T]he
8 drafters of the 2015 amendments intentionally omitted language that discovery
9 must be ‘reasonably calculated to the discovery of admissible evidence’ so that it
10 could no longer be interpreted as defining relevance.”) (citing *In re Bard IVC*
11 *Filters Prod. Liab. Litig.*, 317 F.R.D. 562, 563–64 (D. Ariz. 2016); Rule 26
12 Advisory Committee Notes (2015)). Under the current version of Federal Rule of
13 Civil Procedure 26(b), the scope of permissible discovery is defined as follows:

14 Parties may obtain discovery regarding any nonprivileged matter that
15 is relevant to any party's claim or defense and proportional to the
16 needs of the case, considering the importance of the issues at stake in
17 the action, the amount in controversy, the parties' relative access to
18 relevant information, the parties' resources, the importance of the
discovery in resolving the issues, and whether the burden or expense
of the proposed discovery outweighs its likely benefit. Information
within this scope of discovery need not be admissible in evidence to
be discoverable.

19 Fed. R. Civ. P. 26(b)(1).

20 In considering whether a discovery request is proportional to the needs of
21 the case, the parties and the court consider “the importance of the issues at stake in
22 the action, the amount in controversy, the parties' relative access to relevant
23 information, the parties' resources, the importance of the discovery in resolving the
24 issues, and whether the burden or expense of the proposed discovery outweighs its
25 likely benefit.” *Id.*

V. **ISSUES IN DISPUTE**

A. **RELEVANT STATE DEPARTMENT COMPONENTS**

Plaintiffs' Statement:

The agency defendant in this Action is the State Department and not the Consulate in Toronto; however, Defendants object to the Document Requests and Interrogatories to the extent they seek information, records, or documents of any component of the Department of State *other than those generated or possessed by, or available to, the U.S. Consulate in Toronto*. Consistent with this objection, Defendants construe many of the individual document requests and interrogatories as seeking materials limited to those available to the Toronto Consulate. In so doing, Defendants are inappropriately redefining the claims at issue in this Action to include only a sliver of what is relevant to the allegations in the Complaint. Plaintiffs are challenging not only the Toronto Consulate's adjudication of the applications for a CRBA and U.S. passport for Ethan, but also the State Department's policies on which that adjudication purportedly was based. The policies of the State Department and the process within the State Department (on which the Toronto Consulate supposedly relied to adjudicate Ethan's applications) are therefore highly relevant to the claims in this Action including:

- Information about the State Department's animating rationale for interpreting the relevant statute to include a biological tie to establish parentage;
- the State Department's position on how the right to marry (which applies to same-sex and opposite-sex couples equally and includes the "constellation of benefits" associated with marriage)¹⁶ must or must not shape the application of its policy to same-sex couples; and

¹⁶ See *Pavan v. Nathaniel Smith*, 137 S. Ct. 2075, 2077 (2017) (opposite-sex and same-sex spouses are entitled to the same "constellation of benefits . . . linked to marriage"). Plaintiffs' Complaint alleges that the State Department's interpretation of the INA infringes the fundamental right to marry and unfairly burdens same-sex marriages by denying same-sex spouses and their children the full constellation of

- the State Department's treatment of individuals subjected to the challenged policy, including those outside Toronto, would be highly relevant to this case.

Further, it is reasonable to assume that important policy discussions occurred at the State Department in Washington, D.C., to which consular officers in Toronto were not privy. (Significantly, Defendants have never suggested otherwise to Plaintiffs in this Action.) Even Defendants do not assert that the Toronto Consulate staff set the relevant policy for the State Department.¹⁷ Defendants may not unreasonably and unilaterally constrain the scope of discovery according to their own purported opinions about what information is relevant to Plaintiffs' claims.

The Complaint in this Action includes claims that the State Department's policy is unconstitutional. The Complaint asserts that this policy was cited as the basis to deny Ethan recognition of his U.S. citizenship, even though his U.S. citizen parent, Andrew, is listed on his birth certificate, as is his spouse, Elad. The Complaint also asserts that this unconstitutional policy improperly denies Andrew and Elad, and other same-sex couples, the ability to have their children recognized as born in wedlock in this context. It seeks remedies including not only (a) a declaration of citizenship for Ethan, but also (b) a declaration that the policy is unconstitutional and violates the INA, and (c) an injunction prohibiting Defendants

rights and benefits linked to marriage, including "the legal recognition that same-sex spouses may both be the parents of a child born during their marriage, even if only one spouse is the child's biological parent." (Compl. ¶ 34 (citing *Pavan*, 137 S. Ct. at 2077).)

¹⁷ Indeed, in their response to Interrogatory No. 3 (copied verbatim below), Defendants identified multiple State Department individuals involved with determining the meaning of Section 301(g) or Section 309 who were located in Washington, D.C. during their tenure working for the State Department. This response undercuts Defendants' position that discovery should be limited to those documents and communications generated or possessed by, or available to, the U.S. Consulate in Toronto.

1 from continuing to discriminate against Plaintiffs by classifying the children of
2 same-sex married couples as “children born out of wedlock,” and denying the
3 children of same-sex married couples the right to acquire citizenship at birth
4 pursuant to Section 301(g) on that basis.

5 Defendants brush aside these claims and re-imagine this Action as one
6 concerning how four individuals employed in the Toronto Consulate adjudicated
7 Ethan’s applications for a U.S. passport and CRBA during a five-week period.
8 They generally take the position that the documents these individuals used or had
9 access to are the relevant scope of discoverable materials. In response to questions
10 in propounded 30(b)(6) topics, Interrogatories and Document Requests concerning
11 the State Department’s policies, treatment of same-sex couples, rationales for
12 imposing a biological requirement and other key factual questions, Defendants
13 reflexively seek to cabin any inquiry—despite the clear language of the
14 Complaint—to information in the possession of the Toronto Consulate. The Court
15 should reject Defendants’ efforts to limit Plaintiffs’ discovery requests and should
16 compel Defendants to produce responsive materials and testify at depositions
17 concerning not only the Toronto Consulate but also relevant information and
18 individuals within the entire State Department.

19 **Defendants’ Statement:**

20 Defendants’ proposal to generally limit the scope of discovery to the
21 information possessed or generated by or *available to* the consulate that
22 adjudicated plaintiff Ethan Dvash-Banks’s CRBA and U.S. passport application is
23 reasonable. *See, e.g.,* Marcus Decl. Ex. A. ¶ 13. As an initial matter, Plaintiffs
24 misunderstand Defendants’ proposal; Defendants do not intend to exclude the
25 Department’s relevant policies and practices from discovery. Rather, Defendants
26 intend to provide Plaintiffs with such documents, *as well as* any other relevant
27 information provided to Consulate Toronto and/or of which Consulate Toronto was
28 aware when it adjudicated the applications at issue in this case. *See id.* (describing

1 Defendants' view of the appropriate scope of discovery as including "records or
2 documents... generated by or available to the U.S. Consulate in Toronto, which
3 includes policies or guidance prepared and provided by Department of State
4 components in Washington, D.C., to or intended for use by the Toronto Consulate).
5 Defendants' proposal does not provide Plaintiffs with information solely possessed
6 by its Washington, D.C., office or its other 250-plus embassies and consulates
7 around the world, yet Plaintiffs do not explain why it is proportionate to the needs
8 of this case for Defendants to coordinate searches and review records possessed by
9 its other consulates; Plaintiffs merely state that such information is "highly
10 relevant," *see* Pls.' Stmt., *supra* at 16. For their part, Defendants have explained in
11 detail the burden that a worldwide search for records would impose. As explained
12 in their response to Plaintiffs' request for production of documents,

13 the United States has more than 250 embassies and consulates
14 worldwide, employing more than 50,000 people, operating in English
15 and host-country languages, along with more than 60 other bureaus
16 and units employing more than 20,000 people within the United
17 States; it would be unduly burdensome as well as disproportionate and
18 not relevant to the claims and defenses in this case for the Department
19 to search for records in all of those locations. Worldwide, the
20 Department domestically and through its embassies and consulates
21 overseas received more than 14 million passport applications in fiscal
year 2015; more than 16 million passport applications in fiscal year
2016; and more than 19 million passport applications in fiscal year
2017. Worldwide, the Department printed 73,103 CRBAs in fiscal
year 2015; 76,519 CRBAs in fiscal year 2016; and 89,495 CRBAs in
fiscal year 2017. Because the U.S. Consulate in Toronto is the
Department of State component that adjudicated the Dvash-Banks
applications for CRBAs and U.S. passports at issue in this litigation, it
is the component relevant to the claims and defenses in this case.

22 Marcus Decl. Ex. A ¶ 13. That Plaintiffs raise constitutional challenges does not
23 turn this lawsuit into a class action or otherwise require Defendants to search for
24 and turn over documents that do not proportionally bear on the facts at issue in this
25 case. And as Defendants have already explained to Plaintiffs, the Department's
26 "current" interpretation of the INA to require a biological tie between a parent and
27 child to a U.S. parent dates back more than a century—to a time long before
28 conception and birth of a child by way of assisted reproductive technology was

1 medically possible, and before same-sex marriage was a constitutional right. *See* 8
2 FAM 301.4-1(B). Thus, the Department could not provide records of discussions
3 presaging its adoption of the relevant statutory interpretations at issue here in any
4 event.

5 **B. APPROPRIATE TIME PERIOD FOR DISCOVERY**

6 **Plaintiffs' Statement:**

7 Defendants have refused to produce documents outside of the time period
8 January 1, 2015 to June 2, 2017.¹⁸ Plaintiffs believe they are entitled to documents
9 from January 1, 2012 to the present, in particular because the Supreme Court
10 struck down the federal Defense of Marriage Act in 2013 and affirmed same-sex
11 couples' fundamental right to marry in 2015. *See United States v. Windsor*, 133 S.
12 Ct. 2675 (2013); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

13 Plaintiffs are entitled to discovery regarding discussions within the State
14 Department before and after the Supreme Court's decision in *Windsor* and in the
15 time leading up to *Obergefell* about the effects of State Department policies
16 involving citizenship determinations on same-sex couples.¹⁹ Discovery on these
17 issues is critical to Plaintiffs' equal protection claim because Plaintiffs may be
18 required to prove that the State Department was motivated by a discriminatory
19 purpose in adopting its current interpretation of the INA. Further, discovery that
20 illuminates the State Department's actual rationale for adopting its current

21 ¹⁸ Defendants have not offered any explanation for their proposed June 2, 2017 cut-
22 off date.

23 ¹⁹ Plaintiffs seek documents through the present to the extent that the relevant
24 policies of the State Department or approach to applications by Ethan or others like
25 him (*i.e.*, persons (i) born outside of the United States (ii) who assert they are the
26 children of a United States citizen; (iii) whose United States citizen parent is
27 married to a foreign national; and (iv) who do not have a biological relationship to
28 the United States citizen parent) have changed. Even since the filing of this
Action, courts have continued to reject the interpretation of the INA reflected in
the State Department's policy at issue here, *see, e.g., Jaen v. Sessions*, 899 F.3d
182 (2d Cir. 2018), and the extent to which it remains in force and is applied to
both same-sex and opposite-sex couples remains relevant.

1 interpretation of the INA—rather than any *post hoc* rationale Defendants advance
2 for purposes of this Action—will be necessary to the Court’s analysis if it is to
3 apply any form of heightened scrutiny to Plaintiffs’ constitutional claims. In short,
4 the appropriate time period for Plaintiffs’ discovery requests is from 2012 to the
5 present.

6 **Defendants’ Statement:**

7 Defendants have offered a reasonable time period over two years in which to
8 conduct discovery in this case. 2015 is when plaintiff Andrew Dvash-Banks and
9 his husband purported to begin the process of selecting an egg donor for the
10 purposes of conceiving Ethan and his brother in Canada; June 2, 2017, is three
11 months after Defendants denied Ethan’s CRBA and U.S. passport applications. See
12 Marcus Decl. Ex. A ¶ 12. This time period allows Plaintiffs to receive discovery
13 about Defendants’ policies, practices, and procedures immediately preceding and
14 in place during the adjudications, and allows for Plaintiffs to receive any relevant
15 documents generated immediately after the adjudication. Defendants determined
16 that conducting discovery during this time period would not be unduly burdensome
17 based on the number of records they would potentially have to review and produce
18 in response to Plaintiffs’ numerous production requests. Nonetheless, Defendants
19 are in the process of collecting and reviewing thousands of pages of potentially
20 responsive email and paper records generated during that twenty-seven month
21 period, a substantially burdensome process in its own right.

22 Plaintiffs argue that they are entitled to records spanning a more-than six-
23 year period of time because they “may be required to prove that the State
24 Department was motivated by a discriminatory purpose in adopting its current
25 interpretation of the INA,” Pls.’ Stmt., *supra* at 20. But as Defendants have
26 already explained, the Department’s “current” interpretation of the INA to require
27 a biological tie between a parent and child to a U.S. parent dates back more than a
28 century—to a time long before conception and birth of a child by way of assisted

1 reproductive technology was medically possible, and before same-sex marriage
2 was a constitutional right. *See* 8 FAM 301.4-1(B). Plaintiffs' reasoning for why
3 discovery should continue to the present is even more unsupported.

4 **C. PRIVILEGED DOCUMENTS AND INFORMATION**

5 **Plaintiffs' Statement:**

6 Defendants object to the production of materials covered by privileges and
7 protections and make privilege objections in response to many of the individual
8 interrogatories and document requests, but do not specify whether they have
9 actually withheld information on this basis.²⁰ Defendants must be required to
10 confirm whether they have withheld information based on any privilege or
11 protection and, if so, to produce a privilege log in accordance with Fed. R. Civ. P.
12 26(b)(5), and to comply with the other prerequisites and requirements for
13 assertions of privileges, in order for Plaintiffs (and, if necessary, the Court) to
14 assess those claims.

15 Furthermore, Defendants have failed to comply with the prerequisites for the
16 assertion of the deliberative process privilege, including the provision of a
17 declaration by the head of the department that has control of the matter, identifying
18 and describing the relevant documents and asserting with particularity the basis for
19 the claim of privilege after personal review. *See, e.g., Morgan Hill*, 2017 WL
20 4154927, at *2 ("[P]roper invocation of the privilege requires: (1) a formal claim
21 of privilege by the head of the department possessing control over the requested
22 information, (2) an assertion of the privilege based on actual personal
23 consideration by that official, and (3) a detailed specification of the information for
24 which the privilege is claimed, along with an explanation why it properly falls

25 ²⁰ Defendants have asserted privilege objections (without confirming whether they
26 are intending to withhold responsive documents on this basis) to Interrogatory Nos.
27 1, 2, 6, 7, and 10, as well as Document Request Nos. 1-4, 6-8, 17-18, and 20-23.
28 Defendants assert the deliberative process privilege with respect to Document
Request Nos. 1, 2, 4, 7, and 17-18, and Interrogatory Nos. 1, 2, 6, 7, and 10.

1 within the scope of the privilege.”); *In re McKesson Governmental Entities*
2 *Average Wholesale Price Litig.*, 264 F.R.D. 595, 602 (N.D. Cal. 2009) (granting
3 motion to compel production of certain documents claimed to be protected by the
4 deliberative process privilege where agency failed to provide a “declaration from
5 an agency head” containing “specific facts demonstrating” why the documents
6 were “deliberative” and “predecisional” and could not be produced). Given this
7 wholesale failure to comply with the legal and procedural requirements,
8 Defendants reliance on the deliberative process privilege should be disregarded.

9 **Defendants’ Statement:**

10 There is no meaningful dispute at issue at this time. Defendants have
11 committed to produce any responsive, non-privileged documents within
12 Defendants’ identified scope of discovery, and to identify any otherwise-
13 responsive withheld documents through a privilege log. Defendants have been
14 clear on this point since their September 18 written response to Plaintiffs’
15 document production requests: in those responses, Defendants stated that that they
16 “intend to provide Plaintiffs with privilege logs on a rolling basis in the course of
17 Defendants’ rolling productions.” Marcus Decl. Ex. A ¶ 17. Further, Defendants
18 are not required to perfect their assertion of the deliberative process privilege when
19 responding to a discovery request or even when providing privilege logs; rather,
20 the Government may preserve its privileges through counsel. It is only when
21 responding to a motion to compel that the Government must perfect the privilege
22 by submitting a declaration from the head of an agency, or an appropriate delegee.
23 *See, e.g., Huntleigh USA Corp. v. United States*, 71 Fed. Cl. 726, 727 (Fed. Cl.
24 2006); *In re Sealed Case*, 121 F.3d 729, 741 (D.C. Cir. 1997); *Federal Housing*
25 *Finance Agency v. JPMorgan Chase & Co.*, 978 F. Supp. 2d 267, 278 (S.D.N.Y.
26 2013).

D. DEFENDANTS' RESPONSES TO PLAINTIFFS' DOCUMENT REQUESTS

As required by L.R. 37-2.1, Plaintiffs' Document Requests and Defendants' responses and objections thereto are set forth verbatim below. After each document request and response, Plaintiffs and Defendants separately state their contentions about the sufficiency (or lack thereof) of Defendants' responses.

DOCUMENT REQUEST NO. 1

Plaintiffs' Request:

All Documents and Communications stating or discussing protocols, procedures, practices or policies of the State Department and USCIS for applying Section 301(g) and Section 309 to persons who claim to have acquired United States citizenship under those statutory provisions, including but not limited to the reasons for any such protocols, procedures, practices or policies. This request is limited to Documents and Communications Concerning those protocols, procedures, practices or policies generally and does not include documents that merely reference or rely on them (*e.g.*, documents related to individual Persons' applications for consular or passport services). This request includes all prior or subsequent versions and drafts (whether or not adopted) of such protocols, procedures, practices or policies, and all Documents and Communications that explain, support, or oppose the adoption, implementation, or continued application of any such protocols, procedures, practices or policies.

Defendants' Verbatim Response to Document Request No. 1:²¹

Defendants object to this request on multiple grounds. *First*, the "protocols, procedures, practices, or policies of ... USCIS" are not relevant to the claims and

²¹ All footnotes included in Defendants' Verbatim Responses are footnotes that were copied verbatim from Defendants' responses to the Document Requests and Interrogatories. They are italicized in order to differentiate them from footnotes relating to the parties' positions in this Joint Stipulation.

1 defenses in this litigation, as USCIS is not a component of the Department of State,
2 but rather is a component of the Department of Homeland Security (“DHS”), an
3 Executive department separate from the Department of State. USCIS’s protocols,
4 procedures, practices, or policies are unrelated to actions taken or allegedly taken
5 by Defendants in adjudicating the applications at issue in this case. *Second*, the
6 request is unreasonably vague, overly broad, unduly burdensome, not relevant,
7 disproportionate to the needs of the case, and not reasonably particularized to the
8 extent it seeks any and all documents (including communications) “stating or
9 discussing” the Department of State’s protocols, procedures, practices, or policies.
10 Not only could the number of such documents be extremely voluminous,²² but also
11 documents “stating or discussing” protocols, procedures, practices, or policies
12 would have the tendency to capture deliberative, pre-decisional communications
13 (and other documents) protected by privilege. *Third*, to the extent the request
14 seeks (a) communications sent to or from attorneys for the Department of State,
15 Department of Justice, or any other Executive Branch component (including
16 outside counsel); or (b) documents generated by or at the direction of any such
17 attorney, it likely seeks information protected by the attorney-client privilege
18 and/or the work product doctrine, and the Defendants object to any request to
19 produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Fourth*, by
20 seeking “all prior or subsequent versions and drafts (whether or not adopted),” this
21 request on its face seeks pre-decisional, deliberative documents [protected] by the
22 deliberative process privilege.

23 ²² *This is so notwithstanding the request’s second sentence, which purports to*
24 *“limit[]” the request “to Documents and Communications Concerning those*
25 *protocols, procedures, practices or policies generally and does not include*
26 *documents that merely reference or rely on them (e.g., documents related to*
27 *individual Persons’ applications for consular or passport services).” In any event,*
28 *the request’s second sentence is unreasonably vague and overly broad because it*
incorporates the term “Concerning,” a term which the RFPDs broadly define to
include items that do not directly pertain to the topic at issue but instead merely
“refer[] to” or “mention[]” the topic at issue or are “in any way logically or
factually connected” to its matter. RFPD at 1 ¶ F (emphasis added).

For the purposes of responding to this request, Defendants construe the request as seeking (a) documents that will be cited by Defendants in response to Interrogatory No. 4 (in Plaintiffs' First Set of Interrogatories),²³ and (b) communications sent by or to relevant officers in the consular section of the U.S. Consulate in Toronto, during the time period January 1, 2015 through June 2, 2017, discussing or describing any of the documents referred to in clause "(a)" of this sentence. Subject to and without waiving the above-stated objections—including both those described in the prior two paragraphs and those outlined supra Part I ¶¶ 1-11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or communications responsive to this request (as so construed in the preceding paragraph) after the corresponding interrogatory response has been certified and made, subject to any further objections made in response to Interrogatory No. 4.

Plaintiffs' Contentions as to Why Defendants' Response to Document Request No. 1 Is Insufficient:

Defendants' response to this Document Request is patently insufficient. By way of background, Plaintiffs served the Document Requests nearly ninety days ago, on August 14, 2018, Defendants have repeatedly delayed producing responsive documents and have refused to commit to a date when their production will be substantially complete (or even to identify what potentially responsive documents exist). There is no tenable justification for such a long delay, especially given that the Court has already rejected Defendants' prior position that no discovery is necessary and instead ordered a January 2, 2019 discovery cutoff and April 2019 trial date.

²³ Plaintiffs' Interrogatory No. 4 asks Defendants to: "Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g) or Section 309 to Persons who claim to have acquired United States citizenship under those statutory provisions, including the reasons and basis for any such protocols, procedures, practices, guidelines or policies."

1 Plaintiffs have pressed Defendants for documents on multiple occasions
2 without success. Defendants served their responses and objections on September
3 18, 2018. Plaintiffs sent a detailed letter to Defendants pursuant to L.R. 37-1 on
4 October 2, 2018, requesting a meet-and-confer regarding the responses and
5 objections in an effort to resolve the Parties' disputes. (Decl. Ex. 4.) Having
6 received no response within ten days of sending the letter (as is required by L.R.
7 37-1), Plaintiffs subsequently followed up via letter on October 16, 2018,
8 reminding Defendants of the January 2, 2019 discovery cut-off date and their
9 obligation to meet and confer under the Local Rules. (Decl. Ex. 8.) Thereafter,
10 counsel for the parties participated in two meet-and-confer calls on October 18 and
11 October 23, 2018, during which Defendants committed to begin producing
12 documents on a rolling basis by October 26, 2018. (Decl. at 2.)

13 Instead of moving discovery forward in any meaningful way, Defendants'
14 long-awaited October 26 production consisted of a mere seven pages, including an
15 archived version of a portion of the FAM and three organizational charts for the
16 Bureau of Consular Affairs. The feebleness of this production is all the more
17 concerning because Defendants have refused to commit to any meaningful
18 substantive production of documents or to agree to a date by which their
19 production will be substantially complete.

20 Defendants' delay in producing documents is also holding up other essential
21 discovery that Plaintiffs have requested, such as depositions.

22 In addition, Defendants' construction of the Document Requests is
23 unreasonably narrow (as is explained in detail below). Even if Defendants were to
24 produce all documents responsive to the narrowly-construed requests, Defendants
25 would still be withholding important categories of relevant documents sought by
26 the Document Requests.

27 Turning to Defendants' response to Document Request No. 1 specifically,
28 Defendants have produced only one document responsive to the request (a few

1 pages of the FAM). Further or perhaps as a consequence, Defendants’
2 construction of the request is unreasonably limited. Defendants’ response amounts
3 to an undertaking to produce (a) documents cited in their response to Interrogatory
4 No. 4 (which are a handful of sections of the FAM), and (b) communications sent
5 by or to relevant officers in the consular section of the Toronto Consulate from
6 January 1, 2015 to June 2, 2017, discussing these sections of the FAM. There are
7 multiple problems with this construction: First, Defendants appear to have
8 unreasonably limited the universe of responsive “protocols, procedures, practices
9 or policies of the State Department and USCIS for applying Section 301(g) and
10 Section 309” to the FAM. Plaintiffs can only assume (since Defendants will not
11 tell them) that there are non-FAM State Department “protocols, procedures,
12 practices, or policies” for applying these provisions.²⁴ If that is true, Defendants
13 should be required to produce them.

14 In addition, Defendants did not agree to produce documents pertaining to the
15 “reasons for [] protocols, procedures, practices or policies” of the State Department
16 and USCIS for applying Section 301(g) and Section 309 to persons who claim to
17 have acquired United States citizenship under those statutory provisions. These
18 documents, if they exist, are highly relevant to all of Plaintiffs’ claims, which
19 allege that the State Department’s interpretation and application of the INA is
20 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
21 law, and deprives same-sex spouses of the full constellation of rights and benefits
22 linked to marriage and equal protection of the law, in violation of the Fifth and
23 Fourteenth Amendments.²⁵ For example, with respect to Plaintiffs’ APA claim,

24 ²⁴ The FAM is a publicly available document on the State Department’s website
25 that sets out the State Department’s basic policies and procedures as well as
information about the Department’s organizational structures.

26 ²⁵ To be clear, Plaintiffs do not allege that the State Department’s interpretation of
27 the INA infringes Andrew’s fundamental right to marry because it interferes with
28 Andrew’s and Elad’s *ability* to marry. Rather, Plaintiffs allege that the State
Department’s interpretation denies Andrew the full constellation of benefits

1 Plaintiffs are entitled to discovery on the issue of whether the State Department's
2 adjudication of Ethan's applications, and the process that led to its decision, were
3 the product of reasoned decision-making (e.g., whether the State Department relied
4 on factors that Congress did not intend for it to consider, or whether it failed to
5 consider an important aspect of the issue). Further, with respect to Plaintiffs' equal
6 protection claim, these documents may reflect the State Department's
7 discriminatory purpose or motivation for adopting (or retaining) a policy that
8 inherently discriminates against same-sex married couples on the basis of their sex
9 and sexual orientation.

10 Second, because Defendants limited the universe of responsive "protocols,
11 procedures, practices, or policies" to the FAM, the communications they intend to
12 produce are also very limited. (As noted above, Defendants have stated that they
13 will only produce "communications sent by or to relevant officers in the consular
14 section of the U.S. Consulate in Toronto . . . discussing or describing" documents
15 cited in their response to Interrogatory No. 4 (*i.e.*, certain parts of the FAM)). Just
16 as "protocols, procedures, practices, or policies" other than the FAM are relevant
17 to Plaintiffs' claims, so too are communications stating or discussing those
18 materials.

19 Third, Defendants have not agreed to provide any documents or
20 communications about USCIS' "protocols, procedures . . . for applying Section
21 301(g) and Section 309" ostensibly on the grounds that they are irrelevant to the
22 claims and defenses in this Action, since USCIS is not a component of the State
23 Department. On the contrary, USCIS, which is subsumed within DHS, interprets
24 Section 301(g) and Section 309 in adjudicating applications for certifications of
25 citizenship when individuals within the United States apply for them. (See

26 associated with marriage, such as the legal recognition that same-sex spouses may
27 both be the parents of a child born during their marriage, even if only one spouse is
28 the child's biological parent.

1 Defendants' Interrogatory Response No. 7, *infra* at p. 140 (noting that DHS
2 "conducts its certificate of citizenship adjudications domestically, whereas the
3 Department adjudicates CRBA applications made abroad . . .").) In other words,
4 the same individual would apply to the State Department for documentation
5 evidencing his U.S. citizenship if he were abroad and to USCIS for documentation
6 evidencing his citizenship if he were in the United States. Ethan applied to the
7 State Department for documentation of his U.S. Citizenship (a passport and
8 CRBA) shortly after his birth while he was living in Canada, but could have
9 instead applied to USCIS (for a certification of citizenship) as a toddler resident in
10 California. USCIS materials are thus relevant to the claims and defenses in the
11 Action, because if USCIS is adjudicating citizenship-related applications of
12 individuals—applying the very same statutory sections—in situations similar to
13 Plaintiffs' circumstance, but is arriving at different determinations regarding
14 citizenship from those reached by the State Department, that bears on the
15 legitimacy of the State Department's decisions and any rationale for their policies
16 that they articulate.²⁶ Relatedly, Defendants agreed to provide only
17 "communications sent by or to relevant officers in the consular section" of the
18 Toronto Consulate. Plaintiffs are entitled to discovery regarding any discussions
19 involving non-Toronto-based State Department employees concerning "protocols,
20 procedures, practices or policies of the State Department and USCIS for applying
21 Section 301(g) and Section 309" (and, indeed, that the most important policy
22 discussions likely did not involve Toronto Consulate personnel).

23 Fourth, Defendants have not agreed to produce "all prior or subsequent
24 versions and drafts (whether or not adopted) of the relevant protocols, procedures,

25 ²⁶ Although it is not the subject of this filing, Plaintiffs have sought third party
26 discovery from CIS to obtain the same materials. CIS, represented by the same
27 counsel as the State Department in this Action, has objected to producing these
28 same materials. Thus, it is not the case that Plaintiffs could more easily obtain
these materials from a third party.

1 practices or policies, and all Documents and Communications that explain,
2 support, or oppose the adoption, implementation, or continued application of any
3 such protocols, procedures, practices or policies.” Plaintiffs have good reason to
4 request such documents. For example, if the State Department considered, but
5 ultimately rejected, a proposal to treat children of married same-sex couples (one
6 of whom is a U.S. citizen), who are not biologically related to the U.S. citizen
7 parent, as children born “in wedlock” for purposes of Section 301(g), that proposal
8 (and any communications about it) would be highly relevant to this Action.
9 Similarly, if the State Department changed its policy in anticipation of or in
10 reaction to the Supreme Court’s decision in *Windsor*, that would be highly relevant
11 as well.

12 During the October 18 and October 23 meet-and-confer calls, Plaintiffs
13 pressed Defendants to identify the specific documents they would be producing in
14 response to Plaintiffs’ request, but they failed to provide any specifics. Defendants
15 should be required to produce all non-privileged documents and communications
16 responsive to Document Request No. 1 from January 1, 2012 to the present.

17 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
18 **Response to Document Request No. 1:**

19 Plaintiffs’ broad document requests do not lend themselves to easy
20 “keyword” searches and instead require Defendants to collect and visually sift
21 through tens of thousands of pages (if not more) to locate potentially responsive
22 records. On September 18, 2018, Defendants timely served written responses to
23 Plaintiffs’ twenty-four requests for production, see Marcus Decl. Ex. A at 1, and
24 committed to producing responsive documents on a rolling basis within a
25 reasonable period of time, *id.* ¶ 16. Since that time, Defendants have been
26 diligently engaged in the search process, and have started producing documents as
27 promised by Defendants’ September 18 written responses. Defendants are
28 endeavoring to review and produce as many documents as possible prior to

1 Plaintiffs' depositions of Defendants' witnesses, and to finish any outstanding
2 document productions by the end of the discovery period.

3 Defendants responded to Plaintiffs' Document Request No. 1 by specifying
4 objections to portions of the request, articulating how Defendants were construing
5 the vague and overly broad request, and stating that Defendants would produce
6 documents or communications responsive to the request. *See* Defs.' Verbatim
7 Resp., *supra* at 24. As such, Defendants' response fully complied with Federal
8 Rule of Civil Procedure 34(b)(2).

9 Defendants reasonably interpreted Document Request No. 1 as relating to
10 Plaintiffs' Interrogatory No. 4. Document Request No. 1 seeks "documents and
11 communications stating or discussing protocols, procedures, practices or policies
12 of the State Department and [US]CIS for applying Section 301(g) and Section 309
13 to persons who claim to have acquired United States citizenship under those
14 statutory provisions"; whereas, Interrogatory No. 4 asks Defendants to "Identify
15 and describe any protocols, procedures, practices, guidelines or policies of the
16 State Department for applying Section 301(g) or Section 309 to Persons who claim
17 to have acquired United States citizenship under those statutory provisions."
18 Given the identical language used by the document request and the interrogatory, it
19 was completely reasonable for Defendants to interpret Document Request No. 1 as
20 seeking documents and communications referencing or discussing the "protocols,
21 procedures, practices, or policies" identified in response to Interrogatory No. 4.

22 Plaintiffs advance four arguments as to the alleged insufficiency of
23 Defendants' Response to Document Request No. 1. First, Plaintiffs criticize
24 defendants' response by arguing that it is insufficient for Defendants to agree to
25 produce the "protocols, procedures, practices, and policies" cited by Defendants in
26 response to Interrogatory No. 4 because, according to Plaintiffs, Defendants'
27 response to the related Interrogatory No. 4 was incomplete in its identification of
28 relevant "protocols, procedures, practices, or policies." As noted above,

1 Defendants reasonably construed Document Request No. 1 as seeking copies of the
2 “protocols, procedures, practices, or policies” cited by Defendants in response to
3 Interrogatory No. 4 given the identical language used by the document request and
4 the interrogatory. Plaintiffs contend that Defendants’ Response to Interrogatory
5 No. 4 was incomplete because it only cited to several provisions of the
6 Department’s Foreign Affairs Manual (FAM), and not to any other policies that
7 Plaintiffs imagine (without any support) might exist. But the FAM is the “single,
8 comprehensive, and authoritative source for the [Department of State’s] . . .
9 structures, policies, and procedures.” Marcus Decl. Ex. H at 2 (18 FAM 201.1-
10 1(B)); *see also id.* at 1-3; *see generally* U.S. Dep’t of State, Foreign Affairs
11 Manual and Handbook, <https://fam.state.gov/>. Defendants’ response to
12 Interrogatory No. 4 was complete, and certified as such by the person who made
13 the answer on behalf of the Department. Plaintiffs have no valid basis to criticize
14 Defendants for searching for, and agreeing to produce, documents or
15 communications that reference or discuss the “protocols, procedures, practices, or
16 policies” that Defendants have identified in response to Interrogatory No. 4.

17 Second, and relatedly, Plaintiffs argue that because Defendants limited the
18 universe of relevant “protocols, procedures, practices, or policies” to those
19 identified by Defendants in response to Interrogatory No. 4, “the communications
20 [Defendants] intend to produce are also very limited.” *See* Pls.’ Stmt., *supra* at 26.
21 Again, Plaintiffs’ argument here relies on an unsubstantiated (and untrue)
22 assumption that Defendants provided an incomplete response to Interrogatory No.
23 4. Defendants did not. *See* Marcus Dec. Ex. B at 26–28.

24 Third, Plaintiffs fault Defendants’ Document Request No. 1 Response for
25 objecting to that portion of the document request seeking documents or
26 communications relating to policies and procedures of the U.S. Citizenship and
27 Immigration Services (“USCIS”), a component of the Department of Homeland
28 Security—an Executive department separate from the Department of State. But

1 Defendants' objection here was reasonable and justified, particularly given the
2 disproportionate burden that searching for any and all documents and
3 communications regarding USCIS policies would entail. Plaintiffs argue that State
4 Department documents citing or discussing USCIS policies would somehow
5 "bear[] on the legitimacy of the State Department's decisions and any rationale for
6 their policies that they articulate," Pls.' Stmt., *supra* at 26. Plaintiffs fail to explain
7 how such documents would "bear on" the legitimacy of the Department's decisions
8 in the underlying adjudication (or even on the Department's longstanding and
9 consistent policies on which the underlying adjudication decision was based), let
10 alone how such documents would actually be "relevant" to any party's claims or
11 defenses in this case. And even if Plaintiffs could show that documents or
12 communications about USCIS' policies were somehow relevant to Plaintiffs'
13 claims in this case, such documents or communications would still be outside the
14 permissible scope of discovery because they are not "proportional" to the needs of
15 the case. *See* Fed. R. Civ. P. 26(b)(1).

16 Fourth, Plaintiffs fault Defendants' response because it did not agree to
17 produce "all prior... versions and drafts (whether or not adopted) of the relevant
18 protocols, procedures, practices or policies,"²⁷ or "documents and communications
19 that explain, support, or oppose the adoption, implementation, or continued
20 application of any such protocols, procedures, practices or policies." Pls.' Stmt.,
21 *supra* at 26. Here, Plaintiffs fail to explain the relevance of the hypothetical
22 situation in which the Department of State "considered, but ultimately rejected" a
23 change in policy, *see id.* That said, Defendants have not *per se* excluded from their
24 search communications referencing or discussing "considered, but ultimately

25 ²⁷ Plaintiffs also mention here that Defendants have declined to produce "all ...
26 subsequent versions and drafts," but their argument focuses on the prior versions
27 and drafts, not the subsequent ones. In any event, Defendants cannot reasonably be
28 expected to search for "subsequent versions and drafts" of policies in procedures
because, by their very nature, such versions and drafts do not yet exist.

1 rejected” policies. Indeed, searching for communications referencing or discussing
2 the existing policies is a reasonable way to locate communications regarding
3 potential changes to those policies, given the reasonable likelihood that
4 correspondence discussing potential changes in policy would reference the existing
5 policy in the context of describing potential changes. By committing to searching
6 for, reviewing, and producing “communications ... discussing or describing any of
7 the” policies or procedures identified by Defendants’ in response to Interrogatory
8 No. 4, *see* Defs.’ Verbatim Resp., *supra* at 24, Defendants are reasonably
9 responding to this document request. Additionally, Defendants are producing prior
10 versions of the relevant FAM provisions.

11 ***

12 **DOCUMENT REQUEST NO. 2**

13 **Plaintiffs’ Request:**

14 All Documents and Communications Concerning Communications between
15 (i) the Fraud Detection and National Security Directorate or the Refugee, Asylum
16 and International Operations Directorate, or other units of CIS, and (ii) the State
17 Department, including but not limited to the Secretary of State’s staff, the Office of
18 the Legal Adviser, and the Bureau of Consular Affairs, Concerning any protocol,
19 procedure, practice or policy for applying Section 309, rather than Section 301(g),
20 to any Person born outside of the United States to married parents (one of whom is
21 a United States citizen) if the Person is not biologically related to the United States
22 citizen parent, including but not limited to the rationale for any such protocol,
23 procedure, practice or policy.

24 **Defendants’ Verbatim Response to Document Request No. 2:**

25 Defendants object to this request on multiple grounds. *First*, the phrases
26 “[a]ll Documents ... Concerning Communications ... Concerning any protocol”
27 and “[a]ll ... Communications Concerning Communications ... Concerning any
28 protocol” are unreasonably vague and syntactically unclear. *Second*, to the extent

1 the request seeks (a) communications sent to or from attorneys for the Department
2 of State, Department of Justice, or any other Executive Branch component
3 (including outside counsel); or (b) documents generated by or at the direction of
4 any such attorney, it likely seeks information protected by the attorney-client
5 privilege and/or the work product doctrine, and the Defendants object to any
6 request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1).
7 *Fourth*, the request on its face seeks pre-decisional, deliberative communications
8 exchanged by components of two separate Executive agencies, implicating the
9 deliberative process privilege.

10 For the purposes of responding to this request, Defendants construe the
11 request as seeking (a) documents that would be cited by Defendants in response to
12 Interrogatory No. 5 (in Plaintiffs' First Set of Interrogatories),²⁸ and (b)
13 communications between one or more relevant officers in the consular section of
14 the U.S. Consulate in Toronto, and any employee of the components identified in
15 the request (USCIS, a component of DHS; the Secretary of State's staff; the Office
16 of the Legal Adviser; the Bureau of Consular Affairs) or any other component of
17 the Department, during the time period January 1, 2015 through June 2, 2017,
18 discussing or describing any of the documents referred to in clause "(a)" of this
19 sentence.

20 Subject to and without waiving the above-stated objections—including both
21 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e)
22 and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or
23 communications responsive to this request after the corresponding interrogatory
24

25 ²⁸ Plaintiffs' Interrogatory No. 5 asks Defendants to: "Identify and describe any
26 protocol, procedure, practice, guideline or policy of the State Department for
27 applying Section 309, rather than Section 301(g), to an application for a CRBA or
28 U.S. passport by or for any Person born outside of the United States, including the
reasons and basis for any such protocol, procedure, practice, guideline or policy."

1 response has been certified and made, subject to any further objections made in
2 response to Interrogatory No. 5.

3 **Plaintiffs' Contentions as to Why Defendants' Response to Document**
4 **Request No. 2 Is Insufficient:**

5 Defendants' response to this Document Request is insufficient because
6 (a) Defendants have not produced any responsive documents, and (b) much like
7 Defendants' response to Document Request No. 1, Defendants have construed the
8 request so narrowly that the population of responsive documents is a mere sliver of
9 what Plaintiffs rightfully sought. For the purposes of responding to the request,
10 Defendants construed it as seeking only (a) documents cited in response to
11 Interrogatory No. 5 (*i.e.*, certain sections of the FAM), and (b) communications
12 between "one or more relevant officers in the consular section of the U.S.
13 Consulate in Toronto, and any employee of . . . USCIS[;] . . . the Secretary of
14 State's staff; the Office of the Legal Adviser; the Bureau of Consular Affairs[;] or
15 any other component of the Department, during the time period January 1, 2015
16 through June 2, 2017, discussing or describing" these FAM sections.²⁹ This
17 construction excludes at least two relevant categories of documents covered by the
18 request: (1) documents and communications concerning protocols, procedures,
19 practices, or policies *other than the FAM*, including but not limited to the
20 "rationale for any such protocol, procedure, practice or policy"; and (2) USCIS or
21 State Department communications discussing these protocols, procedures,
22 practices or policies that do not involve an officer of the Toronto Consulate.
23 Documents in the first category, involving communications by the DHS or the
24 State Department discussing the reasons for applying Section 309, rather than
25 301(g), to people similarly situated to Plaintiffs, would be highly relevant to this
26 Action, which alleges that the State Department's application of these provisions is

27 ²⁹ The Secretary of State's staff, the Office of the Legal Adviser, and the Bureau of
28 Consular Affairs are all part of the State Department.

1 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
2 law, and unconstitutional. The second category of materials is equally relevant.

3 Plaintiffs are entitled to discovery regarding any discussions among non-
4 Toronto State Department employees and employees of USCIS (which, as noted
5 *supra* at p. 29, interprets Section 301(g) and Section 309 in adjudicating
6 applications for certifications of citizenship domestically) concerning the
7 application of Section 301(g) or Section 309. During the October 18 and October
8 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the specific
9 documents they would be producing in response to Plaintiffs' request, but they
10 failed to provide any specifics.

11 **Defendants' Statement Regarding the Sufficiency of Defendants'**
12 **Response to Document Request No. 2:**

13 Defendants responded to Plaintiffs' Document Request No. 2 by specifying
14 objections to portions of the request, articulating how Defendants were construing
15 the vague and overly broad request, and stating that Defendants would produce
16 documents or communications responsive to the request. *See* Defs.' Verbatim
17 Resp., *supra* at 35. As such, Defendants' response fully complied with Federal
18 Rule of Civil Procedure 34(b)(2).

19 Defendants reasonably interpreted Document Request No. 2 as relating to
20 Plaintiffs' Interrogatory No. 5. Document Request No. 2 seeks "documents and
21 communications ... concerning any protocol, procedure, practice or policy for
22 applying Section 309, rather than Section 301(g), to any Person born outside of the
23 United States..."; whereas, Interrogatory No. 5 asks Defendants to "Identify and
24 describe any protocols, procedures, practices, guidelines or policies of the State
25 Department for applying Section 309, rather than Section 301(g), to an application
26 for a CRBA or U.S. passport by or for any Person born outside of the United
27 States." Given the nearly identical language used by the document request and the
28 interrogatory, it was completely reasonable for Defendants to interpret Document

1 Request No. 2 as seeking documents and communications referencing or
2 discussing the “protocols, procedures, practices, or policies” identified in response
3 to Interrogatory No. 5.

4 Similar to Plaintiffs’ criticism of Defendants’ Response to Document
5 Request No. 1, Plaintiffs criticize Defendants’ Response to Document Request No.
6 2 by arguing that Defendants’ response to the related Interrogatory No. 5 was
7 incomplete in its identification of relevant “protocols, procedures, practices, or
8 policies.” Pls.’ Stmt. *supra* at 37. Plaintiffs contend that Defendants’ Response to
9 Interrogatory No. 5 was incomplete because (like Defendants Response to
10 Interrogatory No. 4) it only cited to several provisions of the Department’s Foreign
11 Affairs Manual (FAM), and not to any other policies that Plaintiffs speculate
12 (without any support) might exist. *Id.* But the FAM is the “single, comprehensive,
13 and authoritative source for the [Department of State’s] ... structures, policies, and
14 procedures.” Marcus Decl. Ex. H at 2 (18 FAM 201.1-1(B)); *see also id.* at 1-3; *see*
15 *generally* U.S. Dep’t of State, Foreign Affairs Manual and Handbook,
16 <https://fam.state.gov/>. Defendants’ response to Interrogatory No. 5 was complete,
17 and certified as such by the person who made the answer on behalf of the
18 Department. *See* Marcus Decl. Ex. B at 29–30, 49. Plaintiffs’ have no valid basis to
19 criticize Defendants for searching for, and agreeing to produce, documents or
20 communications that reference or discuss the “protocols, procedures, practices, or
21 policies” that Defendants have identified in response to Interrogatory No. 5.

22 Plaintiffs also fault Defendants’ Document No. 2 Response for indicating
23 that Defendants would limit their search for responsive communications to
24 “communications between one or more relevant officers in the consular section of
25 the U.S. Consulate in Toronto, and any employee of the components identified in
26 the request (USCIS, a component of DHS; the Secretary of State’s staff; the Office
27 of the Legal Adviser; the Bureau of Consular Affairs) or any other component of
28 the Department.” *See* Pls.’ Stmt., *supra* at 37 (quoting Defs.’ Verbatim Resp.).

1 Even as so “limited” this search is broad, and it requires review of thousands of
2 emails to identify responsive communications about the relevant policies and
3 procedures. Plaintiffs argue that Defendants should also search for email
4 communications not exchanged (*i.e.*, sent to, from, cc’ed, or bcc’ed) with
5 Consulate Toronto employees. But given the factual allegations in the complaint,
6 and Plaintiffs claims that Consulate Toronto’s denial of Ethan Dvash-Banks’
7 CRBA and U.S. Passport applications was unlawful, Defendants reasonably
8 identified the relevant custodians as including those Consulate Toronto employees
9 who were involved in the determination of—and communications about—Ethan’s
10 applications. Defendants’ current searches encompass emails exchanged between
11 these employees of Consulate Toronto and others, including (to the extent any
12 exist) with USCIS and the Department of State’s Bureau of Consular Affairs. It
13 would be unreasonably burdensome, and disproportionate to the needs of the case,
14 to require Defendants to search for email communications not exchanged with the
15 identified Consulate Toronto employees. Such searches would require Defendants
16 to identify appropriate custodians within the Bureau of Consular Affairs (located in
17 Washington, DC), but Defendants have no manageable way to do so. The Bureau
18 has employed thousands of persons within the timeframe at issue, and any one of
19 these thousands of employees likely communicated at some point about the
20 relevant policies and procedures (*i.e.*, those identified by Defendants in response to
21 Interrogatory No. 5).

22 Moreover, emails exchanged solely within the Bureau and not also
23 communicated to Consulate Toronto would not likely have any relevance to
24 Plaintiffs’ claims in this action that the Department violated Plaintiffs’
25 constitutional rights by denying Ethan’s CRBA and U.S. Passport applications (an
26 action taken by Consulate Toronto).

27 ***
28

DOCUMENT REQUEST NO. 3

Plaintiffs' Request:

All Documents and Communications concerning or discussing the impact or effect of any court ruling, including but not limited to *Pavan v. Smith*, 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born outside of the United States (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.

Defendants' Verbatim Response to Document Request No. 3:

Defendants object to this request on multiple grounds. *First*, the phrase “concerning ... the impact ... of *any court ruling including but not limited to*” is unreasonably vague, overly broad, and not reasonably particularized; it seeks documents not relevant to the claims or defenses; and is disproportionate to the needs of the case. *Second*, to the extent the request seeks (a) communications sent to or from attorneys for the Department of State, Department of Justice, or any other Executive Branch component (including outside counsel); or (b) documents generated by or at the direction of any such attorney, it likely seeks information protected by the attorney-client privilege and/or the work product doctrine, and the Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Third*, to the extent this request seeks documents and communications regarding any individual adjudications conducted by the Department other than any adjudications specifically related to the Dvash-Banks family, Defendants object to the request as unreasonably vague, overly broad, not relevant to the claims and defenses, and disproportionate to the needs of the case.

1 *Fourth*, the document request is unreasonably vague and overly broad in that its
2 terms encompass not only situations governed by 8 U.S.C. § 1401 or 8 U.S.C. §
3 1409, but also situations governed by other provisions of the Immigration and
4 Nationality Act (“INA”), as well as situations where a Person seeks citizenship or
5 proof of citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431
6 and 1433 (the Child Citizenship Act of 2000) and potentially under Title II of the
7 INA, as well as historical sections under which a Person may have acquired
8 citizenship depending on the date of birth.

9 For the purposes of responding to this request, Defendants construe the
10 request as seeking documents, guidance, or instructions available to relevant
11 officers in the consular section of the U.S. Consulate in Toronto and in effect
12 during the time period January 1, 2015 through June 2, 2017—or communications
13 sent to or received by such officers during that time period—regarding any of the
14 five judicial opinions cited in the request, or any other court ruling of general
15 applicability to the Toronto Consulate’s adjudication, based on 8 U.S.C. § 1401 or
16 8 U.S.C. § 1409, in connection with applications for CRBAs or U.S. passports for
17 foreign-born children lacking a biological relationship (as the Department defines
18 that term) with a U.S. citizen parent.

19 Subject to and without waiving the above-stated objections—including both
20 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-
21 11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged
22 documents or communications responsive to this request (as so construed in the
23 preceding paragraph).

24 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
25 **Request No. 3 Is Insufficient:**

26 Defendants’ response to Document Request No. 3 is insufficient because
27 Defendants have produced no responsive documents. Further, Defendants’
28 interpretation of the request as seeking only “documents, guidance, or instructions

1 available to” officers at the Toronto Consulate or “communications sent to or
2 received by those officers” is unreasonably narrow. This construction excludes (a)
3 documents not made available to the Toronto Consulate and (b) communications
4 not involving Toronto consular officers. Documents and communications
5 discussing the precedents identified in the Request are relevant to all Plaintiffs’
6 claims. *First*, such documents bear on the reasonableness of the State
7 Department’s decision-making in adopting or retaining its interpretation of the
8 INA after the Supreme Court’s and Ninth Circuit’s binding decisions in those cases
9 (*e.g.*, by failing to consider the effect of those decisions, or by willfully defying
10 them). *Second*, such documents might reflect the State Department’s rationale for
11 adopting or retaining an interpretation of the INA that unconstitutionally
12 discriminates against same-sex married couples and infringes their fundamental
13 right to marry by denying them the full constellation of rights and benefits
14 associated with marriage. For the reasons previewed above, Plaintiffs should be
15 permitted to obtain discovery related to the State Department’s rationale for
16 adopting or retaining its current interpretation of the INA because Plaintiffs may be
17 required to prove (a) that the State Department engaged in purposeful
18 discrimination, and (b) that the State Department’s current interpretation of the
19 INA does not serve a compelling, important, or legitimate government interest.
20 Defendants should be required to produce both sets of documents, in addition to
21 the documents they have already agreed to produce. During the October 18 and
22 October 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the
23 specific documents they would be producing in response to Plaintiffs’ request, but
24 they failed to provide any specifics.

25 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
26 **Response to Document Request No. 3:**

27 Defendants responded to Plaintiffs’ Document Request No. 3 by specifying
28 objections to portions of the request, articulating how Defendants were construing

1 the vague and overly broad request, and stating that Defendants would produce
2 documents or communications responsive to the request. See Defs.’ Verbatim
3 Resp., *supra* at 41. As such, Defendants’ response fully complied with Federal
4 Rule of Civil Procedure 34(b)(2).

5 Similar to Plaintiffs’ criticism of Defendants’ response to Document Request
6 No. 2, Plaintiffs also fault Defendants’ Document No. 3 Response for indicating
7 that Defendants would limit their search to “documents, guidance, or instructions
8 available to relevant officers in the consular section of the U.S. Consulate in
9 Toronto and in effect . . . or communications sent to or received by such officers
10 during that time period.” Pls.’ Stmt, *supra* at 42 (quoting Defs.’ Verbatim Resp.).
11 *Even* as so “limited” this search is broad, and it requires review of thousands of
12 emails to identify responsive communications about the relevant policies and
13 procedures. Plaintiffs argue that Defendants should also search for documents and
14 communications not made available to Consulate Toronto employees. *Id.* But
15 given the factual allegations in the complaint, and Plaintiffs claims that Consulate
16 Toronto’s denial of Ethan Dvash-Banks’ CRBA and U.S. Passport applications
17 was unlawful, Defendants reasonably identified the relevant custodians as
18 including those Consulate Toronto employees who were involved in the
19 determination of—and communications about—Ethan’s applications. Defendants’
20 current searches encompass emails exchanged between these employees of
21 Consulate Toronto and others. It would be unreasonably burdensome, and
22 disproportionate to the needs of the case, to require Defendants to search for email
23 communications not exchanged with the identified Consulate Toronto employees.
24 Such searches would require Defendants to identify appropriate custodians within
25 the Bureau of Consular Affairs (located in Washington, DC), but Defendants have
26 no manageable way to do so. The Bureau has employed thousands of persons
27 within the timeframe at issue, and any one of these thousands of employees may
28 have at some point sent or received an email referencing one or more of the

1 judicial opinions cited in Document Request No. 3. The unreasonable and
2 disproportionate task of reviewing what could be hundreds of millions of emails
3 for thousands of employees would be made even more difficult by the broad and
4 non-particularized nature of this specific request, which seeks communications
5 “concerning ... the impact ... of *any court ruling including but not limited*” the
6 five court cases cited by the request. *See* Pls.’ Request, *supra* at 41

7 Moreover, emails or documents exchanged solely within the Bureau and not
8 also communicated to Consulate Toronto would not likely have any relevance to
9 Plaintiffs’ claims in this action that the Department violated Plaintiffs’
10 constitutional rights by denying Ethan’s CRBA and U.S. Passport applications (an
11 action taken by Consulate Toronto).

12 ***

13 **DOCUMENT REQUEST NO. 5**

14 **Plaintiffs’ Request:**

15 All Documents and Communications that use the terms “sexual orientation,”
16 “same-sex,” “gay,” “lesbian,” “homosexual,” “LGBT,” or any other term,
17 including any derogatory term, that has the same or a similar meaning as the
18 foregoing terms, in connection with the application of Section 301(g), Section 309,
19 and/or the FAM to same-sex couples who have applied on behalf of their child(ren)
20 for a Consular Report of Birth Abroad, United States passport, or Certificate of
21 Citizenship.

22 **Defendants’ Verbatim Response to Document Request No. 5:**

23 Defendants object to this document request because the phrase “in
24 connection with the application of ... the FAM” as used in the request is
25 unreasonably vague, overly broad, not reasonably particularized, not relevant to the
26 claims and defenses, and disproportionate to the needs of the case. The Foreign
27 Affairs Manual (“FAM”) consists of seventeen separate volumes, only one of
28

1 which—Volume 8 (previously Volume 7)³⁰—provides policies and procedures for
2 “Passports and Consular Reports of Birth Abroad.” See FAM vol. 8; *see also*
3 <https://fam.state.gov/>.

4 For the purposes of responding to this request, Defendants construe the
5 request as seeking documents or communications for which all of the following is
6 true: (a) generated by, available to, or sent or received by relevant officers in the
7 consular section of the U.S. Consulate in Toronto; (b) during the relevant time
8 period of January 1, 2015 through June 2, 2017, or—in the case of policy or
9 protocol documents—in effect during that time period; (c) related to adjudications
10 of CRBA applications and/or U.S. passport applications, where such adjudications
11 would be based on the provisions of 8 U.S.C. § 1401(g) or 8 U.S.C. § 1409 or any
12 FAM provision regarding CRBAs, U.S. passports, or citizenship determinations;
13 and (d) using any of the terms “sexual orientation,” “same-sex,” “gay,” “lesbian,”
14 “homosexual,” “LGBT,” or any other term (including any derogatory term) that
15 has the same or a similar meaning to those terms.

16 Subject to and without waiving the above-stated objections—including both
17 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-
18 11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged
19 documents or communications responsive to this request (as so construed in the
20 preceding paragraph).

21 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
22 **Request No. 5 Is Insufficient:**

23 Defendants’ response is insufficient because Defendants have produced no
24 responsive documents. Additionally, Defendants’ crabbed construction of the
25 request is unreasonable. In particular, Defendants have agreed to provide only
26 documents and communications “generated by, available to, or sent or received by

27 ³⁰ *Many parts of the FAM were renumbered as of July 16, 2018.*
28

relevant officers in” the Toronto Consulate. This potentially excludes a swath of highly relevant materials: documents and communications discussing the application of “Section 301(g), Section 309, and/or the FAM to same-sex couples who have applied on behalf of their child(ren) for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship” that were not provided to, or did not involve, the Toronto Consulate. Documents and communications containing the specified terms (in connection with the application of Section 301(g), Section 309, and/or the FAM to same-sex couples who have applied on behalf of their child(ren) for a CRBA, U.S. passport, or Certificate of Citizenship) are important to Plaintiffs’ case because they may discuss, *e.g.*, the impacts of the State Department’s policies on same-sex couples as a group, which is relevant to Plaintiffs’ equal protection claim. At minimum, Defendants should be required to produce all Documents and Communications that use the terms “sexual orientation,” “same-sex,” “gay,” “lesbian,” “homosexual,” “LGBT,” or any other term, including any derogatory term, that has the same or a similar meaning as the foregoing terms, in connection with the application of Section 301(g), Section 309, and/or FAM provisions regarding CRBAs, U.S. passports, or citizenship determinations. During the October 18 and October 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the specific documents they would be producing in response to Plaintiffs’ request, but they failed to provide any specifics.

**Defendants’ Statement Regarding the Sufficiency of Defendants’
Response to Document Request No. 5:**

Defendants responded to Plaintiffs’ Document Request No. 5 by specifying objections to portions of the request, articulating how Defendants were construing the vague and overly broad request, and stating that Defendants would produce documents or communications responsive to the request. *See* Defs.’ Verbatim

1 Resp., *supra* at 45. As such, Defendants' response fully complied with Federal
2 Rule of Civil Procedure 34(b)(2).

3 Plaintiffs again fault Defendants' Document No. 3 Response for indicating
4 that Defendants would limit their search for responsive communications to
5 "communications between one or more relevant officers in the consular section of
6 the U.S. Consulate in Toronto, and any employee of the components identified in
7 the request (USCIS, a component of DHS; the Secretary of State's staff; the Office
8 of the Legal Adviser; the Bureau of Consular Affairs) or any other component of
9 the Department." Pls.' Stmt., *supra* at 46. As explained above, even as so "limited"
10 this search is broad, and it requires review of thousands of emails to identify
11 responsive communications about the relevant policies and procedures. Plaintiffs
12 argue that Defendants should also search for email communications not exchanged
13 (*i.e.*, sent to, from, cc'ed, or bcc'ed) with Consulate Toronto employees. But given
14 the factual allegations in the complaint, and Plaintiffs claims that Consulate
15 Toronto's denial of Ethan Dvash-Banks' CRBA and U.S. Passport applications
16 was unlawful, Defendants reasonably identified the relevant custodians as
17 including those Consulate Toronto employees who were involved in the
18 determination of—and communications about—Ethan's applications. Defendants'
19 current searches encompass emails exchanged between these employees of
20 Consulate Toronto and others. It would be unreasonably burdensome, and
21 disproportionate to the needs of the case, to require Defendants to search for email
22 communications not exchanged with the identified Consulate Toronto employees.
23 Such searches would require Defendants to identify appropriate custodians within
24 the Bureau of Consular Affairs (located in Washington, DC), but Defendants have
25 no manageable way to do so. The Bureau has employed thousands of persons
26 within the timeframe at issue, and any one of these thousands of employees likely
27 communicated at some point about the relevant policies and procedures (*i.e.*, those
28 identified by Defendants in response to Interrogatory No. 5). Moreover, emails

1 exchanged solely within the Bureau and not also communicated to Consulate
2 Toronto would not likely have any relevance to Plaintiffs' claims in this action that
3 the Department violated Plaintiffs' constitutional rights by denying Ethan's CRBA
4 and U.S. Passport applications (an action taken by Consulate Toronto).

5 In any event, Plaintiffs fail to explain how any documents and
6 communications beyond what Defendants have already committed to produce
7 would, as they say, "bear on the reasonableness of the State Department's
8 decision-making." *See* Pls' Stmt., *supra* at 51. Such speculative assertion falls
9 short of the relevancy requirement of Rule 26(b). To the extent that such additional
10 documents and communications "might reflect the State Department's rationale,"
11 *id.*, Plaintiffs have failed to explain the proportionality of searching for, reviewing,
12 and producing such documents, or why the searches Defendants are already
13 conducting are insufficient for discovering the Department's rationale.

14 ***

15 **DOCUMENT REQUEST NO. 6**

16 **Plaintiffs' Request:**

17 All Documents and Communications Concerning assisted reproductive
18 technology as that term is used in 7 FAM 140 and Appendix D of the FAM,
19 including but not limited to surrogacy, in connection with Section 301(g), Section
20 309, or applications for a Consular Report of Birth Abroad, United States passport,
21 or Certificate of Citizenship.

22 **Defendants' Verbatim Response to Document Request No. 6:**

23 Defendants object to this request on multiple grounds. *First*, the multiple
24 clauses and dangling modifiers in the request make it unreasonably vague and
25 syntactically unclear. *Second*, to the extent the request seeks (a) communications
26 sent to or from attorneys for the Department of State, Department of Justice, or any
27 other Executive Branch component (including outside counsel); or (b) documents
28 generated by or at the direction of any such attorney, it likely seeks information

1 protected by the attorney-client privilege and/or the work product doctrine, and the
2 Defendants object to any request to produce privileged documents. *See, e.g.*, Fed.
3 R. Civ. P. 26(b)(1). *Third*, the document request is unreasonably vague and overly
4 broad in that its terms encompass not only situations governed by 8 U.S.C. § 1401
5 or 8 U.S.C. § 1409, but also situations governed by other provisions of the
6 Immigration and Nationality Act (“INA”), as well as situations where a Person
7 seeks citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431
8 and 1433 (the Child Citizenship Act of 2000) and potentially under Title II of the
9 INA, as well as historical sections under which a Person may have acquired
10 citizenship depending on the date of birth.

11 For the purposes of responding to this request, Defendants construe the
12 request as seeking (a) documents relating to the topic of Interrogatory No. 16 (in
13 Plaintiffs’ First Set of Interrogatories),³¹ and (b) communications sent by or to
14 relevant officers in the consular section of the U.S. Consulate in Toronto, during
15 the time period January 1, 2015 through June 2, 2017, discussing assistive
16 reproductive technology in connection with the application of 8 U.S.C. § 1401(g)
17 or § 1409 to any adjudication of a CRBA or U.S. passport application, or
18 discussing or describing any of the documents referred to in clause “(a)” of this
19 sentence.

20 Subject to and without waiving the above-stated objections—including both
21 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-
22 11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged
23 documents or communications responsive to this request (as so construed in the
24

25 ³¹ *Plaintiffs’ Interrogatory No. 16 asks Defendants to: “Identify and Describe the*
26 *effect or impact, if any, that the use of assisted reproductive technology, as that*
27 *term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in*
28 *connection with the State Department’s (i) application of Section 301(g) or Section*
309; or (ii) determination of applications for a CRBA, United States passport, or
Certificate of Citizenship.”

1 preceding paragraph) after the corresponding interrogatory response has been
2 certified and made, subject to any further objections made in response to
3 Interrogatory No. 16.

4 **Plaintiffs' Contentions as to Why Defendants' Response to Document**
5 **Request No. 6 Is Insufficient:**

6 Defendants have failed to produce any documents responsive to this request,
7 and Defendants' construction of the request is unduly restrictive. Although
8 Defendants agreed in their response to produce documents relating to the topic of
9 Interrogatory No. 16, to date, they have not responded to Interrogatory No. 16. As
10 a result, it is impossible for Plaintiffs to assess whether "documents relating to the
11 topic of Interrogatory No. 16" (as construed by Defendants) would suffice.
12 Further, Defendants interpret the request as seeking communications sent by or to
13 relevant officers in the consular section of the Toronto Consulate discussing
14 assisted reproductive technology ("ART") in connection with Section 301(g),
15 Section 309, or the adjudication of a CRBA or U.S. passport, or discussing or
16 describing documents relating to the topic of Interrogatory No. 16. As explained
17 above, limiting responsive communications to those involving officers in Toronto
18 ignores potentially relevant communications within the State Department. For
19 example, it excludes relevant policy discussions occurring within the State
20 Department's main offices in Washington, D.C. The Court should reject
21 Defendants' construction and compel production of all documents and
22 communications responsive to this request or, at a minimum, of all protocols,
23 procedures, practices or policies responsive to this request, including all prior and
24 subsequent versions and drafts (whether or not adopted) from January 1, 2013 to
25 present. Their relevance to this Action is demonstrated by Defendants' own
26 interrogatory responses, which stated (a) that consular officers adjudicating CRBA
27 and U.S. passport applications are expected to investigate carefully when doubt
28 arises that a U.S. citizen "parent" is biologically related to the child, and (b) that

1 circumstances in which such doubt arise include where the child was born through
2 surrogacy or ART.

3 Responsive documents are also likely to identify any governmental rationale
4 for the State Department's treatment of children born through surrogacy or other
5 forms of ART and the intersection of the State Department's treatment of ART
6 with its treatment of children born to same-sex marriages. During the October 18
7 and October 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the
8 specific documents they would be producing in response to Plaintiffs' request, but
9 they failed to provide any specifics.

10 **Defendants' Statement Regarding the Sufficiency of Defendants'**
11 **Response to Document Request No. 6:**

12 Defendants responded to Plaintiffs' Document Request No. 6 by specifying
13 objections to portions of the request, articulating how Defendants were construing
14 the vague and overly broad request, and stating that Defendants would produce
15 documents or communications responsive to the request. *See* Defs.' Verbatim
16 Resp., *supra* at 49. As such, Defendants' response fully complied with Federal
17 Rule of Civil Procedure 34(b)(2).

18 Defendants reasonably interpreted Document Request No. 6 as relating to
19 Plaintiffs' Interrogatory No. 16, to which Defendants have responded. Document
20 Request No. 6 seeks "documents and Communications Concerning assisted
21 reproductive technology as that term is used in 7 FAM 140 and Appendix D of the
22 FAM, including but not limited to surrogacy, in connection with Section 301(g),
23 Section 309, or applications for a Consular Report of Birth Abroad, United States
24 passport, or Certificate of Citizenship." Interrogatory No. 16 asks Defendants to
25 "Describe the effect or impact, if any, that the use of assisted reproductive
26 technology, as that term is used in 7 FAM 1100 Appendix D of the FAM,
27 including surrogacy, has in connection with the State Department's (i) application
28 of Section 301(g) or Section 309; or (ii) determination of applications for a CRBA,

1 United States passport, or Certificate of Citizenship.” Given the identical language
2 used by the document request and the interrogatory, it was completely reasonable
3 for Defendants to interpret Document Request No. 6 as seeking documents and
4 communications referencing or discussing the “effect or impact” identified in
5 response to Interrogatory No. 16.

6 Plaintiffs fault Defendants’ Document No. 6 Response for indicating that
7 Defendants would limit their search for responsive communications to
8 “communications sent by or to relevant officers in the consular section of the U.S.
9 Consulate in Toronto.” Pls.’ Stmt., *supra* at 51 (quoting Defs.’ Verbatim Resp.).
10 Even as so “limited” this search is broad, and it requires review of thousands of
11 emails to identify responsive communications about the relevant application of
12 policies and procedures. Plaintiffs argue that Defendants should also search for
13 email communications not exchanged (*i.e.*, sent to, from, cc’ed, or bcc’ed) with
14 Consulate Toronto employees. But given the factual allegations in the complaint,
15 and Plaintiffs claims that Consulate Toronto’s denial of Ethan Dvash-Banks’
16 CRBA and U.S. Passport applications was unlawful, Defendants reasonably
17 identified the relevant custodians as including those Consulate Toronto employees
18 who were involved in the determination of—and communications about—Ethan’s
19 applications. Defendants’ current searches encompass emails exchanged between
20 these employees of Consulate Toronto and others. It would be unreasonably
21 burdensome, and disproportionate to the needs of the case, to require Defendants to
22 search for email communications not exchanged with the identified Consulate
23 Toronto employees as Defendants fully explained in their Statement Regarding
24 Their Response to Document Request Nos. 2 and 3, *supra* at 38, 43.

25 It is not clear what point Plaintiffs are trying to make with their assertion
26 that “Responsive documents are also likely to identify any governmental rationale
27 for the State Department’s treatment of children born through surrogacy or other
28 forms of ART and the intersection of the State Department’s treatment of ART

1 with its treatment of children born to same-sex marriages,” Pls.’ Stmt., *supra* at 51.
2 As noted, Defendants have agreed to produce non-privileged documents response
3 to Document Request No. 6 a rolling basis, within a reasonable time frame.

4 ***

5 **DOCUMENT REQUEST NO. 7**

6 **Plaintiffs’ Request:**

7 All Documents and Communications, including any documentation of
8 Communications, Concerning any applications for or inquiries about Consular
9 Reports of Birth Abroad, United States passports, or a Permanent Resident Card
10 made, submitted, or sought on behalf of either or both of Ethan and Aiden,
11 including Documents and Communications Concerning the processing or
12 adjudication of those applications or inquiries, or related Communications between
13 the State Department or CIS and any Person.

14 **Defendants’ Verbatim Response to Document Request No. 7:**

15 Defendants object to this request on multiple grounds. *First*, the phrase “any
16 documentation of Communications” is unreasonably vague and undefined. *Second*,
17 Defendants object to the request to the extent it seeks inter-agency or intra-agency,
18 pre-decisional, deliberative materials, as such documents or communications
19 would be protected by the deliberative process privilege. *Third*, Defendants object
20 to the request to the extent it seeks documents (including communications)
21 unrelated to the actions and alleged actions taken by Defendants and challenged by
22 Plaintiffs in this litigation. Defendants are not authorized to take action with
23 respect to applications for a Permanent Resident Card, and any documents or
24 communications relating to such an application would be not relevant to the claims
25 and defenses in this case, and disproportionate to the needs of the case. *Fourth*,
26 Defendants object to the request to the extent it seeks documents or
27 communications outside of the relevant time period January 1, 2015 through June
28 2, 2017.

1 For the purposes of responding to this request, Defendants construe the
2 request as seeking documents or communications for which all of the following is
3 true: (a) generated by, available to, or sent or received by relevant officers in the
4 consular section of the U.S. Consulate in Toronto; (b) during the relevant time
5 period of January 1, 2015 through June 2, 2017; (c) describing, memorializing,
6 constituting, or discussing; (d) any application for a CRBA and/or a U.S. passport
7 for Ethan or Aiden, or any adjudication of such application, or any inquiry from
8 the Dvash-Banks family regarding a potential or pending application.

9 Subject to and without waiving the above-stated objections—including both
10 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-
11 11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged
12 documents or communications responsive to this request (as so construed in the
13 preceding paragraph).

14 **Plaintiffs' Contentions as to Why Defendants' Response to Document**
15 **Request No. 7 Is Insufficient:**

16 Other than Defendants' initial disclosures (which included Ethan's passport
17 file)³², Defendants have not produced any documents responsive to this request.

18 Defendants' construction of the request as limited to the time period January
19 1, 2015 through June 2, 2017 is particularly problematic here because it would not
20 cover any documents or communications related to Congressman Ted Lieu's letter
21 to the State Department regarding Ethan, to which the State Department responded
22 in October 2017. In addition, the letter sent in response to Congressman Lieu's
23 letter was from the Office of American Citizens Services and Crisis Management,

24 ³² Defendants served their initial disclosures on August 16, 2018. They included
25 the State Department's "passport file," which contains copies of Ethan's
26 applications for a CRBA and a U.S. passport and the State Department's
27 correspondence with Andrew denying those applications, as well as documentation
28 submitted in support of those applications, including, among other things, Ethan's
birth certificate, passport pages, proof of Andrew's residency in the U.S., Andrew's
and Elad's marriage license, and Ethan's birth certificate.

1 not the Toronto Consulate. This suggests, as just one example, that there are
2 communications about Ethan's CRBA and U.S. passport applications that did not
3 involve, or were not limited to, the Toronto Consulate. Any such materials are
4 relevant to the Action and should be produced. Defendants' response to this
5 request underscores the limitations of Defendants' Toronto-specific approach to
6 discovery. If in the months following the Dvash-Banks' interactions with Toronto
7 Consulate personnel, the Dvash-Banks' applications were the source of subsequent
8 communications within the State Department (whether or not within the Toronto
9 Consulate), or if the Dvash Banks' family's move to California and application for
10 a permanent resident card or other relief from USCIS in California triggered
11 communications with the State Department about Ethan's 2017 applications for a
12 U.S. passport and CRBA, they would be excluded by Defendants' position from
13 production (or, if actually privileged, identification on a privilege log in
14 accordance with Federal Rule of Civil Procedure 26(a)(5)). During the October 18
15 and October 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the
16 specific documents they would be producing in response to Plaintiffs' request, but
17 they failed to provide any specifics.

18 **Defendants' Statement Regarding the Sufficiency of Defendants'**
19 **Response to Document Request No. 7:**

20 Defendants responded to Plaintiffs' Document Request No. 7 by specifying
21 objections to portions of the request, articulating how Defendants were construing
22 the vague and overly broad request, and stating that Defendants would produce
23 documents or communications responsive to the request. See Defs.' Verbatim
24 Resp., *supra* at 54. As such, Defendants' response fully complied with Federal
25 Rule of Civil Procedure 34(b)(2).

26 Plaintiffs assert, without any support, that emails related to the Department's
27 response to a Congressional inquiry from Congressman Ted Lieu, on behalf of his
28 constituents the Dvash-Banks family, would necessarily be relevant to their claims

1 that the denial of Ethan's CRBA and U.S. Passport applications was unlawful. See
2 Pls.' Stmt., *supra* at 55. But how the Department may have responded to a
3 Congressional inquiry is a separate question from how the Department adjudicated
4 the CRBA and U.S. Passport applications. Particularly given that the response to
5 Congressman Lieu took place six months post hoc the underlying adjudication, it is
6 not readily apparent that communications and documents regarding that response
7 would be relevant to Plaintiffs' claims about the adjudication, nor have Plaintiffs
8 explained the relevance. As noted, Defendants have agreed to produce non-
9 privileged documents response to Document Request No. 7 a rolling basis, within a
10 reasonable time frame. Not only have Plaintiffs failed to explain the relevance of
11 documents beyond those that Defendants have already agreed to produce, but also
12 they have not even tried to explain how requiring Defendants to broaden their
13 search (which is reasonable as discussed above and in Defendants' verbatim
14 response) would be proportionate to the needs of the case.

15 ***

16 **DOCUMENT REQUEST NO. 8**

17 **Plaintiffs' Request:**

18 All Documents Concerning Communications with any Person regarding
19 Plaintiffs or this Action.

20 **Defendants' Verbatim Response to Document Request No. 8:**

21 Defendants object to this document request on multiple grounds. *First*, the
22 phrase "Documents Concerning Communications" is unreasonably vague, overly
23 broad, and not sufficiently particularized. *Second*, Defendants object to this request
24 to the extent it seeks documents or communications outside of the time period
25 January 1, 2015 through June 2, 2017, as such documents or communications
26 would be too far outside the time period relevant to Plaintiffs' claims to be
27 proportionate to the needs of the case. Documents and communications post-dating
28 that time period—and particularly documents generated and/or communications

1 exchanged after the filing of this lawsuit—would have the tendency to reveal
2 information protected by the attorney-client privilege and/or the work-product
3 doctrine. It would be unduly burdensome, not relevant to the claims and defenses
4 in the litigation, and disproportionate to the needs of the case to require Defendants
5 to collect and review for production any such documents.

6 For the purposes of responding to this request, Defendants construe the
7 request as seeking documents or communications for which all of the following is
8 true: (a) generated by, available to, or sent or received by relevant officers in the
9 consular section of the U.S. Consulate in Toronto; (b) during the relevant time
10 period of January 1, 2015 through June 2, 2017; and (c) mentioning any member of
11 the Dvash-Banks family, or the family as a whole.

12 Subject to and without waiving the above-stated objections—including both
13 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-
14 11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged
15 documents or communications responsive to this request (as so construed in the
16 preceding paragraph).

17 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
18 **Request No. 8 Is Insufficient:**

19 Plaintiffs refer the Court to their statement above (at pp. 55-56) regarding
20 Defendants’ response to Document Request No. 7. Curiously, despite Defendants’
21 lengthy objections to this request, Defendants posed a parallel request to Plaintiffs
22 in Defendants’ discovery requests. (See Defendants’ Request for Production No. 9
23 seeking “every written statement” Andrew has “given or received related to this
24 litigation or related to issues mentioned in the Complaint” except for those made
25 exclusively to counsel). During the October 18 and October 23 meet-and-confer
26 calls, Plaintiffs pressed Defendants to identify the specific documents they would
27 be producing in response to Plaintiffs’ request, but they failed to provide any
28 specifics.

**Defendants' Statement Regarding the Sufficiency of Defendants'
Response to Document Request No. 8:**

Defendants responded to Plaintiffs' Document Request No. 7 by specifying objections to portions of the request, articulating how Defendants were construing the vague and overly broad request, and stating that Defendants would produce documents or communications responsive to the request. *See* Defs.' Verbatim Resp., *supra* at 57. As such, Defendants' response fully complied with Federal Rule of Civil Procedure 34(b)(2).

In describing their contentions as to why Defendants' Response to Document Request No. 8 is insufficient, Plaintiffs refer the Court to their statement regarding Defendants' response to Document Request No. 7. Defendants likewise refer the Court to Defendants' statement regarding the sufficiency of Defendants' response to Document Request No. 7.

DOCUMENT REQUEST NO. 12

Plaintiffs' Request:

Documents sufficient to show the number of same-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not) who have applied for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of one or more children born outside the United States (or adult children of such couples who have applied on their own behalves); the outcomes for, or results of, such applications; and the reasons for any denials of any such applications. This request includes Documents Concerning any requirement of the State Department or CIS that a United States citizen demonstrate a biological connection to, or relationship with, a child born outside the United States in connection with such applications.

Defendants' Verbatim Response to Document Request No. 12:

Defendants object to this request on multiple grounds. *First*, to the extent that it seeks information potentially contained in one or more Department of State

1 systems of records, in particular “Passport Records, State-26,” 80 Fed. Reg. 15653
2 (Mar. 24, 2015), and “Overseas Citizens Services Records, State-05,” 81 Fed. Reg.
3 62235 (Sept. 8, 2016), such data is subject to the disclosure limitations of the
4 Privacy Act. *Second*, the request is overly broad, not reasonably particularized,
5 unduly burdensome, and disproportionate to the needs of the case because the
6 terms it proposes are not queries that can readily be searched by the Department.
7 For example, during the course of consular processing activities at the Toronto
8 Consulate and other posts, applications for CRBAs and U.S. passports (as well as
9 other applications) generate queries to the Consular Consolidated Database
10 (“CCD”). CCD is a data warehouse that holds current and archived data from the
11 Bureau of Consular Affairs’ domestic and post databases. *See, e.g.*, U.S.
12 Department of State, Privacy Impact Assessment: Consular Consolidated
13 Database, at 2 (July 17, 2015), *available at*
14 <https://www.state.gov/documents/organization/242316.pdf>. The CCD stores
15 information about U.S. persons (U.S. citizens and legal permanent residents), as
16 well as foreign nationals (non-U.S. persons) such as Immigrant Visa applicants and
17 Non-Immigrant Visa applicants. *Id.* at 3.³³ CCD does not support statistical
18 reporting of the query terms suggested by Request No. 12, *i.e.*, same-sex married
19 binational couples who have applied for a CRBA or U.S. passport on behalf of one
20 or more children born outside the United States (or adult children who have
21 applied on their own behalves). Records in CCD are not retrievable by nationality,
22 sex of the parents, or marriage status of parents. Nor does the Passport Information
23 Electronic Records System (“PIERS”)³⁴ database maintained by the Department

24 ³³ *Among other information, CCD holds passport records. Id. at 12. Since there is a*
25 *vast amount of data contained in the CCD, the CCD data is not accessed directly.*
26 *Id. at 7. Instead, “data marts” have been created to organize the data. Id. From*
27 *the CCD data, statistical reports are generated and analyzed to create metrics*
28 *based on country, type of request, biographic and biometric checks. Id.*

³⁴ *The Passport Information Electronic Records System (PIERS) is a suite of web*
and desktop applications that provide query and management capabilities for

1 support such queries. The PIERS database collects and stores a range of personally
2 identifiable and adjudication-related information for passport records and Consular
3 Report of Birth Abroad (CRBA) records, but PIERS records cannot be retrieved by
4 the sex of the parents or the marriage status of the parents. *Third*, Defendants
5 object to the request to the extent it would require Defendants to create responsive
6 documents, as a party “is not required to create a document where none exists.”
7 *Rogers v. Guirbino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify
8 records fitting the criteria listed in the request, Defendants would need to manually
9 review more than 3,000 CRBA applications and the thousands of U.S. passport
10 applications processed by the Toronto Consulate from January 1, 2015 through
11 June 2, 2017; each application would need to be printed and/or electronically
12 accessed and reviewed to assess for each application the parents’ nationalities,
13 parents’ marriage status, whether parents were a same-sex couple (to the extent
14 such information was even provided on each application), biological relationship
15 of parent/s to child, citizenship claim, etc. That step alone would take hundreds of
16 hours, and would only indicate, as an initial matter, whether the reviewed
17 applications appeared to meet the criteria of the request and whether the
18 applications were approved or denied. And in many cases it may not be clear—or
19 even possible to ascertain—from the face of an application whether that
20 application fits the criteria listed in the request. Thus such a review would likely
21 generate incomplete and/or inaccurate results. But even if Defendants were to
22 conduct such a review and identify—to the extent possible—individual records
23 reflecting the criteria of the request, Defendants would not be able to produce such
24 records in a format in which the data could readily be extracted by Plaintiffs but
25 instead would need to create a new document to contain/describe an analysis and
26
27 *passport records and Consular Reports of Birth Abroad (CRBAs), among other*
28 *consular records.*

1 review of each application based on the various criterion demanded in the instant
2 RFPD. Additional steps would then be required to determine “the outcomes for, or
3 results of” the applications and “the reasons for any denials of any such
4 applications,” and that information would need to be extracted and then inputted
5 into the new document as well. Not only would this require Defendants to “create a
6 document where none exists,” *see Guirbino*, 288 F.R.D. at 485, but also the
7 process would be unduly burdensome and disproportionate to the needs of the case.
8 *Fourth*, Defendants object to the request because it seeks information not relevant
9 to the claims and defenses, and the burden and expense implicated by the request is
10 disproportionate to the needs of the case.

11 On the basis of these objections, Defendants do not intend to produce
12 documents in response to this specific request.

13 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
14 **Request No. 12 Is Insufficient:**

15 Defendants have refused to produce any documents in response to this
16 request. Defendants claim that the databases in which the information is retained
17 do “not support statistical reporting of the query terms suggested by Request No.
18 12, i.e., same-sex married binational couples who have applied for a CRBA or U.S.
19 passport on behalf of one or more children born outside the United States (or adult
20 children who have applied on their own behalves)” and that the request would
21 “require Defendants to create responsive documents.” Plaintiffs requested during
22 the October 23, 2018 meet-and-confer call that Defendants provide the fields
23 available in these databases so that Plaintiffs can confirm whether there are any
24 appropriate “queries” that could be run. Plaintiffs confirmed during that call that
25 the request does not require Defendants to create responsive documents but instead
26 (assuming the data has not already been compiled in a way that would be helpful to
27 Plaintiffs, in which case those compilations should be produced) to provide raw
28 data that Plaintiffs can analyze. This data could be highly relevant to Plaintiffs’

1 equal protection claim. Defendants will not commit to providing this information.
2 The Court should compel Defendants to provide Plaintiffs with the fields available
3 in the relevant databases, to run any reasonable queries identified by Plaintiffs and
4 to produce the resulting data, subject to the federal Privacy Act, 5 U.S.C. § 552a.

5 **Defendants' Statement Regarding the Sufficiency of Defendants'**
6 **Response to Document Request No. 12:**

7 Defendants responded to Plaintiffs' Document Request No. 12 by stating
8 with specificity the grounds for objecting to the request, including the reasons for
9 Defendants' objections. *See* Defs.' Verbatim Resp., *supra* at 59. As such,
10 Defendants' response fully complied with Federal Rule of Civil Procedure
11 34(b)(2).

12 Plaintiffs propose that Defendants provide Plaintiffs with the fields in the
13 databases cited in Defendants' Response to Document Request No. 12, "so that
14 Plaintiffs can confirm whether there are any appropriate 'queries' that could be
15 run." *See* Pls.' Stmt., *supra* at 62. But Defendants have already provided a detailed
16 explanation why the queries envisioned by Plaintiffs are not supported by the
17 relevant databases, which include the Consular Consolidated Database ("CCD")
18 and the Passport Information Electronic Records System ("PIERS"), *see* Defs.'
19 Verbatim Resp., *supra* at 59. In addition to the narrative explanation in
20 Defendants' Response, to which Defendants respectfully refer the Court,
21 Defendants' Response cited resources describing the CCD and PIERS systems in
22 greater detail. *See id.* (citing and providing a hyperlink to the Department's Privacy
23 Impact Statement for CCD; and also citing Federal Register Notices, 80 Fed. Reg.
24 15653 (Mar. 24, 2015) and 81 Fed. Reg. 62235 (Sept. 8, 2016)). Defendants
25 further explained that "to identify records fitting the criteria listed in the request,
26 Defendants would need to manually review more than 3,000 CRBA applications
27 and the thousands of U.S. passport applications processed by the Toronto
28 Consulate from January 1, 2015 through June 2, 2017; each application would

1 need to be printed and/or electronically accessed and reviewed to assess for each
2 application the parents' nationalities, parents' marriage status, whether parents
3 were a same-sex couple (to the extent such information was even provided on each
4 application), biological relationship of parent/s to child, citizenship claim, etc. That
5 step alone would take hundreds of hours, and would only indicate, as an initial
6 matter, whether the reviewed applications appeared to meet the criteria of the
7 request and whether the applications were approved or denied.

8 Plaintiffs do not dispute Defendants' explanation of the process that would
9 be required to "query" the relevant databases. *See* Pls.' Stmt., *supra* at 62. Instead
10 they simply argue that "[t]his data could be highly relevant to Plaintiffs' equal
11 protection claim." *Id.* Plaintiffs do not explain how the data might be relevant, and
12 they certainly do not explain why it would be proportionate to the needs of the case
13 to require Defendants to undertake the hugely time-consuming and largely manual
14 process described by Defendants' reasonable objection to this document request.

15 ***

16 **DOCUMENT REQUEST NO. 13**

17 **Plaintiffs' Request:**

18 Documents sufficient to show the number, if any, of (a) same-sex married
19 binational couples (i.e., of which one spouse is a United States citizen and the other
20 is not) who applied for and were granted Consular Reports of Birth Abroad, United
21 States passports, or Certificates of Citizenship on behalf of one or more children
22 born outside the United States and (b) adult children of same-sex married bi-
23 national couples who were born outside of the United States and who applied for
24 and were granted Consular Reports of Birth Abroad, United States passports, or
25 Certificates of Citizenship.

26 **Defendants' Verbatim Response to Document Request No. 13:**

27 Defendants object to this request on multiple grounds. *First*, it overlaps with
28 Request No. 12, and is duplicative of and cumulative to that request. *Second*, to the

1 extent that it seeks information potentially contained in one or more Department of
2 State systems of records, in particular “Passport Records, State-26,” 80 Fed. Reg.
3 15653 (Mar. 24, 2015), and “Overseas Citizens Services Records, State-05,” 81
4 Fed. Reg. 62235 (Sept. 8, 2016), such data is subject to the disclosure limitations
5 of the Privacy Act. *Third*, the request is overly broad, not reasonably
6 particularized, unduly burdensome, and disproportionate to the needs of the case
7 because the terms it proposes are not queries that can readily be searched by the
8 Department. For example, during the course of consular processing activities at the
9 Toronto Consulate and other posts, applications for CRBAs and U.S. passports (as
10 well as other applications) generate queries to the Consular Consolidated Database
11 (“CCD”). CCD is a data warehouse that holds current and archived data from the
12 Bureau of Consular Affairs’ domestic and post databases. *See, e.g.*, U.S.
13 Department of State, Privacy Impact Assessment: Consular Consolidated
14 Database, at 2 (July 17, 2015), *available at* [https://www.state.gov/documents/](https://www.state.gov/documents/organization/242316.pdf)
15 [organization/242316.pdf](https://www.state.gov/documents/organization/242316.pdf). The CCD stores information about U.S. persons (U.S.
16 citizens and legal permanent residents), as well as foreign nationals (non-U.S.
17 persons) such as Immigrant Visa applicants and Non-Immigrant Visa applicants.
18 *Id.* at 3.³⁵ CCD does not support statistical reporting of the query terms suggested
19 by Request No. 13, *i.e.*, same-sex married binational couples who have applied for
20 a CRBA or U.S. passport on behalf of one or more children born outside the
21 United States (or adult children who have applied on their own behalves). Records
22 in CCD are not retrievable by nationality, sex of the parents, or marriage status of
23 parents. Nor does the Passport Information Electronic Records System (“PIERS”)³⁶

24 ³⁵ Among other information, CCD holds passport records. *Id.* at 12. Since there is a
25 vast amount of data contained in the CCD, the CCD data is not accessed directly.
26 *Id.* at 7. Instead, “data marts” have been created to organize the data. *Id.* From
the CCD data, statistical reports are generated and analyzed to create metrics
based on country, type of request, biographic and biometric checks. *Id.*

27 ³⁶ The Passport Information Electronic Records System (PIERS) is a suite of web
28 and desktop applications that provide query and management capabilities for

1 database maintained by the Department support such queries. The PIERS database
2 collects and stores a range of personally identifiable and adjudication-related
3 information for passport records and Consular Report of Birth Abroad (CRBA)
4 records, but PIERS records cannot be retrieved by the sex of the parents or the
5 marriage status of the parents. *Fourth*, Defendants object to the request to the
6 extent it would require Defendants to create responsive documents, as a party “is
7 not required to create a document where none exists.” *Rogers v. Guirbino*, 288
8 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify records fitting the criteria
9 listed in the request, Defendants would need to manually review more than 3,000
10 CRBA applications and the thousands of U.S. passport applications processed by
11 the Toronto Consulate from January 1, 2015 through June 2, 2017; each
12 application would need to be printed and/or electronically accessed and reviewed
13 to assess for each application the parents’ nationalities, parents’ marriage status,
14 whether parents were a same-sex couple (to the extent such information was even
15 provided on each application), biological relationship of parent/s to child,
16 citizenship claim, etc. That step alone would take hundreds of hours, and would
17 only indicate, as an initial matter, whether the reviewed applications appeared to
18 meet the criteria of the request and whether the applications were approved or
19 denied. And in many cases it may not be clear—or even possible to ascertain—
20 from the face of an application whether that application fits the criteria listed in the
21 request. Thus such a review would likely generate incomplete and/or inaccurate
22 results. But even if Defendants were to conduct such a review and identify—to the
23 extent possible—individual records reflecting the criteria of the request,
24 Defendants would not be able to produce such records in a format in which the
25 data could readily be extracted by Plaintiffs but instead would need to create a new
26
27 *passport records and Consular Reports of Birth Abroad (CRBAs), among other*
28 *consular records.*

1 document to contain/describe an analysis and review of each application based on
2 the various criterion demanded in the instant RFPD. Additional steps would then
3 be required to determine “the outcomes for, or results of” the applications and “the
4 reasons for any denials of any such applications,” and that information would need
5 to be extracted and then inputted into the new document as well. Not only would
6 this require Defendants to “create a document where none exists,” *see Guirbino*,
7 288 F.R.D. at 485, but also the process would be unduly burdensome and
8 disproportionate to the needs of the case. *Fifth*, Defendants object to the request
9 because it seeks information not relevant to the claims and defenses, and the
10 burden and expense implicated by the request is disproportionate to the needs of
11 the case.

12 On the basis of these objections, Defendants do not intend to produce
13 documents in response to this specific request.

14 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
15 **Request No. 13 Is Insufficient:**

16 Plaintiffs refer the Court to their statement above regarding Document
17 Request No. 12.

18 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
19 **Response to Document Request No. 13:**

20 Defendants refer the Court to their verbatim response to Plaintiffs’
21 Document Request No. 13, *supra* at 64, and to Defendants’ statement above
22 regarding their response to Document Request No. 12, *supra* at 63.

23 ***

24 **DOCUMENT REQUEST NO. 14**

25 **Plaintiffs’ Request:**

26 Documents sufficient to show the number of (a) same-sex married bi-
27 national couples (i.e., of which one spouse is a United States citizen and the other
28 is not) who have applied for Consular Reports of Birth Abroad, United States
passports, or Certificates of Citizenship on behalf of one or more children born

1 outside the United States and who have not been required to demonstrate a
2 biological relationship between the child and United States citizen parent and (b)
3 adult children of same-sex married bi-national couples who were born outside of
4 the United States and have applied for Consular Reports of Birth Abroad, United
5 States passports, or Certificates of Citizenship on their own behalves and who were
6 not required to demonstrate a biological connection between themselves and the
7 United States citizen parent; the outcomes for, or results of, such applications; and
8 the reasons for any denials of any such applications.

9 **Defendants' Verbatim Response to Document Request No. 14:**

10 Defendants object to this request on multiple grounds. *First*, it overlaps with
11 Request Nos. 12 and 13, and is duplicative of and cumulative to those requests.
12 *Second*, to the extent that it seeks information potentially contained in one or more
13 Department of State systems of records, in particular "Passport Records, State-26,"
14 80 Fed. Reg. 15653 (Mar. 24, 2015), and "Overseas Citizens Services Records,
15 State-05," 81 Fed. Reg. 62235 (Sept. 8, 2016), such data is subject to the disclosure
16 limitations of the Privacy Act. *Third*, the request is overly broad, not reasonably
17 particularized, unduly burdensome, and disproportionate to the needs of the case
18 because the terms it proposes are not queries that can readily be searched by the
19 Department. For example, during the course of consular processing activities at the
20 Toronto Consulate and other posts, applications for CRBAs and U.S. passports (as
21 well as other applications) generate queries to the Consular Consolidated Database
22 ("CCD"). CCD is a data warehouse that holds current and archived data from the
23 Bureau of Consular Affairs' domestic and post databases. *See, e.g.*, U.S.
24 Department of State, Privacy Impact Assessment: Consular Consolidated
25 Database, at 2 (July 17, 2015), *available at* [https://www.state.gov/documents/](https://www.state.gov/documents/organization/242316.pdf)
26 [organization/242316.pdf](https://www.state.gov/documents/organization/242316.pdf). The CCD stores information about U.S. persons (U.S.
27 citizens and legal permanent residents), as well as foreign nationals (non-U.S.
28 persons) such as Immigrant Visa applicants and Non-Immigrant Visa applicants.

1 *Id.* at 3.³⁷ CCD does not support statistical reporting of the query terms suggested
2 by Request No. 14, *i.e.*, same-sex married bi-national couples who have applied for
3 a CRBA or U.S. passport on behalf of one or more children born outside the
4 United States (or adult children who have applied on their own behalves). Records
5 in CCD are not retrievable by nationality, sex of the parents, or marriage status of
6 parents. Nor does the Passport Information Electronic Records System (“PIERS”)³⁸
7 database maintained by the Department support such queries. The PIERS database
8 collects and stores a range of personally identifiable and adjudication-related
9 information for passport records and Consular Report of Birth Abroad (CRBA)
10 records, but PIERS records cannot be retrieved by the sex of the parents or the
11 marriage status of the parents. *Fourth*, Defendants object to the request to the
12 extent it would require Defendants to create responsive documents, as a party “is
13 not required to create a document where none exists.” *Rogers v. Guirbino*, 288
14 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify records fitting the criteria
15 listed in the request, Defendants would need to manually review more than 3,000
16 CRBA applications and the thousands of U.S. passport applications processed by
17 the Toronto Consulate from January 1, 2015 through June 2, 2017; each
18 application would need to be printed and/or electronically accessed and reviewed
19 to assess for each application the parents’ nationalities, parents’ marriage status,
20 whether parents were a same-sex couple (to the extent such information was even
21 provided on each application), biological relationship of parent/s to child,

22

23 ³⁷ Among other information, CCD holds passport records. *Id.* at 12. Since there is a
24 vast amount of data contained in the CCD, the CCD data is not accessed directly.
25 *Id.* at 7. Instead, “data marts” have been created to organize the data. *Id.* From
the CCD data, statistical reports are generated and analyzed to create metrics
based on country, type of request, biographic and biometric checks. *Id.*

26 ³⁸ The Passport Information Electronic Records System (PIERS) is a suite of web
27 and desktop applications that provide query and management capabilities for
28 passport records and Consular Reports of Birth Abroad (CRBAs), among other
consular records.

1 citizenship claim, etc. That step alone would take hundreds of hours, and would
2 only indicate, as an initial matter, whether the reviewed applications appeared to
3 meet the criteria of the request and whether the applications were approved or
4 denied. And in many cases it may not be clear—or even possible to ascertain—
5 from the face of an application whether that application fits the criteria listed in the
6 request. Thus such a review would likely generate incomplete and/or inaccurate
7 results. But even if Defendants were to conduct such a review and identify—to the
8 extent possible—individual records reflecting the criteria of the request,
9 Defendants would not be able to produce such records in a format in which the
10 data could readily be extracted by Plaintiffs but instead would need to create a new
11 document to contain/describe an analysis and review of each application based on
12 the various criterion demanded in the instant RFPD. Additional steps would then
13 be required to determine “the outcomes for, or results of” the applications and “the
14 reasons for any denials of any such applications,” and that information would need
15 to be extracted and then inputted into the new document as well. Not only would
16 this require Defendants to “create a document where none exists,” *see Guirbino*,
17 288 F.R.D. at 485, but also the process would be unduly burdensome and
18 disproportionate to the needs of the case. *Fifth*, Defendants object to the request
19 because it seeks information not relevant to the claims and defenses, and the
20 burden and expense implicated by the request is disproportionate to the needs of
21 the case.

22 On the basis of these objections, Defendants do not intend to produce
23 documents in response to this specific request.

24 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
25 **Request No. 14 Is Insufficient:**

26 Plaintiffs refer the Court to their statement above regarding Document
27 Request No. 12. Request No. 14 addresses the question of whether same-sex
28 couples are being required to demonstrate a biological connection to their children

1 at a rate that is out of all proportion to the rate at which this request is made of
2 opposite-sex couples. The Request is relevant to both of Plaintiffs' constitutional
3 claims, which allege that the State Department's interpretation of the INA denies
4 same-sex married couples equal protection and due process in violation of the Fifth
5 and Fourteenth Amendments.

6 **Defendants' Statement Regarding the Sufficiency of Defendants'**
7 **Response to Document Request No. 14:**

8 Defendants refer the Court to their verbatim response to Plaintiffs'
9 Document Request No. 14, *supra* at 68, and to Defendants' statement above
10 regarding their response to Document Request No. 12, *supra* at 63.

11 **DOCUMENT REQUEST NO. 15**

12 **Plaintiffs' Request:**

13 Documents sufficient to show the number of opposite-sex married bi-
14 national couples (i.e., of which one spouse is a United States citizen and the other
15 is not) who have applied for Consular Reports of Birth Abroad, United States
16 passports, or Certificates of Citizenship on behalf of one or more children born
17 outside the United States (or adult children of such couples who have applied on
18 their own behalves); the outcomes for, or results of, such applications; and the
19 reasons for any denials of any such applications. This request includes Documents
20 Concerning any requirement of the State Department or CIS that a United States
21 citizen demonstrate a biological connection to or relationship with a child born
22 outside the United States in connection with any such applications. This request is
23 limited to 2013 to the present.

24 **Defendants' Verbatim Response to Document Request No. 15:**

25 Defendants object to this request on multiple grounds. *First*, it overlaps with
26 Request Nos. 12, 13, and 14, and is duplicative of and cumulative to those
27 requests. *Second*, to the extent that it seeks information potentially contained in
28 one or more Department of State systems of records, in particular "Passport

1 Records, State-26,” 80 Fed. Reg. 15653 (Mar. 24, 2015), and “Overseas Citizens
2 Services Records, State-05,” 81 Fed. Reg. 62235 (Sept. 8, 2016), such data is
3 subject to the disclosure limitations of the Privacy Act. *Third*, the request is overly
4 broad, not reasonably particularized, unduly burdensome, and disproportionate to
5 the needs of the case because the terms it proposes are not queries that can readily
6 be searched by the Department. For example, during the course of consular
7 processing activities at the Toronto Consulate and other posts, applications for
8 CRBAs and U.S. passports (as well as other applications) generate queries to the
9 Consular Consolidated Database (“CCD”). CCD is a data warehouse that holds
10 current and archived data from the Bureau of Consular Affairs’ domestic and post
11 databases. *See, e.g.*, U.S. Department of State, Privacy Impact Assessment:
12 Consular Consolidated Database, at 2 (July 17, 2015), *available at*
13 <https://www.state.gov/documents/organization/242316.pdf>. The CCD stores
14 information about U.S. persons (U.S. citizens and legal permanent residents), as
15 well as foreign nationals (non-U.S. persons) such as Immigrant Visa applicants and
16 Non-Immigrant Visa applicants. *Id.* at 3.³⁹ CCD does not support statistical
17 reporting of the query terms suggested by Request No. 14, *i.e.*, same-sex married
18 bi-national couples who have applied for a CRBA or U.S. passport on behalf of
19 one or more children born outside the United States (or adult children who have
20 applied on their own behalves). Records in CCD are not retrievable by nationality,
21 sex of the parents, or marriage status of parents. Nor does the Passport Information
22 Electronic Records System (“PIERS”)⁴⁰ database maintained by the Department

23 ³⁹ *Among other information, CCD holds passport records. Id. at 12. Since there is a*
24 *vast amount of data contained in the CCD, the CCD data is not accessed directly.*
25 *Id. at 7. Instead, “data marts” have been created to organize the data. Id. From*
the CCD data, statistical reports are generated and analyzed to create metrics
based on country, type of request, biographic and biometric checks. Id.

26 ⁴⁰ *The Passport Information Electronic Records System (PIERS) is a suite of web*
27 *and desktop applications that provide query and management capabilities for*
28 *passport records and Consular Reports of Birth Abroad (CRBAs), among other*
consular records.

1 support such queries. The PIERS database collects and stores a range of personally
2 identifiable and adjudication-related information for passport records and Consular
3 Report of Birth Abroad (CRBA) records, but PIERS records cannot be retrieved by
4 the sex of the parents or the marriage status of the parents. *Fourth*, Defendants
5 object to the request to the extent it would require Defendants to create responsive
6 documents, as a party “is not required to create a document where none exists.”
7 *Rogers v. Guirbino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify
8 records fitting the criteria listed in the request, Defendants would need to manually
9 review more than 3,000 CRBA applications and the thousands of U.S. passport
10 applications processed by the Toronto Consulate from January 1, 2015 through
11 June 2, 2017; each application would need to be printed and/or electronically
12 accessed and reviewed to assess for each application the parents’ nationalities,
13 parents’ marriage status, whether parents were a same-sex couple (to the extent
14 such information was even provided on each application), biological relationship
15 of parent/s to child, citizenship claim, etc. That step alone would take hundreds of
16 hours, and would only indicate, as an initial matter, whether the reviewed
17 applications appeared to meet the criteria of the request and whether the
18 applications were approved or denied. And in many cases it may not be clear—or
19 even possible to ascertain—from the face of an application whether that
20 application fits the criteria listed in the request. Thus such a review would likely
21 generate incomplete and/or inaccurate results. But even if Defendants were to
22 conduct such a review and identify—to the extent possible—individual records
23 reflecting the criteria of the request, Defendants would not be able to produce such
24 records in a format in which the data could readily be extracted by Plaintiffs but
25 instead would need to create a new document to contain/describe an analysis and
26 review of each application based on the various criterion demanded in the instant
27 RFPD. Additional steps would then be required to determine “the outcomes for, or
28 results of” the applications and “the reasons for any denials of any such

1 applications,” and that information would need to be extracted and then inputted
2 into the new document as well. Not only would this require Defendants to “create a
3 document where none exists,” *see Guirbino*, 288 F.R.D. at 485, but also the
4 process would be unduly burdensome and disproportionate to the needs of the case.
5 *Fifth*, Defendants object to the request because it seeks information not relevant to
6 the claims and defenses, and the burden and expense implicated by the request is
7 disproportionate to the needs of the case.

8 On the basis of these objections, Defendants do not intend to produce
9 documents in response to this specific request.

10 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
11 **Request No. 15 Is Insufficient:**

12 Plaintiffs refer the Court to their statements above regarding Document
13 Request Nos. 12 and 14.

14 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
15 **Response to Document Request No. 15:**

16 Defendants refer the Court to their verbatim response to Plaintiffs’
17 Document Request No. 15, *supra* at 71, and to Defendants’ statements above
18 regarding their responses to Document Request Nos. 12, *supra* at 63.

19 ***

20 **DOCUMENT REQUEST NO. 16**

21 **Plaintiffs’ Request:**

22 All protocols, procedures, practices or policies Concerning the showing or
23 evidentiary requirements necessary to establish United States citizenship under
24 Section 301(g) or Section 309, including when genetic testing will or will not be
25 requested as part of that showing. This request includes protocols, procedures,
26 practices or policies that specifically Concern Plaintiffs or any other person (i)
27 born outside of the United States (ii) who asserts he or she is the child of a United
28 States citizen; (iii) whose United States citizen parent is married to a foreign

1 national; and (iv) who does not have a biological relationship to his/her United
2 States citizen parent.

3 **Defendants’ Verbatim Response to Document Request No. 16:**

4 Defendants object to this request because the phrase “protocols ... [and]
5 policies that specifically Concern Plaintiffs” is unreasonably vague. For the
6 purposes of responding to this request, Defendants construe the request as seeking
7 (a) documents that would be cited, described, or referenced by Defendants in
8 response to Interrogatory No. 13 (in Plaintiffs’ First Set of Interrogatories).⁴¹

9 Subject to and without waiving the above-stated objections—including both
10 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e)
11 and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or
12 communications responsive to this request after the corresponding interrogatory
13 response has been certified and made, subject to any further objections made in
14 response to Interrogatory No. 13.

15 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
16 **Request No. 16 Is Insufficient:**

17 Defendants have not produced any documents responsive to this request. In
18 addition, Defendants have construed the request as seeking documents that would
19 be cited, described, or referenced by Defendants in response to Interrogatory No.
20 13, but Defendants have not responded to Interrogatory No. 13. Without this
21 information, it is impossible for Plaintiffs to assess whether such documents would
22 be adequate to respond to this document request. Defendants’ response is all the
23 more incomprehensible because they have further incorporated in their response
24 forthcoming objections in response to Interrogatory No. 13. The documents sought

25 ⁴¹ *Plaintiffs’ Interrogatory No. 13 asks Defendants to: “Identify and describe the*
26 *evidentiary requirements deemed necessary by the State Department to establish*
27 *United States citizenship at birth under Section 301(g) or Section 309, including*
28 *when genetic testing will or will not be requested or required as part of that*
showing.”

1 by the request—pertaining to the evidentiary requirements necessary to establish
2 U.S. citizenship under Sections 301(g) and 309—are relevant to the Action,
3 including whether the evidentiary requirements are the same for same-sex and
4 opposite-sex couples and the rationale for those policies. During the October 18
5 and October 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the
6 specific documents they would be producing in response to Plaintiffs’ request, but
7 they failed to provide any specifics.

8 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
9 **Response to Document Request No. 16:**

10 Defendants responded to Plaintiffs’ Document Request No. 16 by specifying
11 an objection to a portion of the request, articulating how Defendants were
12 construing the vague and overly broad request, and stating that Defendants would
13 produce documents or communications responsive to the request. *See* Defs.’
14 Verbatim Resp., *supra* at 75. As such, Defendants’ response fully complied with
15 Federal Rule of Civil Procedure 34(b)(2).

16 Defendants reasonably interpreted Document Request No. 16 as relating to
17 Plaintiffs’ Interrogatory No. 13. Document Request No. 16 seeks “protocols,
18 procedures, practices or policies Concerning the showing or evidentiary
19 requirements necessary to establish United States citizenship under Section 301(g)
20 or Section 309, including when genetic testing will or will not be requested as part
21 of that showing.” Interrogatory No. 13 asks Defendants to “Identify and describe
22 the evidentiary requirements deemed necessary by the State Department to
23 establish United States citizenship at birth under Section 301(g) or Section 309,
24 including when genetic testing will or will not be requested or required as part of
25 that showing.” Given the nearly identical language used by the document request
26 and the interrogatory, it was completely reasonable for Defendants to interpret
27 Document Request No. 16 as seeking documents and communications referencing
28

1 or discussing the “protocols, procedures, practices, or policies” identified in
2 response to Interrogatory No. 13.

3 Defendants’ Response to Interrogatories No. 13(A) and 13(B) identified the
4 following “protocols, procedures, practices, or policies”: 8 FAM 304.2-2(a) and 8
5 FAM 304.2-2(b). Marcus Decl. Ex. C at 19–20. Defendants are producing those
6 policies in response to Document Request No. 16.

7 ***

8 **DOCUMENT REQUEST NO. 17**

9 **Plaintiffs’ Request**

10 All Documents and Communications reflecting the State Department’s, CIS’
11 or DHS’s rationale, governmental interests or concerns Concerning any decision
12 not to treat as a United States citizen a child born outside of the United States to a
13 married United States citizen who is not the child’s biological parent but who is
14 listed as a parent on the child’s birth certificate.

15 **Defendants’ Verbatim Response to Document Request No. 17:**

16 Defendants object to this request on multiple grounds. *First*, the phrase
17 “concerns Concerning” is unreasonably vague. *Second*, by seeking any and all
18 documents or communications “reflecting the State Department’s ... rationale,
19 interests[,] or concerns” about particular decisions unrelated to the plaintiffs in this
20 case, the request is overly broad and unduly burdensome, not relevant to the claims
21 and defenses in the case, disproportionate to the needs of the case, and likely to
22 implicate the legitimate privacy interests of numerous non-parties. *Third*, the
23 request on its face appears to seek pre-decisional, deliberative documents and
24 communications protected by the deliberative process privilege.

25 For the purposes of responding to this request, Defendants construe the
26 request as seeking (a) documents that would be cited, described, or referenced by
27 Defendants in response to Interrogatory No. 14 (in Plaintiffs’ First Set of
28 Interrogatories), and (b) communications sent by or to relevant officers in the

1 consular section of the U.S. Consulate in Toronto, during the time period January
2 1, 2015 through June 2, 2017, reflecting the governmental interests or concerns
3 with requiring a foreign-born child to demonstrate a biological relationship, in
4 addition to a legal relationship, with a U.S. citizen parent, or discussing or
5 describing any of the documents referred to in clause “(a)” of this sentence.⁴²

6 Subject to and without waiving the above-stated objections—including both
7 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e)
8 and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or
9 communications responsive to this request after the corresponding interrogatory
10 response has been certified and made, subject to any further objections made in
11 response to Interrogatory No. 14.

12 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
13 **Request No. 17 Is Insufficient:**

14 Defendants’ response is insufficient because they have not produced any
15 responsive documents. Further, Defendants have construed the request as seeking
16 documents that would be cited, described, or referenced by Defendants in response
17 to Interrogatory No. 14, but Defendants have not responded to Interrogatory No.
18 14. Defendants also narrowly construe the request as seeking communications sent
19 by or to a limited group of officers in the Toronto Consulate concerning the
20 purported governmental interests or concerns in requiring a foreign-born child to
21 demonstrate a biological relationship to the U.S. citizen parent, or discussing or
22 describing the documents that would be cited, described, or referenced by
23 Defendants in response to Interrogatory No. 14. For reasons discussed above,
24 restricting this request to communications involving Toronto consular officers is

25 ⁴² *Plaintiffs’ Interrogatory No. 14 asks Defendants to: “Identify and describe the*
26 *State Department’s, USCIS’s or DHS’s rationale, governmental interests or*
27 *concerns Concerning any decision not to treat as a United States citizen a child*
28 *born outside of the United States to a married couple (of which one spouse is a*
United States citizen) when the United States citizen is not the child’s biological
parent but is listed as a parent on the child’s birth certificate.”

1 unreasonable and would frustrate Plaintiffs' attempts to secure appropriate
2 discovery. Plaintiffs are entitled to discovery regarding communications about the
3 State Department's rationale, governmental interests or concerns about its
4 interpretations of the INA if they occurred outside the Toronto consulate, *e.g.*, at
5 the State Department's main offices in Washington, D.C. Those materials are
6 relevant to the Complaint's claims that the State Department's interpretation of the
7 INA violates the APA, the Due Process Clause, and the Equal Protection Clause.⁴³
8 During the October 18 and October 23 meet-and-confer calls, Plaintiffs pressed
9 Defendants to identify the specific documents they would be producing in response
10 to Plaintiffs' request, but they failed to provide any specifics.

11 **Defendants' Statement Regarding the Sufficiency of Defendants'**
12 **Response to Document Request No. 17:**

13 Defendants responded to Plaintiffs' Document Request No. 17 by specifying
14 objections to portions of the request, articulating how Defendants were construing
15 the vague and overly broad request, and stating that Defendants would produce
16 documents or communications responsive to the request. *See* Defs.' Verbatim
17 Resp., *supra* at 77. As such, Defendants' response fully complied with Federal
18 Rule of Civil Procedure 34(b)(2).

19 Defendants reasonably interpreted Document Request No. 17 as relating to
20 Plaintiffs' Interrogatory No. 14. Document Request No. 17 seeks "documents and
21 Communications reflecting the State Department's, CIS' or DHS's rationale,
22 governmental interests or concerns Concerning any decision not to treat as a
23 United States citizen a child born outside of the United States to a married United
24 States citizen who is not the child's biological parent but who is listed as a parent
25 on the child's birth certificate"; whereas, Interrogatory No. 14 asks Defendants to

26 ⁴³ Plaintiffs incorporate by reference the discussion of relevance in Plaintiffs'
27 Contentions as to Why Defendants' Response to Document Request No. 1 Is
28 Insufficient, *supra* at pp. 26-31.

1 “Identify and describe the State Department’s, CIS’s or DHS’s rationale,
2 governmental interests or concerns Concerning any decision not to treat as a
3 United States citizen a child born outside of the United States to a married couple
4 (of which one spouse is a United States citizen) when the United States citizen is
5 not the child’s biological parent but is listed as a parent on the child’s birth
6 certificate.” Given the nearly identical language used by the document request and
7 the interrogatory, it was completely reasonable for Defendants to interpret
8 Document Request No. 17 as seeking documents and communications referencing
9 or discussing the “rationale” identified in response to Interrogatory No. 14.

10 Plaintiffs do not explain whether and why they think Defendants
11 unreasonably construed Document Request No. 17. *See* Pls.’ Stmt., *supra* at 78.
12 For the purposes of responding to the request, Defendants’ written response
13 construed the request as seeking “(a) documents that would be cited, described, or
14 referenced by Defendants in response to Interrogatory No. 14 (in Plaintiffs’ First
15 Set of Interrogatories), and (b) communications sent by or to relevant officers in
16 the consular section of the U.S. Consulate in Toronto, during the time period
17 January 1, 2015 through June 2, 2017, reflecting the governmental interests or
18 concerns with requiring a foreign-born child to demonstrate a biological
19 relationship, in addition to a legal relationship, with a U.S. citizen parent, or
20 discussing or describing any of the documents referred to in clause ‘(a)’ of this
21 sentence.” Defs.’ Verbatim Resp., *supra* at 77. Defendants’ construction of the
22 vague request was reasonable.

23 Defendants’ Response to Interrogatory No. 14(A) identified one policy
24 document, 8 FAM 301.4-1. *See* Marcus Decl. Ex. C at 22. Defendants are
25 producing that policy in response to Document Request No. 17. Additionally,
26 Defendants are searching for and will produce any emails discussing or describing
27 that policy (and that fall within the scope described in clause “(b)” in their written
28 response, quoted above). And Defendants are also searching for and will produce

1 any emails “reflecting the governmental interests or concerns with requiring a
2 foreign-born child to demonstrate a biological relationship, in addition to a legal
3 relationship, with a U.S. citizen parent” (and that fall within the scope described in
4 clause “(b)” in their written response, quoted above). *Id.*

5 ***

6 **DOCUMENT REQUEST NO. 18**

7 **Plaintiffs’ Request**

8 All versions of the FAM (or equivalent or related Documents) that define “in
9 wedlock” and “out of wedlock,” or any other term Defendants believe has the same
10 or a similar meaning as those terms, for purposes of applying Section 301(g) or
11 Section 309, and all Documents Concerning decisions or discussions of how to
12 define those terms (including any legal and policy support or justification
13 considered, used, or relied upon in deciding upon such definitions).

14 **Defendants’ Verbatim Response to Document Request No. 18:**

15 Defendants object to this request on multiple grounds. *First*, Defendants
16 object to this request to the extent the request seeks (a) communications sent to or
17 from attorneys for the Department of State, Department of Justice, or any other
18 Executive Branch component (including outside counsel); or (b) documents
19 generated by or at the direction of any such attorney, it likely seeks information
20 protected by the attorney-client privilege and/or the work product doctrine, and the
21 Defendants object to any request to produce privileged documents. *See, e.g.*, Fed.
22 R. Civ. P. 26(b)(1). *Second*, by seeking “discussions of how to define ... terms,”
23 this request on its face seeks pre-decisional, deliberative documents protected by
24 the deliberative process privilege. *Third*, Defendants object to the request to the
25 extent it seeks documents outside of the relevant time period January 1, 2015
26 through June 2, 2017.

27 For the purposes of responding to this request, Defendants construe the
28 request as seeking versions of the FAM and other documents, guidance, or

1 instructions available to relevant officers in the consular section of the U.S.
2 Consulate in Toronto and in effect during the time period January 1, 2015 through
3 June 2, 2017—or communications sent to or received by such officers during that
4 time period—defining or discussing the terms “in wedlock” or “out of wedlock.”

5 Subject to and without waiving the above-stated objections—including both
6 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-
7 11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged
8 documents or communications responsive to this request (as so construed in the
9 preceding paragraph).

10 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
11 **Request No. 18 Is Insufficient:**

12 Defendants’ response is insufficient because (a) Defendants have produced
13 only one archived section of the FAM and (b) Defendants have unreasonably
14 narrowed the request to include merely “versions of the FAM and other
15 documents, guidance, or instructions available to relevant officers” in the Toronto
16 Consulate or “communications sent to or received by such officers.” It may be that
17 all versions of the FAM defining “in wedlock,” “out of wedlock,” and other
18 substantially similar terms are made available to the Toronto Consulate (although
19 Defendants have not confirmed this), but “decisions or discussions of how to
20 define those terms” (which are also sought by the request) are likely to exist in
21 materials that are not available to Toronto consular officers. One of the core issues
22 in this case is whether the State Department’s interpretation of the terms “in
23 wedlock” and “out of wedlock” is lawful. Defendants are also entitled to
24 discovery of materials that bear on the issue of whether the State Department
25 officers who adjudicated Ethan’s applications complied with State Department
26 policies and Defendants’ understanding of the legal issues relevant to those
27 policies. Documents responsive to this request are directly relevant to that issue
28 and therefore should be produced. During the October 18 and October 23 meet-

1 and-confer calls, Plaintiffs pressed Defendants to identify the specific documents
2 they would be producing in response to Plaintiffs' request, but they failed to
3 provide any specifics.

4 **Defendants' Statement Regarding the Sufficiency of Defendants'**
5 **Response to Document Request No. 18:**

6 Defendants responded to Plaintiffs' Document Request No. 18 by specifying
7 objections to portions of the request, articulating how Defendants were construing
8 the vague and overly broad request, and stating that Defendants would produce
9 documents or communications responsive to the request. See Defs.' Verbatim
10 Resp., *supra* at 81. As such, Defendants' response fully complied with Federal
11 Rule of Civil Procedure 34(b)(2).

12 Defendants' response explained that for the purposes of responding to the
13 Defendants were construing Document Request No. 18 as seeking "versions of the
14 FAM and other documents, guidance, or instructions available to relevant officers
15 in the consular section of the U.S. Consulate in Toronto and in effect during the
16 time period January 1, 2015 through June 2, 2017—or communications sent to or
17 received by such officers during that time period—defining or discussing the terms
18 'in wedlock' or 'out of wedlock.'" Plaintiffs criticize Defendants' construction as
19 unreasonably limiting Defendants' search, principally arguing that "decisions or
20 discussions of how to define" the terms "in wedlock" and "out of wedlock" are
21 "likely to exist in materials that are not available to Toronto consular officers."
22 Pls.' Stmt., *supra* at 82. That may be true, but Plaintiffs have failed to explain how
23 such materials would be within the appropriate scope of discovery under Federal
24 Rule of Civil Procedure 26(b), *i.e.*, how such materials would be "relevant" and
25 "proportional to the needs of the case." Indeed, it seems unlikely that any such
26 materials (wholly outside of Consulate Toronto and not made available to the
27 Consulate) would be relevant to Plaintiffs' claims in this action that the
28

Department violated Plaintiffs' legal rights by denying Ethan's CRBA and U.S. Passport applications (an action taken by Consulate Toronto).

DOCUMENT REQUEST NO. 19

Plaintiffs' Request:

All Documents and Communications Concerning any protocols, procedures, practices or policies Concerning the State Department's definition or interpretation of, the terms "born . . . of parents," "wedlock," "in wedlock," or "out of wedlock." This request is limited to Documents and Communications Concerning those protocols, procedures, practices or policies generally and does not include Documents or Communications that merely reference or rely on them (e.g., Documents related to individual Persons' applications for consular or passport services).

Defendants' Verbatim Response to Document Request No. 19:

Defendants object to this request on multiple grounds. *First*, to the extent the Department of State has a "definition or interpretation" of the specified terms, such "definition or interpretation" would likely be considered a "protocol[], procedure[], practice[] or polic[y]." As such the request can be understood as seeking all documents (including communications) "Concerning any protocols . . . or policies Concerning" a particular "protocol[], procedure[], practice[] or polic[y]." The request is unreasonably vague and nonsensical.

For the purposes of responding to this request, Defendants construe the request as seeking (a) documents that would be cited, described, or referenced by Defendants in response to Interrogatory No. 10 (in Plaintiffs' First Set of Interrogatories).⁴⁴

⁴⁴ *Plaintiffs' Interrogatory No. 10 asks Defendants to: "Identify and describe the State Department's interpretation or application of the terms 'born . . . of parents,' 'wedlock,' 'in wedlock' and 'out of wedlock,' or any other term Defendants believe has the same or a similar meaning as those terms, for the purposes of the INA,*

1 Subject to and without waiving the above-stated objections—including both
2 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e)
3 and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or
4 communications responsive to this request after the corresponding interrogatory
5 response has been certified and made, subject to any further objections made in
6 response to Interrogatory No. 10.

7 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
8 **Request No. 19 Is Insufficient:**

9 Defendants have produced only one archived section of the FAM. Further,
10 Defendants take an unreasonably narrow approach to this document request.
11 Specifically, they construe it as seeking documents cited, described, or referenced
12 in response to Interrogatory No. 10, to which Defendants responded by citing only
13 the FAM. This request is not limited to the State Department’s publicly available
14 manual—it seeks documents and communications about protocols, procedures,
15 practices, and policies concerning the State Department’s interpretation of various
16 terms similar to “wedlock.” Defendants’ construction excludes all
17 communications and does not appear to cover documents beyond the protocols and
18 procedures themselves (such as internal memoranda articulating the reasons for
19 those protocols and procedures). Plaintiffs seek to show that the State
20 Department’s decision to classify children similar to Ethan as born “out of
21 wedlock” is arbitrary and capricious, discriminatory, and unjustified. These
22 documents are relevant to those issues. For example, if in other contexts the State
23 Department concedes that a child whose parents are listed on his birth certificate
24 and are married to each other is indeed born in wedlock, that undercuts the position
25 that the State Department has taken in connection with Ethan’s applications.

26 *including any legal and policy support or basis considered, used, or relied upon in*
27 *deciding upon such definitions; and Identify and describe any change in any such*
28 *interpretation or application by the State Department since January 1, 2013.”*

1 During the October 18 and October 23 meet-and-confer calls, Plaintiffs pressed
2 Defendants to identify the specific documents they would be producing in response
3 to Plaintiffs' request, but they failed to provide any specifics.

4 **Defendants' Statement Regarding the Sufficiency of Defendants'**
5 **Response to Document Request No. 19:**

6 Defendants responded to Plaintiffs' Document Request No. 19 by specifying
7 an objection to portions of the request, articulating how Defendants were
8 construing the vague and overly broad request, and stating that Defendants would
9 produce documents or communications responsive to the request. See Marcus
10 Decl. Ex. A at 41–42. As such, Defendants' response fully complied with Federal
11 Rule of Civil Procedure 34(b)(2).

12 Defendants reasonably interpreted Document Request No. 10 as relating to
13 Plaintiffs' Interrogatory No. 10. Document Request No. 19 seeks “documents and
14 communications Concerning any protocols, procedures, practices or policies
15 concerning the State Department’s definition or interpretation of, the terms ‘born .
16 . . of parents,’ ‘wedlock,’ ‘in wedlock,’ or ‘out of wedlock’...”. Interrogatory No.
17 10 asks Defendants to “Identify and describe the State Department’s interpretation
18 or application of the terms ‘born . . . of parents,’ ‘wedlock,’ ‘in wedlock’ and ‘out
19 of wedlock,’ or any other term Defendants believe has the same or a similar
20 meaning as those terms.” Given the nearly identical language used by the
21 document request and the interrogatory, it was completely reasonable for
22 Defendants to interpret Document Request No. 19 as seeking documents that
23 would be cited, described, or referenced by Defendants in response to Interrogatory
24 No. 10.

25 Plaintiffs criticize defendants' response by arguing that it is insufficient for
26 Defendants to agree to produce the “protocols, procedures, practices, and policies”
27 cited by Defendants in response to Interrogatory No. 10 because, according to
28 Plaintiffs, Defendants' response to the related Interrogatory No. 10 was incomplete

1 in its identification of relevant “protocols, procedures, practices, or policies.”
2 Plaintiffs contend that Defendants’ Response to Interrogatory No. 10 was
3 incomplete because it only cited to several provisions of the FAM, and not to any
4 other policies that Plaintiffs imagine (without any support) might exist. But the
5 FAM is the “single, comprehensive, and authoritative source for the [Department
6 of State’s] ... structures, policies, and procedures.” Marcus Decl. Ex. H at 2 (18
7 FAM 201.1-1(B)); *see also id.* at 1-3; *see generally* U.S. Dep’t of State, Foreign
8 Affairs Manual and Handbook, <https://fam.state.gov/>. Defendants’ response to
9 Interrogatory No. 10 was complete, and certified as such by the person who made
10 the answer on behalf of the Department.

11 ***

12 **DOCUMENT REQUEST NO. 20**

13 **Plaintiffs’ Request:**

14 All Documents and Communications Concerning any State Department
15 and/or CIS protocol, procedure, practice or policy with the purpose or effect of
16 preventing discrimination—including discrimination on the basis of sexual
17 orientation—in the provision of consular or passport services, or adjudication with
18 respect to persons claiming to have acquired United States citizenship under
19 Section 301(g) or Section 309.

20 **Defendants’ Verbatim Response to Document Request No. 20:**

21 Defendants object to this request on multiple grounds. *First*, by seeking
22 documents concerning protocols or policies have “the effect of preventing
23 discrimination,” this request is unreasonably vague, overly broad, and not
24 sufficiently particularized because there is no intelligible means by which
25 Defendants could identify every protocol, procedure, practice, or policy that has an
26 *effect* of preventing discrimination. *Second*, to the extent the request seeks (a)
27 communications sent to or from attorneys for the Department of State, Department
28 of Justice, or any other Executive Branch component (including outside counsel);

1 or (b) documents generated by or at the direction of any such attorney, it likely
2 seeks information protected by the attorney-client privilege and/or the work
3 product doctrine, and the Defendants object to any request to produce privileged
4 documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1).

5 For the purposes of responding to this request, Defendants construe the
6 request as seeking (a) documents that would be cited, described, or referenced by
7 Defendants in response to Interrogatory No. 17 (in Plaintiffs' First Set of
8 Interrogatories).⁴⁵ To the extent that Document Request No. 20 is otherwise
9 construed, Defendants object that the request so construed would be overly broad,
10 unduly burdensome, not reasonably particularized, not relevant to the claims and
11 defenses in this litigation, and disproportionate to the needs of the case, such that
12 any additional burdens beyond what Defendants are already undertaking cannot
13 reasonably be justified.

14 Subject to and without waiving the above-stated objections—including both
15 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e)
16 and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or
17 communications responsive to this request after the corresponding interrogatory
18 response has been certified and made, subject to any further objections made in
19 response to Interrogatory No. 17.

20 **Plaintiffs' Contentions as to Why Defendants' Response to Document**
21 **Request No. 20 Is Insufficient:**

22 Defendants have produced no documents in response to this request.
23 Moreover, their construction of the request as calling for only documents that

24 ⁴⁵ *Plaintiffs' Interrogatory No. 17 asks Defendants to: "Identify and describe any*
25 *State Department and/or CIS protocol, procedure, practice or policy implemented*
26 *or in effect between January 1, 2013 and the present with the purpose or effect of*
27 *preventing discrimination—including discrimination on the basis of sexual*
28 *orientation—in the provision of consular or passport services to, or determinations*
of requests or applications by, Persons claiming to have acquired United States
citizenship under the INA."

1 would be cited, described, or referenced by Defendants in response to Interrogatory
2 No. 17 is unreasonable given that Defendants have not provided a response to that
3 interrogatory. Documents and communications discussing prevention of
4 discrimination on the basis of sexual orientation in connection with the provision
5 of consular or passport services, or adjudications related to Sections 301(g) and
6 309, are relevant to this Action, which alleges that the State Department is
7 unlawfully discriminating against same-sex couples. During the October 18 and
8 October 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the
9 specific documents they would be producing in response to Plaintiffs' request, but
10 they failed to provide any specifics.

11 **Defendants' Statement Regarding the Sufficiency of Defendants'**
12 **Response to Document Request No. 20:**

13 Defendants responded to Plaintiffs' Document Request No. 20 by specifying
14 objections to portions of the request, articulating how Defendants were construing
15 the vague and overly broad request, and stating that Defendants would produce
16 documents or communications responsive to the request. See Marcus Decl. Ex. A
17 at 21–22. As such, Defendants' response fully complied with Federal Rule of Civil
18 Procedure 34(b)(2).

19 Defendants reasonably interpreted Document Request No. 20 as relating to
20 Plaintiffs' Interrogatory No. 17. Document Request No. 20 seeks "Documents and
21 Communications Concerning any State Department and/or CIS protocol,
22 procedure, practice or policy with the purpose or effect of preventing
23 discrimination—including discrimination on the basis of sexual orientation—in the
24 provision of consular or passport services..."; whereas, Interrogatory No. 17 asks
25 Defendants to "Identify and describe any State Department and/or CIS protocol,
26 procedure, practice or policy... with the purpose or effect of preventing
27 discrimination—including discrimination on the basis of sexual orientation—in the
28 provision of consular or passport services...." Given the identical language used by

1 the document request and the interrogatory, it was completely reasonable for
2 Defendants to interpret Document Request No. 20 as seeking documents and
3 communications referencing or discussing the “protocol, procedure, practices, or
4 policies” identified in response to Interrogatory No. 17.

5 Plaintiffs argue that this construction is unreasonable because “Defendants
6 [had] not [yet] provided a response to that interrogatory,” Interrogatory No. 17.
7 Defendants have since produced their response to that interrogatory, and thus it
8 appears that there is no longer any dispute with respect to Defendants’ construction
9 of Document Request No. 20.

10 ***

11 **DOCUMENT REQUEST NO. 21**

12 **Plaintiffs’ Request:**

13 All Documents and Communications Concerning training of United States
14 embassy personnel or instructions given to United States embassy personnel
15 Concerning how to interact with gay, lesbian and/or other LGBT individuals or
16 same-sex couples.

17 **Defendants’ Verbatim Response to Document Request No. 21:**

18 Defendants object to this request on multiple grounds. *First*, because the
19 phrase “all Documents and Communications Concerning training” is overly broad,
20 unreasonably vague, and insufficiently particularized because the request can be
21 read to encompass any document remotely connected to any training of State
22 Department personnel, including drafts and other deliberative documents. *Second*,
23 to the extent the request seeks (a) communications sent to or from attorneys for the
24 Department of State, Department of Justice, or any other Executive Branch
25 component (including outside counsel); or (b) documents generated by or at the
26 direction of any such attorney, it likely seeks information protected by the
27 attorney-client privilege and/or the work product doctrine, and the Defendants
28 object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P.

26(b)(1). *Third*, the document request is unreasonably vague and overly broad in that its terms encompass not only situations governed by 8 U.S.C. § 1401 or 8 U.S.C. § 1409, but also situations governed by other provisions of the Immigration and Nationality Act (“INA”), as well as situations where a Person seeks citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431 and 1433 (the Child Citizenship Act of 2000) and potentially under Title II of the INA, as well as historical sections under which a Person may have acquired citizenship depending on the date of birth.

For the purposes of responding to this request, Defendants construe the request as seeking (a) documents that would be cited, described, or referenced by Defendants in response to Interrogatory No. 20 (in Plaintiffs’ First Set of Interrogatories).⁴⁶

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e) and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or communications responsive to this request after the corresponding interrogatory response has been certified and made, subject to any further objections made in response to Interrogatory No. 20.

Plaintiffs’ Contentions as to Why Defendants’ Response to Document Request No. 21 Is Insufficient:

Defendants have produced no documents in response to this request. Moreover, their construction of the request as calling for only documents that would be cited, described, or referenced by Defendants in response to Interrogatory No. 20 is unreasonable given that Defendants have not provided a response to that

⁴⁶ *Plaintiffs’ Interrogatory No. 20 asks Defendants to: “Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning how to interact with gay, lesbian and/or other LGBT individuals or same-sex couples.”*

1 interrogatory. Documents and communications discussing training of U.S.
2 embassy personnel concerning how to interact with LGBT individuals or same-sex
3 couples are relevant to this Action, which alleges that the State Department is
4 unlawfully discriminating against same-sex couples. During the October 18 and
5 October 23 meet-and-confer calls, Plaintiffs pressed Defendants to identify the
6 specific documents they would be producing in response to Plaintiffs' request, but
7 they failed to provide any specifics.

8 **Defendants' Statement Regarding the Sufficiency of Defendants'**
9 **Response to Document Request No. 21:**

10 Defendants responded to Plaintiffs' Document Request No. 21 by specifying
11 objections to portions of the request, articulating how Defendants were construing
12 the vague and overly broad request, and stating that Defendants would produce
13 documents or communications responsive to the request. See Marcus Decl. Ex. A
14 at 43–44. As such, Defendants' response fully complied with Federal Rule of Civil
15 Procedure 34(b)(2).

16 Defendants reasonably interpreted Document Request No. 21 as relating to
17 Plaintiffs' Interrogatory No. 20. Document Request No. 21 seeks "Documents and
18 Communications Concerning training of United States embassy personnel or
19 instructions given to United States embassy personnel Concerning how to interact
20 with gay, lesbian and/or other LGBT individuals or same-sex couples"; whereas,
21 Interrogatory No. 20 asks Defendants to "Identify and describe any training,
22 including any training manuals or other relevant materials, of State Department
23 personnel, including United States embassy personnel, or instructions given to
24 State Department personnel Concerning how to interact with gay, lesbian and/or
25 other LGBT individuals or same-sex couples." Given the identical language used
26 by the document request and the interrogatory, it was completely reasonable for
27 Defendants to interpret Document Request No. 21 as seeking documents and
28

1 communications referencing or discussing the training identified in response to
2 Interrogatory No. 20.

3 Plaintiffs argue that this construction is unreasonable because “Defendants
4 [had] not [yet] provided a response to that interrogatory,” Interrogatory No. 20.
5 Defendants have since produced their response to that interrogatory, and thus it
6 appears that there is no longer any dispute with respect to Defendants’ construction
7 of Document Request No. 21.

8 ***

9 **DOCUMENT REQUEST NO. 22**

10 **Plaintiffs’ Request:**

11 All Documents and Communications Concerning training of United States
12 embassy personnel or instructions given to United States embassy personnel
13 Concerning the circumstances in which they should inquire about the biological
14 and/or gestational relationships between married couples (one of whom is a United
15 States citizen) and their children when such married couples are applying for
16 Consular Reports of Birth Abroad, United States passports, or Certificates of
17 Citizenship on behalf of their children born outside of the United States.

18 **Defendants’ Verbatim Response to Document Request No. 22:**

19 Defendants object to this request on multiple grounds. *First*, because the
20 phrase “all Documents and Communications Concerning training” is overly broad,
21 unreasonably vague, and insufficiently particularized because the request can be
22 read to encompass any document remotely connected to any training of State
23 Department personnel, including drafts and other deliberative documents. *Second*,
24 to the extent the request seeks (a) communications sent to or from attorneys for the
25 Department of State, Department of Justice, or any other Executive Branch
26 component (including outside counsel); or (b) documents generated by or at the
27 direction of any such attorney, it likely seeks information protected by the
28 attorney-client privilege and/or the work product doctrine, and the Defendants

1 object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P.
2 26(b)(1). For the purposes of responding to this request, Defendants construe the
3 request as seeking (a) documents that would be cited, described, or referenced by
4 Defendants in response to Interrogatory No. 15(a) (in Plaintiffs' First Set of
5 Interrogatories).⁴⁷

6 Subject to and without waiving the above-stated objections—including both
7 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e)
8 and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or
9 communications responsive to this request after the corresponding interrogatory
10 response has been certified and made, subject to any further objections made in
11 response to Interrogatory No. 15(a).

12 **Plaintiffs' Contentions as to Why Defendants' Response to Document**
13 **Request No. 22 Is Insufficient:**

14 Defendants have produced no documents in response to this request.
15 Moreover, their construction of the request as calling for only documents that
16 would be cited, described, or referenced by Defendants in response to Interrogatory
17 No. 15 is unreasonable given that Defendants have not provided a response to that
18 interrogatory. Documents and communications discussing instructions given to
19 U.S. embassy personnel concerning the circumstances in which they should inquire
20 about the biological and/or gestational relationships between married couples (one
21 of whom is a United States citizen) and their children, are relevant to this Action,
22 which alleges that the State Department's policy discriminates against same-sex
23 couples. For example, if embassy personnel are *not* instructed to ask children of

24 ⁴⁷ *Plaintiffs' Interrogatory No. 15 includes two sub-parts, Interrogatory No. 15(a)*
25 *and Interrogatory 15(b). Interrogatory 15(a) asks Defendants to "Identify and*
26 *describe any training, including any training manuals or other relevant materials,*
27 *of State Department personnel, including United States embassy personnel, or*
28 *instructions given to State Department personnel Concerning the circumstances in*
which they should ... inquire about the biological and/or gestational relationships
between married couples and their children."

1 opposite-sex couples about their biological and/or gestational relationships to their
2 parents absent specific factual circumstances, but *are* instructed to make such an
3 inquiry when the child has two mothers or two fathers, that could suggest
4 potentially unlawful discrimination. *See also* Plaintiffs’ Contentions as to Why
5 Defendants’ Response to Document Request No. 16 Is Insufficient, *supra* at p. 75
6 (making similar arguments regarding the relevance of documents pertaining to
7 evidentiary requirements). During the October 18 and October 23 meet-and-confer
8 calls, Plaintiffs pressed Defendants to identify the specific documents they would
9 be producing in response to Plaintiffs’ request, but they failed to provide any
10 specifics.

11 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
12 **Response to Document Request No. 22:**

13 Defendants responded to Plaintiffs’ Document Request No. 22 by specifying
14 objections to portions of the request, articulating how Defendants were construing
15 the vague and overly broad request, and stating that Defendants would produce
16 documents or communications responsive to the request. *See* Marcus Decl. Ex. A
17 at 45–46. As such, Defendants’ response fully complied with Federal Rule of Civil
18 Procedure 34(b)(2).

19 Defendants reasonably interpreted Document Request No. 22 as relating to
20 Plaintiffs’ Interrogatory No. 15. Document Request No. 22 seeks “documents and
21 communications concerning training of United States embassy personnel or
22 instructions given to United States embassy personnel concerning the
23 circumstances in which they should inquire about the biological and/or gestational
24 relationships between married couples (one of whom is a United States citizen) and
25 their children when such married couples are applying for Consular Reports of
26 Birth Abroad, United States passports, or Certificates of Citizenship on behalf of
27 their children born outside of the United States.” Interrogatory No. 15 asks
28 Defendants to “Identify and describe any training, including any training manuals

1 or other relevant materials, of State Department personnel, including United States
2 embassy personnel, or instructions given to State Department personnel
3 Concerning the circumstances in which they should (a) inquire about the biological
4 and/or gestational relationships between married couples and their children, or (b)
5 make requests or impose requirements for DNA or other genetic testing,
6 Concerning an application by or on behalf of a married couple (one of whom is a
7 United States citizen) for a CRBA, United States passport, or Certificate of
8 Citizenship on behalf of a child of that couple born outside the United States.”
9 Given the identical language used by the document request and the interrogatory, it
10 was completely reasonable for Defendants to interpret Document Request No. 22
11 as seeking documents and communications referencing or discussing the training
12 identified in response to Interrogatory No. 15.

13 Plaintiffs argue that this construction is unreasonable because “Defendants
14 [had] not [yet] provided a response to that interrogatory,” Interrogatory No. 15.
15 Pls.’ Stmt., *supra* at 94. Defendants have since produced their response to that
16 interrogatory, and thus it appears that there is no longer any dispute with respect to
17 Defendants’ construction of Document Request No. 22.

18 **DOCUMENT REQUEST NO. 23**

19 **Plaintiffs’ Request:**

20 All Documents and Communications Concerning training of United States
21 embassy personnel or instructions given to United States embassy personnel
22 Concerning requests or requirements for DNA testing to establish the biological
23 relationships of married couples (one of whom is a United States citizen) and their
24 children when such married couples are applying for Consular Reports of Birth
25 Abroad, United States passports, or Certificates of Citizenship on behalf of their
26 children born outside the United States.

Defendants' Verbatim Response to Document Request No. 23:

Defendants object to this request on multiple grounds. *First*, because the phrase “all Documents and Communications Concerning training” is overly broad, unreasonably vague, and insufficiently particularized because the request can be read to encompass any document remotely connected to any training of State Department personnel, including drafts and other deliberative documents. *Second*, to the extent the request seeks (a) communications sent to or from attorneys for the Department of State, Department of Justice, or any other Executive Branch component (including outside counsel); or (b) documents generated by or at the direction of any such attorney, it likely seeks information protected by the attorney-client privilege and/or the work product doctrine, and the Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Third*, the document request is unreasonably vague and overly broad in that its terms encompass not only situations governed by 8 U.S.C. § 1401 or 8 U.S.C. § 1409, but also situations governed by other provisions of the Immigration and Nationality Act (“INA”), as well as situations where a Person seeks citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431 and 1433 (the Child Citizenship Act of 2000) and potentially under Title II of the INA, as well as historical sections under which a Person may have acquired citizenship depending on the date of birth.

For the purposes of responding to this request, Defendants construe the request as seeking (a) documents that would be cited, described, or referenced by Defendants in response to Interrogatory No. 15(b) (in Plaintiffs' First Set of Interrogatories).⁴⁸

⁴⁸ Plaintiffs' Interrogatory No. 15 includes two sub-parts, Interrogatory No. 15(a) and Interrogatory 15(b). Interrogatory 15(b) asks Defendants to “Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should ... make requests or impose requirements for DNA or other genetic testing, Concerning an application by or on behalf of a married couple

1 Subject to and without waiving the above-stated objections—including both
2 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-11(e)
3 and Part II ¶¶ 12-17—Defendants intend to produce non-privileged documents or
4 communications responsive to this request after the corresponding interrogatory
5 response has been certified and made, subject to any further objections made in
6 response to Interrogatory No. 15(b).

7 **Plaintiffs’ Contentions as to Why Defendants’ Response to Document**
8 **Request No. 23 Is Insufficient:**

9 Plaintiffs refer the Court to their statement regarding Defendants’ response
10 to Document Request No. 22. During the October 18 and October 23 meet-and-
11 confer calls, Plaintiffs pressed Defendants to identify the specific documents they
12 would be producing in response to Plaintiffs’ request, but they failed to provide
13 any specifics.

14 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
15 **Response to Document Request No. 23:**

16 Defendants responded to Plaintiffs’ Document Request No. 23 by specifying
17 objections to portions of the request, articulating how Defendants were construing
18 the vague and overly broad request, and stating that Defendants would produce
19 documents or communications responsive to the request. *See* Defs.’ Verbatim
20 Resp., *supra* at 97. As such, Defendants’ response fully complied with Federal
21 Rule of Civil Procedure 34(b)(2).

22 Defendants further refer the Court to their statement above regarding their
23 response to Document Request No. 22, *supra* at 95.

24 ***

25
26
27 *(one of whom is a United States citizen) for a CRBA, United States passport, or*
28 *Certificate of Citizenship on behalf of a child of that couple born outside the*
United States.”

E. DEFENDANTS' RESPONSES TO PLAINTIFFS' INTERROGATORIES

Plaintiffs' Interrogatories and Defendants' responses and objections thereto are set forth verbatim below. After each document request and response, Plaintiffs and Defendants separately state their contentions about the sufficiency (or lack thereof) of Defendants' responses. However, the Parties first address Defendants' objection that the Interrogatories are compound:

Plaintiffs' Statement as to Defendants' Compound Objection and Untimely Interrogatory Responses:

Plaintiffs served the Interrogatories nearly eighty days ago, on August 28, 2018. Defendants then sought and received a series of extensions from Plaintiffs. Nonetheless, Defendants ultimately disregarded the last extension Plaintiffs granted and served only partial responses to interrogatories numbered 1 through 10 on October 5, 2018, three days *after* the final extension to which Plaintiffs had agreed. To date, Defendants have utterly failed to provide any response whatsoever to ten of the twenty interrogatories Plaintiffs served.

Defendants attempt to excuse their failure to respond to the remaining ten interrogatories on the grounds that, by Defendants' calculation, the twenty numbered Interrogatories are comprised of forty-five discrete subparts. As is discussed below, Defendants' parsing of the Interrogatories is unreasonable. The "subparts" Defendant have identified are part of a "common theme" and thus should not be counted as separate interrogatories. Notwithstanding their objection to the number of "subparts," Defendants committed during meet-and-confer calls on October 18 and October 23, 2018 to respond to the remaining interrogatories on or before November 2, 2018; however, they later rescinded this commitment. Most recently, on October 25 (after Plaintiffs sent two emails on October 19 and October 23 asking Defendants to serve the remaining interrogatory responses by October 25, given the Court's schedule for discovery), Defendants stated their intention to serve their remaining responses to the Interrogatories at some

1 unspecified time during the week of November 5, but that did not happen. (Decl.
2 Ex. 11.) Plaintiffs sent a meet-and-confer letter on October 28, 2018, hoping to
3 resolve the Parties' disputes about the Interrogatories. (Decl. Ex. 13.) Defendants
4 have yet to provide any response.

5 As for the merits of Defendants' compound objection, Defendants' parsing
6 of the interrogatories is unreasonable. The Ninth Circuit has held that "subparts
7 count collectively as one interrogatory if 'they are logically or factually subsumed
8 within and necessarily related to the primary question.'" *Gibson Brands Inc. v.*
9 *John Hornby Skewes & Co. Ltd.*, 2015 WL 12681376, at *4 (C.D. Cal. July 20,
10 2015) (internal citation omitted). "Determining whether an interrogatory counts as
11 a separate question requires a pragmatic approach." *Id.* If a subpart "introduces a
12 line of inquiry that is separate and distinct from the inquiry made by the portion of
13 the interrogatory that precedes it, the subpart must be considered a separate
14 interrogatory." *Id.* See also *Superior Communications v. Earhugger, Inc.*, 257
15 F.R.D. 215, 218 (C.D. Cal. 2009) (interrogatories "containing subparts directed at
16 eliciting details concerning a 'common theme' should generally be considered a
17 single question"); *Grupo Bimbo S.A.B DE C.V. v. Snak-King Corp.*, 2014 WL
18 12614429, at *1-2 (C.D. Cal. May 5, 2014) (proper approach for determining
19 whether there are discrete subparts is to ascertain "whether subparts are a part of a
20 'common theme' or whether they constitute a 'logical extension' of the main
21 question"; finding, for example, that an interrogatory seeking information about
22 the "circumstances surrounding the decision to use the mark packaging, and
23 product configuration for the products in question," including "when the decision
24 was made, who was involved in making the decision, and the information,
25 documents and materials the person(s) relied upon in making the decision," was a
26 single interrogatory).

27 As is explained below with respect to Interrogatory Nos. 3, 4, 6, 7, and 10,
28 the "subparts" Defendants have identified pertain to a "common theme" and thus

1 should not be counted separately. For example, Defendants parse Interrogatory
2 Nos. 3, 4, and 6 (which ask for various pieces of information related to Sections
3 301 and 309 of the INA) into subparts about those sections. This is nonsensical:
4 Section 301 and Section 309 are the relevant provisions of the INA for determining
5 whether a child who was born outside of the United States and has one U.S. citizen
6 parent is a U.S. citizen at birth. Interrogatories about the policies for applying
7 these sections (and determining which of the two to apply) involve a “common
8 theme” and therefore constitute a single interrogatory. Not surprisingly,
9 Defendants’ responses to these “parsed” Interrogatories are often identical (or
10 nearly identical) for each provision. (*See, e.g.*, Defendants’ responses to
11 “subparts” A, B, and C of Interrogatory No. 3). Similarly, Defendants parsed
12 Interrogatory No. 7 (which asks about several DHS components’ interpretations of
13 Sections 301 and 309) into *seven* subparts. All of the components specified in the
14 interrogatory belong to the *same government agency* (DHS) and concern the same
15 subject, thus the “subparts” relate to a “common theme.” Similarly, Defendants
16 unreasonably contend that Interrogatory No. 10 constitutes three separate
17 interrogatories because it specifies the terms “wedlock,” “in wedlock,” and “out of
18 wedlock.” Defendants should be required to respond to Interrogatory Nos. 11
19 through 20.

20 Because Defendants’ responses to Plaintiffs’ interrogatories numbered 11
21 through 20 are so late, all objections are waived and Defendants must answer the
22 interrogatories in full. *See* Fed. R. Civ. P. 33(b)(5); *Lotgale, Ltd. v. IKOR, Inc.*,
23 2013 WL 3967750, at *2-4 (N.D. Cal. July 31, 2013) (finding that defendants had
24 waived their objections by serving interrogatory responses two weeks after the
25 deadline); *Safeco Ins. Co. of Am. v. Rawstrom*, 183 F.R.D. 668, 671 (C.D. Cal.
26 1998) (“interrogatory objections not included in a timely response are waived even
27 if the objections are contained in a later untimely response, absent a showing of
28 good cause”).

Defendants' Statement Regarding Discrete Subparts in Plaintiffs' Interrogatories:

Plaintiffs improperly served more than twenty-five interrogatories (including all discrete subparts) without a stipulation by Defendants or leave of Court, in violation of the numerical limit set by Federal Rule of Civil Procedure 33(a)(1).⁴⁹ See Fed. R. Civ. P. 33(a)(1) ("Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts."). "The aim [of the numerical limit] is not to prevent needed discovery, but to provide judicial scrutiny before parties make potentially excessive use of this discovery device." *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 443 (C.D. Cal. 1998). Plaintiffs have made excessive use of the interrogatory discovery device.

Interrogatory subparts are to be counted as one interrogatory if they are "logically or factually subsumed within and necessarily related to the primary question." *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal 1998) (internal quotation and citation omitted). This Court has explained:

Probably the best test of whether subsequent questions, within a single interrogatory are subsumed and related, is to examine whether (i) the first question is primary and subsequent questions are secondary to the primary question; or (ii) the subsequent question can stand alone and is independent of the first question. *Id.* If the former, the interrogatory should be treated as a single interrogatory. If the latter, the interrogatory should be treated as multiple interrogatories.

Kim Laube & Co., Inc. v. Wahl Clipper Corp., CV 09-914 JAK(JCX), 2012 WL 12877945, at *4 (C.D. Cal. Aug. 28, 2012) (Chooljian, J.) (citing *Safeco*, 181 F.R.D. at 445).

Defendants objected to the following interrogatories on the basis that they were compound and include multiple discrete subparts: Interrogatory Nos. 3, 4, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19. Each of these interrogatories included subparts that could "stand alone" and that were "independent of the first question."

⁴⁹ By Defendants' count, Plaintiffs served fifty interrogatories.

1 *Id.* Notwithstanding and without waiving their objection that Plaintiffs improperly
2 served more than twenty-five interrogatories once all the discrete subparts were
3 properly counted, Defendants responded to all fifty of Plaintiffs' interrogatories.
4 Defendants' First Set of Responses to Plaintiffs' First Set of Interrogatories (Oct.
5 5, 2018) included Defendants' responses to the first twenty-five interrogatories as
6 properly construed counting discrete sub-parts. *See* Marcus Decl. Ex. B.
7 Defendants' Second Set of Responses to Plaintiffs' First Set of Interrogatories
8 (Nov. 16, 2018) included Defendants' responses to the remainder. *See* Marcus
9 Decl. Ex. C.

10 Plaintiffs urge the Court to use a test different than the one the Court has
11 described as the "best test," *Kim Laube & Co.*, 2012 WL 12877945, at *4, for
12 determining whether subparts are "discrete" under Rule 34. *See* Pls.' Stmt., *supra*
13 at 99. Plaintiffs would have the Court considers "whether subparts are part of a
14 'common theme'," *id.*, but they do not define the phrase "common theme," *see id.*,
15 and it's not immediately obvious how a Court should decide whether the themes of
16 various subparts are "common" to each other. The Court should reject Plaintiffs'
17 invitation to use the difficult-to-apply "common theme" test, and instead should
18 evaluate Plaintiffs' interrogatory subparts using the test described in *Safeco* and
19 *Kim Laube & Co.*

20 **INTERROGATORY NO. 1**

21 **Plaintiffs' Interrogatory:**

22 Identify each Person You believe to have been involved in any
23 determination of, or Communications Concerning, any application for a CRBA or
24 U.S. passport for Plaintiff Ethan Dvash-Banks. With respect to each such Person,
25 Identify his or her role or involvement and any Communications responsive to this
26 interrogatory.
27
28

Defendants' Verbatim Response to Interrogatory No. 1:

Objections:

Defendants object to this Interrogatory as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case because, for example, (a) it could be read as not limited in time to the period of the adjudication at issue, and (b) it could be read as asking Defendants to identify "each Person" Defendants "believe to be involved in any... Communications Concerning..." the Dvash-Banks applications for CRBAs and U.S. passports, regardless of whether such Persons were engaged in the adjudication of the Dvash-Banks applications for CRBAs and U.S. passports, or even employed by Defendants, and thus would have Defendants identify Plaintiffs themselves, Plaintiffs' counsel, and other persons who were not actually involved in the adjudication of those applications. It is unreasonable to burden Defendants with ascertaining who outside of the Department of State might have been involved with communications concerning the applications. It is also unreasonable and not relevant to any party's claim or defense to burden Defendants with identifying persons who may have communicated about the applications after the adjudications had concluded, and/or to identify persons who may have communicated about the applications in the course of responding to this litigation. Defendants further object to this Interrogatory to the extent that it seeks the identification of non-fact witnesses who may nonetheless possess relevant knowledge, such as attorneys who act as agency counsel for the instant action. For the purposes of responding to this Interrogatory, Defendants construe the Interrogatory as seeking to know each Department of State employee or contractor involved in the underlying adjudication, and as further requiring that Defendants identify each such person's "role or involvement" and each such person's related communications.

1 Defendants further object to this Interrogatory to the extent that it seeks (a)
2 communications or information protected by the attorney-client privilege or (b)
3 communications or information protected by the deliberative process privilege.

4 **Answer:**

5 Subject to and without waiving the above-stated objections-including
6 both those described in the prior two paragraphs and those outlined *supra* Part I ¶¶
7 1-12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

8 On January 24, 2017, Consulate Toronto received an “Application for
9 Consular Report of Birth Abroad of a Citizen of the United States of America”
10 for Ethan Dvash-Banks (“the CRBA application”), and also received an
11 “Application for U.S. Passports” for Ethan (the “U.S. passport application”)
12 (collectively, the “applications”). The applications were adjudicated between the
13 time of their receipt and March 2, 2017, at which time Consulate Toronto issued a
14 letter denying the applications. That letter was disclosed to Plaintiffs in
15 Defendants’ initial disclosures. The following staff were involved in the
16 determination of, and communications about, the applications:

- 17
- 18 • Frankie Terri Day, Consular Officer, Consulate Toronto;
 - 19 • Margaret Ramsay, Consular Officer, Consulate Toronto;
 - 20 • Larilyn Reffett, American Citizen Services Chief, Consulate Toronto;
 - 21 and
 - 22 • Ann Marie Warmenhoven, Fraud Prevention Unit Officer, Consulate Toronto.

23 For the above listed persons, Defendants describe their role and diplomatic
24 titles as follows. Ms. Day adjudicated the applications and in doing so consulted
25 with her supervisor, Ms. Reffett. During the relevant time period, Ms. Day’s
26 diplomatic rank was that of “Vice Consul.” Ms. Ramsay provided the
27 adjudicating consular officer (Ms. Day) with relevant FAM references. During
28 the relevant time period (and continuing through today), Ms. Ramsay’s diplomatic

1 rank was that of “Consul.” Ms. Reffett supervises American Citizen Services
2 functions at the U.S. Consulate in Toronto, and has served in this position since
3 August 2016. With respect to the underlying adjudication, Ms. Reffett supervised
4 Ms. Day and discussed the adjudication with her. During the relevant time period
5 (and continuing through today), Ms. Reffett’s diplomatic rank was that of
6 “Consul.” Ms. Warmenhoven reviewed DNA results submitted with the CRBA
7 application and entered findings into the appropriate Department database, and
8 advised the adjudicating consular officer (Ms. Day) of those results.

9 Additionally, data entry functions related to the adjudication of the
10 applications were performed by locally employed staff, Joanna Sackda (American
11 Citizen Services Assistant) and Aneela Fazil (Passport and citizenship assistant).
12 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
13 state that the documents (and particularly any emails) that Defendants will be
14 producing in response to “Plaintiffs’ First Set of Requests for Production of
15 Documents” may identify the role(s), involvement, and/or relevant
16 communications of persons involved in the underlying adjudication. Because
17 the “Identif[ication]” of this information may be determined by examining,
18 abstracting, or summarizing the communications themselves, and because the
19 burden of deriving or ascertaining this portion of Defendants’ answer will be
20 substantially the same for either Defendants or the Plaintiffs, Defendants refer
21 Plaintiffs to the documents that Defendants will be producing.

22 **Plaintiffs’ Contentions as to Why Defendants’ Response to**
23 **Interrogatory No. 1 Is Insufficient:**⁵⁰

24 As set out above, Defendants construed Interrogatory No. 1 as seeking
25 identification of “each Department of State employee or contractor involved in the

26 ⁵⁰ Plaintiffs attempted to meet and confer with Defendants about each of the
27 individual interrogatories. Plaintiffs sent a meet-and-confer letter on October 28,
28 outlining the deficiencies in Defendants’ responses. (Decl. Ex. 13.) Defendants
never responded.

1 underlying adjudication, and as further requiring that Defendants identify each
2 such person's 'role or involvement' and each such person's related
3 communications." Defendants' response is deficient for three reasons:

4 *First*, Defendants unreasonably construe the Interrogatories to refer to only
5 State Department employees or only to employees of the Toronto Consulate. It is
6 not unreasonably burdensome (or otherwise objectionable) to require Defendants
7 to identify other Persons involved who are known to Defendants or to confirm in
8 writing that nobody else was consulted or involved in any determination of or
9 communications concerning Ethan's CRBA and U.S. passport. *Second*,
10 Defendants seek to shirk ordinary discovery obligations in contending that it is
11 "unreasonable and not relevant . . . to burden Defendants with identifying persons
12 who may have communicated about the applications after the adjudications had
13 concluded." If other individuals were involved in any official determination of
14 whether Ethan should be considered a U.S. citizen at birth, even if those
15 communications or determinations occurred after the Toronto Consulate sent a
16 letter to Andrew on March 2, 2017, Defendants should identify them. *Third*, to the
17 extent that the individuals with whom the Dvash-Banks family interacted at the
18 U.S. Consulate in Toronto are not included in Defendants' responses, the responses
19 are incomplete and should be supplemented. *Fourth*, Defendants referred
20 Plaintiffs, by way of further answer to Interrogatory No. 1, to the documents they
21 will be producing beyond their initial disclosures, but have not yet produced any
22 documents having to do with the information sought by Interrogatory No. 1.
23 Information about who adjudicated Ethan's applications is plainly relevant to the
24 case (which challenges that adjudication), and Plaintiffs are likely to depose
25 individuals who took part in the adjudication process. The Court should compel
26 Defendants to remedy all four deficiencies.

**Defendants' Statement Regarding the Sufficiency of Defendants'
Response to Interrogatory No. 1:**

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 1. Plaintiffs' contention otherwise appears to be based on a misreading of Defendants' construction of, and response to, the interrogatory.

For example, Defendants did not "construe the Interrogator[y] to refer... only to employees of the Toronto Consulate." *Supra* at 106. As Defendants' verbatim response indicates, "Defendants construe[d] the Interrogatory as seeking to know each Department of State employee or contractor involved in the underlying adjudication." *Supra* at . Defendants' certified response to the interrogatory identified all such persons known by Defendants, after a reasonable investigation, at the time Defendants answered the interrogatory. Additionally, Defendants acknowledged that their ongoing email search, review, and production process could possibly identify additional persons, particularly ones who "communicated" about the underlying adjudication; thus by way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants response "state[d] that the documents (and particularly any emails) that Defendants will be producing in response to 'Plaintiffs' First Set of Requests for Production of Documents' may identify the role(s), involvement, and/or relevant communications of persons involved in the underlying adjudication." *See* Defs.' Verbatim Response to Interrogatory No. 1, *supra* at 104. Because the "identif[ication]" of this information may be determined by examining, abstracting, or summarizing the communications themselves, and because the burden of deriving or ascertaining this portion of Defendants' answer would be substantially the same for either Defendants or the Plaintiffs, it was reasonable for Defendants to refer Plaintiffs to those documents in addition to providing the narrative response that Defendants provided based on information known to Defendants at the time of the interrogatory response.

Defendants are particularly puzzled by Plaintiffs' contention that "to the extent that the individuals with whom the Dvash-Banks family interacted at the

1 U.S. Consulate in Toronto are not included in Defendants’ responses, the responses
2 are incomplete and should be supplemented.” *See supra* at 106–07. Defendants
3 have no reason to believe that their response to Interrogatory No. 1 was incomplete
4 in the fashion implied here by Plaintiffs. Nor have Plaintiffs provided a specific
5 basis for their contention. Were Plaintiffs to provide Defendants with more specific
6 information indicating that Plaintiffs had interacted with persons at Consulate
7 Toronto in addition to those identified by Defendants’ interrogatory response,
8 Defendants would investigate, and would as appropriate supplement their
9 interrogatory response. Indeed, Defendants indicated as much in paragraph 12(b)
10 of Defendants’ First Set of Responses to Plaintiffs’ First Set of Interrogatories; that
11 paragraph stated, in relevant part, verbatim: “As provided in Rule 26(e),
12 Defendants will supplement their answers to the interrogatories to the extent that
13 Defendants ‘learn[] that in some material request the... response is incomplete or
14 incorrect,’ and ‘if the additional or corrective information has not otherwise been
15 made known to... [Plaintiffs] during the discovery process or in writing,’ Fed. R.
16 Civ. P. 26(e)(1)(A)....” *See Marcus Decl. Ex. A at 7–8 ¶ 12(b).*

17 ***

18 **INTERROGATORY NO. 2**

19 **Plaintiffs’ Interrogatory:**

20 Identify each Person You believe to have knowledge or information
21 Concerning the process by which, or the reasons why, or basis on which, the State
22 Department did not issue a CRBA and U.S. passport to Plaintiff Ethan Dvash-
23 Banks. With respect to each such Person, Identify his or her knowledge and/or the
24 information he or she possesses.

25 **Defendants’ Verbatim Response to Interrogatory No. 2:**

26 **Objections:**

27 Defendants object to this Interrogatory as unreasonably vague, overly broad,
28 unduly burdensome, not relevant to any party’s claim or defense, and

1 disproportionate to the needs of the case to the extent the Interrogatory is not
2 temporally limited to the time period of the underlying adjudication. Defendants
3 further object to this Interrogatory as unreasonably vague, overly broad, unduly
4 burdensome, not relevant to any party's claim or defense, and disproportionate to
5 the needs of the case to the extent the Interrogatory asks Defendants to identify
6 persons other than those Department of State employees or contractors involved
7 with the specific adjudication at issue. It is unreasonable and not relevant to any
8 party's claim or defense to burden Defendants with identifying persons who may
9 have general knowledge bearing on the process used by Consulate Toronto in
10 specifically adjudicating the CRBA and U.S. passport applications for Ethan.
11 Defendants further object to this Interrogatory to the extent that it seeks the
12 identification of non-fact witnesses who may nonetheless possess relevant
13 knowledge, such as attorneys who act as agency counsel for the instant action.
14 For the purposes of responding to this Interrogatory, Defendants construe the
15 Interrogatory as seeking to know each Department of State employee or contractor
16 involved in the underlying adjudication, such that he or she would have knowledge
17 or information concerning the process by which, the reasons why, or the basis on
18 which, Consulate Toronto denied the applications; Defendants further construe the
19 Interrogatory as requesting that Defendants identify each such person's
20 "knowledge and/or the information he or she possesses."

21 Defendants further object to this Interrogatory to the extent that it seeks (a)
22 communications or information protected by the attorney-client privilege or (b)
23 communications or information protected by the deliberative process privilege.

24 ***Answer:***

25 Subject to and without waiving the above-stated objections-including both
26 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-
27 12(b) and Part II ¶¶ 13-21-Defendants respond as follows:
28

Defendants identify the following persons as having knowledge or information concerning the process by which, or the reasons why, or basis on which, the Department---and in particular Consulate Toronto---denied the applications for a CRBA and U.S. passport for Ethan:

- Frankie Terri Day. Ms. Day served as the adjudicating consular officer for the underlying adjudication. Relevant knowledge or information possessed by Ms. Day is restricted to any knowledge or information she possessed in her official capacity as a Consular Officer, Consulate Toronto. Such knowledge would include awareness of the specific process by which the applications were adjudicated, and awareness of the reasons and basis for the denial of those applications.
- Margaret Ramsay. Ms. Ramsay provided the adjudicating consular officer (Ms. Day) with relevant FAM references. Relevant knowledge or information possessed by Ms. Ramsay is restricted to any knowledge or information she possessed/possesses in her official capacity as a Consular Officer, Consulate Toronto. Such knowledge would include general awareness of the process by which the applications were adjudicated.
- Larilyn Reffett. Ms. Reffett served as the supervisor for the adjudicating consular office (Ms. Day), and supervised the underlying adjudication, including by discussing the adjudication with Ms. Day. Relevant knowledge or information possessed by Ms. Reffett is restricted to any knowledge or information she possessed/possesses in her official capacity as American Citizen Services Chief, Consulate Toronto. Such knowledge would include awareness of the specific process by which the applications were adjudicated, and awareness of the reasons and basis for the denial of those applications.

Additionally, as the Chief of American Citizen Services, Consulate

Toronto, Ms. Reffett possess general knowledge regarding the process by which Consulate Toronto adjudicates CRBA and U.S. passport applications, as well as general knowledge regarding Consulate Toronto's interactions with U.S. citizens living in or visiting Toronto.

- Ann Marie Warmenhoven. Relevant knowledge or information possessed by Ms. Warmenhoven is restricted to any knowledge or information she possessed/possesses in her official capacity as Fraud Prevention Unit Officer, Consulate Toronto. Such knowledge would include awareness of the basis for the denial of the applications, general awareness of the process by which the applications were adjudicated, and general awareness of fraud prevention concerns related to the adjudication of CRBA and U.S. passport applications.

By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants state that the documents that Defendants will be producing in response to "Plaintiffs' First Set of Requests for Production of Documents" may identify additional persons responsive to this Interrogatory and/or the "knowledge and/or... information" possessed by persons responsive to this Interrogatory. Because the "Identif[ication]" of this information may be determined by examining, abstracting, or summarizing the documents and communications themselves, and because the burden of deriving or ascertaining this portion of Defendants' answer will be substantially the same for either Defendants or the Plaintiffs, Defendants refer Plaintiffs to the documents that Defendants will be producing.

Plaintiffs' Contentions as to Why Defendants' Response to Interrogatory No. 2 Is Insufficient:

Plaintiffs incorporate their Contentions as to Why Defendants' Response to Interrogatory No. 1 Is Insufficient, as Defendants' response to Interrogatory No. 2 is objectionable for the same reasons.

**Defendants' Statement Regarding the Sufficiency of Defendants'
Response to Interrogatory No. 2:**

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 2. Plaintiffs' contention otherwise appears to be based on unsubstantiated assumptions and/or a misreading of Defendants' construction of, and response to, the interrogatory. Defendants respectfully refer the Court to Defs.' Verbatim Response, *supra* at 109–12.

INTERROGATORY NO. 3

Plaintiffs' Interrogatory:

Identify and provide job titles and dates of employment at the State Department of each Person known to You (a) who is or was involved with or responsible for determining for the State Department the meaning or requirements of Section 301(g) or Section 309; or (b) who is or was involved with or responsible for drafting or approving protocols, procedures, practices, guidelines or policies (including provisions of the FAM) Concerning applications for a CRBA or U.S. passport for, or determinations of the citizenship status of, children born outside of the United States to United States citizens, between January 1, 2013 and the present.

Defendants' Verbatim Response to Interrogatory No. 3:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least three discrete subparts: (A) "Identify and provide job titles and dates of employment ... of each Person... who is or was involved with or responsible for determining for the State Department the meaning or requirements of Section 301(g)... "; (B) "Identify and provide job titles and dates of employment ... of each Person... who is or was involved with or responsible for determining for the State Department the meaning or requirements of... Section 309... "; (C) "Identify and provide job titles and dates of

1 employment ... of each Person... who is or was involved with or responsible for
2 drafting or approving protocols, procedures, practices, guidelines or policies...
3 Concerning applications for a CRBA or U.S. passport for, or determinations of the
4 citizenship status of, children born outside of the United States to United States
5 citizens.”⁵¹ Accordingly, Defendants interpret this Interrogatory as three separate
6 interrogatories (3A-3C).

7 Defendants object to these (at least) three discrete Interrogatories as
8 unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s
9 claim or defense, and disproportionate to the needs of the case to the extent they
10 are not temporally limited to the time period of the underlying adjudication. The
11 time period indicated on the face of the Interrogatories is overly broad, unduly
12 burdensome, not relevant to any party’s claims or defenses, and disproportionate to
13 the needs of the case. Defendants further object to these Interrogatories as
14 unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s
15 claim or defense, and disproportionate to the needs of the case to the extent they
16 ask Defendants to identify persons other than those Department of State employees
17 or contractors involved with the specific adjudication at issue. It is unreasonable,
18 not relevant to any party’s claim or defense, and disproportionate to the needs of
19 the case to burden Defendants with identifying persons who may have general
20 knowledge bearing on the policies or processes used by Consulate Toronto in
21 specifically adjudicating the CRBA and U.S. passport applications for Ethan.
22 Defendants further object to these Interrogatories to the extent they seek the
23 identification of non-fact witnesses who may nonetheless possess relevant
24 knowledge, such as attorneys who act as agency counsel for the instant action.

25
26 ⁵¹ Discrete subpart “(C)” itself could reasonably be construed as containing
27 several discrete subparts, regarding “applications for a CRBA,” “applications for
28 a U.S. passport,” and “[other] determinations of ... citizenship status,”
respectively.

1 Here, the Interrogatories appear to broadly seek identification of persons who-in
2 the case of Interrogatories 3(A) and 3(B)---have been involved in the
3 Department of State's interpretation of certain statutory provisions, and-in the
4 case of Interrogatories 3(C)---that the Department of State generally applies when
5 adjudicating a CRBA application or a U.S. passport application, and/or
6 determining the citizenship status of a certain category of foreign-born children.⁵²
7 It would be unreasonable, not relevant to any party's claim or defense, and
8 disproportionate to the needs of the case to burden Defendants with identifying
9 each and every employee of the Department of State who, at any time, has worked
10 for the Department of State component(s) chiefly responsible for: interpreting 8
11 U.S.C. § 1401, or interpreting 8 U.S.C. § 1409, or developing the general
12 "protocols, procedures, guidelines[, and]...policies" used in adjudicating CRBA
13 applications or U.S. passport applications or otherwise determining the citizenship
14 status of foreign-born children. Thus, for the purposes of responding to these
15 Interrogatories, Defendants construe them as seeking to know the names and job
16 titles of the heads of the components principally responsible for such things
17 during the time period January 1, 2015 through June 2, 2017.

18 Defendants further object to Interrogatory 3(C) as unreasonably vague,
19 overly broad, unduly burdensome, and not relevant to the claims and defenses of
20 the case because, by using commas to set off the phrase "or determinations of
21 the citizenship status of," the Interrogatory on its face appears to indicate that
22 determining citizenship status of foreign-born children is something that happens
23 separate and apart from adjudications of CRBA and U.S. passport applications, but
24 such adjudications themselves involve determinations of citizenship status of the
25 subject child. To the extent Plaintiffs intend this Interrogatory to reach other

26 ⁵² Defendants note the unreasonably vague nature of the phrase "or determinations
27 of the citizenship status of," as that phrase is used in Interrogatory 3(C), and
28 accordingly object to the Interrogatory's use of the phrase, as described below.

1 determinations, outside the context of CRBA or U.S. passport applications, the
2 Interrogatory is unreasonably vague, overly broad, unduly burdensome, not
3 relevant, and disproportionate to the needs of the case.

4 Given the burden involved for Defendants to determine the dates of
5 employment for any individual employee-which would require Defendants to
6 review employment records for each such individual, including individuals
7 who may no longer be employed by the Department and/or who may have had
8 multiple periods of employment with the Department-and the lack of relevance
9 of that information to the claims and defenses in this case, Defendants
10 generally decline to provide dates of employment in their answers, but note
11 that they would be willing to consider providing dates of employment on a
12 case-by-case basis to the extent Plaintiffs can explain how that information
13 would be useful and/or relevant for purposes of Plaintiffs' claims.

14 **Answer:**

15 Subject to and without waiving the above-stated objections-including
16 both those described in the prior four paragraphs and those outlined *supra* Part
17 I ¶¶ 1 - 12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

18 ***With respect to Interrogatory 3(A):***⁵³

19 The Bureau of Consular Affairs formulates and implements policy
20 relating to the determination of U.S. citizenship and the application of 8 U.S.C.
21 § 1401(g). Prior to December 14, 2017, relevant responsibilities were
22 possessed by two Bureau sub-components, the Office of Passport Services
23 (CA/PPT) and the Office of Overseas Citizens Services (CA/OCS). As of
24 December 14, 2017, the relevant responsibilities were consolidated within
25 CA/PPT.

26 ⁵³ *Interrogatory 3(A) asks: "Identify and provide job titles and dates of*
27 *employment...of each Person... who is or was involved with or responsible for*
28 *determining for the State Department the meaning or requirements of*
Section 301(g)...."

1 In 2015, Janice Jacobs served as the Assistant Secretary for Consular
2 Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas
3 Citizens Services, and Brenda Sprague was the Deputy Assistant Secretary for
4 Passport Services. In 2016, Michele Bond served as the Assistant Secretary for
5 Consular Affairs, Karen Christensen was the Deputy Assistant Secretary for
6 Overseas Citizens Services, and Brenda Sprague was the Deputy Assistant
7 Secretary for Passport Services. In 2017, Michele Bond was the Assistant
8 Secretary for Consular Affairs through January 26, before being succeeded by
9 David Donahue as acting Assistant Secretary through July 28; throughout 2017,
10 Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens
11 Services, and subsequently the Principal Deputy Assistant Secretary for Consular
12 Affairs; and Brenda Sprague was the Deputy Assistant Secretary for Passport
13 Services.

14 Within the Department, the Office of the Legal Adviser advises and
15 represents bureaus and missions of the Department on all legal and legal policy
16 issues arising in connection with the work of the Department, including providing
17 legal advice concerning 8 U.S.C. § 1401(g). In 2015, Mary E. McLeod headed the
18 Office of the Legal Adviser, and she continued in that position through February
19 19, 2016. From February 22, 2016 through January 20, 2017, Brian Egan served as
20 the Legal Adviser. Richard C. Visek served as the Acting Legal Adviser for the
21 remainder of 2017.

22 Consulate Toronto applies 8 U.S.C. § 1401(g) in the course of
23 adjudicating specific CRBA and U.S. passport applications. Throughout the time
24 period at issue, Larilyn Reffett served as American Citizen Services Chief,
25 supervising consular functions involving these responsibilities. Her diplomatic
26 rank/title is "Consul," and she has been employed by the Department of State from
27 March 10, 2003, through the present day.
28

With respect to Interrogatory 3(B):⁵⁴

The Bureau of Consular Affairs formulates and implements policy relating to the determination of U.S. citizenship and the application of 8 U.S.C. § 1409. Prior to December 14, 2017, relevant responsibilities were possessed by two Bureau sub-components, the Office of Passport Services (CA/PPT) and the Office of Overseas Citizens Services (CA/OCS). As of December 14, 2017, the relevant responsibilities were consolidated within CA/PPT.

In 2015, Janice Jacobs served as the Assistant Secretary for Consular Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens Services, and Brenda Sprague was the Deputy Assistant Secretary for Passport Services. In 2016, Michele Bond served as the Assistant Secretary for Consular Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens Services, and Brenda Sprague was the Deputy Assistant Secretary for Passport Services. In 2017, Michele Bond was the Assistant Secretary for Consular Affairs through January 26, before being succeeded by David Donahue as acting Assistant Secretary through July 28; throughout 2017, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens Services, and subsequently the Principal Deputy Assistant Secretary for Consular Affairs; and Brenda Sprague was the Deputy Assistant Secretary for Passport Services.

Within the Department, the Office of the Legal Adviser advises and represents bureaus and missions of the Department on all legal and legal policy issues arising in connection with the work of the Department, including providing legal advice concerning 8 U.S.C. § 1409. In 2015, Mary E. McLeod headed the Office of the Legal Adviser, and she continued in that position through February

⁵⁴ *Interrogatory 3(B) asks: "Identify and provide job titles and dates of employment... of each Person... who is or was involved with or responsible for destemming for the State Department the meaning or requirements of... Section 309...."*

22, 2016. From February 19, 2016 through January 20, 2017, Brian Egan served as the Legal Adviser. Richard C. Visek served as the Acting Legal Adviser for the remainder of 2017.

Consulate Toronto applies 8 U.S.C. § 1409 in the course of adjudicating specific CRBA and U.S. passport applications. Throughout the time period at issue, Larilyn Reffett served as American Citizen Services Chief, supervising consular functions involving these responsibilities. For Ms. Reffett's diplomatic title and employment dates, see response to Interrogatory 3(A), *supra* at 21.

With respect to Interrogatory 3(C):⁵⁵

The Bureau of Consular Affairs formulates and implements policy relating to determination of U.S. citizenship and administers pertinent provisions of the Immigration and Nationality Act, including with respect to adjudication of applications for CRBAs and U.S. passports. The bureau develops, revises, implements, and directs policies, procedures, and regulations relating to functions of the Bureau, including the adjudication and issuance of passports and the determination of U.S. citizenship/nationality. Within the bureau, as of December 14, 2017, these responsibilities were consolidated within the Bureau's Office of Passport Services (CA/PPT). Previously, these functions were handled by CA/PPT or the Office of Overseas Citizens Services (CA/OCS),⁵⁶ depending on the location of the service or the issue presented.

In 2015, Janice Jacobs served as the Assistant Secretary for Consular Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas

⁵⁵ Interrogatory 3(C) asks: "Identify and provide job titles and dates of employment ... of each Person... who is or was involved with or responsible for drafting or approving protocols, procedures, practices, guidelines or policies (including provisions of the FAM) Concerning applications for a CRBA or U.S. Passport for or determinations of the citizenship status of, children born outside of the United States to United States citizens..."

⁵⁶ Also a sub-component of the Bureau.

1 Citizens Services, and Brenda Sprague was the Deputy Assistant Secretary for
2 Passport Services. In 2016, Michele Bond served as the Assistant Secretary for
3 Consular Affairs, Karen Christensen was the Deputy Assistant Secretary for
4 Overseas Citizens Services and Brenda Sprague was the Deputy Assistant
5 Secretary for Passport Services. In 2017, Michele Bond was the Assistant
6 Secretary for Consular Affairs through January 26, before being succeeded by
7 David Donahue as acting Assistant Secretary through July 28; throughout 2017,
8 Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens
9 Services, and subsequently the Principal Deputy Assistant Secretary for Consular
10 Affairs; and Brenda Sprague was the Deputy Assistant Secretary for Passport
11 Services.

12 Within the Department, the Office of the Legal Adviser advises and
13 represents bureaus and missions of the Department on all legal and legal policy
14 issues arising in connection with the work of the Department, including providing
15 legal advice concerning citizenship and passport issues. In 2015, Mary E. McLeod
16 headed the Office of the Legal Adviser, and she continued in that position through
17 February 19, 2016. From February 22, 2016 through January 20, 2017, Brian Egan
18 served as the Legal Adviser. Richard C. Visek served as the Acting Legal Adviser
19 for the remainder of 2017.

20 Consulate Toronto applies Department-level policy in the course of
21 adjudicating specific CRBA and U.S. passport applications. Throughout the time
22 period at issues, Larilyn Reffett served as American Citizen Services Chief,
23 supervising consular functions involving these responsibilities. For Ms.
24 Reffett's diplomatic title and employment dates, see response to Interrogatory
25 3(A), *supra* at 21.

Plaintiffs' Contentions As To Why Interrogatory No. 3 Is Not Compound:

Defendants erroneously contend that this interrogatory includes at least three subparts—one pertaining to Section 301(g), the second to Section 309, and the third to “protocols, procedures, practices, guidelines or policies concerning applications for a CRBA or U.S. passport . . .” Defendants’ parsing of Interrogatory No. 3 is unreasonable. All of the “subparts” Defendants have identified relate to a “common theme”—specifically, the individuals involved in developing State Department policy around determinations of citizenship. Sections 301(g) and 309 are provisions of the same narrow part of the INA concerning nationality at birth. Applications for CRBAs (for children born outside the U.S. between U.S. citizens) are adjudicated with reference to these provisions. The fact that Defendants’ responses to each supposedly discrete subpart are identical further demonstrates that Interrogatory No. 3 consists of a single interrogatory.

Defendants' Contentions as to Why Interrogatory No. 3 is Compound:

Interrogatory No. 3 is compound and includes at least three discrete subparts, each of which “can stand alone and is independent of the first question,” *see Kim Laube & Co.*, 2012 WL 12877945, at *4. Those discrete subparts include: (A) “Identify and provide job titles and dates of employment... of each Person... who is or was involved with or responsible for determining for the State Department the meaning or requirements of Section 301(g)...”; (B) “Identify and provide job titles and dates of employment... of each Person... who is or was involved with or responsible for determining for the State Department the meaning or requirements of... Section 309...”; (C) “Identify and provide job titles and dates of employment... of each Person... who is or was involved with or responsible for drafting or approving protocols, procedures, practices, guidelines or policies... Concerning applications for a CRBA or U.S. passport for, or determinations of the citizenship status of, children born outside of the United States to United States

1 citizens.”⁵⁷ Defendants reasonably interpreted this Interrogatory as three separate
2 interrogatories (3A–3C). For further explanation of Defendants’ position,
3 Defendants respectfully refer the Court to Defendants’ Statement at the beginning
4 of Section V(E) of this Joint Stipulation, *supra* at 102.

5 **Plaintiffs’ Contentions as to Why Defendants’ Response to**
6 **Interrogatory No. 3 Is Insufficient:**

7 Defendants unreasonably seek to limit Interrogatory No. 3 to “heads of the
8 components.” Interrogatory No. 3 calls for the identification of “persons involved
9 with or responsible for determining for the State Department” the meaning and
10 requirements of Section 301(g) and Section 309, or for drafting or approving the
11 relevant policies concerning applications for a CRBA or U.S. passport. If there are
12 Persons known to Defendants who were involved in any of these activities,
13 Defendants should identify them in response to the interrogatory regardless of
14 whether they held the title of the head of a department or department component
15 within the State Department. The information sought by Interrogatory No. 3 (State
16 Department personnel involved in interpreting Section 301(g), Section 309, and
17 relevant portions of the FAM) is relevant inasmuch as the Action challenges the
18 State Department’s interpretations of these provisions. The Court should require
19 Defendants to supplement their response by identifying any individuals, not just
20 “heads of components,” involved in determining for the State Department the
21 meaning or requirements of Section 301(g) or Section 309 or for drafting or
22 approving the relevant policies concerning applications for a CRBA or U.S.
23 passport.⁵⁸

24 ⁵⁷ Discrete subpart “(C)” itself could reasonably be construed as containing several
25 discrete subparts, regarding “applications for a CRBA,” “applications for a U.S.
26 passport,” and “[other] determinations of ... citizenship status,” respectively.

27 ⁵⁸ Defendants’ response to Interrogatory No. 3 highlights the problematic nature of
28 Defendants’ attempt to limit the date range to January 1, 2015 to June 2, 2017. If
Defendants’ objections and limitations were allowed to stand, they would not be
required to identify a relevant policy that was authored between 2013 and 2015

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 3:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 3. Plaintiffs' contention otherwise appears to be based on unsubstantiated assumptions. Defendants respectfully refer the Court to Defs.' Verbatim Response, *supra* at 113–20.

INTERROGATORY NO. 4

Plaintiffs' Interrogatory:

Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g) or Section 309 to Persons who claim to have acquired United States citizenship under those statutory provisions, including the reasons and basis for any such protocols, procedures, practices, guidelines or policies.

Defendants' Verbatim Response to Interrogatory No. 4:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) "Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g)... to Persons who claim to have acquired United States Citizenship" under it; and (B) "Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying... Section 309 to Persons who claim to have acquired United States Citizenship" under it. Accordingly, Defendants interpret this Interrogatory as two separate interrogatories (4A-4B).

(around the time of the Supreme Court's decision in *Windsor* or in the lead-up to *Obergefell*).

Defendants object to these two discrete Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case to the extent they are not temporally limited to the time period of the underlying adjudication. Defendants further object to these Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case to the extent they ask Defendants to identify and describe protocols, procedures, practices, guidelines, or policies other than those that apply to Consulate Toronto and/or that are used by Consulate Toronto in the adjudication of CRBA and U.S. passport applications.

Answer:

Subject to and without waiving the above-stated objections-including both those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1-12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

With respect to 4(A):⁵⁹

Relevant Department of State guidance regarding the determination of U.S. citizenship and the application of 8 U.S.C. § 1401(g) can be found in its Foreign Affairs Manual ("FAM"). As reflected in the FAM, the Department interprets the phrase "born... of parents" in 8 U.S.C. § 1401 to include a biological connection between the child and the referenced parents. As set out in the FAM, the Department reads 8 U.S.C. § 1401(g) as applying to children whose biological parents are married to each other at the time of the child's birth. See 8 FAM 301.7-4(D) (interpreting section 1401(g) to apply to children born in wedlock to a U.S.

⁵⁹ Interrogatory 4(A) asks: "Identify and describe any protocols procedures, practices, guidelines or policies of the State Department for applying Section 301(g)... to Persons who claim to have acquired United States Citizenship under... [that] statutory provision [], including the reasons and basis for any such protocols, procedures, practices, guidelines or policies."

1 citizen parent and an alien parent). The FAM defines “in wedlock” as “birth
2 during the marriage of the biological parents to each other.” 8 FAM 304.1-2(a).
3 The FAM goes on to state: “If a married woman and someone other than her
4 spouse have a biological child together, that child is considered to have been born
5 out of wedlock. The same is true for a child born to a married man and a person
6 other than his spouse.” 8 FAM 304.1-2(e).

7 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
8 state that the above-cited provisions of the FAM can be found online at
9 <https://fam.state.gov>; to the extent the currently-available FAM provisions differ
10 (whether substantively or by citation) from those in effect at the time of the
11 underlying adjudication, Defendants state that they will be producing any such
12 former versions in response to Plaintiffs’ First Set of Requests for Production of
13 Documents. Defendants refer to the FAM provisions themselves for a full and
14 complete “descri[ption]” of their contents.

15 ***With respect to 4(B):***⁶⁰

16 Relevant Department of State guidance regarding the determination of U.S.
17 citizenship and the application of 8 U.S.C. § 1409 can also be found in its FAM.
18 The FAM notes that “[c]hildren born in wedlock are generally presumed to be the
19 issue of that marriage. This presumption is not determinative in citizenship cases,
20 however, because an actual biological relationship to a U.S. citizen parent is
21 required. If doubt arises that the U.S. citizen ‘parent’ is biologically related to the
22 child, the consular officer is expected to investigate carefully.” 8 FAM 301.4-
23 1(D)(1)(d); *see also id.* § 301.4-1(D)(1)(a) (“It is not enough that the child is
24 presumed to be the issue of the parents’ marriage by the laws of the jurisdiction

25 ⁶⁰ Interrogatory 4(B) asks: “Identify and describe any protocols, procedures
26 practices, guidelines or policies of the State Department for applying... Section 309
27 to Persons who claim to have acquired United States Citizenship under... [that]
28 statutory provision[], including the reasons and basis for any such protocols,
procedures, practices, guidelines or policies.”

1 where the child was born. Absent a blood relationship between the child and the
2 parent on whose citizenship the child's own claim is based, U.S. citizenship is not
3 acquired."'). Circumstances in which such a doubt may arise include where "[t]he
4 child was born through surrogacy or other forms of assisted reproductive
5 technology." See 8 FAM 301.4-1(D)(1)(d); see also 8 FAM 304.3-2 ("A child
6 born abroad to a surrogate, whose genetic parents are a U.S. citizen mother and
7 anonymous sperm donor, is considered for citizenship purposes to be a person
8 born *out of wedlock* to a U.S. citizen mother... regardless of whether the woman is
9 married and regardless of whether her spouse is the legal parent of the child at the
10 time of birth.") (emphasis added).

11 The FAM interprets 8 U.S.C. § 1409 to apply to children whose *biological*
12 parents are not married to each other. 8 FAM 102.01. A child may acquire U.S.
13 citizenship at birth from his legal mother, pursuant to section 1409, if the child has
14 a biological relationship with her. See 8 U.S.C. § 1409(c). The FAM recognizes a
15 "biological relationship" between a child and another may include either a genetic
16 parental relationship or a legal, gestational relationship. 8 FAM 301.4-
17 1(D)(1)(c), and requires a preponderance of the evidence to establish proof of a
18 biological relationship between child and U.S. citizen mother, 8 FAM 301.4-
19 1(D)(1)(b)(2).

20 The FAM makes clear that persons in legally-valid and recognized
21 marriages may still have a child considered "born out of wedlock" for § 1409
22 purposes. See, e.g., 8 FAM 304.3-2 ("A child born abroad to a surrogate, whose
23 genetic parents are a U.S. citizen mother and anonymous sperm donor, is
24 considered for citizenship purposes to be a person born out of wedlock to a U.S.
25 citizen mother, with a citizenship claim adjudicated under INA 309(c). This is the
26 case regardless of whether the woman is married and regardless of whether her
27 spouse is the legal parent of the child at the time of birth.") The Department applies
28 this policy equally to same-sex marriages and opposite sex marriages. See *id.*; see

1 also 7 FAM Exhibit 1454 ¶ b (“In general, marriages which are legally performed
2 and valid abroad are also legally valid in the United States. Inquiries regarding the
3 validity of a marriage abroad should be directed to the attorney general of the state
4 in the United States where the parties to the marriage live”).

5 **Plaintiffs’ Contentions as to Why Interrogatory No. 4 Is Not**
6 **Compound:**

7 Defendants erroneously contend that this interrogatory includes at least two
8 subparts—one about Section 301(g) and the other about Section 309. Both of
9 these “subparts” relate to a “common theme”—specifically, the policies of the
10 State Department related to the portion of the INA pertaining to nationality at birth
11 (which includes Section 301(g) and Section 309). Therefore, they should be
12 treated as a single interrogatory.

13 **Defendants’ Contentions as to Why Interrogatory No. 4 Is Compound:**

14 Interrogatory No. 4 is compound and includes at least two discrete subparts,
15 each of which “can stand alone and is independent of the first question,” *see Kim*
16 *Laube & Co.*, 2012 WL 12877945, at *4. Those discrete subparts include: (A)
17 “Identify and describe any protocols, procedures, practices, guidelines or policies
18 of the State Department for applying Section 301(g)... to Persons who claim to
19 have acquired United States Citizenship” under it; and (B) “Identify and describe
20 any protocols, procedures, practices, guidelines or policies of the State Department
21 for applying... Section 309 to Persons who claim to have acquired United States
22 Citizenship” under it. Defendants reasonably interpreted this Interrogatory as two
23 separate interrogatories (4A–4B). For further explanation of Defendants’ position,
24 Defendants respectfully refer the Court to Defendants’ Statement at the beginning
25 of Section V(E) of this Joint Stipulation, *supra* at 102.

26 **Plaintiffs’ Contentions as to Why Defendants’ Response to**
27 **Interrogatory No. 4 Is Insufficient:**

28 Defendants’ response to this Interrogatory is facially incomplete. *First*,
although the Interrogatory calls for the identification of certain “protocols,

1 procedures, practices, guidelines or policies of the State Department,” Defendants
2 appear to have reflexively identified only the FAM and to have excluded any other
3 responsive materials. *Second*, Defendants did not respond to the portions of the
4 Interrogatories seeking the “reasons and basis” for the protocols, procedures,
5 practices, guidelines, and policies identified in the response. Nor did Defendants
6 explain when “circumstances of doubt” arise. Specifically, Defendants state that
7 doubt may arise when a child was born through surrogacy or other forms of ART,
8 but they do not identify when and how the State Department ascertains that a child
9 was born through surrogacy or ART. The subject of this interrogatory is clearly
10 relevant given that all of Plaintiffs’ causes of action challenge the State
11 Department’s decision to apply Section 309, instead of 301(g), to children of same-
12 sex couples born abroad who are not biologically related to their U.S. citizen
13 parent. The Court should compel Defendants to supplement their response as just
14 outlined.

15 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
16 **Response to Interrogatory No. 4:**

17 Defendants provided a complete, substantive response to Plaintiffs’
18 Interrogatory No. 1. Plaintiffs’ contention otherwise appears to be based on a
19 misreading of Defendants’ construction of, and response to, the interrogatory.

20 ***

21 **INTERROGATORY NO. 5**

22 **Plaintiffs’ Interrogatory:**

23 Identify and describe any protocol, procedure, practice, guideline or policy
24 of the State Department for applying Section 309, rather than Section 301(g), to an
25 application for a CRBA or U.S. passport by or for any Person born outside of the
26 United States, including the reasons and basis for any such protocol, procedure,
27 practice, guideline or policy.
28

Defendants' Verbatim Response to Interrogatory No. 5:

Objections:

Defendants object to this Interrogatory as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case to the extent it is not temporally limited to the time period of the underlying adjudication. Defendants further object to this Interrogatory as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case to the extent it asks Defendants to identify and describe protocols, procedures, practices, guidelines, or policies other than those that apply to Consulate Toronto and/or that are used by Consulate Toronto in the adjudication of CRBA and U.S. passport applications.

Answer:

Subject to and without waiving the above-stated objections-including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

Pursuant to the FAM, the Department applies 8 U.S.C. § 1409, rather than 8 U.S.C. § 1401(g), where a child's biological parents are not married to each other, even if a child's legal parents are married to each other. Although it may generally be true that a child whose legal parents are married to each other may generally be "presumed to be the issue of that marriage," "[t]his presumption is not determinative in citizenship cases... because [in that context] an actual biological relationship to a U.S. citizen parent is required." See 8 FAM 301.4-1 (D)(1)(d). "If doubt arises that the U.S. citizen 'parent' is biologically related to the child, the consular officer is expected to investigate carefully." 8 FAM 301.4-1(D)(1)(d); see also *id.* § 301.4-1(D)(1)(a) ("It is not enough that the child is presumed to be the issue of the parents' marriage by the laws of the jurisdiction where the child was born. Absent a blood relationship

1 between the child and the parent on whose citizenship the child's own claim is
2 based, U.S. citizenship is not acquired."). Circumstances in which such a doubt
3 may arise include where "[t]he child was born through surrogacy or other forms of
4 assisted reproductive technology." See 8 FAM 301.4-1(D)(1)(d); see also 8
5 FAM 304.3-2 ("A child born abroad to a surrogate, whose genetic parents are a
6 U.S. citizen mother and anonymous sperm donor, is considered for citizenship
7 purposes to be a person born *out of wedlock* to a U.S. citizen mother... regardless
8 of whether the woman is married and regardless of whether her spouse is the legal
9 parent of the child at the time of birth.") (emphasis added).

10 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
11 state that the above-cited provisions of the FAM can be found online at
12 <https://fam.state.gov>; to the extent the currently-available FAM provisions differ
13 (whether substantively or by citation) from those in effect at the time of the
14 underlying adjudication, Defendants state that they will be producing any such
15 former versions in response to Plaintiffs' First Set of Requests for Production of
16 Documents. Defendants refer to the FAM provisions themselves for a full and
17 complete "descri[ption]" of their contents.

18 **Plaintiffs' Contentions as to Why Defendants' Response to**
19 **Interrogatory No. 5 Is Insufficient:**

20 Plaintiffs incorporate their Contentions as to Why Defendants' Response to
21 Interrogatory No. 4 Is Insufficient, as Defendants' response to Interrogatory No. 5
22 is objectionable for the same reasons.

23 **Defendants' Statement Regarding the Sufficiency of Defendants'**
24 **Response to Interrogatory No. 5:**

25 Defendants provided a complete, substantive response to Plaintiffs'
26 Interrogatory No. 1. Plaintiffs' contention otherwise appears to be based on a
27 misreading of Defendants' construction of, and response to, the interrogatory.

28 ***

INTERROGATORY NO. 6

Plaintiffs' Interrogatory:

Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department during the period January 1, 2013 to the present regarding the application of Section 301(g) or Section 309, including any protocols, procedures, practices, guidelines or policies proposed or approved by DHS, but ultimately not adopted by the State Department.

Defendants' Verbatim Response to Interrogatory No. 6:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) "Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department... regarding the application of Section 301(g)"; and (B) "Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department ... regarding the application of... Section 309." Accordingly, Defendants interpret this Interrogatory as two separate interrogatories (6A--6B).

Defendants object to these two discrete Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case because the Interrogatories on their face seek to know information that by its very nature is pre-decisional and deliberative, and thus covered by the deliberative process privilege, and/or covered by the attorney-client privilege.

Defendants further object to these Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case to the extent that they seek to know information regarding or relating to a different Executive department,

1 the Department of Homeland Security (“DHS”), or any components thereof.
2 For example, the Interrogatory seeks to know the extent to which Defendants
3 “considered... any protocols, procedures, practices, guidelines or policies
4 proposed or approved by DHS.” (emphasis added). But the actions taken by
5 Defendants and challenged in this litigation are separate from and do not
6 depend on any actions or policies of DHS, and as such the DHS-related
7 information sought by these Interrogatories is not relevant to the claims and
8 defenses in this litigation, and disproportionate to the needs of the case.

9 ***Answer:***

10 Subject to and without waiving the above-stated objections-including
11 both those described in the prior three paragraphs and those outlined *supra* Part I
12 ¶¶ 1-12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

13 ***With respect to 6(A):***⁶¹

14 Defendants rest on their objections and do not provide an answer to this
15 Interrogatory.

16 ***With respect to 6(B):***⁶²

17 Defendants rest on their objections and do not provide an answer to this
18 Interrogatory.

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22 ⁶¹ Interrogatory 6(A) asks: “Identify and describe any protocols procedures,
23 practices, guidelines or policies considered, but not adopted, by the State
24 Department... regarding the application of Section 301(g)... , including any
25 protocols, procedures, practices, guidelines or policies proposed or approved by
26 DHS, but ultimately not adopted by the State Department.”

27 ⁶² Interrogatory 6(B) asks: “Identify and describe any protocols procedures,
28 practices, guidelines or policies considered, but not adopted, by the State
Department... regarding the application of... Section 309, including any protocols,
procedures, practices, guidelines or policies proposed or approved by DHS, but
ultimately not adopted by the State Department.”

Plaintiffs' Contentions as to Why Interrogatory No. 6 Is Not Compound:

Defendants erroneously contend that this interrogatory includes at least two subparts—one about Section 301(g) and the other about Section 309. Both of these “subparts” relate to a “common theme”—specifically, the policies considered (but not adopted) by the State Department related to the portion of the INA pertaining to nationality at birth (which includes Section 301(g) and Section 309). Therefore, they should be treated as a single interrogatory.

Defendants' Contentions as to Why Interrogatory No. 6 Is Compound:

Interrogatory No. 6 is compound and includes at least two discrete subparts, each of which “can stand alone and is independent of the first question,” *see Kim Laube & Co.*, 2012 WL 12877945, at *4. Those discrete subparts include: (A) “Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department... regarding the application of Section 301(g)”; and (B) “Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department... regarding the application of... Section 309.” Defendants reasonably interpreted this Interrogatory as two separate interrogatories (6A–6B). For further explanation of Defendants’ position, Defendants respectfully refer the Court to Defendants’ Statement at the beginning of Section V(E) of this Joint Stipulation, *supra* at 102.

Plaintiffs' Contentions as to Why Defendants' Response to Interrogatory No. 6 Is Insufficient:

Defendants rest on their objections and did not provide a substantive answer to this Interrogatory, but those objections are unsound. Defendants object to the Interrogatory on the grounds that the information sought is pre-decisional and deliberative and/or attorney-client privileged. As explained above, Defendants have failed to satisfy the legal prerequisites for the assertion of the deliberative process protection and therefore have failed to establish any basis for reliance on

1 that privilege. Similarly, Plaintiffs have not identified what information (if any) is
2 being withheld on the grounds of any privilege. Without this information,
3 Plaintiffs cannot assess Defendants' claims of privilege.⁶³ The Court should
4 compel Defendants to state whether they are withholding information on the basis
5 of any privilege or protection and comply with the requirements for asserting that
6 privilege or protection, including the provision of an appropriate privilege log
7 pursuant to Federal Rule of Civil Procedure 16(a)(5).

8 Defendants also object to the Interrogatory on the ostensible basis that it is
9 unreasonable to expect Defendants to provide information regarding DHS. To the
10 contrary, it is reasonable to expect the State Department and the Secretary of State
11 to be aware of protocols, procedures, practices, guidelines or policies proposed or
12 approved by DHS that were considered, but not adopted, *by the State*
13 *Department*—and to provide any such information in Defendants' possession,
14 custody or control. Defendants should be compelled to provide this information to
15 the extent it is not privileged and Defendants satisfy the requirements for asserting
16 privilege.⁶⁴

17 **Defendants' Statement Regarding the Sufficiency of Defendants'**
18 **Response to Interrogatory No. 6:**

19 Defendants provided a complete, substantive response to Plaintiffs'
20 Interrogatory No. 1. Plaintiffs' contention otherwise appears to be based on a
21 misreading of Defendants' construction of, and response to, the interrogatory.

22 ⁶³ Plaintiffs do not know what responsive documents exist, because Defendants
23 will not tell them. It is entirely plausible, however, that certain of the documents or
24 information responsive to the request might not be privileged, such as a
25 memorandum from DHS to the State Department notifying it that DHS had
decided to apply Sections 301(g) and 309 to children without a biological
connection to their U.S. citizen parent.

26 ⁶⁴ Although it is not the subject of this filing, Plaintiffs have sought third party
27 discovery from DHS to obtain the same materials. DHS, represented by the same
28 counsel as the State Department in this Action, has objected to producing these
same materials.

INTERROGATORY NO. 7

Plaintiffs' Interrogatory:

Identify and describe any differences known to You between or among the interpretations or applications of Section 301(g) and Section 309 by (i) the State Department, (ii) the DHS, and (iii) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, or other units of CIS, to Persons who claim to have acquired United States citizenship under those statutory provisions.

Defendants' Verbatim Response to Interrogatory No. 7:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least seven (and likely more) discrete subparts: (A) "Identify and describe any differences ... between... the interpretations or applications of Section 301(g) and Section 309 by... the State Department ... "; (B) Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... the DHS"; (C) Identify and describe any differences... between...the interpretations or applications of Section 301(g) and Section 309 by... the Fraud Detection and National Security Directorate"; (D) "Identify and describe any differences ... between... the interpretations or applications of Section 301(g) and Section 309 by... the Refugee, Asylum and International Operations Directorate"; (E) "Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... other units of [US]CIS"; (F) "Identify and describe any differences... between... the interpretations or applications of Section 301(g)... by the State Department... [and by] the DHS... "; and (G) "Identify and describe any differences ... between... the interpretations or applications of Section 309... by the State Department ... [and

1 by] the DHS....” Accordingly, Defendants interpret this Interrogatory as seven
2 separate Interrogatories (7A-7G).

3 Defendants object to these (at least) seven discrete Interrogatories as seeking
4 to know issues of “pure law,” *i.e.*, legal issues unrelated to the facts of the case.
5 *See* Fed. R. Civ. P. 33 advisory committee’s note to 1970 amendment; *see also*
6 8B The Late Charles Alan Wright et al., Federal Practice and Procedure § 2167
7 (3d ed.). These are not “contention” interrogatories because they do not ask for
8 a “contention that relates to... the application of law to fact.” *Cf.* Fed. R. Civ. P.
9 33 (a)(2). Rather, these interrogatories ask for Defendants’ interpretation of the law
10 divorced from any factual context, and in doing so seek Defendants’ legal theories.
11 Defendants object on the additional basis that such information is protected from
12 disclosure by the work product doctrine. To the extent that these interrogatories
13 could be considered “contention interrogatories,” however, Defendants expressly
14 reserve the right to provide additional responses later in the discovery period, or at
15 the close of discovery, as relevant facts of the case may be further developed or
16 disclosed by Plaintiffs through discovery.

17 Defendants further object to these Interrogatories to the extent that they seek
18 (a) communications or information protected by the attorney-client privilege or (b)
19 communications or information protected by the deliberative process privilege.
20 Additionally, Defendants object to these Interrogatories as unreasonably vague,
21 overly broad, and unduly burdensome, not relevant to any party’s claim or
22 defense, and disproportionate to the needs of the case to the extent that they
23 seek to know information regarding or relating to a different Executive
24 department, the Department of Homeland Security (“DHS”), or any components
25 thereof. The actions taken by Defendants and challenged in this litigation are
26 separate from and do not depend on any actions or policies of DHS, and as such
27 the DHS-related information sought by this Interrogatory is not relevant to the
28 claims and defenses in this litigation. Both the Fraud Detection and National

1 Security Directorate, and the Refugee, Asylum and International Operations
2 Directorate, are sub-components of USCIS, which itself is a component of DHS,
3 not the Department of State. Defendants cannot reasonably be expected to know
4 each and every way in which DHS and its components differ from Defendants, to
5 the extent they differ at all, with regard to interpretation and application of 8
6 U.S.C. § 1401(g) or with regard to interpretation and application of 8 U.S.C. §
7 1409. Defendants cannot reasonably be expected to know all ways that DHS and
8 its components interpret or apply 8 U.S.C. §§ 1401(g) and 1409; moreover, DHS
9 and its components adjudicate applications for Certificates of Citizenship and not
10 for CRBAs or U.S. passports. With respect to Interrogatory 7(A), Defendants
11 cannot be expected to know the extent to which DHS and its components differ
12 with one another in their interpretations and applications of these statutes.

13 ***Answer:***

14 Subject to and without waiving the above-stated objections-including
15 both those described in the prior four paragraphs and those outlined *supra* Part
16 I ¶¶ 1- 12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

17 ***With respect to 7(A).***⁶⁵

18 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains its own statutory
19 language differing from the other statutory provision. 8 U.S.C. § 1401 is headed
20 “Nationals and Citizens of the United States at Birth” while 8 U.S.C. § 1409,
21 per its heading, governs expressly situations of “Children Born Out of Wedlock.”
22 Additional differences between the statutory provisions and the Department’s
23 interpretation and application thereof are identified and described *supra* in the
24 Responses to Interrogatories 4(A) and 4(B).

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26 ⁶⁵ Interrogatory 7(A) asks: “Identify and describe any differences ... between... the
27 interpretations or applications of Section 301(g) and Section 309 by... the State
28 Department... to Persons who claim to have acquired United States citizenship
under those statutory provisions.”

With respect to 7(B):⁶⁶

Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains its own statutory language differing from the other statutory provision, Defendants lack knowledge or information sufficient to identify how DHS may interpret or apply 8 U.S.C. § 1401(g) differently from how it interprets or applies 8 U.S.C. § 1409.

With respect to 7(C):⁶⁷

Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains its own statutory language differing from the other statutory provision, Defendants lack knowledge or information sufficient to identify how DHS's Fraud Detection and National Security Directorate may interpret or apply 8 U.S.C. § 1401(g) differently from how it interprets or applies 8 U.S.C. § 1409.

With respect to 7(D):⁶⁸

Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains its own statutory language differing from the other statutory provision, Defendants lack knowledge or information sufficient to identify how DHS's Refugee, Asylum, and International Operations Directorate may

⁶⁶ Interrogatory 7(B) asks: "Identify and describe any differences ... between... the interpretations or applications of Section 301(g) and Section 309 by... the DHS... to Persons who claim to have acquired United States citizenship under those statutory provisions."

⁶⁷ Interrogatory 7(C) asks: "Identify and describe any differences... between... the interpretations or applications of Section 301(g) and section 309 by... the Fraud Detection and National Security Directorate... to Persons who claim to have acquired United States citizenship under those statutory provisions."

⁶⁸ Interrogatory 7(D) asks: "Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... the Refugee, Asylum and International Operations Directorate... to Persons who claim to have acquired United States citizenship under those statutory provisions."

1 interpret or apply 8 U.S.C. § 1401(g) differently from how it interprets or
2 applies 8 U.S.C. § 1409.

3 ***With respect to 7(E):***⁶⁹

4 Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains
5 its own statutory language differing from the other statutory provision, Defendants
6 lack knowledge or information sufficient to identify how any other units of USCIS
7 (other than the Fraud Detection and National Security Directorate and the
8 Refugee, Asylum, and International Operations Directorate) may interpret or apply
9 8 U.S.C. § 1401(g) differently from how they interpret or apply 8 U.S.C. §
10 1409.

11 ***With respect to 7(F):***⁷⁰

12 Defendants are aware of certain differences in responsibilities of the
13 Department and DHS. For example, the Department is responsible for adjudicating
14 applications for CRBAs and U.S. passports, whereas DHS is responsible for
15 adjudicating applications for certificates of citizenship. Additionally, DHS
16 primarily conducts its certificate of citizenship adjudications domestically, whereas
17 the Department adjudicates CRBA applications made abroad, and adjudicates U.S.
18 passport applications both domestically and internationally.

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23 ⁶⁹ Interrogatory 7(E) asks: “Identify and describe any differences ... between... the
24 interpretations or applications of Section 301(g) and Section 309 by... other units
25 of [US]CIS... to Persons who claim to have acquired United States citizenship
under those statutory provisions.”

26 ⁷⁰ Interrogatory 7(F) asks: “Identify and describe any differences... between... the
27 interpretations or applications of Section 301(g)... by the State Department... [and
28 by] the DHS... to Persons who claim to have acquired United States
citizenship under... [that] statutory provision[.]”

***With respect to 7(G):*⁷¹**

Defendants are aware of certain differences in responsibilities of the Department and DHS. For example, the Department is responsible for adjudicating applications for CRBAs and U.S. passports, whereas DHS is responsible for adjudicating applications for certificates of citizenship. Additionally, DHS primarily conducts adjudications domestically, whereas the Department adjudicates CRBA applications made abroad, and adjudicates U.S. passport applications both domestically and internationally.

Plaintiffs' Contentions as to Why Interrogatory No. 7 Is Not Compound:

Defendants assert that this interrogatory “includes at least seven (and likely more) discrete subparts.” This flawed position appears to hinge on the fact that Plaintiffs have specified components of DHS in the text of the Interrogatory as opposed to relying on the Interrogatories’ definition of DHS (which includes those components). For example, and as Interrogatory No. 7 states, the Fraud Detection and National Security Directorate and the Asylum and International Operations Directorate are units within DHS. Moreover, all of the “subparts” Defendants have identified relate to a “common theme”—the differences in interpretations of Section 301(g) and Section 309 between the State Department and DHS. As such, Interrogatory No. 7 should count as a single interrogatory.

Defendants' Contentions as to Why Interrogatory No. 7 Is Compound:

Interrogatory No. 7 is compound and includes at least seven (and likely more) discrete subparts, each of which “can stand alone and is independent of the first question,” see *Kim Laube & Co.*, 2012 WL 12877945, at *4. Those discrete subparts include: (A) “Identify and describe any differences... between... the

⁷¹ Interrogatory 7(G) asks: “Identify and describe any differences ... between... the interpretations or applications of Section 309... by the State Department ... [and by] the DHS....., to Persons who claim to have acquired United States citizenship under... [that] statutory provision[.]”

1 interpretations or applications of Section 301(g) and Section 309 by... the State
2 Department...”; (B) Identify and describe any differences... between... the
3 interpretations or applications of Section 301(g) and Section 309 by... the DHS”;
4 (C) Identify and describe any differences... between... the interpretations or
5 applications of Section 301(g) and Section 309 by... the Fraud Detection and
6 National Security Directorate”; (D) “Identify and describe any differences...
7 between... the interpretations or applications of Section 301(g) and Section 309
8 by... the Refugee, Asylum and International Operations Directorate”; (E) “Identify
9 and describe any differences... between... the interpretations or applications of
10 Section 301(g) and Section 309 by... other units of [US]CIS”; (F) “Identify and
11 describe any differences... between... the interpretations or applications of Section
12 301(g)... by the State Department... [and by] the DHS...”; and (G) “Identify and
13 describe any differences... between... the interpretations or applications of Section
14 309... by the State Department... [and by] the DHS....” Defendants reasonably
15 interpreted this Interrogatory as seven separate Interrogatories (7A–7G). For
16 further explanation of Defendants’ position, Defendants respectfully refer the
17 Court to Defendants’ Statement at the beginning of Section V(E) of this Joint
18 Stipulation, *supra* at 102.

19 **Plaintiffs’ Contentions as to Why Defendants’ Response to**
20 **Interrogatory No. 7 Is Insufficient:**

21 Defendants appear to have misunderstood this Interrogatory. In Defendants’
22 response to “subparts” A through E, they discuss differences between
23 interpretations/applications of Sections 301 as opposed to Section 309 *within*
24 various agencies. Plaintiffs did not seek this information; instead, Plaintiffs sought
25 to understand how other agencies that deal with Sections 301 and 309 may
26 interpret and apply those sections differently from the State Department.
27 (Plaintiffs explained this to Defendants in their October 28, 2018 letter, Decl. Ex.
28 13, to which Defendants have not responded.) Defendants describe “subparts” F

1 and G as identifying any differences between the interpretations or applications of
2 Sections 301 and 309 by the State Department and DHS, but they do not provide
3 any information about such differences, and instead merely note that DHS and the
4 State Department have different responsibilities. Plaintiffs requested that
5 Defendants supplement this response in an October 28, 2018 meet-and-confer
6 letter, but Defendants never responded. (Decl. Ex. 13.)

7 **Defendants' Statement Regarding the Sufficiency of Defendants'**
8 **Response to Interrogatory No. 7:**

9 Defendants provided a complete, substantive response to Plaintiffs'
10 Interrogatory No. 7. Plaintiffs' contention otherwise appears to be based on a
11 misreading of Defendants' construction of, and response to, the interrogatory.

12 ***

13 **INTERROGATORY NO. 8**

14 **Plaintiffs' Interrogatory:**

15 Identify and describe the requirements established, imposed or applied by
16 the State Department in order to consider or determine an individual to be a
17 "parent" within the meaning of the INA, including any requirement for a biological
18 relationship.

19 **Defendants' Verbatim Response to Interrogatory No. 8:**

20 **Objections:**

21 Defendants object to this Interrogatory to the extent it seeks to know issues
22 of "pure law," i.e., legal issues unrelated to the facts of the case. *See* Fed. R. Civ.
23 P. 33 advisory committee's note to 1970 amendment; *see also* 8B The Late Charles
24 Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.). By asking
25 Defendants to broadly identify the criteria by which the Department of State
26 determines whether a legal term of art is applicable in any given case, this
27 Interrogatory asks for Defendants' interpretation of the law divorced from any
28 factual context, and in doing so seek Defendants' legal theories. Defendants object

1 on the additional basis that such information is protected from disclosure by the
2 work product doctrine. To the extent that this Interrogatory could be considered a
3 “contention interrogatory,” however, Defendants expressly reserve the right to
4 provide additionally responses later in the discovery period, or at the close of
5 discovery, as relevant facts of the case may be further developed or disclosed by
6 Plaintiffs through discovery.

7 **Answer:**

8 Subject to and without waiving the above-stated objections-including both
9 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1 - 12(b)
10 and Part II ¶¶ 13-21-Defendants respond as follows:

11 The Immigration and Nationality Act contains multiple definitions of the
12 term “parent” for different sections/purposes of the Act.

13 For purposes of Title I and Title II of the Act, 8 U.S.C. § 1101(b)(1) defines
14 the term “child.” Additionally, for purposes of Title I and Title II of the Act, 8
15 U.S.C. § 1101(b)(2) defines the terms “parent,” “father,” and “mother,” as
16 follows: “‘parent’, ‘father’, or ‘mother’ mean a parent, father, or mother only
17 where the relationship exists by reason of any of the circumstances set forth in [8
18 U.S.C. § 1101(b)](1)... , except that, for purposes of... [§ 1101(b)](1)(F) (other
19 than the second proviso therein) and... [§ 1101(b)](1)(G)(i) in the case of a
20 child born out of wedlock described in... [§ 1101(b)](1)(D) (and not described
21 in...[§ 1101(b)](1)(C)), the term ‘parent’ does not include the natural father or
22 the child if the father has disappeared or abandoned or deserted the child or if the
23 father has in writing irrevocably released the child for emigration and adoption.”

24 For purposes of Title III of the Act, including for purposes of acquisition
25 of citizenship at birth, 8 U.S.C. § 1101(c)(1) defines the term “child.” For
26 purposes of Title III of the Act, 8 U.S.C. § 1101(c)(2) provides that “[t]he terms
27 ‘parent’, ‘father’, and ‘mother’ include in the case of a posthumous child a
28 deceased parent, father, and mother.”

1 8 FAM 101.3-1 provides: “Parent, father, and mother: These include in the
2 case of a posthumous child a deceased parent, father, and mother.” Additionally, 8
3 FAM 301.4-1(D)(1)(a) provides: “It is not enough that the child is presumed to be
4 the issue of the parents’ marriage by the laws of the jurisdiction where the child
5 was born. Absent a blood relationship between the child and the parent on whose
6 citizenship the child’s own claim is based, U.S. citizenship is not acquired.”
7 Circumstances in which such a doubt may arise include where “[t]he child was
8 born through surrogacy or other forms of assisted reproductive technology.” See 8
9 FAM 301.4-1(D)(1)(d); *see also* 8 FAM 304.3-2 (“A child born abroad to a
10 surrogate, whose genetic parents are a U.S. citizen mother and anonymous sperm
11 donor, is considered for citizenship purposes to be a person born *out of wedlock* to
12 a U.S. citizen mother... regardless of whether the woman is married and regardless
13 of whether her spouse is the legal parent of the child at the time of birth.”)
14 (emphasis added).

15 The FAM interprets 8 U.S.C. § 1409 to apply to children whose
16 *biological* parents are not married to each other. 8 FAM 102.01. A child may
17 acquire U.S. citizenship at birth from his legal mother, pursuant to section 1409, if
18 the child has a biological relationship with her. See 8 U.S.C. § 1409(c). The FAM
19 recognizes a “biological relationship” between a child and another may include
20 either a genetic parental relationship or a legal, gestational relationship. 8 FAM
21 301.4-1(D)(1)(c), and requires a preponderance of the evidence to establish proof
22 of a biological relationship between child and U.S. citizen mother, 8 FAM
23 301.4-1(D)(1)(b)(2).

24 In addition to the biological relationship requirements contained elsewhere
25 in the FAM, 8 FAM 101.1-2 requires “evidence of the legal relationship between
26 the U.S. citizen parent and the child.”
27
28

**Plaintiffs' Contentions as to Why Defendants' Response to
Interrogatory No. 8 Is Insufficient:**

This Interrogatory requests that Defendants “Identify and describe the requirements . . . applied by the State Department in order to consider or determine an individual to be a ‘parent’ within the meaning of the INA.” Instead of clearly explaining how the State Department determines parentage, Defendants directed Plaintiffs to a tangled statutory web.⁷² The Court should direct Defendants to explain in the manner requested by the Interrogatories how the State Department determines individuals to be “parents.” Refusing to respond in plain English should not be a viable method for Defendants to avoid participating in discovery concerning information relevant to this Action. *See U.S. ex rel. O’Connell v. Chapman Univ.*, 245 F.R.D. 646, 650 (C.D. Cal. 2007) (“It is well established that an answer to an interrogatory ‘must be responsive to the question. It should be complete in itself and should not refer to the pleadings, or to depositions or other documents, or to other interrogatories, at least where such references make it impossible to determine whether an adequate answer has been given without an elaborate comparison of answers.’”) (quoting *Scaife v. Boenne*, 191 F.R.D. 590, 594 (N.D. Ind. 2000)); *12W RPO, LLC v. Victaulic Co.*, 2017 WL 7312757, at *2 (D. Or. Feb. 28, 2017) (granting motion to compel a further response to interrogatory where initial response was “incomprehensible”).

⁷² See Defendants’ Verbatim Discovery Response to Interrogatory No. 8 (“For purposes of Title I and Title II of the Act, 8 U.S.C. § 1101 (b)(1) defines the term “child.” Additionally, for purposes of Title I and Title II of the Act, 8 U.S.C. § 1101(b)(2) defines the terms “parent,” “father,” and “mother,” as follows: “‘parent’, ‘father’, or ‘mother’ mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in [8 U.S.C. § 1101(b)](1) ... , except that, for purposes of ... [§ 1101(b)](1)(F) (other than the second proviso therein) and ... [§ 1101(b)](1)(G)(i) in the case of a child born out of wedlock described in... [§ 1101(b)](1)(D) (and not described in ...[§ 1101(b)](1)(C)), the term ‘parent’ does not include the natural father or the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.”).

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 8:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 8. Plaintiffs' contention otherwise appears to be based on unsubstantiated assumptions and/or a misreading of Defendants' construction of, and response to, the interrogatory. Defendants respectfully refer the Court to Defs.' Verbatim Response, *supra* at 142. ***

INTERROGATORY NO. 9

Plaintiffs' Interrogatory:

Identify and describe any circumstances in which the State Department would consider a child of same-sex spouses to be born in wedlock for the purposes of applying Sections 301(g) and/or 309.

Defendants' Verbatim Response to Interrogatory No. 9:

Objections:

Defendants object to this Interrogatory as seeking to know issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33 advisory committee's note to 1970 amendment; *see also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.). This is not a "contention" interrogatory because it asks Defendants to identify and describe "any circumstances," and thus does not ask for a "contention that relates to... the application of law to fact." *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather, this Interrogatory asks for Defendants' interpretation of the law divorced from any factual context, and in doing so seeks Defendants' legal theories. Defendants object on the additional basis that such information is protected from disclosure by the work product doctrine. To the extent that this Interrogatory could be considered a "contention interrogatory," however, Defendants expressly reserve the right to provide additionally responses later in the discovery period, or at the close of discovery, as relevant facts of the case may be further developed or disclosed by Plaintiffs through discovery.

Answer:

Subject to and without waiving the above-stated objections-including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1-12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

In response to Interrogatory Nos. 4(A), 4(B), and 5, Defendants described the circumstances in which the Department would consider a child to be born “in wedlock” for purposes of applying 8 U.S.C. § 1401(g) and/or § 1409. Those answers apply to all children regardless of whether their legal parents are in a same-sex marriage or opposite sex marriage.

Additionally, the FAM describes the circumstances under which children born abroad to a married same-sex female couple are considered to be “born in wedlock” for purposes of the Department’s consideration under INA § 301 (8 U.S.C. § 1401). Where one woman is a U.S. citizen and the other woman is an alien, the child can acquire U.S. citizenship at birth if the U.S.-citizen spouse is either “the genetic mother (the woman whose egg was used in conception) or the gestational mother (the woman who carried and delivered the baby),” so long as the law of the country where she resides also recognizes her as a legal parent and the other spouse also has a biological relationship to the child. 8 FAM 301.4-1(D)(1)(c). Where both women are U.S. citizens, and one is the legal, gestational mother and the other is the genetic mother of the child, the Department of State adjudicates the child’s citizenship claim under INA 301(c). 8 FAM 304.3-1(b).

Plaintiffs’ Contentions as to Why Defendants’ Response to Interrogatory No. 9 Is Insufficient:

Plaintiffs requested in their October 28, 2018 meet-and-confer letter that Defendants clarify whether the scenario described in their response (in which one woman is a U.S. citizen and the other is an alien)⁷³ would be adjudicated by the

⁷³ The scenario is as follows: “Where one woman is a U.S. citizen and the other woman is an alien, the child can acquire U.S. citizenship at birth if the U.S.-citizen spouse is either ‘the genetic mother (the woman whose egg was used in

1 State Department under Section 309 of the INA, as it is unclear from the response.
2 (Decl. Ex. 13.) Defendants have failed to respond. As a result, Plaintiffs ask that
3 the court compel a response to this Interrogatory identifying whether there are “any
4 circumstances in which the State Department would consider a child of same-sex
5 parents to be born in wedlock for purposes of applying Sections 301(g) and/or
6 309” and if so, to “describe” them in plain English. *See Victaulic*, 2017 WL
7 7312757, at *2.

8 **Defendants’ Statement Regarding the Sufficiency of Defendants’**
9 **Response to Interrogatory No. 9:**

10 Defendants provided a complete, substantive response to Plaintiffs’
11 Interrogatory No. 9. Plaintiffs’ contention otherwise appears to be based on
12 unsubstantiated assumptions. Defendants respectfully refer the Court to Defs.’
13 Verbatim Response, *supra* at 145.

14 ***

15 **INTERROGATORY NO. 10**

16 **Plaintiffs’ Interrogatory:**

17 Identify and describe the State Department’s interpretation or application of
18 the terms “born . . . of parents,” “wedlock,” “in wedlock” and “out of wedlock,” or
19 any other term Defendants believe has the same or a similar meaning as those
20 terms, for the purposes of the INA, including any legal and policy support or basis
21 considered, used, or relied upon in deciding upon such definitions; and Identify
22 and describe any change in any such interpretation or application by the State
23 Department since January 1, 2013.

24
25
26 conception) or the gestational mother (the woman who carried and delivered the
27 baby),” so long as the law of the country where she resides also recognizes her as a
28 legal parent and the other spouse also has a biological relationship to the child. 8
FAM 301.4-1(D)(1)(c).”

Defendants' Verbatim Response to Interrogatory No. 10:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least six discrete subparts: (A) "Identify and describe the State Department's interpretation or application of the term[] 'born ... of parents'"; (B) "Identify and describe the State Department's interpretation or application of the term[] 'wedlock'"; (C) "Identify and describe the State Department's interpretation or application of the term[] 'in wedlock'"; (D) "Identify and describe the State Department's interpretation or application of the term[] 'out of wedlock'"; (E) and "Identify and describe any change in any such interpretation or application [of the term 'born... of parents'] by the State Department since January 1, 2013." and (F) and "Identify and describe any change in any such interpretation or application [of the term 'wedlock'] by the State Department since January 1, 2013." Accordingly, Defendants interpret this Interrogatory as six separate and distinct interrogatories (10A-10F).

Defendants object to these six discrete Interrogatories as seeking to know issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33 advisory committee's note to 1970 amendment; *see also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.). These are not "contention" interrogatories because they do not ask for a "contention that relates to... the application of law to fact." *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather, these interrogatories ask for Defendants' interpretation of the law divorced from any factual context, and in doing so seek Defendants' legal theories. Defendants object on the additional basis that such information is protected from disclosure by the work product doctrine. To the extent that these interrogatories could be considered "contention interrogatories," however, Defendants expressly reserve the right to provide additionally responses later in

1 the discovery period, or at the close of discovery, as relevant facts of the case may
2 be further developed or disclosed by Plaintiffs through discovery.

3 Defendants further object to these Interrogatories inasmuch as they seek to
4 isolate individual statutory terms from each other and from the overall statutory
5 scheme which the Department interprets and applies in individual adjudications.

6 Defendants further object to these Interrogatories as overly broad, not
7 relevant to the claims or defenses in this case, and disproportionate to the needs of
8 this case because the Interrogatories seek information outside of a reasonable time
9 period relating to the claims and defenses in this case. Any iterations of the
10 Department's legal interpretations of the referenced terms existing prior to January
11 24, 2017-the starting date of the underlying adjudication-are not relevant to the
12 claims and defenses in this case because the Department applied contemporaneous
13 law and legal interpretations to the underlying adjudication. Similarly, any changes
14 to the Department's interpretation or application of the cited legal terms that took
15 place prior to the underlying adjudication are not relevant to the claims and
16 defenses; the adjudication was based on the Department's interpretation of that law
17 as of the time period of the adjudication, January 24, 2017, to March 2, 2017.

18 Defendants will restrict their responses to these Interrogatories to the same time
19 period Defendants have generally been using in responding to the Interrogatories,
20 January 1, 2015, to June 2, 2017. That time period is broader by more than two
21 years than the time period of the underlying adjudication, and likely includes
22 information not relevant to the claims and defenses, but it is a reasonable time
23 period for discovery purposes as compared with the time period beginning
24 January 1, 2013 as set forth in the Interrogatory.

25 Defendants further object to these Interrogatories to the extent that they
26 seek (a) communications or information protected by the attorney-client
27 privilege, or (b) communications or information protected by the deliberative
28 process privilege

Answer:

Subject to and without waiving the above-stated objections- including both those described in the prior five paragraphs and those outlined *supra* Part I ¶¶ 1-12(b) and Part II ¶¶ 13-21-Defendants respond as follows:

With respect to 10(A):⁷⁴

As reflected in the FAM, the Department interprets the phrase “born... of parents” in 8 U.S.C. § 1401 to include a biological connection between the child and the referenced parents. Thus, the Department reads 8 U.S.C. § 1401(g) as applying to children whose biological parents are married to each other at the time of the child’s birth. *See* 8 FAM 301.7-4(D) (interpreting section 1401(g) to apply to children born in wedlock to a U.S. citizen parent and an alien parent).

With respect to 10(B):⁷⁵

The Department does not interpret or apply the term “wedlock” independent of the meanings “in wedlock” or “out of wedlock.”

With respect to 10(C):⁷⁶

The FAM defines “in wedlock” as “birth during the marriage of the biological parents to each other.” 8 FAM 304.1-2(a).

⁷⁴ Interrogatory 10(A) asks: “Identify and describe the State Department’s interpretation or application of the term[] ‘born ... of parents.,’ ... for the purposes of the INA, including any legal and policy support or basis considered, used, or relied upon in deciding upon such definitions.”

⁷⁵ Interrogatory 10(B) asks: “Identify and describe the State Department’s interpretation or application of the term[] ‘wedlock,’ ... for the purposes of the INA, including any legal and policy support or basis considered, used, or relied upon in deciding upon such definitions.”

⁷⁶ Interrogatory 10(C) asks: “Identify and describe the State Department’s interpretation or application of the term[] ‘in wedlock,’ ... for the purposes of the INA, including any legal and policy support or basis considered, used, or relied upon in deciding upon such definitions.”

With respect to 10(D):⁷⁷

The FAM provides that: “If a married woman and someone other than her spouse have a biological child together, that child is considered to have been born out of wedlock. The same is true for a child born to a married man and a person other than his spouse.” 8 FAM 304.1-2(e).

With respect to 10(E):⁷⁸

There has been no change to the Department’s interpretation or application of “born... of parents” since January 1, 2015. The citation/location within the FAM where relevant FAM provisions may exist has changed, pursuant to reorganization and renumbering as of July 16, 2018.

With respect to 10(F):⁷⁹

There has been no change to the Department’s interpretation or application of “wedlock,” “in wedlock,” or “out of wedlock” since January 1, 2015. The citation/location within the FAM where such interpretations may exist has changed, pursuant to reorganization and renumbering as of July 16, 2018.

Plaintiffs’ Contentions as to Why Interrogatory No. 10 is Not Compound:

Defendants object to this interrogatory on the basis that it is compound, consisting of six subparts. Defendants’ parsing of the interrogatory is unreasonable. The interrogatory requests that Defendants identify and describe the State Department’s interpretation of variations of the term “wedlock,” including

⁷⁷ Interrogatory 10(D) asks: “Identify and describe the State Department’s interpretation or application of the term[] ‘out of wedlock.,’ ... for the purposes of the INA, including any legal and policy support or basis considered, used, or relied upon in deciding upon such definitions.”

⁷⁸ Interrogatory 10(E) asks: “Identify and describe any change in any such interpretation or application [of the term ‘born... of parents’] by the State Department since January 1, 2013.”

⁷⁹ Interrogatory 10(F) asks: “Identify and describe any change in any such interpretation or application [of the term ‘wedlock’] by the State Department since January 1, 2013.”

1 any legal and policy support for any such interpretation, and any changes to the
2 interpretations since January 2013. These “subparts” are all part of a “common
3 theme”: how the State Department interprets and applies terms in the INA dealing
4 with legitimacy. Defendants’ construction of the interrogatory as having subparts
5 dealing with each of the variations (“born...of parents,” “wedlock,” “in wedlock,”
6 and “out of wedlock”) is nonsensical, particularly since Defendants admit in their
7 response that they do “not interpret or apply the term ‘wedlock’ independent[ly] of
8 the meanings ‘in wedlock’ or ‘out of wedlock.’” Further, Defendants’ objection
9 that this interrogatory improperly “seek[s] to isolate individual statutory terms
10 from each other and from the overall statutory scheme” renders all the more
11 dubious Defendants’ construction and assertions about the supposed compound
12 nature of the interrogatory.

13 **Defendants’ Contentions as to Why Interrogatory No. 10 Is Compound:**

14 Interrogatory on the basis that it is compound and includes at least six
15 discrete subparts, each of which “can stand alone and is independent of the first
16 question,” see *Kim Laube & Co.*, 2012 WL 12877945, at *4. Those discrete
17 subparts include: (A) “Identify and describe the State Department’s interpretation
18 or application of the term[] ‘born . . . of parents’”; (B) “Identify and describe the
19 State Department’s interpretation or application of the term[] ‘wedlock’”; (C)
20 “Identify and describe the State Department’s interpretation or application of the
21 term[] ‘in wedlock’”; (D) “Identify and describe the State Department’s
22 interpretation or application of the term[] ‘out of wedlock’”; (E) and “Identify and
23 describe any change in any such interpretation or application [of the term ‘born...
24 of parents’] by the State Department since January 1, 2013.” and (F) and “Identify
25 and describe any change in any such interpretation or application [of the term
26 ‘wedlock’] by the State Department since January 1, 2013.” Defendants reasonably
27 interpreted this Interrogatory as six separate and distinct interrogatories (10A–
28 10F). For further explanation of Defendants’ position, Defendants respectfully

1 refer the Court to Defendants' Statement at the beginning of Section V(E) of this
2 Joint Stipulation, *supra* at 102.

3 **Plaintiffs' Contentions as to Why Defendants' Response to**
4 **Interrogatory No. 10 Is Insufficient:**

5 Defendants object to this Interrogatory on the grounds that it seeks
6 information outside of a reasonable time period, because the State Department
7 purportedly applied contemporaneous law to Ethan's applications. The
8 Interrogatory (which specified a time period of January 1, 2013 to present) does
9 not seek information outside of a reasonable time period, because whether the State
10 Department's interpretation of these terms has changed over time may bear on
11 whether the justifications for its current interpretation are legitimate. Notably, it
12 was in this very time period that the Supreme Court struck down the Defense of
13 Marriage Act and recognized a right to same-sex marriage. These developments
14 may well have shaped the State Department's analysis of whether the children of
15 same-sex couples necessarily would be considered born "out of wedlock" under
16 Sections 301(g) and 309. The Court should order Defendants to supplement this
17 response with information for the time period Plaintiffs identified.

18 **Defendants' Statement Regarding the Sufficiency of Defendants'**
19 **Response to Interrogatory No. 10:**

20 Defendants provided a complete, substantive response to Plaintiffs'
21 Interrogatory No. 10. Plaintiffs' contention otherwise appears to be based on
22 unsubstantiated assumptions. Defendants respectfully refer the Court to Defs.'
23 Verbatim Response, *supra* at 148.

24 ***

25 **INTERROGATORY NO. 11**

26 **Plaintiffs' Interrogatory:**

27 Identify and describe any protocol, procedure, practice or policy of the State
28 Department pursuant to which an applicant for, or subject of, a CRBA, United
States passport, or Certificate of Citizenship for one or more children born outside

1 the United States is required to demonstrate a biological relationship between the
2 child and a United States citizen parent.

3 **Defendants' Verbatim Response to Interrogatory No. 11:**

4 ***Objections:***

5 Defendants object to this Interrogatory on the basis that it is compound and
6 includes at least two discrete subparts: (A) "Identify and describe any protocol,
7 procedure, practice or policy of the State Department pursuant to which an
8 applicant for... a CRBA... [or] United States passport... is required to demonstrate
9 a biological relationship between the [subject] child and a United States citizen
10 parent"; and (B) "Identify and describe any protocol, procedure, practice or policy
11 of the State Department pursuant to which a[] ... subject of ... [a] Certificate of
12 Citizenship ... is required to demonstrate a biological relationship between the
13 [subject] child and a United States citizen parent." Accordingly, Defendants
14 interpret this interrogatory as two separate interrogatories (11A and 11B).

15 Defendants object to these Interrogatories to the extent that they seek (a)
16 communications or information protected by the attorney-client privilege, or (b)
17 communications or information protected by the deliberative process privilege.

18 Additionally, Defendants object to Interrogatory No. 11B as overly broad,
19 unduly burdensome, not relevant, and disproportionate to the needs of the case to
20 the extent that it seeks to know information regarding or relating to a different
21 Executive department, the Department of Homeland Security ("DHS"), or any
22 components thereof. The actions taken by Defendants and challenged in this
23 litigation are separate from and do not depend on any actions or policies of DHS,
24 and as such the DHS-related information sought by this Interrogatory is not
25 relevant to the claims and defenses in this litigation, and is disproportionate to the
26 needs of the case.

27 ***Answer:***

28 Subject to and without waiving the above-stated objections—including both

1 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
2 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

3 ***With respect to 11(A):*⁸⁰**

4 8 FAM 304.2 (former 7 FAM 1100 Appendix D) provides guidance about
5 citizenship adjudication for purposes of CRBA applications and U.S. passport
6 applications, and the use of DNA testing to establish the requisite relationship
7 between the U.S. citizen putative or alleged parent and a child claiming derivative
8 U.S. citizenship. *See also* Defendants’ Responses to Interrogatory Nos. 4(A) and
9 4(B).

10 ***With respect to 11(B):*⁸¹**

11 If an applicant for a U.S. passport provides a Certificate of Citizenship
12 issued by the Department of Homeland Security as documentation supporting
13 his/her application for a U.S. passport or a CRBA, the Department typically
14 accepts the Certificate of Citizenship as proof of U.S. citizenship and would not
15 ask for additional evidence to support the claim to citizenship. As set out in 8 FAM
16 303.1-1(a)(4), a valid certificate of citizenship bearing the seal of the issuing
17 agency/office is proof of citizenship and the bearer’s claim to citizenship cannot be
18 questioned unless the issuing authority has canceled or revoked the document.”

19 **Plaintiffs’ Contentions as to Why Defendants’ Response to**
20 **Interrogatory No. 11 Is Insufficient:**

21 Defendants have not responded to this interrogatory. Inasmuch as Plaintiffs
22 are challenging the State Department’s biological connection requirement, the

23 ⁸⁰ Interrogatory 11(A) asks: “Identify and describe any protocol, procedure,
24 practice or policy of the State Department pursuant to which an applicant for, or
25 subject of, a CRBA... [or] United States passport... is required to demonstrate a
biological relationship between the [subject] child and a United States citizen
parent.”

26 ⁸¹ Interrogatory 11(B) asks: “Identify and describe any protocol, procedure,
27 practice or policy of the State Department pursuant to which an applicant for, or
28 subject of, a... Certificate of Citizenship... is required to demonstrate a biological
relationship between the [subject] child and a United States citizen parent.”

1 subject of the interrogatory (State Department protocols, procedures, practices and
2 policies regarding when an applicant for a CRBA, U.S. passport, or Certificate of
3 Citizenship must show that s/he is the biological child of his/her U.S. citizen
4 parent) is clearly relevant to the Action. The Court should compel Defendants to
5 respond substantively, promptly and in full to this interrogatory. As noted above,
6 given that Defendants' response to this interrogatory will be very untimely, any
7 objections Defendants may have to it (as well as Interrogatory Nos. 12-20) have
8 been waived. See Fed. R. Civ. P. 33(b)(5); *IKOR*, 2013 WL 3967750, at *2-4;
9 *Rawstrom*, 183 F.R.D. at 671.

10 **Defendants' Statement Regarding the Sufficiency of Defendants'**
11 **Response to Interrogatory No. 11:**

12 Defendants provided a complete, substantive response to Plaintiffs'
13 Interrogatory No. 11.

14 ***

15 **INTERROGATORY NO. 12**

16 **Plaintiffs' Interrogatory:**

17 Identify and describe any protocol, procedure, practice or policy of the State
18 Department pursuant to which an adult child of a married couple (of which one
19 spouse is a United States citizen) who was born outside of the United States and
20 applied for a CRBA, United States passport, or Certificate of Citizenship on his or
21 her own behalf is required to demonstrate a biological connection between the
22 applicant and a United States citizen parent.

23 **Defendants' Verbatim Response to Interrogatory No. 12:**

24 **Objections:**

25 Defendants object to this Interrogatory on the basis that it is compound and
26 includes at least two discrete subparts: (A) "Identify and describe any protocol,
27 procedure, practice or policy of the State Department pursuant to which an adult
28 child of a married couple (of which one spouse is a United States citizen) who was

1 born outside of the United States and applied for a CRBA... [or] United States
2 passport ... on his or her own behalf is required to demonstrate a biological
3 relationship between the applicant and a United States citizen parent”; and (B)
4 “Identify and describe any protocol, procedure, practice or policy of the State
5 Department pursuant to which an adult child of a married couple (of which one
6 spouse is a United States citizen) who was born outside of the United States and
7 applied for a ... Certificate of Citizenship on his or her own behalf is required to
8 demonstrate a biological relationship between the applicant and a United States
9 citizen parent.” Accordingly, Defendants interpret this interrogatory as two
10 separate interrogatories (12A and 12B).

11 Defendants object to these Interrogatories to the extent that they seek
12 information protected by (a) the attorney-client privilege, (b) the deliberative
13 process privilege, and (c) the law enforcement privilege.

14 Additionally, Defendants object to Interrogatory No. 12B, as overly broad,
15 unduly burdensome, not relevant, and disproportionate to the needs of the case to
16 the extent that it seeks to know information regarding or relating to a different
17 Executive department, the Department of Homeland Security (“DHS”), or any
18 components thereof. The actions taken by Defendants and challenged in this
19 litigation are separate from and do not depend on any actions or policies of DHS,
20 and as such the DHS-related information sought by this Interrogatory is not
21 relevant to the claims and defenses in this litigation, and is disproportionate to the
22 needs of the case. Defendants note that DHS, not the Department, adjudicates and
23 issues Certificates of Citizenship.

24 ***Answer:***

25 Subject to and without waiving the above-stated objections—including both
26 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
27 and Part II ¶¶ 13–21—Defendants respond as follows:
28

With respect to 12(A):⁸²

A Consular Report of Birth Abroad of a U.S. citizen is only issued to a child who acquired U.S. citizenship at birth and who is generally under the age of 18 at the time of the application. More information regarding the issuance of a CRBA or a U.S. passport can be found at <https://travel.state.gov/content/travel/en/international-travel/while-abroad/birth-abroad.html>.

8 FAM 304.2 (former 7 FAM 1100 Appendix D) provides guidance to adjudicators at passport agencies and centers and U.S. embassies and consulates abroad about citizenship adjudication and the use of DNA testing to establish the requisite relationship between the U.S. citizen putative or alleged parent and a child claiming derivative U.S. citizenship. *See also* Defendants' Responses to Interrogatory Nos. 4(A) and 4(B).

With respect to 12(B):⁸³

Defendants do not have any protocol, procedure, practice, or policy governing the situation in which an adult child of a married couple (of which one spouse is a United States citizen) who was born outside of the United States applied for a Certificate of Citizenship on his or her own behalf; the Department of Homeland Security (and specifically, USCIS) adjudicates applications for Certificates of Citizenship.

⁸² Interrogatory 12(A) asks: "Identify and describe any protocol, procedure, practice or policy of the State Department pursuant to which an adult child of a married couple (of which one spouse is a United States citizen) who was born outside of the United States and applied for a CRBA... [or] United States... on his or her own behalf is required to demonstrate a biological connection between the applicant and a United States citizen parent."

⁸³ Interrogatory 12(B) asks: "Identify and describe any protocol, procedure, practice or policy of the State Department pursuant to which an adult child of a married couple (of which one spouse is a United States citizen) who was born outside of the United States and applied for a... Certificate of Citizenship on his or her own behalf is required to demonstrate a biological connection between the applicant and a United States citizen parent."

**Plaintiffs' Contentions as to Why Defendants' Response to
Interrogatory No. 12 Is Insufficient:**

Defendants have not responded to this interrogatory. The subject of this interrogatory is relevant for the same reasons that the information sought by Interrogatory No. 11 is relevant. The Court should compel Defendants to respond substantively, promptly and in full to this interrogatory.

**Defendants' Statement Regarding the Sufficiency of Defendants'
Response to Interrogatory No. 12:**

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 12.

INTERROGATORY NO. 13

Plaintiffs' Interrogatory:

Identify and describe the evidentiary requirements deemed necessary by the State Department to establish United States citizenship at birth under Section 301(g) or Section 309, including when genetic testing will or will not be requested or required as part of that showing.

Defendants' Verbatim Response to Interrogatory No. 13:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) "Identify and describe the evidentiary requirements deemed necessary by the State Department to establish United States citizenship at birth under Section 301(g)"; and (B) "Identify and describe the evidentiary requirements deemed necessary by the State Department to establish United States citizenship at birth under Section 309." Accordingly, Defendants interpret this interrogatory as two separate interrogatories (13A–13B).

Defendants further object to each of these two discrete Interrogatories as seeking to know issues of "pure law," i.e., legal issues unrelated to the facts of the case. See Fed. R. Civ. P. 33 advisory committee's note to 1970 amendment; see

1 also 8B The Late Charles Alan Wright et al., Federal Practice and Procedure
2 § 2167 (3d ed.). These are not “contention” interrogatories because they do not ask
3 for a “contention that relates to... the application of law to fact.” *Cf.* Fed. R. Civ.
4 P. 33 (a)(2). Rather, these interrogatories ask for Defendants’ interpretation of the
5 law divorced from any factual context, and in doing so seek Defendants’ legal
6 theories. Defendants object on the additional basis that such information is
7 protected from disclosure by the work-product doctrine. To the extent that these
8 interrogatories could be considered “contention interrogatories,” however,
9 Defendants expressly reserve the right to provide additional responses later in the
10 discovery period, or at the close of discovery, as relevant facts of the case may be
11 further developed or disclosed by Plaintiffs through discovery.

12 ***Answer:***

13 Subject to and without waiving the above-stated objections—including both
14 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
15 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

16 ***With respect to 13(A):***⁸⁴

17 Relevant Department of State guidance regarding the interpretation and
18 application of 8 U.S.C. § 1401(g) can be found in 8 FAM 304.2-2(a), which
19 describes the burden of proof for establishing U.S. citizenship as follows:

20 Applicants for U.S. passports and Consular Reports of the Birth
21 Abroad of a Citizen of the United States have the burden of proving
22 by a preponderance of the evidence, also known as balance of
23 probabilities, their identity (22 CFR 51.23) and that they are citizens
24 of the United States (22 CFR 51.40). The standard is met if the
25 proposition is more likely to be true than not true. Effectively, the
26 standard is satisfied if there is greater than a 50 percent chance that
27 the proposition is true. Nothing contained in 22 CFR 51.42 through
28 51.46 shall prohibit the consular officer or the passport specialist from
requiring an applicant to submit additional evidence deemed

26 ⁸⁴ Interrogatory 13(A) asks: “Identify and describe the evidentiary requirements
27 deemed necessary by the State Department to establish United States citizenship at
28 birth under Section 301(g)..., including when genetic testing will or will not be
requested or required as part of that showing.”

necessary to meet this standard to establish U.S. citizenship or nationality (see 22 CFR 51.45).

***With respect to 13(B):*⁸⁵**

Relevant Department of State guidance regarding interpretation and administration of 8 U.S.C. § 1409 can be found in 8 FAM 304.2-2(a), which describes the burden of proof for establishing U.S. citizenship. Additionally, 8 FAM 304.2-2(b) states:

8 U.S.C. § 1409 (a)(1) (INA 309(a)(1)) provides that for a person born abroad out of wedlock to a U.S. citizen father, a blood relationship between the person and the father is established by clear and convincing evidence. This is an intermediate level of burden of persuasion sometimes employed in U.S. civil procedure. In order to prove something by “clear and convincing evidence” the party with the burden of proof must convince the trier of fact that it is substantially more likely than not that the thing is in fact true. This is a lesser requirement than “proof beyond a reasonable doubt” which requires that the trier of fact be close to certain of the truth of the matter asserted, but a stricter requirement than proof by “preponderance of the evidence,” which merely requires that the matter asserted seems more likely true than not.

Plaintiffs’ Contentions as to Why Defendants’ Response to Interrogatory No. 13 Is Insufficient:

Defendants have not responded to this interrogatory. The subject of this interrogatory is relevant for the same reasons that the documents requested by Document Request No. 16 are relevant (see p. 75, *supra*). The Court should compel Defendants to respond substantively, promptly and in full to this interrogatory.

Defendants’ Statement Regarding the Sufficiency of Defendants’ Response to Interrogatory No. 13:

Defendants provided a complete, substantive response to Plaintiffs’ Interrogatory No. 13.

⁸⁵ Interrogatory 13(B) asks: “Identify and describe the evidentiary requirements deemed necessary by the State Department to establish United States citizenship at birth under... Section 309, including when genetic testing will or will not be requested or required as part of that showing.”

INTERROGATORY NO. 14

Plaintiffs' Interrogatory:

Identify and describe the State Department's, CIS's or DHS's rationale, governmental interests or concerns Concerning any decision not to treat as a United States citizen a child born outside of the United States to a married couple (of which one spouse is a United States citizen) when the United States citizen is not the child's biological parent but is listed as a parent on the child's birth certificate.

Defendants' Verbatim Response to Interrogatory No. 14:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) "Identify and describe the State Department's ... rationale, governmental interests or concerns ..."; and (B) "Identify and describe ... [US]CIS's or DHS's rationale, governmental interests or concerns...." Accordingly, Defendants interpret this interrogatory as two separate interrogatories (14A–14B).

Defendants further object to each of these two discrete Interrogatories as seeking to know issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33 advisory committee's note to 1970 amendment; *see also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.). These are not "contention" interrogatories because they do not ask for a "contention that relates to... the application of law to fact." *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather, these interrogatories ask for Defendants' interpretation of the law divorced from any factual context, and in doing so seek Defendants' legal theories. Defendants object on the additional basis that such information is protected from disclosure by the work-product doctrine. To the extent that these interrogatories could be considered "contention interrogatories," however, Defendants expressly reserve the right to provide additional responses later in the

1 discovery period, or at the close of discovery, as relevant facts of the case may be
2 further developed or disclosed by Plaintiffs through discovery.

3 Defendants further object to these Interrogatories to the extent that they seek
4 (a) communications or information protected by the attorney-client privilege or (b)
5 communications or information protected by the deliberative process privilege.

6 Defendants further object to Interrogatory No. 14B, as overly broad, unduly
7 burdensome, not relevant, and disproportionate to the needs of the case to the
8 extent that it seeks to know information regarding or relating to a different
9 Executive department, the Department of Homeland Security (“DHS”), or any
10 components thereof. The actions taken by Defendants and challenged in this
11 litigation are separate from and do not depend on any actions or policies of DHS,
12 and as such the DHS-related information sought by this Interrogatory is not
13 relevant to the claims and defenses in this litigation, and is disproportionate to the
14 needs of the case. Defendants note that DHS, not the Department, adjudicates and
15 issues Certificates of Citizenship.

16 ***Answer:***

17 Subject to and without waiving the above-stated objections—including both
18 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
19 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

20 ***With respect to 14(A):***⁸⁶

21 The Department’s rationale, governmental interests, and concerns are in
22 faithfully executing the laws passed by Congress. The INA was enacted in 1952, a
23 time when it was commonly understood, that outside the adoption context, a
24

25 ⁸⁶ *Interrogatory 14(A) asks: “Identify and describe the State Department’s...
26 rationale, governmental interests or concerns Concerning any decision not to treat
27 as a United States citizen a child born outside of the United States to a married
28 couple (of which one spouse is a United States citizen) when the United States
citizen is not the child’s biological parent but is listed as a parent on the child’s
birth certificate.”*

1 “parent” at birth referred to a biological parent. 8 FAM 301.4-1(D)(1)(a) provides,
2 “[t]he laws on acquisition of U.S. citizenship through a parent have always
3 contemplated the existence of a blood relationship between the child and the
4 parent(s) through whom citizenship is claimed. It is not enough that the child is
5 presumed to be the issue of the parents’ marriage by the laws of the jurisdiction
6 where the child was born. Absent a blood relationship between the child and the
7 parent on whose citizenship the child’s own claim is based, U.S. citizenship is not
8 acquired. The burden of proving a claim to U.S. citizenship, including blood
9 relationship and legal relationship, where applicable, is on the person making such
10 claim.”

11 ***With respect to 14(B):⁸⁷***

12 Defendants lack knowledge with respect the rationale, governmental
13 interests, and concerns of the Department of Homeland Security and its
14 components.

15 **Plaintiffs’ Contentions as to Why Defendants’ Response to**
16 **Interrogatory No. 14 Is Insufficient:**

17 Defendants have not responded to this interrogatory. The subject of this
18 interrogatory is relevant for the same reasons that the documents requested by
19 Document Request No. 17 are relevant (see pp. 79-80, *supra*). The Court should
20 compel Defendants to respond substantively, promptly and in full to this
21 interrogatory.
22
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25 ⁸⁷ Interrogatory 14(B) asks: “Identify and describe... [US]CIS’s or DHS’s
26 rationale, governmental interests or concerns Concerning any decision not to treat
27 as a United States citizen a child born outside of the United States to a married
28 couple (of which one spouse is a United States citizen) when the United States
citizen is not the child’s biological parent but is listed as a parent on the child’s
birth certificate.”

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 14:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 14.

INTERROGATORY NO. 15

Plaintiffs' Interrogatory:

Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should (a) inquire about the biological and/or gestational relationships between married couples and their children, or (b) make requests or impose requirements for DNA or other genetic testing, Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a CRBA, United States passport, or Certificate of Citizenship on behalf of a child of that couple born outside the United States.

Defendants' Verbatim Response to Interrogatory No. 15:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least four discrete subparts: (A) "Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... inquire about the biological and/or gestational relationships between married couples and their children, ... Concerning an application... for a CRBA... [or] United States passport ... on behalf of a child... born outside the United States"; (B) "Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... inquire about the biological and/or gestational relationships between married couples and their children, ... Concerning an application... for a... Certificate of Citizenship on behalf of a child.. born outside the United States";

(C) “Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... make requests or impose requirements for DNA or other genetic testing, Concerning an application... for a CRBA... [or] United States passport ... on behalf of a child... born outside the United States”; and (D) “Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... make requests or impose requirements for DNA or other genetic testing, Concerning an application... for a... Certificate of Citizenship on behalf of a child... born outside the United States.” Accordingly, Defendants interpret this interrogatory as four separate interrogatories (15A–15D).

Defendants further object to these discrete Interrogatories to the extent they seek information protected by (a) the attorney-client privilege, (b) the deliberative process privilege, (c) law enforcement of other types of Executive privilege.

Answer:

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

***With respect to 15(A):*⁸⁸**

Department of State guidance regarding interpretation and application of the Immigration and Nationality Act can be found in its Foreign Affairs Manual (“FAM”), which is a principal source in training materials for consular officers. The FAM notes that “[c]hildren born in wedlock are generally presumed to be the

⁸⁸ Interrogatory 15(A) asks: “Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should... inquire about the biological and/or gestational relationships between married couples and their children... Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a CRBA... [or] United States passport... on behalf of a child of that couple born outside the United States.”

1 issue of that marriage. This presumption is not determinative in citizenship cases,
2 however, because an actual biological relationship to a U.S. citizen parent is
3 required. If doubt arises that the U.S. citizen ‘parent’ is biologically related to the
4 child, the consular officer is expected to investigate carefully.” 8 FAM 301.4-
5 1(D)(1)(d); *see also id.* § 301.4-1(D)(1)(a) (“It is not enough that the child is
6 presumed to be the issue of the parents’ marriage by the laws of the jurisdiction
7 where the child was born. Absent a blood relationship between the child and the
8 parent on whose citizenship the child's own claim is based, U.S. citizenship is not
9 acquired.”). Circumstances in which such a doubt may arise include where “[t]he
10 child was born through surrogacy or other forms of assisted reproductive
11 technology.” 8 FAM 301.4-1(D)(1)(d)(5); *see also* 8 FAM 304.3-2 (“A child born
12 abroad to a surrogate, whose genetic parents are a U.S. citizen mother and
13 anonymous sperm donor, is considered for citizenship purposes to be a person born
14 *out of wedlock* to a U.S. citizen mother ... regardless of whether the woman is
15 married and regardless of whether her spouse is the legal parent of the child at the
16 time of birth.”) (emphasis added).

17 8 FAM 304.2 (former 7 FAM Appendix D) provides guidance to passport
18 agencies and centers and U.S. embassies and consulates abroad about citizenship
19 adjudication and the use of DNA testing to establish the requisite relationship
20 between the U.S. citizen putative or alleged parent and a child claiming derivative
21 U.S. citizenship.

22 Any consular officer who will adjudicate citizenship claims as part of his or
23 her job duties is required to take a six-week course at the Foreign Service Institute,
24 which includes course modules such as “Interviewing and Decision Making” and
25 “Citizenship Interviewing,” in addition to modules on adjudication. Domestic
26 adjudicators have similar training requirements in adjudicating citizenship claims
27 in various roles at passport agencies and Headquarter offices including, but not
28 limited to, “Passport Services’ National Training Program.” In addition, there is

1 more advanced training available for consular officers that include training on
2 citizenship adjudication, including evidentiary considerations. Citizenship
3 adjudication issues may also be addressed in regional training of consular officers
4 and training related to fraud prevention as well. In all of this training employees
5 learn about the laws being applied, the Department's policies on citizenship
6 adjudication, what parts of the FAM to consult, and which offices in the
7 Department to contact for questions about particular cases or issues.

8 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
9 note that in responding to Plaintiffs' Requests for Production of Documents Nos.
10 21, 22, 23, and 24, Defendants have indicated their intention to produce non-
11 privileged responsive documents regarding training of State Department personnel.
12 Because the "Identif[ication]" of this information may be determined by
13 examining, abstracting, or summarizing the training documents themselves, and
14 because the burden of deriving or ascertaining this portion of Defendants' answer
15 will be substantially the same for either Defendants or the Plaintiffs, Defendants
16 refer Plaintiffs to the documents that Defendants will be producing.

17 Additionally, Defendants refer Plaintiffs to Defendants' Answers to
18 Interrogatory Nos. 4(A), 4(B), 11(A), and 12(A). These responses relate to the
19 Department's protocols, procedures, practices, guidelines or policies for applying
20 INA § 301(g) and INA § 309 and the requirement for an applicant to demonstrate a
21 biological relationship between the [subject] child and a United States citizen
22 parent.

With respect to 15(B):⁸⁹

Defendants do not provide personnel of the Department of State with training or instructions regarding applications for a Certificate of Citizenship because such applications are not adjudicated by Department of State personnel.

With respect to 15(C):⁹⁰

This request is substantively similar to the requests contained at 11(A) and 12(A). As a result, Defendants refer Plaintiffs to Defendants' Answers to Interrogatory Nos. 4(A), 4(B), 11(A), and 12(A). These responses relate to the Department's protocols, procedures, practices, guidelines or policies for applying INA § 301(g) and INA § 309 and the requirement for an applicant to demonstrate a biological relationship between the [subject] child and a United States citizen parent.

⁸⁹ Interrogatory 15(B) asks: "Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should... inquire about the biological and/or gestational relationships between married couples and their children... Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a... Certificate of Citizenship on behalf of a child of that couple born outside the United States."

⁹⁰ Interrogatory 15(C) asks: "Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should... make requests or impose requirements for DNA or other genetic testing, Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a CRBA... [or] United States passport... on behalf of a child of that couple born outside the United States."

*With respect to 15(D):*⁹¹

Defendants do not provide personnel of the Department of State with training or instructions regarding applications for a Certificate of Citizenship because such applications are not adjudicated by Department of State personnel.

Plaintiffs' Contentions as to Why Defendants' Response to Interrogatory No. 15 Is Insufficient:

Defendants have not responded to this interrogatory. The subject of this interrogatory is relevant for the same reasons that the documents requested by Document Request Nos. 22 and 23 are relevant (see pp. 95-98, *supra*). The Court should compel Defendants to respond substantively, promptly and in full to this interrogatory.

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 15:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 15.

INTERROGATORY NO. 16

Plaintiffs' Interrogatory:

Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in connection with the State Department's (i) application of Section 301(g) or Section 309; or (ii) determination of applications for a CRBA, United States passport, or Certificate of Citizenship.

⁹¹ Interrogatory 15(D) asks: "Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should... make requests or impose requirements for DNA or other genetic testing, Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a... Certificate of Citizenship on behalf of a child of that couple born outside the United States."

Defendants' Verbatim Response to Interrogatory No. 16:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least four discrete subparts: (A) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... application of Section 301(g)"; (B) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... application of ... Section 309"; (C) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... determination of applications for a CRBA... [or a] United States passport"; and (D) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... determination of applications for a ... or Certificate of Citizenship."

Defendants further object to each of these Interrogatories as seeking to know issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33 advisory committee's note to 1970 amendment; *see also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.). These are not "contention" interrogatories because they do not ask for a "contention that relates to... the application of law to fact." *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather, these interrogatories ask for Defendants' interpretation of the law divorced from any factual context, and in doing so seek Defendants' legal theories. Defendants object on the additional basis that such information is protected from disclosure by the work-product doctrine. To the extent that these interrogatories could be considered "contention interrogatories," however, Defendants expressly reserve the right to provide additional responses later in the discovery period, or at the close of

1 discovery, as relevant facts of the case may be further developed or disclosed by
2 Plaintiffs through discovery.

3 Defendants further object to these Interrogatories as unreasonably vague,
4 overly broad, unduly burdensome, not relevant to any party's claim or defense, and
5 disproportionate to the needs of the case. The phrase "effect or impact" as used in
6 these Interrogatories is unreasonably vague, overly broad, unduly burdensome, and
7 Defendants do not understand what the Interrogatories are seeking. Defendants
8 further object to these Interrogatories to the extent they are not temporally limited
9 to the time period of the underlying adjudication. Defendants further object to
10 these Interrogatories as unreasonably cumulative, duplicative, and oppressive,
11 given that Defendants have already answered Plaintiffs' Interrogatories No. 4(A)
12 and 4(B).

13 **Answer:**

14 Subject to and without waiving the above-stated objections—including both
15 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
16 and Part II ¶¶ 13–21—and noting that the FAM provision cited in the question has
17 been renumbered⁹²—Defendants respond as follows:

18 ***With respect to 16(A):***⁹³

19 Relevant Department of State guidance regarding interpretation and
20 administration of the Immigration and Nationality Act can be found in its Foreign
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22 ⁹² The current FAM citation of "8 FAM 304.3" refers to material previously
23 identified by the citation "7 FAM 1100 Appendix D." Defendants have previously
24 brought this change to the attention of Plaintiffs' counsel. See "Table of
25 Department of State's Foreign Affairs Manual Provisions," Mem. in Support of
26 Defs.' Mot. to Dismiss, ECF No. 31-1 at viii, *Blixt v. U.S. Dep't of State*, 18-cv-124
27 (D.D.C.) (Sept. 3, 2018); see also Defs.' Resp. to Interrogatory No. 10(E) (noting
28 that the FAM was renumbered in July 2018).

26 ⁹³ Interrogatory 16(A) asks: "Identify and Describe the effect or impact, if any, that
27 the use of assisted reproductive technology, as that term is used in 7 FAM 1100
28 Appendix D of the FAM, including surrogacy, has in connection with the State
Department's... application of Section 301(g)."

1 Affairs Manual (“FAM”). The Department’s guidance on acquisition of citizenship
2 at birth in cases of assisted reproductive technology is found at 8 FAM 304.3
3 (former 7 FAM 1140 Appendix D).⁹⁴ Specifically, the section describes a number
4 of possible assisted reproductive technology scenarios and the citizenship
5 acquisition method for each. In addition, the 8 FAM 304.3-4(f) notes that,
6 “[q]uestions relating to family/genetic/blood relationships can be considered
7 intrusive and contacts with families in these circumstances may become somewhat
8 emotional. Interviews should always be conducted with consideration for privacy
9 and the sensitivity of the issues.”

10 Additionally, Defendants refer Plaintiffs to Defendants’ Answers to
11 Interrogatory Nos. 4(A), 11(A), and 12(A). These responses relate to the
12 Department’s protocols, procedures, practices, guidelines or policies for applying
13 INA § 301(g) and INA § 309 and the requirement for an applicant to demonstrate a
14 biological relationship between the [subject] child and a United States citizen
15 parent.

16 ***With respect to 16(B):***⁹⁵

17 Relevant Department of State guidance regarding interpretation and
18 administration of the Immigration and Nationality Act can be found in its Foreign
19 Affairs Manual (“FAM”). The Department’s guidance on acquisition of citizenship
20 at birth in cases of assisted reproductive technology is found at 8 FAM 304.3

21
22 ⁹⁴ The current FAM citation of “8 FAM 304.3” refers to material previously
23 identified by the citation “7 FAM 1100 Appendix D.” Defendants have previously
24 brought this change to the attention of Plaintiffs’ counsel. See “Table of
25 Department of State’s Foreign Affairs Manual Provisions,” Mem. in Support of
26 Defs.’ Mot. to Dismiss, ECF No. 31-1 at viii, *Blixt v. U.S. Dep’t of State*, 18-cv-124
27 (D.D.C.) (Sept. 3, 2018); see also Defs.’ Resp. to Interrogatory No. 10(E) (noting
28 that the FAM was renumbered in July 2018).

26 ⁹⁵ Interrogatory 16(B) asks: “Identify and Describe the effect or impact, if any, that
27 the use of assisted reproductive technology, as that term is used in 7 FAM 1100
28 Appendix D of the FAM, including surrogacy, has in connection with the State
Department’s... application of... Section 309.”

1 (former 7 FAM 1140 Appendix D). Specifically, the section describes a number of
2 possible assisted reproductive technology scenarios and the citizenship acquisition
3 method for each. In addition, the 8 FAM 304.3-4(f) notes that, “[q]uestions relating
4 to family/genetic/blood relationships can be considered intrusive and contacts with
5 families in these circumstances may become somewhat emotional. Interviews
6 should always be conducted with consideration for privacy and the sensitivity of
7 the issues.”

8 To the extent the question posed by this Interrogatory overlaps with that
9 posed by Interrogatory Nos. 4(B), 11(A), and 12(A), Defendants refer Plaintiffs to
10 Defendants’ responses to those interrogatories.

11 ***With respect to 16(C):***⁹⁶

12 Relevant Department of State guidance regarding interpretation and
13 administration of the Immigration and Nationality Act can be found in its Foreign
14 Affairs Manual (“FAM”). The Department’s guidance on acquisition of citizenship
15 at birth in cases of assisted reproductive technology is found at 8 FAM 304.3
16 (former 7 FAM 1140 Appendix D). Specifically, the section describes a number of
17 possible assisted reproductive technology scenarios and the citizenship acquisition
18 method for each. In addition, the 8 FAM 304.3-4(f) notes that, “[q]uestions relating
19 to family/genetic/blood relationships can be considered intrusive and contacts with
20 families in these circumstances may become somewhat emotional. Interviews
21 should always be conducted with consideration for privacy and the sensitivity of
22 the issues.”

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26 ⁹⁶ Interrogatory 16(C) asks: “Identify and Describe the effect or impact, if any, that
27 the use of assisted reproductive technology, as that term is used in [8 FAM 304.3],
28 including surrogacy, has in connection with the State Department’s...
determination of applications for a CRBA... [or] United States passport...”

To the extent the question posed by this Interrogatory overlaps with that posed by Interrogatory Nos. 4(A), 4(B), 11(A), and 12(A), Defendants refer Plaintiffs to Defendants' responses to those interrogatories.

***With respect to 16(D):*⁹⁷**

The use of "assisted reproductive technology," as that term is used in [8 FAM 304.3], has no effect or impact relating to Department of State determination of applications for a Certificate of Citizenship because the Department does not adjudicate Certificate of Citizenship applications.

Plaintiffs' Contentions as to Why Defendants' Response to Interrogatory No. 16 Is Insufficient:

Defendants have not responded to this interrogatory. The subject of this interrogatory is relevant for the same reasons that the documents requested by Document Request No. 6 are relevant (see p. 50-51, *supra*). The Court should compel Defendants to respond substantively, promptly and in full to this interrogatory.

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 16:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 16.

INTERROGATORY NO. 17

Plaintiffs' Interrogatory:

Identify and describe any State Department and/or CIS protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including

⁹⁷ Interrogatory 16(D) asks: "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in [8 FAM 304.3], including surrogacy, has in connection with the State Department's... determination of applications for a... Certificate of Citizenship."

1 discrimination on the basis of sexual orientation—in the provision of consular or
2 passport services to, or determinations of requests or applications by, Persons
3 claiming to have acquired United States citizenship under the INA.

4 **Defendants’ Verbatim Response to Interrogatory No. 17:**

5 ***Objections:***

6 Defendants object to this Interrogatory on the basis that it is compound and
7 includes at least three discrete subparts: (A) “Identify and describe any State
8 Department ... protocol, procedure, practice or policy... with the purpose or effect
9 of preventing discrimination... *in the provision of consular or passport services*
10 *to...* Persons claiming to have acquired United States citizenship under the INA”;
11 (B) “Identify and describe any State Department ... protocol, procedure, practice
12 or policy... with the purpose or effect of preventing discrimination... *in...*
13 *determinations of requests or applications by...* Persons claiming to have acquired
14 United States citizenship under the INA”; (C) “Identify and describe any...
15 [US]CIS protocol, procedure, practice or policy implemented or in effect between
16 January 1, 2013 and the present with the purpose or effect of preventing
17 discrimination—including discrimination on the basis of sexual orientation—in ...
18 determinations of requests or applications by, Persons claiming to have acquired
19 United States citizenship under the INA.”

20 Additionally, Defendants object to Interrogatory No. 17C, as overly broad,
21 unduly burdensome, not relevant, and disproportionate to the needs of the case to
22 the extent that it seeks to know information regarding or relating to a different
23 Executive department, the Department of Homeland Security (“DHS”), or any
24 components thereof. The actions taken by Defendants and challenged in this
25 litigation are separate from and do not depend on any actions or policies of DHS,
26 and as such the DHS-related information sought by this Interrogatory is not
27 relevant to the claims and defenses in this litigation, and is disproportionate to the
28 needs of the case.

1 **Answer:**

2 Subject to and without waiving the above-stated objections—including both
3 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
4 and Part II ¶¶ 13–21—Defendants respond as follows:

5 ***With respect to 17(A):***⁹⁸

6 Consular officers are directed to conduct in-person interviews and any
7 telephone or e-mail exchanges “courteously and professionally.” 8 FAM 103.1-7
8 (Customer Service). Additionally, as set out in 7 FAH-1 Consular Management
9 Handbook H-820 (Public Service), “courtesy” is defined as “not just good
10 manners, but reflecting U.S. standards of fair and reasonable treatment in dealing
11 with each individual.” 7-FAH-1 H-821a. The handbook states further, “Public
12 service ... does **not** mean that the law and regulations are not strictly enforced but
13 it does mean that consular decisions are made knowledgeably, fairly and without
14 bias. It does **not** mean that an unqualified applicant won’t be refused but it does
15 mean hearing and considering the applicant as an individual, not as a stereotype”
16 (emphasis in original). 7-FAH-1 H-822. The handbook states further, “**All**
17 employees must understand that their job performance will be judged not only for
18 **what** they do but also for **how** they do it. Emphasizing the important point that
19 ‘people will generally treat each other the way they are treated,’ 3 FAM 1330 also
20 set out the department policy that employees must treat each other, as well as our
21 external public, with proper respect and courtesy at all times.” 7-FAH-1 H-824.

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25 ⁹⁸ *Interrogatory 17(A) asks: Identify and describe any State Department...
26 protocol, procedure, practice or policy implemented or in effect between January
27 1, 2013 and the present with the purpose or effect of preventing discrimination—
28 including discrimination on the basis of sexual orientation—in the provision of
consular or passport services to... Persons claiming to have acquired United
States citizenship under the INA.*

With respect to 17(B):⁹⁹

Consular officers are directed to conduct in-person interviews and any telephone or e-mail exchanges “courteously and professionally,” including with respect to customers who are in unusual circumstances. 8 FAM 103.1-7 (Customer Service). Additionally, as set out in 7 FAH-1 Consular Management Handbook H-820 (Public Service), “courtesy” is defined as “not just good manners, but reflecting U.S. standards of fair and reasonable treatment in dealing with each individual.” 7-FAH-1 H-821a. The handbook states further, “Public service ... does **not** mean that the law and regulations are not strictly enforced but it does mean that consular decisions are made knowledgeably, fairly and without bias. It does **not** mean that an unqualified applicant won’t be refused but it does mean hearing and considering the applicant as an individual, not as a stereotype” (emphasis in original). 7-FAH-1 H-822. The handbook states further, “**All** employees must understand that their job performance will be judged not only for **what** they do but also for **how** they do it. Emphasizing the important point that ‘people will generally treat each other the way they are treated,’ 3 FAM 1330 also set out the department policy that employees must treat each other, as well as our external public, with proper respect and courtesy at all times.” 7-FAH-1 H-824.

⁹⁹ Interrogatory 17(B) asks: “Identify and describe any State Department... protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in... determinations of requests or applications by... Persons claiming to have acquired United States citizenship under the INA.”

*With respect to 17(C):*¹⁰⁰

Defendants lack knowledge with respect to the protocols, procedures, practices or policies implemented the Department of Homeland Security and its components.

Plaintiffs' Contentions as to Why Defendants' Response to Interrogatory No. 17 Is Insufficient:

Defendants have not responded to this interrogatory. The subject of this interrogatory is relevant for the same reasons that the documents requested by Document Request No. 20 are relevant (see pp. 89-90, *supra*). The Court should compel Defendants to respond substantively, promptly and in full to this interrogatory.

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 17:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 17.

INTERROGATORY NO. 18

Plaintiffs' Interrogatory:

Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under Section 301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or regulations affecting the citizenship status of children of same-sex couples.

¹⁰⁰ Interrogatory 17(C) asks: "Identify and describe any... [US]CIS protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in... determinations of requests or applications by... Persons claiming to have acquired United States citizenship under the INA."

Defendants' Verbatim Response to Interrogatory No. 18.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least four discrete subparts: (A) "Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under Section 301(g)"; (B) "Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under ... Section 309"; (C) "Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under ... 1140 Appendix E of the FAM"; and (D) "Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under ... any other applicable laws or regulations affecting the citizenship status of children of same-sex couples." Accordingly, Defendants interpret this interrogatory as four separate interrogatories (18A–18D).

Answer:

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

With respect to 18(A):¹⁰¹

Department guidance does not distinguish same-sex couples, as guidance applies equally to all citizenship adjudications. *See supra* responses to Interrogatory Nos. 4(A) and 5.

With respect to 18(B):¹⁰²

Department guidance does not distinguish same-sex couples, as guidance applies equally to all citizenship adjudications. *See supra* responses to Interrogatory Nos. 4(B), and 5.

With respect to 18(C):¹⁰³

Department guidance does not distinguish same-sex couples, as guidance applies equally to all citizenship adjudications. *See supra* responses to Interrogatory Nos. 10(C) and 10(D).

With respect to 18(D):¹⁰⁴

Department guidance does not distinguish same-sex couples, as guidance applies equally to all citizenship adjudications.

¹⁰¹ Interrogatory 18(A) asks: “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under Section 301(g).”

¹⁰² Interrogatory 18(B) asks: “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under... Section 309.”

¹⁰³ Interrogatory 18(C) asks: “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under... 1140 Appendix E of the FAM.”

¹⁰⁴ Interrogatory 18(D) asks: “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under... any other applicable laws or regulations affecting the citizenship status of children of same-sex couples[, other than 8 U.S.C. §§ 1401(g) and 1409, and the 1140 Appendix E of the FAM].”

Plaintiffs' Contentions as to Why Defendants' Response to Interrogatory No. 18 Is Insufficient:

Defendants have not responded to this interrogatory. This information is relevant to the Action, which alleges that the State Department is treating children of same-sex couples applying for a CRBA and U.S. passport (who are not biologically related to their U.S. citizen parent) unlawfully. Of particular relevance are protocols effective from 2013, because, starting in 2013, the Supreme Court issued major decisions affirming the rights of LGBT individuals concerning marriage, which may have sparked policy changes within the State Department: *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), and *Pavan v. Smith*, 137 S. Ct. 2075 (2017). The Court should order Defendants to respond substantively, promptly and in full to this interrogatory.

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 18:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 18.

INTERROGATORY NO. 19

Plaintiffs' Interrogatory:

Identify and Describe each action taken by You, including the promulgation and enforcement of rules, regulations, or guidelines, and the dissemination of Documents or other materials, (a) to inform Your Representatives about treatment of children of same-sex couples under Section 301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or regulations governing citizenship status; and (b) to encourage or secure compliance with any of the foregoing laws, rules, regulations, or guidelines.

Defendants' Verbatim Response to Interrogatory No. 19:

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) "Identify and Describe each action taken by You... to inform Your Representatives about treatment of children of same-sex couples under Section 301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or regulations governing citizenship status;" and (B) "Identify and Describe each action taken by You... to encourage or secure compliance with any of the foregoing laws, rules, regulations, or guidelines."

Answer:

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

With respect to 19(A):¹⁰⁵

With respect to the promulgation of rules, regulations, and guidelines, Defendants refer Plaintiffs to Defendants' responses to Interrogatory Nos. 4(A) and 5.

8 FAM 1002 describes the process by which the Department reviews passport issuances at overseas posts. Specifically, at 8 FAM 1002.1-1, "Consular supervisors must review as many passport adjudications as is practicable, but no fewer than 4 percent of passport applications issued per officer per month. Systematic, randomized, regular review of adjudicated passport applications is a significant management and instructional tool to maintain the highest professional

¹⁰⁵ Interrogatory 19(A) asks: "Identify and Describe each action taken by You, including the promulgation and enforcement of rules, regulations, or guidelines, and the dissemination of Documents or other materials ... to inform Your Representatives about treatment of children of same-sex couples under Section 301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or regulations governing citizenship status."

1 standards of adjudication. It also ensures uniform and correct application of
2 applicable law and regulations.”

3 With respect to dissemination of this information, the FAM and the Foreign
4 Affairs Handbook (“FAH”) are available online to all consular staff and are
5 updated regularly as needed. Important changes to Department policy or
6 procedures are announced through cables to the field. In addition, training touching
7 on matters relating to adjudication of passports and CRBAs is regularly offered to
8 staff of our US Embassies and consulates worldwide.

9 ***With respect to 19(B):¹⁰⁶***

10 With respect to the promulgation of rules, regulations, and guidelines,
11 Defendants refer Plaintiffs to Defendants’ responses to Interrogatory Nos. 4(A) and
12 5.

13 8 FAM 1002 describes the process by which the Department reviews
14 passport issuances at overseas posts. Specifically, at 8 FAM 1002.1-1, “Consular
15 supervisors must review as many passport adjudications as is practicable, but no
16 fewer than 4 percent of passport applications issued per officer per month.
17 Systematic, randomized, regular review of adjudicated passport applications is a
18 significant management and instructional tool to maintain the highest professional
19 standards of adjudication. It also ensures uniform and correct application of
20 applicable law and regulations.”

21 With respect to dissemination of this information, the FAM and the Foreign
22 Affairs Handbook (“FAH”) are available online to all consular staff and are
23 updated regularly as needed. Important changes to Department policy or
24 procedures are announced through cables to the field. In addition, training touching

25 ¹⁰⁶ Interrogatory 19(B) asks: “Identify and Describe each action taken by You,
26 including the promulgation and enforcement of rules, regulations, or guidelines,
27 and the dissemination of Documents or other materials... to encourage or secure
28 compliance with any of the... laws, rules, regulations, or guidelines [listed in
Interrogatory 19(A)].”

on matters relating to adjudication of passports and CRBAs is regularly offered to staff of our US Embassies and consulates worldwide.

Plaintiffs' Contentions as to Why Defendants' Response to Interrogatory No. 19 Is Insufficient:

Defendants have not responded to this interrogatory. The information sought by the interrogatory, which inquires about the State Department's instructions to employees regarding treatment of children of same-sex couples who apply for a CRBA and U.S. passport—is pertinent to the Action, which alleges that the challenged policy violates the Equal Protection Clause. The Court should order Defendants to respond substantively, promptly and in full to this interrogatory.

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 19:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 19.

INTERROGATORY NO. 20

Plaintiffs' Interrogatory:

Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning how to interact with gay, lesbian and/or other LGBT individuals or same-sex couples.

Defendants' Verbatim Response to Interrogatory No. 20:

Objections:

Defendants object to this interrogatory as overly burdensome inasmuch as the Department's Foreign Service Institute offers nearly 900 courses with approximately 170,000 enrollments annually, including more than 60 courses on consular functions alone, and to review the content of these courses for responsive references would be inordinately time-consuming, as well as not relevant to claims or defenses of any party in the case.

Answer:

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

The Department instructs employees to treat all customers with respect, courtesy and professionalism, regardless of their sexual orientation. See 8 FAM 103.1-7. Department training materials provide that all applicants, even those who are refused services, are treated promptly and courteously, without bias. To the extent the question posed by this Interrogatory overlaps with that posed by Interrogatory Nos. 17(A) and 17(B), Defendants refer Plaintiffs to Defendants’ responses to those interrogatories.

By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants note that in responding to Plaintiffs’ Requests for Production of Documents Nos. 21, 22, 23, and 24, Defendants have indicated their intention to produce non-privileged responsive documents regarding training of State Department personnel. Because the “Identif[ication]” of this information may be determined by examining, abstracting, or summarizing the training documents themselves, and because the burden of deriving or ascertaining this portion of Defendants’ answer will be substantially the same for either Defendants or the Plaintiffs, Defendants refer Plaintiffs to the documents that Defendants will be producing.

Plaintiffs’ Contentions as to Why Defendants’ Response to Interrogatory No. 20 Is Insufficient:

Defendants have not responded to this interrogatory. The subject of this interrogatory is relevant for the same reasons that the documents requested by Document Request No. 21 are relevant (see pp. 91-92, *supra*). The Court should compel Defendants to respond substantively, promptly and in full to this interrogatory.

Defendants' Statement Regarding the Sufficiency of Defendants' Response to Interrogatory No. 20:

Defendants provided a complete, substantive response to Plaintiffs' Interrogatory No. 20.

F. RULE 30(B)(6) DEPOSITIONS

Plaintiffs' Statement:

Plaintiffs served a 30(b)(6) deposition notice on Defendants on September 7, 2018, noticing a 30(b)(6) deposition for October 15. (Decl. Ex. 2.) The topics contained in the 30(b)(6) Notice (the "Noticed Topics") for which Plaintiffs sought to depose an organizational deponent are the obvious and most relevant ones for this Action and tracked the substance of the Document Requests and Interrogatories.

Defendants offered no response until five weeks later, *i.e.*, three days before the deposition date, when they asserted blunderbuss objections to each Deposition Topic and stated they would be "unable to participate in a deposition on October 15, 2018." (Decl. Ex. 7.) This type of unilateral assertion is insufficient to avoid a properly noticed deposition: "Unless a party or witness files a motion for a protective order and seeks and obtains a stay prior to the deposition, a party or witness has no basis to refuse to attend a properly noticed deposition." *In re Toys R Us-Delaware, Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 2010 WL 4942645, at *3 (C.D. Cal. July 29, 2010) (holding that "defendant's objections to the PMK Depo. Notice" were untimely because the "[d]efendant did not seek or obtain a stay of the depositions prior to the dates for which the depositions were noticed Instead, defendant's counsel merely advised plaintiffs' counsel that none of the deponents would appear for their depositions.").

Despite Defendants' refusal to appear, Plaintiffs continued seeking cooperative resolution to the noticed 30(b)(6) deposition. Plaintiffs discussed the 30(b)(6) deposition during the October 18 and October 23 meet-and-confer

1 calls. (Decl. at 2.) Plaintiffs then sent a letter on October 30 offering to narrow
2 substantially the Deposition Topics. (Decl. Ex. 14.) To date, Defendants have not
3 responded to that letter or provided any indication of whether and when they will
4 appear for the 30(b)(6) deposition. Because of Defendants' failure to engage in
5 meaningful discovery regarding the 30(b)(6) deposition, Plaintiffs now seek to
6 compel Defendants to produce an organizational deponent for the Noticed Topics.

7 Defendants have asserted two main objections: duplication and burden. As
8 discussed below, neither objection has merit.

9 **Duplication:** Defendants stated in their letter responding to the 30(b)(6),
10 somewhat ironically, that the Deposition Notice was duplicative of other
11 discovery—discovery to which Defendants have not yet responded. (Decl. Ex. 7.)
12 This objection is inappropriate, since depositions provide a unique opportunity to
13 test the veracity of claims made in the organization's written discovery
14 papers. *See, e.g., Campbell v. Facebook Inc.*, 310 F.R.D. 439, 449 (N.D. Cal.
15 2015) ("Plaintiffs have a right to verify and explore the information Facebook
16 provided [in its interrogatory responses and declarations] through a 30(b)(6)
17 deposition . . . [since] responses to Interrogatory Nos. 2-4 are simply narratives,
18 and Plaintiffs should be entitled to test their veracity and accuracy . . . [I]t is
19 fundamental that parties may simultaneously utilize any or all of the discovery
20 mechanisms authorized by the rules.") (internal quotation marks omitted); *Kelly v.*
21 *Provident Life & Acc. Ins. Co.*, 2011 WL 2448276, at *3 (S.D. Cal. June 20, 2011)
22 ("[I]n responding to a Rule 30(b)(6) notice or subpoena, a corporation may not
23 take the position that its documents state the company's position. . . . In order to
24 meet the purpose of the Rule, '[i]f a corporation has knowledge or a position as to
25 a set of alleged facts or an area of inquiry, it is its officers, employees, agents or
26 others who must present the position, give reasons for the position, and, more
27 importantly, stand subject to cross-examination.'").
28

1 **Burden:** Defendants asserted boilerplate objections that Plaintiffs’ Topics
2 are overly broad, unduly burdensome, and disproportionate to the needs of the
3 case, in response to *all but one* Deposition Topic (Topic 11). Stated in this
4 redundant and formulaic fashion, without explaining anything more than how
5 Plaintiffs’ Noticed Topics relate to similar topics as other methods of discovery,
6 Defendants objections are facially insufficient. *U.S. ex rel. O’Connell v. Chapman*
7 *Univ.*, 245 F.R.D. 646, 649 (C.D. Cal. 2007) (holding objections made to
8 numerous interrogatories of “[o]verbroad, unduly burdensome, unduly redundant
9 to other discovery,” were “general or boilerplate objections, which are not proper
10 objections.”); *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D.
11 Cal. 2006) (“[G]eneral or boilerplate objections such as ‘overly burdensome and
12 harassing’ are improper—especially when a party fails to submit any evidentiary
13 declarations supporting such objections.”).

14 During the meet-and-confer call on October 18, Defendants stated their
15 primary concern was the burden of preparing an organizational deponent regarding
16 the Noticed Deposition Topics. The concessions included in Plaintiffs’ October 30
17 letter are directly responsive to this issue. (Decl. Ex. 14.) *First*, in an effort to
18 compromise and to prioritize the most important issues, Plaintiffs’ letter agreed to
19 narrow substantially the Noticed Topics. Specifically, Plaintiffs offered to remove
20 Topics 11, 21, and 22, and to further remove Topics 17 and 18 subject to resolution
21 of the parallel document requests (*i.e.*, Document Request Nos. 12-15). *Second*,
22 Plaintiffs offered to combine individual and 30(b)(6) depositions for specified
23 topics, to the extent appropriate, if Defendants intended to designate, as
24 Defendants stated they did, any individual who Plaintiffs had noticed for an
25 individual deposition. The compromise was directly responsive to Defendants’
26 objections that the 30(b)(6) deposition would be duplicative of those individual
27 depositions (stated in Topics 1, 13 and 14). *Third*, Plaintiffs specifically offered to
28 narrow the scope of Topics 2, 5, 7, 8, and 15. *Fourth*, Plaintiffs offered to narrow

1 the time period for Topic 10. *Fifth*, Plaintiffs offered to avoid duplication of any
2 materials Defendants produced in their meager document production that would
3 also be responsive to Topic 16. Defendants have offered no indication that these
4 efforts at compromise have had any impact on their decision not to produce a
5 30(b)(6) deponent. In fact, they have not responded at all to Defendants' October
6 30 letter.

7 **Relevance:** Deposition Topics 1 and 2 are analogous to Requests for
8 Production 4, 7 and 8, and Interrogatories 1 and 2. These discovery requests all
9 seek information concerning the State Department's denial of a CRBA and U.S.
10 passport for Ethan. Deposition Topics 3-6, 10, 12 and 15 are analogous to
11 Requests for Production 1, 2, 6, 16, 18 and 19, and Interrogatories 4-7, 13 and 16.
12 These discovery requests all seek information surrounding the State Department's
13 interpretation and application of Section 301(g), Section 309, and the related FAM
14 provisions at issue in this Action. Deposition Topic 7, like Request for Production
15 3, requests information concerning Defendants' response to changing case law
16 relevant to the rights of Plaintiffs in this action. Deposition Topics 8-9 and 17-19
17 are analogous to Requests for Production 12-15, 18 and 19, and Interrogatories 9,
18 10, 18 and 19. These discovery requests all seek information about the State
19 Department's differential treatment towards children of same-sex versus opposite-
20 sex couples in applications for citizenship. Deposition Topic 16, like Requests for
21 Production 9 and 10, seeks information regarding the organizational structure of
22 the government components involved in citizenship determinations. Deposition
23 Topic 20, like Request for Production 20 and Interrogatory 17, seeks information
24 about the State Department's efforts to avoid discrimination in the application of
25 the relevant statutory provisions. Deposition Topics 13 and 14 do not have
26 analogous counterparts in the Document Requests or Interrogatories, but seek
27 information regarding statements made by Defendants regarding Plaintiffs, and
28 made in the course of the proceedings leading to this Action. This content

1 sufficiently “bears on, or [] reasonably could lead to other matter that could bear
2 on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*,
3 437 U.S. 340, 351 (1978) (stating the broad test for relevance in discovery).

4 The Court should compel a 30(b)(6) deposition on Topics 1-10 and 12-20, as
5 all of these topics are relevant to the Action (and not unduly burdensome, as
6 discussed above). In order to prove their APA claim, Plaintiffs may be required to
7 show that the State Department’s adjudication of Ethan’s CRBA and U.S. passport
8 applications, and the process that led to its decision, were not the product of
9 reasoned decision-making. To succeed on their substantive due process claim,
10 Plaintiffs may need to show that the State Department’s justification for its policy
11 is not sufficiently compelling. And to prevail on their equal protection claim,
12 Plaintiffs may need to demonstrate that the State Department had a discriminatory
13 motivation for interpreting the INA to include a biological tie to establish
14 parentage. Plaintiffs’ 30(b)(6) topics—which generally seek to understand the
15 reasons for the State Department’s denial of Ethan’s CRBA and U.S. passport
16 applications and, more broadly, the reasons for its decision to interpret the INA to
17 require a biological tie to establish parentage—are thus highly relevant.

18 **Defendants’ Overall Statement Regarding Plaintiffs’ Proposed 30(b)(6)**
19 **Topics:**

20 Defendants appreciate Plaintiffs’ willingness to narrow and eliminate certain
21 30(b)(6) deposition topics, and Defendants are willing to produce a 30(b)(6)
22 deponent in this case to testify on a proportionate and specifically described set of
23 topics. Plaintiffs, however, fail to note the fundamental flaw in their deposition
24 notice, which Defendants repeatedly pointed out in their objections and which
25 Plaintiffs largely failed to remedy in their follow-up response: virtually all of their
26 proposed 30(b)(6) topics are insufficiently particularized. “A party noticing a
27 deposition pursuant to Rule 30(b)(6) must describe with reasonable particularity
28 the matters on which the examination is requested.” *Harris v. Best Buy Stores*,

1 *L.P.*, 15-CV-00657-HSG-KAW, 2015 WL 6085307, at *2 (N.D. Cal. Oct. 16,
2 2015) (citing Fed. R. Civ. P. 30(b)(6)). Indeed, because a 30(b)(6) deponent is
3 responsible for testifying about her organization’s collective knowledge of each
4 given topic, “to allow the Rule to effectively function, the requesting party must
5 take care to designate, *with painstaking specificity*, the particular subject areas that
6 are intended to be questioned, and that are relevant to the issues in dispute.”
7 *Memory Integrity, LLC v. Intel Corp.*, 308 F.R.D. 656, 661 (D. Or. 2015) (internal
8 citation and quotation marks omitted).

9 Plaintiffs’ proposed topics are insufficiently particularized in large part
10 because they merely repeat, often verbatim, what Plaintiffs seek in their written
11 discovery requests, rendering them duplicative and overly burdensome as well.
12 “Courts have found Rule 30(b)(6) notices to be unduly burdensome which merely
13 request the duplication of other information already obtained through other
14 discovery methods.” *Dongguk Univ. v. Yale Univ.*, 270 F.R.D. 70, 74 (D. Conn.
15 2010). Plaintiffs claim that *Campbell*, 310 F.R.D. at 449, and *Kelly*, 2011 WL
16 2448276, at *3, are to the contrary, but that is incorrect. In *Campbell*, the defendant
17 had provided general information about its source code through written discovery,
18 and the plaintiff sought specific additional information in their 30(b)(6) deposition:
19 “[t]he identification of . . . source code utilized to carry out each process.”
20 *Campbell*, 310 F.R.D. at 448. Not so here. In *Kelly*, meanwhile, a 30(b)(6)
21 deposition was found to be non-cumulative of prior individual depositions because
22 (1) “any testimony provided by employees as individuals does not satisfy the need
23 for Plaintiff to obtain binding testimony from the corporate entity” and (2) the prior
24 depositions had been taken before certain relevant documents were produced,
25 about which the plaintiffs were unable to ask questions. *Kelly*, 2011 WL 2448276,
26 at *4. Here, however, Plaintiffs have sought, and Defendants have either provided
27 or will provide, proportional responses to Plaintiffs’ written discovery requests as
28

1 an organization. And Plaintiffs are not seeking updated information through their
2 30(b)(6) deposition.

3 Moreover, only two topics contain a limiting time frame, and many contain
4 broadening language such as “any and all” and “including without limitation,”
5 because Plaintiffs have instructed Defendants to construe the term “including” as
6 used in their topics as “including without limitation.” “[T]he language “including
7 but not limited to” is overbroad when identifying a 30(b)(6) topic and defeats the
8 purpose of giving notice of the topics to be discussed in the deposition.” *Dongguk*
9 *Univ. v. Yale Univ.*, 270 F.R.D. at 74. Defendants cannot reasonably prepare a
10 designee on topics that are propounded “without limitation.”

11 In addition, several of Plaintiffs’ proposed topics seek information best
12 obtained from individual depositions because they seek specific facts about the
13 Department’s adjudication of the Dvash-Banks applications. *Jones v. Hernandez*,
14 16-CV-1986-W(WVG), 2018 WL 539082, at *3 (S.D. Cal. Jan. 23, 2018),
15 *objections overruled*, 16-CV-1986 W (WVG), 2018 WL 1981207 (S.D. Cal. Apr.
16 27, 2018) (“It is . . . unclear how a Rule 30(b)(6) deposition would help him test
17 Defendants’ assertions more effectively than depositions of the agents who were
18 actually involved in the charging decision-making process.”). Multiple topics
19 improperly call for legal conclusions.¹⁰⁷ *Yahoo!, Inc. v. MyMail, Ltd.*,
20 16CV07044EJDSVK, 2017 WL 2177519, at *2 (N.D. Cal. May 18, 2017).

21
22 ¹⁰⁷ Finally, to the extent Plaintiffs wish to hold a 30(b)(6) deposition to prove
23 an element of their APA claim, as they assert in their statement above, that is
24 plainly improper. Judicial review of agency action is generally limited to the
25 administrative record. See 5 U.S.C. § 706; *Citizens to Pres. Overton Park, Inc. v.*
26 *Volpe*, 401 U.S. 402, 420 (1971), *abrogated on other grounds by Califano v.*
27 *Sanders*, 430 U.S. 99 (1977); *Ctr. for Biological Diversity v. U.S. Fish & Wildlife*
28 *Serv.*, 450 F.3d 930, 943 (9th Cir. 2006); *Hill Dermaceuticals, Inc. v. FDA*, 709
F.3d 44, 47 (D.C. Cir. 2013). The Ninth Circuit has explained that district courts
are permitted to admit extra-record evidence in the following limited
circumstances: “(1) if admission is necessary to determine ‘whether the agency has

Below, Defendants explain the deficiencies in each topic that remains the subject of dispute and note the areas of potential agreement and/or compromise.

Defendants’ Statement Regarding Topic 1:

Topic 1 seeks testimony regarding “[t]he process by which and any basis on which the State Department considered and determined any request or application for a Consular Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks, including any refusal or denial of any such application.”

Defendants note that Rule 30(b)(6) is designed to allow a party to obtain testimony regarding information generally known to an organization, particularly where the examining party does not know the identities of persons within the organization who may have the information sought. Defendants further note that—in response to Plaintiffs’ Interrogatory No. 1—Defendants have previously identified for Plaintiffs the specific Department of State employees (current or former) that were involved with the adjudication and determination of the two applications—one for a Consular Report of Birth Abroad, and the other for a U.S. passport—submitted to the Department on behalf of Ethan. And, in response to Plaintiffs’ Interrogatory No 2, Defendants identified those same individuals as the persons who “have knowledge or information concerning the process by which, ... the reasons why, ... [and] the basis on which” the applications were denied.

Defendants’ interrogatory answers show a closed set of four individuals who in their official capacities possess personal knowledge of the specific process used

considered all relevant factors and has explained its decision,’ (2) if ‘the agency has relied on documents not in the record,’ (3) ‘when supplementing the record is necessary to explain technical terms or complex subject matter,’ or (4) ‘when plaintiffs make a showing of agency bad faith.’” *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005). These exceptions from the general rule “are narrowly construed and applied.” *Id.* Here, Plaintiffs have provided no reasoning for why extra-record evidence is necessary to prove their APA claim, and none should be presumed.

1 and the reasons for the denial of the applications. And although a witness
2 designated for 30(b)(6) purposes need not have “personal knowledge” on the
3 designated topic, Defendants would likely identify one of those persons as being
4 best positioned for Defendants to prepare to “testify about information known or
5 reasonably available to” the Department. If Plaintiffs are willing to forgo taking
6 individual depositions of persons identified in response to Interrogatories No. 1
7 and 2, Defendants would be willing to designate a witness to serve as a 30(b)(6)
8 witness for this topic. Otherwise, Defendants object to Topic 1 as unduly
9 burdensome, unreasonably cumulative, duplicative, and disproportionate to the
10 needs of the case.

11 While Plaintiffs have suggested a “combined individual and 30(b)(6)
12 deposition as a compromise for these topics, Plaintiffs’ proposal would require
13 Defendants, and the individual witnesses, to bear a two-fold burden. Moreover,
14 Plaintiffs have not explained what additional utility would be achieved by
15 designating the individual deponents as 30(b)(6) witnesses, given that Plaintiffs are
16 free to ask the individual deponents question about this topic even if Defendants do
17 not designate those individuals as 30(b)(6) witnesses. Any additional utility
18 potentially served appears disproportionate to the needs of the case, given the
19 additional burden involved in preparing 30(b)(6) witnesses.

20 **Defendants’ Statement Regarding Topic 2:**

21 Topic 2 asks Defendants to designate someone to testify regarding “[a]ny
22 and all communications concerning Plaintiffs or any request or application for a
23 Consular Report of Birth Abroad and United States passport for Plaintiff Ethan
24 Dvash- Banks.” (emphasis added).

25 Defendants object to this topic as overly broad, unduly burdensome, and
26 disproportionate to the needs of the case. Plaintiffs’ deposition notice defines the
27 word “communications” as including all oral and written communications, and it
28

1 would be unduly burdensome, if not impossible, to prepare a designee in such a
2 manner.

3 While Plaintiffs have suggested a “combined individual and 30(b)(6)
4 deposition as a compromise for these topics, this is an insufficient remedy, as
5 Defendants explained *supra* in connection with Topic 1. Plaintiffs have also
6 reformulated Topic 2 to request “any and all communications concerning any
7 request or application for Report of Birth Abroad and United States passport for
8 Plaintiff Ethan Dvash-Banks,” but this formulation does not meaningfully alter the
9 topic, which continues to broadly seek information about all oral and written
10 communications concerning the topic.

11 **Defendants’ Statement Regarding Topic 3:**

12 Topic 3 seeks information relating to “the State Department’s interpretation
13 of Section 301(g) and Section 309 as applied to persons who claim to have
14 acquired United States citizenship under those statutory provisions, including the
15 rationale for that application or interpretation.”

16 Defendants object to this topic as improperly seeking legal conclusions, not
17 factual information. Defendants further object to this topic as unreasonably
18 cumulative, unreasonably cumulative, overly burdensome, and disproportionate to
19 the needs of the case; it seeks information that is duplicative of what Plaintiffs
20 have already sought through Plaintiffs’ RFPD No. 1 and Interrogatory No. 4.¹⁰⁸ To
21 the extent Plaintiffs seek information beyond what they have sought in their other
22

23 ¹⁰⁸ Plaintiffs’ RFPD No. 1 seeks “[a]ll Documents and Communications stating or
24 discussing protocols, procedures, practices or policies of the State Department and
25 [US]CIS for applying Section 301(g) and Section 309 to persons who claim to
26 have acquired United States citizenship under those statutory provisions, including
27 but not limited to the reasons for any such protocols, procedures, practices or
28 policies.” Interrogatory No. 4 asks Defendants to: “Identify and describe any
protocols, procedures, practices, guidelines or policies of the State Department for
applying Section 301(g) or Section 309 to Persons who claim to have acquired
United States citizenship under those statutory provisions, including the reasons
and basis for any such protocols, procedures, practices, guidelines or policies.”

1 discovery requests, they have failed to identify the additional, sought-after
2 information with reasonable particularity as required under Rule 30(b)(6).

3 **Defendants' Statement Regarding Topic 4:**

4 This topic seeks information relating to “[a]ny protocol, procedure, practice,
5 policy or guideline for applying Section 309, rather than Section 301(g), to any
6 Person born outside of the United States to married parents (one of whom is a
7 United States citizen) if the Person is not biologically related to the United States
8 citizen parent.”

9 Defendants object to this topic as unreasonably cumulative, overly
10 burdensome, and disproportionate to the needs of the case; it seeks information that
11 is duplicative of what Plaintiffs sought in Plaintiffs' RFPD No. 1 and
12 Interrogatories No. 4, 5, 7, and 18. Defendants refer Plaintiffs to Defendants'
13 responses to RFPD No. 1 and the Interrogatories and incorporate their specific
14 objections to those requests here. The topic is also duplicative of what is requested
15 in Topic 3. To the extent Plaintiffs seek information beyond what they have sought
16 in their other discovery requests, they have failed to identify the additional, sought-
17 after information with reasonable particularity as required under Rule 30(b)(6).

18 **Defendants' Statement Regarding Topic 5:**

19 This topic seeks information relating to “[a]ny and all Communications
20 between (i) the Fraud Detection and National Security Directorate or the Refugee,
21 Asylum and International Operations Directorate, or other units of CIS; and (ii)
22 the State Department, including the Secretary of State's staff, the Office of the
23 Legal Adviser, and the Bureau of Consular Affairs, Concerning any protocol,
24 procedure, practice, policy or guideline for applying Section 309, rather than
25 Section 301(g), to any Person born outside of the United States to married parents
26 (one of whom is a United States citizen) if the Person is not biologically related to
27 the United States citizen parent.”
28

1 Defendants object to this topic as unreasonably cumulative, overly
2 burdensome, and disproportionate to the needs of the case; it seeks information that
3 is duplicative of what Plaintiffs sought in Plaintiffs' RFPD No. 2 and
4 Interrogatories No. 5 and 7.¹⁰⁹ To the extent Plaintiffs seek information beyond
5 what they have sought in their other discovery requests, they have failed to identify
6 the additional, sought-after information with reasonable particularity as required
7 under Rule 30(b)(6).

8 Plaintiffs now state that they no longer seek information about
9 communications between the Department's Fraud Division and USCIS
10 components other than the National Security Directorate or the Refugee, Asylum
11 and International Operations Directorate, but the request is still insufficiently
12 particularized and duplicative, and unduly burdensome. It is not feasible to prepare
13 a 30(b)(6) witness to speak to all of an office's communications with two other
14 interagency components.

15 **Defendants' Statement Regarding Topic 6:**

16 This topic seeks information relating to "[a]ny evidentiary requirements
17 imposed by the State Department for an individual to establish United States
18 citizenship under Section 301(g) or Section 309, including when in practice genetic

19 ¹⁰⁹ Plaintiffs' RFPD No. 2, for example, seeks "[a]ll Documents and
20 Communications Concerning Communications between (i) the Fraud Detection
21 and National Security Directorate or the Refugee, Asylum and International
22 Operations Directorate, or other units of [US]CIS, and (ii) the State Department,
23 including but not limited to the Secretary of State's staff, the Office of the Legal
24 Adviser, and the Bureau of Consular Affairs, Concerning any protocol, procedure,
25 practice or policy for applying Section 309, rather than Section 301(g), to any
26 Person born outside of the United States to married parents (one of whom is a
27 United States citizen) if the Person is not biologically related to the United States
28 citizen parent, including but not limited to the rationale for any such protocol,
procedure, practice or policy." Plaintiffs' Interrogatory No. 7, meanwhile, requests
the Department to "Identify and describe any differences known to You between or
among the interpretations or applications of Section 301(g) and Section 309 by (i)
the State Department, (ii) the DHS, and (iii) the Fraud Detection and National
Security Directorate or the Refugee, Asylum and International Operations
Directorate, or other units of CIS, to Persons who claim to have acquired United
States citizenship under those statutory provisions."

1 testing will or will not be requested as part of that showing, any requirement that a
2 United States citizen demonstrate a biological connection to, or relationship with, a
3 child born outside the United States.”

4 Defendants object to this topic as unreasonably cumulative, overly
5 burdensome, and disproportionate to the needs of the case; it seeks information that
6 is duplicative of what Plaintiffs sought in Plaintiffs’ RFPD No. 16 and
7 Interrogatory No. 13.¹¹⁰ To the extent Plaintiffs seek information beyond what they
8 have sought in their other discovery requests, they have failed to identify the
9 additional, sought-after information with reasonable particularity as required under
10 Rule 30(b)(6).

11 **Defendants’ Statement Regarding Topic 7:**

12 This topic seeks information relating to “the impact or effect of any court
13 ruling, including *Pavan v. Smith*, 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*,
14 135 S. Ct. 2584 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Jaen v.*
15 *Sessions*, 899 F.3d 182 (2d Cir. 2018), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090
16 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on the State
17 Department’s consideration of applications for a Consular Report of Birth Abroad,
18 United States passport, or Certificate of Citizenship by Plaintiffs or any other
19 person (i) born outside of the United States; (ii) who asserts he or she is the child
20 of a United States citizen; (iii) whose United States citizen parent is married to a

21 ¹¹⁰ Plaintiffs’ RFPD No. 16 seeks “All protocols, procedures, practices or policies
22 Concerning the showing or evidentiary requirements necessary to establish United
23 States citizenship under Section 301(g) or Section 309, including when genetic
24 testing will or will not be requested as part of that showing. This request includes
25 protocols, procedures, practices or policies that specifically Concern Plaintiffs or
26 any other person (i) born outside of the United States (ii) who asserts he or she is
27 the child of a United States citizen; (iii) whose United States citizen parent is
28 married to a foreign national; and (iv) who does not have a biological relationship
to his/her United States citizen parent.” Plaintiffs’ Interrogatory No. 13,
meanwhile, requests the Department to “Identify and describe the evidentiary
requirements deemed necessary by the State Department to establish United States
citizenship at birth under Section 301(g) or Section 309, including when genetic
testing will or will not be requested or required as part of that showing.”

1 foreign national; and (iv) who does not have a biological relationship to his/her
2 United States citizen parent.”

3 Defendants object to this topic as unreasonably cumulative, overly
4 burdensome, and disproportionate to the needs of the case; it seeks information that
5 is duplicative of—and, indeed identical to—what Plaintiffs sought in Defendants’
6 RFPD No. 3.¹¹¹ To the extent Plaintiffs seek information beyond what they have
7 sought in their other discovery requests, they have failed to identify the additional,
8 sought-after information with reasonable particularity as required under Rule
9 30(b)(6).

10 Plaintiffs now purport to narrow the scope of this topic by taking out the
11 language “any court ruling,” but the topic is still insufficiently particularized and
12 duplicative. Plaintiffs fail to sufficiently describe what they seek beyond what they
13 have requested in their written discovery.

14 **Defendants’ Statement Regarding Topic 8:**

15 This topic seeks “[a]ny circumstances under which the State Department
16 treats the children of married same-sex couples as children born in wedlock, and
17 any circumstances under which the State Department treats children of married
18 same-sex couples as children born out of wedlock.”

19 Defendants object to this topic as unreasonably cumulative, overly
20 burdensome, and disproportionate to the needs of the case; it seeks information that
21 is duplicative of what Plaintiffs sought in Plaintiffs’ RFPD Nos. 18 and 19 and

22 ¹¹¹ Plaintiffs’ RFPD No. 3 seeks “[a]ll Documents and Communications concerning
23 or discussing the impact or effect of any court ruling, including but not limited to
24 *Pavan v. Smith*, 28 F.3d 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584
25 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Solis-Espinoza v.*
26 *Gonzales*, 401 F.3d 21090 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th
27 Cir. 2000), on applications for a Consular Report of Birth Abroad, United States
28 passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born
outside of the United States (ii) who asserts he or she is the child of a United States
citizen; (iii) whose United States citizen parent is married to a foreign national; and
(iv) who does not have a biological relationship to his/her United States citizen
parent.”

1 Interrogatories Nos. 9, 10, 18, and 19. To the extent Plaintiffs seek information
2 beyond what they have sought in their other discovery requests, they have failed to
3 identify the additional, sought-after information with reasonable particularity as
4 required under Rule 30(b)(6).

5 Plaintiffs now purport to narrow the scope of this topic by taking out the
6 language “and any circumstances under which the State Department treats children
7 of married same-sex couples as children born out of wedlock” and focusing the
8 topic on how the Department treats the children of men in same-sex marriages. But
9 the topic is still insufficiently particularized and duplicative. Plaintiffs fail to
10 sufficiently describe what they seek beyond what they have requested in their
11 written discovery.

12 **Defendants’ Statement Regarding Topic 9:**

13 This topic seeks information relating to “[t]he application of Section 301(g),
14 Section 309, and/or the FAM to same-sex couples who have applied on behalf of
15 their child(ren) for a Consular Report of Birth Abroad, United States passport, or
16 Certificate of Citizenship.”

17 Defendants object to this topic as unreasonably cumulative, overly
18 burdensome, and disproportionate to the needs of the case; it seeks information that
19 is duplicative of what Plaintiffs sought in Defendants’ RFPD Nos. 12, 13, 14, and
20 15 and Interrogatory No. 19.. To the extent Plaintiffs seek information beyond
21 what they have sought in their other discovery requests, they have failed to identify
22 the additional, sought-after information with reasonable particularity as required
23 under Rule 30(b)(6).

24 **Defendants’ Statement Regarding Topic 10:**

25 This topic seeks information relating to “[t]he content of and the basis and
26 rationale for any versions or editions of the FAM that reference, define or interpret
27 any part of Section 301(g) or Section 309. This topic includes any internal
28 considerations, underlying assumptions, information collected, and the identity and

1 role of any authors or contributors for the relevant provisions in the FAM,
2 including whether, when and how those involved in drafting, enacting or applying
3 the FAM specifically considered its application to same-sex couples.”

4 Defendants object to this topic as unreasonably cumulative, overly
5 burdensome, and disproportionate to the needs of the case; it seeks information that
6 is duplicative of what Plaintiffs sought *inter alia*, in Plaintiffs’ RFPD No. 18.¹¹² To
7 the extent Plaintiffs seek information beyond what they have sought in their other
8 discovery requests, they have failed to identify the additional, sought-after
9 information with reasonable particularity as required under Rule 30(b)(6).
10 Moreover, this topic seeks information that is overly burdensome for the
11 Department to marshal for the purposes of a Rule 30(b)(6) deposition insofar as the
12 topic seeks, and would require the Department to prepare witnesses who can speak
13 to, the reasons behind and numerous individuals involved in updating references to
14 8 U.S.C. §§ 1401(g) and 1409 throughout approximately twenty prior versions of
15 the FAM dating back as far as 1960. Finally, the topic also seeks plainly privileged
16 information insofar as it seeks “internal considerations” regarding references to §§
17 1401(g) and 1409 in the FAM.

18 Plaintiffs now purport to narrow the scope of this topic to the time period
19 January 1, 2013 to present. Defendants believe they can reach resolution by further
20 negotiating with Plaintiffs on this topic, though questions about the Department’s
21

22 ¹¹² Plaintiffs’ RFPD No. 18 seeks “[a]ll versions of the FAM (or equivalent or
23 related Documents) that define ‘in wedlock’ and ‘out of wedlock,’ or any other
24 term Defendants believe has the same or a similar meaning as those terms, for
25 purposes of applying Section 301(g) or Section 309, and all Documents
26 Concerning decisions or discussions of how to define those terms (including any
27 legal and policy support or justification considered, used, or relied upon in
28 deciding upon such definitions).” Indeed, many other RFPDs and Interrogatories
seek duplicative information insofar as they seek the Department’s relevant
“protocol, procedures, practices or policies,” see RFPDs No. RFPDs Nos. 1, 4, 6,
16, 19; Interrogatories Nos. 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, 18, which are
largely, if not totally, encapsulated in the FAM.

1 interpretation of the FAM after June 2, 2017, are irrelevant, as Defendants explain
2 above.

3 **Defendants' Statement Regarding Topic 12:**

4 This topic seeks information relating to “[t]he impact if any that the use of
5 assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D
6 of the FAM, has in connection with the State Department’s (i) application of
7 Section 301(g) or Section 309; or (ii) consideration or determination of
8 applications for a Consular Report of Birth Abroad, United States passport, or
9 Certificate of Citizenship.”

10 Defendants object to this topic as unreasonably cumulative, overly
11 burdensome, and disproportionate to the needs of the case; it seeks information that
12 is duplicative of what Plaintiffs sought in Plaintiffs’ RFPD No. 6 and Interrogatory
13 No. 16.¹¹³ To the extent Plaintiffs seek information beyond what they have sought
14 in their other discovery requests, they have failed to identify the additional, sought-
15 after information with reasonable particularity as required under Rule 30(b)(6).

16 **Defendants' Statement Regarding Topics 13 and 14:**

17 These topics seek testimony regarding the “factual and legal basis and
18 circumstances” concerning certain statements in two letters, a March 2, 2017 letter,
19 and an October 2, 2017 letter.

20 ¹¹³ Plaintiffs’ RFPD No. 6 seeks “All Documents and Communications Concerning
21 assisted reproductive technology as that term is used in 7 FAM 140 and Appendix
22 D of the FAM, including but not limited to surrogacy, in connection with Section
23 301(g), Section 309, or applications for a Consular Report of Birth Abroad, United
24 States passport, or Certificate of Citizenship.” Plaintiffs’ Interrogatory No. 16,
25 meanwhile, requests the Department to “Identify and Describe the effect or impact,
26 Identify and Describe the effect or impact, if any, that the use of assisted
27 reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the
28 FAM, including surrogacy, has in connection with the State Department’s (i)
application of Section 301(g) or Section 309; or (ii) determination of applications
for a CRBA, United States passport, or Certificate of Citizenship. if any, that the
use of assisted reproductive technology, as that term is used in 7 FAM 1100
Appendix D of the FAM, including surrogacy, has in connection with the State
Department’s (i) application of Section 301(g) or Section 309; or (ii) determination
of applications for a CRBA, United States passport, or Certificate of Citizenship.”

1 Those letters with signed by individuals who Plaintiffs have already
2 indicated they intend to depose as individuals. Thus, Defendants object to these
3 topics as unduly burdensome, unreasonably cumulative, duplicative, and
4 disproportionate to the needs of the case. Defendants further object to topics 13
5 and 14 because the topics seek legal conclusions, *i.e.*, the “legal basis and
6 circumstances” of certain statements made in connection with the Department’s
7 denial; this request for legal opinions or conclusions is beyond the proper scope of
8 a Rule 30(b)(6) deposition, the purpose of which is to obtain factual information.

9 **Defendants’ Statement Regarding Topic 15:**

10 This topic seeks information relating to “[a]ny information the State
11 Department considers in making a determination of whether a parent-child
12 relationship exists.”

13 Defendants object to this topic as unreasonably cumulative, overly
14 burdensome, and disproportionate to the needs of the case; it seeks information that
15 is duplicative of what Plaintiffs sought in Defendants’ RFPD No. 19.¹¹⁴ To the
16 extent Plaintiffs seek information beyond what they have sought in their other
17 discovery requests, they have failed to identify the additional, sought-after
18 information with reasonable particularity as required under Rule 30(b)(6).

19 Plaintiffs now propose to modify this topic to seek “[a]ny information the
20 State Department considers in making a determination of whether a parent-child
21 relationship exists for purposes of applying Section 301(g) or Section 309.”
22 Defendants believe that they can produce a deponent to speak on this topic as
23 narrowed by Plaintiffs.

24
25
26 ¹¹⁴ Plaintiffs’ RFPD No. 19 seeks “[a]ll Documents and Communications
27 Concerning any protocols, procedures, practices or policies Concerning the State
28 Department’s definition or interpretation of, the terms ‘born . . . of parents,’
‘wedlock,’ ‘in wedlock,’ or ‘out of wedlock.’”

Defendants' Statement Regarding Topic 16:

This topic seeks information relating to “[t]he organizational structure of the State Department and CIS, respectively.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants’ RFPDs Nos. 9 and 10.¹¹⁵ Defendants particularly re-emphasize that USCIS’s full organizational structure is beyond the reasonable scope of knowledge of the Department. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6). Further, to the extent it is appropriate to for Plaintiffs to seek this information in discovery in this case, the topic is better suited to written discovery responses rather than deposition testimony.

Plaintiffs now state that they can drop this topic on the following conditions: (a) Defendants stipulate to the authenticity and accuracy of the organizational charts that they have produced in response to Plaintiffs’ discovery requests in the Action; and (b) Defendants do not object to Plaintiffs’ efforts to inquire into the roles and responsibilities of various State Department personnel relevant to this Action,” information which is not contained in the organizational charts produced.

¹¹⁵ Plaintiffs’ RFPD No. 9 seeks “Department and CIS, respectively, including organizational charts or other documents that identify the hierarchy of authority among positions and the responsibilities and duties associated with each position, and the names and titles of Representatives of the State Department or CIS who held those positions between January 1, 2012 and the present.” Plaintiffs’ RFPD No. 10, meanwhile, seeks “Documents sufficient to show the organizational structure of the State Department, including the United States Embassy in Toronto, and CIS, respectively, including organizational charts or other documents that identify the hierarchy of authority among positions and the responsibilities and duties associated with each position, and the names and titles of employees or officers of the State Department or CIS who held those positions between January 1, 2012 and the present.”

Defendants believe they can reach resolution by further negotiating with Plaintiffs on this topic, particularly in regards to the second condition they propose.

Defendants' Statement Regarding Topic 17:

This topic seeks information relating to “[t]he number of (i) same-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not); and, separately, (ii) opposite-sex married bi-national couples, who have applied for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of one or more children born outside the United States (or adult children of such couples who have applied on their own behalves).”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants' RFPDs Nos. 12, 13, 14, and 15. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

Defendants' Statement Regarding Topic 18:

This topic seeks information relating to “[t]he outcomes for, or results of, applications for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship by or on behalf of one or more children born outside the United States (or adult children of such couples who have applied on their own behalves) and any differences in such outcomes for, respectively, children of same-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not) and opposite-sex married bi-national couples; and the reasons for any such differences.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants' RFPDs Nos. 12, 13, 14, and

1 15. To the extent Plaintiffs seek information beyond what they have sought in their
2 other discovery requests, they have failed to identify the additional, sought-after
3 information with reasonable particularity as required under Rule 30(b)(6).

4 **Defendants' Statement Regarding Topic 19:**

5 This topic seeks information relating to “[t]he nature and extent to which the
6 State Department treats differently applications for Consular Reports of Birth
7 Abroad, United States passports, or Certificates of Citizenship on behalf of one or
8 more children born outside the United States (or adult children of such couples
9 who have applied on their own behalves) to (i) same-sex married bi-national
10 couples (i.e., of which one spouse is a United States citizen and the other is not)
11 and (ii) opposite-sex married bi-national couples.”

12 Defendants object to this topic as unreasonably cumulative, overly
13 burdensome, and disproportionate to the needs of the case; it seeks information that
14 is duplicative of what Plaintiffs sought in Defendants' RFPDs Nos. 12, 13, 14, and
15 15 and Interrogatory No. 19. To the extent Plaintiffs seek information beyond what
16 they have sought in their other discovery requests, they have failed to identify the
17 additional, sought-after information with reasonable particularity as required under
18 Rule 30(b)(6).

19 **Defendants' Statement Regarding Topic 20:**

20 This topic seeks information relating to “[a]ny State Department and/or CIS
21 protocol, procedure, practice, policy or guideline with the purpose or effect of
22 preventing discrimination—including discrimination on the basis of sexual
23 orientation—in the provision of consular or passport services, or adjudication with
24 respect to persons claiming to have acquired United States citizenship under
25 Section 301(g) or Section 309.”

26 Defendants object to this topic as unreasonably cumulative, overly
27 burdensome, and disproportionate to the needs of the case; it seeks information that
28 is duplicative of what Plaintiffs sought in Defendants' RFPD No. 20 and

1 Interrogatory No. 17.¹¹⁶ Defendants particularly re-emphasize that USCIS's full
2 protocols, procedures, policies and practices are beyond the reasonable scope of
3 knowledge of the State Department. To the extent Plaintiffs seek information
4 beyond what they have sought in their other discovery requests, they have failed to
5 identify the additional, sought-after information with reasonable particularity as
6 required under Rule 30(b)(6).

7 ***

8 **G. INDIVIDUAL DEPOSITIONS**

9 **Plaintiffs' Statement:**

10 Plaintiffs have noticed depositions of seven (current or former) State
11 Department employees, all of whom were identified in Defendants' partial
12 responses to the Interrogatories: Frankie Terri Day, Margaret Ramsay, Larilyn
13 Reffett, Ann Marie Warmenhoven, Karen Christensen and Brian Egan. Frankie
14 Terri Day, Margaret Ramsay, Larilyn Reffett, and Ann Marie Warmenhoven were
15 identified by Defendants in their responses to the Interrogatories as the specific
16 staff members involved in the determination of, and communications about, the
17 applications for a CRBA and U.S. passport on behalf of Ethan (thus their testimony
18 would be relevant to the Action, which challenges that determination and the
19 policy behind it). Specifically, Defendants stated that "Ms. Day adjudicated the
20 applications and in doing so consulted with her supervisor, Ms. Reffett;" Ms.

21 ¹¹⁶ Plaintiffs' RFPD No. 20 seeks "All Documents and Communications
22 Concerning any State Department and/or CIS protocol, procedure, practice or
23 policy with the purpose or effect of preventing discrimination—including
24 discrimination on the basis of sexual orientation—in the provision of consular or
25 passport services, or adjudication with respect to persons claiming to have acquired
26 United States citizenship under Section 301(g) or Section 309." Plaintiffs'
27 Interrogatory No. 17, meanwhile, requests the Department to "Identify and
28 describe any State Department and/or CIS protocol, procedure, practice or policy
implemented or in effect between January 1, 2013 and the present with the purpose
or effect of preventing discrimination—including discrimination on the basis of
sexual orientation—in the provision of consular or passport services to, or
determinations of requests or applications by, Persons claiming to have acquired
United States citizenship under the INA."

1 Ramsay “provided the adjudicating consular officer (Ms. Day) with relevant FAM
2 references;” Ms. Reffett “supervised Ms. Day and discussed the adjudication with
3 her;” and “Ms. Warmenhoven reviewed DNA results submitted with the CRBA
4 application and entered findings into the appropriate Department database, and
5 advised the adjudicating consular officer (Ms. Day) of those results.”

6 Defendants similarly identified Karen Christensen and Brian Egan in their
7 responses to the Interrogatories as individuals involved in the State Department’s
8 interpretation of Section 301(g) and Section 309, and in the implementation of
9 protocols, procedures, practices, guidelines or policies concerning CRBA and U.S.
10 passport applications.

11 Carlos Hernandez is the signatory on the letter from the State Department to
12 Congressman Lieu, sent on October 2, 2017, in which Hernandez discussed the
13 DNA requirement that was imposed on the Dvash-Banks family. (Complaint, Ex.
14 D.)

15 Although Defendants initially suggested they would be cooperative in
16 scheduling the individual depositions, Defendants have consistently delayed, to the
17 point that, after over a month of discussion, Defendants have yet to confirm a
18 single deposition date, and have not even responded to Plaintiffs’ October 31 letter
19 seeking to schedule the depositions on a cooperative basis. (Decl. Ex. 15.)

20 Plaintiffs raised their intention to notice individual depositions during a
21 meet-and-confer telephone call on September 20, 2018. (Decl. at 2.) Defendants
22 represented at that time that they would be willing to accept notices for State
23 Department employees, and further indicated a willingness to coordinate on dates
24 and deponent’s availability. Plaintiffs followed up in e-mails on September 24 and
25 October 3, but Defendants did not provide dates on which Plaintiffs could calendar
26 the depositions. (Decl. Exs. 3, 5.)

27 During the October 18, 2018 meet-and-confer call, Plaintiffs told Defendants
28 that they intended to take depositions of the individuals identified in Defendants’

1 response to Interrogatory No. 1 (Frankie Terri Day, Margaret Ramsay, Larilyn
2 Reffett, and Ann Marie Warmenhoven), as well as Carlos Hernandez. Plaintiffs
3 expressed their willingness to be flexible on dates and locations for the depositions,
4 in the interest of calendaring them as soon as possible. Plaintiffs also inquired
5 whether Defendants intended to represent Frankie Terri Day, a former State
6 Department employee. During the call, Defendants stated they would reach out to
7 the requested individuals to determine their availability, but that they were unsure
8 whether they would represent Frankie Terri Day. Defendants confirmed they
9 would follow up with Plaintiffs the following week regarding these issues.

10 On the October 23 meet-and-confer call, Plaintiffs followed up regarding the
11 depositions. Defendants stated that they had reached out to the individuals
12 regarding depositions but had not heard back. When Plaintiffs received no follow-
13 up from Defendants for the remainder of the week, Plaintiffs proceeded to serve
14 deposition notices on Defendants for seven State Department employees, including
15 the former employee, Ms. Day. Plaintiffs' October 26 e-mail attaching the notices
16 stated that "[Plaintiffs] are willing to move the specific dates of the depositions if
17 there are mutually agreeable dates that better suit your availability and do not
18 unduly delay the depositions." (Decl. Ex. 12.)

19 Plaintiffs received no response to the service of deposition notices, and so
20 followed up on October 31 in a letter, explaining, "Plaintiffs endeavor to have
21 these deposition dates confirmed as soon as possible, as scheduling depositions
22 may become more difficult as the end of the year approaches." (Decl. Ex. 15.)
23 Plaintiffs specifically requested confirmation of dates by November 2.

24 To date, Defendants have provided no further information regarding the
25 depositions. Based on Defendants' failure to engage in deposition discovery,
26 Plaintiffs request that the Court compel the depositions of Frankie Terri Day,
27 Margaret Ramsay, Larilyn Reffett, Ann Marie Warmenhoven, Carlos Hernandez,
28 Karen Christensen and Brian Egan.

1 Given that (a) discussion regarding these individual depositions has been
2 ongoing for more than a month, (b) Plaintiffs have raised the issue of scheduling
3 individual depositions at least six separate times (during the September 20,
4 October 18 and October 23 meet-and-confer calls, in the October 3 and October 26
5 e-mails regarding deposition notices, and in the October 31 letter regarding
6 scheduling depositions), (c) Defendants have failed to calendar a single deposition
7 and seem to have ceased all communication with Plaintiffs on that subject, and (d)
8 the discovery cut-off date in the Action is impending, Plaintiffs respectfully
9 request that the Court compel the depositions of these seven individuals.¹¹⁷ See
10 *Botell v. United States*, 2013 WL 360410, at *3 (E.D. Cal. Jan. 29, 2013) (finding a
11 government agency was required to produce an employee for deposition testimony,
12 and “the paramount test is whether the employee deponent identifies with the
13 interests of the employer.”); *Hyde & Drath v. Baker*, 24 F.3d 1162, 1167 (9th Cir.
14 1994) (upholding dismissal of a complaint based on failure to appear for
15 depositions, explaining “[b]ecause the Hong Kong corporations continually
16 ignored scheduled depositions, the district court [properly] found that appellees
17 faced a fast approaching court date, a lack of crucial information, and an inability
18 to construct a defense.”).

19 **Defendants’ Statement:**

20 On October 26, Plaintiffs served Defendants with seven deposition notices.
21 Defendants state their position with respect to each notice/deposition as follows:

22 **Karen Christensen:** Ms. Christensen has no personal knowledge of the
23 facts alleged in the complaint, and she should not be deposed in this case. She
24 serves as the Principal Deputy Assistant Secretary for Consular Affairs. Plaintiffs

25 ¹¹⁷ To the extent Defendants take the position that they do not control former
26 employee Frankie Terri Day and therefore cannot produce her for a deposition
27 then, that at minimum, the Court should compel Defendants to provide Ms. Day’s
28 last known address, phone number, and whereabouts—all of which they have
declined to provide thus far.

1 had not mentioned her as someone they wished to depose before serving the notice
2 of deposition on October 26. Defendants have relayed to Plaintiffs that Ms.
3 Christensen lacks personal knowledge, *see* Marcus Decl. Ex. D at 1, and Ms.
4 Christensen has provided a declaration confirming as much. *See* Defs.' Ex. 2
5 (Christensen Decl.); *see also id.* ¶ 3. Ms. Christensen's testimony is not relevant to
6 the claims and defenses in this case. *See id.* Given her high-level position, as the
7 second highest official within the Department's largest Bureau, *see id.* ¶¶ 1, 2, it
8 would be particularly burdensome to require Defendants to make her available for
9 a deposition.

10 **Brian Egan:** Mr. Egan served as the Department of State's Legal Adviser
11 from February 22, 2016 through January 20, 2017, after which he left the
12 Department, and he has not been employed by the Department since that time.
13 Plaintiffs had not mentioned Mr. Egan as someone they wished to depose before
14 serving the notice of deposition on October 26. Because Mr. Egan no longer works
15 for the government, a deposition notice is insufficient to secure his attendance at a
16 deposition. Plaintiffs must serve a valid subpoena.¹¹⁸ Mr. Egan has been provided
17 with a copy of the complaint in this case and has provided a declaration that he has
18 no personal knowledge regarding the factual allegations therein. *See* Defs.' Ex. 3
19 (Decl. of Brian Egan); *see also id.* ¶ 3. If Plaintiffs were to serve a subpoena
20 seeking to depose Mr. Egan, Defendants and/or Mr. Egan himself would likely
21 object and/or move to quash the subpoena on the grounds that his testimony is not
22 relevant to the claims and defenses in this case, and deposing the former Legal
23 Adviser would be unduly burdensome and disproportionate to the needs of the
24 case. *See id.* ¶ 4.

25
26
27 ¹¹⁸ Mr. Egan has authorized undersigned counsel to accept a subpoena on his
28 behalf.

1 **Frankie Terri Day:** Defendants' counsel have communicated to Plaintiffs
2 that Ms. Day no longer works for the Department of State, and she currently lives
3 in the Charlotte, North Carolina area. See Marcus Decl. Ex. D at 1. Defendants'
4 counsel have relayed to Plaintiffs that Ms. Day is available to be deposed either in
5 person or via video-teleconference on November 28. Plaintiffs have indicated their
6 preference to depose Ms. Day later in December. Defendants' counsel will share
7 with Plaintiffs more information about Ms. Day's schedule as it becomes available
8 to counsel. Because Ms. Day no longer works for the government, a deposition
9 notice is insufficient to secure her attendance at a deposition. Plaintiffs must serve
10 a valid subpoena.¹¹⁹

11 **Carlos Hernandez:** Mr. Hernandez has only limited personal knowledge
12 of the facts alleged in the complaint, and the knowledge he has is not relevant to
13 Plaintiffs' claims. He should not be deposed in this case. On October 12, 2018,
14 Defendants' counsel emailed Plaintiffs' counsel to explain Mr. Hernandez's lack of
15 personal knowledge. Plaintiffs did not respond to that email. Mr. Hernandez has
16 provided a declaration explaining that his knowledge is limited to the (limited) role
17 he played in finalizing and signing a letter responding to a Congressional inquiry
18 from Congressman Lieu. Defs.' Ex. 4 (Hernandez Decl.); *see also id.* ¶¶ 2, 4–6.
19 The correspondence with Congressman Lieu occurred more than six months after
20 Consulate Toronto denied Ethan Dvash-Banks' applications for a CRBA and U.S.
21 Passport. As such, the correspondence is not relevant to Plaintiffs' claims that
22 Ethan's applications were unlawfully denied. A deposition of Mr. Hernandez
23 would be a waste of time for both Mr. Hernandez, a current Department of State
24 employee who would otherwise be attending to Departmental business, and for
25 Defendants' counsel, and thus would be disproportionate to the needs of the case.

26
27 ¹¹⁹ Ms. Day has authorized undersigned counsel to accept a subpoena on his behalf,
28 and has consented to electronic service.

1 **Margaret Ramsay:** There is no disagreement at present between the
2 parties with regard to a deposition of Ms. Ramsay. Defendants agreed to make Ms.
3 Ramsay available for a deposition in Toronto, and Plaintiffs have issued an
4 amended notice of deposition, scheduling her deposition for December 7, 2018.

5 **Larilyn Reffett:** There is no disagreement at present between the parties
6 with regard to a deposition of Ms. Reffett. Defendants agreed to make Ms. Reffett
7 available for a deposition in Toronto, and Plaintiffs have issued an amended notice
8 of deposition, scheduling her deposition for December 6, 2018.

9 **Ann Marie Warmenhoven:** Defendants conveyed to Plaintiffs on
10 November 13, 2018, that “Ms. Warmenhoven is now stationed in Dar es Salaam,
11 and as such, she’s currently unavailable to be deposed.” Marcus Decl. Ex D. As
12 indicated in Defendants’ response to Interrogatory No. 1, Ms. Warmenhoven
13 played only a small part in the underlying adjudication: “Ms. Warmenhoven
14 reviewed DNA results submitted with the CRBA application and entered findings
15 into the appropriate Department database, and advised the adjudicating consular
16 officer (Ms. Day) of those results.” Plaintiffs can ask Ms. Day about what Ms.
17 Warmenhoven conveyed to her. Particularly given Ms. Warmenhoven’s limited
18 support role in the underlying adjudication, it would be unduly burdensome and
19 disproportionate to the needs of the case to require the Department to take Ms.
20 Warmenhoven away from her post duties in Dar es Salaam for a deposition in the
21 United States.

22 **VI. CONCLUSION**

23 **Plaintiffs’ Statement:**

24 For the aforementioned reasons, the Court should compel Defendants to
25 respond in full to the (as-propounded) Interrogatories and Document Requests, to
26 produce a 30(b)(6) witness to testify regarding the topics outlined in the 30(b)(6)
27 Notice, as narrowed by Plaintiffs’ October 30 letter, and to schedule depositions of
28

1 the seven individuals identified by Plaintiffs at the earliest practicable time.
2 Plaintiffs further seek reimbursement of their costs and fees relating to this motion.

3 **Defendants' Statement:**

4 Defendants have fully responded to the numerous written discovery requests
5 (50 interrogatories and 23 document requests) served by Plaintiffs. Defendants are
6 diligently engaged in reviewing documents to continue producing to Plaintiffs any
7 non-privileged responsive documents on a rolling (and also to provide privilege
8 logs for documents withheld on the basis of privilege). Defendants are willing to
9 produce a 30(b)(6) deponent in this case to testify on a proportionate and
10 specifically described set of topics. Defendants have agreed to several of the
11 individual depositions sought by Plaintiffs, and for the remainder have raised valid,
12 reasonable objections to depositions of persons lacking personal knowledge of the
13 factual allegations in Plaintiffs' complaint. Defendants have reasonably and
14 diligently engaged in discovery in this case, and will continue to do so. The Court
15 should deny Plaintiffs' motion to compel.

1 Dated: November 19, 2018

Respectfully submitted,

2 By: /s/ Alexa M. Lawson-Remer

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

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

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

15 *Attorneys for Plaintiffs*

16 JOSEPH H. HUNT
17 Assistant Attorney General
JOSHUA E. GARDNER
18 Assistant Director

19 /s/ Lisa Zeidner Marcus
20 LISA ZEIDNER MARCUS
Senior Counsel
21 United States Department of Justice
Civil Division
22 Federal Programs Branch
P.O. Box 883
23 Washington, DC 20044
Tel: (202) 514-3336
Lisa.marcus@usdoj.gov

24 VINITA B. ANDRAPALLIYAL
25 Trial Attorney

26 *Counsel for Defendants*

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

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

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

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-
BANKS and ETHAN JACOB
DVASH-BANKS,

Plaintiffs,

v.

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

Defendants.

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

**DECLARATION OF ALEXA
LAWSON-REMER IN SUPPORT
OF PLAINTIFFS' PORTION OF
THE JOINT STIPULATION
REGARDING DISPUTE OVER
PRODUCTION OF DOCUMENTS,
INTERROGATORY RESPONSES,
AND DEPOSITIONS**

Judge: Honorable John F. Walter
Hearing date: December 11, 2018
Discovery cutoff date: January 2, 2019
Pretrial conference date: April 5, 2019
Trial date: April 16, 2019

I, ALEXA LAWSON-REMER, declare as follows:

1. I am an attorney duly licensed by the State of California and am admitted to practice before this Court. I am an associate at Sullivan & Cromwell LLP, and am one of the attorneys representing Plaintiffs *pro bono* in the above-captioned action. I submit this Declaration in support of Plaintiffs' Motion to Compel Production of Documents, Interrogatory Responses, and Depositions, filed concurrently herewith. I have personal knowledge of the facts set forth in this Declaration and, if called upon, could testify to those facts.

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

- Exhibit 1 Scheduling and Case Management Order, filed August 21, 2018.
- Exhibit 2 Plaintiffs' Notice of Rule 30(b)(6) Deposition of Defendant United States Department of State, dated September 7, 2018.
- Exhibit 3 E-mail from Alexa Lawson-Remer to Lisa Zeidner Marcus and Vinita Andrapalliyal, dated September 24, 2018, regarding individual depositions.
- Exhibit 4 Letter from Alexa Lawson-Remer to Lisa Zeidner Marcus, dated October 2, 2018, regarding Plaintiffs' First Set of Requests for Production of Documents.
- Exhibit 5 E-mail chain between Lisa Zeidner Marcus, Jessica Klein, and Alexa Lawson-Remer, dated October 2 and October 3, 2018, regarding Plaintiffs' First Set of Interrogatories and deposition scheduling.
- Exhibit 6 E-mail from Alexa Lawson-Remer to Vinita Andrapalliyal and Lisa Zeidner Marcus, dated October 5, 2018, regarding Plaintiffs' 30(b)(6) Deposition Notice, Plaintiffs' First Set of Interrogatories, and Plaintiffs' First Set of Requests for Production of Documents.
- Exhibit 7 Letter from Vinita Andrapalliyal and Lisa Zeidner Marcus to Alexa Lawson-Remer, dated October 12, 2018, regarding Plaintiffs' 30(b)(6) Deposition Notice.
- Exhibit 8 Letter from Alexa Lawson-Remer to Lisa Zeidner Marcus, dated October 16, 2018, regarding Defendants' Responses and Objections to Plaintiffs' First Set of Requests for Production of Documents.
- Exhibit 9 E-mail chain between Lisa Zeidner Marcus, Vinita Andrapalliyal, Alexa Lawson-Remer, and Jessica Klein, dated between October 16 and October 18, 2018, regarding document production.
- Exhibit 10 E-mail from Lisa Zeidner Marcus to Jessica Klein and Alexa Lawson-Remer, dated October 19, 2018, regarding document production.

- Exhibit 11 E-mail chain between Lisa Zeidner Marcus, Vinita Andrapalliyal, and Alexa Lawson-Remer, dated between October 19 and October 25, 2018, regarding Defendants' pending responses to Plaintiffs' First Set of Interrogatories.
- Exhibit 12 E-mail from Alicia Roll to Vinita Andrapalliyal and Lisa Marcus, dated October 26, 2018, sending Plaintiffs' deposition notices and inquiring about scheduling depositions.
- Exhibit 13 Letter from Alexa Lawson-Remer to Lisa Zeidner Marcus, dated October 28, 2018, regarding Defendants' Responses and Objections to Plaintiffs' First Set of Interrogatories.
- Exhibit 14 Letter from Alexa Lawson-Remer to Vinita Andrapalliyal and Lisa Zeidner Marcus, dated October 30, 2018, regarding Plaintiffs' 30(b)(6) Deposition Notice.
- Exhibit 15 Letter from Alexa Lawson-Remer to Vinita Andrapalliyal and Lisa Zeidner Marcus, dated October 31, 2018, regarding document production and deposition notices.

3. In addition, Plaintiffs' and Defendants' counsel met and conferred on the following dates:

- a. On September 20, Plaintiffs' and Defendants' counsel met and conferred regarding, among other things, Plaintiffs' intention to take individual depositions and the status of Plaintiffs' Notice for a 30(b)(6) Deposition.
- b. On September 25, Plaintiffs' and Defendants' counsel met and conferred regarding, among other things, scheduling for the individual depositions.
- c. On October 18, Plaintiffs' and Defendants' counsel met and conferred regarding, among other things, mediation, Plaintiffs' Request for Production of Documents, Plaintiffs' Notice for a 30(b)(6) Deposition, scheduling individual depositions, and Plaintiffs' Interrogatories.
- d. On October 23, Plaintiffs' and Defendants' counsel met and conferred regarding, among other things, mediation, Plaintiffs' Request for Production of Documents, and the individual depositions.

1 4. On October 30, Plaintiffs requested that Defendants meet and confer
2 further regarding Plaintiffs' discovery requests, but as of November 9, 2018,
3 Defendants have not responded to that request.

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

6 Executed this 9th day of November, 2018 in Los Angeles, California.

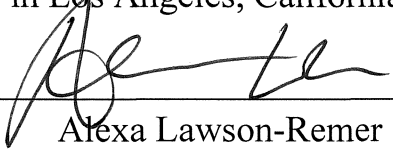
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Alexa Lawson-Remer

Exhibit 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Andrew Mason Dvash-Banks, et al.,	}	Case No. CV 18-523-JFW(JCx)
Plaintiff,		SCHEDULING AND CASE MANAGEMENT
v.		ORDER
Rex W. Tillerson, et al.,		
Defendants.		

The purpose of this Order is to notify the parties and their counsel of the deadlines and the schedule that will govern this action. SEE THE LAST PAGE OF THIS ORDER FOR THE SPECIFIED DATES. Ordinarily, the dates set forth on the last page are determined after reviewing the parties' Joint Report or consultation with the parties at the Scheduling Conference. Accordingly, the dates and requirements are firm. The Court is very unlikely to grant continuances, even if stipulated to by the parties, unless the parties establish good cause through a concrete showing. **Because this Order in some respects modifies the applicable Local Rules, counsel are advised to read it carefully to avoid default on the**

1 obligations established herein. Counsel are advised to pay
2 particular attention to the requirements of the Court with
3 respect to electronic filing, the filing of motions for
4 summary judgment, and the documents to be submitted at the
5 Pre-Trial Conference and Trial.

6 **1. ELECTRONIC FILING AND COURTESY COPIES**

7 All documents that are required to be filed in an
8 electronic format pursuant to the Local Rules shall be filed
9 electronically no later than 4:00 p.m. on the date due unless
10 otherwise ordered by the Court. Any documents filed
11 electronically after 4:00 p.m. on the date due will be
12 considered late and may be stricken by the Court. Any
13 documents that counsel attempt to file electronically which
14 are improperly filed will not be accepted by the Court.

15 Counsel are ORDERED to deliver **2 copies** of all documents
16 filed electronically to Chambers. For each document filed
17 electronically, one copy shall be marked "CHAMBERS COPY" and
18 the other copy shall be marked "COURTESY COPY." The
19 "CHAMBERS COPY" and "COURTESY COPY" are collectively referred
20 to herein as "Courtesy Copies." The Courtesy Copies of each
21 electronically filed document must include on each page the
22 running header created by the ECF system. In addition, on
23 the first page of each Courtesy Copy, in the space between
24 lines 1 - 7 to the right of the center, counsel shall include
25 the date the document was e-filed and the document number.
26 The Courtesy Copies shall not be blue-backed. All documents
27 must be stapled only in the left-hand corner, the electronic
28 proof of service must be attached as the last page of each

1 document, and the exhibits attached to any document must be
2 tabbed. Counsel shall not staple the "COURTESY COPY" and
3 "CHAMBERS COPY" together. The "COURTESY COPY" and "CHAMBERS
4 COPY" of all documents must be three-hole punched at the left
5 margin with the oversized 13/32" hole size, not the standard
6 9/32" hole size. The Courtesy Copies shall be delivered to
7 Chambers no later than 10:00 a.m. on the next business day
8 after the document was electronically filed.

9 For any document that is not required to be filed
10 electronically, counsel are ORDERED to deliver 1 conformed
11 copy of the document, which shall be marked "COURTESY COPY,"
12 to Chambers **at the time of filing**.

13 When a proposed order accompanies an electronic filing, a
14 WordPerfect or Word copy of the proposed order, along with a
15 copy of the PDF electronically filed main document, shall be
16 e-mailed to JFW_Chambers@cacd.uscourts.gov. The subject line
17 of the e-mail shall be in the following format: court's
18 divisional office, year, case type, case number, document
19 control number assigned to the main document at the time of
20 filing, judge's initials and filer's (party) name. Failure
21 to comply with this requirement may result in the denial or
22 striking of the request or the Court may withhold ruling on
23 the request until the Court receives the required documents.

24 **2. DISCOVERY**

25 All discovery shall be completed by the discovery cut-off
26 date specified on the last page of this Order. **THIS IS NOT**
27 **THE DATE BY WHICH DISCOVERY REQUESTS MUST BE SERVED; IT IS**
28 **THE DATE BY WHICH ALL DISCOVERY, INCLUDING EXPERT DISCOVERY,**

1 **SHALL BE COMPLETED.** The Court does not enforce side
2 agreements to conduct discovery beyond the discovery cut-off
3 date.

4 Any motion challenging the adequacy of responses to
5 discovery must be heard sufficiently in advance of the
6 discovery cut-off date to permit the responses to be obtained
7 before that date if the motion is granted.

8 In an effort to provide further guidance to the parties,
9 the Court notes the following:

10 **(a) Depositions**

11 All depositions shall be scheduled to commence
12 sufficiently in advance of the discovery cut-off date to
13 permit their completion and to permit the deposing party
14 enough time to bring any discovery motions concerning the
15 deposition prior to the cut-off date.

16 **(b) Written Discovery**

17 All interrogatories, requests for production of
18 documents, and requests for admissions shall be served
19 sufficiently in advance of the discovery cut-off date to
20 permit the discovering party enough time to challenge (via
21 motion practice) responses deemed to be deficient.

22 **(c) Discovery Motions**

23 Whenever possible, the Court expects the parties to
24 resolve discovery issues among themselves in a courteous,
25 reasonable, and professional manner. If they do so, resort
26 to the Court for guidance in discovery is seldom necessary.
27 The Magistrate Judge assigned to this case will rule on
28 discovery motions and protective orders.

1 **(d) Expert Discovery**

2 If expert witnesses are to be called at trial, the
3 parties shall designate affirmative experts to be called at
4 trial and shall provide reports required by Fed.R.Civ.P.
5 26(a)(2)(B) not later than eight weeks prior to the discovery
6 cut-off date. Rebuttal expert witnesses shall be designated
7 and reports provided as required by Fed.R.Civ.P. 26(a)(2)(B)
8 not later than five weeks prior to the discovery cut-off
9 date. Any non-retained expert designated by a party as an
10 affirmative or rebuttal expert shall also prepare and provide
11 an expert report in the form described by Fed.R.Civ.P.
12 26(a)(2)(B). Expert witnesses will be bound by the opinions
13 expressed in their reports prepared in accordance with
14 Fed.R.Civ.P. 26(a)(2)(B) and will not be permitted to offer
15 new opinions at trial. Failure to timely comply with this
16 deadline will result in the expert being excluded at trial as
17 a witness.

18 **3. MOTIONS - GENERAL PROVISIONS**

19 All law and motion matters, except for motions in limine,
20 must be set for hearing (not filed) by the motion cut-off
21 date specified on the last page of this Order. The Court
22 will deny or strike late-filed motions. The title page of
23 all motions must state the hearing date and time for the
24 motion, the Pre-Trial Conference date, and the Trial date.

25 Once a party has noticed a motion for hearing on a
26 particular date, the hearing shall not be continued without
27 leave of Court. If the Court concludes that a motion can be

28 / / /

1 resolved without argument, the Court will notify the parties
2 in advance.

3 If counsel does not intend to oppose a motion, counsel
4 shall immediately inform the Courtroom Deputy by e-mail and
5 immediately file a Notice of Non-Opposition in accordance
6 with the Local Rules. The parties should note that failure
7 to timely respond to any motion shall be deemed by the Court
8 as consent to the granting of the motion. See Local Rules.

9 Ex parte practice is strongly discouraged. The Court
10 will require strict adherence to proper ex parte procedures
11 for any ex parte application filed with the Court. See Local
12 Rules and the Court's Standing Order.

13 **(a) Applications and Stipulations to Extend Time**

14 No applications or stipulations extending the time to
15 file any required document or to continue any date are
16 effective unless and until the Court approves them.
17 Applications and/or stipulations to extend the time to file
18 any required document or to continue any hearing, Pre-Trial
19 date, or the Trial date must set forth the following:

20 (i) the existing due date or hearing date, as well
21 as all dates currently set by the Court in this Order,
22 including the discovery cut-off date, the Pre-Trial
23 Conference date, and the Trial date;

24 (ii) the new dates proposed by the parties;

25 (iii) specific, concrete reasons supporting good
26 cause for granting the extension; and

27 / / /

28 / / /

1 (iv) whether there have been prior requests for
2 extensions by any party, and whether those requests were
3 granted or denied by the Court.

4 All applications and stipulations must be accompanied by
5 a separate and independent proposed order which must be
6 submitted to the Court in accordance with the Local Rules and
7 this Order. Failure to submit a separate proposed order may
8 result in the denial of the application or stipulation or the
9 Court may withhold ruling on the application or stipulation
10 until the Court receives a separate proposed order.

11 **(b) Joinder of Parties and Amendment of Pleadings**

12 The deadline for joining parties and amending pleadings
13 is sixty days from the date of this Order. Any motions to
14 join other parties or for leave to amend the pleadings shall
15 be filed within twenty days of the date of this Order so that
16 they can be heard and decided prior to the deadline.

17 In addition to the requirements of the Local Rules, all
18 motions to amend the pleadings shall: (1) state the effect of
19 the amendment; and (2) state the page, line number(s), and
20 wording of any proposed change or addition of material. The
21 parties shall file and deliver to Chambers a redlined version
22 of the proposed amended pleading indicating all additions
23 and/or deletions of material.

24 **(c) Withdrawal or Substitution of Counsel**

25 The Court will not grant a request for approval of
26 substitution of counsel after an action has been set for
27 trial unless: (1) counsel files the request using the most
28 recent version of the appropriate forms provided on the

1 Court's website; and (2) the request is accompanied by a
 2 declaration signed by a substituting attorney indicating that
 3 such attorney has been advised of the trial date and will be
 4 prepared to proceed with trial as scheduled. Any request for
 5 substitution of counsel which is not on the proper form or is
 6 not accompanied by a declaration signed by a substituting
 7 attorney as set forth above will be denied.

8 Counsel who wish to withdraw and substitute their client
 9 *pro se* must file a regularly noticed motion to withdraw which
 10 demonstrates good cause for the request to withdraw. The
 11 Court will not consider such a motion unless: (1) the motion
 12 is accompanied by a declaration signed by the client
 13 indicating that the client consents to the withdrawal, has
 14 been advised of the time and date of trial, and will be
 15 prepared to represent themselves *pro se* on the scheduled
 16 trial date; or (2) the Court is otherwise satisfied for good
 17 cause shown that the attorney should be permitted to
 18 withdraw.

19 **4. SUMMARY JUDGMENT MOTIONS**

20 The Court will only entertain ONE summary judgment motion
 21 by a party. In the event a party believes that more than one
 22 summary judgment motion is necessary to expedite the
 23 resolution of issues in the action, the party must obtain
 24 leave of court to file more than one summary judgment motion.
 25 The Court will require strict adherence to the following
 26 requirements:

27 / / /

28 / / /

**(a) Statement Of Uncontroverted Facts and Conclusions of
Law and Statement of Genuine Disputes of Material
Fact**

The Statement of Uncontroverted Facts and Conclusions of Law is to be prepared in a two column format. The left hand column should set forth the allegedly undisputed fact or conclusion or law. The right hand column should set forth the evidence that supports the factual statement or conclusion of law. The factual statements and conclusions of law should be set forth in sequentially numbered paragraphs. Each paragraph should contain a narrowly focused statement of fact or conclusion of law. Each numbered paragraph should address a single subject in as concise a manner as possible.

The opposing party's Statement of Genuine Disputes of Material Fact must track the movant's Statement of Uncontroverted Facts exactly as prepared. The document must be in two columns; the left hand column must restate the allegedly undisputed fact, and the right hand column must restate the moving party's evidence in support of the fact, and indicate either undisputed or disputed. The opposing party may dispute all or only a portion of the statement, but if disputing only a portion, must clearly indicate what part is being disputed. Where the opposing party is disputing the fact in whole or part, the opposing party must, in the right hand column, set forth the evidence controverting the fact. Where the opposing party is disputing the fact on the basis of an evidentiary objection, the party must cite to the evidence alleged to be objectionable and state the ground of

1 the objection and nothing more. Counsel are reminded that
2 unwarranted factual denials made in the context of a Summary
3 Judgment Motion are subject to Rule 11 sanctions. **No**
4 **argument should be set forth in this document.**

5 The opposing party may submit additional material facts
6 that bear on or relate to the issues raised by the movant,
7 which shall follow the format described above for the moving
8 party's Statement of Uncontroverted Facts. These additional
9 facts shall follow the movant's facts, shall continue in
10 sequentially numbered paragraphs (*i.e.*, if movant's last
11 statement of fact was set forth in paragraph 30, then the
12 first new fact will be set forth in paragraph 31), and the
13 evidence that supports the new fact shall be set forth in the
14 right hand column.

15 The moving party, together with its reply, shall file a
16 separate document entitled "Combined Statement of Facts" that
17 (1) restates the entirety of the opposing party's Statement
18 of Genuine Disputes of Material Fact and (2) responds to any
19 additional facts in the same manner and format that the
20 opposing party must follow in responding to the Statement of
21 Uncontroverted Facts, as described above.

22 **(b) Supporting Evidence**

23 No party should submit any evidence other than the
24 specific items of evidence or testimony necessary to support
25 or controvert a proposed statement of undisputed fact. Thus,
26 for example, entire sets of interrogatory responses, or
27 documents that do not specifically support or controvert
28 material in the Statements should not be submitted in support

1 of or in opposition to a motion for summary judgment. Any
2 such material will not be considered.

3 Evidence submitted in support of or in opposition to a
4 motion for summary judgment should be submitted either by way
5 of stipulation or as exhibits to declarations sufficient to
6 authenticate the proffered evidence, and should not be
7 attached to the memorandum of points and authorities. The
8 Court will accept counsel's authentication of deposition
9 transcripts, written discovery responses, and the receipt of
10 documents in discovery if the fact that the document was in
11 the opponent's possession is of independent significance.
12 Documentary evidence as to which there is no stipulation
13 regarding foundation must be accompanied by the testimony,
14 either by declaration or properly authenticated deposition
15 transcript, of a witness who can establish its authenticity.

16 All exhibits submitted in support of, and in opposition
17 to, a motion for summary judgment shall be consecutively
18 numbered; no two exhibits shall bear the same number. For
19 example, if the moving party submits one declaration and one
20 request for judicial notice, with four exhibits attached to
21 each document, the exhibits attached to the declaration shall
22 be marked 1 through 4, and the exhibits attached to the
23 request for judicial notice shall be marked 5 through 8. The
24 opposing party's exhibits shall then commence with number 9.
25 Immediately above or below the page number on each page of an
26 exhibit, the parties shall mark "[Party Name]'s Summary
27 Judgment Exhibit No. ____".

28 / / /

1 In addition to the foregoing, any party who offers
2 deposition testimony in support of or in opposition to a
3 motion for summary judgment shall prepare and file a separate
4 document for each deponent which contains only those
5 questions and answers, and any objections made at the time of
6 the deposition to those questions, that a party is relying on
7 to support their motion, with a citation to the appropriate
8 page and line number(s) in the deposition transcript.

9 The parties shall also deliver to chambers (but not file)
10 one copy of the entire deposition transcript (single-sided
11 condensed transcript including the word index) of each
12 deposition referenced. The deposition transcripts shall be
13 placed in a slant D-ring binder with each transcript
14 separated by a tab divider on the right side and three-hole
15 punched at the left margin with the oversized 13/32" hole
16 size, not the standard 9/32" hole size. The deposition
17 transcript binder shall include a Table of Contents and the
18 spine of each binder shall be labeled with its contents.

19 The Court's Courtesy Copies of all evidence in support of
20 or in opposition to a motion for summary judgment shall be
21 submitted in a separately bound compendium and shall include
22 a Table of Contents. If the supporting evidence exceeds
23 twenty-five pages, each Courtesy Copy of the supporting
24 evidence shall be placed in a slant D-ring binder with each
25 item of evidence separated by a tab divider on the right
26 side. All documents contained in the binder must be three-
27 hole punched with the oversized 13/32" hole size, not the

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1 standard 9/32" hole size. The spine of each binder shall be
2 labeled with its contents.

3 In addition to the foregoing, the parties shall meet and
4 confer and prepare two binders, one binder containing a joint
5 set of all exhibits relied on by the parties in support of
6 and in opposition to the motion for summary judgment ("Joint
7 Exhibit Binder"), and the other binder containing a joint set
8 of all declarations relied on by the parties in support of
9 and in opposition to the motion for summary judgment ("Joint
10 Declarations Binder"). The parties shall file the Joint Set
11 of Exhibits with a cover page titled "Joint Set of Exhibits"
12 and the Joint Set of Declarations with a cover page titled
13 "Joint Set of Declarations" with the Reply. The parties
14 shall also deliver to Chambers two copies of both the Joint
15 Exhibit Binder and Joint Declarations Binder in accordance
16 with paragraph 1 of this Order, one set of which shall be
17 marked "CHAMBERS COPY," and the other set of which shall be
18 marked "COURTESY COPY."

19 The Joint Exhibit Binder and Joint Declarations Binder
20 shall include a Table of Contents, and the spine of each
21 binder shall be labeled with its contents. The Table of
22 Contents for the Joint Exhibit Binder and Joint Declarations
23 Binder shall specifically describe each summary judgment
24 exhibit or declaration and include a citation to each
25 paragraph number in the Combined Statement of Facts that
26 refers to the exhibit or declaration (e.g. Plaintiff's
27 Summary Judgment Exhibit No. 1 - Letter from John Doe to Jane
28 Doe dated January 1, 2007 Re: Reasons for Jane Doe's

1 termination) (Combined Statement of Facts Nos. 2, 8, 10). In
 2 preparing the Table of Contents, counsel should not create a
 3 new set of exhibit numbers. Counsel shall use the same
 4 exhibit numbers that were used to identify the documents in
 5 the Motion for Summary Judgment.

6 **(c) Objections to Evidence**

7 If a party disputes a fact based in whole or in part on
 8 an evidentiary objection, the ground for the objection, as
 9 indicated above, should be stated in the Statement of Genuine
 10 Disputes of Material Fact or Combined Statement of Facts but
 11 not argued in that document. Evidentiary objections are to
 12 be addressed in a separate memorandum to be filed with the
 13 opposition or reply brief of the party. This memorandum
 14 should be organized to track the paragraph numbers of the
 15 Statement of Genuine Disputes of Material Fact or Combined
 16 Statement of Facts in sequence. It should identify the
 17 specific item of evidence to which objection is made, or in
 18 the case of deposition testimony it should quote the relevant
 19 testimony, the ground for the objection, and a very brief
 20 argument with citation to authority as to why the objection
 21 is well taken. The following is an example of the format
 22 required by the Court:

23 Combined Statement of Facts Paragraph 10: Objection to
 24 the supporting deposition testimony of Jane Smith [quote
 25 testimony] at 60:1-10 on the grounds that the statement
 26 constitutes inadmissible hearsay and no exception is
 27 applicable. To the extent it is offered to prove her

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1 state of mind, it is irrelevant because her state of mind
2 is not in issue. Fed. R. Evid. 801, 802.

3 **DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE**
4 **OPPONENT'S STATEMENT OF FACTS. THESE WILL BE DISREGARDED AND**
5 **OVERRULED.**

6 **(d) The Memorandum of Points and Authorities**

7 The movant's memorandum of points and authorities should
8 be in the usual form required under Local Rules and should
9 contain a narrative statement of facts as to those aspects of
10 the case that are before the Court. All facts should be
11 supported with citations to the paragraph number in the
12 Statement of Uncontroverted Facts that supports the factual
13 assertion and not to the underlying evidence.

14 Unless the case involves some unusual twist, the motion
15 need only contain a brief statement of the Fed.R.Civ.P. 56
16 standard; the Court is familiar with the Rule and with its
17 interpretation under *Celotex* and its progeny. If at all
18 possible, the argument should be organized to focus on the
19 pertinent elements of the claim(s) for relief or defense(s)
20 in issue, with the purpose of showing the existence or non-
21 existence of a genuine issue of material fact for trial on
22 that element of the claim or defense.

23 Likewise, the opposition memorandum of points and
24 authorities should be in the usual form required by the Local
25 Rules. Where the opposition memorandum sets forth facts,
26 those facts should be supported with citations to the
27 paragraph number in the Statement of Genuine Disputes of
28 Material Fact and not to the underlying evidence.

1 **(e) Proposed Statement of Decision**

2 Within two days of the deadline for filing the Reply,
3 each party shall lodge a Proposed Statement of Decision,
4 which shall contain a statement of the relevant facts and
5 applicable law with citations to case law and the record.
6 The Proposed Statement of Decision shall not exceed fifteen
7 pages and shall be in a form that would be appropriate for
8 the Court to enter as its final order on the motion. The
9 Proposed Statement of Decision shall be submitted to the
10 Court in accordance with the Local Rules. Failure to lodge
11 the Proposed Statement of Decision will result in the denial
12 or granting of the motion.

13 **(f) Timing**

14 Parties should not wait until the motion cut-off date to
15 bring motions for summary judgment or partial summary
16 judgment. Early completion of non-expert discovery and
17 filing of motions for summary judgment may eliminate or
18 reduce the need for expensive expert depositions which are
19 normally conducted in the last stages of discovery.

20 **Caveat: Failure of the moving party to comply with these**
21 **procedures regarding summary judgment motions will result in**
22 **the denial of the Motion for Summary Judgment. If a party**
23 **fails to respond to a Motion for Summary Judgment, the Court**
24 **will assume that the material facts as claimed and adequately**
25 **supported by the moving party are admitted to exist without**
26 **controversy, which will likely result in the granting of the**
27 **Motion for Summary Judgment.**

28 / / /

1 **5. MOTIONS IN LIMINE**

2 The Court will only entertain a maximum of five motions
3 in limine by a party. In the event a party believes that
4 more than five motions in limine are necessary, the party
5 must obtain leave of Court to file more than five motions in
6 limine. The Court will not hear or resolve motions in limine
7 that are disguised summary judgment motions. No application
8 to file under seal will be granted with respect to a motion
9 in limine or any documents submitted with the motion in
10 limine.

11 Before filing any motion in limine, lead counsel for the
12 parties shall confer in a good faith effort to eliminate the
13 necessity for hearing the motion in limine or to eliminate as
14 many of the disputes as possible. It shall be the
15 responsibility of counsel for the moving party to arrange for
16 this conference. The conference shall take place **in person**
17 within ten calendar days of service upon opposing counsel of
18 a letter requesting such conference, but in no event later
19 than twenty-one days before the Pre-Trial Conference. Unless
20 counsel agree otherwise, the conference shall take place at
21 the office of the counsel for the moving party. If both
22 counsel are not located in the same county in the Central
23 District, the conference may take place by telephone. The
24 moving party's letter shall identify the testimony, exhibits,
25 or other specific matters alleged to be inadmissible and/or
26 prejudicial, shall state briefly with respect to each such
27 matter the moving party's position (and provide any legal
28 / / /

1 authority which the moving party believes is dispositive),
2 and shall specify the terms of the order to be sought.

3 If counsel are unable to resolve their differences, they
4 shall prepare and file a separate, sequentially numbered
5 Joint Motion in Limine for each issue in dispute which
6 contains a clear caption which identifies the moving party
7 and the nature of the dispute (e.g., "Plaintiff's Motion in
8 Limine #1 to exclude the testimony of Defendant's expert").
9 Each Joint Motion in Limine shall consist of one document
10 signed by all counsel. The Joint Motion in Limine shall
11 contain a clear identification of the testimony, exhibits, or
12 other specific matters alleged to be inadmissible and/or
13 prejudicial and a statement of the specific prejudice that
14 will be suffered by the moving party if the motion is not
15 granted. The identification of the matters in dispute shall
16 be followed by each party's contentions and each party's
17 memorandum of points and authorities. The title page of the
18 Joint Motion in Limine must state the Pre-Trial Conference
19 date, hearing date for the motions in limine, and Trial date.

20 Joint Motions in Limine made for the purpose of
21 precluding the mention or display of inadmissible and/or
22 prejudicial matter in the presence of the jury shall be
23 accompanied by a declaration that includes the following:
24 (1) a clear identification of the specific matter alleged to
25 be inadmissible and/or prejudicial; (2) a representation to
26 the Court that the subject of the motion in limine has been
27 discussed with opposing counsel, and that opposing counsel
28 has either indicated that such matter will be mentioned or

1 displayed in the presence of the jury before it is admitted
2 in evidence or that counsel has refused to stipulate that
3 such matter will not be mentioned or displayed in the
4 presence of the jury unless and until it is admitted in
5 evidence; and (3) a statement of the specific prejudice that
6 will be suffered by the moving party if the motion in limine
7 is not granted.

8 Unless ordered by the Court, no supplemental or separate
9 memorandum of points and authorities shall be filed by either
10 party in connection with any motion in limine.

11 The Court's Courtesy Copies of all evidence in support of
12 or in opposition to a motion in limine, including
13 declarations and exhibits to declarations, shall be submitted
14 in a separately bound volume and shall include a Table of
15 Contents. If the supporting evidence exceeds twenty-five
16 pages, each Courtesy Copy of the supporting evidence shall be
17 placed in a slant D-ring binder with each item of evidence
18 separated by a tab divider on the right side, and the spine
19 of the binder shall be labeled with its contents. All
20 documents contained in the binder must be three-hole punched
21 with the oversized 13/32" hole size, not the standard 9/32"
22 hole size.

23 The Court will not consider any motion in limine in the
24 absence of a joint motion or a declaration from counsel for
25 the moving party establishing that opposing counsel: (a)
26 failed to confer in a timely manner; (b) failed to provide
27 the opposing party's portion of the joint motion in a timely
28 / / /

1 manner; or (c) refused to sign and return the joint motion
2 after the opposing party's portion was added.

3 Unless otherwise ordered by the Court, motions in limine
4 should be filed and will be heard on the dates specified on
5 the last page of this Order. Unless the Court in its
6 discretion otherwise allows, no motions in limine shall be
7 filed or heard on an ex parte basis, absent a showing of
8 irreparable injury or prejudice not attributable to the lack
9 of diligence of the moving party.

10 The failure of any counsel to comply with or cooperate in
11 the foregoing procedures will result in the imposition of
12 sanctions, including a resolution of the issue against the
13 party refusing to cooperate.

14 **6. PRE-TRIAL CONFERENCE AND LOCAL RULE 16 FILINGS**

15 **(a) General Provisions**

16 The Pre-Trial Conference ("PTC") will be held on the date
17 specified on the last page of this Order, unless the Court
18 expressly waived a PTC. If adjustments in the Court's
19 calendar to accommodate congestion become necessary, the
20 Court may re-schedule the PTC instead of the trial date.
21 Therefore, the parties should assume that if the PTC goes
22 forward, the trial will go forward without continuance,
23 although some brief period of trailing may prove necessary.

24 The lead trial attorney on behalf of each party shall
25 attend both the PTC and all meetings of the parties in
26 preparation for the PTC, unless excused for good cause shown
27 in advance of the PTC.

28 / / /

1 A continuance of the PTC at the parties' request or by
 2 stipulation is highly unlikely. **Specifically, failure to**
 3 **complete discovery is not a ground for continuance.** In the
 4 unlikely event that the Court agrees to continue the PTC, the
 5 trial date is likely to be delayed as a result. If a change
 6 in the trial date is necessitated or likely because of the
 7 Court's calendar or otherwise, modifications of that date
 8 will be discussed at the PTC.

9 At the PTC, the parties should be prepared to discuss
 10 means of streamlining the trial, including, but not limited
 11 to: bifurcation; presentation of foundational and non-
 12 critical testimony and direct testimony by deposition
 13 excerpts; narrative summaries and/or stipulations as to the
 14 content of testimony; presentation of testimony on direct
 15 examination by affidavit or by declaration subject to cross-
 16 examination; and qualification of experts by admitted
 17 resumes. The Court will also discuss settlement.

18 **(b) Form of Pre-Trial Conference Order ("PTCO")**

19 The proposed PTCO shall be filed by the date specified on
 20 the last page of this Order. Adherence to this time
 21 requirement is necessary for in-chambers preparation of the
 22 matter. The PTCO shall include the date of the L.R. 16-2
 23 conference and the names of each attorney in attendance at
 24 the L.R. 16-2 conference. The form of the proposed PTCO
 25 shall comply with Appendix A to the Local Rules and the
 26 following:

27 / / /

28 / / /

1 (i) Place in "ALL CAPS" and in **bold** the separately
2 numbered headings for each category in the PTCO (e.g., "**1.**
3 **THE PARTIES**" or "**7. CLAIMS AND DEFENSES OF THE PARTIES**").

4 (ii) Include a Table of Contents at the beginning.

5 (iii) In specifying the surviving pleadings, state
6 which claims or counterclaims have been dismissed or
7 abandoned (e.g., "Plaintiff's second cause of action for
8 breach of fiduciary duty has been dismissed."). Also, in
9 multiple party cases where not all claims or counterclaims
10 will be prosecuted against all remaining parties on the other
11 side, specify to which party each claim or counterclaim
12 is directed.

13 (iv) In drafting the PTCO, the Court expects that
14 the parties will attempt to agree on and set forth as many
15 uncontested facts as possible. A carefully drafted and
16 comprehensively stated stipulation of facts will assist the
17 Court in preparing for the Pre-Trial Conference.

18 **(v) In specifying the parties' claims and defenses**
19 **in Section 7 of the PTCO, each party shall closely follow the**
20 **examples set forth in Appendix A of the Local Rules.**

21 (vi) The Court may submit fact issues to the jury in
22 the form of findings on a special verdict form. The issues
23 of fact should track the elements of a claim or defense on
24 which the jury will be required to make findings.

25 (vii) If expert witnesses are to be called at trial,
26 each party must list and identify its respective expert
27 witnesses, both retained and non-retained. Failure of a
28 party to list and identify an expert witness in the PTCO

1 shall preclude the party from calling that expert witness at
2 trial.

3 **(c) Rule 16 Filings; Memoranda; Witness Lists; Exhibit**
4 **Lists**

5 The parties must comply fully with the requirements of
6 Local Rule 16. They shall file carefully prepared Memoranda
7 of Contentions of Fact and Law (which may also serve as the
8 trial brief), along with their respective Witness Lists and
9 Exhibit Lists, all in accordance with the Local Rules. See
10 the last page of this Order for applicable dates.

11 **(d) Summary of Witness Testimony and Time Estimates**

12 Counsel shall prepare a list of their witnesses,
13 including a brief summary (two to three paragraphs) of each
14 witness's expected testimony, an estimate of the length of
15 time needed for direct examination, and whether the witness
16 will testify by deposition or in person. Counsel shall
17 exchange these lists with opposing counsel. **Counsel shall**
18 **jointly file a single list of witness testimony summaries,**
19 **including estimates for direct examination of their own**
20 **witnesses and estimates for cross-examination of opposing**
21 **witnesses.** The joint witness testimony summaries shall be
22 filed at the same time counsel submit the PTC0. If a party
23 intends to offer deposition testimony into evidence at trial,
24 the party shall comply with the Local Rules.

25 **(e) Pre-Trial Exhibit Stipulation**

26 The parties shall prepare a Pre-Trial Exhibit Stipulation
27 which shall contain each party's numbered list of all trial
28 exhibits, with objections, if any, to each exhibit including

1 the basis of the objection and the offering party's response.
 2 All exhibits to which there is no objection shall be deemed
 3 admitted. The parties shall also identify each witness they
 4 anticipate will testify about and/or lay the foundation for
 5 the exhibit. All parties shall stipulate to the authenticity
 6 of exhibits whenever possible, and the Pre-Trial Exhibit
 7 Stipulation shall identify any exhibits for which
 8 authenticity has not been stipulated to and the specific
 9 reasons for the party's failure to stipulate.

10 The Pre-Trial Exhibit Stipulation shall be substantially
 11 in the following form:

12 Pre-Trial Exhibit Stipulation

13 Plaintiff(s)' Exhibits

14 Number Description Witness If Objection, State Grounds Response to Objection

15 Defendant(s)' Exhibits

16 Number Description Witness If Objection, State Grounds Response to Objection

17 The Pre-Trial Exhibit Stipulation shall be filed at the
 18 same time counsel file the PTCO. Failure to comply with this
 19 paragraph shall constitute a waiver of all objections.

20 **DO NOT SUBMIT BLANKET OR BOILERPLATE OBJECTIONS TO THE**
 21 **OPPOSING PARTY'S EXHIBITS. THESE WILL BE DISREGARDED AND**
 22 **OVERRULED.**

23 **(f) Jury Instructions, Verdict Forms, Special**
 24 **Interrogatories**

25 Fourteen days before the required Local Rule 16-2
 26 meeting, the parties shall exchange proposed jury
 27 instructions, verdict forms, and, if necessary, special
 28 interrogatories. Seven days before the meeting, counsel

1 shall exchange written objections, if any, to the proposed
2 jury instructions, verdict forms, and special
3 interrogatories. At the required meeting, lead counsel
4 shall confer with the objective of submitting one set of
5 agreed upon instructions, a verdict form, and, if necessary,
6 special interrogatories.

7 If lead counsel agree upon one complete set of jury
8 instructions, they shall file a joint set of proposed jury
9 instructions, arranged in a logical sequence with each
10 instruction sequentially numbered, and identified as
11 "Stipulated Instruction No. __ Re _____," with the blanks
12 filled in as appropriate. If the parties cannot agree upon
13 one complete set of jury instructions, they shall file the
14 following two joint documents with the Court:

15 (i) A joint set of proposed jury instructions
16 arranged in a logical sequence with each instruction
17 sequentially numbered. If undisputed, an instruction shall
18 be identified as "Stipulated Instruction No. __ Re _____,"
19 with the blanks filled in as appropriate. If disputed, each
20 alternate version of the disputed instruction shall be
21 inserted together (back to back) in their logical place in
22 the overall sequence. Each such disputed instruction shall
23 be identified as "Disputed Instruction No. __ Re _____
24 Proposed By _____," with the blanks filled in as
25 appropriate. All disputed versions of an instruction shall
26 bear the same instruction number. If a party does not have a
27 counter-version of an instruction and simply contends no such
28 instruction should be given, then that party should so state

1 (and explain why) on a separate page inserted in lieu of an
2 alternate version; and

3 (ii) A joint memorandum of law in support of each
4 party's disputed instructions, organized by instruction
5 number. The joint memorandum of law shall quote the text of
6 each disputed instruction and shall set forth each party's
7 respective position and legal authority, immediately after
8 the text of each disputed instruction.

9 Each proposed instruction, whether agreed upon or
10 disputed, shall (a) be set forth in full on a separate page;
11 (b) embrace only one subject or principle of law; (c) cite to
12 the legal authority for or source of the instruction; and (d)
13 reference the claim for relief to which the instruction
14 relates with a citation to Section 7 of the PTCO.

15 **A Table of Contents shall be included with all jury**
16 **instructions submitted to the Court.** The Table of Contents
17 shall set forth the following:

- 18 (i) The number of the instruction;
- 19 (ii) A brief title of the instruction;
- 20 (iii) Whether it is undisputed or disputed;
- 21 (iv) The source of the instruction; and
- 22 (v) The page number of the instruction.

23 For example:

24 <u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page No.</u>
25			
26 1	Burden of Proof (Undisputed)	9th Cir. Man. of Model Jury Instr. 5.1	5
27			
28			

1 The Court directs counsel to use the instructions from
2 the Ninth Circuit Manual of Model Jury Instructions (West
3 Publishing, most recent edition) where applicable. Where
4 California law is to be applied and the above instructions
5 are not applicable, the Court prefers counsel to use the
6 Judicial Council of California Civil Jury Instructions
7 ("CACI") (LexisNexis Matthew Bender, most recent edition).
8 If neither of these sources is applicable, counsel are
9 directed to use the instructions from O'Malley, Grenig and
10 Lee, Federal Jury Practice and Instructions (West Group, most
11 recent edition). Any modifications made to the original form
12 instruction from the foregoing sources (or any other form
13 instructions) must be specifically identified, along with the
14 authority supporting the modification. **Counsel shall not**
15 **submit proposed preliminary instructions to be given to the**
16 **jury prior to opening statements.**

17 If the parties agree upon a verdict form and/or special
18 interrogatories, they shall file a joint verdict form and/or
19 special interrogatories, with the questions arranged in a
20 logical sequence. If the parties cannot agree upon a verdict
21 form and/or special interrogatories, they shall file a joint
22 document containing each party's alternative version along
23 with a brief explanation of each party's respective position.

24 The joint set of proposed jury instructions, the joint
25 memorandum of law, and verdict form(s) and/or special
26 interrogatories are to be filed with the PTCO and other Local
27 Rule 16 documents. Courtesy Copies shall be provided to the
28 Court in accordance with Section 1 of this Order. **In**

1 addition, the parties shall e-mail the joint set of proposed
2 jury instructions, joint memorandum of law, and verdict
3 form(s) and/or special interrogatories in WordPerfect or Word
4 format to the Chambers' e-mail address
5 (JFW_Chambers@cacd.uscourts.gov) at the time of filing.

6 Immediately after the Court's final ruling on the
7 disputed jury instructions, counsel shall file one final
8 "clean set" of jury instructions, which shall be sent into
9 the jury room for the jury's use during deliberations. The
10 "clean set" shall contain only the text of each instruction
11 set forth in full on each page, with the caption "Court's
12 Instruction No. ____" (eliminating supporting authority,
13 citations to the PTCO, etc.). Counsel shall also e-mail the
14 final "clean set" of jury instructions in WordPerfect or Word
15 format to the Chambers' e-mail address
16 (JFW_Chambers@cacd.uscourts.gov) at the time of filing.

17 **Caveat:** The failure of any counsel to comply with or
18 cooperate in all of the foregoing procedures regarding jury
19 instructions and/or verdict forms will constitute a waiver of
20 all objections to the jury instructions and/or verdict form
21 used by the Court or will constitute a waiver of jury trial
22 and/or the striking of the jury demand.

23 **(g) Real-Time Reporting Requirement**

24 Each party must file with the Court, at the same time
25 counsel submit the PTCO, a document for the Court Reporter
26 which contains proper names, unusual or scientific terms, or
27 any foreign or uncommon words that are likely to be used by
28 the parties during the PTC and the Trial. Each party shall

1 also e-mail a copy of the document to the Chambers' e-mail
2 address (JFW_Chambers@cacd.uscourts.gov) at the time of
3 filing.

4 **(h) Joint Statement of the Case and Requests for Voir**
5 **Dire**

6 Three days prior to the Pre-Trial Conference, the parties
7 shall file their proposed voir dire questions and their joint
8 statement of the case which the Court shall read to all
9 prospective jurors prior to the commencement of voir dire.
10 The statement should be not longer than two or three
11 paragraphs.

12 The Court conducts voir dire of all prospective jurors.
13 The parties need not submit requests for standard voir dire
14 questions, such as education, current occupation, marital
15 status, prior jury service, etc., but should include only
16 proposed questions specifically tailored to the parties and
17 issues of the case.

18 **7. COURT TRIALS**

19 **(a) Declarations of Witness Direct Testimony**

20 Counsel in non-jury trials shall submit the direct
21 testimony of their witnesses in writing in a declaration
22 executed under penalty of perjury. These declarations shall
23 be in admissible form with an appropriate foundation
24 established for the declarant's statements. Paragraphs in
25 each declaration shall be numbered consecutively to
26 facilitate the identification of paragraphs for evidentiary
27 objections. Any exhibits which are attached to a witness

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1 declaration shall be numbered consistently with the number of
2 the exhibit on the Joint Exhibit List.

3 Counsel are to exchange and file these declarations at
4 least fourteen calendar days before trial, unless otherwise
5 ordered by the Court. Courtesy Copies shall be provided to
6 the Court in accordance with Section 1 of this Order.
7 Courtesy Copies shall be submitted to the Court in a slant D-
8 ring binder with each declaration separated by a tab divider
9 on the right side. All documents must be three-hole punched
10 with the oversized 13/32" hole size, not the standard 9/32"
11 hole size. The binders shall also contain a Table of
12 Contents listing the declarations contained therein, and the
13 spine of the binder shall be labeled with its contents.

14 Eight calendar days before trial, counsel may file
15 evidentiary objections to those declarations. Counsel shall
16 prepare a separate document for each declaration for which
17 they have an evidentiary objection in which they shall quote
18 the specific language from the declaration to which they
19 object, followed by the objection and any relevant argument.
20 Counsel shall file any reply or response to the objections by
21 noon on the fifth calendar day before trial. Courtesy Copies
22 shall be provided to the Court in accordance with Section 1
23 of this Order. **DO NOT SUBMIT BLANKET OR BOILERPLATE**
24 **OBJECTIONS TO THE OPPOSING PARTY'S WITNESS DECLARATIONS.**
25 **THESE WILL BE DISREGARDED AND OVERRULED.**

26 At trial, the Court will rule on the evidentiary
27 objections and, depending upon the ruling, the declarations
28 will be received in evidence, either in whole or in part, or

1 rejected. Counsel will then conduct the cross-examination
2 and re-direct examination at trial.

3 Failure to comply with the terms of this Order will
4 result in sanctions or the Court may refuse to allow that
5 witness to testify.

6 **(b) Trial Briefs**

7 Counsel for each party shall file and serve a trial
8 brief, not to exceed 15 pages in length, fourteen calendar
9 days before trial.

10 **(c) Findings of Fact and Conclusions of Law**

11 Counsel for each party shall file and serve initial
12 proposed findings of fact and conclusions of law fourteen
13 calendar days before trial. Counsel for each party shall
14 also e-mail a copy of their proposed findings of fact and
15 conclusions of law to the Chambers' e-mail address
16 (JFW_Chambers@cacd.uscourts.gov) on the date due. Counsel
17 for each party shall then:

- 18 (i) Underline in red the portions which it
19 disputes;
20 (ii) Underline in blue the portions which it
21 admits; and
22 (iii) Underline in yellow the portions which it does
23 not dispute, but deems irrelevant.

24 Counsel may agree with a part of a finding or conclusion,
25 disagree with a part of it, and/or consider a part of it
26 irrelevant.

27 Two marked copies of opposing counsel's proposed findings
28 of fact and conclusions of law shall be filed with the Court

1 seven calendar days before trial and one marked copy shall be
2 served on opposing counsel. Courtesy Copies shall be
3 provided to the Court in accordance with Section 1 of this
4 Order.

5 **8. SETTLEMENT**

6 This Court will not conduct settlement conferences in
7 non-jury cases which the Court will try unless counsel for
8 all parties and their respective clients agree either in
9 writing or on the record. In jury cases, the Court will
10 conduct a settlement conference at the parties' joint request
11 if three conditions exist:

12 (a) The parties are satisfied that the fact issues in
13 the case will be tried to a jury;

14 (b) All significant pre-trial rulings which the Court
15 must make have been made; and

16 (c) The parties desire the Court to conduct the
17 conference, understanding that if settlement fails, the Court
18 will preside over trial of the case.

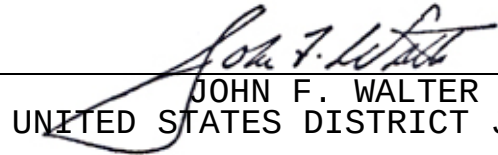
19 The parties must file a Status Report re: Settlement at
20 the time they lodge the Proposed Pre-Trial Conference Order.
21 The Status Report shall include the name and phone number of
22 the Settlement Officer who assisted the parties with their
23 settlement conference.

24 **Caveat: If counsel fail to cooperate in the preparation**
25 **of the required Pre-Trial documents, fail to file the**
26 **required Pre-Trial documents, or fail to appear at the Pre-**
27 **Trial Conference and such failure is not otherwise**
28 **satisfactorily explained to the Court: (a) the cause shall**

1 stand dismissed for failure to prosecute if such failure
2 occurs on the part of the plaintiff; (b) default judgment
3 shall be entered if such failure occurs on the part of the
4 defendant; or (c) the Court may take such action as it deems
5 appropriate.

6 IT IS SO ORDERED.

7
8 DATED: August 21, 2018



JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

JUDGE JOHN F. WALTER
SCHEDULE OF TRIAL AND PRE-TRIAL DATES

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial (court) Estimated length: <u>2</u> days	8:30 am				4/16/19
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	10:00 am				N/A
[Court trial] Hearing on Motions in Limine	10:00 am				N/A
Pre-Trial Conference (File Proposed Voir Dire Qs and Agreed-to Statement of Case three days prior to PTC)	10:00 am				4/5/19
Submit Pre-Trial Conf. Order; File Motions in Limine; Memo of Contentions of Fact and Law; Pre-Trial Exhibit Stipulation; Summary of Witness Testimony and Time Estimates; File Status Report re: Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.					3/18/19
Last day for hearing motions *	1:30 pm				1/28/19
Discovery cut-off					1/2/19

**ADDITIONAL MATTERS TO BE DETERMINED AT SCHEDULING
CONFERENCE**

Last day to conduct Settlement Conference					12/10/18
Last day to file Joint Report re: results of Settlement Conference					12/14/18

* Motions for class certification shall be filed in accordance with Local Rule 23-3.

Exhibit 2

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

Theodore Edelman (*pro hac vice*)
edelmant@sullcrom.com
Jessica Klein (*pro hac vice*)
kleinj@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

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

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ANDREW MASON DVASH-
BANKS and ETHAN JACOB
DVASH-BANKS,

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' NOTICE OF RULE
30(b)(6) DEPOSITION OF
DEFENDANT UNITED STATES
DEPARTMENT OF STATE**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks ("Plaintiffs"), by and through their undersigned attorneys, will take the deposition upon oral examination of Defendant the United States Department of State ("Defendant") by one or more of its officers, directors, managing agents or other representatives who shall be designated to testify on Defendant's behalf regarding all information known or reasonably available to Defendant with respect to the subject matters described in Schedule A. Plaintiffs request that Defendant provide written notice at least five (5) business days before the deposition of the name(s) and employment position(s) of the individual(s) designated to testify on Defendant's behalf and confirm that those persons will be prepared to testify regarding the matters set forth in Schedule A that are known or reasonably available to Defendant.

The deposition shall take place on October 15, 2018, beginning at 10:00 AM, or on such other date as shall be agreed on by the parties, at the offices of Sullivan & Cromwell LLP, 1700 New York Ave., N.W., Suite 700, Washington D.C., 20006, and shall continue for seven hours or until the examination is completed. The deposition will be taken before a court reporter, notary public or other person authorized by law to administer oaths and take depositions, and will be recorded by stenographic means and videotaped.

The videotaped deposition is being taken for the purposes of discovery, for use at trial, and for other purposes as are permitted under the Federal Rules of Civil Procedure.

Dated: September 7, 2018 Respectfully submitted,

By: /s/ Alexa Lawson-Remer

Alexa Lawson-Remer (SBN 268855)
lawsonr@sullcrom.com
SULLIVAN & CROMWELL LLP

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1888 Century Park East, Suite 2100
Los Angeles, California 90067-1725
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

Theodore Edelman (*pro hac vice*)
edelmant@sullcrom.com
Jessica Klein (*pro hac vice*)
kleinj@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

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

Attorneys for Plaintiffs

1 Representatives. Except to the extent that a topic treats them separately, this term
2 includes the CIS.

3 7. The term “FAM” means the Foreign Affairs Manual and its
4 associated handbooks, including the currently effective versions of the same and
5 all prior and proposed subsequent versions and amendments, whether in draft or
6 final form and whether or not approved, adopted or implemented.

7 8. The term “LGBT” means lesbian, gay, bisexual and
8 transgender.

9 9. The terms “Person” or “Persons” mean, without limitation, any
10 natural person, proprietorship, corporation, partnership, trust, company, joint
11 venture, group, association, organization, estate, government body, agency or
12 officer of any government, or unit of an agency, another organization or business,
13 and all other entities.

14 10. The term “Plaintiffs” means Andrew Mason Dvash-Banks and
15 Ethan Jacob Dvash-Banks.

16 11. The term “Representatives” means directors, officers,
17 representatives, agents, servants, employees, or any other Persons acting, or
18 purporting to act, on behalf of or in concert or cooperation with, a Person.

19 12. The terms “Section 301(g)” and “Section 309” mean,
20 respectively, Sections 301(g) and 309 of the Immigration and Nationality Act of
21 1952, 8 U.S.C. §§ 1401(g) and 1409.

22 13. The term “State Department” means the United States
23 Department of State in its entirety and all its divisions, departments, sections,
24 units, embassies, consulates, and Representatives.

25 **INSTRUCTIONS**

26 1. Each topic identified below shall be construed according to its
27 terms in accordance with the definitions and instructions stated and cited herein.
28

1 Although there may be some overlap, no topic should be understood to limit any
2 other.

3 2. To bring within the scope of these topics all information that
4 might otherwise be construed to be outside of their scope, the following rules of
5 construction apply: (i) the singular shall include the plural and vice versa; (ii) the
6 masculine, feminine, or neuter pronoun shall not exclude other genders; (iii) the
7 connectives “and” and “or” shall be read either disjunctively or conjunctively as
8 necessary to bring within the scope of the topics all responses that might otherwise
9 be construed to be outside their scope; (iv) the terms “any,” “all,” and “each” shall
10 be read to mean any, all, each, and every; (v) the word “including” shall be read to
11 mean including without limitation; and (vi) the present tense shall be construed to
12 include the past tense and vice versa.

13 3. To bring within the scope of these topics all information that
14 might otherwise be construed to be outside of their scope, any terminology
15 referencing familial relations is to be read as broadly and inclusively as possible,
16 and, unless otherwise indicated, shall not be limited to the State Department’s
17 application of these terms to exclude any legally recognized parental relationship.
18 This instruction includes references to children, parents, a Person born outside of
19 the United States to married parents, a Person born to married parents, a United
20 States citizen parent, marriage to a foreign national, children of married same-sex
21 couples, and a parent’s efforts made on behalf of a child of the parent.

22 TOPICS FOR EXAMINATION

23 **The deponent(s) shall be prepared to testify as to the following**
24 **topics:**

25 1. The process by which and any basis on which the State
26 Department considered and determined any request or application for a Consular
27 Report of Birth Abroad and United States passport for Plaintiff Ethan
28 Dvash-Banks, including any refusal or denial of any such application.

1 2. Any and all Communications Concerning Plaintiffs or any
2 request or application for a Consular Report of Birth Abroad and United States
3 passport for Plaintiff Ethan Dvash-Banks, including any refusal or denial of any
4 such application.

5 3. The State Department's interpretation of Section 301(g) and
6 Section 309 as applied to persons who claim to have acquired United States
7 citizenship under those statutory provisions, including the rationale for that
8 application or interpretation. This topic includes any protocols, procedures,
9 practices, policies or guidelines Concerning applications for a Consular Report of
10 Birth Abroad, a United States passport, or a Certificate of Citizenship by Persons
11 asserting citizenship under Section 301(g) or Section 309.

12 4. Any protocol, procedure, practice, policy or guideline for
13 applying Section 309, rather than Section 301(g), to any Person born outside of
14 the United States to married parents (one of whom is a United States citizen) if the
15 Person is not biologically related to the United States citizen parent, including the
16 rationale, governmental interests or concern for any such protocol, procedure,
17 practice, policy or guideline, and the application of any protocol, procedure,
18 practice, policy or guideline to Plaintiffs and/or other same-sex couples who have
19 applied on behalf of their child(ren) for a Consular Report of Birth Abroad, United
20 States passport, or Certificate of Citizenship.

21 5. Any and all Communications between (i) the Fraud Detection
22 and National Security Directorate or the Refugee, Asylum and International
23 Operations Directorate, or other units of CIS; and (ii) the State Department,
24 including the Secretary of State's staff, the Office of the Legal Adviser, and the
25 Bureau of Consular Affairs, Concerning any protocol, procedure, practice, policy
26 or guideline for applying Section 309, rather than Section 301(g), to any Person
27 born outside of the United States to married parents (one of whom is a United
28 States citizen) if the Person is not biologically related to the United States citizen

1 parent, including the rationale for any such protocol, procedure, practice, policy or
2 guideline.

3 6. Any evidentiary requirements imposed by the State
4 Department for an individual to establish United States citizenship under
5 Section 301(g) or Section 309, including when in practice genetic testing will or
6 will not be requested as part of that showing, any requirement that a United States
7 citizen demonstrate a biological connection to, or relationship with, a child born
8 outside the United States, and any sources of information relied upon by the State
9 Department to support the imposition of a biological relationship requirement for
10 the acquisition of citizenship at birth.

11 7. The impact or effect of any court ruling, including *Pavan v.*
12 *Smith*, 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015),
13 *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Jaen v. Sessions*, 899 F.3d 182
14 (2d Cir. 2018), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), and
15 *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on the State Department's
16 consideration of applications for a Consular Report of Birth Abroad, United States
17 passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born
18 outside of the United States; (ii) who asserts he or she is the child of a United
19 States citizen; (iii) whose United States citizen parent is married to a foreign
20 national; and (iv) who does not have a biological relationship to his/her United
21 States citizen parent.

22 8. Any circumstances under which the State Department treats
23 the children of married same-sex couples as children born in wedlock, and any
24 circumstances under which the State Department treats children of married same-
25 sex couples as children born out of wedlock.

26 9. The application of Section 301(g), Section 309, and/or the
27 FAM to same-sex couples who have applied on behalf of their child(ren) for a
28

1 Consular Report of Birth Abroad, United States passport, or Certificate of
2 Citizenship.

3 10. The content of and the basis and rationale for any versions or
4 editions of the FAM that reference, define or interpret any part of Section 301(g)
5 or Section 309. This topic includes any internal considerations, underlying
6 assumptions, information collected, and the identity and role of any authors or
7 contributors for the relevant provisions in the FAM, including whether, when and
8 how those involved in drafting, enacting or applying the FAM specifically
9 considered its application to same-sex couples.

10 11. The extent to which the FAM purports to be an interpretation
11 of Section 301(g) and Section 309.

12 12. The impact if any that the use of assisted reproductive
13 technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, has in
14 connection with the State Department's (i) application of Section 301(g) or
15 Section 309; or (ii) consideration or determination of applications for a Consular
16 Report of Birth Abroad, United States passport, or Certificate of Citizenship.

17 13. The factual and legal basis and circumstances Concerning the
18 statement in the March 2, 2017 letter to Plaintiff Andrew Dvash-Banks from Terri
19 N. Day, Vice Consul, U.S. Consulate General, Toronto, that "[t]he Immigration
20 and Nationality Act (INA) of 1952, as amended, requires, among other things, a
21 blood relationship between a child and the U.S. citizen parent in order for the
22 parent to transmit U.S. citizenship."

23 14. The factual and legal basis and circumstances Concerning the
24 statement in the October 2, 2017 letter to Congressman Lieu from the State
25 Department that "[t]o establish the evidence of transmission as required by U.S.
26 citizenship law, it is common for our Embassies and Consulates to ask persons
27 who engage in surrogacy overseas—regardless of sexual orientation—to go
28 through DNA testing to establish the blood relationship between parent and child

1 required for transmission of U.S. citizenship in support of a Consular Report of
2 Birth Abroad application. This practice is not limited to the U.S. Consulate of
3 Toronto.”

4 15. Any information the State Department considers in making a
5 determination of whether a parent-child relationship exists. This topic includes
6 any protocols, procedures, practices, policies or guidelines Concerning the State
7 Department’s definition or interpretation of, the terms “born . . . of parents,” “in
8 wedlock,” or “out of wedlock,” or any other term Defendants believe has the same
9 or a similar meaning as those terms, for purposes of applying Section 301(g) or
10 Section 309, and any decisions or discussions of how to define those terms
11 (including any legal and policy support or justification considered, used, or relied
12 upon in deciding upon or applying such definitions).

13 16. The organizational structure of the State Department and CIS,
14 respectively, including the hierarchy of authority among positions and the
15 responsibilities and duties associated with each position. This topic includes
16 Representatives of the State Department or CIS (i) who are or were involved with
17 or responsible for interpreting Section 301(g) or Section 309; (ii) who are or were
18 involved with or responsible for drafting or approving protocols, procedures,
19 practices, policies or guidelines (including provisions of the FAM) relating to the
20 citizenship status of children born outside of the United States to United States
21 citizens (whether or not those children have a biological connection to their
22 United States citizen parents); or (iii) who are or were involved with or
23 responsible for receiving, adjudicating, advising upon, administering, or otherwise
24 participating in any Communication, action or decision with respect to any
25 applications for or inquiries about Consular Reports of Birth Abroad, United
26 States passports, or a permanent residence in the United States.

27 17. The number of (i) same-sex married bi-national couples (*i.e.*,
28 of which one spouse is a United States citizen and the other is not); and,

1 separately, (ii) opposite-sex married bi-national couples, who have applied for
2 Consular Reports of Birth Abroad, United States passports, or Certificates of
3 Citizenship on behalf of one or more children born outside the United States (or
4 adult children of such couples who have applied on their own behalves). This
5 topic is limited to January 1, 2013 to the present

6 18. The outcomes for, or results of, applications for Consular
7 Reports of Birth Abroad, United States passports, or Certificates of Citizenship by
8 or on behalf of one or more children born outside the United States (or adult
9 children of such couples who have applied on their own behalves) and any
10 differences in such outcomes for, respectively, children of same-sex married bi-
11 national couples (*i.e.*, of which one spouse is a United States citizen and the other
12 is not) and opposite-sex married bi-national couples; and the reasons for any such
13 differences. This topic is limited to January 1, 2013 to the present.

14 19. The nature and extent to which the State Department treats
15 differently applications for Consular Reports of Birth Abroad, United States
16 passports, or Certificates of Citizenship on behalf of one or more children born
17 outside the United States (or adult children of such couples who have applied on
18 their own behalves) to (i) same-sex married bi-national couples (*i.e.*, of which one
19 spouse is a United States citizen and the other is not) and (ii) opposite-sex married
20 bi-national couples.

21 20. Any State Department and/or CIS protocol, procedure,
22 practice, policy or guideline with the purpose or effect of preventing
23 discrimination—including discrimination on the basis of sexual orientation—in
24 the provision of consular or passport services, or adjudication with respect to
25 persons claiming to have acquired United States citizenship under Section 301(g)
26 or Section 309.

27
28

1 21. *Defendants' Responses to Plaintiffs' First Set of Document*
2 *Requests* served in this Action on August 14, 2018, and the identities of any
3 individuals knowledgeable about that response.

4 22. *Defendants' Responses to Plaintiffs' First Set of*
5 *Interrogatories* served in this Action on August 28, 2018, and the identities of any
6 individuals knowledgeable about that response.

CERTIFICATE OF SERVICE

I am employed in the County of New York, State of New York. I hereby certify that I am over the age of 18 and not a party to the above action. My business address is Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004.

On September 7, 2018, I caused to be served the foregoing documents described as:

**PLAINTIFFS' NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT
UNITED STATES DEPARTMENT OF STATE**

on the interested parties in this action by emailing this document to the address(es) as follows:

Chad A. Readler
Joshua E. Gardner
Vinita Andrapalliyal
US Department of Justice
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, DC 20044
202-305-0845
Fax: 202-616-8470
Email: vinita.b.andrapalliyal@usdoj.gov

☒ **BY E-MAIL:** by causing to be transmitted via e-mail the document(s) listed above to the addressee(s) at the e-mail address(es) listed above.

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

Executed on September 7, 2018, at New York, New York.


Jessica M. Klein

Exhibit 3

From: Lawson-Remer, Alexa M.
Sent: Monday, September 24, 2018 3:52 PM
To: Marcus, Lisa (CIV); Andrapalliyal, Vinita B. (CIV)
Cc: Klein, Jessica
Subject: Dvash-Banks - Depositions

Vinita, Lisa,

As previewed on the call last Thursday, Plaintiffs intend to depose two State Department employees: (1) Toronto Vice Consul Terri N. Day, and (2) Country Officer of the Office of American Citizens Services and Crisis Management, Carlos Hernandez. Please confirm that you will accept service for each of them.

Best,
Alexa

Alexa M. Lawson-Remer
SULLIVAN & CROMWELL LLP
1888 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067-1725
PHONE | 310.712.6697
FAX | 310.407.2688
lawsonr@sullcrom.com

Exhibit 4

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-310-712-6600
FACSIMILE: 1-310-712-8800
WWW.SULLCROM.COM

*1888 Century Park East
Los Angeles, California 90067-1725*

NEW YORK • PALO ALTO • WASHINGTON, D.C.

BRUSSELS • FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

October 2, 2018

Via E-Mail

Lisa Zeidner Marcus, Esq.,
U.S. Department of Justice,
Civil Division, Federal Programs Branch,
P.O. Box 883, Ben Franklin Station,
Washington, DC 20530.

Re: *Dvash Banks v. U.S. Dep't of State*, No. 2:18-cv-00523-JFW-JCx
(C.D. Cal.), Meet and Confer Regarding Request for Production of
Documents

Dear Lisa:

I write on behalf of Plaintiffs Andrew and Ethan Dvash-Banks in connection with the above-referenced action ("Action") to request the parties meet and confer regarding the objections and responses lodged by Defendants ("Responses") to the request for production of documents ("Requests"), served by Plaintiffs on August 14, 2018. In anticipation of a productive meet-and-confer between Plaintiffs and Defendants, and pursuant to Local Rule 37-1, please find below an identification of the discovery requests in dispute and Plaintiffs' positions regarding those requests. Plaintiffs request that Defendants immediately undertake the necessary investigation to identify and produce, and provide a date certain for the production of, any non-privileged documents or information responsive to the Requests. If the parties are unable to reach a resolution regarding the Requests, Plaintiffs intend to seek an order compelling Defendants to produce documents responsive to the Requests.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

"CIS": Defendants object that the definition of the term CIS is unreasonably vague and overbroad because the definition includes any predecessor, as well as any and all divisions, departments, sections, units, and Representatives. Defendants maintain they cannot reasonably be expected to know such information regarding the component agency of the Department of Homeland Security ("DHS").

Lisa Zeidner Marcus, Esq.

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Given the regular and recurring coordination between the State Department and DHS, the definition is not unreasonable. Further, detailed knowledge of every minute detail regarding CIS is not necessary to respond to the Requests. To the extent there is a specific aspect of the definition that Defendants consider particularly problematic, Plaintiffs are willing to discuss that during the meet-and-confer session.

“Communication” and “Concerning”: Defendants object that Plaintiffs’ definitions are vague and overbroad, however, these definitions essentially track (with some added specificity) the S.D.N.Y. definitions. To the extent there is a specific aspect of these definitions that Defendants takes issue with, Plaintiffs are willing to discuss that during the meet-and-confer session.

“DHS”: Defendants object that Plaintiffs’ definition of DHS is vague and overbroad because it requests the inclusion of predecessor agencies. Defendants maintain there was no predecessor to DHS. Within the same objection, however, Defendants explain that the formation of DHS involved the integration of twenty-two different federal departments and agencies. These twenty-two federal departments and agencies would fall into the category of “any predecessor thereof.” Defendants next object that they cannot reasonably be expected to know the components of the DHS. To the contrary, it is reasonable to expect the State Department and the Secretary of State to be aware of the components of the Department of Homeland Security, an agency with which they coordinate frequently—and much more reasonable to expect Defendants to have such knowledge, rather than to ask Plaintiffs (outsiders to the governmental structure and process) to guess at such information. Plaintiffs request Defendants makes a good faith effort to locate all requested documents pertaining to DHS. To clarify, to the extent Plaintiffs’ list of possible DHS components is overly inclusive, Plaintiffs do not request Defendants produce documents that do not in fact exist.

“Document”: Defendants object that Plaintiffs’ definition of Document is vague, overbroad, unduly burdensome and disproportionate to the needs of the case. Plaintiffs’ definition of “Document” includes a variety of examples to ensure any responsive material is captured by the request. To the extent Plaintiffs’ definition refers to materials that do not exist, Defendants need not produce such material. To the extent Plaintiffs’ definition incorporates any privileged material, Defendants can protect that material in the ordinary way, *i.e.*, by asserting a proper claim on a privilege log and complying with any other prerequisites for assertion of privileges, following which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). To the extent Defendants object to reviewing individual documents to discern whether they contain any notations or marks not part of the original text, Plaintiffs are comfortable with a full production of responsive materials. Plaintiffs will undertake the claimed burden of reviewing the documents to locate any distinct copies.

Lisa Zeidner Marcus, Esq.

-3-

“FAM”: Defendants object that the definition of FAM is overly broad, unduly burdensome, not relevant, and disproportionate to the needs of the case. Defendants argue this is because the FAM has been published since 1960. Plaintiffs are willing to consider narrowing the time frame to the most important portion of this period. To the extent Plaintiffs’ definition incorporates any privileged material, the Department can assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, following which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5).

“Permanent Residence Card”: Plaintiffs accept Defendants’ proposal to define the term Permanent Residence Card in alignment with the USCIS definition for that term, that “[a] Permanent Resident Card ‘is proof of ... [a person’s] permanent resident status in the United States.’ [] ‘It also serves as a valid identification document and proof that ... [a person is] eligible to live and work in the United States.’”

“Representatives”: Defendants object that the definition of Representatives is unreasonably vague and overly broad because Defendants cannot reasonably be expected to know any and all persons who act or purport to act, on behalf of or in concert or cooperation with, any given Person. Plaintiffs agree to limit the definition to those acting or purporting to act, on behalf of or in concert or cooperation with, any Person, *to the knowledge of Defendants or any individual employed by Defendants*. Plaintiffs confirm that a government contractor would be covered by the Request.

“State Department”: Defendants object that the definition of State Department is overly broad and unreasonably vague because of the inclusion of State Department Representatives. As stated above, Plaintiffs are willing to include a limiting principle regarding Representatives.

“Instructions”: Defendants object to Plaintiffs’ Instructions as departing from Federal Rules of Civil Procedure 26 or 34. Plaintiffs have not exceeded the scope of permissible Instructions under the Federal Rules of Civil Procedure, but for clarity, request that the Department provide any and all information required by the Federal Rules of Civil Procedure.

Defendants offer a number of definitions for terms Plaintiffs did not define. Plaintiffs disagree with some of the definitions proposed. Specifically, the definition provided for “the Dvash-Banks applications for CRBAs and U.S. passports” improperly limits the definition to only those documents submitted by Andrew Mason Dvash-Banks to the U.S. Consulate in Toronto. Instead, this phrase should refer to applications submitted by any member of the Dvash-Banks family to the State Department or any component thereof. The definition provided by Defendants for the

Lisa Zeidner Marcus, Esq.

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phrase “relevant officers in the consular section of the U.S. Consulate in Toronto” is also improper. Defendants limit the definition to those responsible for adjudicating the Dvash-Banks applications during January 1, 2015 through June 2, 2017. Instead, “the relevant officers in the consular section of the U.S. Consulate in Toronto” should include any officer in the U.S. Consulate in Toronto who is or has been responsible for applying the provisions of Section 301 or 309, from January 1, 2012 to present.

GENERAL OBJECTIONS

First, Defendants object to Plaintiffs’ decision to not specify a timeframe or to the timeframe when specified. Plaintiffs do not accept Defendants’ counterproposal of a timeframe spanning from January 1, 2015 through June 2, 2017, but are willing to negotiate a timeframe that adequately captures the documents most likely to be responsive to Plaintiffs’ requests. Plaintiffs propose a timeframe from January 1, 2012 to present unless otherwise specified in specific Requests.

Second, Defendants object that Plaintiffs request records or documents beyond those generated by or available to the U.S. Consulate in Toronto. The U.S. Consulate in Toronto is presumably in regular contact with other components of the State Department, including with respect to actions taken regarding Plaintiffs. Plaintiffs therefore do not agree that it is overly broad, irrelevant, and disproportionate to the needs of this case to require Defendants to conduct searches for the requested documents. Documents evidencing the State Department’s treatment of individuals subjected to the discriminatory policy, including those outside Toronto, would be highly relevant to this case.

Third, Defendants assert that review of this case is limited to the administrative record. Defendants are incorrect. Plaintiffs’ constitutional claims merit additional discovery. *See Grill v. Quinn*, 2012 WL 174873, at *2 (E.D. Cal. Jan. 20, 2012) (“A direct constitutional challenge is reviewed independent of the APA. [citation.] As such the court is entitled to look beyond the administrative record in regard to this claim.”). The court in this matter would not have permitted discovery if Plaintiffs were legally prevented from obtaining that discovery.

Fourth, Defendants object to the production of materials covered by privileges and protections. Again, in accordance with Fed. R. Civ. P. 26(b)(5), the Department should provide a privilege log listing any materials it believes are exempt from production on these grounds and comply with the other prerequisites and requirements for assertions of privileges, after which Plaintiffs will evaluate those claims. Furthermore, Defendants’ assertion of the deliberative process privilege fails to follow proper procedure. Defendants have not provided a declaration by the head of the department that has control of the matter, identifying and describing the relevant

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documents and asserting with particularity the basis for the claim of privilege after personal review. Moreover, any such privilege would apply, at most to pre-decisional and deliberative content, not factual material. *See, e.g., Robinson v. Cty. of San Joaquin*, 2014 WL 1922827, at *2–3 (E.D. Cal. May 14, 2014). Defendants’ refusal to “produce a privilege log for privileged material not otherwise properly within the scope of discovery and/or as to which no privilege log would be required pursuant to Federal Rule of Civil Procedure 26(b)(5)” is irrelevant, since all of Plaintiffs’ requests are properly within the scope of discovery and therefore Defendants must comply with the requirements of Fed. R. Civ. P. 26(b)(5) for any document covered by the Requests that Defendants withhold, in whole or in part, on grounds of privilege.

OBJECTIONS TO SPECIFIC REQUESTS FOR PRODUCTION

Request No. 1: First, Plaintiffs’ requests for documents relating to USCIS are relevant to the claims and defenses in the litigation because if USCIS is adjudicating citizenship-related claims and applications of individuals in situations similar to Plaintiffs,¹ but is arriving at different determinations regarding citizenship from those reached by the Department, that bears on the legitimacy of the State Department’s decisions. *Second*, Plaintiffs maintain the importance and relevance of documents stating or discussing protocols, procedures, practices, or policies. Nonetheless, Plaintiffs are willing to discuss possible methods for narrowing this Request during the meet-and-confer session. *Third*, to the extent Plaintiffs’ request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Fourth*, Defendants’ assertion of the deliberative process privilege fails to follow proper procedure. Defendants have not provided a declaration by the head of the department that has control of the matter, identifying and describing the relevant documents and asserting with particularity the basis for the claim of privilege after personal review. *See, e.g., Robinson v. Cty. of San Joaquin*, 2014 WL 1922827, at *2–3 (E.D. Cal. May 14, 2014).

Request No. 2: First, Plaintiffs’ explanatory clauses serve to narrow what Defendants might otherwise assert to be a broad request. To the extent Defendants are confused about the terminology, Plaintiffs are happy to clarify the phrasing used in this request during the meet-and-confer session. *Second*, to the extent Plaintiffs’ request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can

¹ For clarity, Plaintiffs assert that an individual in a similar situation are those (i) born outside of the United States; (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.

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assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Third*, Defendants' assertion of the deliberative process privilege fails to follow proper procedure. Defendants have not provided a declaration by the head of the department that has control of the matter, identifying and describing the relevant documents and asserting with particularity the basis for the claim of privilege after personal review. *See, e.g., Robinson v. Cty. of San Joaquin*, 2014 WL 1922827, at *2–3 (E.D. Cal. May 14, 2014).

Request No. 3: First, to clarify, the phrase “concerning . . . the impact . . . of any court ruling included but not limited to” is intended to provide a helpful set of examples regarding the types of court rulings that would be highly relevant to this request. Defendants claim that, by listing example court rulings, the request becomes unreasonably vague, overly broad, not reasonably particularized, not relevant, and disproportionate to the needs of the case. If Defendants are confused by the inclusion of highly relevant examples, Defendants may focus on the listed criteria. *Second*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Third*, Defendants' contention that “any adjudications” that are not “specifically related to the Dvash-Banks family” are unreasonably vague, overly broad, not relevant, and disproportionate is misguided. Plaintiffs are claiming that the State Department's policy is discriminatory in its application to any individual in a situation similar to Plaintiffs in all relevant respects.² Therefore, Plaintiffs justifiably and reasonably seek documents and communications regarding adjudications beyond the Dvash-Banks immediate family members. *Fourth*, Plaintiffs seek documents regarding the application of provisions of the Immigration and Nationality Act (“INA”) beyond Sections 301 and 309. This is because the State Department may be denying citizenship improperly based on a misinterpretation of the INA. If the State Department's policy for adjudicating Plaintiffs' applications is, in any part, based on other provisions, Plaintiffs are entitled to that information.

Request No. 4: First, Plaintiffs' requests are not “syntactically unclear.” Plaintiffs request protocols, procedures, practices or policies, which, Plaintiffs clarify, includes how those protocols, procedures, practices or policies apply to a specific group of people. *Second*, Plaintiffs seek documents regarding the application of provisions of the INA beyond Sections 301 and 309. This is because the State Department may be denying citizenship improperly based on a misinterpretation of the INA. If the State Department's policy for adjudicating Plaintiffs' applications is, in any part, based on other provisions, Plaintiffs are entitled to that information. *Third*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege

² See note 1, *supra*.

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log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Fourth*, Defendants' assertion of the deliberative process privilege fails to follow proper procedure. Defendants have not provided a declaration by the head of the department that has control of the matter, identifying and describing the relevant documents and asserting with particularity the basis for the claim of privilege after personal review. *See, e.g., Robinson v. Cty. of San Joaquin*, 2014 WL 1922827, at *2–3 (E.D. Cal. May 14, 2014).

Request No. 5: Plaintiffs' decision to require Defendants to determine which provisions of the FAM are applied "to same-sex couples who have applied on behalf of their child(ren) for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship," in order to respond to this request is not unreasonably vague, overly broad, not reasonably particularized, not relevant, and disproportionate to the needs of the case. Defendants are in the best position to know which of the "seventeen separate volumes" is applicable to Plaintiffs' request and presumably apply that knowledge in the ordinary course of their operations and activities.

Request No. 6: *First*, Plaintiffs' requests are not "syntactically unclear." Plaintiffs request all documents and communications concerning assisted reproductive technology. Plaintiffs clarify the phrase assisted reproductive technology is used in the same way a particular provision of the Foreign Affairs Manual uses the term. Plaintiffs then provide examples of specific categories of responsive materials. If Defendants are still unclear about what types of materials are responsive to this Request, Plaintiffs are willing to discuss the matter during the meet-and-confer session. *Second*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Third*, Plaintiffs seek documents regarding the application of provisions of the INA beyond Sections 301 and 309. This is because the State Department may be denying citizenship improperly based on a misinterpretation of the INA. If the State Department's policy for adjudicating Plaintiffs' applications is, in any part, based on other provisions, Plaintiffs are entitled to that information.

Request No. 7: *First*, to clarify, Plaintiffs included the phrase "documentation of Communications" for additional specificity because this request seeks, in part, documents about communications with Plaintiffs. If Defendants are comfortable with Plaintiffs' definitions for "Document" and "Communication," then Plaintiffs would be comfortable omitting the "including any documentation of Communications" clause. *Second*, Defendants' assertion of the deliberative process privilege fails to follow proper procedure. Defendants have not provided a declaration by the head of the department that has control of the matter, identifying and describing the relevant documents and asserting with particularity the basis for the claim of privilege after personal review. *See*,

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e.g., *Robinson v. Cty. of San Joaquin*, 2014 WL 1922827, at *2–3 (E.D. Cal. May 14, 2014). *Third*, to the extent Plaintiffs’ request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Fourth*, as stated above, Plaintiffs do not accept Defendants’ counterproposal of a timeframe spanning from January 1, 2015 through June 2, 2017; but, Plaintiffs are willing to negotiate a timeframe that adequately captures the documents most likely to be responsive to Plaintiffs’ requests. Plaintiffs propose a timeframe from January 1, 2012 to present.

Request No. 8: First, Plaintiffs’ use of the phrase “Documents Concerning Communications” is not unreasonably vague, overly broad, and not sufficiently particularized. Plaintiffs are willing to help clarify any difficulties Defendants have with the phrase during the meet and confer session. *Second*, Plaintiffs do not accept Defendants’ counterproposal of a timeframe spanning from January 1, 2015 through June 2, 2017; but, Plaintiffs are willing to negotiate a timeframe that adequately captures the documents most likely to be responsive to Plaintiffs’ requests. Plaintiffs propose a timeframe from January 1, 2012 to present.

Request No. 9: First, Defendants object that Plaintiffs’ request is unreasonably vague and insufficiently particularized, but then take issue with Plaintiffs’ limiting sentence. But Plaintiffs’ second sentence helpfully and substantially narrows the request to only those documents sufficient to show the specific organizational structure likely to be the most relevant to this Action. *Second*, Plaintiffs do not seek “every organizational chart ever prepared,” as Defendants state. Rather, and as immediately identified by Defendants’ fourth objection, Plaintiffs seek documents from January 1, 2012 to the present. This timeframe is not overly broad, unduly burdensome, and disproportionate to the needs of the Action, but rather specifically tailored to capture the documents most likely to be relevant—tracking the changes from shortly before marriage equality until the present, when Plaintiff Ethan Dvash-Banks is being denied documentation of his citizenship. *Third*, Plaintiffs maintain all documents sought in this request are highly relevant and properly tailored to the needs of this case. Nonetheless, Plaintiffs are willing to discuss methods for targeting the most responsive materials during the meet and confer session. *Sixth*, as explained above, the names and titles of persons employed in other components of the State Department beyond the Toronto Consulate are relevant to Plaintiffs’ case. Plaintiffs are entitled to know whether and to what extent Defendants apply the discriminatory policy in locations besides the Toronto Embassy.

Request No. 10: First, to the extent material is responsive to multiple requests, Plaintiffs agree that Defendants may produce a single copy. *Second*, Defendants object that Plaintiffs’ request is unreasonably vague and insufficiently

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particularized, but then take issue with Plaintiffs' limiting sentence. Plaintiffs' second sentence helpfully and substantially narrows the request seeking documents sufficient to show the specific organizational structure likely to be the most relevant to this case. *Third*, Plaintiffs do not seek "every organizational chart ever prepared," as Defendants state. Rather, and as immediately identified by Defendants' fourth objection, Plaintiffs seek documents from January 1, 2012 to the present. This timeframe is not overly broad, unduly burdensome, and disproportionate to the needs of the Action, but rather specifically tailored to capture the documents most likely to be relevant—tracking the changes from shortly before marriage equality until the present, when Plaintiff Ethan Dvash-Banks is being denied documentation of his citizenship.

Request No. 11: *First*, to the extent material is responsive to multiple requests, Plaintiffs agree that Defendants may produce a single copy. *Second*, federal agencies and components other than the Department of State are relevant to the claims and defenses in this case because: (1) information about the treatment of individuals in situations similar to Plaintiffs' situation³ has bearing on the claim of systemic discrimination and the interpretation and application of Sections 301 and 309 of INA, which are core issues in the Action; (2) Plaintiffs understand and believe there is coordination between federal agencies on policy decisions relating to determinations of U.S. citizenship and interpretation of the INA, and responsive documents may provide insight as to those policy decisions; and (3) any governmental interests claimed by the federal agencies overseeing immigration with respect to their handling of citizenship determinations such as those of Plaintiffs has bearing on Plaintiffs' claims. *Third*, to clarify, Plaintiffs do not require Defendants to create responsive documents, but are willing to discuss Defendants' doing so if Defendants believe that would ease the burden they purport to discern in the fourth objection.

Request No. 12: *First*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Second*, Plaintiffs are willing to assist Defendants in determining search criteria that would be most effective for Defendants' records and adequately provide responsive material. Plaintiffs are willing to discuss this during the meet and confer session. *Third*, to clarify, Plaintiffs do not require Defendants to create responsive documents, but are willing to discuss Defendants' doing so if Defendants believe that would ease the burden they purport to discern in their fourth objection. Plaintiffs are willing to assist Defendants in determining a reasonable method for searching the relevant records that would adequately provide responsive material.

³ See note 1, *supra*.

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Request Nos. 13, 14 and 15: *First*, to the extent material is responsive to multiple requests, Plaintiffs agree that Defendants may produce a single copy. *Second*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Third*, Plaintiffs are willing to assist Defendants in determining the search criteria that would be most effective for Defendants' records and adequately provide responsive material. Plaintiffs are willing to discuss this during the meet and confer session. *Fourth*, to clarify, Plaintiffs do not require Defendants to create responsive documents, but are willing to discuss Defendants' doing so if Defendants believe that would ease the burden they purport to discern in their fifth objection. Plaintiffs are willing to assist Defendants in determining a reasonable method for searching the relevant records that would adequately provide responsive material.

Request No. 16: *First*, Defendants' counterproposal for the scope of this request is too narrow. Interrogatory No. 13 relates to the general evidentiary requirements of the State Department to establish citizenship. Request No. 16 seeks, more broadly, all protocols, procedures, practices or policies concerning those requirements. Request No. 16 clarifies that it specifically includes protocols, procedures, practices or policies concerning Plaintiffs or those similarly situated. Because Plaintiffs have not seen Defendants' response to Interrogatory No. 13, Plaintiffs are not comfortable limiting Request No. 16 to Defendants' interpretation therein.

Request No. 17: *First*, the phrase "concerns Concerning" uses the terms differently. The first "concern" refers to an apprehension, whereas (as is evidenced from the use of the defined term format of the word in initial upper case lettering) the second "Concerning" is already defined in Plaintiffs' definitions as "in any way relating to." *Second*, because Defendants' governmental interests may in fact be furthering a discriminatory policy, a request for documents and communications "reflecting the State Department's . . . rationale, interest[,] or concerns" in situations similar to that of Plaintiffs' situation is not overly broad and unduly burdensome, irrelevant, or disproportionate. To the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Third*, Defendants' assertion of the deliberative process privilege fails to follow proper procedure. Defendants have not provided a declaration by the head of the department that has control of the matter, identifying and describing the relevant documents and asserting with particularity the basis for the claim of privilege after personal review. *See, e.g., Robinson v. Cty. of San Joaquin*, 2014 WL 1922827, at *2-3 (E.D. Cal. May 14, 2014).

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Request No. 18: First, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Second*, Defendants' assertion of the deliberative process privilege fails to follow proper procedure. Defendants have not provided a declaration by the head of the department that has control of the matter, identifying and describing the relevant documents and asserting with particularity the basis for the claim of privilege after personal review. *See, e.g., Robinson v. Cty. of San Joaquin*, 2014 WL 1922827, at *2–3 (E.D. Cal. May 14, 2014). *Third*, Plaintiffs do not accept Defendants' counterproposal of a timeframe spanning from January 1, 2015 through June 2, 2017; but, Plaintiffs are willing to negotiate a timeframe that adequately captures the documents most likely to be responsive to Plaintiffs' requests. Plaintiffs propose a timeframe from January 1, 2012 to present.

Request No. 19: First, it is not unreasonably vague and nonsensical to request, for example, any protocol detailing the State Department's application of its own policy. And, to the extent Defendants consider the request to be confusing, Plaintiffs are willing to clarify further the types of documents responsive to this request during the meet and confer session. Because Plaintiffs have not seen Defendants' response to Interrogatory No. 10, however, Plaintiffs are not comfortable limiting Request No. 19 to the as-yet unknown interpretation contained in that response.

Request No. 20: First, to the extent Defendants do not know the effect of their policies, Plaintiffs are willing to limit this request to every protocol, procedure, practice or policy that Defendants know or suspect has the effect of preventing discrimination. *Second*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5).

Request No. 21: First, Plaintiffs concur with Defendants that this request includes drafts and deliberative documents. To the extent Defendants wish to assert the deliberative process privilege over those documents, Defendants must follow the correct procedure for doing so. *Second*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Third*, Plaintiffs seek documents regarding the application of provisions of the INA beyond Sections 301 and 309. This is because the State Department may be denying citizenship improperly based on a misinterpretation of the INA. If the State Department's policy for adjudicating Plaintiffs' applications is, in any part, based on other provisions, Plaintiffs are entitled to that information.

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Request No. 22: First, Plaintiffs concur with Defendants that this request includes drafts and deliberative documents. To the extent Defendants wish to assert the deliberative process privilege over those documents, Defendants must follow the correct procedure for doing so. *Second*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5).

Request No. 23: First, Plaintiffs concur with Defendants that this request includes drafts and deliberative documents. To the extent Defendants wish to assert the deliberative process privilege over those documents, Defendants must follow the correct procedure for doing so. *Second*, to the extent Plaintiffs' request covers any privileged material, Defendants should assert that claim on a privilege log and comply with any other prerequisites for assertion of privileges, after which Plaintiffs can assess those claims. *See* Fed. R. Civ. P. 26(b)(5). *Third*, Plaintiffs seek documents regarding the application of provisions of INA beyond Sections 301 and 309. This is because the State Department may be using additional provisions needed for their citizenship. If the State Department's policy for adjudicating Plaintiffs' applications is, in any part, based on other provisions, Plaintiffs are entitled to that information.

Request No. 24: To the extent Defendants consider this request to cover documents covered by other parts of the Requests, Plaintiffs agree that Defendants may produce a single copy of the responsive documents.

We are looking forward to discussing these issues in the meet and confer. Please let us know your availability so that we may schedule that meet and confer as soon as mutually convenient, but no later than 10 days from receipt of this letter. *See* Local Rule 37-1. We hope to resolve these issues cooperatively, and we will make every reasonable effort to come to an agreement concerning these discovery responses. Given the expedited schedule the Court has set for this matter, we will endeavor—and hope that the Department will endeavor—to address and resolve these issues promptly.

Sincerely,

A handwritten signature in black ink, appearing to be 'AL' followed by a long horizontal flourish.

Alexa M. Lawson-Remer

Exhibit 5

From: Lawson-Remer, Alexa M.
Sent: Wednesday, October 03, 2018 1:44 PM
To: Marcus, Lisa (CIV)
Cc: Andrapalliyal, Vinita B. (CIV); amorris@immigrationequality.org; Edelman, Theodore; Klein, Jessica
Subject: RE: Dvash-Banks - Pls. First Set of Interrogatories

Lisa,

While we don't agree with your characterization of Plaintiffs' First Set of Interrogatories as containing "discrete subparts," Plaintiffs are willing to consider an additional extension until Friday, October 5, for Defendants to respond to the 20 enumerated interrogatories. If Defendants would like to seek an additional extension to substantively answer specific interrogatories, we ask that you please identify those interrogatories by number and propose a date certain for serving those responses sometime next week. In exchange for agreeing to this additional extension, Plaintiffs ask that Defendants commit to producing documents responsive to Plaintiffs' First Set of Document Requests the earlier of 10 days from now or 5 days from the entry of the negotiated inadvertent production order. We further ask that you please agree to accept service and make available for depositions Terri Day and Carlos Hernandez or, if they no longer work at the State Department, provide their last known addresses and contact information.

Please confirm whether you agree to this arrangement.

Best,
Alexa

Alexa M. Lawson-Remer
SULLIVAN & CROMWELL LLP
1888 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067-1725
PHONE | 310.712.6697
FAX | 310.407.2688
lawsonr@sullcrom.com

From: Marcus, Lisa (CIV) <lisa.marcus@usdoj.gov>
Sent: Tuesday, October 02, 2018 8:34 PM
To: Lawson-Remer, Alexa M. <LawsonR@sullcrom.com>; amorris@immigrationequality.org; Edelman, Theodore <EdelmanT@sullcrom.com>; Klein, Jessica <kleinj@sullcrom.com>
Cc: Andrapalliyal, Vinita B. (CIV) <Vinita.B.Andrapalliyal@usdoj.gov>
Subject: Dvash-Banks - Pls. First Set of Interrogatories

Jessica,

When we talked last week and you and your colleagues agreed to a two-business-day extension of time (until 10/1) for Defendants' interrogatory responses—and then again when we spoke yesterday and I explained that an unexpected medical emergency in my family had impacted my availability to work at the end of last week and over this past weekend with Defendants on the interrogatory responses, but that I thought we could send you the responses today (10/2)—I did not realize the extent to which additional time was needed for the Department of State to complete its due diligence and internal-review process for the interrogatory responses. I apologize for having to come back to you again.

I can confirm that the Department of State has been working diligently to formulate accurate, complete, substantive responses to the interrogatories. Given the breadth of the interrogatories posed, and the number of discrete subparts involved, formulating and completing the interrogatory responses has proven to be quite burdensome, and more time-consuming than anticipated.

As an initial matter, Defendants are working to finalize their substantive responses to the first twenty-five discrete subparts included within Plaintiffs' First Set of Interrogatories. We think we can get you those responses ("Defs.' First Set of Responses to Pls.' First Set of Interrogatories") on Thursday (10/4) of this week, but it could be tomorrow (10/3), and in any event will be no later than Friday (10/5). Will you please let me know whether Plaintiffs are agreeable to this requested extension of time?

Without waiving any objections Defendants may have with respect to the number of interrogatories that have been served to date, *see* Fed. R. Civ. P. 33(a)(1), Defendants also intend to provide substantive answers to the remaining subparts included within Plaintiffs First Set of Interrogatories; Defendants plan to provide these answers in their Second Set of Responses to Pls.' First Set of Interrogatories, and will do so within a reasonable time.

Sincerely, Lisa

Lisa Zeidner Marcus
Senior Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
Direct dial: (202) 514-3336

Exhibit 6

From: Lawson-Remer, Alexa M.
Sent: Friday, October 05, 2018 12:33 AM
To: Andrapalliyal, Vinita B. (CIV); Marcus, Lisa (CIV)
Cc: Klein, Jessica; Edelman, Theodore; Aaron Morris (Amorris@immigrationequality.org)
Subject: Dvash-Banks

Lisa, Vinita,

On September 7, 2018, Plaintiffs served Defendant U.S. Department of State ("DOS") with a notice scheduling a Rule 30(b)(6) deposition on October 15, 2018. To date, the DOS has not responded to that notice and plaintiffs are preparing to proceed as scheduled with that deposition. For that deposition to be productive, it is essential that Plaintiffs receive Defendants' substantive and complete interrogatory responses and the documents requested in Plaintiffs' First Set of Requests for Production. Plaintiffs served their First Set of Interrogatories on August 28, 2018 and their First Set of Requests for Production ("RFPs") on August 14, 2018. Notwithstanding the multiple extensions Plaintiffs have given Defendants—all of which have now expired—Plaintiffs have not received Defendants' interrogatory responses. Nor have Plaintiffs received any documents responsive to Plaintiffs' RFPs. Plaintiffs are currently awaiting a draft stipulation and proposed order from Defendants covering Privacy Act protections, which Defendants raised last week as a newly identified prerequisite to their production of documents. However, this should not impede Defendants' production of documents that are obviously not privileged and do not raise Privacy Act concerns, such as those responsive to Request No. 9, which calls for documents sufficient to show the organizational structure of the DOS and CIS between January 1, 2012 and the present.

Accordingly, while Plaintiffs are prepared to move forward with the 30(b)(6) deposition on October 15, Plaintiffs also reserve their right to call DOS' designated representative(s) back for a second deposition should Defendants ultimately provide untimely interrogatory responses and produce documents relevant to the 30(b)(6) topics after the deposition has occurred. Plaintiffs also reserve all other rights, including to seek relief from the court regarding any and all of these matters.

Best,
Alexa

Alexa M. Lawson-Remer
SULLIVAN & CROMWELL LLP
1888 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067-1725
PHONE | 310.712.6697
FAX | 310.407.2688
lawsonr@sullcrom.com

Exhibit 7



U.S. Department of Justice
Civil Division, Federal Programs Branch

Mailing Address

P.O. Box 883, Ben Franklin Station, Washington, DC 20530

Street Address

1100 L Street NW, Room 11516, Washington, DC 20044

Vinita B. Andrapalliyal
Trial Attorney

Telephone: (202) 305-0845
Facsimile: (202) 616-8470

October 12, 2018

VIA E-MAIL

Alexa Lawson-Remer
Sullivan & Cromwell LLP
1888 Century Park East, Suite 2100
Los Angeles, CA 90067-1725
(Tel) 310-712-6600
(Fax) 310-712-8800
lawsonr@sullcrom.com

Re: *Dvash-Banks v. Pompeo*, No. 18-524 (JFW-JCx)

Dear Ms. Lawson-Remer:

We are in receipt of your Rule 30(b)(6) deposition notice containing twenty-two separately enumerated topics for deposition. As an initial matter, Defendants are unable to participate in a deposition on October 15, 2018. Further, we have the following objections to the definitions, instructions, and topics contained in the notice. We look forward to working with you to try to resolve these issues as expeditiously as possible.

While we include below detailed objections to the topics in your notice, we note up front that many of those topics seek information duplicative of what you have already sought through interrogatories and document requests. We think the scope of this 30(b)(6) notice and the sheer number of listed topics is unduly burdensome. "A party who notices a Rule 30(b)(6) deposition should apply fairness and reasonableness to the scope of the matters that the witness is required to testify about." *Madrigal v. Allstate Indem. Co.*, No. 14-civ-4242, 2015 WL 12746225, at *5 (C.D. Cal. Apr. 22, 2015). The task of making "a good faith effort to prepare... [one or more] 30(b)(6) witness[es] to 'fully and unequivocally answer questions about the designated [topics]... becomes less realistic and increasingly impossible as the number and breadth of noticed subject areas expand.'" *Id.* (internal citation omitted); *see also* 8A The Late Charles Alan Wright et. al., *Federal Practice and Procedure* § 2103 (3d ed.) ("[T]he burdens faced by the responding party [served with a 30(b)(6) notice] are considerably more challenging than with an ordinary deposition."). Because the Department has already provided interrogatory responses on many of the topics listed in your 30(b)(6) notice, we question the utility of a 30(b)(6) deposition on these same topics, which appear cumulative/duplicative and unnecessary. To the extent you continue to believe a 30(b)(6) deposition would be helpful and

relevant, we urge you to significantly narrow the number and breadth of topics. We object to the current scope of the 30(b)(6) notice.

Definitions. For the purposes of this letter, Defendants incorporate the objections they raised in their first responses to Plaintiffs' requests for the production of documents ("RFPDs") and Interrogatories to the following terms: "CIS," "Communication," "Concerning," "DHS," "FAM," "Representatives," and "State Department."¹ Additionally, while Defendants generally concur with the notice's definitions of the term "Section 301(g)" and "Section 309" of the Immigration and Nationality Act, throughout this response to the notice, Defendants instead tend to use the U.S. code citations—8 U.S.C. § 1401(g) and 8 U.S.C. § 1409—to refer to those provisions.

Instructions. Defendants object to Plaintiffs' instructions to construe "any terminology referencing familial relations is to be read as broadly and inclusively as possible." This instruction is vague, overbroad and not described with the reasonable particularity required by Rule 30(b)(6) because it is untethered to any legal definition of family that the State Department can use to adequately prepare for a Rule 30(b)(6) deposition.

General objections. Defendants object to the demand that they provide at least five business days before any 30(b)(6) deposition the names and employment position(s) of individual(s) designated to testify on Defendants' behalf; Defendants will endeavor to provide the names of their designees within a reasonable time prior to the deposition(s). Defendants also incorporate herein the general objections Defendants interposed in response each of Plaintiffs' RFPDs, and those that Defendants interposed in response to each of Plaintiffs' interrogatories. In particular, Defendants incorporate their objections regarding the extent Plaintiffs seek information (1) outside of a reasonable time period relating to the claims and defenses in this case; (2) beyond the administrative record in connection with Plaintiffs' claims seeking judicial review of agency actions under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (Count III), and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02 (Counts I and II); and (3) that is privileged, confidential, or otherwise protected from disclosure.² Defendants specifically reserve the right to make further objections as necessary to the extent additional issues arise regarding the meaning of terms in and/or information sought by discovery, including during any forthcoming 30(b)(6) deposition.

¹ Defs.' First Response to Pls.' RFPD ¶ 2 ("CIS"); *id.* ¶ 3 ("Communication"); *id.* ¶ 4 ("Concerning"); *id.* ¶ 5 ("DHS"); *id.* ¶ 7 ("FAM"); *id.* ¶ 9 ("Representatives"); *id.* ¶ 10 ("State Department"); *see also* Defs.' First Response to Pls.' First Set of Interrogatories ¶ 2 ("CIS"); *id.* ¶ 3 ("Communication"); *id.* ¶ 4 ("Concerning"); *id.* ¶ 5 ("DHS"); *id.* ¶ 7 ("FAM"); *id.* ¶ 10 ("Representatives"); *id.* ¶ 11 ("State Department");

² *See* Defs.' First Response to Pls.' RFPD ¶¶ 13–20; *see also* Defs.' First Response to Pls.' First Set of Interrogatories ¶¶ 13–21.

Topics. Defendants object to the following topics identified as topics of examination in the notice:

- **Topic 1.** This topic seeks testimony regarding “[t]he process by which and any basis on which the State Department considered and determined any request or application for a Consular Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks, including any refusal or denial of any such application.”

Defendants note that Rule 30(b)(6) is designed to allow a party to obtain testimony regarding information generally known to an organization, particularly where the examining party does not know the identities of persons within the organization who may have the information sought.³ Defendants further note that—in response to Plaintiffs’ Interrogatory No. 1—Defendants have previously identified for Plaintiffs the specific Department of State employees (current or former) that were involved with the adjudication and determination of the two applications—one for a Consular Report of Birth Abroad, and the other for a U.S. passport—submitted to the Department on behalf of Ethan. And, in response to Plaintiffs’ Interrogatory No 2, Defendants identified those same individuals as the persons who “have knowledge or information concerning the process by which, ... the reasons why, ... [and] the basis on which” the applications were denied.

Defendants’ interrogatory answers show a closed set of four individuals who in their official capacities possess personal knowledge of the specific process used and the reasons for the denial of the applications. And although a witness designated for 30(b)(6) purposes need not have “personal knowledge” on the designated topic, Defendants would likely identify one of those persons as being best positioned for Defendants to prepare to “testify about information known or reasonably available to” the Department. If Plaintiffs are willing to forgo taking individual depositions of persons identified in response to Interrogatories No. 1 and 2, Defendants would be willing to designate a witness to serve as a 30(b)(6) witness for this topic. Otherwise, Defendants object to Topic 1 as unduly burdensome, unreasonably cumulative, duplicative, and disproportionate to the needs of the case.

- **Topic 2.** This topic asks Defendants to designate someone to testify regarding “[a]ny and all communications concerning Plaintiffs or any request or application for a Consular Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks.” (emphasis added). Defendants object to this topic as overly broad, unduly burdensome, and disproportionate to the needs of the case. Plaintiffs’ deposition notice defines the word “communications” as including all oral and written communications, and it would be unduly burdensome, if not impossible, to prepare a designee in such a manner.

³ Rule 30(b)(6) was added as a discovery device to the Federal Rules in 1970, in order to “‘curb the [problem of] ‘bandying’ by which officers or managing agents of a corporation are deposed in turn but each disclaims knowledge of facts that are clearly known to persons in the organization and thereby to [the organization].” 8A The Late Charles Alan Wright et. al., *Federal Practice and Procedure* § 2103 (3d ed.) (quoting Fed. R. Civ. P. 30, Committee Note).

- **Topic 3:** This topic seeks information relating to “the State Department’s interpretation of Section 301(g) and Section 309 as applied to persons who claim to have acquired United States citizenship under those statutory provisions, including the rationale for that application or interpretation.”

Defendants object to this topic as improperly seeking legal conclusions, not factual information. Defendants further object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs have already sought through Plaintiffs’ RFPD No. 1 and Interrogatories No. 4(A) and 4(B), to which Defendants have already objected.⁴ Defendants refer Plaintiffs to Defendants’ responses to RFPD No. 1 and Interrogatories No. 4(A) and 4(B), and incorporate their objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 4:** This topic seeks information relating to “[a]ny protocol, procedure, practice, policy or guideline for applying Section 309, rather than Section 301(g), to any Person born outside of the United States to married parents (one of whom is a United States citizen) if the Person is not biologically related to the United States citizen parent.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Plaintiffs’ RFPD No. 1 and Interrogatories No. 4(A), 4(B), 5, 7(A), and 18. Defendants refer Plaintiffs to Defendants’ responses to RFPD No. 1 and the Interrogatories and incorporate their specific objections to those requests here. The topic is also duplicative of what is requested in Topic 3. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 5:** This topic seeks information relating to “[a]ny and all Communications between (i) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, or other units of CIS; and (ii) the State Department, including the Secretary of State’s staff, the Office of the Legal Adviser, and the Bureau of Consular Affairs, Concerning any protocol, procedure, practice, policy or guideline for applying Section 309, rather than Section 301(g), to any Person born outside of the United States to married parents (one of whom is a United

⁴ Plaintiffs’ RFPD No. 1 seeks “[a]ll Documents and Communications stating or discussing protocols, procedures, practices or policies of the State Department and [US]CIS for applying Section 301(g) and Section 309 to persons who claim to have acquired United States citizenship under those statutory provisions, including but not limited to the reasons for any such protocols, procedures, practices or policies.” Interrogatory No. 4 asks Defendants to: “Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g) or Section 309 to Persons who claim to have acquired United States citizenship under those statutory provisions, including the reasons and basis for any such protocols, procedures, practices, guidelines or policies.”

States citizen) if the Person is not biologically related to the United States citizen parent.”

By asking Defendants to designate someone to testify regarding “[a]ny and all communications” between the State Department and USCIS regarding any protocol, procedure, practice, policy, or guideline for applying one section of the INA over another section of the INA, this topic is overly broad, unduly burdensome, and disproportionate to the needs of the case, particularly because Plaintiffs’ deposition notice defines the word “communications” as including all oral and written communications. It would be unduly burdensome, if not impossible, to prepare a designee in such a manner, and therefore Defendants object to this topic.

Defendants further object to this topic as overly burdensome, and unreasonably cumulative because it seeks information that is duplicative of what Plaintiffs sought in Plaintiffs’ RFPD No. 2 and Interrogatories No. 5 and 7(C), 7(D), 7(E), 7(F), and 7(G).⁵ Defendants refer Plaintiffs to Defendants’ responses to RFPDs No. 2 and the Interrogatories and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 6:** This topic seeks information relating to “[a]ny evidentiary requirements imposed by the State Department for an individual to establish United States citizenship under Section 301(g) or Section 309, including when in practice genetic testing will or will not be requested as part of that showing, any requirement that a United States citizen demonstrate a biological connection to, or relationship with, a child born outside the United States.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Plaintiffs’ RFPD No. 16 and Interrogatory No. 13.⁶ Defendants refer

⁵ Plaintiffs’ RFPD No. 2, for example, seeks “[a]ll Documents and Communications Concerning Communications between (i) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, or other units of [US]CIS, and (ii) the State Department, including but not limited to the Secretary of State’s staff, the Office of the Legal Adviser, and the Bureau of Consular Affairs, Concerning any protocol, procedure, practice or policy for applying Section 309, rather than Section 301(g), to any Person born outside of the United States to married parents (one of whom is a United States citizen) if the Person is not biologically related to the United States citizen parent, including but not limited to the rationale for any such protocol, procedure, practice or policy.”

⁶ Plaintiffs’ RFPD No. 16 seeks “All protocols, procedures, practices or policies Concerning the showing or evidentiary requirements necessary to establish United States citizenship under Section 301(g) or Section 309, including when genetic testing will or will not be requested as part of that showing. This request includes protocols, procedures, practices or policies that specifically Concern Plaintiffs or any other person (i) born outside of the United States (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is

Plaintiffs to Defendants' responses to those RFPDs and Interrogatories and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 7:** This topic seeks information relating to “the impact or effect of any court ruling, including *Pavan v. Smith*, 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Jaen v. Sessions*, 899 F.3d 182 (2d Cir. 2018), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on the State Department’s consideration of applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born outside of the United States; (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of—and, indeed identical to—what Plaintiffs sought in Defendants’ RFPD No. 3, to which Defendants have already objected.⁷ Defendants refer Plaintiffs to Defendants’ response to RFPD No. 3 and incorporate their specific objections to that request here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 8:** This topic seeks “[a]ny circumstances under which the State Department treats the children of married same-sex couples as children born in wedlock, and any circumstances under which the State Department treats children of married same-sex couples as children born out of wedlock.”

married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.” Plaintiffs’ Interrogatory No. 13, meanwhile, requests the Department to “Identify and describe the evidentiary requirements deemed necessary by the State Department to establish United States citizenship at birth under Section 301(g) or Section 309, including when genetic testing will or will not be requested or required as part of that showing.”

⁷ Plaintiffs’ RFPD No. 3 seeks “[a]ll Documents and Communications concerning or discussing the impact or effect of any court ruling, including but not limited to *Pavan v. Smith*, 28 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Solis-Espinoza v. Gonzales*, 401 F.3d 2 1090 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born outside of the United States (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Plaintiffs' RFPD Nos. 18 and 19 and Interrogatories Nos. 9, 10(A)–10(F), 18, and 19, to which Defendants have already objected. Defendants refer Plaintiffs to Defendants' responses to those RFPDs and Interrogatories and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 9:** This topic seeks information relating to “[t]he application of Section 301(g), Section 309, and/or the FAM to same-sex couples who have applied on behalf of their child(ren) for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants' RFPD Nos. 12, 13, 14, and 15 and Interrogatory No. 19, to which Defendants have already objected. Defendants refer Plaintiffs to Defendants' responses to those RFPDs and Interrogatory No. 19 and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 10:** This topic seeks information relating to “[t]he content of and the basis and rationale for any versions or editions of the FAM that reference, define or interpret any part of Section 301(g) or Section 309. This topic includes any internal considerations, underlying assumptions, information collected, and the identity and role of any authors or contributors for the relevant provisions in the FAM, including whether, when and how those involved in drafting, enacting or applying the FAM specifically considered its application to same-sex couples.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Plaintiffs' RFPD No. 18, to which Defendants have already objected.⁸ Defendants refer Plaintiffs to Defendants' response to that RFPD and incorporate their specific objections to that request here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6). Moreover, this topic seeks information that bears no

⁸ Plaintiffs' RFPD No. 18 seeks “[a]ll versions of the FAM (or equivalent or related Documents) that define ‘in wedlock’ and ‘out of wedlock,’ or any other term Defendants believe has the same or a similar meaning as those terms, for purposes of applying Section 301(g) or Section 309, and all Documents Concerning decisions or discussions of how to define those terms (including any legal and policy support or justification considered, used, or relied upon in deciding upon such definitions).”

apparent relevance to the claims and defenses in this case and is overly burdensome for the Department to marshal for the purposes of a Rule 30(b)(6) deposition insofar as the topic seeks, and would require the Department to prepare witnesses who can speak to, the reasons behind references to 8 U.S.C. §§ 1401(g) and 1409 in versions of the FAM dating back as far as 1960. This topic is also not defined with reasonable particularity because it requires the Department to prepare a witness who could provide information regarding references to both provisions and scattered sections of the FAM that have no apparent bearing to the case. Finally, the topic also seeks plainly privileged information insofar as it seeks “internal considerations” regarding references to §§ 1401(g) and 1409 in the FAM.

- **Topic 11:** This topic seeks information relating to “[t]he extent to which the FAM purports to be an interpretation of Section 301(g) and Section 309.”

Defendants object to this topic because it seeks legal opinions or conclusions, which is beyond the proper scope of a Rule 30(b)(6) deposition.

- **Topic 12:** This topic seeks information relating to “[t]he impact if any that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, has in connection with the State Department’s (i) application of Section 301(g) or Section 309; or (ii) consideration or determination of applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Plaintiffs’ RFPD No. 6 and Interrogatory No. 16, to which Defendants have already objected.⁹ Defendants refer Plaintiffs to Defendants’ responses to RFPD No. 6 and Interrogatory No. 16 and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topics 13 and 14:** These topics seek testimony regarding the “factual and legal basis and circumstances” concerning certain statements in two letters, a March 2, 2017 letter,

⁹ Plaintiffs’ RFPD No. 6 seeks “All Documents and Communications Concerning assisted reproductive technology as that term is used in 7 FAM 140 and Appendix D of the FAM, including but not limited to surrogacy, in connection with Section 301(g), Section 309, or applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship.” Plaintiffs’ Interrogatory No. 16, meanwhile, requests the Department to “Identify and Describe the effect or impact, Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in connection with the State Department’s (i) application of Section 301(g) or Section 309; or (ii) determination of applications for a CRBA, United States passport, or Certificate of Citizenship. if any, that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in connection with the State Department’s (i) application of Section 301(g) or Section 309; or (ii) determination of applications for a CRBA, United States passport, or Certificate of Citizenship.”

and an October 2, 2017 letter. Those letters with signed by individuals who Plaintiffs have already indicated they intend to depose. Thus, Defendants object to these topics as unduly burdensome, unreasonably cumulative, duplicative, and disproportionate to the needs of the case.

Defendants further object to topics 13 and 14 because the topics seek legal conclusions, *i.e.*, the “legal basis and circumstances” of certain statements made in connection with the Department’s denial; this request for legal opinions or conclusions is beyond the proper scope of a Rule 30(b)(6) deposition, the purpose of which is to obtain factual information. *See, e.g., Jones v. Hernandez*, 16-CV-1986-W(WVG), 2018 WL 539082, at *5 (S.D. Cal. Jan. 23, 2018), *objections overruled*, 16-CV-1986 W (WVG), 2018 WL 1981207 (S.D. Cal. Apr. 27, 2018).

Defendants further object to topic 14 because it seeks testimony regarding a letter sent to a Congressman on October 2, 2017, more than six months after the underlying adjudication in this case concluded. By seeking testimony about the letter, this topic is overly broad, not relevant to the claims and defenses in the case, and disproportionate to the needs of the case.

- **Topic 15:** This topic seeks information relating to “[a]ny information the State Department considers in making a determination of whether a parent-child relationship exists.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants’ RFPD No. 19.¹⁰ Defendants refer Plaintiffs to Defendants’ response to RFPD No. 19 and incorporate their specific objections to that request here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 16:** This topic seeks information relating to “[t]he organizational structure of the State Department and CIS, respectively.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants’ RFPDs Nos. 9 and 10, to which Defendants have already objected.¹¹ Defendants refer Plaintiffs to Defendants’ responses to those RFPDs

¹⁰ Plaintiffs’ RFPD No. 19 seeks “[a]ll Documents and Communications Concerning any protocols, procedures, practices or policies Concerning the State Department’s definition or interpretation of, the terms ‘born . . . of parents,’ ‘wedlock,’ ‘in wedlock,’ or ‘out of wedlock.’”

¹¹ Plaintiffs’ RFPD No. 9 seeks “Department and CIS, respectively, including organizational charts or other documents that identify the hierarchy of authority among positions and the responsibilities and duties associated with each position, and the names and titles of Representatives of the State Department or CIS who held those positions between January 1, 2012 and the present.” Plaintiffs’ RFPD No. 10, meanwhile, seeks “Documents sufficient to

also incorporate their specific objections to those requests here. Defendants particularly re-emphasize that USCIS's full organizational structure is beyond the reasonable scope of knowledge of the Department. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 17:** This topic seeks information relating to “[t]he number of (i) same-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not); and, separately, (ii) opposite-sex married bi-national couples, who have applied for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of one or more children born outside the United States (or adult children of such couples who have applied on their own behalves).”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants' RFPDs Nos. 12, 13, 14, and 15, to which Defendants have already objected. Defendants refer Plaintiffs to Defendants' responses to those RFPDs and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 18:** This topic seeks information relating to “[t]he outcomes for, or results of, applications for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship by or on behalf of one or more children born outside the United States (or adult children of such couples who have applied on their own behalves) and any differences in such outcomes for, respectively, children of same-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not) and opposite-sex married bi-national couples; and the reasons for any such differences.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants' RFPDs Nos. 12, 13, 14, and 15, to which Defendants have already objected. Defendants refer Plaintiffs to Defendants' responses to those RFPDs and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

show the organizational structure of the State Department, including the United States Embassy in Toronto, and CIS, respectively, including organizational charts or other documents that identify the hierarchy of authority among positions and the responsibilities and duties associated with each position, and the names and titles of employees or officers of the State Department or CIS who held those positions between January 1, 2012 and the present.”

- **Topic 19:** This topic seeks information relating to “[t]he nature and extent to which the State Department treats differently applications for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of one or more children born outside the United States (or adult children of such couples who have applied on their own behalves) to (i) same-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not) and (ii) opposite-sex married bi-national couples.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants’ RFPDs Nos. 12, 13, 14, and 15 and Interrogatory No. 19, to which Defendants have already objected. Defendants refer Plaintiffs to Defendants’ responses to those RFPDs and Interrogatory No. 19 and incorporate their specific objections to those requests here. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6).

- **Topic 20:** This topic seeks information relating to “[a]ny State Department and/or CIS protocol, procedure, practice, policy or guideline with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in the provision of consular or passport services, or adjudication with respect to persons claiming to have acquired United States citizenship under Section 301(g) or Section 309.”

Defendants object to this topic as unreasonably cumulative, overly burdensome, and disproportionate to the needs of the case; it seeks information that is duplicative of what Plaintiffs sought in Defendants’ RFPD No. 20 and Interrogatory No. 17, to which Defendants have already objected.¹² Defendants refer Plaintiffs to Defendants’ responses to RFPD No. 20 and Interrogatory No. 17 and also incorporate their specific objections to those requests here. Defendants particularly re-emphasize that USCIS’s full protocols, procedures, policies and practices are beyond the reasonable scope of knowledge of the State Department. To the extent Plaintiffs seek information beyond what they have sought in their other discovery requests, they have failed to identify the additional, sought-after information with reasonable particularity as required under Rule

¹² Plaintiffs’ RFPD No. 20 seeks “All Documents and Communications Concerning any State Department and/or CIS protocol, procedure, practice or policy with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in the provision of consular or passport services, or adjudication with respect to persons claiming to have acquired United States citizenship under Section 301(g) or Section 309.” Plaintiffs’ Interrogatory No. 17, meanwhile, requests the Department to “Identify and describe any State Department and/or CIS protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in the provision of consular or passport services to, or determinations of requests or applications by, Persons claiming to have acquired United States citizenship under the INA.”

30(b)(6).

- **Topics 21 and 22:** These topics ask Defendants to designate an individual to provide testimony about: (a) “Defendants’ Responses to Plaintiffs’ First Set of Document Requests,” (b) “Defendants’ Responses to Plaintiffs’ First Set of Interrogatories,” and (c) the “identities of any individuals knowledgeable” about those responses.

Defendants object to these topics as overly broad, unduly burdensome, not relevant, and disproportionate to the needs of the case. Defendants’ responses to the document requests and interrogatories speak for themselves; testimony regarding the responses is unnecessary, as well as cumulative and duplicative. To the extent Plaintiffs seek testimony regarding any particular that aspects of the responses beyond the responses themselves, Defendants further object to these topics as failing to identify the additional, sought-after information with reasonable particularity as required under Rule 30(b)(6). Defendants further object to these topics as seeking information protected by the work product doctrine.

The Department of Justice has an interest in working cooperatively with you to ensure that discovery in this case is efficient, cost effective, and targeted to the claims and defenses in this case. I look forward to hearing from you.

Sincerely,

/s/ Vinita B. Andrapalliyal

VINITA B. ANDRAPALLIYAL
Trial Attorney
Federal Programs Branch

and

/s/ Lisa Zeidner Marcus

Lisa Zeidner Marcus
Senior Counsel
Federal Programs Branch

Exhibit 8

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-310-712-6600
FACSIMILE: 1-310-712-8800
WWW.SULLCROM.COM

*1888 Century Park East
Los Angeles, California 90067-1725*

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October 16, 2018

Via E-Mail and U.S. Mail

Lisa Zeidner Marcus, Esq.,
U.S. Department of Justice,
Civil Division, Federal Programs Branch,
P.O. Box 883, Ben Franklin Station,
Washington, D.C. 20530.

Re: *Dvash Banks v. U.S. Dep't of State*, No. 2:18-cv-00523-JFW-JCx
(C.D. Cal.), Forthcoming Motion to Compel – First Set of
Requests for Production

Dear Lisa:

I write to follow up on my October 2, 2018 letter requesting that you meet and confer with us concerning Defendants' responses and objections ("Responses") to Plaintiffs' First Set of Requests for Production ("RFPs"), which were served on August 14, 2018. On August 21, 2018, the Court made clear in its *Scheduling and Case Management Order* that "[a]ll discovery shall be completed by [January 2, 2019]." Although Plaintiffs served the RFPs more than two months ago, Defendants have yet to produce a single page of discovery beyond their August 16, 2018 initial disclosures. Nor have you made yourself available for a meet-and-confer pursuant to Local Rule 37-1. Given that Defendants have completely stonewalled Plaintiffs' efforts to conduct discovery in this matter, unless you confirm by close of business this Wednesday, October 17, 2018, that Defendants will begin producing documents on a rolling basis by Friday, October 19, 2018, we will consider the parties to be at an impasse and will begin preparing papers for a motion to compel.

Sincerely,

Alexa Lawson - Remer / KTR
Alexa Lawson-Remer

Exhibit 9

From: Marcus, Lisa (CIV) <lisa.marcus@usdoj.gov>
Sent: Thursday, October 18, 2018 9:37 AM
To: Lawson-Remer, Alexa M.; Andrapalliyal, Vinita B. (CIV); Klein, Jessica
Cc: Edelman, Theodore; Raybuck, Rebekah T.; Aaron Morris
(AMorris@immigrationequality.org)
Subject: RE: Dvash-Banks -- Forthcoming Motions To Compel

Alexa,

We can talk at 5:30 Eastern. We want to get a Protective Order approved by the Court, and are working on a draft to get to you. Defendants will be able to start producing documents once the Protective Order is approved.

- Lisa

From: Lawson-Remer, Alexa M. [mailto:LawsonR@sullcrom.com]
Sent: Wednesday, October 17, 2018 11:54 PM
To: Andrapalliyal, Vinita B. (CIV) <vandrapa@CIV.USDOJ.GOV>; Klein, Jessica <kleinj@sullcrom.com>; Marcus, Lisa (CIV) <LMarcus@civ.usdoj.gov>
Cc: Edelman, Theodore <EdelmanT@sullcrom.com>; Raybuck, Rebekah T. <raybuckr@sullcrom.com>; Aaron Morris (AMorris@immigrationequality.org) <AMorris@immigrationequality.org>
Subject: RE: Dvash-Banks -- Forthcoming Motions To Compel

Vinita,

Could you let us know whether you have concrete proposals for when Defendants and DHS will produce documents? If so, we are available to speak tomorrow at 1:00 or 5:30 Eastern.

Thanks,
Alexa

Alexa M. Lawson-Remer
SULLIVAN & CROMWELL LLP
PHONE | 310.712.6697

From: Andrapalliyal, Vinita B. (CIV) <Vinita.B.Andrapalliyal@usdoj.gov>
Sent: Wednesday, October 17, 2018 6:01 PM
To: Klein, Jessica <kleinj@sullcrom.com>; Marcus, Lisa (CIV) <lisa.marcus@usdoj.gov>
Cc: Edelman, Theodore <EdelmanT@sullcrom.com>; Lawson-Remer, Alexa M. <LawsonR@sullcrom.com>; Raybuck, Rebekah T. <raybuckr@sullcrom.com>; Aaron Morris (AMorris@immigrationequality.org) <AMorris@immigrationequality.org>
Subject: RE: Dvash-Banks -- Forthcoming Motions To Compel

Jessica,

We are in receipt of your letters. We continue to make progress on readying documents for production in response to Plaintiffs' requests for production and subpoena to DHS. Please let us know your availability for a call tomorrow to confer on the outstanding issues.

Thank you,
Vinita

From: Klein, Jessica <kleinj@sullcrom.com>

Sent: Tuesday, October 16, 2018 1:51 PM

To: Marcus, Lisa (CIV) <LMarcus@civ.usdoj.gov>; Andrapalliyal, Vinita B. (CIV) <vandrapa@CIV.USDOJ.GOV>

Cc: Edelman, Theodore <EdelmanT@sullcrom.com>; Lawson-Remer, Alexa M. <LawsonR@sullcrom.com>; Raybuck, Rebekah T. <raybuckr@sullcrom.com>; Aaron Morris (AMorris@immigrationequality.org) <AMorris@immigrationequality.org>

Subject: Dvash-Banks -- Forthcoming Motions To Compel

Lisa and Vinita,

Please see the attached letters.

Regards,
Jessica

Jessica M. Klein
Sullivan & Cromwell LLP
125 Broad Street
New York, N.Y. 10004
kleinj@sullcrom.com
Tel. (212) 558-3153

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Exhibit 10

From: Marcus, Lisa (CIV) <lisa.marcus@usdoj.gov>
Sent: Friday, October 19, 2018 6:16 PM
To: Lawson-Remer, Alexa M.; Klein, Jessica; Edelman, Theodore; Aaron Morris (AMorris@immigrationequality.org)
Cc: Andrapalliyal, Vinita B. (CIV)
Subject: Dvash-Banks - follow-up

Dear Jessica and Alexa,

Thank you for the productive call yesterday. We look forward to speaking with you again on Monday.

In the meantime, I can confirm that Defendants intend to start producing documents next week, *i.e.*, by October 26.

Without waiving the Fed. R. Civ. P. 45 objections made in its September 12, 2018 letter, the Department of Homeland Security, a third party in this action, also intends to start producing documents next week, *i.e.*, by October 26.

Please let me know if you have any questions about the above.

Sincerely, Lisa

Lisa Zeidner Marcus
Senior Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
Direct dial: (202) 514-3336

Exhibit 11

From: Raybuck, Rebekah T.
Sent: Thursday, November 08, 2018 10:24 AM
To: Raybuck, Rebekah T.
Subject: FW: Dvash-Banks

From: Marcus, Lisa (CIV) <lisa.marcus@usdoj.gov>
Sent: Thursday, October 25, 2018 9:38 AM
To: Lawson-Remer, Alexa M. <LawsonR@sullcrom.com>; Andrapalliyal, Vinita B. (CIV) <Vinita.B.Andrapalliyal@usdoj.gov>
Cc: Klein, Jessica <kleinj@sullcrom.com>; Edelman, Theodore <EdelmanT@sullcrom.com>; Aaron Morris (AMorris@immigrationequality.org) <AMorris@immigrationequality.org>
Subject: RE: Dvash-Banks

Alexa,

As you know, Defendants have already responded to the first 25 written interrogatories, as properly construed based on the discrete subparts included in Plaintiffs' requests. Defendants are working on responding to the remaining (more than 20) interrogatories that Plaintiffs have served; we anticipate that we will be able to provide you those responses by the end of next week, or sometime the following week at the latest (depending on specific availability of our certifiers). You will certainly receive them well in advance of the forthcoming depositions.

If Plaintiffs intend to move to compel earlier responses to those interrogatories, however, we will take the position that they were not properly propounded. We did not stipulate to allowing more than 25 interrogatories in this case, and pursuant to Federal Rule of Civil Procedure 33(a)(1), you would need leave of Court to serve more than "25 written interrogatories, including all discrete subparts." Further, we would be prepared to argue that leave for the additional interrogatories should not be granted, given the provisions of Rules 33(a)(1) and 26(b)(2)(C).

Please let us know if you wish to discuss this further.

Sincerely, Lisa

Lisa Zeidner Marcus
Senior Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
Direct dial: (202) 514-3336

From: Lawson-Remer, Alexa M. [<mailto:LawsonR@sullcrom.com>]
Sent: Tuesday, October 23, 2018 7:56 PM
To: Andrapalliyal, Vinita B. (CIV) <vandrapa@CIV.USDOJ.GOV>; Marcus, Lisa (CIV) <LMarcus@civ.usdoj.gov>
Cc: Klein, Jessica <kleinj@sullcrom.com>; Edelman, Theodore <EdelmanT@sullcrom.com>; Aaron Morris (AMorris@immigrationequality.org) <AMorris@immigrationequality.org>
Subject: RE: Dvash-Banks

Lisa, Vinita,

We did not hear back from you in response to my email below. Could you please let us know by the end of the day tomorrow whether you will supplement Defendants' interrogatory responses by Thursday, October 25 so that we can evaluate your response in the context of whether Plaintiffs need to move to compel further responses?

Best,
Alexa

Alexa M. Lawson-Remer
SULLIVAN & CROMWELL LLP
PHONE | 310.712.6697

From: Lawson-Remer, Alexa M.
Sent: Friday, October 19, 2018 5:01 PM
To: 'Andrapalliyal, Vinita B. (CIV)' <Vinita.B.Andrapalliyal@usdoj.gov>; Marcus, Lisa (CIV) <lisa.marcus@usdoj.gov>
Cc: Klein, Jessica <kleinj@sullcrom.com>; Edelman, Theodore <EdelmanT@sullcrom.com>; Aaron Morris
<AMorris@immigrationequality.org> <AMorris@immigrationequality.org>
Subject: Dvash-Banks

Lisa, Vinita,

On our call yesterday, we discussed, among other things, that Defendants had not yet responded to the remainder of Plaintiffs' First Set of Interrogatories, served on August 28, 2018. You stated that you would respond to the rest of the interrogatories on or before November 2. In order to comply with the court's schedule for discovery in this case, including depositions, that timeline is not feasible. While Plaintiffs reserve all rights with respect to whether the responses were timely, we request that you provide the remaining responses by Thursday, October 25.

Could you please let us whether you will abide.

Best,
Alexa

Alexa M. Lawson-Remer
SULLIVAN & CROMWELL LLP
1888 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067-1725
PHONE | 310.712.6697
FAX | 310.407.2688
lawsonr@sullcrom.com

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Exhibit 12

From: Roll, Alicia M.
Sent: Friday, October 26, 2018 3:09 PM
To: 'Vinita.B.Andrapalliyal@usdoj.gov'; 'lisa.marcus@usdoj.gov'
Cc: Edelman, Theodore; Klein, Jessica; Lawson-Remer, Alexa M.; 'amorris@immigrationequality.org'; Raybuck, Rebekah T.
Subject: Dvash-Banks v. Tillerson — Deposition Notices
Attachments: 2018-10-26 Deposition Notice of Carlos Hernandez.pdf; 2018-10-26 Deposition Notice of Karen Christensen.pdf; 2018-10-26 Deposition Notice of Larilyn Reffett.pdf; 2018-10-26 Deposition Notice of Margaret Ramsay.pdf; 2018-10-26 Deposition Notice of Ann Marie Warmenhoven.pdf; 2018-10-26 Deposition Notice of Brian Egan.pdf; 2018-10-26 Deposition Notice of Frankie Terri Day.pdf; 2018-10-26 Klein Certificate of Service - Deposition Notices (Dvash-Ban....pdf

Counsel,

As discussed on our prior telephonic meet and confers, please find deposition notices for Frankie Terri Day, Margaret Ramsay, Larilyn Reffett, Ann Marie Warmenhoven, and Carlos Hernandez, attached here. You will also see we have attached notices for Karen Christensen and Brian Egan. During the prior discussions, you confirmed that you represent Ramsay, Reffett, Warmenhoven, and Hernandez. Please also confirm that these notices are sufficient and that you will not require separate subpoenas for them.

Please also let us know whether you represent Ms. Day as a former employee of the State Department and the individual who adjudicated the relevant applications, and therefore will not require a subpoena for her; if you will in fact require a subpoena, please confirm you will accept service on her behalf. If you do not represent Ms. Day, please promptly provide information concerning her last known address and whereabouts.

We are willing to move the specific dates of the depositions if there are mutually agreeable dates that better suit your availability and do not unduly delay the depositions.

Thank you,

Alicia Roll
Sullivan & Cromwell LLP | 1870 Embarcadero Road |
Palo Alto, CA 94303-3308
T: (650) 461-5632 | F: (650) 461-5700 |
rolla@sullcrom | <http://www.sullcrom.com>

Exhibit 13

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-310-712-6600
FACSIMILE: 1-310-712-8800
WWW.SULLCROM.COM

*1888 Century Park East
Los Angeles, California 90067-1725*

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October 28, 2018

Via E-Mail

Lisa Zeidner Marcus, Esq.,
U.S. Department of Justice
Civil Division, Federal Programs Branch,
P.O. Box 883, Ben Franklin Station.
Washington, DC 20530.

Re: *Dvash Banks v. U.S. Dep't of State,*
No. 2:18-cv-00523-JFW-JCx (C.D. Cal.)

Dear Lisa:

I write on behalf of Plaintiffs Andrew and Ethan Dvash-Banks in connection with the above-referenced action ("Action") to request that the parties meet and confer regarding the insufficiencies in Defendants' Responses and Objections ("Partial Responses") to Plaintiffs' First Set of Interrogatories ("Interrogatories"), served on August 28, 2018.

As a threshold matter, the Partial Responses are untimely. Despite Plaintiffs having granted Defendants a number of extensions, Defendants served only their Partial Responses to interrogatories numbered 1 through 10 on October 5, 2018, three (3) days after the final extension to which Plaintiffs had agreed. To date, Defendants have utterly failed to provide any response whatsoever to ten (10) of the twenty (20) interrogatories Plaintiffs served. Because Defendants failed to serve timely responses to Plaintiffs' interrogatories numbered 11 through 20, any objections Defendants may have had to these interrogatories are waived. *See* Fed. R. Civ. P. 33(b)(5); *Lotgale, Ltd. v. IKOR, Inc.*, 2013 WL 3967750, at *2-4 (N.D. Cal. July 21, 2013) (finding that defendants had waived their objections by serving interrogatory responses two weeks after the deadline); *Safeco Ins. Co. of Am. v. Rawstrom*, 183 F.R.D. 668, 671 (C.D. Cal. 1998) ("interrogatory objections not included in a timely response are waived even if the objections are contained in a later untimely response, absent a showing of good cause").

Lisa Zeidner Marcus, Esq.

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Defendants' position that the Interrogatories are not properly propounded because they contain what Defendants purport to be forty-five (45) "discrete subparts" relies on an improper and contorted reading of the Interrogatories. (See October 25, 2018 Email from Lisa Marcus to Alexa Lawson-Remer.) As just one example, in Interrogatory No. 3, Plaintiffs requested that Defendants "Identify and provide job titles and dates of employment at the State Department of each Person known to You (a) who is or was involved with or responsible for determining for the State Department the meaning or requirements of Section 301(g) or Section 309 . . ." Defendants erroneously construed the quoted language to contain two subparts because it referenced two sections of the same statute. The fact that Defendants went on to provide identical responses to these "subparts" demonstrates the unreasonableness of Defendants' construction.¹

Putting aside Defendants' improper contention that the Interrogatories contain excessive subparts, Defendants previously committed during meet-and-confer calls on October 18 and October 22, 2018 to respond to the remaining Interrogatories on or before November 2, 2018. Plaintiffs did not agree to an extension of that duration (subsequent to our meet-and-confer calls, we requested via email on October 19 and October 23 that Defendants provide their responses to the remaining Interrogatories by October 25). Nonetheless, you have since rescinded this commitment. Most recently, Defendants have committed to serving their remaining responses to the Interrogatories by sometime during the week of November 5. Plaintiffs can wait no longer to meet and confer concerning the Interrogatories in order to be able to file any necessary motion to compel, in accordance with the case schedule set by the Court. The delay in responding to the remaining Interrogatories—served more than 60 days ago—is one of several ways in which Defendants appear to be endeavoring to run out the clock, rather than working cooperatively with Plaintiffs to conducting meaningful, relevant discovery. We request that you meet and confer with us concerning the Interrogatories on Tuesday, October 30 or, at the latest, Wednesday, October 31.

In addition to these threshold issues, Defendants' Partial Responses also include various other deficiencies. In anticipation of a productive meet-and-confer between Plaintiffs and Defendants, and pursuant to Local Rule 37-1, please find below an

¹ Similarly, Interrogatory No. 7 requested that Defendants "Identify and describe any differences known to You between or among the interpretations or applications of Section 301(g) and Section 309 by (i) the State Department, (ii) the DHS, and (iii) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, or other units of CIS, to Persons who claim to have acquired United States citizenship under those statutory provisions." Defendants assert that this interrogatory "includes at least seven (and likely more) discrete subparts." (Partial Responses at p. 33.) This position appears to hinge on the fact that Plaintiffs have specified components of DHS in the text of the Interrogatory as opposed to relying on the Interrogatories' definition of DHS. For example, and as Interrogatory No. 7 states, the Fraud Detection and National Security Directorate and the Asylum and International Operations Directorate are units within DHS.

Lisa Zeidner Marcus, Esq.

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identification of the discovery requests in dispute to date and Plaintiffs' positions regarding those requests. If the parties are unable to reach a resolution on the below matters, Plaintiffs intend to seek an order compelling Defendants to provide further responses to the Interrogatories.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Plaintiffs incorporate by reference their explanations and responses to Defendants' objections to the Interrogatories' definitions of the terms "CIS," "Communication," "Concerning," "Document," "FAM," "Representatives," "State Department," and "Instructions," as set forth in Plaintiffs' October 2, 2018 letter regarding Defendants' objections and responses to Plaintiffs' First Set of Requests for Production of Documents.

"INA": Defendants object to the definition of the term INA as encompassing the entire Immigration and Nationality Act and construe it to mean only those provisions relating to acquisition of U.S. citizenship at birth. Plaintiffs do not agree to this limitation. The term INA appears in Interrogatory Nos. 8 and 10, which seek information about (among other things) how the State Department determines who is a "parent" and which children are born "in wedlock." Whether there are other instances of these terms in the INA and whether the State Department interprets them differently bears on whether the State Department has a legitimate justification for the policy being challenged in this litigation.

Defendants seek to limit the definitions of a number of additional terms. Although Plaintiffs accept Defendants' definitions for the purpose of interpreting Defendants' responses, Plaintiffs do not agree to those definitions generally.

GENERAL OBJECTIONS

First, Defendants seek to construe the Interrogatories as limited to the timeframe from January 1, 2015 through June 2, 2017. This proposed period is unduly limited. In the interest of compromise, Plaintiffs propose a timeframe of January 1, 2012 to the present unless otherwise specified in the individual Interrogatories or in this letter.

Second, Defendants object that Plaintiffs request information beyond that generated by or available to the U.S. Consulate in Toronto. Plaintiffs do not agree that it is overly broad, irrelevant, and disproportionate to the needs of this case to require Defendants to provide information about other State Department components. Information about the State Department's treatment of individuals subjected to the potentially discriminatory policy, including those outside Toronto, is highly relevant to this action. As in the case of other discovery responses, Defendants are inappropriately re-defining the claims at issue in this Action to include only a sliver of what is relevant to the allegations in the Complaint. The agency defendant in this Action is the State

Lisa Zeidner Marcus, Esq.

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Department and not the Consulate in Toronto. The policies of the State Department and the process within the State Department (on which the Toronto Consulate supposedly relied to adjudicate Ethan's applications) are highly relevant to the claims in this Action. Defendants may not unreasonably and unilaterally constrain the scope of discovery to accommodate their unreasonable efforts to constrain discovery in this action.

Third, Defendants incorrectly assert that discovery in the action should be limited to the administrative record. Plaintiffs' constitutional claims merit additional discovery. *See Grill v. Quinn*, 2012 WL 174873, at *2 (E.D. Cal. Jan. 20, 2012) ("A direct constitutional challenge is reviewed independent of the APA. [citation.] As such the court is entitled to look beyond the administrative record in regard to this claim.").

Fourth, Defendants object to the Interrogatories to the extent they supposedly seek responses on issues of "pure law." This objection is misplaced. Plaintiffs have not asked the Department of State to answer any purely legal questions, but instead to identify the policies it has adopted and applied in administering the INA.

Fifth, Defendants object to the production of materials covered by privileges and protections and make specific privilege objections in response to Interrogatory Nos. 2, 6, 7, and 10, but do not specify whether they have actually withheld information on this basis. The Department should produce a privilege log in accordance with Fed. R. Civ. P. 26(b)(5) listing any information it believes it need not provide and comply with the other prerequisites and requirements for assertions of privileges, after which Plaintiffs will evaluate those claims. Furthermore, as Plaintiffs have previously indicated in the context of Defendants' Responses to Plaintiffs' First Set of Requests for Production of Documents, Defendants' assertion of the deliberative process privilege fails to follow proper procedure. Please confirm whether Defendants are withholding any information in response to the Interrogatories on the basis of the deliberative process privilege or any other purported privilege or protection. Further, Defendants' refusal to "produce a privilege log for privileged material not otherwise properly within the scope of discovery and/or as to which no privilege log would be required pursuant to Federal Rule of Civil Procedure 26(b)(5)" is irrelevant, since all of Plaintiffs' requests are properly within the scope of discovery and therefore Defendants must comply with the requirements of Fed. R. Civ. P. 26(b)(5) for any information sought by the Interrogatories that Defendants withhold, in whole or in part, on grounds of privilege.

RESPONSES AND OBJECTIONS TO SPECIFIC INTERROGATORIES

Interrogatory Nos. 1 and 2: Defendants construed Interrogatory No. 1 as seeking identification of "each Department of State employee or contractor involved in the underlying adjudication, and as further requiring that Defendants identify each such

Lisa Zeidner Marcus, Esq.

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person's 'role or involvement' and each such person's related communications."² Subject to their objections, Defendants provided the names of four current or former State Department employees at the Toronto Consulate who were involved in the adjudication of Ethan's applications for a Consular Report of Birth Abroad ("CRBA") and U.S. passport, along with brief descriptions of their roles and involvement therein, and identified two individuals who exclusively conducted data entry. Similarly, Defendants construed Interrogatory No. 2 as seeking identification of "each Department of State employee or contractor involved in the underlying adjudication, such that he or she would have knowledge or information concerning the process by which, the reasons why, or the basis on which, Consulate Toronto denied the applications." Subject to their objections, Defendants then provided the names of the same four current or former State Department employees, along with general descriptions of the knowledge they possess regarding the adjudication of Ethan's applications for a CRBA and U.S. passport.

Plaintiffs do not agree to Defendants' construction of the Interrogatories to refer only to State Department employees or only to employees of the Toronto Consulate. It is not unreasonably burdensome (or otherwise objectionable) to require Defendants to identify other Persons involved who are known to Defendants or to confirm in writing that nobody else was consulted or involved in any determination of or communications concerning Ethan's applications for a U.S. passport and CRBA (*see* Interrogatory No. 1). Plaintiffs do not agree with Defendants' contention that it is "unreasonable and not relevant . . . to burden Defendants with identifying persons who may have communicated about the applications after the adjudications had concluded." (Partial Responses at 12.) To the extent that there are other individuals who have considered whether Ethan Dvash-Banks should be considered a U.S. citizen at birth, even if those communications or determinations occurred after the Toronto Consulate sent a letter to Andrew Dvash-Banks on March 2, 2017, Defendants should identify them. In addition, to the extent that the individuals with whom the Dvash-Banks family interacted at the U.S. Consulate in Toronto are not included in Defendants' responses, the responses are incomplete and should be supplemented.

In addition, Defendants directed Plaintiffs, by way of further answer to Interrogatory Nos. 1 and 2, to the documents they will be producing beyond their initial disclosures, but only just made their first production on October 26, which consisted of

² Interrogatory No. 1 asked Defendants to "Identify each Person You believe to have been involved in any determination of, or Communications Concerning, any application for a CRBA or U.S. passport for Plaintiff Ethan Dvash-Banks. With respect to each such Person, Identify his or her role or involvement and any Communications responsive to this interrogatory." Interrogatory No. 2 requested that Defendants "Identify each Person You believe to have knowledge or information Concerning the process by which, or the reasons why, or basis on which, the State Department did not issue a CRBA and U.S. passport to Plaintiff Ethan Dvash-Banks. With respect to each such Person, Identify his or her knowledge and/or the information he or she possesses."

Lisa Zeidner Marcus, Esq.

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four (4) documents, including an archived version of part of the Foreign Affairs Manual and three organizational charts. Plaintiffs reserve the right to revisit the adequacy of Defendants' interrogatory responses following any further production by Defendants of documents (or in the event they are not produced) in response to Plaintiffs' requests.

Interrogatory No. 3: Defendants construed this interrogatory as "seeking to know the names and job titles of the heads of the components principally responsible for" interpreting Sections 301(g) or 309, or developing protocols, procedures, practices, guidelines or policies concerning applications for a CRBA or U.S. passport for children born outside of the U.S. to U.S. citizens, during the time period January 1, 2015 through June 2, 2017. Plaintiffs do not agree to Defendants' construction of the Interrogatory to include only "heads of the components." Interrogatory No. 3 instead calls for the identification of "persons involved with or responsible for determining for the State Department" the meaning or requirements of Section 301(g) or Section 309 or for drafting or approving the relevant policies concerning applications for a CRBA or U.S. passport. If there are Persons known to Defendants who were involved in the activities listed in Interrogatory No. 3, they should be identified regardless of whether they held the title of the head of a department or department component within the State Department.

Plaintiffs also do not agree to Defendants' proposed time period. Once again, the issue is not only the application of the State Department's policy during a period of weeks, but the policies that State Department personnel in Washington developed, the rationale for those policies and the consistency with which they are or are not applied.

Interrogatory Nos. 4 and 5: Defendants' responses to these Interrogatories are incomplete. First, although these Interrogatories call for the identification of certain "protocols, procedures, practices, guidelines or policies of the State Department" (*see, e.g.*, Interrogatory No. 4), Defendants appear to have reflexively identified only the FAM without identifying any other responsive materials. Second, Defendants did not respond to the portions of the Interrogatories seeking the "reasons and basis" for the protocols, procedures, practices, guidelines, and policies identified in the response. Nor did Defendants explain when "circumstances of doubt" arise. Specifically, Defendants state that doubt may arise when a child was born through surrogacy or other forms of assisted reproductive technology ("ART"), but they do not identify when and how the State Department comes to know that a child was born through surrogacy or ART. Plaintiffs request that Defendants supplement their responses.

Interrogatory No. 6: Defendants rested on their objections and did not provide an answer to this Interrogatory. Defendants object to the Interrogatory on the grounds that the information sought is pre-decisional and deliberative and/or attorney-client privileged. As explained above, Defendants have failed to satisfy the legal prerequisites for the assertion of the deliberative process protection and therefore have failed

Lisa Zeidner Marcus, Esq.

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to establish any basis for reliance on that privilege. Similarly, Plaintiffs have not identified what information (if any) is being withheld on attorney-client privilege grounds. Without this information, Plaintiffs cannot assess Defendants' claims of privilege. Defendants also object to the Interrogatory on the ostensible basis that it is unreasonable to expect Defendants to provide information regarding DHS. To the contrary, it is reasonable to expect the State Department and the Secretary of State to be aware of protocols, procedures, practices, guidelines or policies proposed or approved by DHS that were considered, but not adopted, *by the State Department*. Plaintiffs request that Defendants respond to this Interrogatory.

Interrogatory No. 7: Defendants appear to have misunderstood this Interrogatory. In Defendants' response to "subparts" A through E, they discuss differences between interpretations/applications of Sections 301 as opposed to Section 309 *within* various agencies. Plaintiffs did not seek this information; instead, Plaintiffs sought to understand how other agencies that deal with Sections 301 and 309 may interpret and apply those sections differently from the State Department. Defendants describe "subparts" F and G as identifying any differences between the interpretations or applications of Sections 301 and 309 by the State Department and DHS, but they do not provide any information about such differences, and instead merely note that DHS and the State Department have different responsibilities. Plaintiffs request that Defendants supplement this response.

Interrogatory No. 8: This Interrogatory requested that Defendants "Identify and describe the requirements . . . applied by the State Department in order to consider or determine an individual to be a 'parent' within the meaning of the INA." Instead of clearly explaining how the State Department determines parentage, Defendants directed Plaintiffs to a tangled statutory web. (See Partial Responses at 39 ("For purposes of Title I and Title II of the Act, 8 U.S.C. § 1101 (b)(1) defines the term "child." Additionally, for purposes of Title I and Title II of the Act, 8 U.S.C. § 1101(b)(2) defines the terms "parent," "father," and "mother," as follows: "'parent', 'father', or 'mother' mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in [8 U.S.C. § 1101(b)](1) ... , except that, for purposes of ... [§ 1101(b)](1)(F) (other than the second proviso therein) and ... [§ 1101(b)](1)(G)(i) in the case of a child born out of wedlock described in... [§ 1101(b)](1)(D) (and not described in ...[§ 1101(b)](1)(C)), the term 'parent' does not include the natural father or the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.") Plaintiffs request that Defendants explain in the manner requested by the Interrogatories how the State Department determines individuals to be "parents."

Interrogatory No. 9: In order to understand the response provided, please clarify whether the scenario described on page 41 at lines 21-26 would be adjudicated by the State Department under Section 309 of the INA.

Lisa Zeidner Marcus, Esq.

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Interrogatory No. 10: Defendants object to this Interrogatory on the grounds that it seeks information outside of a reasonable time period, because the State Department applied contemporaneous law to Ethan's applications. Plaintiffs disagree that the Interrogatory (which specified a time period of January 1, 2013 to present) sought information outside of a reasonable time period, because whether the State Department's interpretation of these terms has changed over time may bear on whether the justifications for its current interpretation are legitimate. Plaintiffs request that Defendants supplement this response with information for the time period Plaintiffs identified.

*

*

*

We look forward to discussing these issues in the meet and confer. Please let us know your availability to engage in those discussions so that we may schedule that meet and confer as soon as possible. We hope to resolve these issues cooperatively, and we will make every reasonable effort to come to an agreement concerning these discovery responses. Given the expedited schedule the Court has set for this matter, we request to schedule a meet and confer on Tuesday, October 30 or Wednesday, October 31. Plaintiffs reserve all rights in connection with this matter, including the rights to seek fees and costs and any other appropriate sanctions.

Sincerely,

/s/ Alexa M. Lawson-Remer

Alexa M. Lawson-Remer

CC: Aaron Morris (Immigration Equality)
Vinita Andrapalliyal (U.S. Department of Justice)

Exhibit 14

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-310-712-6600
FACSIMILE: 1-310-712-8800
WWW.SULLCROM.COM

*1888 Century Park East
Los Angeles, California 90067-1725*

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October 30, 2018

Via E-Mail

Vinita B. Andrapalliyal, Esq. and Lisa Zeidner Marcus, Esq.,
U.S. Department of Justice,
Civil Division, Federal Programs Branch,
P.O. Box 883, Ben Franklin Station,
Washington, DC 20530.

Re: *Dvash Banks v. U.S. Dep't of State*, No. 2:18-cv-00523-JFW-JCx
(C.D. Cal.)

Dear Vinita and Lisa:

I write on behalf of Plaintiffs Andrew and Ethan Dvash-Banks in connection with the above-referenced action ("Action") to request that the parties meet and confer regarding the objections lodged by Defendants ("Responses") to Plaintiffs' Rule 30(b)(6) deposition notice ("30(b)(6) Notice"), served by Plaintiffs on September 7, 2018. Pursuant to Plaintiffs' ongoing efforts to resolve pending discovery disputes, Plaintiffs hope to find a reasonable compromise so that discovery can proceed expeditiously in accordance with the schedule established by the Court. If the parties are unable to reach a resolution on the below matters, Plaintiffs intend to seek an order compelling Defendants to designate and produce a 30(b)(6) deponent.

Defendants have objected that the 30(b)(6) Noticed topics ("Deposition Topics") seek similar information to that sought through Plaintiffs' Request for Production of Documents and Plaintiffs' First Set of Interrogatories. As an initial matter, Plaintiffs disagree that the Deposition Topics are unreasonably cumulative or duplicative. Plaintiffs do not seek senseless duplication of materials.¹ Nonetheless, in the interests of

¹ Plaintiffs will not be in a position to ascertain whether Defendants have provided sufficient interrogatory responses and/or document production until Defendants have actually provided their full interrogatory responses and completed their document production, both of which have been pending for quite some time. Although Plaintiffs are compelled to proceed with the deposition of

Vinita B. Andrapalliyal, Esq. and
Lisa Zeidner Marcus, Esq.

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compromise and expedition, Plaintiffs are willing to consider narrowing the scope of the Deposition Topics, as outlined below.

First, in order to prioritize the most essential subjects, Plaintiffs are willing to consider removing Deposition Topics 11, 17, 18,² 21, and 22 from the Deposition Topics in exchange for Defendants producing a 30(b)(6) witness on the remaining Deposition Topics, many of which are further narrowed below. This considerable removal of five (5) Deposition Topics should alone substantially ease the burden Defendants claim in producing a 30(b)(6) deponent.

Second, Plaintiffs are willing to narrow the following Deposition Topics as follows:

Topic 1. Defendants objected that this Deposition Topic was duplicative of information that could be sought from the four individuals identified in Defendants' interrogatory answers, dated October 5, 2018. As previously discussed in our telephonic meet-and-confer sessions, Plaintiffs intend to depose Frankie Terri Day, Margaret Ramsay, Larilyn Reffett, and Ann Marie Warmenhoven. If Defendants designate any of these individuals as a 30(b)(6) deponent for this Deposition Topic, Plaintiffs, with adequate notice, are willing to treat each such deposition as a combined individual and 30(b)(6) deposition.

Topic 2. Defendants objected to the scope of Deposition Topic 2 on the grounds that it would be overly burdensome to prepare a witness regarding "all communications concerning Plaintiffs or any request or application for a Consular Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks." As with Deposition Topic 1, if Defendants designate any of the individuals referenced in their interrogatory answers as a 30(b)(6) deponent for this Deposition Topic, Plaintiffs, with adequate notice, are willing to treat each such deposition as a combined individual and 30(b)(6) deposition. Plaintiffs are also further willing to narrow this Deposition Topic to "all communications concerning ~~Plaintiffs or~~ any request or application for a Consular

a State Department representative notwithstanding Defendants' delays and deficiencies in responding to Plaintiffs' discovery requests, Plaintiffs reserve all rights to continue that deposition after receipt of Defendants' full discovery responses, including full interrogatory responses and completion of document production.

² Plaintiffs' willingness to consider removing Deposition Topics 17 and 18 is pending resolution of Requests for Production Nos. 12, 13, 14 and 15, and Plaintiffs reserve the opportunity to pursue Deposition Topics 17 and 18.

Vinita B. Andrapalliyal, Esq. and
Lisa Zeidner Marcus, Esq.

-3-

Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks”. By eliminating “all communications concerning Plaintiffs,” the Deposition Topic is significantly more narrow.

Topic 5. Defendants objected to the scope of Deposition Topic 5 on the grounds that it would be overly burdensome to prepare a witness regarding any and all communications between the State Department and USCIS regarding any protocol, procedure, practice, policy, or guideline for applying Section 309, rather than Section 301(g). Plaintiffs note that Defendants’ objection fails to include the limiting language, which narrows this topic to communications relating to a “Person born outside of the United States to married parents (one of whom is a United States citizen) if the Person is not biologically related to the United States citizen parent.” In an effort to compromise, Plaintiffs are willing to narrow this topic further to “[a]ny and all Communications between (i) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, ~~or other units of CIS~~; and (ii) the State Department . . .”

Topic 7. Defendants objected to Deposition Topic 7 because it seeks information similar to Plaintiffs’ Request for Production No. 3, but Defendants have not yet produced documents responsive to Request No. 3. Nonetheless, in the interest of compromise, Plaintiffs are willing to narrow Deposition Topic 7 to the specific cases named. The topic would then read as follows: “The impact or effect of ~~any court ruling, including~~ *Pavan v. Smith*, 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Jaen v. Sessions*, 899 F.3d 182 (2d Cir. 2018), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on the State Department’s consideration of applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born outside of the United States; (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.”

Topic 8. Defendants objected to Deposition Topic 8 on the grounds that it seeks information sought in requests for production and interrogatories and would be overly burdensome and unreasonably cumulative. In the interest of compromise, Plaintiffs are willing to narrow Deposition Topic 8 to: “Any circumstances under which the State Department treats the children of men in same-sex marriages ~~married same-sex couples~~ as children born in wedlock, ~~and any circumstances under which the State Department treats children of married same-sex couples as children born out of wedlock.~~”

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Lisa Zeidner Marcus, Esq.

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Topic 10. Plaintiffs are perplexed by Defendants' claim that Deposition Topic 10 is not relevant. Deposition Topic 10 covers the content, basis, and rationale for sections of the FAM that reference Section 301(g) or Section 309—the provisions of the INA that are directly at issue in this case. Plaintiffs seek to understand whether and, if so, in what respects, Defendants have considered same-sex couples' right to marriage and right to the constellation of benefits linked to marriage in applying and modifying relevant provisions of the FAM. Nonetheless, in the interest of compromise, Plaintiffs are willing to consider narrowing the time period to January 1, 2013 to present.

Topics 13 and 14. Defendants objected to Deposition Topics 13 and 14 as duplicative of the individual depositions of Frankie Terri Day and Carlos Hernandez. Defendants seek to subject Plaintiffs to a discovery whipsaw, on the one hand resisting producing a 30(b)(6) witness on Deposition Topic 13 on the basis that this testimony would be best obtained from Ms. Day, while at the same time avoiding responding to any of Plaintiffs' prior inquiries regarding Ms. Day's whereabouts or whether Defendants even represent her. Nevertheless, if Defendants designate either Frankie Terri Day, with respect to Deposition Topic 13, or Carlos Hernandez, with respect to Deposition Topic 14, as a 30(b)(6) deponent for these Topics, Plaintiffs, with adequate notice, are willing to treat that deposition as a combined individual and 30(b)(6) deposition for the purpose of these Deposition Topics.

Topic 15. In the interest of compromise, Plaintiffs are willing to add the following narrowing language to Deposition Topic 15: "Any information the State Department considers in making a determination of whether a parent-child relationship exists for purposes of applying Section 301(g) or Section 309."

Topic 16. Plaintiffs are willing to agree not to request a 30(b)(6) deponent to provide the organizational information that Defendants have provided through the organizational charts Defendants have produced on the following conditions:
(a) Defendants stipulate to the authenticity and accuracy of the organizational charts that they have produced in response to Plaintiffs' discovery requests in the Action; and
(b) Defendants do not object to Plaintiffs' efforts to inquire into the roles and responsibilities of various State Department personnel relevant to this Action, information which is not contained in the organizational charts produced.

Third, Defendants' objections that Topics 3, 4, 6, 9, 12, 19 and 20 and inappropriate because they focus on the same subjects as certain other discovery requests of Plaintiffs is unfounded. Defendants repeatedly protest that the topics relate to similar subjects as those for which Plaintiffs seek document productions and interrogatory responses. However, it is appropriate in discovery to have a 30(b)(6) witness designated on topics that overlap with produced documents and interrogatory responses. The

Vinita B. Andrapalliyal, Esq. and
Lisa Zeidner Marcus, Esq.

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designated witness can answer questions about the documents and fill in gaps in interrogatory answers. *See, e.g., Campbell v. Facebook Inc.*, 310 F.R.D. 439, 449 (N.D. Cal. 2015) (“Plaintiffs have a right to verify and explore the information Facebook provided [in its interrogatory responses and declarations] through a 30(b)(6) deposition . . . [since] responses to Interrogatory Nos. 2–4 are simply narratives, and Plaintiffs should be entitled to test their veracity and accuracy . . . [I]t is fundamental that parties may simultaneously utilize any or all of the discovery mechanisms authorized by the rules.”) (internal quotation marks omitted); *Kelly v. Provident Life & Acc. Ins. Co.*, 2011 WL 2448276, at *3 (S.D. Cal. June 20, 2011) (“[I]n responding to a Rule 30(b)(6) notice or subpoena, a corporation may not take the position that its documents state the company’s position. . . . In order to meet the purpose of the Rule, ‘[i]f a corporation has knowledge or a position as to a set of alleged facts or an area of inquiry, it is its officers, employees, agents or others who must present the position, give reasons for the position, and, more importantly, stand subject to cross-examination.’”).

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We are looking forward to discussing these issues in the meet and confer. Please let us know your availability so that we may schedule that meet and confer as soon as mutually convenient, but no later than November 2, 2018. We hope to resolve these issues cooperatively, and we will make every reasonable effort to come to an agreement concerning these discovery responses. Given the expedited schedule the Court has set for this matter, we will endeavor—and hope that Defendants will endeavor—to address and resolve these issues promptly. If the parties do not come to ground on these issues, Plaintiffs intend to move to compel the designation and production of a 30(b)(6) deponent. Should that prove necessary, Plaintiffs reserve their rights to seek fees and costs and any other appropriate sanctions.

Sincerely,


Alexa M. Lawson-Remer

cc: Aaron Morris (Immigration Equality)

Exhibit 15

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-310-712-6600
FACSIMILE: 1-310-712-8800
WWW.SULLCROM.COM

*1888 Century Park East
Los Angeles, California 90067-1725*

NEW YORK • PALO ALTO • WASHINGTON, D.C.

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October 31, 2018

Via E-Mail

Vinita B. Andrapalliyal, Esq. and Lisa Zeidner Marcus, Esq.,
U.S. Department of Justice,
Civil Division, Federal Programs Branch,
P.O. Box 883, Ben Franklin Station,
Washington, DC 20530.

Re: *Dvash Banks v. U.S. Dep't of State*, No. 2:18-cv-00523-JFW-JCx
(C.D. Cal.)

Dear Vinita and Lisa:

I write on behalf of Plaintiffs Andrew and Ethan Dvash-Banks in connection with the above-referenced action ("Action") regarding Defendants' document production received by Plaintiffs on Friday, October 26, 2018, and regarding Plaintiffs' deposition notices sent to Defendants on Friday, October 26, 2018.

Document Production: In response to document requests served two and a half months ago (on August 14, 2018), Defendants' document production to date amounts to seven pages. Generously construed, the production is partially responsive to only two requests, leaving 22 others still completely unanswered. Defendants' meager production is blatantly insufficient. Defendants' failure to make adequate productions is consistent with Defendants' apparent efforts to frustrate the course of all discovery in this Action. Although Defendants asserted in the Joint Rule 26(f) Report filed on August 20, 2018 that no discovery is necessary in this Action, the Court rejected that position, setting forth a schedule with a January 2, 2019 discovery cutoff and April 2019 trial date. Now, more than two months later, Defendants have made the most scant production and have not provided Plaintiffs with any date by which they expect to achieve substantial completion of their production—all while time is running on the expedited schedule set by the Court. Having failed to persuade the Court to deprive Plaintiffs of reasonable discovery, Defendants seem engaged in a concerted effort to achieve that result through diversion

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and delay.

We have raised with you on multiple occasions our various concerns about Defendants' apparent lack of responsiveness and our willingness to work cooperatively with you to conduct discovery in an efficient and timely manner. In those discussions, we have noted that the delay in producing documents impedes other aspects of discovery, including depositions, that must go forward in order to comply with the Court's timeline and allow counsel to prepare meaningfully for and schedule depositions. Plaintiffs, once again, ask that Defendants make an adequate production of documents in this matter and complete that production no later than November 10, 2018.

Deposition Notices: Plaintiffs have served notices to take the depositions of seven individuals identified in Defendants' partial interrogatory responses (which was the subject of my October 28, 2018 letter to you): Frankie Terri Day, Margaret Ramsay, Larilyn Reffett, Ann Marie Warmenhoven, Carlos Hernandez, Karen Christensen and Brian Egan. Although Plaintiffs are prepared to proceed on the noticed dates, Plaintiffs have reiterated a number of times now a willingness to try to accommodate Defendants' and witnesses' schedules in scheduling the depositions, but Plaintiffs have not heard anything back from Defendants regarding that subject. Specifically, during the meet-and-confer telephone call on October 18, 2018, Plaintiffs requested that Defendants provide no later than the week of October 22 confirmation of the deposition dates for Frankie Terri Day, Margaret Ramsay, Larilyn Reffett, Ann Marie Warmenhoven, and Carlos Hernandez, as well as confirmation of the dates for any depositions Defendants intend to take of Andrew or Elad Dvash-Banks. Plaintiffs noticed the 30(b)(6) deposition for October 15, but Defendants have evaded Plaintiffs' various efforts to agree on arrangements for, and the scope of, that deposition. Plaintiffs endeavor to have these deposition dates confirmed as soon as possible, as scheduling depositions may become more difficult as the end of the year approaches. Our ability to be flexible with the deposition dates becomes more limited as weeks pass without any effort from Defendants to calendar these depositions. Please confirm by no later than Friday, November 2, 2018, the dates Plaintiffs have provided or, alternatively, promptly provide Plaintiffs a list of dates available for the noticed depositions that would not unduly delay the depositions or necessitate inefficiency and unnecessary expense by spacing out depositions that will require travel for counsel.

I have resisted writing a letter of this nature in the hope that we could work amicably and cooperatively to schedule and conduct discovery. Our hopes have repeatedly been disappointed. It takes far too long to arrange discussions with Defendants regarding discovery issues; and, when those discussions occur, Defendants decline to make any commitments, relying instead on generalizations and ambiguous references to promised cooperation that remain unfulfilled. In response to Plaintiffs' requests that Defendants specify documents or information they will provide, Defendants ask Plaintiffs to identify what documents Defendants have or who should have them—as if Plaintiffs would have any access or basis to know such information. When Plaintiffs'

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do endeavor to identify categories of materials for production by Defendants, Defendants respond with broad, unsupported assertions of burden and privilege. When Plaintiffs ask Defendants to work together to schedule or sequence discovery, we receive no response. As the calendar turns to November, we have waited as long as we reasonably can for cooperation. If Defendants wish to work collaboratively with Plaintiffs on appropriate discovery, we remain willing to do so—immediately; if not, please indicate that so that we know where we stand. Either way, absent a fair and reasonable response we will have no choice but to seek appropriate relief from the Court.

Sincerely,

/s/ Alexa M. Lawson-Remer

Alexa M. Lawson-Remer

cc: Aaron Morris, Esq. (Immigration Equality)

Exhibit 1

JOSEPH H. HUNT
Assistant Attorney General
JOSHUA E. GARDNER
Assistant Director
VINITA B. ANDRAPALLIYAL
vinita.b.andrapalliyal@usdoj.gov
Trial Attorney
LISA ZEIDNER MARCUS
lisa.marcus@usdoj.gov
Senior Counsel

UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Tel: (202) 514-3336

Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. **2:18-cv-00523-JFW (JCx)**

DISCOVERY MATTER

**Declaration of Vinita B. Andrapalliyal in
support of Defendants' Response to
Plaintiffs' Motion to Compel Additional
Discovery**

Hearing Date: Tuesdays
Hearing Time: 9:30 AM
Ctrm: #750, 7th Floor
Roybal Federal Building
255 E. Temple St.
Los Angeles, CA 90012

Honorable Jacqueline Chooljian
United States Magistrate Judge

DECLARATION OF LISA ZEIDNER MARCUS

I, Lisa Zeidner Marcus, hereby declare:

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

captioned case. I submit this Declaration in support of Defendants' Response to Plaintiffs' Motion to Compel Additional Discovery. I have personal knowledge of the facts set forth in this Declaration.

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

- Exhibit A Defendants' Responses to Plaintiffs' First Set of Requests for Production of Documents (Sept. 18, 2018)
- Exhibit B Defendants' First Set of Responses to Plaintiffs' First Set of Interrogatories (Oct. 5, 2018)
- Exhibit C Defendants' Second Set of Responses to Plaintiffs' First Set of Interrogatories (Nov. 16, 2018)
- Exhibit D Email from Lisa Zeidner Marcus to Theodore Edelman, Jessica Klein, Alexa Lawson-Remer, and Aaron Morris, dated October 26, 2018, regarding document production.
- Exhibit E Email chain between Rebekah Reybuck, Lisa Zeidner Marcus, Vinita Andrapalliyal, regarding meet and confer (Nov. 13, 2018)
- Exhibit F Email chain between Lisa Zeidner Marcus, Alicia Roll, Theodore Edelman, Jessica Klein, Alexa Lawson-Remer, Aaron Morris, Rebekah Raybuck, dated between November 13 and November 16, 2018, regarding deposition scheduling
- Exhibit G Letter from Vinita Andrapalliyal to Alexa Lawson-Remer dated November 16, 2018, regarding Plaintiffs' 30(b)(6) Deposition Notice
- Exhibit H 18 FAM 200 - REGULATIONS AND RELATED PROGRAMS; 18 FAM 201 DIRECTIVES MANAGEMENT; 18 FAM 201.1 DIRECTIVES

3. As noted in the November 9, 2018, declaration of Alexa Lawson-Remer, counsel for Defendants met and conferred with counsel for Plaintiffs multiple times about the discovery disputes at issue in Plaintiffs' motion to compel.

4. On Tuesday, November 13, 2018, counsel for Defendants contacted counsel for Plaintiffs to request another meet and confer conversation. *See* Defs.' Ex. E. Defendants wanted to try again to narrow the discovery issues in dispute before any party requested involvement from the Court. *See id.* Plaintiffs declined to make themselves available for a meet and confer conversation, explaining that "time is now of the essence to obtain resolution of these issues before Judge Chooljian in her courtroom on December 11." *Id.* Plaintiffs' counsel indicated Plaintiffs' preference to file the Joint

1 Stipulation first and to consider Defendants' positions later. *Id.*

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

3
4 Executed on November 16, 2018 at Pittsburgh, Pennsylvania.

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6 /s/ Lisa Zeidner Marcus
7 LISA ZEIDNER MARCUS
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Exhibit A

JOSEPH H. HUNT
Assistant Attorney General
JOSHUA E. GARDNER
Assistant Director
VINITA B. ANDRAPALLIYAL
Trial Attorney
LISA ZEIDNER MARCUS
Senior Counsel

UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Tel: (202) 514-3336
lisa.marcus@usdoj.gov

Counsel for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS and ETHAN JACOB
DVASH-BANKS,

Plaintiffs,

v.

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

Defendants.

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

DEFENDANTS' RESPONSES TO
PLAINTIFFS' FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS

September 18, 2018

Pursuant to Federal Rules of Civil Procedure 26 and 34 and the Local Rules of the United States District Court for the Central District of California, Defendants, the U.S. Department of State and Michael R. Pompeo, sued solely in his official capacity as Secretary of State (collectively, "the Department" or "Defendants"), hereby respond to Plaintiffs' First Set of Requests for Production of Documents ("RFPDs").

I. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. For purposes of this response to the RFPDs, Defendants use the following terms as those terms were defined by the RFPDs: “Aiden,” “Action,” “Ethan,” “Defendants,” “Ethan,” and “Plaintiffs.” Although Defendants concur with the RFPDs’ definitions of the terms “Section 301(g)” and “Section 309,” throughout this response to the RFPDs, Defendants instead tend to use the U.S. code citations— “8 U.S.C. § 1401(g)” and “8 U.S.C. § 1409”—to refer to those provisions. Additionally, Defendants use the following terms not defined in Plaintiffs’ RFPDs:

a. The term “Complaint” refers to the complaint filed by Plaintiffs in this Action (Dkt. # 1).

b. The term “CRBAs” refers to Consular Reports of Birth Abroad, and the term “CRBA” refers to a Consular Report of Birth Abroad in the singular.

c. The term “the Dvash-Banks applications for CRBAs and U.S. passports” refers to the applications submitted by Andrew Mason Dvash-Banks to the U.S. Consulate in Toronto to obtain CRBAs and U.S. passports for Ethan and Aiden.

d. The term “the Dvash-Banks family” refers to Andrew Mason Dvash-Banks, Elad Dvash-Banks, Ethan Jacob Dvash-Banks, and Aiden James Dvash-Banks. When referring to a particular member of the Dvash-Banks family, Defendants use that person’s first name, *e.g.*, the term “Andrew” refers to Andrew Mason Dvash-Banks, the term “Elad” refers to Elad Dvash-Banks; the terms “Ethan” and “Aiden” were defined in Plaintiffs’ RFPDs.

e. The term “relevant officers in the consular section of the U.S. Consulate in Toronto” refers to those officers who would have had responsibility relating to the adjudication of the Dvash-Banks applications for CRBAs and U.S. passports during the time period January 1, 2015

1 through June 2, 2017.

2 f. The terms “the Toronto Consulate” and “the Consulate” refer to
3 the U.S. Consulate in Toronto.

4 2. Defendants object to the definition of the term “CIS” as unreasonably
5 vague and overly broad. *See* RFPDs at 1 ¶ A. The RFPDs define that term as not
6 only the United States Citizenship Immigration Services (“USCIS”)¹ and the former
7 United States Immigration and Naturalization Service, but also “any [other]
8 predecessor” of USCIS, as well as “any and all of its divisions, departments,
9 sections, units, and Representatives.” Such definition is unreasonably vague and
10 overly broad because the USCIS is a component of a different Executive department,
11 the Department of Homeland Security; it is not a component of the Department of
12 State, and as such Defendants cannot reasonably be expected to know each and every
13 predecessor, division, department, section, unit, or Representative of USCIS.

14 3. Defendants object to the definition of the term “Communication” as
15 unreasonably vague and overly broad to the extent the RFPDs define that term to
16 include non-written or non-recorded communications, including “radio” and
17 “verbal” communications, as well as “any other actions intended to convey or
18 actually conveying information as data.” *See id.* at 1 ¶ E.

19 4. Defendants object to the definition of the term “Concerning” as
20 unreasonably vague and overly broad to the extent the RFPDs define that term to
21 include items that do not directly pertain to the topic at issue but instead merely
22 “refer[] to” or “mention[]” it or are “*in any way* logically or factually connected” to
23 its matter. *See id.* at 1 ¶ F (emphasis added).

24 5. Defendants object to the definition of the term “DHS” as unreasonably
25 vague and overly broad. *See id.* at ¶ H. The RFPDs define DHS as “United States
26 Department of Homeland Security in its entirety, and any predecessor thereof,” but

27 ¹ Throughout this response to the RFPDs, Defendants tend to use the government’s
28 preferred acronym “USCIS,” rather than “CIS,” to refer to the U.S. Citizenship and
Immigration Services, a component of the Department of Homeland Security.

1 there was no predecessor to the Department of Homeland Security in its entirety.
 2 The Department of Homeland Security was a new Executive department created in
 3 the wake of 9/11. See Homeland Security Act, 116 Stat. 2125 (2002) (codified as
 4 amended at 6 U.S.C. § 101 note). It was created through the integration of all or part
 5 of twenty-two different federal departments and agencies into one, unified
 6 Department of Homeland Security, but none of the those twenty-two units originated
 7 from the Department of State. See *id.*² The definition of “DHS” is also unreasonably
 8 vague and overly broad because it includes “any and all of its divisions, departments,
 9 sections, units, embassies, consulates, and Representatives,” see RFPDs at 2 ¶ H, but
 10 Defendants cannot reasonably be expected to know each and every division,
 11 department, section, unit, or Representative of an Executive department different
 12 and separate from the Department of State, nor would the Department of Homeland
 13 Security maintain any embassy or consulate.

14 6. Defendants object to the definition of the terms “Document” and/or
 15 “Documents” as unreasonably vague and overly broad, for a number of reasons. See
 16 RFPDs at 2 ¶ Defendants object that the terms are unreasonably vague and overly
 17 broad to the extent they are defined to include “archived” “World Wide Web or other
 18 HTML pages.” Defendants do not know what the subpoena means by “archived,”
 19 an undefined term; the phrase “other HTML pages” is also unreasonably vague. To
 20 the extent the Department maintains historical copies of websites, its technical
 21 means for retrieving them may be cumbersome and may not necessarily even be
 22 feasible with respect to particular sites, in particular sites that were active farther
 23 back in time. Defendants object to the definition of these terms to the extent it
 24 includes “intelligence or information” that is classified or protected by a law
 25 enforcement privilege. See *id.* Further, Defendants object to producing multiple
 26 copies of documents; it is overly broad and unduly burdensome to require

27 ² See also <https://www.dhs.gov/who-joined-dhs> (displaying chart—under the
 28 heading “Chronology of Events”—listing the twenty-two units joined to form DHS,
 and identifying the various Executive agencies from which they came).

1 Defendants to search for and produce any and all printouts or copies of documents
 2 that include any notation or “mark that is not part of the original text or reproduction
 3 thereof.” *See id.* It is overly broad and unduly burdensome, as well as
 4 disproportionate to the needs of the case, to require Defendants to search for and
 5 produce any and all “draft[s] or non-identical cop[ies]” of Documents, *see id.*, and
 6 drafts and potentially non-identical copies would in any event likely be subject to
 7 the deliberative process privilege.

8 7. Defendants object to the RFPDs’ definition of the term “FAM” to the
 9 extent the RFPDs define that term to include not only the Foreign Affairs Manual
 10 but also “all prior ... versions and amendments ... in final ... form,” “all prior ...
 11 versions and amendments ... in draft ... form,” and “all ... proposed subsequent
 12 versions and amendments, whether in draft or final form.” *Id.* at 2 ¶ K. Such
 13 definition is overly broad, unduly burdensome, not relevant to the claims and
 14 defenses, and disproportionate to the needs of the case. The Department of State has
 15 published the Foreign Affairs Manual since 1960, and portions have been amended
 16 continually since that time. The RFPDs’ definition of “FAM” also includes all
 17 “associated handbooks,” an undefined term. Defendants construe the phrase
 18 “associated handbooks” as referring to the Foreign Affairs Handbook, and object to
 19 the phrase as unreasonably vague and overly broad to the extent that Plaintiffs
 20 intended any other construction. Additionally, the RFPDs’ definition, which
 21 includes drafts of the FAM, implicates the deliberative process privilege, and is
 22 objectionable on that basis.

23 8. Defendants object to the RFPDs’ definition of the term “Permanent
 24 Resident Card” to the extent the RFPDs definition departs from the way that term is
 25 defined by USCIS, the component of the Department of Homeland Security
 26 responsible for issuing Permanent Resident Cards. *See, e.g.,* USCIS, *B2 – I am a*
 27 *permanent resident... How do I renew or replace my permanent resident card?* (Oct.
 28 2013), <https://www.uscis.gov/sites/default/files/USCIS/Resources/B2en.pdf>. A

1 Permanent Resident Card “is proof of ... [a person’s] permanent resident status in
 2 the United States.” *Id.* “It also serves as a valid identification document and proof
 3 that ... [a person is] eligible to live and work in the United States.” *Id.*

4 9. Defendants object to the RFPDs’ definition of the term
 5 “Representatives” to the extent the RFPDs define that term to include “any ...
 6 persons acting, or purporting to act, on behalf of or in concert or cooperation with, a
 7 Person.” *Id.* at 3 ¶ O. Such definition is unreasonably vague and overly broad
 8 because Defendants cannot reasonably be expected to know any and all persons who
 9 act or purport to act, on behalf of or in concert or cooperation with, any given Person.
 10 In addition, this definition, which would include government contractors, is overly
 11 broad and unduly burdensome.

12 10. Defendants object to the RFPDs’ definition of the term “State
 13 Department” to the extent the RFPDs define that term to incorporate and include
 14 “Representatives.” See *id.* at 3 ¶ Q. As described above, the RFPDs include an overly
 15 broad and unreasonably vague definition of the term “Representatives.” See *supra*
 16 ¶ 9.

17 11. Defendants object to the “Instructions” articulated in the RFPDs to the
 18 extent they purport to obligate Defendants to duties different from those required by:
 19 (a) Federal Rule of Civil Procedure 26 (“Rule 26”), which contains general
 20 provisions governing discovery; (b) Federal Rule of Civil Procedure 34 (“Rule 34”),
 21 which governs the production of documents, electronically stored information, and
 22 tangible things; and (c) relevant Local Rules in the Central District of California. By
 23 purporting to obligate Defendants to additional duties not contained in these rules,
 24 the RFPDs are overly broad, unduly burdensome, and disproportionate to the needs
 25 of the case. Specifically, Defendants object that:

26 a. Instruction F departs from the requirements of Rule 34(b)(2)(E)
 27 in that it instructs Defendants to produce each responsive document or thing
 28 “as it is kept in the usual course of business, including all file folders,

1 binders, notebooks, and other devices by which such papers or things may
 2 be organized or separated.” RFPDs at 4 ¶ F. Rule 34(b)(2)(E) allows
 3 Defendants to “produce documents as they are kept in the usual course of
 4 business or ... [to] organize and label them to correspond to the categories in
 5 the request.” Fed. R. Civ. P. 34(b)(2)(E) (emphasis added). Defendants
 6 object to Instruction F on this basis. Additionally, consistent with the
 7 Federal Rules of Civil Procedure, Defendants may redact non-responsive
 8 and/or privileged and/or protected (by statute, regulations, order, or other
 9 law) portions of documents that otherwise contain responsive, non-
 10 privileged information; Defendants object to Instruction F to the extent that
 11 it purports to require otherwise.

12 b. Instruction G instructs Defendants to produce “[a]ll versions or
 13 copies of each document requested below that are not identical to the
 14 original or other produced copy of the document, whether because of
 15 handwritten notations, revisions or the inclusion of cover letters, transmittal
 16 sheets, appendices or other attachments.” RFPDs at 4 ¶ G. Defendants object
 17 to producing multiple copies of documents; it is overly broad, unduly
 18 burdensome, and disproportionate to the needs of the case to require
 19 Defendants to search for and produce any and all copies that include
 20 handwritten notations or a cover letter or transmittal sheet. Many of the
 21 policies and procedure documents requested by the RFPDs are of a type
 22 frequently consulted by individual employees, and any one of Defendants’
 23 approximately 75,000 employees could print out a copy of such policy and
 24 procedure and make handwritten notations reflecting the individual’s duties,
 25 thoughts, and emphasis. Moreover, Rule 34(b)(2)(E) explicitly provides that
 26 “[a] party need not produce the same electronically stored information in
 27 more than one form.” Defendants object to producing non-final versions of
 28

1 documents because drafts and non-final versions are protected by the
2 deliberative process privilege.

3 c. Instruction H directs Defendants to “identify, as completely as
4 possible” “any Document or thing otherwise responsive to any document
5 request [that] has been lost, discarded, or destroyed since its preparation or
6 receipt,” *id.* at 4–5 ¶¶ H, and to “state the document request to which it
7 would be responsive, and give full particulars or circumstances under which
8 the document or thing was lost or destroyed, including each document’s
9 date, the general nature of the document ..., the subject matter of the
10 document, each author or originator, each person indicated as an addressee
11 or copy recipient, or known by Defendants to have received a copy of the
12 document or thing, and the document’s former custodians,” *id.* Instruction H
13 is, essentially, an interrogatory, and an unduly burdensome one. Neither
14 Rule 26 nor Rule 34 nor any Local Rule requires Defendants to “give the
15 full particulars or circumstances” under which a document was lost or
16 destroyed. Defendants object to Instruction H.

17 d. Instruction I instructs that “Electronic documents should be
18 produced with all metadata associated with each document.” The phrase “all
19 metadata associated” is unreasonably vague, overly broad, unduly
20 burdensome, and disproportionate to the needs of the case. Defendants
21 object to producing any metadata protected by statute, regulation, or
22 privilege, including: the Privacy Act; the attorney-client privilege; the work
23 product doctrine; the deliberative process privilege; the law enforcement
24 and/or investigatory files privilege; and other statutes, regulations, or
25 directives regarding the protection of privacy or confidential information.
26 Defendants object to producing metadata for protocols, procedures,
27 practices, and policies; although such documents may be available in an
28 electronic form—*e.g.*, to post on the Department’s internet site, or to make

1 available to Department employees and contractors through an intranet
2 site—metadata associated with protocols, procedures, practices, and policies
3 is not relevant to the claims and defenses in this case, and it would be
4 expensive and disproportionate to the needs of the case to require
5 Defendants to collect such protocols, procedures, practices, and policies in a
6 way that preserves the metadata. Accordingly, Defendants will produce
7 protocols, procedures, practices, and policies in PDF format without
8 metadata. With respect to other electronic documents and communications,
9 including e-mail and attachments, Defendants plan to produce responsive
10 documents (*i.e.*, emails and attachments) in a format consistent with the U.S.
11 Department of Justice, Civil Division’s “Specifications for Production of
12 ESI and Digitized (‘Scanned’) Images” (“Civil Division Production
13 Specifications”); Defendants will follow the version of the Civil Division
14 Production Specifications in effect at the time of production. The current
15 version of the Civil Division Production Specifications is attached to
16 Defendants’ Response as Appendix A. Defendants object to Instruction I.

17 e. Instruction K departs from the language of Rule 26(e)
18 governing supplementation of disclosures and responses. Defendants object
19 to Instruction K and will instead follow Rule 26(e)’s requirements regarding
20 supplementations and corrections.

21 **II. OBJECTIONS TO ALL REQUESTS FOR PRODUCTION**

22 12. Defendants object to Plaintiffs’ requests as overly broad, not relevant
23 to the claims or defenses in this case, and disproportionate to the needs of this case
24 to the extent they seek documents outside of a reasonable time period relating to the
25 claims and defenses in this case. Most of the requests included in the RFPDs do not
26 specify a timeframe. Unless otherwise specified in response to specific requests,
27 Defendants construe all RFPDs as applying to, and seeking documents and records
28 within, the timeframe starting January 1, 2015—1 year, 8 months, and 15 days

1 before the birth date of Aiden and Ethan, see Compl. ¶ 46, and at least several months
2 prior to “the summer of 2015” when it is alleged that Andrew and Elad selected an
3 anonymous egg donor used to conceive Ethan, see *id.* ¶ 44—and ending on June 2,
4 2017—three months after the Consulate issued its decision denying Andrew’s
5 application for a CRBA and passport for Ethan.

6 13. Defendants object to Plaintiffs’ requests as overly broad, not relevant
7 to the claims or defenses in this case, and disproportionate to the needs of this case
8 to the extent they seek records or documents of any component of the Department
9 of State other than those generated by or available to the U.S. Consulate in Toronto,
10 which includes policies or guidance prepared and provided by Department of State
11 components in Washington, D.C., to or intended for use by the Toronto Consulate.
12 The United States has more than 250 embassies and consulates worldwide,
13 employing more than 50,000 people, operating in English and host-country
14 languages, along with more than 60 other bureaus and units employing more than
15 20,000 people within the United States; it would be unduly burdensome as well as
16 disproportionate and not relevant to the claims and defenses in this case for the
17 Department to search for records in all of those locations. Worldwide, the
18 Department domestically and through its embassies and consulates overseas
19 received more than 14 million passport applications in fiscal year 2015; more than
20 16 million passport applications in fiscal year 2016; and more than 19 million
21 passport applications in fiscal year 2017. Worldwide, the Department printed 73,103
22 CRBAs in fiscal year 2015; 76,519 CRBAs in fiscal year 2016; and 89,495 CRBAs
23 in fiscal year 2017. Because the U.S. Consulate in Toronto is the Department of State
24 component that adjudicated the Dvash-Banks applications for CRBAs and U.S.
25 passports at issue in this litigation, it is the component relevant to the claims and
26 defenses in this case. Unless otherwise specified in response to a specific request,
27 Defendants will not search for or produce records or documents other than those
28 generated by or available to the Toronto Consulate, or communications other than

1 those sent by or to the relevant officers in the consular section of the Toronto
2 Consulate during the time period relevant to the claims in this case, *see supra* ¶ 12;
3 nor will Defendants search for or produce records or documents other than those (a)
4 generated by the Toronto Consulate, or (b) available to the Toronto Consulate.

5 14. Defendants object to Plaintiffs' requests to the extent they request
6 discovery beyond the administrative record in connection with Plaintiffs' claims
7 seeking judicial review of agency actions under the Administrative Procedure Act,
8 5 U.S.C. § 701 *et seq.* (Count III), and under the Declaratory Judgment Act, 28
9 U.S.C. §§ 2201–02 (Counts I and II). To the extent these claims are properly brought,
10 the Court is limited to reviewing the administrative record compiled by the agency,
11 which the agency submits as the complete record of its proceedings. The Court
12 generally may not base its review on a record supplemented with documents created
13 in the first instance in the District Court.

14 15. Defendants object to Plaintiffs' requests to the extent that they seek (a)
15 attorney work product; (b) documents or communications protected by the attorney-
16 client privilege; (c) information protected by the deliberative process privilege, law
17 enforcement privilege, or any form of executive privilege; (d) information classified
18 and required to be kept secret pursuant to Executive Order; (e) material the
19 disclosure of which would violate legitimate privacy interests and expectations of
20 persons not party to this litigation; (f) records protected from disclosure by the
21 Privacy Act, 5 U.S.C. § 552a, and its implementing regulations, especially 22 C.F.R.
22 §§ 171.20–171.26; (h) alien registration records, which are confidential pursuant to
23 8 U.S.C. § 1304; or (i) any other applicable privilege, statute, or protection.

24 16. Subject to the responses and objections contained herein, Defendants
25 intend to produce to Plaintiffs non-privileged responsive documents on a rolling
26 basis and within a reasonable period of time.

27 17. Defendants specifically decline to produce privileged information.
28 Defendants further object to any requirement that it produce a privilege log for

1 privileged material not otherwise properly within the scope of discovery and/or as
2 to which no privilege log would be required pursuant to Federal Rule of Civil
3 Procedure 26(b)(5). Subject to the foregoing, Defendants intend to provide Plaintiffs
4 with privilege logs on a rolling basis in the course of Defendants' rolling
5 productions.

6 18. Each and every response contained herein is subject to the above
7 objections, which apply to each and every response, regardless of whether a specific
8 objection is interposed in a specific response. The making of a specific objection in
9 response to a particular request is not intended to constitute a waiver of any other
10 objection not specifically referenced in the particular response.

11 19. Defendants specifically reserve the right to make further objections as
12 necessary to the extent additional issues arise regarding the meaning of terms in
13 and/or information sought by discovery.

14 **III. OBJECTIONS TO SPECIFIC REQUESTS FOR PRODUCTION**

15 **Document Request No. 1:**

16 All Documents and Communications stating or discussing protocols,
17 procedures, practices or policies of the State Department and [US]CIS for applying
18 Section 301(g) and Section 309 to persons who claim to have acquired United States
19 citizenship under those statutory provisions, including but not limited to the reasons
20 for any such protocols, procedures, practices or policies. This request is limited to
21 Documents and Communications Concerning those protocols, procedures, practices
22 or policies generally and does not include documents that merely reference or rely
23 on them (e.g., documents related to individual Persons' applications for consular or
24 passport services). This request includes all prior or subsequent versions and drafts
25 (whether or not adopted) of such protocols, procedures, practices or policies, and all
26 Documents and Communications that explain, support, or oppose the adoption,
27 implementation, or continued application of any such protocols, procedures,
28 practices or policies.

23 **Response No. 1:**

24 Defendants object to this request on multiple grounds. *First*, the "protocols,
25 procedures, practices, or policies of ... USCIS" are not relevant to the claims and
26 defenses in this litigation, as USCIS is not a component of the Department of State,
27 but rather is a component of the Department of Homeland Security ("DHS"), an
28 Executive department separate from the Department of State. USCIS's protocols,

1 procedures, practices, or policies are unrelated to actions taken or allegedly taken by
2 Defendants in adjudicating the applications at issue in this case. *Second*, the request
3 is unreasonably vague, overly broad, unduly burdensome, not relevant,
4 disproportionate to the needs of the case, and not reasonably particularized to the
5 extent it seeks any and all documents (including communications) “stating or
6 discussing” the Department of State’s protocols, procedures, practices, or policies.
7 Not only could the number of such documents be extremely voluminous,³ but also
8 documents “stating or discussing” protocols, procedures, practices, or policies
9 would have the tendency to capture deliberative, pre-decisional communications
10 (and other documents) protected by privilege. *Third*, to the extent the request seeks
11 (a) communications sent to or from attorneys for the Department of State,
12 Department of Justice, or any other Executive Branch component (including outside
13 counsel); or (b) documents generated by or at the direction of any such attorney, it
14 likely seeks information protected by the attorney-client privilege and/or the work
15 product doctrine, and the Defendants object to any request to produce privileged
16 documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Fourth*, by seeking “all prior or
17 subsequent versions and drafts (whether or not adopted),” this request on its face
18 seeks pre-decisional, deliberative documents protected by the deliberative
19 process privilege.

20 For the purposes of responding to this request, Defendants construe the
21 request as seeking (a) documents that will be cited by Defendants in response to
22

23 ³ This is so notwithstanding the request’s second sentence, which purports to
24 “limit[]” the request “to Documents and Communications Concerning those
25 protocols, procedures, practices or policies generally and does not include
26 documents that merely reference or rely on them (*e.g.*, documents related to
27 individual Persons’ applications for consular or passport services).” In any event,
28 the request’s second sentence is unreasonably vague and overly broad because it
incorporates the term “Concerning,” a term which the RFPDs broadly define to
include items that do not directly pertain to the topic at issue but instead merely
“refer[] to” or “mention[]” the topic at issue or are “*in any way* logically or factually
connected” to its matter. RFPD at 1 ¶ F (emphasis added).

Interrogatory No. 4 (in Plaintiffs' First Set of Interrogatories),⁴ and (b) communications sent by or to relevant officers in the consular section of the U.S. Consulate in Toronto, during the time period January 1, 2015 through June 2, 2017, discussing or describing any of the documents referred to in clause "(a)" of this sentence.

Subject to and without waiving the above-stated objections—including both those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or communications responsive to this request (as so construed in the preceding paragraph) after the corresponding interrogatory response has been certified and made, subject to any further objections made in response to Interrogatory No. 4.

Document Request No. 2:

All Documents and Communications Concerning Communications between (i) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, or other units of [US]CIS, and (ii) the State Department, including but not limited to the Secretary of State's staff, the Office of the Legal Adviser, and the Bureau of Consular Affairs, Concerning any protocol, procedure, practice or policy for applying Section 309, rather than Section 301(g), to any Person born outside of the United States to married parents (one of whom is a United States citizen) if the Person is not biologically related to the United States citizen parent, including but not limited to the rationale for any such protocol, procedure, practice or policy.

Response No. 2:

Defendants object to this request on multiple grounds. *First*, the phrases "[a]ll Documents ... Concerning Communications ... Concerning any protocol" and "[a]ll ... Communications Concerning Communications ... Concerning any protocol" are unreasonably vague and syntactically unclear. *Second*, to the extent the request seeks (a) communications sent to or from attorneys for the Department of State, Department of Justice, or any other Executive Branch component (including outside

⁴ Plaintiffs' Interrogatory No. 4 asks Defendants to: "Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g) or Section 309 to Persons who claim to have acquired United States citizenship under those statutory provisions, including the reasons and basis for any such protocols, procedures, practices, guidelines or policies."

1 counsel); or (b) documents generated by or at the direction of any such attorney, it
2 likely seeks information protected by the attorney-client privilege and/or the work
3 product doctrine, and the Defendants object to any request to produce privileged
4 documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Fourth*, the request on its face seeks
5 pre-decisional, deliberative communications exchanged by components of two
6 separate Executive agencies, implicating the deliberative process privilege.

7 For the purposes of responding to this request, Defendants construe the
8 request as seeking (a) documents that would be cited by Defendants in response to
9 Interrogatory No. 5 (in Plaintiffs' First Set of Interrogatories),⁵ and (b)
10 communications between one or more relevant officers in the consular section of the
11 U.S. Consulate in Toronto, and any employee of the components identified in the
12 request (USCIS, a component of DHS; the Secretary of State's staff; the Office of
13 the Legal Adviser; the Bureau of Consular Affairs) or any other component of the
14 Department, during the time period January 1, 2015 through June 2, 2017, discussing
15 or describing any of the documents referred to in clause "(a)" of this sentence.

16 Subject to and without waiving the above-stated objections—including both
17 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–11(e) and
18 Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or
19 communications responsive to this request after the corresponding interrogatory
20 response has been certified and made, subject to any further objections made in
21 response to Interrogatory No. 5.

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25
26 ⁵ Plaintiffs' Interrogatory No. 5 asks Defendants to: "Identify and describe any
27 protocol, procedure, practice, guideline or policy of the State Department for
28 applying Section 309, rather than Section 301(g), to an application for a CRBA or
U.S. passport by or for any Person born outside of the United States, including the
reasons and basis for any such protocol, procedure, practice, guideline or policy."

Document Request No. 3:

All Documents and Communications concerning or discussing the impact or effect of any court ruling, including but not limited to *Pavan v. Smith*, 28 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Solis-Espinoza v. Gonzales*, 401 F.3d 2 1090 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born outside of the United States (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.

Response No. 3:

Defendants object to this request on multiple grounds. *First*, the phrase “concerning ... the impact ... of *any court ruling including but not limited to*” is unreasonably vague, overly broad, and not reasonably particularized; it seeks documents not relevant to the claims or defenses; and is disproportionate to the needs of the case. *Second*, to the extent the request seeks (a) communications sent to or from attorneys for the Department of State, Department of Justice, or any other Executive Branch component (including outside counsel); or (b) documents generated by or at the direction of any such attorney, it likely seeks information protected by the attorney-client privilege and/or the work product doctrine, and the Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Third*, to the extent this request seeks documents and communications regarding any individual adjudications conducted by the Department other than any adjudications specifically related to the Dvash-Banks family, Defendants object to the request as unreasonably vague, overly broad, not relevant to the claims and defenses, and disproportionate to the needs of the case. *Fourth*, the document request is unreasonably vague and overly broad in that its terms encompass not only situations governed by 8 U.S.C. § 1401 or 8 U.S.C. § 1409, but also situations governed by other provisions of the Immigration and Nationality Act (“INA”), as well as situations where a Person seeks citizenship or proof of citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431

1 and 1433 (the Child Citizenship Act of 2000) and potentially under Title II of the
2 INA, as well as historical sections under which a Person may have acquired
3 citizenship depending on the date of birth.

4 For the purposes of responding to this request, Defendants construe the
5 request as seeking documents, guidance, or instructions available to relevant officers
6 in the consular section of the U.S. Consulate in Toronto and in effect during the time
7 period January 1, 2015 through June 2, 2017—or communications sent to or received
8 by such officers during that time period—regarding any of the five judicial opinions
9 cited in the request, or any other court ruling of general applicability to the Toronto
10 Consulate’s adjudication, based on 8 U.S.C. § 1401 or 8 U.S.C. § 1409, in
11 connection with applications for CRBAs or U.S. passports for foreign-born children
12 lacking a biological relationship (as the Department defines that term) with a U.S.
13 citizen parent.

14 Subject to and without waiving the above-stated objections—including both
15 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
16 11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents
17 or communications responsive to this request (as so construed in the preceding
18 paragraph).

19 **Document Request No. 4:**

20 All protocols, procedures, practices or policies Concerning the adjudication,
21 issuance, denial, cancellation, or revocation of Consular Reports of Birth Abroad,
22 United States passports, or Certificates of Citizenship, including all Documents and
23 Communications concerning the application of such protocols, procedures, practices
24 or policies to Plaintiffs or any other person (i) born outside of the United States (ii)
25 who asserts he or she is the child of a United States citizen; (iii) whose United States
26 citizen parent is married to a foreign national; and (iv) who does not have a biological
27 relationship to his/her United States citizen parent. This request is limited to
28 Documents and Communications Concerning those protocols, procedures, practices
or policies generally and does not include documents that merely reference or rely
on them (e.g., documents related to individual Persons’ applications for consular or
passport services). This request includes all prior and subsequent versions and drafts
(whether or not adopted) of such protocols, procedures, practices or policies, and
Documents and Communications that explain, support, or oppose the adoption,
implementation, or continued application of any such protocols, procedures,
practices or policies.

Response No. 4:

Defendants object to this request on multiple grounds. *First*, Defendants object to this request as syntactically unclear with respect to the various clauses in the first sentence, which appear to request “protocols, procedures, practices or policies,” but also indicate that included among such requested “protocols, procedures, practices or policies” are “Documents and Communications concerning the application of such protocols, procedures, practices or policies.” *Second*, the document request is unreasonably vague and overly broad in that its terms encompass not only situations governed by 8 U.S.C. § 1401 or 8 U.S.C. § 1409, but also situations governed by other provisions of the Immigration and Nationality Act (“INA”), as well as situations where a Person seeks citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431 and 1433 (the Child Citizenship Act of 2000) and potentially under Title II of the INA, as well as historical sections under which a Person may have acquired citizenship depending on the date of birth. *Third*, to the extent the request seeks (a) communications sent to or from attorneys for the Department of State, Department of Justice, or any other Executive Branch component (including outside counsel); or (b) documents generated by or at the direction of any such attorney, it likely seeks information protected by the attorney-client privilege and/or the work product doctrine, and the Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Fourth*, by seeking “all prior or subsequent versions and drafts (whether or not adopted),” this request on its face seeks pre-decisional, deliberative documents protected by the deliberative process privilege.

On the basis of these objections, Defendants do not intend to produce documents in response to this specific request.

Document Request No. 5:

All Documents and Communications that use the terms “sexual orientation,” “same-sex,” “gay,” “lesbian,” “homosexual,” “LGBT,” or any other term, including any derogatory term, that has the same or a similar meaning as the foregoing terms, in connection with the application of Section 301(g), Section 309, and/or the FAM to same-sex couples who have applied on behalf of their child(ren) for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship.

Response No. 5:

Defendants object to this document request because the phrase “in connection with the application of ... the FAM” as used in the request is unreasonably vague, overly broad, not reasonably particularized, not relevant to the claims and defenses, and disproportionate to the needs of the case. The Foreign Affairs Manual (“FAM”) consists of seventeen separate volumes, only one of which—Volume 8 (previously Volume 7)⁶—provides policies and procedures for “Passports and Consular Reports of Birth Abroad.” *See* FAM vol. 8; *see also* <https://fam.state.gov/>.

For the purposes of responding to this request, Defendants construe the request as seeking documents or communications for which all of the following is true: (a) generated by, available to, or sent or received by relevant officers in the consular section of the U.S. Consulate in Toronto; (b) during the relevant time period of January 1, 2015 through June 2, 2017, or—in the case of policy or protocol documents—in effect during that time period; (c) related to adjudications of CRBA applications and/or U.S. passport applications, where such adjudications would be based on the provisions of 8 U.S.C. § 1401(g) or 8 U.S.C. § 1409 or any FAM provision regarding CRBAs, U.S. passports, or citizenship determinations; and (d) using any of the terms “sexual orientation,” “same-sex,” “gay,” “lesbian,” “homosexual,” “LGBT,” or any other term (including any derogatory term) that has the same or a similar meaning to those terms.

Subject to and without waiving the above-stated objections—including both those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–

⁶ Many parts of the FAM were renumbered as of July 16, 2018.

1 11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents
2 or communications responsive to this request (as so construed in the preceding
3 paragraph).

4 **Document Request No. 6:**

5 All Documents and Communications Concerning assisted reproductive
6 technology as that term is used in 7 FAM 140 and Appendix D of the FAM, including
7 but not limited to surrogacy, in connection with Section 301(g), Section 309, or
8 applications for a Consular Report of Birth Abroad, United States passport, or
9 Certificate of Citizenship.

8 **Response No. 6:**

9 Defendants object to this request on multiple grounds. *First*, the multiple
10 clauses and dangling modifiers in the request make it unreasonably vague and
11 syntactically unclear. *Second*, to the extent the request seeks (a) communications
12 sent to or from attorneys for the Department of State, Department of Justice, or any
13 other Executive Branch component (including outside counsel); or (b) documents
14 generated by or at the direction of any such attorney, it likely seeks information
15 protected by the attorney-client privilege and/or the work product doctrine, and the
16 Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R.
17 Civ. P. 26(b)(1). *Third*, the document request is unreasonably vague and overly
18 broad in that its terms encompass not only situations governed by 8 U.S.C. § 1401
19 or 8 U.S.C. § 1409, but also situations governed by other provisions of the
20 Immigration and Nationality Act (“INA”), as well as situations where a Person seeks
21 citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431 and 1433
22 (the Child Citizenship Act of 2000) and potentially under Title II of the INA, as well
23 as historical sections under which a Person may have acquired citizenship depending
24 on the date of birth.

25 For the purposes of responding to this request, Defendants construe the
26 request as seeking (a) documents relating to the topic of Interrogatory No. 16 (in
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28

1 Plaintiffs' First Set of Interrogatories),⁷ and (b) communications sent by or to
2 relevant officers in the consular section of the U.S. Consulate in Toronto, during the
3 time period January 1, 2015 through June 2, 2017, discussing assistive reproductive
4 technology in connection with the application of 8 U.S.C. § 1401(g) or § 1409 to
5 any adjudication of a CRBA or U.S. passport application, or discussing or describing
6 any of the documents referred to in clause "(a)" of this sentence.

7 Subject to and without waiving the above-stated objections—including both
8 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
9 11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents
10 or communications responsive to this request (as so construed in the preceding
11 paragraph) after the corresponding interrogatory response has been certified and
12 made, subject to any further objections made in response to Interrogatory No. 16.

13 **Document Request No. 7:**

14 All Documents and Communications, including any documentation of
15 Communications, Concerning any applications for or inquiries about Consular
16 Reports of Birth Abroad, United States passports, or a Permanent Resident Card
17 made, submitted, or sought on behalf of either or both of Ethan and Aiden, including
18 Documents and Communications Concerning the processing or adjudication of those
19 applications or inquiries, or related Communications between the State Department
20 or CIS and any Person.

21 **Response No. 7:**

22 Defendants object to this request on multiple grounds. *First*, the phrase "any
23 documentation of Communications" is unreasonably vague and undefined. *Second*,
24 Defendants object to the request to the extent it seeks inter-agency or intra-agency,
25 pre-decisional, deliberative materials, as such documents or communications would
26 be protected by the deliberative process privilege. *Third*, Defendants object to the
27 request to the extent it seeks documents (including communications) unrelated to the
28

⁷ Plaintiffs' Interrogatory No. 16 asks Defendants to: "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in connection with the State Department's (i) application of Section 301(g) or Section 309; or (ii) determination of applications for a CRBA, United States passport, or Certificate of Citizenship."

1 actions and alleged actions taken by Defendants and challenged by Plaintiffs in this
2 litigation. Defendants are not authorized to take action with respect to applications
3 for a Permanent Resident Card, and any documents or communications relating to
4 such an application would be not relevant to the claims and defenses in this case,
5 and disproportionate to the needs of the case. *Fourth*, Defendants object to the
6 request to the extent it seeks documents or communications outside of the relevant
7 time period January 1, 2015 through June 2, 2017.

8 For the purposes of responding to this request, Defendants construe the
9 request as seeking documents or communications for which all of the following is
10 true: (a) generated by, available to, or sent or received by relevant officers in the
11 consular section of the U.S. Consulate in Toronto; (b) during the relevant time period
12 of January 1, 2015 through June 2, 2017; (c) describing, memorializing, constituting,
13 or discussing; (d) any application for a CRBA and/or a U.S. passport for Ethan or
14 Aiden, or any adjudication of such application, or any inquiry from the Dvash-Banks
15 family regarding a potential or pending application.

16 Subject to and without waiving the above-stated objections—including both
17 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
18 11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents
19 or communications responsive to this request (as so construed in the preceding
20 paragraph).

21 **Document Request No. 8:**

22 All Documents Concerning Communications with any Person regarding
23 Plaintiffs or this Action.

24 **Response No. 8:**

25 Defendants object to this document request on multiple grounds. *First*, the
26 phrase “Documents Concerning Communications” is unreasonably vague, overly
27 broad, and not sufficiently particularized. *Second*, Defendants object to this request
28 to the extent it seeks documents or communications outside of the time period

1 January 1, 2015 through June 2, 2017, as such documents or communications would
2 be too far outside the time period relevant to Plaintiffs' claims to be proportionate to
3 the needs of the case. Documents and communications post-dating that time
4 period—and particularly documents generated and/or communications exchanged
5 after the filing of this lawsuit—would have the tendency to reveal information
6 protected by the attorney-client privilege and/or the work-product doctrine. It would
7 be unduly burdensome, not relevant to the claims and defenses in the litigation, and
8 disproportionate to the needs of the case to require Defendants to collect and review
9 for production any such documents.

10 For the purposes of responding to this request, Defendants construe the
11 request as seeking documents or communications for which all of the following is
12 true: (a) generated by, available to, or sent or received by relevant officers in the
13 consular section of the U.S. Consulate in Toronto; (b) during the relevant time period
14 of January 1, 2015 through June 2, 2017; and (c) mentioning any member of the
15 Dvash-Banks family, or the family as a whole.

16 Subject to and without waiving the above-stated objections—including both
17 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
18 11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents
19 or communications responsive to this request (as so construed in the preceding
20 paragraph).

21 **Document Request No. 9:**

22 Documents sufficient to show the organizational structure of the State
23 Department and CIS, respectively, including organizational charts or other
24 documents that identify the hierarchy of authority among positions and the
25 responsibilities and duties associated with each position, and the names and titles of
26 Representatives of the State Department or CIS who held those positions between
27 January 1, 2012 and the present. This request is limited to Representatives of the
28 State Department or CIS (a) who are or were involved with or responsible for
interpreting Section 301(g) or Section 309 or (b) who are or were involved with or
responsible for drafting or approving protocols, procedures, practices or policies
(including provisions of the FAM) relating to the citizenship status of children born
outside of the United States to United States citizens (whether or not those children
have a biological connection to their United States citizen parents).

Response No. 9:

Defendants object to this request on multiple grounds. *First*, the request is unreasonably vague, insufficiently particularized, and nonsensical in that the first sentence indicates that the request seeks organizational charts, but the *Second* sentence states that the “request is limited to Representatives,” a term the RFPDs define as applying only to persons and not to components, offices, or units of an organization. *Third*, Defendants object to this request as unreasonably vague, not sufficiently particularized, overly broad, unduly burdensome, and disproportionate to the needs of the case inasmuch as the request is seeking every organizational chart ever prepared within the State Department and routine changes in assignments of individual Department personnel frequently impact organizational charts and/or the names and titles of persons holding particular positions at any given time. *Fourth*, Defendants object that the timeframe identified in the request, “January 1, 2012 ... [to] the present” is overly broad, unduly burdensome, and disproportionate to the needs of the case. *Fifth*, the numbers of Department personnel who—at any given time—“are ... involved with ... drafting or approving” any such identified protocols, procedures, practices, or policies (which under the broad phrasing of the request might be Department-wide or mission-or-post specific) likely number in the thousands given that the Department employs more than 50,000 people in 250 embassies and consulates worldwide, and more than 20,000 people in its domestic bureaus and units. It would be unduly burdensome, not relevant to the claims or defenses in the case, and disproportionate to the needs of the case to require Defendants to produce documents “sufficient to show” the names and titles of all such persons. *Sixth*, Defendants object to the request to the extent it seeks names and titles of persons employed by any other component of the Department of State other than the Toronto Consulate because such information is overly broad, unduly burdensome, not relevant to the claims and defenses in the case, and disproportionate to the needs of the case.

1 Accordingly, for the purposes of responding to this request, Defendants
2 construe the request as being restricted to (a) available organizational charts of the
3 Department as a whole, the Bureau of Consular Affairs, and the Toronto Consulate,
4 during the time period January 1, 2015 to June 2, 2017; and (b) list(s) showing names
5 and titles of persons holding positions at the Toronto Consulate during the time
6 period January 1, 2015 to June 2, 2017.

7 Subject to and without waiving the above-stated objections—including both
8 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
9 11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents
10 or communications responsive to this request (as so construed in the preceding
11 paragraph).

12 **Document Request No. 10:**

13 Documents sufficient to show the organizational structure of the State
14 Department, including the United States Embassy in Toronto, and CIS, respectively,
15 including organizational charts or other documents that identify the hierarchy of
16 authority among positions and the responsibilities and duties associated with each
17 position, and the names and titles of employees or officers of the State Department
18 or CIS who held those positions between January 1, 2012 and the present. This
19 request is limited to Representatives of the State Department or CIS who are or were
involved with or responsible for receiving, adjudicating, advising upon,
administering, or otherwise participating in any Communication, action or decision
with respect to any applications for or inquiries about Consular Reports of Birth
Abroad, United States passports, or a Permanent Resident Card made, submitted, or
sought on behalf of either or both of Ethan and Aiden.

20 **Response No. 10:**

21 Defendants object to this request on multiple grounds. *First*, it overlaps with
22 Request No. 9, and is duplicative of and cumulative to that request. *Second*, the
23 request is unreasonably vague, insufficiently particularized, and nonsensical in that
24 the first sentence indicates that the request seeks organizational charts, but the
25 *Second* sentence states that the “request is limited to Representatives,” a term the
26 RFPDs define as applying only to persons and not to components, offices, or units
27 of an organization. *Third*, Defendants object to this request as unreasonably vague,
28 not sufficiently particularized, overly broad, unduly burdensome, and

1 disproportionate to the needs of the case inasmuch as the request is seeking every
2 organizational chart ever prepared within the State Department and routine changes
3 in assignments of individual Department personnel frequently impact organizational
4 charts and/or the names and titles of persons holding particular positions at any given
5 time. *Fourth*, Defendants object that the timeframe identified in the request,
6 “January 1, 2012 ... [to] the present” is overly broad, unduly burdensome, and
7 disproportionate to the needs of the case.

8 Accordingly, for purposes of responding to this request, Defendants construe
9 the request as being restricted to (a) organizational charts of the Department as a
10 whole, the Bureau of Consular Affairs, and the Toronto Consulate, during the time
11 period January 1, 2015 and June 2, 2017, and (b) documents identifying the names
12 and titles of Department personnel who were involved with the adjudication of the
13 Dvash-Banks applications for CRBAs and U.S. passports.

14 On the basis of these objections, Defendants do not intend to produce
15 documents in response to this specific request.

16 **Document Request No. 11:**

17 Documents sufficient to identify all United States government agencies (and
18 offices therein) involved in (a) implementing Section 309 and/or Section 301(g) or
19 (b) making decisions about protocols, procedures, practices or policies (or whose
sign-off is required to institute any such decision) Concerning Section 309 and/or
Section 301(g).

20 **Response No. 11:**

21 Defendants object to this request on multiple grounds. *First*, to the extent the
22 request seeks Documents sufficient to identify the relevant components of the
23 Department of State, it overlaps with Request No. 9, and is duplicative of and
24 cumulative to that request. *Second*, to the extent the request seeks Documents
25 sufficient to identify federal agencies and components other than those of the
26 Department of State, Defendants object that such information is not relevant to the
27 claims and defenses in this case, as Plaintiffs claims relate to actions taken by
28 Defendants, and not to actions taken by other federal agencies. *Third*, Defendants

1 object to the request to the extent it would require Defendants to create responsive
2 documents, as a party “is not required to create a document where none exists.”
3 *Rogers v. Guirbino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012). *Fourth*, Defendants
4 object to the request because the information can be obtained from some other
5 source—including publicly available sources—which is more convenient and less
6 burdensome than requesting such information from Defendants.

7 On the basis of these objections, Defendants do not intend to produce
8 documents in response to this specific request.

9 **Document Request No. 12:**

10 Documents sufficient to show the number of same-sex married bi-national
11 couples (i.e., of which one spouse is a United States citizen and the other is not) who
12 have applied for Consular Reports of Birth Abroad, United States passports, or
13 Certificates of Citizenship on behalf of one or more children born outside the United
14 States (or adult children of such couples who have applied on their own behalves);
15 the outcomes for, or results of, such applications; and the reasons for any denials of
16 any such applications. This request includes Documents Concerning any
17 requirement of the State Department or CIS that a United States citizen demonstrate
18 a biological connection to, or relationship with, a child born outside the United States
19 in connection with such applications.

20 **Response No. 12:**

21 Defendants object to this request on multiple grounds. *First*, to the extent that
22 it seeks information potentially contained in one or more Department of State
23 systems of records, in particular “Passport Records, State-26,” 80 Fed. Reg. 15653
24 (Mar. 24, 2015), and “Overseas Citizens Services Records, State-05,” 81 Fed. Reg.
25 62235 (Sept. 8, 2016), such data is subject to the disclosure limitations of the Privacy
26 Act. *Second*, the request is overly broad, not reasonably particularized, unduly
27 burdensome, and disproportionate to the needs of the case because the terms it
28 proposes are not queries that can readily be searched by the Department. For
example, during the course of consular processing activities at the Toronto Consulate
and other posts, applications for CRBAs and U.S. passports (as well as other
applications) generate queries to the Consular Consolidated Database (“CCD”).
CCD is a data warehouse that holds current and archived data from the Bureau of

1 Consular Affairs’ domestic and post databases. *See, e.g.*, U.S. Department of State,
2 Privacy Impact Assessment: Consular Consolidated Database, at 2 (July 17, 2015),
3 *available at* <https://www.state.gov/documents/organization/242316.pdf>. The CCD
4 stores information about U.S. persons (U.S. citizens and legal permanent residents),
5 as well as foreign nationals (non-U.S. persons) such as Immigrant Visa applicants
6 and Non-Immigrant Visa applicants. *Id.* at 3.⁸ CCD does not support statistical
7 reporting of the query terms suggested by Request No. 12, *i.e.*, same-sex married bi-
8 national couples who have applied for a CRBA or U.S. passport on behalf of one or
9 more children born outside the United States (or adult children who have applied on
10 their own behalves). Records in CCD are not retrievable by nationality, sex of the
11 parents, or marriage status of parents. Nor does the Passport Information Electronic
12 Records System (“PIERS”)⁹ database maintained by the Department support such
13 queries. The PIERS database collects and stores a range of personally identifiable
14 and adjudication-related information for passport records and Consular Report of
15 Birth Abroad (CRBA) records, but PIERS records cannot be retrieved by the sex of
16 the parents or the marriage status of the parents. *Third*, Defendants object to the
17 request to the extent it would require Defendants to create responsive documents, as
18 a party “is not required to create a document where none exists.” *Rogers v. Guirbino*,
19 288 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify records fitting the criteria
20 listed in the request, Defendants would need to manually review more than 3,000
21 CRBA applications and the thousands of U.S. passport applications processed by the
22 Toronto Consulate from January 1, 2015 through June 2, 2017; each application
23

24 ⁸ Among other information, CCD holds passport records. *Id.* at 12. Since there is a
25 vast amount of data contained in the CCD, the CCD data is not accessed directly. *Id.*
26 at 7. Instead, “data marts” have been created to organize the data. *Id.* From the CCD
data, statistical reports are generated and analyzed to create metrics based on
country, type of request, biographic and biometric checks. *Id.*

27 ⁹ The Passport Information Electronic Records System (PIERS) is a suite of web and
28 desktop applications that provide query and management capabilities for passport
records and Consular Reports of Birth Abroad (CRBAs), among other consular
records.

1 would need to be printed and/or electronically accessed and reviewed to assess for
2 each application the parents' nationalities, parents' marriage status, whether parents
3 were a same-sex couple (to the extent such information was even provided on each
4 application), biological relationship of parent/s to child, citizenship claim, etc. That
5 step alone would take hundreds of hours, and would only indicate, as an initial
6 matter, whether the reviewed applications appeared to meet the criteria of the request
7 and whether the applications were approved or denied. And in many cases it may
8 not be clear—or even possible to ascertain—from the face of an application whether
9 that application fits the criteria listed in the request. Thus such a review would likely
10 generate incomplete and/or inaccurate results. But even if Defendants were to
11 conduct such a review and identify—to the extent possible—individual records
12 reflecting the criteria of the request, Defendants would not be able to produce such
13 records in a format in which the data could readily be extracted by Plaintiffs but
14 instead would need to create a new document to contain/describe an analysis and
15 review of each application based on the various criterion demanded in the instant
16 RFPD. Additional steps would then be required to determine “the outcomes for, or
17 results of” the applications and “the reasons for any denials of any such
18 applications,” and that information would need to be extracted and then inputted into
19 the new document as well. Not only would this require Defendants to “create a
20 document where none exists,” *see Guirbino*, 288 F.R.D. at 485, but also the process
21 would be unduly burdensome and disproportionate to the needs of the case. *Fourth*,
22 Defendants object to the request because it seeks information not relevant to the
23 claims and defenses, and the burden and expense implicated by the request is
24 disproportionate to the needs of the case.

25 On the basis of these objections, Defendants do not intend to produce
26 documents in response to this specific request.
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Document Request No. 13:

Documents sufficient to show the number, if any, of (a) same-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not) who applied for and were granted Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of one or more children born outside the United States and (b) adult children of same-sex married bi-national couples who were born outside of the United States and who applied for and were granted Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship.

Response No. 13:

Defendants object to this request on multiple grounds. *First*, it overlaps with Request No. 12, and is duplicative of and cumulative to that request. *Second*, to the extent that it seeks information potentially contained in one or more Department of State systems of records, in particular “Passport Records, State-26,” 80 Fed. Reg. 15653 (Mar. 24, 2015), and “Overseas Citizens Services Records, State-05,” 81 Fed. Reg. 62235 (Sept. 8, 2016), such data is subject to the disclosure limitations of the Privacy Act. *Third*, the request is overly broad, not reasonably particularized, unduly burdensome, and disproportionate to the needs of the case because the terms it proposes are not queries that can readily be searched by the Department. For example, during the course of consular processing activities at the Toronto Consulate and other posts, applications for CRBAs and U.S. passports (as well as other applications) generate queries to the Consular Consolidated Database (“CCD”). CCD is a data warehouse that holds current and archived data from the Bureau of Consular Affairs’ domestic and post databases. *See, e.g.*, U.S. Department of State, Privacy Impact Assessment: Consular Consolidated Database, at 2 (July 17, 2015), *available at* <https://www.state.gov/documents/organization/242316.pdf>. The CCD stores information about U.S. persons (U.S. citizens and legal permanent residents), as well as foreign nationals (non-U.S. persons) such as Immigrant Visa applicants and Non-Immigrant Visa applicants. *Id.* at 3.¹⁰ CCD does not support statistical

¹⁰ Among other information, CCD holds passport records. *Id.* at 12. Since there is a vast amount of data contained in the CCD, the CCD data is not accessed directly. *Id.*

1 reporting of the query terms suggested by Request No. 13, *i.e.*, same-sex married bi-
2 national couples who have applied for a CRBA or U.S. passport on behalf of one or
3 more children born outside the United States (or adult children who have applied on
4 their own behalves). Records in CCD are not retrievable by nationality, sex of the
5 parents, or marriage status of parents. Nor does the Passport Information Electronic
6 Records System (“PIERS”)¹¹ database maintained by the Department support such
7 queries. The PIERS database collects and stores a range of personally identifiable
8 and adjudication-related information for passport records and Consular Report of
9 Birth Abroad (CRBA) records, but PIERS records cannot be retrieved by the sex of
10 the parents or the marriage status of the parents. *Fourth*, Defendants object to the
11 request to the extent it would require Defendants to create responsive documents, as
12 a party “is not required to create a document where none exists.” *Rogers v. Guirbino*,
13 288 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify records fitting the criteria
14 listed in the request, Defendants would need to manually review more than 3,000
15 CRBA applications and the thousands of U.S. passport applications processed by the
16 Toronto Consulate from January 1, 2015 through June 2, 2017; each application
17 would need to be printed and/or electronically accessed and reviewed to assess for
18 each application the parents’ nationalities, parents’ marriage status, whether parents
19 were a same-sex couple (to the extent such information was even provided on each
20 application), biological relationship of parent/s to child, citizenship claim, etc. That
21 step alone would take hundreds of hours, and would only indicate, as an initial
22 matter, whether the reviewed applications appeared to meet the criteria of the request
23 and whether the applications were approved or denied. And in many cases it may

24 _____
25 at 7. Instead, “data marts” have been created to organize the data. *Id.* From the CCD
26 data, statistical reports are generated and analyzed to create metrics based on
country, type of request, biographic and biometric checks. *Id.*

27 ¹¹ The Passport Information Electronic Records System (PIERS) is a suite of web
28 and desktop applications that provide query and management capabilities for
passport records and Consular Reports of Birth Abroad (CRBAs), among other
consular records.

1 not be clear—or even possible to ascertain—from the face of an application whether
2 that application fits the criteria listed in the request. Thus such a review would likely
3 generate incomplete and/or inaccurate results. But even if Defendants were to
4 conduct such a review and identify—to the extent possible—individual records
5 reflecting the criteria of the request, Defendants would not be able to produce such
6 records in a format in which the data could readily be extracted by Plaintiffs but
7 instead would need to create a new document to contain/describe an analysis and
8 review of each application based on the various criterion demanded in the instant
9 RFPD. Additional steps would then be required to determine “the outcomes for, or
10 results of” the applications and “the reasons for any denials of any such
11 applications,” and that information would need to be extracted and then inputted into
12 the new document as well. Not only would this require Defendants to “create a
13 document where none exists,” *see Guirbino*, 288 F.R.D. at 485, but also the process
14 would be unduly burdensome and disproportionate to the needs of the case. *Fifth*,
15 Defendants object to the request because it seeks information not relevant to the
16 claims and defenses, and the burden and expense implicated by the request is
17 disproportionate to the needs of the case.

18 On the basis of these objections, Defendants do not intend to produce
19 documents in response to this specific request.

20 **Document Request No. 14:**

21 Documents sufficient to show the number of (a) same-sex married bi-national
22 couples (i.e., of which one spouse is a United States citizen and the other is not) who
23 have applied for Consular Reports of Birth Abroad, United States passports, or
24 Certificates of Citizenship on behalf of one or more children born outside the United
25 States and who have not been required to demonstrate a biological relationship
26 between the child and United States citizen parent and (b) adult children of same-
27 sex married bi-national couples who were born outside of the United States and have
28 applied for Consular Reports of Birth Abroad, United States passports, or
Certificates of Citizenship on their own behalves and who were not required to
demonstrate a biological connection between themselves and the United States
citizen parent; the outcomes for, or results of, such applications; and the reasons for
any denials of any such applications.

Response No. 14:

Defendants object to this request on multiple grounds. *First*, it overlaps with Request Nos. 12 and 13, and is duplicative of and cumulative to those requests. *Second*, to the extent that it seeks information potentially contained in one or more Department of State systems of records, in particular “Passport Records, State-26,” 80 Fed. Reg. 15653 (Mar. 24, 2015), and “Overseas Citizens Services Records, State-05,” 81 Fed. Reg. 62235 (Sept. 8, 2016), such data is subject to the disclosure limitations of the Privacy Act. *Third*, the request is overly broad, not reasonably particularized, unduly burdensome, and disproportionate to the needs of the case because the terms it proposes are not queries that can readily be searched by the Department. For example, during the course of consular processing activities at the Toronto Consulate and other posts, applications for CRBAs and U.S. passports (as well as other applications) generate queries to the Consular Consolidated Database (“CCD”). CCD is a data warehouse that holds current and archived data from the Bureau of Consular Affairs’ domestic and post databases. *See, e.g.*, U.S. Department of State, Privacy Impact Assessment: Consular Consolidated Database, at 2 (July 17, 2015), *available at* <https://www.state.gov/documents/organization/242316.pdf>. The CCD stores information about U.S. persons (U.S. citizens and legal permanent residents), as well as foreign nationals (non-U.S. persons) such as Immigrant Visa applicants and Non-Immigrant Visa applicants. *Id.* at 3.¹² CCD does not support statistical reporting of the query terms suggested by Request No. 14, *i.e.*, same-sex married bi-national couples who have applied for a CRBA or U.S. passport on behalf of one or more children born outside the United States (or adult children who have

¹² Among other information, CCD holds passport records. *Id.* at 12. Since there is a vast amount of data contained in the CCD, the CCD data is not accessed directly. *Id.* at 7. Instead, “data marts” have been created to organize the data. *Id.* From the CCD data, statistical reports are generated and analyzed to create metrics based on country, type of request, biographic and biometric checks. *Id.*

1 applied on their own behalves). Records in CCD are not retrievable by nationality,
2 sex of the parents, or marriage status of parents. Nor does the Passport Information
3 Electronic Records System (“PIERS”)¹³ database maintained by the Department
4 support such queries. The PIERS database collects and stores a range of personally
5 identifiable and adjudication-related information for passport records and Consular
6 Report of Birth Abroad (CRBA) records, but PIERS records cannot be retrieved by
7 the sex of the parents or the marriage status of the parents. *Fourth*, Defendants object
8 to the request to the extent it would require Defendants to create responsive
9 documents, as a party “is not required to create a document where none exists.”
10 *Rogers v. Guirbino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify
11 records fitting the criteria listed in the request, Defendants would need to manually
12 review more than 3,000 CRBA applications and the thousands of U.S. passport
13 applications processed by the Toronto Consulate from January 1, 2015 through June
14 2, 2017; each application would need to be printed and/or electronically accessed
15 and reviewed to assess for each application the parents’ nationalities, parents’
16 marriage status, whether parents were a same-sex couple (to the extent such
17 information was even provided on each application), biological relationship of
18 parent/s to child, citizenship claim, etc. That step alone would take hundreds of
19 hours, and would only indicate, as an initial matter, whether the reviewed
20 applications appeared to meet the criteria of the request and whether the applications
21 were approved or denied. And in many cases it may not be clear—or even possible
22 to ascertain—from the face of an application whether that application fits the criteria
23 listed in the request. Thus such a review would likely generate incomplete and/or
24 inaccurate results. But even if Defendants were to conduct such a review and
25 identify—to the extent possible—individual records reflecting the criteria of the

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27 ¹³ The Passport Information Electronic Records System (PIERS) is a suite of web
28 and desktop applications that provide query and management capabilities for
passport records and Consular Reports of Birth Abroad (CRBAs), among other
consular records.

request, Defendants would not be able to produce such records in a format in which the data could readily be extracted by Plaintiffs but instead would need to create a new document to contain/describe an analysis and review of each application based on the various criterion demanded in the instant RFPD. Additional steps would then be required to determine “the outcomes for, or results of” the applications and “the reasons for any denials of any such applications,” and that information would need to be extracted and then inputted into the new document as well. Not only would this require Defendants to “create a document where none exists,” *see Guirbino*, 288 F.R.D. at 485, but also the process would be unduly burdensome and disproportionate to the needs of the case. *Fifth*, Defendants object to the request because it seeks information not relevant to the claims and defenses, and the burden and expense implicated by the request is disproportionate to the needs of the case.

On the basis of these objections, Defendants do not intend to produce documents in response to this specific request.

Document Request No. 15:

Documents sufficient to show the number of opposite-sex married bi-national couples (i.e., of which one spouse is a United States citizen and the other is not) who have applied for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of one or more children born outside the United States (or adult children of such couples who have applied on their own behalves); the outcomes for, or results of, such applications; and the reasons for any denials of any such applications. This request includes Documents Concerning any requirement of the State Department or CIS that a United States citizen demonstrate a biological connection to or relationship with a child born outside the United States in connection with any such applications. This request is limited to 2013 to the present.

Response No. 15:

Defendants object to this request on multiple grounds. *First*, it overlaps with Request Nos. 12, 13, and 14, and is duplicative of and cumulative to those requests. *Second*, to the extent that it seeks information potentially contained in one or more Department of State systems of records, in particular “Passport Records, State-26,” 80 Fed. Reg. 15653 (Mar. 24, 2015), and “Overseas Citizens Services Records, State-05,” 81 Fed. Reg. 62235 (Sept. 8, 2016), such data is subject to the disclosure

1 limitations of the Privacy Act. *Third*, the request is overly broad, not reasonably
2 particularized, unduly burdensome, and disproportionate to the needs of the case
3 because the terms it proposes are not queries that can readily be searched by the
4 Department. For example, during the course of consular processing activities at the
5 Toronto Consulate and other posts, applications for CRBAs and U.S. passports (as
6 well as other applications) generate queries to the Consular Consolidated Database
7 (“CCD”). CCD is a data warehouse that holds current and archived data from the
8 Bureau of Consular Affairs’ domestic and post databases. *See, e.g.*, U.S. Department
9 of State, Privacy Impact Assessment: Consular Consolidated Database, at 2 (July 17,
10 2015), *available at* <https://www.state.gov/documents/organization/242316.pdf>. The
11 CCD stores information about U.S. persons (U.S. citizens and legal permanent
12 residents), as well as foreign nationals (non-U.S. persons) such as Immigrant Visa
13 applicants and Non-Immigrant Visa applicants. *Id.* at 3.¹⁴ CCD does not support
14 statistical reporting of the query terms suggested by Request No. 13, *i.e.*, same-sex
15 married bi-national couples who have applied for a CRBA or U.S. passport on behalf
16 of one or more children born outside the United States (or adult children who have
17 applied on their own behalves). Records in CCD are not retrievable by nationality,
18 sex of the parents, or marriage status of parents. Nor does the Passport Information
19 Electronic Records System (“PIERS”)¹⁵ database maintained by the Department
20 support such queries. The PIERS database collects and stores a range of personally
21 identifiable and adjudication-related information for passport records and Consular
22 Report of Birth Abroad (CRBA) records, but PIERS records cannot be retrieved by

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24 ¹⁴ Among other information, CCD holds passport records. *Id.* at 12. Since there is a
25 vast amount of data contained in the CCD, the CCD data is not accessed directly. *Id.*
26 at 7. Instead, “data marts” have been created to organize the data. *Id.* From the CCD
data, statistical reports are generated and analyzed to create metrics based on
country, type of request, biographic and biometric checks. *Id.*

27 ¹⁵ The Passport Information Electronic Records System (PIERS) is a suite of web
28 and desktop applications that provide query and management capabilities for
passport records and Consular Reports of Birth Abroad (CRBAs), among other
consular records.

1 the sex of the parents or the marriage status of the parents. *Fourth*, Defendants object
2 to the request to the extent it would require Defendants to create responsive
3 documents, as a party “is not required to create a document where none exists.”
4 *Rogers v. Guirbino*, 288 F.R.D. 469, 485 (S.D. Cal. 2012). In order to identify
5 records fitting the criteria listed in the request, Defendants would need to manually
6 review more than 3,000 CRBA applications and the thousands of U.S. passport
7 applications processed by the Toronto Consulate from January 1, 2015 through June
8 2, 2017; each application would need to be printed and/or electronically accessed
9 and reviewed to assess for each application the parents’ nationalities, parents’
10 marriage status, whether parents were a same-sex couple (to the extent such
11 information was even provided on each application), biological relationship of
12 parent/s to child, citizenship claim, etc. That step alone would take hundreds of
13 hours, and would only indicate, as an initial matter, whether the reviewed
14 applications appeared to meet the criteria of the request and whether the applications
15 were approved or denied. And in many cases it may not be clear—or even possible
16 to ascertain—from the face of an application whether that application fits the criteria
17 listed in the request. Thus such a review would likely generate incomplete and/or
18 inaccurate results. But even if Defendants were to conduct such a review and
19 identify—to the extent possible—individual records reflecting the criteria of the
20 request, Defendants would not be able to produce such records in a format in which
21 the data could readily be extracted by Plaintiffs but instead would need to create a
22 new document to contain/describe an analysis and review of each application based
23 on the various criterion demanded in the instant RFPD. Additional steps would then
24 be required to determine “the outcomes for, or results of” the applications and “the
25 reasons for any denials of any such applications,” and that information would need
26 to be extracted and then inputted into the new document as well. Not only would this
27 require Defendants to “create a document where none exists,” *see Guirbino*, 288
28 F.R.D. at 485, but also the process would be unduly burdensome and

1 disproportionate to the needs of the case. *Fifth*, Defendants object to the request
2 because it seeks information not relevant to the claims and defenses, and the burden
3 and expense implicated by the request is disproportionate to the needs of the case.

4 On the basis of these objections, Defendants do not intend to produce
5 documents in response to this specific request.

6 **Document Request No. 16:**

7 All protocols, procedures, practices or policies Concerning the showing or
8 evidentiary requirements necessary to establish United States citizenship under
9 Section 301(g) or Section 309, including when genetic testing will or will not be
10 requested as part of that showing. This request includes protocols, procedures,
11 practices or policies that specifically Concern Plaintiffs or any other person (i) born
outside of the United States (ii) who asserts he or she is the child of a United States
citizen; (iii) whose United States citizen parent is married to a foreign national; and
(iv) who does not have a biological relationship to his/her United States citizen
parent.

12 **Response No. 16:**

13 Defendants object to this request because the phrase “protocols ... [and]
14 policies that specifically Concern Plaintiffs” is unreasonably vague. For the purposes
15 of responding to this request, Defendants construe the request as seeking (a)
16 documents that would be cited, described, or referenced by Defendants in response
17 to Interrogatory No. 13 (in Plaintiffs’ First Set of Interrogatories).¹⁶

18 Subject to and without waiving the above-stated objections—including both
19 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–11(e) and
20 Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or
21 communications responsive to this request after the corresponding interrogatory
22 response has been certified and made, subject to any further objections made in
23 response to Interrogatory No. 13.

24
25
26 ¹⁶ Plaintiffs’ Interrogatory No. 13 asks Defendants to: “Identify and describe the
27 evidentiary requirements deemed necessary by the State Department to establish
28 United States citizenship at birth under Section 301(g) or Section 309, including
when genetic testing will or will not be requested or required as part of that
showing.”

Document Request No. 17:

All Documents and Communications reflecting the State Department's, CIS' or DHS's rationale, governmental interests or concerns Concerning any decision not to treat as a United States citizen a child born outside of the United States to a married United States citizen who is not the child's biological parent but who is listed as a parent on the child's birth certificate.

Response No. 17:

Defendants object to this request on multiple grounds. *First*, the phrase "concerns Concerning" is unreasonably vague. *Second*, by seeking any and all documents or communications "reflecting the State Department's ... rationale, interests[,] or concerns" about particular decisions unrelated to the plaintiffs in this case, the request is overly broad and unduly burdensome, not relevant to the claims and defenses in the case, disproportionate to the needs of the case, and likely to implicate the legitimate privacy interests of numerous non-parties. *Third*, the request on its face appears to seek pre-decisional, deliberative documents and communications protected by the deliberative process privilege.

For the purposes of responding to this request, Defendants construe the request as seeking (a) documents that would be cited, described, or referenced by Defendants in response to Interrogatory No. 14 (in Plaintiffs' First Set of Interrogatories), and (b) communications sent by or to relevant officers in the consular section of the U.S. Consulate in Toronto, during the time period January 1, 2015 through June 2, 2017, reflecting the governmental interests or concerns with requiring a foreign-born child to demonstrate a biological relationship, in addition to a legal relationship, with a U.S. citizen parent, or discussing or describing any of the documents referred to in clause "(a)" of this sentence.¹⁷

¹⁷ Plaintiffs' Interrogatory No. 14 asks Defendants to: "Identify and describe the State Department's, CIS's or DHS's rationale, governmental interests or concerns Concerning any decision not to treat as a United States citizen a child born outside of the United States to a married couple (of which one spouse is a United States citizen) when the United States citizen is not the child's biological parent but is listed as a parent on the child's birth certificate."

1 Subject to and without waiving the above-stated objections—including both
2 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–11(e) and
3 Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or
4 communications responsive to this request after the corresponding interrogatory
5 response has been certified and made, subject to any further objections made in
6 response to Interrogatory No. 14.

7 **Document Request No. 18:**

8 All versions of the FAM (or equivalent or related Documents) that define “in
9 wedlock” and “out of wedlock,” or any other term Defendants believe has the same
10 or a similar meaning as those terms, for purposes of applying Section 301(g) or
11 Section 309, and all Documents Concerning decisions or discussions of how to
define those terms (including any legal and policy support or justification
considered, used, or relied upon in deciding upon such definitions).

12 **Response No. 18:**

13 Defendants object to this request on multiple grounds. *First*, Defendants
14 object to this request to the extent the request seeks (a) communications sent to or
15 from attorneys for the Department of State, Department of Justice, or any other
16 Executive Branch component (including outside counsel); or (b) documents
17 generated by or at the direction of any such attorney, it likely seeks information
18 protected by the attorney-client privilege and/or the work product doctrine, and the
19 Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R.
20 Civ. P. 26(b)(1). *Second*, by seeking “discussions of how to define ... terms,” this
21 request on its face seeks pre-decisional, deliberative documents protected by the
22 deliberative process privilege. *Third*, Defendants object to the request to the extent
23 it seeks documents outside of the relevant time period January 1, 2015 through June
24 2, 2017.

25 For the purposes of responding to this request, Defendants construe the
26 request as seeking versions of the FAM and other documents, guidance, or
27 instructions available to relevant officers in the consular section of the U.S.
28 Consulate in Toronto and in effect during the time period January 1, 2015 through

June 2, 2017—or communications sent to or received by such officers during that time period—defining or discussing the terms “in wedlock” or “out of wedlock.”

Subject to and without waiving the above-stated objections—including both those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–11(e) and Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or communications responsive to this request (as so construed in the preceding paragraph).

Document Request No. 19:

All Documents and Communications Concerning any protocols, procedures, practices or policies Concerning the State Department’s definition or interpretation of, the terms “born . . . of parents,” “wedlock,” “in wedlock,” or “out of wedlock.” This request is limited to Documents and Communications Concerning those protocols, procedures, practices or policies generally and does not include Documents or Communications that merely reference or rely on them (e.g., Documents related to individual Persons’ applications for consular or passport services).

Response No. 19

Defendants object to this request on multiple grounds. *First*, to the extent the Department of State has a “definition or interpretation” of the specified terms, such “definition or interpretation” would likely be considered a “protocol[], procedure[], practice[] or polic[y].” As such the request can be understood as seeking all documents (including communications) “Concerning any protocols ... or policies Concerning” a particular “protocol[], procedure[], practice[] or polic[y].” The request is unreasonably vague and nonsensical.

For the purposes of responding to this request, Defendants construe the request as seeking (a) documents that would be cited, described, or referenced by Defendants in response to Interrogatory No. 10 (in Plaintiffs’ First Set of Interrogatories).¹⁸

¹⁸ Plaintiffs’ Interrogatory No. 10 asks Defendants to: “Identify and describe the State Department’s interpretation or application of the terms ‘born . . . of parents,’ ‘wedlock,’ ‘in wedlock’ and ‘out of wedlock,’ or any other term Defendants believe has the same or a similar meaning as those terms, for the purposes of the INA,

1 Subject to and without waiving the above-stated objections—including both
2 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–11(e) and
3 Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or
4 communications responsive to this request after the corresponding interrogatory
5 response has been certified and made, subject to any further objections made in
6 response to Interrogatory No. 10.

7 **Document Request No. 20:**

8 All Documents and Communications Concerning any State Department
9 and/or CIS protocol, procedure, practice or policy with the purpose or effect of
10 preventing discrimination—including discrimination on the basis of sexual
11 orientation—in the provision of consular or passport services, or adjudication with
12 respect to persons claiming to have acquired United States citizenship under Section
13 301(g) or Section 309.

14 **Response No. 20:**

15 Defendants object to this request on multiple grounds. *First*, by seeking
16 documents concerning protocols or policies have “the effect of preventing
17 discrimination,” this request is unreasonably vague, overly broad, and not
18 sufficiently particularized because there is no intelligible means by which
19 Defendants could identify every protocol, procedure, practice, or policy that has an
20 *effect* of preventing discrimination. *Second*, to the extent the request seeks (a)
21 communications sent to or from attorneys for the Department of State, Department
22 of Justice, or any other Executive Branch component (including outside counsel); or
23 (b) documents generated by or at the direction of any such attorney, it likely seeks
24 information protected by the attorney-client privilege and/or the work product
25 doctrine, and the Defendants object to any request to produce privileged documents.
26 *See, e.g.,* Fed. R. Civ. P. 26(b)(1).

27 _____
28 including any legal and policy support or basis considered, used, or relied upon in
deciding upon such definitions; and Identify and describe any change in any such
interpretation or application by the State Department since January 1, 2013.”

1 For the purposes of responding to this request, Defendants construe the
2 request as seeking (a) documents that would be cited, described, or referenced by
3 Defendants in response to Interrogatory No. 17 (in Plaintiffs' First Set of
4 Interrogatories).¹⁹ To the extent that Document Request No. 20 is otherwise
5 construed, Defendants object that the request so construed would be overly broad,
6 unduly burdensome, not reasonably particularized, not relevant to the claims and
7 defenses in this litigation, and disproportionate to the needs of the case, such that
8 any additional burdens beyond what Defendants are already undertaking cannot
9 reasonably be justified.

10 Subject to and without waiving the above-stated objections—including both
11 those described in the prior paragraph and those outlined supra Part I ¶¶ 1–11(e) and
12 Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or
13 communications responsive to this request after the corresponding interrogatory
14 response has been certified and made, subject to any further objections made in
15 response to Interrogatory No. 17.

16 **Document Request No. 21:**

17 All Documents and Communications Concerning training of United States
18 embassy personnel or instructions given to United States embassy personnel
19 Concerning how to interact with gay, lesbian and/or other LGBT individuals or
same-sex couples.

20 **Response No. 21:**

21 Defendants object to this request on multiple grounds. *First*, because the
22 phrase “all Documents and Communications Concerning training” is overly broad,
23 unreasonably vague, and insufficiently particularized because the request can be
24 read to encompass any document remotely connected to any training of State

25 ¹⁹ Plaintiffs' Interrogatory No. 17 asks Defendants to: “Identify and describe any
26 State Department and/or CIS protocol, procedure, practice or policy implemented or
27 in effect between January 1, 2013 and the present with the purpose or effect of
28 preventing discrimination—including discrimination on the basis of sexual
orientation—in the provision of consular or passport services to, or determinations
of requests or applications by, Persons claiming to have acquired United States
citizenship under the INA.”

1 Department personnel, including drafts and other deliberative documents. *Second*,
2 to the extent the request seeks (a) communications sent to or from attorneys for the
3 Department of State, Department of Justice, or any other Executive Branch
4 component (including outside counsel); or (b) documents generated by or at the
5 direction of any such attorney, it likely seeks information protected by the attorney-
6 client privilege and/or the work product doctrine, and the Defendants object to any
7 request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Third*,
8 the document request is unreasonably vague and overly broad in that its terms
9 encompass not only situations governed by 8 U.S.C. § 1401 or 8 U.S.C. § 1409, but
10 also situations governed by other provisions of the Immigration and Nationality Act
11 (“INA”), as well as situations where a Person seeks citizenship through other
12 provisions of the INA such as 8 U.S.C. §§ 1431 and 1433 (the Child Citizenship Act
13 of 2000) and potentially under Title II of the INA, as well as historical sections under
14 which a Person may have acquired citizenship depending on the date of birth.

15 For the purposes of responding to this request, Defendants construe the
16 request as seeking (a) documents that would be cited, described, or referenced by
17 Defendants in response to Interrogatory No. 20 (in Plaintiffs’ First Set of
18 Interrogatories).²⁰

19 Subject to and without waiving the above-stated objections—including both
20 those described in the prior paragraph and those outlined supra Part I ¶¶ 1–11(e) and
21 Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or
22 communications responsive to this request after the corresponding interrogatory
23 response has been certified and made, subject to any further objections made in
24 response to Interrogatory No. 20.

25
26 ²⁰ Plaintiffs’ Interrogatory No. 20 asks Defendants to: “Identify and describe any
27 training, including any training manuals or other relevant materials, of State
28 Department personnel, including United States embassy personnel, or instructions
given to State Department personnel Concerning how to interact with gay, lesbian
and/or other LGBT individuals or same-sex couples.”

Document Request No. 22:

All Documents and Communications Concerning training of United States embassy personnel or instructions given to United States embassy personnel Concerning the circumstances in which they should inquire about the biological and/or gestational relationships between married couples (one of whom is a United States citizen) and their children when such married couples are applying for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of their children born outside of the United States.

Response No. 22:

Defendants object to this request on multiple grounds. *First*, because the phrase “all Documents and Communications Concerning training” is overly broad, unreasonably vague, and insufficiently particularized because the request can be read to encompass any document remotely connected to any training of State Department personnel, including drafts and other deliberative documents. *Second*, to the extent the request seeks (a) communications sent to or from attorneys for the Department of State, Department of Justice, or any other Executive Branch component (including outside counsel); or (b) documents generated by or at the direction of any such attorney, it likely seeks information protected by the attorney-client privilege and/or the work product doctrine, and the Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1).

For the purposes of responding to this request, Defendants construe the request as seeking (a) documents that would be cited, described, or referenced by Defendants in response to Interrogatory No. 15(a) (in Plaintiffs’ First Set of Interrogatories).²¹

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined supra Part I ¶¶ 1–11(e) and

²¹ Plaintiffs’ Interrogatory No. 15 includes two sub-parts, Interrogatory No. 15(a) and Interrogatory 15(b). Interrogatory 15(a) asks Defendants to “Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should ... inquire about the biological and/or gestational relationships between married couples and their children.”

Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or communications responsive to this request after the corresponding interrogatory response has been certified and made, subject to any further objections made in response to Interrogatory No. 15(a).

Document Request No. 23:

All Documents and Communications Concerning training of United States embassy personnel or instructions given to United States embassy personnel Concerning requests or requirements for DNA testing to establish the biological relationships of married couples (one of whom is a United States citizen) and their children when such married couples are applying for Consular Reports of Birth Abroad, United States passports, or Certificates of Citizenship on behalf of their children born outside the United States.

Response No. 23:

Defendants object to this request on multiple grounds. *First*, because the phrase “all Documents and Communications Concerning training” is overly broad, unreasonably vague, and insufficiently particularized because the request can be read to encompass any document remotely connected to any training of State Department personnel, including drafts and other deliberative documents. *Second*, to the extent the request seeks (a) communications sent to or from attorneys for the Department of State, Department of Justice, or any other Executive Branch component (including outside counsel); or (b) documents generated by or at the direction of any such attorney, it likely seeks information protected by the attorney-client privilege and/or the work product doctrine, and the Defendants object to any request to produce privileged documents. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). *Third*, the document request is unreasonably vague and overly broad in that its terms encompass not only situations governed by 8 U.S.C. § 1401 or 8 U.S.C. § 1409, but also situations governed by other provisions of the Immigration and Nationality Act (“INA”), as well as situations where a Person seeks citizenship through other provisions of the INA such as 8 U.S.C. §§ 1431 and 1433 (the Child Citizenship Act of 2000) and potentially under Title II of the INA, as well as historical sections under which a Person may have acquired citizenship depending on the date of birth.

1 For the purposes of responding to this request, Defendants construe the
2 request as seeking (a) documents that would be cited, described, or referenced by
3 Defendants in response to Interrogatory No. 15(b) (in Plaintiffs' First Set of
4 Interrogatories).²²

5 Subject to and without waiving the above-stated objections—including both
6 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–11(e) and
7 Part II ¶¶ 12–17—Defendants intend to produce non-privileged documents or
8 communications responsive to this request after the corresponding interrogatory
9 response has been certified and made, subject to any further objections made in
10 response to Interrogatory No. 15(b).

11 **Document Request No. 24:**

12 All Documents that Defendants intend to introduce at any hearing or trial in
13 the Action to the extent not produced in response to any of the preceding requests.

14 **Response No. 24:**

15 Defendants object to this request and duplicative and cumulative to
16 Defendants' obligations under Federal Rule of Civil Procedure 26(a)(1) (initial
17 disclosures). Defendants further object to this request as inconsistent with the
18 Court's Case Management Order. That Order directs that the "[i]n drafting the PTCO
19 [Pre-Trial Conference Order], the Court expects that the parties will attempt to agree
20 on and set forth as many uncontested facts as possible." Dkt. No. 52 at 22 ¶ 6(b)(iv).
21 Until the parties have met and conferred in an attempt to identify stipulated facts,
22 Defendants are not positioned to identify documents that they "intend to introduce"
23 at trial because Defendants only intend to introduce evidence regarding contested

24 ²² Plaintiffs' Interrogatory No. 15 includes two sub-parts, Interrogatory No. 15(a)
25 and Interrogatory 15(b). Interrogatory 15(b) asks Defendants to "Identify and
26 describe any training, including any training manuals or other relevant materials, of
27 State Department personnel, including United States embassy personnel, or
28 instructions given to State Department personnel Concerning the circumstances in
which they should ... make requests or impose requirements for DNA or other
genetic testing, Concerning an application by or on behalf of a married couple (one
of whom is a United States citizen) for a CRBA, United States passport, or
Certificate of Citizenship on behalf of a child of that couple born outside the United
States."

1 facts. Additionally, Defendants object to the request as premature and note that the
2 Court has set March 18, 2019, as the deadline for Defendants to file their exhibit list.
3 See *id.* at 24.

4 On the basis of these objections, Defendants do not intend to produce
5 documents in response to this specific request.

6
7 Dated: September 18, 2018

8 JOSEPH H. HUNT
Assistant Attorney General

9 JOSHUA E. GARDNER
Assistant Director

10
11 /s/ Lisa Zeidner Marcus

12 LISA ZEIDNER MARCUS
Senior Counsel

13 VINITA B. ANDRAPALLIYAL
Trial Attorney

14
15 U.S. Department of Justice, Civil Division
Federal Programs Branch
16 P.O. Box 883, Benjamin Franklin Station
Washington, DC 20530
17 Tel: (202) 514-3336
Email: Lisa.marcus@usdoj.gov
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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, I served via electronic mail Defendants' Response to Plaintiffs' First Set of Requests for Production of Documents on each person or entity named below:

Alexa M. Lawson-Remer, Esq.
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, CA 90067
Email: lawsonr@sullcrom.com

Theodore Edelman
Email: edelmant@sullcrom.com
Jessica Klein
Email: kleinj@sullcrom.com
125 Broad Street
New York, New York 10004-2498

Aaron C. Morris
Immigration Equality
40 Exchange Place
Suite 1300
New York, New York, 10005-2744
Email: amorris@immigrationequality.org

/s/ Lisa Zeidner Marcus

LISA ZEIDNER MARCUS
Senior Counsel
U.S. Department of Justice
Federal Programs Branch
P.O. Box 883, Benjamin Franklin Station
Washington, DC 20530
Tel: (202) 514-3336
Lisa.marcus@usdoj.gov

Counsel for Defendants

Exhibit B

JOSEPH H. HUNT
Assistant Attorney General
JOSHUA E. GARDNER
Assistant Director
VINITA B. ANDRAPALLIYAL
Vinita.b.andrapalliyal@usdoj.gov
Trial Attorney
LISA ZEIDNER MARCUS
lisa.marcus@usdoj.gov
Senior Counsel

UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Tel: (202) 514-3336

Counsel for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

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

Defendants,

Case No. **2:18-cv-00523-JFW (JCx)**

**Defendants' First Set of Responses to
Plaintiffs' First Set of Interrogatories**

October 5, 2018

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the United States District Court for the Central District of California, Defendants, the U.S. Department of State and Michael R. Pompeo, sued solely in his official capacity as Secretary of State (collectively, "the Department" or "Defendants"), hereby respond to Plaintiffs' First Set of Interrogatories (the "Interrogatories").

I. OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

1. For purposes of this response to the Interrogatories, Defendants use and/or understand the following terms as those terms were defined by the Interrogatories: “CRBA,” “Defendants,” “LGBT,” “Plaintiffs,” and “You” and “Your.” Although Defendants concur with the Interrogatories’ definitions of the terms “Section 301(g)” and “Section 309,” throughout this response to the Interrogatories, Defendants instead tend to use the U.S. code citations—“8 U.S.C. § 1401(g)” and “8 U.S.C. § 1409”—to refer to those provisions. Additionally, Defendants use the following terms not defined in Plaintiffs’ Interrogatories:

- a. The term “the Bureau” refers to the Bureau of Consular Affairs.
- b. The terms “Consulate Toronto” and “the Consulate” refer to the U.S. Consulate General Toronto.
- c. The term “CRBA” refers to a Consular Report of Birth Abroad, and “CRBAs” refers to such reports in the plural.
- d. The term “the Dvash-Banks applications for CRBAs and U.S. passports” refers to the applications submitted by Andrew Mason Dvash-Banks and Elad Dvash-Banks to the U.S. Consulate in Toronto to obtain CRBAs and U.S. passports for Ethan and Aiden.
- e. The term “the Dvash-Banks family” refers to Andrew Mason Dvash-Banks, Elad Dvash-Banks, Ethan Jacob Dvash-Banks, and Aiden James Dvash-Banks. When referring to a particular member of the Dvash-Banks family, Defendants use that person’s first name, *e.g.*, the term “Andrew” refers to Andrew Mason Dvash-Banks, the term “Elad” refers to Elad Dvash-Banks; the terms “Ethan” and “Aiden” were defined in Plaintiffs’ Interrogatories.
- f. The term “underlying adjudication” refers to the adjudication of two applications—an “Application for Consular Report of Birth Abroad of a Citizen of the United States of America” and an “Application for U.S.

1 Passport”— submitted on behalf of Ethan on January 24, 2017 and denied
 2 by Consulate Toronto on March 2, 2017.

3 2. Defendants object to the Interrogatories’ definition of the term “CIS”
 4 as unreasonably vague and overly broad. *See* Interrogatories at 1 ¶ B. The
 5 Interrogatories define that term as not only the United States Citizenship and
 6 Immigration Services (“USCIS”)¹ and the former United States Immigration and
 7 Naturalization Service, but also “any [other] predecessor” of USCIS, as well as “any
 8 and all of its divisions, departments, sections, units, and Representatives.” *Id.* Such
 9 definition is unreasonably vague and overly broad because the USCIS is a
 10 component of a different Executive department, the Department of Homeland
 11 Security; it is not a component of the Department of State, and as such Defendants
 12 cannot reasonably be expected to know each and every predecessor, division,
 13 department, section, unit, or Representative of USCIS.

14 3. Defendants object to the Interrogatories’ definition of the term
 15 “Communication” as unreasonably vague and overly broad to the extent the
 16 Interrogatories define that term to include non-written or non-recorded
 17 communications, including “radio” and “verbal” communications, as well as “any
 18 other actions intended to convey or actually conveying information as data.” *See id.*
 19 at 1 ¶ C.

20 4. Defendants object to the Interrogatories’ definition of the term
 21 “Concerning” as unreasonably vague and overly broad to the extent the
 22 Interrogatories define that term to include items that do not directly pertain to the
 23 topic at issue but instead merely “refer[] to” or “mention[]” it or are “*in any way*
 24 logically or factually connected” to its matter. *See id.* at 1–2 ¶ D (emphasis added).

25
 26
 27 ¹ Throughout this response to the Interrogatories, Defendants tend to use the
 28 government’s preferred acronym “USCIS,” rather than “CIS,” to refer to the U.S.
 Citizenship and Immigration Services, a component of the Department of Homeland
 Security.

5. Defendants object to the Interrogatories' definition of the term "DHS" as unreasonably vague and overly broad. *See id.* at 2 ¶ G. The Interrogatories define DHS as "United States Department of Homeland Security in its entirety, and any predecessor thereof," but there was no predecessor to the Department of Homeland Security in its entirety. The Department of Homeland Security was a new Executive department created in the wake of 9/11. *See* Homeland Security Act, 116 Stat. 2125 (2002) (codified as amended at 6 U.S.C. § 101 note). It was created through the integration of all or part of twenty-two different federal departments and agencies into one, unified Department of Homeland Security, but none of the those twenty-two units originated from the Department of State. *See id.*² The definition of "DHS" is also unreasonably vague and overly broad because it includes "any and all of its divisions, departments, sections, units, embassies, consulates, and Representatives," *see* Interrogatories at 2 ¶ G, but Defendants cannot reasonably be expected to know each and every division, department, section, unit, or Representative of an Executive department different and separate from the Department of State, nor would the Department of Homeland Security maintain any embassy or consulate.

6. Defendants object to the Interrogatories' definition of the terms "Document" and/or "Documents" as unreasonably vague and overly broad, for a number of reasons. *See* Interrogatories at 2 ¶ H. Defendants object that the terms are unreasonably vague and overly broad to the extent they are defined to include "archived" "World Wide Web or other HTML pages." *Id.* Defendants do not know what the subpoena means by "archived," an undefined term; the phrase "other HTML pages" is also unreasonably vague. To the extent the Department maintains historical copies of websites, its technical means for retrieving them may be cumbersome and may not necessarily even be feasible with respect to particular

² *See also* <https://www.dhs.gov/who-joined-dhs> (displaying chart—under the heading "Chronology of Events"—listing the twenty-two units joined to form DHS, and identifying the various Executive agencies from which they came).

1 sites, in particular sites that were active farther back in time. Defendants object to
 2 the Interrogatories' definition of these terms to the extent it includes "intelligence or
 3 information" that is classified or protected by a law enforcement privilege. *See id.*
 4 Further, Defendants object to producing multiple copies of documents; it is overly
 5 broad and unduly burdensome to require Defendants to search for and produce any
 6 and all printouts or copies of documents that include any notation or "mark that is
 7 not part of the original text or reproduction thereof." *See id.* It is overly broad and
 8 unduly burdensome, as well as disproportionate to the needs of the case, to require
 9 Defendants to search for and produce any and all "draft[s] or non-identical cop[ies]"
 10 of Documents, *see id.*, and drafts and potentially non-identical copies would in any
 11 event likely be subject to the deliberative process privilege.

12 7. Defendants object to the Interrogatories' definition of the term "FAM"
 13 to the extent the Interrogatories define that term to include not only the Foreign
 14 Affairs Manual but also "all prior... versions and amendments... in final... form,"
 15 "all prior... versions and amendments... in draft... form," and "all... proposed
 16 subsequent versions and amendments, whether in draft or final form." *Id.* at 2–3 ¶ I.
 17 Such definition is overly broad, unduly burdensome, not relevant to the claims and
 18 defenses, and disproportionate to the needs of the case. The Department of State has
 19 published the Foreign Affairs Manual since 1960, and portions have been amended
 20 continually since that time. The Interrogatories' definition of "FAM" also includes
 21 all "associated handbooks," an undefined term. Defendants construe the phrase
 22 "associated handbooks" as referring to the Foreign Affairs Handbook, and object to
 23 the phrase as unreasonably vague and overly broad to the extent that Plaintiffs
 24 intended any other construction. Additionally, the Interrogatories' definition, which
 25 includes drafts of the FAM, implicates the deliberative process privilege, and is
 26 objectionable on that basis.

27 8. Defendants object to the Interrogatories' definition of the term
 28 "Identify," *id.* at 3 ¶ J, as unreasonably vague and overly broad because it provides

1 a different meaning of the term “with respect to Persons,” “with respect to
 2 Documents,” “with respect to Communications,” and “with respect to any
 3 transaction, occurrence, event, arrangement, or any other thing.” Yet when the term
 4 “Identify” is used in each individual interrogatory it is not obvious which of these
 5 meanings would apply. And, in any event, each meaning is unduly burdensome, and
 6 in most instances would require Defendants to provide information not relevant to
 7 the claims and defenses in the case. Defendants further object to the Interrogatories’
 8 definition of the term “Identify” as overly broad, unduly burdensome, and
 9 disproportionate to the needs of the case because the definition requires a level and
 10 amount of detail beyond that which is necessary to recognize or specify the particular
 11 thing (whether person, document, communication, policy, protocol, or other) that
 12 Defendants are asked by an individual interrogatory to “identify.”

13 9. Defendants object to the Interrogatories’ definition of the term “INA”
 14 as encompassing the entire Immigration and Nationality Act. *See id.* at 3 ¶ K. Unless
 15 otherwise specified in response to specific requests, Defendants will construe the
 16 term “INA” as used in the Interrogatories as encompassing only those provisions
 17 relating to acquisition of U.S. citizenship at birth, *e.g.*, Sections 301 and 309,
 18 codified at 8 U.S.C. § 1401 and 8 U.S.C. § 1409.

19 10. Defendants object to the Interrogatories’ definition of the term
 20 “Representatives” to the extent the Interrogatories define that term to include “any...
 21 persons acting, or purporting to act, on behalf of or in concert or cooperation with, a
 22 Person.” *See* Interrogatories at 3 ¶ O. Such definition is unreasonably vague and
 23 overly broad because Defendants cannot reasonably be expected to know any and
 24 all persons who act or purport to act, on behalf of or in concert or cooperation with,
 25 any given Person. In addition, this definition, which would include government
 26 contractors, is overly broad and unduly burdensome.

27 11. Defendants object to the Interrogatories’ definition of the term “State
 28 Department” to the extent the Interrogatories define that term to incorporate and

1 include “Representatives.” *See id.* at 4 ¶ Q. As described above, the Interrogatories
 2 include an overly broad and unreasonably vague definition of the term
 3 “Representatives.” *See supra* ¶ 10.

4 12. Defendants object to the “Instructions” articulated in the Interrogatories
 5 to the extent they purport to obligate Defendants to duties different from those
 6 required by: (a) Federal Rule of Civil Procedure 26 (“Rule 26”), which contains
 7 general provisions governing discovery; (b) Federal Rule of Civil Procedure 33
 8 (“Rule 33”), which governs interrogatories and responding to interrogatories; and
 9 (c) relevant Local Rules in the Central District of California. *See* Interrogatories at
 10 4–5. By purporting to obligate Defendants to additional duties not contained in these
 11 rules, the Interrogatories are overly broad, unduly burdensome, and disproportionate
 12 to the needs of the case. For example, Defendants object that:

13 a. Rule 26(b)(5) governs a party’s duties when claiming privilege
 14 or protecting trial-preparation materials, and the Interrogatories’ Instruction E
 15 appears to depart from Rule 26(b)(5)’s requirements. Defendants will only
 16 produce a privilege log if they “withhold information otherwise discoverable
 17 by claiming that the information is privileged or subject to protection as trial-
 18 preparation material.” Fed. R. Civ. P. 26(b)(5). Such privilege log would
 19 conform to requirements of the Federal Rules of Civil Procedure and any
 20 pertinent local rule.

21 b. The Interrogatories’ Instruction F departs from the language of
 22 Rule 26(e) governing supplementation of disclosures and responses.
 23 Defendants object to Instruction K and will instead follow Rule 26(e)’s
 24 requirements regarding supplementations and corrections. Defendants further
 25 object to Instruction F to the extent it could be read as extending into the future
 26 the cut-off date for answering the interrogatories and/or for responsive
 27 information. As provided in Rule 26(e), Defendants will supplement their
 28 answers to the interrogatories to the extent that Defendants “learn[] that in

1 some material request the... response is incomplete or incorrect,” and “if the
 2 additional or corrective information has not otherwise been made known to...
 3 [Plaintiffs] during the discovery process or in writing,” Fed. R. Civ. P.
 4 26(e)(1)(A), or “as ordered by the court,” *id.* 26(e)(1)(B). Defendants object
 5 to the extent the Interrogatories ask for future information, *i.e.*, Defendants
 6 object to “continuing interrogatories.”

8 II. OBJECTIONS TO ALL INTERROGATORIES

9 13. Defendants object to counting these Interrogatories and their discrete
 10 subparts as consisting of only twenty requests. When the Interrogatories and their
 11 discrete subparts are properly construed as separate interrogatories pursuant to Fed.
 12 R. Civ. P. 33(a)(1), they total at least forty-five Interrogatories. Given the burden
 13 presented by so many separate requests, Defendants further object to the timeframe
 14 provided to respond to these Interrogatories. The instant response—Defendants First
 15 Set of Responses to Plaintiffs’ First Set Interrogatories—includes responses to the
 16 first twenty-five Interrogatories as properly construed counting discrete sub-parts.

17 14. Defendants object to the Interrogatories as overly broad, not relevant to
 18 the claims or defenses in this case, and disproportionate to the needs of this case to
 19 the extent they seek information outside of a reasonable time period relating to the
 20 claims and defenses in this case. Most of the interrogatories do not specify a
 21 timeframe, and those interrogatories that do contain a timeframe tend to seek
 22 information outside of the time period of the underlying adjudication at issue in this
 23 case. Unless otherwise specified in response to specific requests, Defendants
 24 construe all Interrogatories as applying to, and seeking documents and records
 25 within, the timeframe starting January 1, 2015—1 year, 8 months, and 15 days
 26 before the birth date of Aiden and Ethan, see Compl. ¶ 46, and at least several months
 27 prior to “the summer of 2015” when it is alleged that Andrew and Elad selected an
 28 anonymous egg donor used to conceive Ethan, see *id.* ¶ 44—and ending on June 2,

1 2017—three months after the Consulate issued its decision denying Andrew’s
2 application for a CRBA and passport for Ethan.

3 15. Defendants object to the Interrogatories as overly broad, not relevant to
4 the claims or defenses in this case, and disproportionate to the needs of this case to
5 the extent they seek information of any component of the Department of State other
6 than information generated or possessed by, or available to, the U.S. Consulate in
7 Toronto.³ The United States has more than 250 embassies and consulates worldwide,
8 employing more than 50,000 people, operating in English and host-country
9 languages, along with more than 60 other bureaus and units employing more than
10 20,000 people within the United States; it would be unduly burdensome as well as
11 disproportionate and not relevant to the claims and defenses in this case for the
12 Department to answer the Interrogatories with respect to each and every one of those
13 locations. Worldwide, the Department domestically and through its embassies and
14 consulates overseas received more than 14 million passport applications in fiscal
15 year 2015; more than 16 million passport applications in fiscal year 2016; and more
16 than 19 million passport applications in fiscal year 2017. Worldwide, the
17 Department printed 73,103 CRBAs in fiscal year 2015; 76,519 CRBAs in fiscal year
18 2016; and 89,495 CRBAs in fiscal year 2017. Because the U.S. Consulate in Toronto
19 is the Department of State component that adjudicated the Dvash-Banks applications
20 for CRBAs and U.S. passports at issue in this litigation, it is the component relevant
21 to the claims and defenses in this case. Unless otherwise specified in response to a
22 specific request, Defendants will only provide answers describing (a) the practice,
23 approach, or knowledge of Consulate Toronto, or (b) the general practice, general
24 approach, or general knowledge of the Bureau of Consulate Affairs to the extent
25 such practice, approach, or knowledge applies to Consulate Toronto; Defendants
26

27 ³ Information “available to the U.S. Consulate in Toronto” includes policies or
28 guidance prepared and provided by Department of State components in Washington,
D.C., to or intended for use by Consulate Toronto.

1 will not include in their responses any practices, approaches, policies, or other
2 information applicable to other consulates, regions, or components.

3 16. Defendants object to the Interrogatories to the extent they request
4 discovery beyond the administrative record in connection with Plaintiffs' claims
5 seeking judicial review of agency actions under the Administrative Procedure Act,
6 5 U.S.C. § 701 et seq. (Count III), and under the Declaratory Judgment Act, 28
7 U.S.C. §§ 2201–02 (Counts I and II). To the extent these claims are properly brought,
8 the Court is limited to reviewing the administrative record compiled by the agency,
9 which the agency submits as the complete record of its proceedings. Though
10 Defendants provide answers to the interposed Interrogatories, Defendants preserve
11 all objections regarding the appropriate use of information gathered through
12 discovery. The Court generally may not base its review on a record supplemented
13 with discovery created in the first instance in the District Court.

14 17. Defendants object to the Interrogatories to the extent that they seek to
15 know issues of “pure law,” *i.e.*, legal issues unrelated to the facts of the case. *See*
16 Fed. R. Civ. P. 33 advisory committee’s note to 1970 amendment; *see also* 8B The
17 Late Charles Alan Wright et al., *Federal Practice and Procedure* § 2167 (3d ed.).

18 18. Defendants object to the Interrogatories to the extent that they seek (a)
19 attorney work product; (b) information protected by the attorney-client privilege; (c)
20 information protected by the deliberative process privilege, law enforcement
21 privilege, or any form of executive privilege; (d) information classified and required
22 to be kept secret pursuant to Executive Order; (e) information the disclosure of which
23 would violate legitimate privacy interests and expectations of persons not party to
24 this litigation; (f) records protected from disclosure by the Privacy Act, 5 U.S.C. §
25 552a, and its implementing regulations, especially 22 C.F.R. §§ 171.20–171.26; (h)
26 alien registration records, which are confidential pursuant to 8 U.S.C. § 1304; or (i)
27 any other applicable privilege, statute, or protection.
28

1 19. Defendants specifically decline to produce privileged information.
2 Defendants further object to any requirement that it produce a privilege log for
3 privileged material not otherwise properly within the scope of discovery and/or as
4 to which no privilege log would be required pursuant to Federal Rule of Civil
5 Procedure 26(b)(5).

6 20. Each and every response contained herein is subject to the above
7 objections, which apply to each and every response, regardless of whether a specific
8 objection is interposed in a specific response. The making of a specific objection in
9 response to a particular request is not intended to constitute a waiver of any other
10 objection not specifically referenced in the particular response.

11 21. Defendants specifically reserve the right to make further objections as
12 necessary to the extent additional issues arise regarding the meaning of terms in
13 and/or information sought by discovery.

14
15 **III. OBJECTIONS AND RESPONSES TO SPECIFIC**
16 **INTERROGATORIES**

17 **INTERROGATORY NO. 1**

18 *Identify each Person You believe to have been involved in any determination*
19 *of, or Communications Concerning, any application for a CRBA or U.S. passport*
20 *for Plaintiff Ethan Dvash-Banks. With respect to each such Person, Identify his or*
her role or involvement and any Communications responsive to this interrogatory.

21 **Objections:**

22 Defendants object to this Interrogatory as unreasonably vague, overly broad,
23 unduly burdensome, not relevant to any party's claim or defense, and
24 disproportionate to the needs of the case because, for example, (a) it could be read
25 as not limited in time to the period of the adjudication at issue, and (b) it could be
26 read as asking Defendants to identify "each Person" Defendants "believe to be
27 involved in any... Communications Concerning..." the Dvash-Banks applications
28 for CRBAs and U.S. passports, regardless of whether such Persons were engaged in

1 the adjudication of the Dvash-Banks applications for CRBAs and U.S. passports, or
2 even employed by Defendants, and thus would have Defendants identify Plaintiffs
3 themselves, Plaintiffs' counsel, and other persons who were not actually involved in
4 the adjudication of those applications. It is unreasonable to burden Defendants with
5 ascertaining who outside of the Department of State might have been involved with
6 communications concerning the applications. It is also unreasonable and not relevant
7 to any party's claim or defense to burden Defendants with identifying persons who
8 may have communicated about the applications after the adjudications had
9 concluded, and/or to identify persons who may have communicated about the
10 applications in the course of responding to this litigation. Defendants further object
11 to this Interrogatory to the extent that it seeks the identification of non-fact witnesses
12 who may nonetheless possess relevant knowledge, such as attorneys who act as
13 agency counsel for the instant action. For the purposes of responding to this
14 Interrogatory, Defendants construe the Interrogatory as seeking to know each
15 Department of State employee or contractor involved in the underlying adjudication,
16 and as further requiring that Defendants identify each such person's "role or
17 involvement" and each such person's related communications.

18 Defendants further object to this Interrogatory to the extent that it seeks (a)
19 communications or information protected by the attorney-client privilege or (b)
20 communications or information protected by the deliberative process privilege.

21 **Answer:**

22 Subject to and without waiving the above-stated objections—including both
23 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
24 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

25 On January 24, 2017, Consulate Toronto received an "Application for
26 Consular Report of Birth Abroad of a Citizen of the United States of America" for
27 Ethan Dvash-Banks ("the CRBA application"), and also received an "Application
28

1 for U.S. Passports” for Ethan (the “U.S. passport application”) (collectively, the
2 “applications”). The applications were adjudicated between the time of their receipt
3 and March 2, 2017, at which time Consulate Toronto issued a letter denying the
4 applications. That letter was disclosed to Plaintiffs in Defendants’ initial disclosures.
5 The following staff were involved in the determination of, and communications
6 about, the applications:

- 7 • Frankie Terri Day, Consular Officer, Consulate Toronto;
- 8 • Margaret Ramsay, Consular Officer, Consulate Toronto;
- 9 • Larilyn Reffett, American Citizen Services Chief, Consulate Toronto;
- 10 and
- 11 • Ann Marie Warmenhoven, Fraud Prevention Unit Officer, Consulate
12 Toronto.

13 For the above listed persons, Defendants describe their role and diplomatic
14 titles as follows. Ms. Day adjudicated the applications and in doing so consulted with
15 her supervisor, Ms. Reffett. During the relevant time period, Ms. Day’s diplomatic
16 rank was that of “Vice Consul.” Ms. Ramsay provided the adjudicating consular
17 officer (Ms. Day) with relevant FAM references. During the relevant time period
18 (and continuing through today), Ms. Ramsay’s diplomatic rank was that of “Consul.”
19 Ms. Reffett supervises American Citizen Services functions at the U.S. Consulate in
20 Toronto, and has served in this position since August 2016. With respect to the
21 underlying adjudication, Ms. Reffett supervised Ms. Day and discussed the
22 adjudication with her. During the relevant time period (and continuing through
23 today), Ms. Reffett’s diplomatic rank was that of “Consul.” Ms. Warmenhoven
24 reviewed DNA results submitted with the CRBA application and entered findings
25 into the appropriate Department database, and advised the adjudicating consular
26 officer (Ms. Day) of those results.

1 Additionally, data entry functions related to the adjudication of the
2 applications were performed by locally employed staff, Joanna Sackda (American
3 Citizen Services Assistant) and Aneela Fazil (Passport and citizenship assistant).

4 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
5 state that the documents (and particularly any emails) that Defendants will be
6 producing in response to “Plaintiffs’ First Set of Requests for Production of
7 Documents” may identify the role(s), involvement, and/or relevant communications
8 of persons involved in the underlying adjudication. Because the “Identif[ication]” of
9 this information may be determined by examining, abstracting, or summarizing the
10 communications themselves, and because the burden of deriving or ascertaining this
11 portion of Defendants’ answer will be substantially the same for either Defendants
12 or the Plaintiffs, Defendants refer Plaintiffs to the documents that Defendants will
13 be producing.

14
15 **INTERROGATORY NO. 2**

16 *Identify each Person You believe to have knowledge or information*
17 *Concerning the process by which, or the reasons why, or basis on which, the State*
18 *Department did not issue a CRBA and U.S. passport to Plaintiff Ethan Dvash-Banks.*
With respect to each such Person, Identify his or her knowledge and/or the
information he or she possesses.

19 **Objections:**

20 Defendants object to this Interrogatory as unreasonably vague, overly broad,
21 unduly burdensome, not relevant to any party’s claim or defense, and
22 disproportionate to the needs of the case to the extent the Interrogatory is not
23 temporally limited to the time period of the underlying adjudication. Defendants
24 further object to this Interrogatory as unreasonably vague, overly broad, unduly
25 burdensome, not relevant to any party’s claim or defense, and disproportionate to
26 the needs of the case to the extent the Interrogatory asks Defendants to identify
27 persons other than those Department of State employees or contractors involved with
28 the specific adjudication at issue. It is unreasonable and not relevant to any party’s

1 claim or defense to burden Defendants with identifying persons who may have
2 general knowledge bearing on the process used by Consulate Toronto in specifically
3 adjudicating the CRBA and U.S. passport applications for Ethan. Defendants further
4 object to this Interrogatory to the extent that it seeks the identification of non-fact
5 witnesses who may nonetheless possess relevant knowledge, such as attorneys who
6 act as agency counsel for the instant action. For the purposes of responding to this
7 Interrogatory, Defendants construe the Interrogatory as seeking to know each
8 Department of State employee or contractor involved in the underlying adjudication,
9 such that he or she would have knowledge or information concerning the process by
10 which, the reasons why, or the basis on which, Consulate Toronto denied the
11 applications; Defendants further construe the Interrogatory as requesting that
12 Defendants identify each such person's "knowledge and/or the information he or she
13 possesses."

14 Defendants further object to this Interrogatory to the extent that it seeks (a)
15 communications or information protected by the attorney-client privilege or (b)
16 communications or information protected by the deliberative process privilege.

17 **Answer:**

18 Subject to and without waiving the above-stated objections—including both
19 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
20 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

21 Defendants identify the following persons as having knowledge or
22 information concerning the process by which, or the reasons why, or basis on which,
23 the Department—and in particular Consulate Toronto—denied the applications for
24 a CRBA and U.S. passport for Ethan:

- 25 • Frankie Terri Day. Ms. Day served as the adjudicating consular
26 officer for the underlying adjudication. Relevant knowledge or
27 information possessed by Ms. Day is restricted to any knowledge or
28

1 information she possessed in her official capacity as a Consular Officer,
2 Consulate Toronto. Such knowledge would include awareness of the
3 specific process by which the applications were adjudicated, and
4 awareness of the reasons and basis for the denial of those applications.

5 • Margaret Ramsay. Ms. Ramsay provided the adjudicating consular
6 officer (Ms. Day) with relevant FAM references. Relevant knowledge or
7 information possessed by Ms. Ramsay is restricted to any knowledge or
8 information she possessed/possesses in her official capacity as a Consular
9 Officer, Consulate Toronto. Such knowledge would include general
10 awareness of the process by which the applications were adjudicated.

11 • Larilyn Reffett. Ms. Reffett served as the supervisor for the
12 adjudicating consular office (Ms. Day), and supervised the underlying
13 adjudication, including by discussing the adjudication with Ms. Day.
14 Relevant knowledge or information possessed by Ms. Reffett is restricted
15 to any knowledge or information she possessed/possesses in her official
16 capacity as American Citizen Services Chief, Consulate Toronto. Such
17 knowledge would include awareness of the specific process by which the
18 applications were adjudicated, and awareness of the reasons and basis for
19 the denial of those applications. Additionally, as the Chief of American
20 Citizen Services, Consulate Toronto, Ms. Reffett possess general
21 knowledge regarding the process by which Consulate Toronto adjudicates
22 CRBA and U.S. passport applications, as well as general knowledge
23 regarding Consulate Toronto's interactions with U.S. citizens living in or
24 visiting Toronto.

25 • Ann Marie Warmenhoven. Relevant knowledge or information
26 possessed by Ms. Warmenhoven is restricted to any knowledge or
27 information she possessed/possesses in her official capacity as Fraud
28 Prevention Unit Officer, Consulate Toronto. Such knowledge would

1 include awareness of the basis for the denial of the applications, general
2 awareness of the process by which the applications were adjudicated, and
3 general awareness of fraud prevention concerns related to the adjudication
4 of CRBA and U.S. passport applications.

5 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
6 state that the documents that Defendants will be producing in response to “Plaintiffs’
7 First Set of Requests for Production of Documents” may identify additional persons
8 responsive to this Interrogatory and/or the “knowledge and/or... information”
9 possessed by persons responsive to this Interrogatory. Because the “Identif[ication]”
10 of this information may be determined by examining, abstracting, or summarizing
11 the documents and communications themselves, and because the burden of deriving
12 or ascertaining this portion of Defendants’ answer will be substantially the same for
13 either Defendants or the Plaintiffs, Defendants refer Plaintiffs to the documents that
14 Defendants will be producing.

15
16 **INTERROGATORY NO. 3**

17 *Identify and provide job titles and dates of employment at the State*
18 *Department of each Person known to You (a) who is or was involved with or*
19 *responsible for determining for the State Department the meaning or requirements*
20 *of Section 301(g) or Section 309; or (b) who is or was involved with or responsible*
21 *for drafting or approving protocols, procedures, practices, guidelines or policies*
(including provisions of the FAM) Concerning applications for a CRBA or U.S.
passport for, or determinations of the citizenship status of, children born outside of
the United States to United States citizens, between January 1, 2013 and the present.

22 **Objections:**

23 Defendants object to this Interrogatory on the basis that it is compound and
24 includes at least three discrete subparts: (A) “Identify and provide job titles and dates
25 of employment... of each Person... who is or was involved with or responsible for
26 determining for the State Department the meaning or requirements of Section
27 301(g)...”; (B) “Identify and provide job titles and dates of employment... of each
28 Person... who is or was involved with or responsible for determining for the State

1 Department the meaning or requirements of... Section 309...”; (C) “Identify and
2 provide job titles and dates of employment... of each Person... who is or was
3 involved with or responsible for drafting or approving protocols, procedures,
4 practices, guidelines or policies... Concerning applications for a CRBA or U.S.
5 passport for, or determinations of the citizenship status of, children born outside of
6 the United States to United States citizens.”⁴ Accordingly, Defendants interpret this
7 Interrogatory as three separate interrogatories (3A–3C).

8 Defendants object to these (at least) three discrete Interrogatories as
9 unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s
10 claim or defense, and disproportionate to the needs of the case to the extent they are
11 not temporally limited to the time period of the underlying adjudication. The time
12 period indicated on the face of the Interrogatories is overly broad, unduly
13 burdensome, not relevant to any party’s claims or defenses, and disproportionate to
14 the needs of the case. Defendants further object to these Interrogatories as
15 unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s
16 claim or defense, and disproportionate to the needs of the case to the extent they ask
17 Defendants to identify persons other than those Department of State employees or
18 contractors involved with the specific adjudication at issue. It is unreasonable, not
19 relevant to any party’s claim or defense, and disproportionate to the needs of the
20 case to burden Defendants with identifying persons who may have general
21 knowledge bearing on the policies or processes used by Consulate Toronto in
22 specifically adjudicating the CRBA and U.S. passport applications for Ethan.
23 Defendants further object to these Interrogatories to the extent they seek the
24 identification of non-fact witnesses who may nonetheless possess relevant
25 knowledge, such as attorneys who act as agency counsel for the instant action. Here,
26

27 ⁴ Discrete subpart “(C)” itself could reasonably be construed as containing several
28 discrete subparts, regarding “applications for a CRBA,” “applications for a U.S.
passport,” and “[other] determinations of ... citizenship status,” respectively.

1 the Interrogatories appear to broadly seek identification of persons who—in the case
2 of Interrogatories 3(A) and 3(B)—have been involved in the Department of State’s
3 interpretation of certain statutory provisions, and—in the case of Interrogatories
4 3(C)—that the Department of State generally applies when adjudicating a CRBA
5 application or a U.S. passport application, and/or determining the citizenship status
6 of a certain category of foreign-born children.⁵ It would be unreasonable, not
7 relevant to any party’s claim or defense, and disproportionate to the needs of the
8 case to burden Defendants with identifying each and every employee of the
9 Department of State who, at any time, has worked for the Department of State
10 component(s) chiefly responsible for: interpreting 8 U.S.C. § 1401, or interpreting 8
11 U.S.C. § 1409, or developing the general “protocols, procedures, guidelines[, and]...
12 policies” used in adjudicating CRBA applications or U.S. passport applications or
13 otherwise determining the citizenship status of foreign-born children. Thus, for the
14 purposes of responding to these Interrogatories, Defendants construe them as
15 seeking to know the names and job titles of the heads of the components principally
16 responsible for such things during the time period January 1, 2015 through June 2,
17 2017.

18 Defendants further object to Interrogatory 3(C) as unreasonably vague, overly
19 broad, unduly burdensome, and not relevant to the claims and defenses of the case
20 because, by using commas to set off the phrase “or determinations of the citizenship
21 status of,” the Interrogatory on its face appears to indicate that determining
22 citizenship status of foreign-born children is something that happens separate and
23 apart from adjudications of CRBA and U.S. passport applications, but such
24 adjudications themselves involve determinations of citizenship status of the subject
25 child. To the extent Plaintiffs intend this Interrogatory to reach other determinations,
26

27 ⁵ Defendants note the unreasonably vague nature of the phrase “or determinations of
28 the citizenship status of,” as that phrase is used in Interrogatory 3(C), and
accordingly object to the Interrogatory’s use of the phrase, as described below.

1 outside the context of CRBA or U.S. passport applications, the Interrogatory is
2 unreasonably vague, overly broad, unduly burdensome, not relevant, and
3 disproportionate to the needs of the case.

4 Given the burden involved for Defendants to determine the dates of
5 employment for any individual employee—which would require Defendants to
6 review employment records for each such individual, including individuals who may
7 no longer be employed by the Department and/or who may have had multiple periods
8 of employment with the Department—and the lack of relevance of that information
9 to the claims and defenses in this case, Defendants generally decline to provide dates
10 of employment in their answers, but note that they would be willing to consider
11 providing dates of employment on a case-by-case basis to the extent Plaintiffs can
12 explain how that information would be useful and/or relevant for purposes of
13 Plaintiffs' claims.

14 **Answer:**

15 Subject to and without waiving the above-stated objections—including both
16 those described in the prior four paragraphs and those outlined *supra* Part I ¶¶ 1–
17 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

18
19 **With respect to Interrogatory 3(A):⁶**

20 The Bureau of Consular Affairs formulates and implements policy relating to
21 the determination of U.S. citizenship and the application of 8 U.S.C. § 1401(g). Prior
22 to December 14, 2017, relevant responsibilities were possessed by two Bureau sub-
23 components, the Office of Passport Services (CA/PPT) and the Office of Overseas
24

25
26
27 ⁶ Interrogatory 3(A) asks: “Identify and provide job titles and dates of employment...
28 of each Person... who is or was involved with or responsible for determining for the
State Department the meaning or requirements of Section 301(g)... .”

1 Citizens Services (CA/OCS). As of December 14, 2017, the relevant responsibilities
2 were consolidated within CA/PPT.

3 In 2015, Janice Jacobs served as the Assistant Secretary for Consular Affairs,
4 Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens
5 Services, and Brenda Sprague was the Deputy Assistant Secretary for Passport
6 Services. In 2016, Michele Bond served as the Assistant Secretary for Consular
7 Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens
8 Services, and Brenda Sprague was the Deputy Assistant Secretary for Passport
9 Services. In 2017, Michele Bond was the Assistant Secretary for Consular Affairs
10 through January 26, before being succeeded by David Donahue as acting Assistant
11 Secretary through July 28; throughout 2017, Karen Christensen was the Deputy
12 Assistant Secretary for Overseas Citizens Services, and subsequently the Principal
13 Deputy Assistant Secretary for Consular Affairs; and Brenda Sprague was the
14 Deputy Assistant Secretary for Passport Services.

15 Within the Department, the Office of the Legal Adviser advises and represents
16 bureaus and missions of the Department on all legal and legal policy issues arising
17 in connection with the work of the Department, including providing legal advice
18 concerning 8 U.S.C. § 1401(g). In 2015, Mary E. McLeod headed the Office of the
19 Legal Adviser, and she continued in that position through February 19, 2016. From
20 February 22, 2016 through January 20, 2017, Brian Egan served as the Legal
21 Adviser. Richard C. Visek served as the Acting Legal Adviser for the remainder of
22 2017.

23 Consulate Toronto applies 8 U.S.C. § 1401(g) in the course of adjudicating
24 specific CRBA and U.S. passport applications. Throughout the time period at issue,
25 Larilyn Reffett served as American Citizen Services Chief, supervising consular
26 functions involving these responsibilities. Her diplomatic rank/title is "Consul," and
27 she has been employed by the Department of State from March 10, 2003, through
28 the present day.

With respect to Interrogatory 3(B):⁷

The Bureau of Consular Affairs formulates and implements policy relating to the determination of U.S. citizenship and the application of 8 U.S.C. § 1409. Prior to December 14, 2017, relevant responsibilities were possessed by two Bureau sub-components, the Office of Passport Services (CA/PPT) and the Office of Overseas Citizens Services (CA/OCS). As of December 14, 2017, the relevant responsibilities were consolidated within CA/PPT.

In 2015, Janice Jacobs served as the Assistant Secretary for Consular Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens Services, and Brenda Sprague was the Deputy Assistant Secretary for Passport Services. In 2016, Michele Bond served as the Assistant Secretary for Consular Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens Services, and Brenda Sprague was the Deputy Assistant Secretary for Passport Services. In 2017, Michele Bond was the Assistant Secretary for Consular Affairs through January 26, before being succeeded by David Donahue as acting Assistant Secretary through July 28; throughout 2017, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens Services, and subsequently the Principal Deputy Assistant Secretary for Consular Affairs; and Brenda Sprague was the Deputy Assistant Secretary for Passport Services.

Within the Department, the Office of the Legal Adviser advises and represents bureaus and missions of the Department on all legal and legal policy issues arising in connection with the work of the Department, including providing legal advice concerning 8 U.S.C. § 1409. In 2015, Mary E. McLeod headed the Office of the Legal Adviser, and she continued in that position through February 22, 2016. From February 19, 2016 through January 20, 2017, Brian Egan served as the Legal

⁷ Interrogatory 3(B) asks: "Identify and provide job titles and dates of employment... of each Person... who is or was involved with or responsible for determining for the State Department the meaning or requirements of... Section 309..."

1 Adviser. Richard C. Visek served as the Acting Legal Adviser for the remainder of
2 2017.

3 Consulate Toronto applies 8 U.S.C. § 1409 in the course of adjudicating
4 specific CRBA and U.S. passport applications. Throughout the time period at issue,
5 Larilyn Reffett served as American Citizen Services Chief, supervising consular
6 functions involving these responsibilities. For Ms. Reffett's diplomatic title and
7 employment dates, see response to Interrogatory 3(A), *supra* at 21.

8
9 **With respect to Interrogatory 3(C):⁸**

10 The Bureau of Consular Affairs formulates and implements policy relating to
11 determination of U.S. citizenship and administers pertinent provisions of the
12 Immigration and Nationality Act, including with respect to adjudication of
13 applications for CRBAs and U.S. passports. The bureau develops, revises,
14 implements, and directs policies, procedures, and regulations relating to functions of
15 the Bureau, including the adjudication and issuance of passports and the
16 determination of U.S. citizenship/nationality. Within the bureau, as of December 14,
17 2017, these responsibilities were consolidated within the Bureau's Office of Passport
18 Services (CA/PPT). Previously, these functions were handled by CA/PPT or the
19 Office of Overseas Citizens Services (CA/OCS),⁹ depending on the location of the
20 service or the issue presented.

21 In 2015, Janice Jacobs served as the Assistant Secretary for Consular Affairs,
22 Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens
23 Services, and Brenda Sprague was the Deputy Assistant Secretary for Passport
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25 ⁸ Interrogatory 3(C) asks: "Identify and provide job titles and dates of employment...
26 of each Person... who is or was involved with or responsible for drafting or
27 approving protocols, procedures, practices, guidelines or policies (including
28 provisions of the FAM) Concerning applications for a CRBA or U.S. passport for,
or determinations of the citizenship status of, children born outside of the United
States to United States citizens... ."

⁹ Also a sub-component of the Bureau.

1 Services. In 2016, Michele Bond served as the Assistant Secretary for Consular
2 Affairs, Karen Christensen was the Deputy Assistant Secretary for Overseas Citizens
3 Services and Brenda Sprague was the Deputy Assistant Secretary for Passport
4 Services. In 2017, Michele Bond was the Assistant Secretary for Consular Affairs
5 through January 26, before being succeeded by David Donahue as acting Assistant
6 Secretary through July 28; throughout 2017, Karen Christensen was the Deputy
7 Assistant Secretary for Overseas Citizens Services, and subsequently the Principal
8 Deputy Assistant Secretary for Consular Affairs; and Brenda Sprague was the
9 Deputy Assistant Secretary for Passport Services.

10 Within the Department, the Office of the Legal Adviser advises and represents
11 bureaus and missions of the Department on all legal and legal policy issues arising
12 in connection with the work of the Department, including providing legal advice
13 concerning citizenship and passport issues. In 2015, Mary E. McLeod headed the
14 Office of the Legal Adviser, and she continued in that position through February 19,
15 2016. From February 22, 2016 through January 20, 2017, Brian Egan served as the
16 Legal Adviser. Richard C. Visek served as the Acting Legal Adviser for the
17 remainder of 2017.

18 Consulate Toronto applies Department-level policy in the course of
19 adjudicating specific CRBA and U.S. passport applications. Throughout the time
20 period at issue, Larilyn Reffett served as American Citizen Services Chief,
21 supervising consular functions involving these responsibilities. For Ms. Reffett's
22 diplomatic title and employment dates, see response to Interrogatory 3(A), *supra* at
23 21.

INTERROGATORY NO. 4

Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g) or Section 309 to Persons who claim to have acquired United States citizenship under those statutory provisions, including the reasons and basis for any such protocols, procedures, practices, guidelines or policies.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) “Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g)... to Persons who claim to have acquired United States Citizenship” under it; and (B) “Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying... Section 309 to Persons who claim to have acquired United States Citizenship” under it. Accordingly, Defendants interpret this Interrogatory as two separate interrogatories (4A–4B).

Defendants object to these two discrete Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s claim or defense, and disproportionate to the needs of the case to the extent they are not temporally limited to the time period of the underlying adjudication. Defendants further object to these Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s claim or defense, and disproportionate to the needs of the case to the extent they ask Defendants to identify and describe protocols, procedures, practices, guidelines, or policies other than those that apply to Consulate Toronto and/or that are used by Consulate Toronto in the adjudication of CRBA and U.S. passport applications.

Answer:

Subject to and without waiving the above-stated objections—including both those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

With respect to 4(A):¹⁰

Relevant Department of State guidance regarding the determination of U.S. citizenship and the application of 8 U.S.C. § 1401(g) can be found in its Foreign Affairs Manual (“FAM”). As reflected in the FAM, the Department interprets the phrase “born... of parents” in 8 U.S.C. § 1401 to include a biological connection between the child and the referenced parents. As set out in the FAM, the Department reads 8 U.S.C. § 1401(g) as applying to children whose biological parents are married to each other at the time of the child’s birth. *See* 8 FAM 301.7-4(D) (interpreting section 1401(g) to apply to children born in wedlock to a U.S. citizen parent and an alien parent). The FAM defines “in wedlock” as “birth during the marriage of the biological parents to each other.” 8 FAM 304.1-2(a). The FAM goes on to state: “If a married woman and someone other than her spouse have a biological child together, that child is considered to have been born out of wedlock. The same is true for a child born to a married man and a person other than his spouse.” 8 FAM 304.1-2(e).

By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants state that the above-cited provisions of the FAM can be found online at <https://fam.state.gov>; to the extent the currently-available FAM provisions differ (whether substantively or by citation) from those in effect at the time of the

¹⁰ Interrogatory 4(A) asks: “Identify and describe any protocols, procedures, practices, guidelines or policies of the State Department for applying Section 301(g)... to Persons who claim to have acquired United States Citizenship under... [that] statutory provision[], including the reasons and basis for any such protocols, procedures, practices, guidelines or policies.”

1 underlying adjudication, Defendants state that they will be producing any such
2 former versions in response to Plaintiffs' First Set of Requests for Production of
3 Documents. Defendants refer to the FAM provisions themselves for a full and
4 complete "descri[ption]" of their contents.

5
6 **With respect to 4(B):¹¹**

7 Relevant Department of State guidance regarding the determination of U.S.
8 citizenship and the application of 8 U.S.C. § 1409 can also be found in its FAM. The
9 FAM notes that "[c]hildren born in wedlock are generally presumed to be the issue
10 of that marriage. This presumption is not determinative in citizenship cases,
11 however, because an actual biological relationship to a U.S. citizen parent is
12 required. If doubt arises that the U.S. citizen 'parent' is biologically related to the
13 child, the consular officer is expected to investigate carefully." 8 FAM 301.4-
14 1(D)(1)(d); *see also id.* § 301.4-1(D)(1)(a) ("It is not enough that the child is
15 presumed to be the issue of the parents' marriage by the laws of the jurisdiction
16 where the child was born. Absent a blood relationship between the child and the
17 parent on whose citizenship the child's own claim is based, U.S. citizenship is not
18 acquired."). Circumstances in which such a doubt may arise include where "[t]he
19 child was born through surrogacy or other forms of assisted reproductive
20 technology." *See* 8 FAM 301.4-1(D)(1)(d); *see also* 8 FAM 304.3-2 ("A child born
21 abroad to a surrogate, whose genetic parents are a U.S. citizen mother and
22 anonymous sperm donor, is considered for citizenship purposes to be a person born
23 *out of wedlock* to a U.S. citizen mother... regardless of whether the woman is
24
25

26
27 ¹¹ Interrogatory 4(B) asks: "Identify and describe any protocols, procedures,
28 practices, guidelines or policies of the State Department for applying... Section 309
to Persons who claim to have acquired United States Citizenship under... [that]
statutory provision[], including the reasons and basis for any such protocols,
procedures, practices, guidelines or policies."

1 married and regardless of whether her spouse is the legal parent of the child at the
2 time of birth.”) (emphasis added).

3 The FAM interprets 8 U.S.C. § 1409 to apply to children whose *biological*
4 parents are not married to each other. 8 FAM 102.01. A child may acquire U.S.
5 citizenship at birth from his legal mother, pursuant to section 1409, if the child has
6 a biological relationship with her. *See* 8 U.S.C. § 1409(c). The FAM recognizes a
7 “biological relationship” between a child and another may include either a genetic
8 parental relationship or a legal, gestational relationship. 8 FAM 301.4-1(D)(1)(c),
9 and requires a preponderance of the evidence to establish proof of a biological
10 relationship between child and U.S. citizen mother, 8 FAM 301.4-1(D)(1)(b)(2).

11 The FAM makes clear that persons in legally-valid and recognized marriages
12 may still have a child considered “born out of wedlock” for § 1409 purposes. *See*,
13 *e.g.*, 8 FAM 304.3-2 (“A child born abroad to a surrogate, whose genetic parents are
14 a U.S. citizen mother and anonymous sperm donor, is considered for citizenship
15 purposes to be a person born out of wedlock to a U.S. citizen mother, with a
16 citizenship claim adjudicated under INA 309(c). This is the case regardless of
17 whether the woman is married and regardless of whether her spouse is the legal
18 parent of the child at the time of birth.”) The Department applies this policy equally
19 to same-sex marriages and opposite sex marriages. *See id.*; *see also* 7 FAM Exhibit
20 1454 ¶ b (“In general, marriages which are legally performed and valid abroad are
21 also legally valid in the United States. Inquiries regarding the validity of a marriage
22 abroad should be directed to the attorney general of the state in the United States
23 where the parties to the marriage live”).

INTERROGATORY NO. 5

Identify and describe any protocol, procedure, practice, guideline or policy of the State Department for applying Section 309, rather than Section 301(g), to an application for a CRBA or U.S. passport by or for any Person born outside of the United States, including the reasons and basis for any such protocol, procedure, practice, guideline or policy.

Objections:

Defendants object to this Interrogatory as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case to the extent it is not temporally limited to the time period of the underlying adjudication. Defendants further object to this Interrogatory as unreasonably vague, overly broad, unduly burdensome, not relevant to any party's claim or defense, and disproportionate to the needs of the case to the extent it asks Defendants to identify and describe protocols, procedures, practices, guidelines, or policies other than those that apply to Consulate Toronto and/or that are used by Consulate Toronto in the adjudication of CRBA and U.S. passport applications.

Answer:

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

Pursuant to the FAM, the Department applies 8 U.S.C. § 1409, rather than 8 U.S.C. § 1401(g), where a child's biological parents are not married to each other, even if a child's legal parents are married to each other. Although it may generally be true that a child whose legal parents are married to each other may generally be "presumed to be the issue of that marriage," "[t]his presumption is not determinative in citizenship cases... because [in that context] an actual biological relationship to a U.S. citizen parent is required." See 8 FAM 301.4-1(D)(1)(d). "If doubt arises that

1 the U.S. citizen ‘parent’ is biologically related to the child, the consular officer is
2 expected to investigate carefully.” 8 FAM 301.4-1(D)(1)(d); *see also id.* § 301.4-
3 1(D)(1)(a) (“It is not enough that the child is presumed to be the issue of the parents’
4 marriage by the laws of the jurisdiction where the child was born. Absent a blood
5 relationship between the child and the parent on whose citizenship the child's own
6 claim is based, U.S. citizenship is not acquired.”). Circumstances in which such a
7 doubt may arise include where “[t]he child was born through surrogacy or other
8 forms of assisted reproductive technology.” *See* 8 FAM 301.4-1(D)(1)(d); *see also*
9 8 FAM 304.3-2 (“A child born abroad to a surrogate, whose genetic parents are a
10 U.S. citizen mother and anonymous sperm donor, is considered for citizenship
11 purposes to be a person born *out of wedlock* to a U.S. citizen mother... regardless of
12 whether the woman is married and regardless of whether her spouse is the legal
13 parent of the child at the time of birth.”) (emphasis added).

14 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
15 state that the above-cited provisions of the FAM can be found online at
16 <https://fam.state.gov>; to the extent the currently-available FAM provisions differ
17 (whether substantively or by citation) from those in effect at the time of the
18 underlying adjudication, Defendants state that they will be producing any such
19 former versions in response to Plaintiffs’ First Set of Requests for Production of
20 Documents. Defendants refer to the FAM provisions themselves for a full and
21 complete “descri[ption]” of their contents.
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INTERROGATORY NO. 6

Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department during the period January 1, 2013 to the present regarding the application of Section 301(g) or Section 309, including any protocols, procedures, practices, guidelines or policies proposed or approved by DHS, but ultimately not adopted by the State Department.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) “Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department... regarding the application of Section 301(g)”; and (B) “Identify and describe any protocols, procedures, practices, guidelines or policies considered, but not adopted, by the State Department... regarding the application of... Section 309.” Accordingly, Defendants interpret this Interrogatory as two separate interrogatories (6A–6B).

Defendants object to these two discrete Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s claim or defense, and disproportionate to the needs of the case because the Interrogatories on their face seek to know information that by its very nature is pre-decisional and deliberative, and thus covered by the deliberative process privilege, and/or covered by the attorney-client privilege.

Defendants further object to these Interrogatories as unreasonably vague, overly broad, unduly burdensome, not relevant to any party’s claim or defense, and disproportionate to the needs of the case to the extent that they seek to know information regarding or relating to a different Executive department, the Department of Homeland Security (“DHS”), or any components thereof. For example, the Interrogatory seeks to know the extent to which Defendants “considered... any protocols, procedures, practices, guidelines or policies proposed or approved *by DHS*.” (emphasis added). But the actions taken by Defendants and

1 challenged in this litigation are separate from and do not depend on any actions or
2 policies of DHS, and as such the DHS-related information sought by these
3 Interrogatories is not relevant to the claims and defenses in this litigation, and
4 disproportionate to the needs of the case.

5
6 **Answer:**

7 Subject to and without waiving the above-stated objections—including both
8 those described in the prior three paragraphs and those outlined *supra* Part I ¶¶ 1–
9 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

10
11 **With respect to 6(A):¹²**

12 Defendants rest on their objections and do not provide an answer to this
13 Interrogatory.

14
15 **With respect to 6(B):¹³**

16 Defendants rest on their objections and do not provide an answer to this
17 Interrogatory.

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¹² Interrogatory 6(A) asks: “Identify and describe any protocols, procedures,
24 practices, guidelines or policies considered, but not adopted, by the State
25 Department... regarding the application of Section 301(g)..., including any
26 protocols, procedures, practices, guidelines or policies proposed or approved by
27 DHS, but ultimately not adopted by the State Department.”

28 ¹³ Interrogatory 6(B) asks: “Identify and describe any protocols, procedures,
practices, guidelines or policies considered, but not adopted, by the State
Department... regarding the application of... Section 309, including any protocols,
procedures, practices, guidelines or policies proposed or approved by DHS, but
ultimately not adopted by the State Department.”

INTERROGATORY NO. 7

Identify and describe any differences known to You between or among the interpretations or applications of Section 301(g) and Section 309 by (i) the State Department, (ii) the DHS, and (iii) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, or other units of CIS, to Persons who claim to have acquired United States citizenship under those statutory provisions.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least seven (and likely more) discrete subparts: (A) “Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... the State Department...”; (B) Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... the DHS”; (C) Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... the Fraud Detection and National Security Directorate”; (D) “Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... the Refugee, Asylum and International Operations Directorate”; (E) “Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... other units of [US]CIS”; (F) “Identify and describe any differences... between... the interpretations or applications of Section 301(g)... by the State Department... [and by] the DHS...”; and (G) “Identify and describe any differences... between... the interpretations or applications of Section 309... by the State Department... [and by] the DHS....” Accordingly, Defendants interpret this Interrogatory as seven separate Interrogatories (7A–7G).

Defendants object to these (at least) seven discrete Interrogatories as seeking to know issues of “pure law,” *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33 advisory committee’s note to 1970 amendment; *see also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.).

1 These are not “contention” interrogatories because they do not ask for a “contention
2 that relates to... the application of law to fact.” *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather,
3 these interrogatories ask for Defendants’ interpretation of the law divorced from any
4 factual context, and in doing so seek Defendants’ legal theories. Defendants object
5 on the additional basis that such information is protected from disclosure by the work
6 product doctrine. To the extent that these interrogatories could be considered
7 “contention interrogatories,” however, Defendants expressly reserve the right to
8 provide additional responses later in the discovery period, or at the close of
9 discovery, as relevant facts of the case may be further developed or disclosed by
10 Plaintiffs through discovery.

11 Defendants further object to these Interrogatories to the extent that they seek
12 (a) communications or information protected by the attorney-client privilege or (b)
13 communications or information protected by the deliberative process privilege.

14 Additionally, Defendants object to these Interrogatories as unreasonably
15 vague, overly broad, and unduly burdensome, not relevant to any party’s claim or
16 defense, and disproportionate to the needs of the case to the extent that they seek to
17 know information regarding or relating to a different Executive department, the
18 Department of Homeland Security (“DHS”), or any components thereof. The actions
19 taken by Defendants and challenged in this litigation are separate from and do not
20 depend on any actions or policies of DHS, and as such the DHS-related information
21 sought by this Interrogatory is not relevant to the claims and defenses in this
22 litigation. Both the Fraud Detection and National Security Directorate, and the
23 Refugee, Asylum and International Operations Directorate, are sub-components of
24 USCIS, which itself is a component of DHS, not the Department of State.
25 Defendants cannot reasonably be expected to know each and every way in which
26 DHS and its components differ from Defendants, to the extent they differ at all, with
27 regard to interpretation and application of 8 U.S.C. § 1401(g) or with regard to
28 interpretation and application of 8 U.S.C. § 1409. Defendants cannot reasonably be

1 expected to know all ways that DHS and its components interpret or apply 8 U.S.C.
2 §§ 1401(g) and 1409; moreover, DHS and its components adjudicate applications
3 for Certificates of Citizenship and not for CRBAs or U.S. passports. With respect to
4 Interrogatory 7(A), Defendants cannot be expected to know the extent to which DHS
5 and its components differ with one another in their interpretations and applications
6 of these statutes.

7
8 **Answer:**

9 Subject to and without waiving the above-stated objections—including both
10 those described in the prior four paragraphs and those outlined *supra* Part I ¶¶ 1–
11 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

12 **With respect to 7(A):**¹⁴

13 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains its own statutory
14 language differing from the other statutory provision. 8 U.S.C. § 1401 is headed
15 “Nationals and Citizens of the United States at Birth” while 8 U.S.C. § 1409, per its
16 heading, governs expressly situations of “Children Born Out of Wedlock.”
17 Additional differences between the statutory provisions and the Department’s
18 interpretation and application thereof are identified and described *supra* in the
19 Responses to Interrogatories 4(A) and 4(B).

20 **With respect to 7(B):**¹⁵

21 Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains
22 its own statutory language differing from the other statutory provision, Defendants
23

24
25 ¹⁴ Interrogatory 7(A) asks: “Identify and describe any differences... between... the
26 interpretations or applications of Section 301(g) and Section 309 by... the State
Department... to Persons who claim to have acquired United States citizenship
under those statutory provisions.”

27 ¹⁵ Interrogatory 7(B) asks: “Identify and describe any differences... between... the
28 interpretations or applications of Section 301(g) and Section 309 by... the DHS...

1 lack knowledge or information sufficient to identify how DHS may interpret or apply
2 8 U.S.C. § 1401(g) differently from how it interprets or applies 8 U.S.C. § 1409.

3
4 **With respect to 7(C):¹⁶**

5 Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains
6 its own statutory language differing from the other statutory provision, Defendants
7 lack knowledge or information sufficient to identify how DHS's Fraud Detection
8 and National Security Directorate may interpret or apply 8 U.S.C. § 1401(g)
9 differently from how it interprets or applies 8 U.S.C. § 1409.

10
11 **With respect to 7(D):¹⁷**

12 Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains
13 its own statutory language differing from the other statutory provision, Defendants
14 lack knowledge or information sufficient to identify how DHS's Refugee, Asylum,
15 and International Operations Directorate may interpret or apply 8 U.S.C. § 1401(g)
16 differently from how it interprets or applies 8 U.S.C. § 1409.

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21 to Persons who claim to have acquired United States citizenship under those
22 statutory provisions.”

23
24 ¹⁶ Interrogatory 7(C) asks: “Identify and describe any differences... between... the
25 interpretations or applications of Section 301(g) and Section 309 by... the Fraud
26 Detection and National Security Directorate... to Persons who claim to have
27 acquired United States citizenship under those statutory provisions.”

28 ¹⁷ Interrogatory 7(D) asks: “Identify and describe any differences... between... the
interpretations or applications of Section 301(g) and Section 309 by... the Refugee,
Asylum and International Operations Directorate... to Persons who claim to have
acquired United States citizenship under those statutory provisions.”

With respect to 7(E):¹⁸

Other than noting that 8 U.S.C. § 1401(g) and 8 U.S.C. § 1409 each contains its own statutory language differing from the other statutory provision, Defendants lack knowledge or information sufficient to identify how any other units of USCIS (other than the Fraud Detection and National Security Directorate and the Refugee, Asylum, and International Operations Directorate) may interpret or apply 8 U.S.C. § 1401(g) differently from how they interpret or apply 8 U.S.C. § 1409.

With respect to 7(F):¹⁹

Defendants are aware of certain differences in responsibilities of the Department and DHS. For example, the Department is responsible for adjudicating applications for CRBAs and U.S. passports, whereas DHS is responsible for adjudicating applications for certificates of citizenship. Additionally, DHS primarily conducts its certificate of citizenship adjudications domestically, whereas the Department adjudicates CRBA applications made abroad, and adjudicates U.S. passport applications both domestically and internationally.

With respect to 7(G):²⁰

Defendants are aware of certain differences in responsibilities of the Department and DHS. For example, the Department is responsible for adjudicating

¹⁸ Interrogatory 7(E) asks: “Identify and describe any differences... between... the interpretations or applications of Section 301(g) and Section 309 by... other units of [US]CIS... to Persons who claim to have acquired United States citizenship under those statutory provisions.”

¹⁹ 7(F) asks: “Identify and describe any differences... between... the interpretations or applications of Section 301(g)... by the State Department... [and by] the DHS..., to Persons who claim to have acquired United States citizenship under... [that] statutory provision[.]”

²⁰ Interrogatory 7(G) asks: “Identify and describe any differences... between... the interpretations or applications of Section 309... by the State Department... [and by] the DHS..., to Persons who claim to have acquired United States citizenship under... [that] statutory provision[.]”

1 applications for CRBAs and U.S. passports, whereas DHS is responsible for
2 adjudicating applications for certificates of citizenship. Additionally, DHS primarily
3 conducts adjudications domestically, whereas the Department adjudicates CRBA
4 applications made abroad, and adjudicates U.S. passport applications both
5 domestically and internationally.

6
7 **INTERROGATORY NO. 8**

8 *Identify and describe the requirements established, imposed or applied by the*
9 *State Department in order to consider or determine an individual to be a “parent”*
10 *within the meaning of the INA, including any requirement for a biological*
11 *relationship.*

12 **Objections:**

13 Defendants object to this Interrogatory to the extent it seeks to know issues of
14 “pure law,” *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33
15 advisory committee’s note to 1970 amendment; *see also* 8B The Late Charles Alan
16 Wright et al., Federal Practice and Procedure § 2167 (3d ed.). By asking Defendants
17 to broadly identify the criteria by which the Department of State determines whether
18 a legal term of art is applicable in any given case, this Interrogatory asks for
19 Defendants’ interpretation of the law divorced from any factual context, and in doing
20 so seek Defendants’ legal theories. Defendants object on the additional basis that
21 such information is protected from disclosure by the work product doctrine. To the
22 extent that this Interrogatory could be considered a “contention interrogatory,”
23 however, Defendants expressly reserve the right to provide additionally responses
24 later in the discovery period, or at the close of discovery, as relevant facts of the case
25 may be further developed or disclosed by Plaintiffs through discovery.

26 **Answer:**

27 Subject to and without waiving the above-stated objections—including both
28 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and
Part II ¶¶ 13–21—Defendants respond as follows:

1 The Immigration and Nationality Act contains multiple definitions of the term
2 “parent” for different sections/purposes of the Act.

3 For purposes of Title I and Title II of the Act, 8 U.S.C. § 1101(b)(1) defines
4 the term “child.” Additionally, for purposes of Title I and Title II of the Act, 8 U.S.C.
5 § 1101(b)(2) defines the terms “parent,” “father,” and “mother,” as follows:
6 “‘parent’, ‘father’, or ‘mother’ mean a parent, father, or mother only where the
7 relationship exists by reason of any of the circumstances set forth in [8 U.S.C.
8 § 1101(b)](1)..., except that, for purposes of... [§ 1101(b)](1)(F) (other than the
9 second proviso therein) and... [§ 1101(b)](1)(G)(i) in the case of a child born out
10 of wedlock described in... [§ 1101(b)](1)(D) (and not described in...
11 [§ 1101(b)](1)(C)), the term ‘parent’ does not include the natural father or the child
12 if the father has disappeared or abandoned or deserted the child or if the father has
13 in writing irrevocably released the child for emigration and adoption.”

14 For purposes of Title III of the Act, including for purposes of acquisition of
15 citizenship at birth, 8 U.S.C. § 1101(c)(1) defines the term “child.” For purposes of
16 Title III of the Act, 8 U.S.C. § 1101(c)(2) provides that “[t]he terms ‘parent’, ‘father’,
17 and ‘mother’ include in the case of a posthumous child a deceased parent, father,
18 and mother.”

19 8 FAM 101.3-1 provides: “Parent, father, and mother: These include in the
20 case of a posthumous child a deceased parent, father, and mother.” Additionally, 8
21 FAM 301.4-1(D)(1)(a) provides: “It is not enough that the child is presumed to be
22 the issue of the parents’ marriage by the laws of the jurisdiction where the child was
23 born. Absent a blood relationship between the child and the parent on whose
24 citizenship the child's own claim is based, U.S. citizenship is not acquired.”
25 Circumstances in which such a doubt may arise include where “[t]he child was born
26 through surrogacy or other forms of assisted reproductive technology.” *See* 8 FAM
27 301.4-1(D)(1)(d); *see also* 8 FAM 304.3-2 (“A child born abroad to a surrogate,
28 whose genetic parents are a U.S. citizen mother and anonymous sperm donor, is

1 considered for citizenship purposes to be a person born *out of wedlock* to a U.S.
2 citizen mother... regardless of whether the woman is married and regardless of
3 whether her spouse is the legal parent of the child at the time of birth.”) (emphasis
4 added).

5 The FAM interprets 8 U.S.C. § 1409 to apply to children whose *biological*
6 parents are not married to each other. 8 FAM 102.01. A child may acquire U.S.
7 citizenship at birth from his legal mother, pursuant to section 1409, if the child has
8 a biological relationship with her. *See* 8 U.S.C. § 1409(c). The FAM recognizes a
9 “biological relationship” between a child and another may include either a genetic
10 parental relationship or a legal, gestational relationship. 8 FAM 301.4-1(D)(1)(c),
11 and requires a preponderance of the evidence to establish proof of a biological
12 relationship between child and U.S. citizen mother, 8 FAM 301.4-1(D)(1)(b)(2).

13 In addition to the biological relationship requirements contained elsewhere in
14 the FAM, 8 FAM 101.1-2 requires “evidence of the legal relationship between the
15 U.S. citizen parent and the child.”

16
17 **INTERROGATORY NO. 9**

18 *Identify and describe any circumstances in which the State Department would*
19 *consider a child of same-sex spouses to be born in wedlock for the purposes of*
applying Sections 301(g) and/or 309.

20 **Objections:**

21 Defendants object to this Interrogatory as seeking to know issues of “pure
22 law,” *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33
23 advisory committee’s note to 1970 amendment; *see also* 8B The Late Charles Alan
24 Wright et al., Federal Practice and Procedure § 2167 (3d ed.). This is not a
25 “contention” interrogatory because it asks Defendants to identify and describe “any
26 circumstances,” and thus does not ask for a “contention that relates to... the
27 application of law to fact.” *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather, this Interrogatory
28 asks for Defendants’ interpretation of the law divorced from any factual context, and

1 in doing so seeks Defendants’ legal theories. Defendants object on the additional
2 basis that such information is protected from disclosure by the work product
3 doctrine. To the extent that this Interrogatory could be considered a “contention
4 interrogatory,” however, Defendants expressly reserve the right to provide
5 additionally responses later in the discovery period, or at the close of discovery, as
6 relevant facts of the case may be further developed or disclosed by Plaintiffs through
7 discovery.

8
9 **Answer:**

10 Subject to and without waiving the above-stated objections—including both
11 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and
12 Part II ¶¶ 13–21—Defendants respond as follows:

13 In response to Interrogatory Nos. 4(A), 4(B), and 5, Defendants described the
14 circumstances in which the Department would consider a child to be born “in
15 wedlock” for purposes of applying 8 U.S.C. § 1401(g) and/or § 1409. Those answers
16 apply to all children regardless of whether their legal parents are in a same-sex
17 marriage or opposite sex marriage.

18 Additionally, the FAM describes the circumstances under which children born
19 abroad to a married same-sex female couple are considered to be “born in wedlock”
20 for purposes of the Department’s consideration under INA § 301 (8 U.S.C. § 1401).
21 Where one woman is a U.S. citizen and the other woman is an alien, the child can
22 acquire U.S. citizenship at birth if the U.S.-citizen spouse is either “the genetic
23 mother (the woman whose egg was used in conception) or the gestational mother
24 (the woman who carried and delivered the baby),” so long as the law of the country
25 where she resides also recognizes her as a legal parent and the other spouse also has
26 a biological relationship to the child. 8 FAM 301.4-1(D)(1)(c). Where both women
27 are U.S. citizens, and one is the legal, gestational mother and the other is the genetic
28

1 mother of the child, the Department of State adjudicates the child's citizenship claim
2 under INA 301(c). 8 FAM 304.3-1(b).

3
4 **INTERROGATORY NO. 10**

5 *Identify and describe the State Department's interpretation or application of*
6 *the terms "born . . . of parents," "wedlock," "in wedlock" and "out of wedlock,"*
7 *or any other term Defendants believe has the same or a similar meaning as those*
8 *terms, for the purposes of the INA, including any legal and policy support or basis*
9 *considered, used, or relied upon in deciding upon such definitions; and Identify and*
10 *describe any change in any such interpretation or application by the State*
11 *Department since January 1, 2013.*

12 **Objections:**

13 Defendants object to this Interrogatory on the basis that it is compound and
14 includes at least six discrete subparts: (A) "Identify and describe the State
15 Department's interpretation or application of the term[] 'born . . . of parents'"; (B)
16 "Identify and describe the State Department's interpretation or application of the
17 term[] 'wedlock'"; (C) "Identify and describe the State Department's interpretation
18 or application of the term[] 'in wedlock'"; (D) "Identify and describe the State
19 Department's interpretation or application of the term[] 'out of wedlock'"; (E) and
20 "Identify and describe any change in any such interpretation or application [of the
21 term 'born... of parents'] by the State Department since January 1, 2013." and (F)
22 and "Identify and describe any change in any such interpretation or application [of
23 the term 'wedlock'] by the State Department since January 1, 2013." Accordingly,
24 Defendants interpret this Interrogatory as six separate and distinct interrogatories
25 (10A–10F).

26 Defendants object to these six discrete Interrogatories as seeking to know
27 issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R.
28 Civ. P. 33 advisory committee's note to 1970 amendment; *see also* 8B The Late
Charles Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.). These
are not "contention" interrogatories because they do not ask for a "contention that
relates to... the application of law to fact." *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather, these

1 interrogatories ask for Defendants' interpretation of the law divorced from any
2 factual context, and in doing so seek Defendants' legal theories. Defendants object
3 on the additional basis that such information is protected from disclosure by the work
4 product doctrine. To the extent that these interrogatories could be considered
5 "contention interrogatories," however, Defendants expressly reserve the right to
6 provide additionally responses later in the discovery period, or at the close of
7 discovery, as relevant facts of the case may be further developed or disclosed by
8 Plaintiffs through discovery.

9 Defendants further object to these Interrogatories inasmuch as they seek to
10 isolate individual statutory terms from each other and from the overall statutory
11 scheme which the Department interprets and applies in individual adjudications.

12 Defendants further object to these Interrogatories as overly broad, not relevant
13 to the claims or defenses in this case, and disproportionate to the needs of this case
14 because the Interrogatories seek information outside of a reasonable time period
15 relating to the claims and defenses in this case. Any iterations of the Department's
16 legal interpretations of the referenced terms existing prior to January 24, 2017—the
17 starting date of the underlying adjudication—are not relevant to the claims and
18 defenses in this case because the Department applied contemporaneous law and legal
19 interpretations to the underlying adjudication. Similarly, any changes to the
20 Department's interpretation or application of the cited legal terms that took place
21 prior to the underlying adjudication are not relevant to the claims and defenses; the
22 adjudication was based on the Department's interpretation of that law as of the time
23 period of the adjudication, January 24, 2017, to March 2, 2017. Defendants will
24 restrict their responses to these Interrogatories to the same time period Defendants
25 have generally been using in responding to the Interrogatories, January 1, 2015, to
26 June 2, 2017. That time period is broader by more than two years than the time period
27 of the underlying adjudication, and likely includes information not relevant to the
28 claims and defenses, but it is a reasonable time period for discovery purposes as

1 compared with the time period beginning January 1, 2013 as set forth in the
2 Interrogatory.

3 Defendants further object to these Interrogatories to the extent that they seek
4 (a) communications or information protected by the attorney-client privilege, or (b)
5 communications or information protected by the deliberative process privilege

6 **Answer:**

7 Subject to and without waiving the above-stated objections—including both
8 those described in the prior five paragraphs and those outlined *supra* Part I ¶¶ 1–
9 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

10
11 **With respect to 10(A):²¹**

12 As reflected in the FAM, the Department interprets the phrase “born... of
13 parents” in 8 U.S.C. § 1401 to include a biological connection between the child and
14 the referenced parents. Thus, the Department reads 8 U.S.C. § 1401(g) as applying
15 to children whose biological parents are married to each other at the time of the
16 child’s birth. *See* 8 FAM 301.7-4(D) (interpreting section 1401(g) to apply to
17 children born in wedlock to a U.S. citizen parent and an alien parent).

18
19 **With respect to 10(B):²²**

20 The Department does not interpret or apply the term “wedlock” independent
21 of the meanings “in wedlock” or “out of wedlock.”

22
23
24 ²¹ Interrogatory 10(A) asks: “Identify and describe the State Department’s
25 interpretation or application of the term[] ‘born . . . of parents,’... for the purposes
26 of the INA, including any legal and policy support or basis considered, used, or relied
27 upon in deciding upon such definitions.”

28 ²² Interrogatory 10(B) asks: “Identify and describe the State Department’s
interpretation or application of the term[] ‘wedlock,’... for the purposes of the INA,
including any legal and policy support or basis considered, used, or relied upon in
deciding upon such definitions.”

With respect to 10(C):²³

The FAM defines “in wedlock” as “birth during the marriage of the biological parents to each other.” 8 FAM 304.1-2(a).

With respect to 10(D):²⁴

The FAM provides that: “If a married woman and someone other than her spouse have a biological child together, that child is considered to have been born out of wedlock. The same is true for a child born to a married man and a person other than his spouse.” 8 FAM 304.1-2(e).

With respect to 10(E):²⁵

There has been no change to the Department’s interpretation or application of “born... of parents” since January 1, 2015. The citation/location within the FAM where relevant FAM provisions may exist has changed, pursuant to reorganization and renumbering as of July 16, 2018.

With respect to 10(F):²⁶

There has been no change to the Department’s interpretation or application of “wedlock,” “in wedlock,” or “out of wedlock” since January 1, 2015. The

²³ Interrogatory 10(C) asks: “Identify and describe the State Department’s interpretation or application of the term[] ‘in wedlock,’... for the purposes of the INA, including any legal and policy support or basis considered, used, or relied upon in deciding upon such definitions.”

²⁴ Interrogatory 10(D) asks: “Identify and describe the State Department’s interpretation or application of the term[] ‘out of wedlock,’... for the purposes of the INA, including any legal and policy support or basis considered, used, or relied upon in deciding upon such definitions.”

²⁵ Interrogatory 10(E) asks: “Identify and describe any change in any such interpretation or application [of the term ‘born... of parents’] by the State Department since January 1, 2013.”

²⁶ Interrogatory 10(F) asks: “Identify and describe any change in any such interpretation or application [of the term ‘wedlock’] by the State Department since January 1, 2013.”

1 citation/location within the FAM where such interpretations may exist has changed,
2 pursuant to reorganization and renumbering as of July 16, 2018.

3
4 **IV. SIGNATURES PURSUANT TO FEDERAL RULE OF CIVIL**
5 **PROCEDURE 33(B)(5)**

6 Dated: October 5, 2018

As to objections,

7 JOSEPH H. HUNT
8 Assistant Attorney General

9 JOSHUA E. GARDNER
Assistant Director

10 /s/ Lisa Zeidner Marcus

11 LISA ZEIDNER MARCUS
12 Senior Counsel

13 VINITA B. ANDRAPALLIYAL
14 Trial Attorney

15 U.S. Department of Justice, Civil Division
16 Federal Programs Branch
17 P.O. Box 883, Benjamin Franklin Station
18 Washington, DC 20530
19 Tel: (202) 514-3336
20 Email: Lisa.marcus@usdoj.gov

21 As to the answers, see the attached certification pages.
22
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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants,

Case No. **2:18-cv-00523-JFW (JCx)**

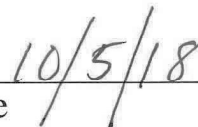
**Defendants' First Set of Responses to
Plaintiffs' First Set of Interrogatories,
Signature Page**

Certification of Margaret S. Ramsay

I, Margaret S. Ramsay, declare that I assisted in the preparation of and provided information for the Department of State's responses to Plaintiffs' Interrogatory Nos. 1, 2, 3A, 3B, and 3C in the above-captioned case. The responses are based upon information gathered in the course of my inquiry and information maintained in the regular course of agency activities, supplemented in some instances with personal knowledge. On behalf of the Department, I furnish the answers to Interrogatory Nos. 1 and 2; also on behalf of the Department, I furnish those portions of the answers to Interrogatory Nos. 3A, 3B, and 3C that directly relate to the U.S. Consulate General, Toronto.

I declare under penalty of perjury that that these answers are true and correct.


Margaret S. Ramsay
Consul


Date

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants,

) Case No. **2:18-cv-00523-JFW (JCx)**

) **Defendants' First Set of Responses to**
) **Plaintiffs' First Set of Interrogatories,**
) **Signature Page**

Certification of Bennett S. Fellows

I, Bennett S. Fellows, declare that I assisted in the preparation of and provided information for the Department of State's responses to Plaintiffs' Interrogatory Nos. 3A-10F in the above-captioned case. The responses are based upon information gathered in the course of my inquiry and information maintained in the regular course of agency activities, supplemented in some instances with personal knowledge. On behalf of the Department, I furnish the answers to Interrogatory Nos. 3A-10F, other than those portions of the answers to Interrogatory Nos. 3A, 3B, and 3C that directly relate to the U.S. Consulate General, Toronto.

I declare under penalty of perjury that that these answers are true and correct.



Bennett S. Fellows
Division Chief
U.S. Department of State
Bureau of Consular Affairs, Office of Passport Services
Office of Adjudication, Policy Division

10 - 05 - 2018

Date

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants,

) Case No. **2:18-cv-00523-JFW (JCx)**
)
) **Defendants' First Set of Responses to**
) **Plaintiffs' First Set of Interrogatories**
) **Certificate of Service**
)
)
)
)
)
)

I hereby certify that on October 5, 2018, pursuant to prior agreement by the parties to accept service by electronic mail, I served *Defendants' First Set of Responses to Plaintiffs' First Set of Interrogatories* via electronic mail on Plaintiffs through their attorneys:

Alexa M. Lawson-Remer, Esq. (lawsonr@sullcrom.com)
Sullivan Cromwell LLP
1888 Century Park East, Los Angeles, CA 90067

Theodore Edelman, Esq. (edelmant@sullcrom.com)
Jessica Klein, Esq. (kleinj@sullcrom.com)
Sullivan Cromwell LLP
125 Broad Street, New York, NY 10004-2498

Aaron C. Morris, Esq. (amorris@immigrationequality.org)
Immigration Equality
40 Exchange Place, Suite 1300, New York, NY 10005-2744

/s/ Lisa Zeidner Marcus

LISA ZEIDNER MARCUS

Senior Counsel

U.S. Department of Justice, Civil Division, Federal Programs Branch
Lisa.marcus@usdoj.gov

Counsel for Defendants

Exhibit C

1 JOSEPH H. HUNT
Assistant Attorney General
2 JOSHUA E. GARDNER
Assistant Director
3 VINITA B. ANDRAPALLIYAL
Vinita.b.andrapalliyal@usdoj.gov
4 Trial Attorney
LISA ZEIDNER MARCUS
5 lisa.marcus@usdoj.gov
Senior Counsel
6

UNITED STATES DEPARTMENT OF JUSTICE
7 Civil Division
Federal Programs Branch
8 P.O. Box 883
Washington, DC 20044
9 Tel: (202) 514-3336

10 *Counsel for Defendants*

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

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

16 Plaintiffs,

17 v.

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

20 Defendants,
21

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

**Defendants' Second Set of Responses
to Plaintiffs' First Set of
Interrogatories**

November 16, 2018

22 On October 5, 2018, Defendants served Plaintiffs with "Defendants' First
23 Set of Responses to Plaintiffs' First Set of Interrogatories" ("Defendants' First Set
24 of Responses"). Among other objections, Defendants' First Set of Responses
25 objected to counting Plaintiffs' Interrogatories and their discrete subparts as
26 consisting of only twenty requests. Defs.' 1st Set Resps. ¶ 13. Defendants noted:
27 "When the Interrogatories and their discrete subparts are properly construed as
28

1 separate interrogatories pursuant to Fed. R. Civ. P. 33(a)(1), they total at least
2 forty-five Interrogatories.” *Id.*

3 Defendants’ First Set of Responses included responses to the first twenty-
4 five Interrogatories as properly construed counting discrete sub-parts. Without
5 waiving their objection that Plaintiffs improperly served more than twenty-five
6 interrogatories (include all discrete subparts) without a stipulation by Defendants
7 or leave of Court, *see* Fed. R. Civ. P. 33(a)(1), Defendants hereby provide
8 responses to the remaining interrogatories in Plaintiffs’ First Set of Interrogatories
9 (the “Interrogatories”). These responses are provided pursuant to Federal Rules of
10 Civil Procedure 26 and 33 and the Local Rules of the United States District Court
11 for the Central District of California.

12 **I. OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS¹**

13 1. For purposes of this response to the Interrogatories, Defendants use
14 and/or understand the following terms as those terms were defined by the
15 Interrogatories: “CRBA,” “Defendants,” “LGBT,” “Plaintiffs,” and “You” and
16 “Your.” Although Defendants concur with the Interrogatories’ definitions of the
17 terms “Section 301(g)” and “Section 309,” throughout this response to the
18 Interrogatories, Defendants instead tend to use the U.S. code citations—“8 U.S.C.
19 § 1401(g)” and “8 U.S.C. § 1409”—to refer to those provisions (as in effect,
20 unchanged, since before 2000). Additionally, Defendants use the following terms
21 not defined in Plaintiffs’ Interrogatories:

22 a. The term “the Bureau” refers to the Bureau of Consular Affairs.

23 b. The terms “Consulate Toronto” and “the Consulate” refer to the
24 U.S. Consulate General Toronto.

25
26 ¹ Defendants incorporate herein the Objections to Instructions and Definitions
27 included in Defendants’ First Set of Responses. Defendants replicate those
28 Objections here for ease of the reader.

1 c. The term “CRBA” refers to a Consular Report of Birth Abroad,
2 and “CRBAs” refers to such reports in the plural.

3 d. The term “the Dvash-Banks applications for CRBAs and U.S.
4 passports” refers to the applications submitted by Andrew Mason Dvash-
5 Banks and Elad Dvash-Banks to the U.S. Consulate in Toronto to obtain
6 CRBAs and U.S. passports for Ethan and Aiden.

7 e. The term “the Dvash-Banks family” refers to Andrew Mason
8 Dvash-Banks, Elad Dvash-Banks, Ethan Jacob Dvash-Banks, and Aiden
9 James Dvash-Banks. When referring to a particular member of the Dvash-
10 Banks family, Defendants use that person’s first name, *e.g.*, the term
11 “Andrew” refers to Andrew Mason Dvash-Banks, the term “Elad” refers to
12 Elad Dvash-Banks; the terms “Ethan” and “Aiden” were defined in
13 Plaintiffs’ Interrogatories.

14 f. The term “underlying adjudication” refers to the adjudication of
15 two applications—an “Application for Consular Report of Birth Abroad of a
16 Citizen of the United States of America” and an “Application for U.S.
17 Passport”—submitted on behalf of Ethan on January 24, 2017 and denied by
18 Consulate Toronto on March 2, 2017.

19 2. Defendants object to the Interrogatories’ definition of the term “CIS”
20 as unreasonably vague and overly broad. *See* Interrogatories at 1 ¶ B. The
21 Interrogatories define that term as not only the United States Citizenship and
22 Immigration Services (“USCIS”)² and the former United States Immigration and
23 Naturalization Service, but also “any [other] predecessor” of USCIS, as well as
24

25
26 ² Throughout this response to the Interrogatories, Defendants tend to use the
27 government’s preferred acronym “USCIS,” rather than “CIS,” to refer to the U.S.
28 Citizenship and Immigration Services, a component of the Department of
Homeland Security.

1 “any and all of its divisions, departments, sections, units, and Representatives.” *Id.*
 2 Such definition is unreasonably vague and overly broad because the USCIS is a
 3 component of a different Executive department, the Department of Homeland
 4 Security; it is not a component of the Department of State, and as such Defendants
 5 cannot reasonably be expected to know each and every predecessor, division,
 6 department, section, unit, or Representative of USCIS.

7 3. Defendants object to the Interrogatories’ definition of the term
 8 “Communication” as unreasonably vague and overly broad to the extent the
 9 Interrogatories define that term to include non-written or non-recorded
 10 communications, including “radio” and “verbal” communications, as well as “any
 11 other actions intended to convey or actually conveying information as data.” *See*
 12 *id.* at 1 ¶ C.

13 4. Defendants object to the Interrogatories’ definition of the term
 14 “Concerning” as unreasonably vague and overly broad to the extent the
 15 Interrogatories define that term to include items that do not directly pertain to the
 16 topic at issue but instead merely “refer[] to” or “mention[]” it or are “*in any way*
 17 logically or factually connected” to its matter. *See id.* at 1–2 ¶ D (emphasis added).

18 5. Defendants object to the Interrogatories’ definition of the term “DHS”
 19 as unreasonably vague and overly broad. *See id.* at 2 ¶ G. The Interrogatories
 20 define DHS as “United States Department of Homeland Security in its entirety, and
 21 any predecessor thereof,” but there was no predecessor to the Department of
 22 Homeland Security in its entirety. The Department of Homeland Security was a
 23 new Executive department created in the wake of 9/11. *See* Homeland Security
 24 Act, 116 Stat. 2125 (2002) (codified as amended at 6 U.S.C. § 101 note). It was
 25 created through the integration of all or part of twenty-two different federal
 26 departments and agencies into one, unified Department of Homeland Security, but
 27 none of the those twenty-two units originated from the Department of State. *See*
 28

1 *id.*³ The definition of “DHS” is also unreasonably vague and overly broad because
 2 it includes “any and all of its divisions, departments, sections, units, embassies,
 3 consulates, and Representatives,” *see* Interrogatories at 2 ¶ G, but Defendants
 4 cannot reasonably be expected to know each and every division, department,
 5 section, unit, or Representative of an Executive department different and separate
 6 from the Department of State, nor would the Department of Homeland Security
 7 maintain any embassy or consulate.

8 6. Defendants object to the Interrogatories’ definition of the terms
 9 “Document” and/or “Documents” as unreasonably vague and overly broad, for a
 10 number of reasons. *See* Interrogatories at 2 ¶ H. Defendants object that the terms
 11 are unreasonably vague and overly broad to the extent they are defined to include
 12 “archived” “World Wide Web or other HTML pages.” *Id.* Defendants do not know
 13 what the subpoena means by “archived,” an undefined term; the phrase “other
 14 HTML pages” is also unreasonably vague. To the extent the Department maintains
 15 historical copies of websites, its technical means for retrieving them may be
 16 cumbersome and may not necessarily even be feasible with respect to particular
 17 sites, in particular sites that were active farther back in time. Defendants object to
 18 the Interrogatories’ definition of these terms to the extent it includes “intelligence
 19 or information” that is classified or protected by a law enforcement privilege. *See*
 20 *id.* Further, Defendants object to producing multiple copies of documents; it is
 21 overly broad and unduly burdensome to require Defendants to search for and
 22 produce any and all printouts or copies of documents that include any notation or
 23 “mark that is not part of the original text or reproduction thereof.” *See id.* It is
 24 overly broad and unduly burdensome, as well as disproportionate to the needs of
 25 _____

26 3 *See also* <https://www.dhs.gov/who-joined-dhs> (displaying chart—under the
 27 heading “Chronology of Events”—listing the twenty-two units joined to form
 28 DHS, and identifying the various Executive agencies from which they came).

1 the case, to require Defendants to search for and produce any and all “draft[s] or
 2 non-identical cop[ies]” of Documents, *see id.*, and drafts and potentially non-
 3 identical copies would in any event likely be subject to the deliberative process
 4 privilege.

5 7. Defendants object to the Interrogatories’ definition of the term
 6 “FAM” to the extent the Interrogatories define that term to include not only the
 7 Foreign Affairs Manual but also “all prior... versions and amendments... in
 8 final... form,” “all prior... versions and amendments... in draft... form,” and
 9 “all... proposed subsequent versions and amendments, whether in draft or final
 10 form.” *Id.* at 2–3 ¶ I. Such definition is overly broad, unduly burdensome, not
 11 relevant to the claims and defenses, and disproportionate to the needs of the case.
 12 The Department of State has published the Foreign Affairs Manual since 1960, and
 13 portions have been amended continually since that time. The Interrogatories’
 14 definition of “FAM” also includes all “associated handbooks,” an undefined term.
 15 Defendants construe the phrase “associated handbooks” as referring to the Foreign
 16 Affairs Handbook, and object to the phrase as unreasonably vague and overly
 17 broad to the extent that Plaintiffs intended any other construction. Additionally, the
 18 Interrogatories’ definition, which includes drafts of the FAM, implicates the
 19 deliberative process privilege, and is objectionable on that basis.

20 8. Defendants object to the Interrogatories’ definition of the term
 21 “Identify,” *id.* at 3 ¶ J, as unreasonably vague and overly broad because it provides
 22 a different meaning of the term “with respect to Persons,” “with respect to
 23 Documents,” “with respect to Communications,” and “with respect to any
 24 transaction, occurrence, event, arrangement, or any other thing.” Yet when the
 25 term “Identify” is used in each individual interrogatory it is not obvious which of
 26 these meanings would apply. And, in any event, each meaning is unduly
 27 burdensome, and in most instances would require Defendants to provide
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1 information not relevant to the claims and defenses in the case. Defendants further
2 object to the Interrogatories' definition of the term "Identify" as overly broad,
3 unduly burdensome, and disproportionate to the needs of the case because the
4 definition requires a level and amount of detail beyond that which is necessary to
5 recognize or specify the particular thing (whether person, document,
6 communication, policy, protocol, or other) that Defendants are asked by an
7 individual interrogatory to "identify."

8 9. Defendants object to the Interrogatories' definition of the term "INA"
9 as encompassing the entire Immigration and Nationality Act. *See id.* at 3 ¶ K.
10 Unless otherwise specified in response to specific requests, Defendants will
11 construe the term "INA" as used in the Interrogatories as encompassing only those
12 provisions relating to acquisition of U.S. citizenship at birth, *e.g.*, Sections 301 and
13 309, codified at 8 U.S.C. § 1401 and 8 U.S.C. § 1409.

14 10. Defendants object to the Interrogatories' definition of the term
15 "Representatives" to the extent the Interrogatories define that term to include
16 "any... persons acting, or purporting to act, on behalf of or in concert or
17 cooperation with, a Person." *See* Interrogatories at 3 ¶ O. Such definition is
18 unreasonably vague and overly broad because Defendants cannot reasonably be
19 expected to know any and all persons who act or purport to act, on behalf of or in
20 concert or cooperation with, any given Person. In addition, this definition, which
21 would include government contractors, is overly broad and unduly burdensome.

22 11. Defendants object to the Interrogatories' definition of the term "State
23 Department" to the extent the Interrogatories define that term to incorporate and
24 include "Representatives." *See id.* at 4 ¶ Q. As described above, the Interrogatories
25 include an overly broad and unreasonably vague definition of the term
26 "Representatives." *See supra* ¶ 10.

12. Defendants object to the “Instructions” articulated in the Interrogatories to the extent they purport to obligate Defendants to duties different from those required by: (a) Federal Rule of Civil Procedure 26 (“Rule 26”), which contains general provisions governing discovery; (b) Federal Rule of Civil Procedure 33 (“Rule 33”), which governs interrogatories and responding to interrogatories; and (c) relevant Local Rules in the Central District of California. *See* Interrogatories at 4–5. By purporting to obligate Defendants to additional duties not contained in these rules, the Interrogatories are overly broad, unduly burdensome, and disproportionate to the needs of the case. For example, Defendants object that:

a. Rule 26(b)(5) governs a party’s duties when claiming privilege or protecting trial-preparation materials, and the Interrogatories’ Instruction E appears to depart from Rule 26(b)(5)’s requirements. Defendants will only produce a privilege log if they “withhold information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material.” Fed. R. Civ. P. 26(b)(5). Such privilege log would conform to requirements of the Federal Rules of Civil Procedure and any pertinent local rule.

b. The Interrogatories’ Instruction F departs from the language of Rule 26(e) governing supplementation of disclosures and responses. Defendants object to Instruction K and will instead follow Rule 26(e)’s requirements regarding supplementations and corrections. Defendants further object to Instruction F to the extent it could be read as extending into the future the cut-off date for answering the interrogatories and/or for responsive information. As provided in Rule 26(e), Defendants will supplement their answers to the interrogatories to the extent that Defendants “learn[] that in some material request the... response is incomplete or

incorrect,” and “if the additional or corrective information has not otherwise been made known to... [Plaintiffs] during the discovery process or in writing,” Fed. R. Civ. P. 26(e)(1)(A), or “as ordered by the court,” *id.* 26(e)(1)(B). Defendants object to the extent the Interrogatories ask for future information, *i.e.*, Defendants object to “continuing interrogatories.”

II. OBJECTIONS TO ALL INTERROGATORIES⁴

13. Defendants object to counting these Interrogatories and their discrete subparts as consisting of only twenty requests. When the Interrogatories and their discrete subparts are properly construed as separate interrogatories pursuant to Fed. R. Civ. P. 33(a)(1), they total at least forty-five Interrogatories. Given the burden presented by so many separate requests, Defendants further object to the timeframe provided to respond to these Interrogatories. The instant response—Defendants Second Set of Responses to Plaintiffs’ First Set Interrogatories—includes responses to the remaining Interrogatories beyond the first twenty-five Interrogatories as properly construed counting discrete sub-parts.

14. Defendants object to the Interrogatories as overly broad, not relevant to the claims or defenses in this case, and disproportionate to the needs of this case to the extent they seek information outside of a reasonable time period relating to the claims and defenses in this case. Most of the interrogatories do not specify a timeframe, and those interrogatories that do contain a timeframe tend to seek information outside of the time period of the underlying adjudication at issue in this case. Unless otherwise specified in response to specific requests, Defendants construe all Interrogatories as applying to, and seeking documents and records

⁴ Defendants incorporate herein the Objections to All Interrogatories included in Defendants’ First Set of Responses. Defendants replicate those Objections here for ease of the reader.

1 within, the timeframe starting January 1, 2015—1 year, 8 months, and 15 days
2 before the birth date of Aiden and Ethan, *see* Compl. ¶ 46, and at least several
3 months prior to “the summer of 2015” when it is alleged that Andrew and Elad
4 selected an anonymous egg donor used to conceive Ethan, *see id.* ¶ 44—and
5 ending on June 2, 2017—three months after the Consulate issued its decision
6 denying Andrew’s application for a CRBA and passport for Ethan.

7 15. Defendants object to the Interrogatories as overly broad, not relevant
8 to the claims or defenses in this case, and disproportionate to the needs of this case
9 to the extent they seek information of any component of the Department of State
10 other than information generated or possessed by, or available to, the U.S.
11 Consulate in Toronto.⁵ The United States has more than 250 embassies and
12 consulates worldwide, employing more than 50,000 people, operating in English
13 and host-country languages, along with more than 60 other bureaus and units
14 employing more than 20,000 people within the United States; it would be unduly
15 burdensome as well as disproportionate and not relevant to the claims and defenses
16 in this case for the Department to answer the Interrogatories with respect to each
17 and every one of those locations. Worldwide, the Department domestically and
18 through its embassies and consulates overseas received more than 14 million
19 passport applications in fiscal year 2015; more than 16 million passport
20 applications in fiscal year 2016; and more than 19 million passport applications in
21 fiscal year 2017. Worldwide, the Department printed 73,103 CRBAs in fiscal year
22 2015; 76,519 CRBAs in fiscal year 2016; and 89,495 CRBAs in fiscal year 2017.
23 Because the U.S. Consulate in Toronto is the Department of State component that
24 adjudicated the Dvash-Banks applications for CRBAs and U.S. passports at issue

25
26 ⁵ Information “available to the U.S. Consulate in Toronto” includes policies or
27 guidance prepared and provided by Department of State components in
28 Washington, D.C., to or intended for use by Consulate Toronto.

1 in this litigation, it is the component relevant to the claims and defenses in this
2 case. Unless otherwise specified in response to a specific request, Defendants will
3 only provide answers describing (a) the practice, approach, or knowledge of
4 Consulate Toronto, or (b) the general practice, general approach, or general
5 knowledge of the Bureau of Consulate Affairs to the extent such practice,
6 approach, or knowledge applies to Consulate Toronto; Defendants will not include
7 in their responses any practices, approaches, policies, or other information
8 applicable to other consulates, regions, or components.

9 16. Defendants object to the Interrogatories to the extent they request
10 discovery beyond the administrative record in connection with Plaintiffs' claims
11 seeking judicial review of agency actions under the Administrative Procedure Act,
12 5 U.S.C. § 701 et seq. (Count III), and under the Declaratory Judgment Act, 28
13 U.S.C. §§ 2201–02 (Counts I and II). To the extent these claims are properly
14 brought, the Court is limited to reviewing the administrative record compiled by
15 the agency, which the agency submits as the complete record of its proceedings.
16 Though Defendants provide answers to the interposed Interrogatories, Defendants
17 preserve all objections regarding the appropriate use of information gathered
18 through discovery. The Court generally may not base its review on a record
19 supplemented with discovery created in the first instance in the District Court.

20 17. Defendants object to the Interrogatories to the extent that they seek to
21 know issues of “pure law,” *i.e.*, legal issues unrelated to the facts of the case. *See*
22 Fed. R. Civ. P. 33 advisory committee’s note to 1970 amendment; *see also* 8B The
23 Late Charles Alan Wright et al., *Federal Practice and Procedure* § 2167 (3d ed.).

24 18. Defendants object to the Interrogatories to the extent that they seek (a)
25 attorney work product; (b) information protected by the attorney-client privilege;
26 (c) information protected by the deliberative process privilege, law enforcement
27 privilege, or any form of executive privilege; (d) information classified and
28

1 required to be kept secret pursuant to Executive Order; (e) information the
2 disclosure of which would violate legitimate privacy interests and expectations of
3 persons not party to this litigation; (f) records protected from disclosure by the
4 Privacy Act, 5 U.S.C. § 552a, and its implementing regulations, especially 22
5 C.F.R. §§ 171.20–171.26; (h) alien registration records, which are confidential
6 pursuant to 8 U.S.C. § 1304; or (i) any other applicable privilege, statute, or
7 protection.

8 19. Defendants specifically decline to produce privileged information.
9 Defendants further object to any requirement that it produce a privilege log for
10 privileged material not otherwise properly within the scope of discovery and/or as
11 to which no privilege log would be required pursuant to Federal Rule of Civil
12 Procedure 26(b)(5).

13 20. Each and every response contained herein is subject to the above
14 objections, which apply to each and every response, regardless of whether a
15 specific objection is interposed in a specific response. The making of a specific
16 objection in response to a particular request is not intended to constitute a waiver
17 of any other objection not specifically referenced in the particular response.

18 21. Defendants specifically reserve the right to make further objections as
19 necessary to the extent additional issues arise regarding the meaning of terms in
20 and/or information sought by discovery.
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1 **III. OBJECTIONS AND RESPONSES TO SPECIFIC**
2 **INTERROGATORIES**

3 **INTERROGATORY No. 11**

4 *Identify and describe any protocol, procedure, practice or policy of the State*
5 *Department pursuant to which an applicant for, or subject of, a CRBA, United*
6 *States passport, or Certificate of Citizenship for one or more children born outside*
7 *the United States is required to demonstrate a biological relationship between the*
8 *child and a United States citizen parent.*

9 **Objections:**

10 Defendants object to this Interrogatory on the basis that it is compound and
11 includes at least two discrete subparts: (A) “Identify and describe any protocol,
12 procedure, practice or policy of the State Department pursuant to which an
13 applicant for... a CRBA... [or] United States passport... is required to demonstrate
14 a biological relationship between the [subject] child and a United States citizen
15 parent”; and (B) “Identify and describe any protocol, procedure, practice or policy
16 of the State Department pursuant to which a[] ... subject of ... [a] Certificate of
17 Citizenship ... is required to demonstrate a biological relationship between the
18 [subject] child and a United States citizen parent.” Accordingly, Defendants
19 interpret this interrogatory as two separate interrogatories (11A and 11B).

20 Defendants object to these Interrogatories to the extent that they seek (a)
21 communications or information protected by the attorney-client privilege, or (b)
22 communications or information protected by the deliberative process privilege.

23 Additionally, Defendants object to Interrogatory No. 11B as overly broad,
24 unduly burdensome, not relevant, and disproportionate to the needs of the case to
25 the extent that it seeks to know information regarding or relating to a different
26 Executive department, the Department of Homeland Security (“DHS”), or any
27 components thereof. The actions taken by Defendants and challenged in this
28 litigation are separate from and do not depend on any actions or policies of DHS,
29 and as such the DHS-related information sought by this Interrogatory is not

1 relevant to the claims and defenses in this litigation, and is disproportionate to the
2 needs of the case.

3
4 **Answer:**

5 Subject to and without waiving the above-stated objections—including both
6 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
7 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

8 **With respect to 11(A):**⁶

9 8 FAM 304.2 (former 7 FAM 1100 Appendix D) provides guidance about
10 citizenship adjudication for purposes of CRBA applications and U.S. passport
11 applications, and the use of DNA testing to establish the requisite relationship
12 between the U.S. citizen putative or alleged parent and a child claiming derivative
13 U.S. citizenship. *See also* Defendants’ Responses to Interrogatory Nos. 4(A) and
14 4(B).

15 **With respect to 11(B):**⁷

16 If an applicant for a U.S. passport provides a Certificate of Citizenship
17 issued by the Department of Homeland Security as documentation supporting
18 his/her application for a U.S. passport or a CRBA, the Department typically
19 accepts the Certificate of Citizenship as proof of U.S. citizenship and would not
20 ask for additional evidence to support the claim to citizenship. As set out in 8 FAM
21 303.1-1(a)(4), a valid certificate of citizenship bearing the seal of the issuing
22 _____

23 ⁶ Interrogatory 11(A) asks: “Identify and describe any protocol, procedure, practice
24 or policy of the State Department pursuant to which an applicant for, or subject of,
25 a CRBA... [or] United States passport... is required to demonstrate a biological
relationship between the [subject] child and a United States citizen parent.”

26 ⁷ Interrogatory 11(B) asks: “Identify and describe any protocol, procedure, practice
27 or policy of the State Department pursuant to which an applicant for, or subject of,
28 a... Certificate of Citizenship... is required to demonstrate a biological relationship
between the [subject] child and a United States citizen parent.”

1 agency/office is proof of citizenship and the bearer's claim to citizenship cannot be
2 questioned unless the issuing authority has canceled or revoked the document."

3
4 **INTERROGATORY NO. 12**

5 *Identify and describe any protocol, procedure, practice or policy of the State*
6 *Department pursuant to which an adult child of a married couple (of which one*
7 *spouse is a United States citizen) who was born outside of the United States and*
8 *applied for a CRBA, United States passport, or Certificate of Citizenship on his or*
9 *her own behalf is required to demonstrate a biological connection between the*
10 *applicant and a United States citizen parent.*

11 **Objections:**

12 Defendants object to this Interrogatory on the basis that it is compound and
13 includes at least two discrete subparts: (A) "Identify and describe any protocol,
14 procedure, practice or policy of the State Department pursuant to which an adult
15 child of a married couple (of which one spouse is a United States citizen) who was
16 born outside of the United States and applied for a CRBA... [or] United States
17 passport ... on his or her own behalf is required to demonstrate a biological
18 relationship between the applicant and a United States citizen parent"; and (B)
19 "Identify and describe any protocol, procedure, practice or policy of the State
20 Department pursuant to which an adult child of a married couple (of which one
21 spouse is a United States citizen) who was born outside of the United States and
22 applied for a ... Certificate of Citizenship on his or her own behalf is required to
23 demonstrate a biological relationship between the applicant and a United States
24 citizen parent." Accordingly, Defendants interpret this interrogatory as two
25 separate interrogatories (12A and 12B).

26 Defendants object to these Interrogatories to the extent that they seek
27 information protected by (a) the attorney-client privilege, (b) the deliberative
28 process privilege, and (c) the law enforcement privilege.

Additionally, Defendants object to Interrogatory No. 12B, as overly broad,
unduly burdensome, not relevant, and disproportionate to the needs of the case to

1 the extent that it seeks to know information regarding or relating to a different
2 Executive department, the Department of Homeland Security (“DHS”), or any
3 components thereof. The actions taken by Defendants and challenged in this
4 litigation are separate from and do not depend on any actions or policies of DHS,
5 and as such the DHS-related information sought by this Interrogatory is not
6 relevant to the claims and defenses in this litigation, and is disproportionate to the
7 needs of the case. Defendants note that DHS, not the Department, adjudicates and
8 issues Certificates of Citizenship.

9
10 **Answer:**

11 Subject to and without waiving the above-stated objections—including both
12 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
13 and Part II ¶¶ 13–21—Defendants respond as follows:

14 **With respect to 12(A):**⁸

15 A Consular Report of Birth Abroad of a U.S. citizen is only issued to a child
16 who acquired U.S. citizenship at birth and who is generally under the age of 18 at
17 the time of the application. More information regarding the issuance of a CRBA or
18 a U.S. passport can be found at [https://travel.state.gov/content/travel/
19 en/international-travel/while-abroad/birth-abroad.html](https://travel.state.gov/content/travel/en/international-travel/while-abroad/birth-abroad.html).

20 8 FAM 304.2 (former 7 FAM 1100 Appendix D) provides guidance to
21 adjudicators at passport agencies and centers and U.S. embassies and consulates
22 abroad about citizenship adjudication and the use of DNA testing to establish the
23

24
25 ⁸ Interrogatory 12(A) asks: “Identify and describe any protocol, procedure, practice
26 or policy of the State Department pursuant to which an adult child of a married
27 couple (of which one spouse is a United States citizen) who was born outside of
28 the United States and applied for a CRBA... [or] United States... on his or her own
behalf is required to demonstrate a biological connection between the applicant and
a United States citizen parent.”

1 requisite relationship between the U.S. citizen putative or alleged parent and a
2 child claiming derivative U.S. citizenship. *See also* Defendants' Responses to
3 Interrogatory Nos. 4(A) and 4(B).

4 **With respect to 12(B):**⁹

5 Defendants do not have any protocol, procedure, practice, or policy
6 governing the situation in which an adult child of a married couple (of which one
7 spouse is a United States citizen) who was born outside of the United States
8 applied for a Certificate of Citizenship on his or her own behalf; the Department of
9 Homeland Security (and specifically, USCIS) adjudicates applications for
10 Certificates of Citizenship.

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12 **INTERROGATORY NO. 13**

13 *Identify and describe the evidentiary requirements deemed necessary by the*
14 *State Department to establish United States citizenship at birth under Section*
15 *301(g) or Section 309, including when genetic testing will or will not be requested*
or required as part of that showing.

16 **Objections:**

17 Defendants object to this Interrogatory on the basis that it is compound and
18 includes at least two discrete subparts: (A) "Identify and describe the evidentiary
19 requirements deemed necessary by the State Department to establish United States
20 citizenship at birth under Section 301(g)"; and (B) "Identify and describe the
21 evidentiary requirements deemed necessary by the State Department to establish
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25 ⁹ Interrogatory 12(B) asks: "Identify and describe any protocol, procedure, practice
26 or policy of the State Department pursuant to which an adult child of a married
27 couple (of which one spouse is a United States citizen) who was born outside of
28 the United States and applied for a... Certificate of Citizenship on his or her own
behalf is required to demonstrate a biological connection between the applicant and
a United States citizen parent."

1 United States citizenship at birth under Section 309.” Accordingly, Defendants
2 interpret this interrogatory as two separate interrogatories (13A–13B).

3 Defendants further object to each of these two discrete Interrogatories as
4 seeking to know issues of “pure law,” *i.e.*, legal issues unrelated to the facts of the
5 case. *See* Fed. R. Civ. P. 33 advisory committee’s note to 1970 amendment; *see*
6 *also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure
7 § 2167 (3d ed.). These are not “contention” interrogatories because they do not ask
8 for a “contention that relates to... the application of law to fact.” *Cf.* Fed. R. Civ.
9 P. 33 (a)(2). Rather, these interrogatories ask for Defendants’ interpretation of the
10 law divorced from any factual context, and in doing so seek Defendants’ legal
11 theories. Defendants object on the additional basis that such information is
12 protected from disclosure by the work-product doctrine. To the extent that these
13 interrogatories could be considered “contention interrogatories,” however,
14 Defendants expressly reserve the right to provide additional responses later in the
15 discovery period, or at the close of discovery, as relevant facts of the case may be
16 further developed or disclosed by Plaintiffs through discovery.

17 **Answer:**

18 Subject to and without waiving the above-stated objections—including both
19 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
20 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:
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With respect to 13(A):¹⁰

Relevant Department of State guidance regarding the interpretation and application of 8 U.S.C. § 1401(g) can be found in 8 FAM 304.2-2(a), which describes the burden of proof for establishing U.S. citizenship as follows:

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

With respect to 13(B):¹¹

Relevant Department of State guidance regarding interpretation and administration of 8 U.S.C. § 1409 can be found in 8 FAM 304.2-2(a), which describes the burden of proof for establishing U.S. citizenship. Additionally, 8 FAM 304.2-2(b) states:

8 U.S.C. § 1409 (a)(1) (INA 309(a)(1)) provides that for a person born abroad out of wedlock to a U.S. citizen father, a blood relationship between the person and the father is established by clear and convincing evidence. This is an intermediate level of burden of persuasion sometimes employed in U.S. civil procedure. In order to prove something by “clear and convincing evidence” the party with the burden of proof must convince the trier of fact that it is substantially more likely than not that the thing is in fact true. This is a lesser requirement than “proof beyond a reasonable doubt” which requires that the trier of fact be close to certain of the truth of the

¹⁰ Interrogatory 13(A) asks: “Identify and describe the evidentiary requirements deemed necessary by the State Department to establish United States citizenship at birth under Section 301(g)..., including when genetic testing will or will not be requested or required as part of that showing.”

¹¹ Interrogatory 13(B) asks: “Identify and describe the evidentiary requirements deemed necessary by the State Department to establish United States citizenship at birth under... Section 309, including when genetic testing will or will not be requested or required as part of that showing.”

1 matter asserted, but a stricter requirement than proof by
2 “preponderance of the evidence,” which merely requires that the
3 matter asserted seems more likely true than not.

4 **INTERROGATORY NO. 14**

5 *Identify and describe the State Department’s, CIS’s or DHS’s rationale,*
6 *governmental interests or concerns Concerning any decision not to treat as a*
7 *United States citizen a child born outside of the United States to a married couple*
(of which one spouse is a United States citizen) when the United States citizen is
not the child’s biological parent but is listed as a parent on the child’s birth
certificate.

8 **Objections:**

9 Defendants object to this Interrogatory on the basis that it is compound and
10 includes at least two discrete subparts: (A) “Identify and describe the State
11 Department’s ... rationale, governmental interests or concerns ...”; and (B)
12 “Identify and describe ... [US]CIS’s or DHS’s rationale, governmental interests or
13 concerns....” Accordingly, Defendants interpret this interrogatory as two separate
14 interrogatories (14A–14B).

15 Defendants further object to each of these two discrete Interrogatories as
16 seeking to know issues of “pure law,” *i.e.*, legal issues unrelated to the facts of the
17 case. *See* Fed. R. Civ. P. 33 advisory committee’s note to 1970 amendment; *see*
18 *also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure
19 § 2167 (3d ed.). These are not “contention” interrogatories because they do not ask
20 for a “contention that relates to... the application of law to fact.” *Cf.* Fed. R. Civ.
21 P. 33 (a)(2). Rather, these interrogatories ask for Defendants’ interpretation of the
22 law divorced from any factual context, and in doing so seek Defendants’ legal
23 theories. Defendants object on the additional basis that such information is
24 protected from disclosure by the work-product doctrine. To the extent that these
25 interrogatories could be considered “contention interrogatories,” however,
26 Defendants expressly reserve the right to provide additional responses later in the
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1 discovery period, or at the close of discovery, as relevant facts of the case may be
2 further developed or disclosed by Plaintiffs through discovery.

3 Defendants further object to these Interrogatories to the extent that they seek
4 (a) communications or information protected by the attorney-client privilege or (b)
5 communications or information protected by the deliberative process privilege.

6 Defendants further object to Interrogatory No. 14B, as overly broad, unduly
7 burdensome, not relevant, and disproportionate to the needs of the case to the
8 extent that it seeks to know information regarding or relating to a different
9 Executive department, the Department of Homeland Security (“DHS”), or any
10 components thereof. The actions taken by Defendants and challenged in this
11 litigation are separate from and do not depend on any actions or policies of DHS,
12 and as such the DHS-related information sought by this Interrogatory is not
13 relevant to the claims and defenses in this litigation, and is disproportionate to the
14 needs of the case. Defendants note that DHS, not the Department, adjudicates and
15 issues Certificates of Citizenship.

16 **Answer:**

17 Subject to and without waiving the above-stated objections—including both
18 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–
19 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:
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With respect to 14(A):¹²

The Department's rationale, governmental interests, and concerns are in faithfully executing the laws passed by Congress. The INA was enacted in 1952, a time when it was commonly understood, that outside the adoption context, a "parent" at birth referred to a biological parent. 8 FAM 301.4-1(D)(1)(a) provides, "[t]he laws on acquisition of U.S. citizenship through a parent have always contemplated the existence of a blood relationship between the child and the parent(s) through whom citizenship is claimed. It is not enough that the child is presumed to be the issue of the parents' marriage by the laws of the jurisdiction where the child was born. Absent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired. The burden of proving a claim to U.S. citizenship, including blood relationship and legal relationship, where applicable, is on the person making such claim."

With respect to 14(B):¹³

Defendants lack knowledge with respect the rationale, governmental interests, and concerns of the Department of Homeland Security and its components.

¹² Interrogatory 14(A) asks: "Identify and describe the State Department's... rationale, governmental interests or concerns Concerning any decision not to treat as a United States citizen a child born outside of the United States to a married couple (of which one spouse is a United States citizen) when the United States citizen is not the child's biological parent but is listed as a parent on the child's birth certificate."

¹³ Interrogatory 14(B) asks: "Identify and describe... [US]CIS's or DHS's rationale, governmental interests or concerns Concerning any decision not to treat as a United States citizen a child born outside of the United States to a married couple (of which one spouse is a United States citizen) when the United States citizen is not the child's biological parent but is listed as a parent on the child's birth certificate."

INTERROGATORY NO. 15

Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should (a) inquire about the biological and/or gestational relationships between married couples and their children, or (b) make requests or impose requirements for DNA or other genetic testing, Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a CRBA, United States passport, or Certificate of Citizenship on behalf of a child of that couple born outside the United States.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least four discrete subparts: (A) “Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... inquire about the biological and/or gestational relationships between married couples and their children, ... Concerning an application... for a CRBA... [or] United States passport ... on behalf of a child... born outside the United States”; (B) “Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... inquire about the biological and/or gestational relationships between married couples and their children, ... Concerning an application... for a... Certificate of Citizenship on behalf of a child.. born outside the United States”; (C) “Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... make requests or impose requirements for DNA or other genetic testing, Concerning an application... for a CRBA... [or] United States passport ... on behalf of a child... born outside the United States”; and (D) “Identify and describe any training ... or instructions given to State Department personnel Concerning the circumstances in which they should ... make requests or impose requirements for DNA or other genetic testing, Concerning an application... for a... Certificate of

1 Citizenship on behalf of a child... born outside the United States.” Accordingly,
2 Defendants interpret this interrogatory as four separate interrogatories (15A–15D).

3 Defendants further object to these discrete Interrogatories to the extent they
4 seek information protected by (a) the attorney-client privilege, (b) the deliberative
5 process privilege, (c) law enforcement of other types of Executive privilege.

6 **Answer:**

7 Subject to and without waiving the above-stated objections—including both
8 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
9 and Part II ¶¶ 13–21—Defendants respond as follows:

10
11 **With respect to 15(A):¹⁴**

12 Department of State guidance regarding interpretation and application of the
13 Immigration and Nationality Act can be found in its Foreign Affairs Manual
14 (“FAM”), which is a principal source in training materials for consular officers.
15 The FAM notes that “[c]hildren born in wedlock are generally presumed to be the
16 issue of that marriage. This presumption is not determinative in citizenship cases,
17 however, because an actual biological relationship to a U.S. citizen parent is
18 required. If doubt arises that the U.S. citizen ‘parent’ is biologically related to the
19 child, the consular officer is expected to investigate carefully.” 8 FAM 301.4-
20 1(D)(1)(d); *see also id.* § 301.4-1(D)(1)(a) (“It is not enough that the child is
21 presumed to be the issue of the parents’ marriage by the laws of the jurisdiction
22 _____

23 ¹⁴ Interrogatory 15(A) asks: “Identify and describe any training, including any
24 training manuals or other relevant materials, of State Department personnel,
25 including United States embassy personnel, or instructions given to State
26 Department personnel Concerning the circumstances in which they should...
27 inquire about the biological and/or gestational relationships between married
28 couples and their children... Concerning an application by or on behalf of a
married couple (one of whom is a United States citizen) for a CRBA... [or] United
States passport... on behalf of a child of that couple born outside the United
States.”

1 where the child was born. Absent a blood relationship between the child and the
2 parent on whose citizenship the child's own claim is based, U.S. citizenship is not
3 acquired.”). Circumstances in which such a doubt may arise include where “[t]he
4 child was born through surrogacy or other forms of assisted reproductive
5 technology.” 8 FAM 301.4-1(D)(1)(d)(5); *see also* 8 FAM 304.3-2 (“A child born
6 abroad to a surrogate, whose genetic parents are a U.S. citizen mother and
7 anonymous sperm donor, is considered for citizenship purposes to be a person born
8 *out of wedlock* to a U.S. citizen mother ... regardless of whether the woman is
9 married and regardless of whether her spouse is the legal parent of the child at the
10 time of birth.”) (emphasis added).

11 8 FAM 304.2 (former 7 FAM Appendix D) provides guidance to passport
12 agencies and centers and U.S. embassies and consulates abroad about citizenship
13 adjudication and the use of DNA testing to establish the requisite relationship
14 between the U.S. citizen putative or alleged parent and a child claiming derivative
15 U.S. citizenship.

16 Any consular officer who will adjudicate citizenship claims as part of his or
17 her job duties is required to take a six-week course at the Foreign Service Institute,
18 which includes course modules such as “Interviewing and Decision Making” and
19 “Citizenship Interviewing,” in addition to modules on adjudication. Domestic
20 adjudicators have similar training requirements in adjudicating citizenship claims
21 in various roles at passport agencies and Headquarter offices including, but not
22 limited to, “Passport Services’ National Training Program.” In addition, there is
23 more advanced training available for consular officers that include training on
24 citizenship adjudication, including evidentiary considerations. Citizenship
25 adjudication issues may also be addressed in regional training of consular officers
26 and training related to fraud prevention as well. In all of this training employees
27 learn about the laws being applied, the Department’s policies on citizenship
28

1 adjudication, what parts of the FAM to consult, and which offices in the
2 Department to contact for questions about particular cases or issues.

3 By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants
4 note that in responding to Plaintiffs' Requests for Production of Documents Nos.
5 21, 22, 23, and 24, Defendants have indicated their intention to produce non-
6 privileged responsive documents regarding training of State Department personnel.
7 Because the "Identif[ication]" of this information may be determined by
8 examining, abstracting, or summarizing the training documents themselves, and
9 because the burden of deriving or ascertaining this portion of Defendants' answer
10 will be substantially the same for either Defendants or the Plaintiffs, Defendants
11 refer Plaintiffs to the documents that Defendants will be producing.

12 Additionally, Defendants refer Plaintiffs to Defendants' Answers to
13 Interrogatory Nos. 4(A), 4(B), 11(A), and 12(A). These responses relate to the
14 Department's protocols, procedures, practices, guidelines or policies for applying
15 INA § 301(g) and INA § 309 and the requirement for an applicant to demonstrate a
16 biological relationship between the [subject] child and a United States citizen
17 parent.

18 **With respect to 15(B):¹⁵**

19 Defendants do not provide personnel of the Department of State with
20 training or instructions regarding applications for a Certificate of Citizenship
21 because such applications are not adjudicated by Department of State personnel.
22

23
24 ¹⁵ Interrogatory 15(B) asks: "Identify and describe any training, including any
25 training manuals or other relevant materials, of State Department personnel,
26 including United States embassy personnel, or instructions given to State
27 Department personnel Concerning the circumstances in which they should...
28 inquire about the biological and/or gestational relationships between married
couples and their children... Concerning an application by or on behalf of a
married couple (one of whom is a United States citizen) for a... Certificate of
Citizenship on behalf of a child of that couple born outside the United States.

With respect to 15(C):¹⁶

This request is substantively similar to the requests contained at 11(A) and 12(A). As a result, Defendants refer Plaintiffs to Defendants' Answers to Interrogatory Nos. 4(A), 4(B), 11(A), and 12(A). These responses relate to the Department's protocols, procedures, practices, guidelines or policies for applying INA § 301(g) and INA § 309 and the requirement for an applicant to demonstrate a biological relationship between the [subject] child and a United States citizen parent.

With respect to 15(D):¹⁷

Defendants do not provide personnel of the Department of State with training or instructions regarding applications for a Certificate of Citizenship because such applications are not adjudicated by Department of State personnel.

¹⁶ Interrogatory 15(C) asks: "Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should... make requests or impose requirements for DNA or other genetic testing, Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a CRBA... [or] United States passport... on behalf of a child of that couple born outside the United States."

¹⁷ Interrogatory 15(D) asks: "Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning the circumstances in which they should... make requests or impose requirements for DNA or other genetic testing, Concerning an application by or on behalf of a married couple (one of whom is a United States citizen) for a... Certificate of Citizenship on behalf of a child of that couple born outside the United States."

INTERROGATORY NO. 16

Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in connection with the State Department's (i) application of Section 301(g) or Section 309; or (ii) determination of applications for a CRBA, United States passport, or Certificate of Citizenship.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least four discrete subparts: (A) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... application of Section 301(g)"; (B) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... application of ... Section 309"; (C) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... determination of applications for a CRBA... [or a] United States passport"; and (D) "Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, ... including surrogacy, has in connection with the State Department's ... determination of applications for a ... or Certificate of Citizenship."

Defendants further object to each of these Interrogatories as seeking to know issues of "pure law," *i.e.*, legal issues unrelated to the facts of the case. *See* Fed. R. Civ. P. 33 advisory committee's note to 1970 amendment; *see also* 8B The Late Charles Alan Wright et al., Federal Practice and Procedure § 2167 (3d ed.). These are not "contention" interrogatories because they do not ask for a "contention that relates to... the application of law to fact." *Cf.* Fed. R. Civ. P. 33 (a)(2). Rather, these interrogatories ask for Defendants' interpretation of the law divorced from any factual context, and in doing so seek Defendants' legal theories. Defendants

1 object on the additional basis that such information is protected from disclosure by
2 the work-product doctrine. To the extent that these interrogatories could be
3 considered “contention interrogatories,” however, Defendants expressly reserve the
4 right to provide additional responses later in the discovery period, or at the close of
5 discovery, as relevant facts of the case may be further developed or disclosed by
6 Plaintiffs through discovery.

7 Defendants further object to these Interrogatories as unreasonably vague,
8 overly broad, unduly burdensome, not relevant to any party’s claim or defense, and
9 disproportionate to the needs of the case. The phrase “effect or impact” as used in
10 these Interrogatories is unreasonably vague, overly broad, unduly burdensome, and
11 Defendants do not understand what the Interrogatories are seeking. Defendants
12 further object to these Interrogatories to the extent they are not temporally limited
13 to the time period of the underlying adjudication. Defendants further object to
14 these Interrogatories as unreasonably cumulative, duplicative, and oppressive,
15 given that Defendants have already answered Plaintiffs’ Interrogatories No. 4(A)
16 and 4(B).

17 **Answer:**

18 Subject to and without waiving the above-stated objections—including both
19 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
20 and Part II ¶¶ 13–21—and noting that the FAM provision cited in the question has
21 been renumbered¹⁸—Defendants respond as follows:
22
23 _____

24 ¹⁸ The current FAM citation of “8 FAM 304.3” refers to material previously
25 identified by the citation “7 FAM 1100 Appendix D.” Defendants have previously
26 brought this change to the attention of Plaintiffs’ counsel. See “Table of
27 Department of State’s Foreign Affairs Manual Provisions,” Mem. in Support of
28 Defs.’ Mot. to Dismiss, ECF No. 31-1 at viii, *Blixt v. U.S. Dep’t of State*, 18-cv-
124 (D.D.C.) (Sept. 3, 2018); *see also* Defs.’ Resp. to Interrogatory No. 10(E)
(noting that the FAM was renumbered in July 2018).

With respect to 16(A):¹⁹

Relevant Department of State guidance regarding interpretation and administration of the Immigration and Nationality Act can be found in its Foreign Affairs Manual (“FAM”). The Department’s guidance on acquisition of citizenship at birth in cases of assisted reproductive technology is found at 8 FAM 304.3 (former 7 FAM 1140 Appendix D).²⁰ Specifically, the section describes a number of possible assisted reproductive technology scenarios and the citizenship acquisition method for each. In addition, the 8 FAM 304.3-4(f) notes that, “[q]uestions relating to family/genetic/blood relationships can be considered intrusive and contacts with families in these circumstances may become somewhat emotional. Interviews should always be conducted with consideration for privacy and the sensitivity of the issues.”

Additionally, Defendants refer Plaintiffs to Defendants’ Answers to Interrogatory Nos. 4(A), 11(A), and 12(A). These responses relate to the Department’s protocols, procedures, practices, guidelines or policies for applying INA § 301(g) and INA § 309 and the requirement for an applicant to demonstrate a biological relationship between the [subject] child and a United States citizen parent.

¹⁹ Interrogatory 16(A) asks: “Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in connection with the State Department’s... application of Section 301(g).”

²⁰ The current FAM citation of “8 FAM 304.3” refers to material previously identified by the citation “7 FAM 1100 Appendix D.” Defendants have previously brought this change to the attention of Plaintiffs’ counsel. See “Table of Department of State’s Foreign Affairs Manual Provisions,” Mem. in Support of Defs.’ Mot. to Dismiss, ECF No. 31-1 at viii, *Blixt v. U.S. Dep’t of State*, 18-cv-124 (D.D.C.) (Sept. 3, 2018); see also Defs.’ Resp. to Interrogatory No. 10(E) (noting that the FAM was renumbered in July 2018).

With respect to 16(B):²¹

Relevant Department of State guidance regarding interpretation and administration of the Immigration and Nationality Act can be found in its Foreign Affairs Manual (“FAM”). The Department’s guidance on acquisition of citizenship at birth in cases of assisted reproductive technology is found at 8 FAM 304.3 (former 7 FAM 1140 Appendix D). Specifically, the section describes a number of possible assisted reproductive technology scenarios and the citizenship acquisition method for each. In addition, the 8 FAM 304.3-4(f) notes that, “[q]uestions relating to family/genetic/blood relationships can be considered intrusive and contacts with families in these circumstances may become somewhat emotional. Interviews should always be conducted with consideration for privacy and the sensitivity of the issues.”

To the extent the question posed by this Interrogatory overlaps with that posed by Interrogatory Nos. 4(B), 11(A), and 12(A), Defendants refer Plaintiffs to Defendants’ responses to those interrogatories.

With respect to 16(C):²²

Relevant Department of State guidance regarding interpretation and administration of the Immigration and Nationality Act can be found in its Foreign Affairs Manual (“FAM”). The Department’s guidance on acquisition of citizenship at birth in cases of assisted reproductive technology is found at 8 FAM 304.3 (former 7 FAM 1140 Appendix D). Specifically, the section describes a number of

²¹ Interrogatory 16(B) asks: “Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in 7 FAM 1100 Appendix D of the FAM, including surrogacy, has in connection with the State Department’s... application of... Section 309.”

²² Interrogatory 16(C) asks: “Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in [8 FAM 304.3], including surrogacy, has in connection with the State Department’s... determination of applications for a CRBA... [or] United States passport....”

possible assisted reproductive technology scenarios and the citizenship acquisition method for each. In addition, the 8 FAM 304.3-4(f) notes that, “[q]uestions relating to family/genetic/blood relationships can be considered intrusive and contacts with families in these circumstances may become somewhat emotional. Interviews should always be conducted with consideration for privacy and the sensitivity of the issues.”

To the extent the question posed by this Interrogatory overlaps with that posed by Interrogatory Nos. 4(A), 4(B), 11(A), and 12(A), Defendants refer Plaintiffs to Defendants’ responses to those interrogatories.

With respect to 16(D):²³

The use of “assisted reproductive technology,” as that term is used in [8 FAM 304.3], has no effect or impact relating to Department of State determination of applications for a Certificate of Citizenship because the Department does not adjudicate Certificate of Citizenship applications.

INTERROGATORY NO. 17

Identify and describe any State Department and/or CIS protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in the provision of consular or passport services to, or determinations of requests or applications by, Persons claiming to have acquired United States citizenship under the INA.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least three discrete subparts: (A) “Identify and describe any State

²³ Interrogatory 16(D) asks: “Identify and Describe the effect or impact, if any, that the use of assisted reproductive technology, as that term is used in [8 FAM 304.3], including surrogacy, has in connection with the State Department’s... determination of applications for a... Certificate of Citizenship.”

1 Department ... protocol, procedure, practice or policy... with the purpose or effect
2 of preventing discrimination... in *the provision of consular or passport services*
3 *to...* Persons claiming to have acquired United States citizenship under the INA”;
4 (B) “Identify and describe any State Department ... protocol, procedure, practice
5 or policy... with the purpose or effect of preventing discrimination... *in...*
6 *determinations of requests or applications by...* Persons claiming to have acquired
7 United States citizenship under the INA”; (C) “Identify and describe any...
8 [US]CIS protocol, procedure, practice or policy implemented or in effect between
9 January 1, 2013 and the present with the purpose or effect of preventing
10 discrimination—including discrimination on the basis of sexual orientation—in ...
11 determinations of requests or applications by, Persons claiming to have acquired
12 United States citizenship under the INA.”

13 Additionally, Defendants object to Interrogatory No. 17C, as overly broad,
14 unduly burdensome, not relevant, and disproportionate to the needs of the case to
15 the extent that it seeks to know information regarding or relating to a different
16 Executive department, the Department of Homeland Security (“DHS”), or any
17 components thereof. The actions taken by Defendants and challenged in this
18 litigation are separate from and do not depend on any actions or policies of DHS,
19 and as such the DHS-related information sought by this Interrogatory is not
20 relevant to the claims and defenses in this litigation, and is disproportionate to the
21 needs of the case.

22
23 **Answer:**

24 Subject to and without waiving the above-stated objections—including both
25 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
26 and Part II ¶¶ 13–21—Defendants respond as follows:
27
28

With respect to 17(A):²⁴

Consular officers are directed to conduct in-person interviews and any telephone or e-mail exchanges “courteously and professionally.” 8 FAM 103.1-7 (Customer Service). Additionally, as set out in 7 FAH-1 Consular Management Handbook H-820 (Public Service), “courtesy” is defined as “not just good manners, but reflecting U.S. standards of fair and reasonable treatment in dealing with each individual.” 7-FAH-1 H-821a. The handbook states further, “Public service ... does **not** mean that the law and regulations are not strictly enforced but it does mean that consular decisions are made knowledgeably, fairly and without bias. It does **not** mean that an unqualified applicant won’t be refused but it does mean hearing and considering the applicant as an individual, not as a stereotype” (emphasis in original). 7-FAH-1 H-822. The handbook states further, “**All** employees must understand that their job performance will be judged not only for **what** they do but also for **how** they do it. Emphasizing the important point that ‘people will generally treat each other the way they are treated,’ 3 FAM 1330 also set out the department policy that employees must treat each other, as well as our external public, with proper respect and courtesy at all times.” 7-FAH-1 H-824.

²⁴ Interrogatory 17(A) asks: Identify and describe any State Department... protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in the provision of consular or passport services to... Persons claiming to have acquired United States citizenship under the INA.”

With respect to 17(B):²⁵

Consular officers are directed to conduct in-person interviews and any telephone or e-mail exchanges “courteously and professionally,” including with respect to customers who are in unusual circumstances. 8 FAM 103.1-7 (Customer Service). Additionally, as set out in 7 FAH-1 Consular Management Handbook H-820 (Public Service), “courtesy” is defined as “not just good manners, but reflecting U.S. standards of fair and reasonable treatment in dealing with each individual.” 7-FAH-1 H-821a. The handbook states further, “Public service ... does **not** mean that the law and regulations are not strictly enforced but it does mean that consular decisions are made knowledgeably, fairly and without bias. It does **not** mean that an unqualified applicant won’t be refused but it does mean hearing and considering the applicant as an individual, not as a stereotype” (emphasis in original). 7-FAH-1 H-822. The handbook states further, “**All** employees must understand that their job performance will be judged not only for **what** they do but also for **how** they do it. Emphasizing the important point that ‘people will generally treat each other the way they are treated,’ 3 FAM 1330 also set out the department policy that employees must treat each other, as well as our external public, with proper respect and courtesy at all times.” 7-FAH-1 H-824.

²⁵ Interrogatory 17(B) asks: “Identify and describe any State Department... protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in... determinations of requests or applications by... Persons claiming to have acquired United States citizenship under the INA.”

With respect to 17(C):²⁶

Defendants lack knowledge with respect to the protocols, procedures, practices or policies implemented the Department of Homeland Security and its components.

INTERROGATORY NO. 18

Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under Section 301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or regulations affecting the citizenship status of children of same-sex couples.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least four discrete subparts: (A) “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under Section 301(g)”; (B) “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under ... Section 309”; (C) “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under ... 1140 Appendix E of the FAM”; and (D) “Identify and describe any protocol, procedure, practice or

²⁶ Interrogatory 17(C) asks: “Identify and describe any... [US]CIS protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present with the purpose or effect of preventing discrimination—including discrimination on the basis of sexual orientation—in... determinations of requests or applications by... Persons claiming to have acquired United States citizenship under the INA.”

1 policy implemented or in effect between January 1, 2013 and the present of the
2 State Department specifically Concerning the treatment of children of same-sex
3 couples under ... any other applicable laws or regulations affecting the citizenship
4 status of children of same-sex couples.” Accordingly, Defendants interpret this
5 interrogatory as four separate interrogatories (18A–18D).

6 **Answer:**

7 Subject to and without waiving the above-stated objections—including both
8 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
9 and Part II ¶¶ 13–21—Defendants respond as follows:

10
11 **With respect to 18(A):**²⁷

12 Department guidance does not distinguish same-sex couples, as guidance
13 applies equally to all citizenship adjudications. *See supra* responses to
14 Interrogatory Nos. 4(A) and 5.

15 **With respect to 18(B):**²⁸

16 Department guidance does not distinguish same-sex couples, as guidance
17 applies equally to all citizenship adjudications. *See supra* responses to
18 Interrogatory Nos. 4(B), and 5.

19
20
21
22
23 ²⁷ Interrogatory 18(A) asks: “Identify and describe any protocol, procedure,
24 practice or policy implemented or in effect between January 1, 2013 and the
25 present of the State Department specifically Concerning the treatment of children
of same-sex couples under Section 301(g).”

26 ²⁸ Interrogatory 18(B) asks: “Identify and describe any protocol, procedure,
27 practice or policy implemented or in effect between January 1, 2013 and the
28 present of the State Department specifically Concerning the treatment of children
of same-sex couples under... Section 309.”

With respect to 18(C):²⁹

Department guidance does not distinguish same-sex couples, as guidance applies equally to all citizenship adjudications. See *supra* responses to Interrogatory Nos. 10(C) and 10(D).

With respect to 18(D):³⁰

Department guidance does not distinguish same-sex couples, as guidance applies equally to all citizenship adjudications.

INTERROGATORY NO. 19

Identify and Describe each action taken by You, including the promulgation and enforcement of rules, regulations, or guidelines, and the dissemination of Documents or other materials, (a) to inform Your Representatives about treatment of children of same-sex couples under Section 301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or regulations governing citizenship status; and (b) to encourage or secure compliance with any of the foregoing laws, rules, regulations, or guidelines.

Objections:

Defendants object to this Interrogatory on the basis that it is compound and includes at least two discrete subparts: (A) “Identify and Describe each action taken by You... to inform Your Representatives about treatment of children of same-sex couples under Section 301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or regulations governing citizenship status;”

²⁹ Interrogatory 18(C) asks: “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under... 1140 Appendix E of the FAM.”

³⁰ Interrogatory 18(D) asks: “Identify and describe any protocol, procedure, practice or policy implemented or in effect between January 1, 2013 and the present of the State Department specifically Concerning the treatment of children of same-sex couples under... any other applicable laws or regulations affecting the citizenship status of children of same-sex couples[, other than 8 U.S.C. §§ 1401(g) and 1409, and the 1140 Appendix E of the FAM].”

1 and (B) “Identify and Describe each action taken by You... to encourage or secure
2 compliance with any of the foregoing laws, rules, regulations, or guidelines.”

3
4 **Answer:**

5 Subject to and without waiving the above-stated objections—including both
6 those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b)
7 and Part II ¶¶ 13–21—Defendants respond as follows:

8 **With respect to 19(A):**³¹

9 With respect to the promulgation of rules, regulations, and guidelines,
10 Defendants refer Plaintiffs to Defendants’ responses to Interrogatory Nos. 4(A) and
11 5.

12 8 FAM 1002 describes the process by which the Department reviews
13 passport issuances at overseas posts. Specifically, at 8 FAM 1002.1-1, “Consular
14 supervisors must review as many passport adjudications as is practicable, but no
15 fewer than 4 percent of passport applications issued per officer per month.
16 Systematic, randomized, regular review of adjudicated passport applications is a
17 significant management and instructional tool to maintain the highest professional
18 standards of adjudication. It also ensures uniform and correct application of
19 applicable law and regulations.”

20 With respect to dissemination of this information, the FAM and the Foreign
21 Affairs Handbook (“FAH”) are available online to all consular staff and are
22 updated regularly as needed. Important changes to Department policy or
23

24
25 ³¹ Interrogatory 19(A) asks: “Identify and Describe each action taken by You,
26 including the promulgation and enforcement of rules, regulations, or guidelines,
27 and the dissemination of Documents or other materials ... to inform Your
28 Representatives about treatment of children of same-sex couples under Section
301(g), Section 309, 1140 Appendix E of the FAM, or any other applicable laws or
regulations governing citizenship status.”

1 procedures are announced through cables to the field. In addition, training touching
2 on matters relating to adjudication of passports and CRBAs is regularly offered to
3 staff of our US Embassies and consulates worldwide.

4 **With respect to 19(B):**³²

5 With respect to the promulgation of rules, regulations, and guidelines,
6 Defendants refer Plaintiffs to Defendants' responses to Interrogatory Nos. 4(A) and
7 5.

8 8 FAM 1002 describes the process by which the Department reviews
9 passport issuances at overseas posts. Specifically, at 8 FAM 1002.1-1, "Consular
10 supervisors must review as many passport adjudications as is practicable, but no
11 fewer than 4 percent of passport applications issued per officer per month.
12 Systematic, randomized, regular review of adjudicated passport applications is a
13 significant management and instructional tool to maintain the highest professional
14 standards of adjudication. It also ensures uniform and correct application of
15 applicable law and regulations."

16 With respect to dissemination of this information, the FAM and the Foreign
17 Affairs Handbook ("FAH") are available online to all consular staff and are
18 updated regularly as needed. Important changes to Department policy or
19 procedures are announced through cables to the field. In addition, training touching
20 on matters relating to adjudication of passports and CRBAs is regularly offered to
21 staff of our US Embassies and consulates worldwide.

22
23
24 _____
25 ³² Interrogatory 19(B) asks: "Identify and Describe each action taken by You,
26 including the promulgation and enforcement of rules, regulations, or guidelines,
27 and the dissemination of Documents or other materials... to encourage or secure
28 compliance with any of the... laws, rules, regulations, or guidelines [listed in
Interrogatory 19(A)]."

INTERROGATORY NO. 20:

Identify and describe any training, including any training manuals or other relevant materials, of State Department personnel, including United States embassy personnel, or instructions given to State Department personnel Concerning how to interact with gay, lesbian and/or other LGBT individuals or same-sex couples.

Objections:

Defendants object to this interrogatory as overly burdensome inasmuch as the Department's Foreign Service Institute offers nearly 900 courses with approximately 170,000 enrollments annually, including more than 60 courses on consular functions alone, and to review the content of these courses for responsive references would be inordinately time-consuming, as well as not relevant to claims or defenses of any party in the case.

Answer:

Subject to and without waiving the above-stated objections—including both those described in the prior paragraph and those outlined *supra* Part I ¶¶ 1–12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

The Department instructs employees to treat all customers with respect, courtesy and professionalism, regardless of their sexual orientation. *See* 8 FAM 103.1-7. Department training materials provide that all applicants, even those who are refused services, are treated promptly and courteously, without bias. To the extent the question posed by this Interrogatory overlaps with that posed by Interrogatory Nos. 17(A) and 17(B), Defendants refer Plaintiffs to Defendants' responses to those interrogatories.

By way of further answer, and pursuant to Fed. R. Civ. P. 33(d), Defendants note that in responding to Plaintiffs' Requests for Production of Documents Nos. 21, 22, 23, and 24, Defendants have indicated their intention to produce non-privileged responsive documents regarding training of State Department personnel.

1 Because the “Identif[ication]” of this information may be determined by
2 examining, abstracting, or summarizing the training documents themselves, and
3 because the burden of deriving or ascertaining this portion of Defendants’ answer
4 will be substantially the same for either Defendants or the Plaintiffs, Defendants
5 refer Plaintiffs to the documents that Defendants will be producing.

6
7 **IV. SIGNATURES PURSUANT TO FEDERAL RULE OF CIVIL**
8 **PROCEDURE 33(B)(5)**

9 Dated: November 16, 2018

As to objections,

10 JOSEPH H. HUNT
11 Assistant Attorney General

12 JOSHUA E. GARDNER
13 Assistant Director

14 /s/ Lisa Zeidner Marcus

15 LISA ZEIDNER MARCUS
16 Senior Counsel

17 VINITA B. ANDRAPALLIYAL
18 Trial Attorney

19 U.S. Department of Justice, Civil Division
20 Federal Programs Branch
21 P.O. Box 883, Benjamin Franklin Station
22 Washington, DC 20530
23 Tel: (202) 514-3336
24 Email: Lisa.marcus@usdoj.gov

25 As to the answers, see the attached certification pages.
26
27
28

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants,

) Case No. 2:18-cv-00523-JFW (JCx)
)
) **Defendants' Second Set of Responses**
) **to Plaintiffs' First Set of**
) **Interrogatories, Signature Page**

Certification of Bennett S. Fellows

I, Bennett S. Fellows, declare that I assisted in the preparation of and provided information for the Department of State's responses to Plaintiffs' Interrogatory Nos. 11(A)–20 in the above-captioned case. The responses are based upon information gathered in the course of my inquiry and information maintained in the regular course of agency activities, supplemented in some instances with personal knowledge. On behalf of the Department, I furnish the answers to Interrogatory Nos. 11(A)–20.

I declare under penalty of perjury that that these answers are true and correct.



Bennett S. Fellows
Division Chief
U.S. Department of State
Bureau of Consular Affairs, Office of Passport Services
Office of Adjudication, Policy Division

11-16-18
Date

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants,

) Case No. **2:18-cv-00523-JFW (JCx)**
)
) **Defendants' Second Set of Responses**
) **to Plaintiffs' First Set of**
) **Interrogatories, Certificate of Service**

I hereby certify that on November 16, 2018, pursuant to prior agreement by the parties to accept service by electronic mail, I served *Defendants' Second Set of Responses to Plaintiffs' First Set of Interrogatories* via electronic mail on Plaintiffs through their attorneys:

Alexa M. Lawson-Remer, Esq. (lawsonr@sullcrom.com)
Sullivan & Cromwell LLP
1888 Century Park East, Los Angeles, CA 90067

Theodore Edelman, Esq. (edelmant@sullcrom.com)
Jessica Klein, Esq. (kleinj@sullcrom.com)
Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498

Aaron C. Morris, Esq. (amorris@immigrationequality.org)
Immigration Equality
40 Exchange Place, Suite 1300, New York, NY 10005-2744

/s/ Lisa Zeidner Marcus
LISA ZEIDNER MARCUS
Senior Counsel

U.S. Department of Justice, Civil Division, Federal Programs Branch
Lisa.marcus@usdoj.gov

Counsel for Defendants

Exhibit D

Andrapalliyal, Vinita B. (CIV)

From: Marcus, Lisa (CIV)
Sent: Friday, October 26, 2018 10:29 PM
To: Edelman, Theodore; Klein, Jessica; Lawson-Remer, Alexa M.;
amorris@immigrationequality.org
Cc: Andrapalliyal, Vinita B. (CIV)
Subject: Dvash-Banks v. Tillerson - Defs' Production of Documents
Attachments: 2018-10-26 - Defs production cover letter.pdf; Defs_Prod001.zip

Dear Counsel,

Please see the attached.

Also, we would like to use the Department of Justice's file-sharing platform to send future productions. That platform is called JEFS (Justice Enterprise File Sharing), and it uses a box.com platform. Kindly please identify two attorneys on your end as the point persons for receiving the future productions, and have those persons provide us their work mobile number, or whatever mobile number they would use for two-factor authentication purposes. We will submit a request for JEFS accounts to be created for them.

Sincerely, Lisa

Lisa Zeidner Marcus
Senior Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
Direct dial: (202) 514-3336

Exhibit E

From: [Raybuck, Rebekah T.](#)
To: [Marcus, Lisa \(CIV\)](#); [Andrapalliyal, Vinita B. \(CIV\)](#)
Cc: [Edelman, Theodore](#); [Klein, Jessica](#); [Lawson-Remer, Alexa M.](#); [Goldsmith, Lauren M.](#); [Roll, Alicia M.](#)
Subject: RE: Dvash-Banks - Joint Stipulation re discovery disputes
Date: Tuesday, November 13, 2018 6:12:04 PM

Lisa,

We have reached out by letter on October 28, October 30, and October 31, with no response. Unfortunately, time is now of the essence to obtain resolution of these issues before Judge Chooljian in her courtroom on December 11. We think the best course is for you to put your positions in your responsive portions of the document, which are due no later than this Friday. We will then file the signed document promptly. After the joint stipulation has been filed, we'll closely review your positions. If the parties reach agreement on a narrowing of their positions next week, we can send the judge a supplemental brief no later than November 27, 2018.

Best regards,

Rebekah T. Raybuck
Sullivan & Cromwell LLP | 1870 Embarcadero Road |
Palo Alto, CA 94303-3308
T: (650) 461-5674 | F: (650) 461-5700 |
raybuckr@sullcrom.com | <http://www.sullcrom.com>

From: Marcus, Lisa (CIV) [<mailto:lisa.marcus@usdoj.gov>]
Sent: Tuesday, November 13, 2018 11:18 AM
To: Raybuck, Rebekah T.; Andrapalliyal, Vinita B. (CIV)
Cc: Edelman, Theodore; Klein, Jessica; Lawson-Remer, Alexa M.; Goldsmith, Lauren M.; Roll, Alicia M.
Subject: RE: Dvash-Banks - Joint Stipulation re discovery disputes

****This is an external message from: lisa.marcus@usdoj.gov ****

Rebekah,

Please let us know your availability to discuss the issues outlined in the draft Joint Stipulation. We would like to see the issues narrowed, if possible, before anything is filed with the Court. Please let us know when your side might be available for a call tomorrow (Wed.) or Thursday.

Sincerely, Lisa

Lisa Zeidner Marcus
Senior Counsel
U.S. Department of Justice
Civil Division, Federal Programs Branch
Direct dial: (202) 514-3336

From: Raybuck, Rebekah T. [mailto:raybuckr@sullcrom.com]

Sent: Friday, November 09, 2018 8:33 PM

To: Marcus, Lisa (CIV) <LMarcus@civ.usdoj.gov>; Andrapalliyal, Vinita B. (CIV) <vandrapa@CIV.USDOJ.GOV>

Cc: Edelman, Theodore <EdelmanT@sullcrom.com>; Klein, Jessica <kleinj@sullcrom.com>; Lawson-Remer, Alexa M. <LawsonR@sullcrom.com>; Goldsmith, Lauren M. <goldsmithl@sullcrom.com>; Roll, Alicia M. <rolla@sullcrom.com>

Subject: Dvash-Banks - Joint Stipulation re discovery disputes

Counsel,

Please see attached Plaintiffs' portions of a Joint Stipulation Regarding Dispute Over Production of Documents, Interrogatory Responses, and Depositions. Note that internal page references in Plaintiffs' portions of the Joint Stipulation will be changed once your portions are added. The declaration and exhibits that we intend to file along with the Joint Stipulation will be sent in a separate email due to the size of the exhibits. Pursuant to L.R. 37-2.2, you must return Defendants' portion of the stipulation, together with any declaration and all exhibits you intend to offer in support of Defendants' position, within seven (7) days, so no later than November 16. We ask that you do so no later than the close of business Pacific Time so that we may insert them and finalize the document for your signature that same day.

Best regards,

Rebekah T. Raybuck

Sullivan & Cromwell LLP | 1870 Embarcadero Road |
Palo Alto, CA 94303-3308

T: (650) 461-5674 | F: (650) 461-5700 |
raybuckr@sullcrom.com | <http://www.sullcrom.com>

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Exhibit F

From: [Marcus, Lisa \(CIV\)](#)
To: ["Klein, Jessica"; Edelman, Theodore; Lawson-Remer, Alexa M.; amorris@immigrationequality.org; Raybuck, Rebekah T.; Roll, Alicia M.](#)
Cc: [Andrapalliyal, Vinita B. \(CIV\)](#)
Subject: RE: Dvash-Banks v. Tillerson — Deposition Notices
Date: Friday, November 16, 2018 9:34:00 PM

Jessica,

Defendants are committed to producing documents on a rolling basis. We are prioritizing review of communications/documents sent to, from, etc. the individual deponents, in an effort to produce any non-privileged responsive documents prior to those individuals' depositions. We had planned to make a production of documents this week, but the huge task of responding to the >130 page Joint Stipulation sent by Plaintiffs diverted us from being able to complete the production.

I learned some additional information today about Ms. Reffett's and Ms. Ramsay's schedules for December 6 and 7 and would like to talk with you on Monday about the start times for those depositions.

A notice of deposition will not be sufficient to secure Ms. Day's attendance at a deposition. We will accept a subpoena on her behalf, and you may send it electronically. Do Plaintiffs propose to pay for Ms. Day's travel and lodging for a deposition in DC or NYC? If so, we can discuss that option with her. (I do not know if she would agree, but I can ask.) Plaintiffs might also consider conducting Ms. Day's deposition via video-conference, so that Plaintiffs' counsel does not have to travel. I have done this before in another case and am happy to discuss logistics with you.

We disagree with your characterization of our interrogatory responses regarding knowledge possessed by Ms. Christensen and Mr. Egan. Having supervisory responsibility over a broad subject-matter area that includes the policy and statute at issue in this case is not tantamount to having meaningful, relevant knowledge about particular aspects of the policy or statute as such. They are current and former high-level officials, and deposing them would be burdensome, without appreciable benefit (let alone benefit that outweighs the burden), disproportionate to the needs of the case, and duplicative of Plaintiffs' requested 30(b)(6) deposition. If you want to discuss this further, let me know. In any event, Mr. Egan no longer works for the Department. Should you insist nevertheless on pursuing his appearance, he has authorized me to accept a subpoena on his behalf. (That does not mean that he or the Department consent to his deposition; they do not.)

Thank you for letting us know about Elad's and Andrew's availability. We're working to confirm those dates on our end, and will circle back if we need you to ask about alternative dates/times.

Sincerely, Lisa

From: Klein, Jessica [mailto:kleinj@sullcrom.com]
Sent: Wednesday, November 14, 2018 6:21 PM
To: Marcus, Lisa (CIV) <LMarcus@civ.usdoj.gov>; Andrapalliyal, Vinita B. (CIV) <vandrappa@CIV.USDOJ.GOV>

Cc: Edelman, Theodore <EdelmanT@sullcrom.com>; Lawson-Remer, Alexa M. <LawsonR@sullcrom.com>; amorris@immigrationequality.org; Raybuck, Rebekah T. <raybuckr@sullcrom.com>; Roll, Alicia M. <rolla@sullcrom.com>
Subject: RE: Dvash-Banks v. Tillerson — Deposition Notices

Lisa,

Thank you for your email. As an initial matter, Plaintiffs have not received any document productions since Defendants began rolling productions with their seven-page production on October 26. Please confirm that Defendants will complete their document productions at least five business days before the first deposition. Otherwise, the dates we are willing to confirm may need to be moved. Please also confirm any available dates for the 30(b)(6) deposition Plaintiffs noticed in September. It is imperative that we get that deposition scheduled and that Defendants identify for Plaintiffs the individuals whom Defendants designate to testify and the topics on which they will testify.

We are available to take the depositions of Ms. Reffett and Ms. Ramsay on December 6 and 7 at the Toronto Consulate on back to back days and will send along amended deposition notices and confirm whose deposition we wish to take first by tomorrow.

With respect to Ms. Day, can you please confirm whether a notice of deposition will be sufficient, or whether you will require a subpoena for her deposition? Plaintiffs are not available to take Ms. Day's deposition in Charlotte, North Carolina on November 28. Please propose dates during the first three weeks of December that work for Ms. Day. We would have more flexibility in scheduling Ms. Day's deposition if she is available to attend the deposition in Washington, D.C. or New York City.

Plaintiffs disagree with your position regarding Karen Christensen and Brian Egan and whether the State Department is required to make these individuals available for deposition. Irrespective of whether they have direct knowledge of the State Department's adjudication of the Ethan Dvash-Bank's application, Defendants' interrogatory responses (partial though they are) confirm that they have knowledge regarding the policy that purportedly provided that basis for that determination that is directly at issue in the litigation. If Defendants would find it helpful, Plaintiffs would willing to agree to sequence those deposition for later in December. Please propose dates that would work for Ms. Christensen and Mr. Egan.

We have not heard back regarding the deposition of Carlos Hernandez. Please let us know the status of getting this deposition calendared.

Finally, Elad is available for a deposition on December 11 and Andrew is available for a deposition on December 12. Because Plaintiffs' Motion to Compel will be heard on December 11, we propose for a 12:00 start time on that day.

Thank you,
Jessica Klein

From: Marcus, Lisa (CIV) [<mailto:lisa.marcus@usdoj.gov>]
Sent: Tuesday, November 13, 2018 2:14 PM
To: Roll, Alicia M.; Andrapalliyal, Vinita B. (CIV)
Cc: Edelman, Theodore; Klein, Jessica; Lawson-Remer, Alexa M.; amorris@immigrationequality.org; Raybuck, Rebekah T.
Subject: RE: Dvash-Banks v. Tillerson — Deposition Notices

Jessica and Alicia,

I'm writing about deposition scheduling.

Ms. Reffett and Ms. Ramsay both live and work in Toronto. The Department of State will make space available at the Consulate Toronto for their depositions. They are available Dec. 5-7. Please let us know which days and times you want us to reserve for those depositions. Will you plan to depose them both in one day (one in the morning and one in the afternoon), or back to back days?

Ms. Warmenhoven is now stationed in Dar es Salaam, and as such, she's currently unavailable to be deposed.

We can confirm that we will accept a subpoena on behalf of Frankie Terri Day. Ms. Day currently lives outside of Charlotte, NC. We would propose that you depose her at the U.S. Attorney's Office in Charlotte, which is within 100 miles of her home. Ms. Day is available on Nov. 28. If that day works for you, we can to see if the U.S. Attorney's Office has a conference room that we could use that day. Please let us know. (If attorneys attending the deposition are also attending the mediation, we could fly from Charlotte to NYC that evening, to attend the mediation the next morning.)

Neither Karen Christensen nor Brian Egan have personal knowledge of the underlying adjudication, and the Department of State is not inclined to make them available for a deposition.

We would like to depose Andrew and Elad in LA the week of Dec. 10. Will you please let us know their availability that week?

- Lisa

From: Roll, Alicia M. [<mailto:rolla@sullcrom.com>]
Sent: Friday, October 26, 2018 6:09 PM
To: Andrapalliyal, Vinita B. (CIV) <vandrappa@CIV.USDOJ.GOV>; Marcus, Lisa (CIV) <LMarcus@civ.usdoj.gov>
Cc: Edelman, Theodore <EdelmanT@sullcrom.com>; Klein, Jessica <kleinj@sullcrom.com>; Lawson-Remer, Alexa M. <LawsonR@sullcrom.com>; amorris@immigrationequality.org; Raybuck, Rebekah T. <raybuckr@sullcrom.com>

Subject: Dvash-Banks v. Tillerson — Deposition Notices

Counsel,

As discussed on our prior telephonic meet and confers, please find deposition notices for Frankie Terri Day, Margaret Ramsay, Larilyn Reffett, Ann Marie Warmenhoven, and Carlos Hernandez, attached here. You will also see we have attached notices for Karen Christensen and Brian Egan.

During the prior discussions, you confirmed that you represent Ramsay, Reffett, Warmenhoven, and Hernandez. Please also confirm that these notices are sufficient and that you will not require separate subpoenas for them.

Please also let us know whether you represent Ms. Day as a former employee of the State Department and the individual who adjudicated the relevant applications, and therefore will not require a subpoena for her; if you will in fact require a subpoena, please confirm you will accept service on her behalf. If you do not represent Ms. Day, please promptly provide information concerning her last known address and whereabouts.

We are willing to move the specific dates of the depositions if there are mutually agreeable dates that better suit your availability and do not unduly delay the depositions.

Thank you,

Alicia Roll

Sullivan & Cromwell LLP | 1870 Embarcadero Road |

Palo Alto, CA 94303-3308

T: (650) 461-5632 | F: (650) 461-5700 |

rolla@sullcrom | <http://www.sullcrom.com>

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Exhibit G



Mailing Address

P.O. Box 883
Washington, DC 20044

Street Address

Room 11516
1100 L Street NW
Washington, DC 20

Vinita B. Andrapalliyal
Trial Attorney

Tel: (202) 305-0845
Fax: (202) 616-8470

November 16, 2018

VIA E-MAIL

Alexa Lawson-Remer
Sullivan & Cromwell LLP
1888 Century Park East, Suite 2100
Los Angeles, CA 90067-1725
(Tel) 310-712-6600
(Fax) 310-712-8800
lawsonr@sullcrom.com

Re: *Dvash-Banks v. Pompeo*, No. 18-524 (JFW-JCx)

Dear Alexa,

Defendants reiterate their desire to continue working with Plaintiffs to reach a mutually-agreeable resolution of the 30(b)(6) deposition issue. Defendants are in receipt of your most recent correspondence on this issue, dated October 30, 2018. Defendants appreciate Plaintiffs' willingness to eliminate the following 30(b)(6) deposition topics: Topics 11, 21, and 22 in their entirety; and Topics 17 and 18 on a conditional basis. Defendants also appreciate Plaintiffs' proposal to narrow certain other topics included in Plaintiffs' original 30(b)(6) deposition notice. While many of Plaintiffs' proposed topics remain insufficiently particularized, the Department of State ("the Department") is willing to produce a 30(b)(6) deponent to testify about a proportionate and specifically described set of topics. Therefore, Defendants propose to meet and confer on Tuesday, November 20, 2018, in an effort to reach resolution on the issues that remain in dispute.

Below, Defendants offer responses to Plaintiffs' most recent proposals to narrow certain 30(b)(6) topics.

- **Topic 1** seeks testimony regarding "[t]he process by which and any basis on which the State Department considered and determined any request or application for a Consular Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks, including any refusal or denial of any such application."

Plaintiffs have suggested a "combined individual and 30(b)(6) deposition" as a purported compromise for this topic. We do not view Plaintiffs' proposal as a compromise, as it

would still require the Department to undertake the task of making “a good faith effort to prepare... a 30(b)(6) witness to ‘fully . . . answer questions’” about the designated topic. *Madrigal v. Allstate Indem. Co.*, No. 14-civ-4242, 2015 WL 12746225, at *5 (C.D. Cal. Apr. 22, 2015). “[T]he burdens faced by the responding party [served with a 30(b)(6) notice] are considerably more challenging than with an ordinary deposition.” 8A The Late Charles Alan Wright et. al., *Federal Practice and Procedure* § 2103 (3d ed.). Plaintiffs’ proposal would require Defendants, and the individual witnesses, to bear a two-fold burden. Moreover, Plaintiffs have not explained what additional utility would be achieved by designating the individual deponents as 30(b)(6) witnesses, given that Plaintiffs are free to ask the individual deponents question about this topic even if Defendants do not designate those individuals as 30(b)(6) witnesses. Any additional utility potentially served appears disproportionate to the needs of the case, given the additional burden involved in preparing 30(b)(6) witnesses. We respectfully request that Plaintiffs eliminate this topic.

- **Topic 2** asks Defendants to designate someone to testify regarding “[a]ny and all communications concerning Plaintiffs or any request or application for a Consular Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks.” (emphasis added).

Plaintiffs have reformulated Topic 2 to request “any and all communications concerning any request or application for Report of Birth Abroad and United States passport for Plaintiff Ethan Dvash-Banks,” but this formulation does not meaningfully alter the topic, which continues to broadly seek information about all oral and written communications concerning the topic. It would be unduly burdensome, if not impossible, to prepare a designee in such a manner.

Plaintiffs have also suggested a combined individual and 30(b)(6) deposition as a purported compromise for this topic. As explained in connection with Topic 1, we do not view Plaintiffs’ proposal as a compromise, and respectfully request that Plaintiffs eliminate this topic.

- **Topic 5:** This topic seeks information relating to “[a]ny and all Communications between (i) the Fraud Detection and National Security Directorate or the Refugee, Asylum and International Operations Directorate, or other units of CIS; and (ii) the State Department, including the Secretary of State’s staff, the Office of the Legal Adviser, and the Bureau of Consular Affairs, Concerning any protocol, procedure, practice, policy or guideline for applying Section 309, rather than Section 301(g), to any Person born outside of the United States to married parents (one of whom is a United States citizen) if the Person is not biologically related to the United States citizen parent.”

Plaintiffs state that they no longer seek information about communications between the Department’s Fraud Division and USCIS components other than the National Security Directorate or the Refugee, Asylum and International Operations Directorate, but the request is still insufficiently particularized and duplicative, and unduly burdensome. It is not feasible to prepare a 30(b)(6) witness to speak to all of an office’s communications

with two other interagency components. We respectfully request that Plaintiffs eliminate this topic.

- **Topic 7:** This topic seeks information relating to “the impact or effect of any court ruling, including *Pavan v. Smith*, 137 S. Ct. 2075 (2017), *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), *United States v. Windsor*, 133 S. Ct. 2675 (2013), *Jaen v. Sessions*, 899 F.3d 182 (2d Cir. 2018), *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), and *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), on the State Department’s consideration of applications for a Consular Report of Birth Abroad, United States passport, or Certificate of Citizenship by Plaintiffs or any other person (i) born outside of the United States; (ii) who asserts he or she is the child of a United States citizen; (iii) whose United States citizen parent is married to a foreign national; and (iv) who does not have a biological relationship to his/her United States citizen parent.”

Plaintiffs purport to narrow the scope of this topic by taking out the language “any court ruling,” but the topic is still insufficiently particularized and duplicative. Plaintiffs fail to sufficiently describe what they seek beyond what they have requested in their written discovery. Defendants are willing to engage with Plaintiffs to identify more specifically what Plaintiffs are seeking, in an attempt to clarify this topic such that the Department might reasonably identify and prepare a designee.

- **Topic 8:** Plaintiffs’ recent correspondence indicated that Plaintiffs are willing to narrow Deposition Topic 8 to: “Any circumstances under which the State Department treats the children of men in same-sex marriages married same-sex couples as children born in wedlock,” However, the topic is still insufficiently particularized and duplicative. Plaintiffs fail to sufficiently describe what they seek beyond what they have requested in their other discovery. Defendants, however, are willing to engage with Plaintiffs to identify more specifically what Plaintiffs are seeking, in an attempt to clarify this topic such that the Department might reasonably identify and prepare a designee.
- **Topic 10:** This topic seeks information relating to “[t]he content of and the basis and rationale for any versions or editions of the FAM that reference, define or interpret any part of Section 301(g) or Section 309. This topic includes any internal considerations, underlying assumptions, information collected, and the identity and role of any authors or contributors for the relevant provisions in the FAM, including whether, when and how those involved in drafting, enacting or applying the FAM specifically considered its application to same-sex couples.”

Plaintiffs purport to narrow the scope of this topic to the time period January 1, 2013 to present. Defendants are willing to discuss these conditions and look forward to speaking further about them, though questions about the Department’s interpretation of the FAM after June 2, 2017, are irrelevant to the claims and defenses in this case.

- **Topic 15:** This topic seeks information relating to “[a]ny information the State Department considers in making a determination of whether a parent-child relationship exists.”

Plaintiffs propose to modify this topic to seek “[a]ny information the State Department considers in making a determination of whether a parent-child relationship exists for purposes of applying Section 301(g) or Section 309.” Defendants believe that they can produce a deponent to speak on this topic as narrowed by Plaintiffs. Defendants reserve their ability to seek further clarification as needed based on feedback received from the designee.

- **Topic 16:** This topic seeks information relating to “[t]he organizational structure of the State Department and CIS, respectively.”

Plaintiffs state that they can drop this topic on the following conditions: “(a) Defendants stipulate to the authenticity and accuracy of the organizational charts that they have produced in response to Plaintiffs’ discovery requests in the Action; and (b) Defendants do not object to Plaintiffs’ efforts to inquire into the roles and responsibilities of various State Department personnel relevant to this Action,” information which is not contained in the organizational charts produced. Defendants are willing to discuss these conditions and look forward to speaking further about them.

Defendants reiterate their objections to topics 3, 4, 6, 9, 12, 19, and 20. While Plaintiffs may be able to “verify and explore” the information that Defendants provided in their other discovery responses in some measure, *see Campbell v. Facebook Inc.*, 310 F.R.D. 439, 449 (N.D. Cal. 2015), Plaintiffs have not described the additional information they seek beyond what Defendants have provided, or intend to provide, in response to those requests. Therefore, Plaintiffs have not described these topics with sufficient particularity, as required under Rule 30(b)(6). *See Memory Integrity, LLC v. Intel Corp.*, 308 F.R.D. 656, 661 (D. Or. 2015).

We look forward to speaking with you further.

Sincerely,

/s/ Vinita B. Andrapalliyal

VINITA B.
ANDRAPALLIYAL
Trial Attorney
Federal Programs Branch

Exhibit H

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 18
Programs, Practices, and Planning

18 FAM 200 REGULATIONS AND RELATED PROGRAMS

18 FAM 201 DIRECTIVES MANAGEMENT

18 FAM 201.1 DIRECTIVES

(CT:PPP-10; 09-19-2018)
(Office of Origin: A/GIS/DIR)

18 FAM 201.1-1 POLICY AND OBJECTIVE

18 FAM 201.1-1(A) Policy

(CT:PPP-2; 03-19-2018)
(State Only)

- a. The Department of State articulates official guidance, including procedures and policies, on matters relating to Department management and personnel, known collectively as “directives,” in the Foreign Affairs Manual and Handbook Series. Directives include Department administrative organization policies and procedures. These directives derive their authority from statutes, Executive orders, other legal authorities, and Presidential directives, such as OMB circulars, and Department policies.
- b. For the purposes of this subchapter, all references to the Foreign Affairs Manual include the Foreign Affairs Handbook series.
- c. The only authoritative text of the Foreign Affairs Manual or its Foreign Affairs handbook series is the text that the Office of Directives Management (A/GIS/DIR) posts and maintains on its Internet, Intranet, and ClassNet websites. Personnel who administer Department websites must not post copies of Foreign Affairs Manual or Foreign Affairs Handbook material on such websites; instead, they must provide a hyperlink to the authoritative text. See 18 FAM 201.1-6(D)(2).

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18 FAM 201.1-1(B) Objective

*(CT:PPP-2; 03-19-2018)**(State Only)*

- a. The Department's directives program provides agency managers with the means to convey written instructions to Department and other relevant personnel and to document Department directives. The program's purpose is to make necessary organization, policy, and procedural information available to program management and operating offices so that they can carry out their responsibilities in accordance with statutory and Executive mandates.
- b. The Department achieves its objective by:
 - (1) Providing a single, comprehensive, and authoritative source: The Foreign Affairs Manual (FAM) and the related Foreign Affairs Handbooks (FAH) for organizational structures, policies, and procedures that govern the operations of the Department, the Foreign Service, and, when applicable, other Foreign Affairs agencies;
 - (2) Organizing and structuring policy and procedural information and providing indices and references to facilitate effective use;
 - (3) Incorporating statutes, Executive orders, and directives originally issued elsewhere into the FAM;
 - (4) Issuing changes and additions to Department directives in a timely manner;
 - (5) Annually reviewing the FAM to ensure completeness and accuracy (see 18 FAM 201.1-3(A), subparagraph (2)); and
 - (6) Supporting operational needs of offices by providing updated FAM material on its websites and in other formats, as requested.

18 FAM 201.1-1(C) Scope

*(CT:PPP-2; 03-19-2018)**(State Only)*

These directives apply to the Department of State and its operations worldwide.

18 FAM 201.1-1(D) Applicability

*(CT:PPP-2; 03-19-2018)**(State Only)*

These directives apply to all Department of State and other relevant personnel worldwide.

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18 FAM 201.1-2 AUTHORITIES

(CT:PPP-2; 03-19-2018)
(State Only)

Authorities include:

- (1) Section 1 (a)(4) of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a(1)(a)(4)). This statute, authorizes the Secretary to “promulgate such rules and regulations as may be necessary to carry out the functions of the Secretary of State and the Department of State.” Various other statutes and regulations authorize the Secretary to prescribe rules and regulations on particular topics. (For example, see Section 206 of the Foreign Service Act of 1980, as amended (22 U.S.C. 3926), which authorizes the Secretary to prescribe such regulations as the Secretary deems appropriate to carry out functions under the Foreign Service Act.) Relevant legal authorities are cited in the portions of the FAM to which they pertain;
- (2) The Federal Records Act of 1950 (44 U.S.C. Chapter 31);
- (3) The Government Paperwork Elimination Act (GPEA) (Public Law 105-277, Title XVII (44 U.S.C. 3504, note); and
- (4) The Electronic and Information Technology Accessibility Standards, which implement Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d).

18 FAM 201.1-3 RESPONSIBILITIES

18 FAM 201.1-3(A) Program Offices

(CT:PPP-7; 08-13-2018)
(State Only)

Program offices:

- (1) Draft and coordinate appropriate directives to be incorporated into the FAM that set forth Department organizational structures, policies, and procedures and identify and verify related legal authorities;
- (2) Ensure that the Department’s directives are current. Program offices review directives for which they have substantive and coordinating responsibility annually and make changes to maintain the completeness and accuracy of the FAM; and
- (3) Ensure that organizational, policy, or procedural changes issued by ALDACS or Department Notices (see 18 FAM 201.1-5(B)) are incorporated into the FAM within 60 days of the announcement of such changes.

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U.S. Department of State Foreign Affairs Manual Volume 18
Programs, Practices, and Planning**18 FAM 201.1-3(B) Operating Offices***(CT:PPP-2; 03-19-2018)*
(State Only)

Operating offices should notify the proper program office, if known, or the Office of Directives Management of any discrepancies in the FAM.

18 FAM 201.1-3(C) Office of Directives Management*(CT:PPP-2; 03-19-2018)*
(State Only)

- a. The Office of Directives Management (A/GIS/DIR):
 - (1) Analyzes, evaluates, organizes, and edits initial FAM directives and changes;
 - (2) Coordinates with and ensures that responsible program offices incorporate statutes, Executive orders, or other legally-required or Presidentially-directed materials into the FAM;
 - (3) In conjunction with the Office of the Legal Adviser, determines the validity of Department of State directives materials; and
 - (4) Periodically reports to management the status of the Directives Management Program.
- b. A/GIS/DIR must approve and ensure the appropriate clearance of all directives before publication or issuance. (This includes changes issued as covered under section 18 FAM 201.1-5(B).)
- c. A/GIS/DIR coordinates the annual review of all FAM material (see 18 FAM 201.1-1(B) paragraph b(5)) and reports on the review's status to the Standing Committee on Directives.
- d. A/GIS/DIR also maintains the official Department of State organization chart. This chart reflects the structure of the Department as given by the organizational and functional statements in 1 FAM (Organization and Functions).
- e. A/GIS/DIR provides up-to-date organizational information to the Federal Register annually, or as otherwise requested, for inclusion in the United States Government Manual (See 5 U.S.C. 552).

18 FAM 201.1-3(D) Office of Inspector General*(CT:PPP-2; 03-19-2018)*
(State Only)

The Office of Inspector General (OIG) has statutory responsibilities under section 4(a) of the Inspector General Act of 1978, as amended (5 U.S.C. Appendix).

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Accordingly, OIG reviews proposed legislation, regulations, and policies relating to programs and operations of the Department and other establishments for which OIG provides oversight. OIG provides written comments on such proposals when appropriate. OIG's review ensures its awareness of all changes relevant to its oversight responsibilities, and its comments typically focus on text that is related to:

- (1) OIG work or recommendations within the past 3 years; or
- (2) OIG oversight authorities and internal operations.

18 FAM 201.1-3(E) Other Foreign Affairs Agencies

*(CT:PPP-2; 03-19-2018)**(State Only)*

- a. The Department of State and other Foreign Affairs agencies, i.e., the Agency for International Development (USAID) and the Departments of Commerce and Agriculture, should strive to provide maximum uniformity in their administrative policies and procedures. Directives, therefore, should be joint efforts whenever the agencies have common operations. In the Department of State's Foreign Affairs Manual, these joint directives are issued using the term "uniform regulations." A/GIS/DIR determines the presentation style of these policies and procedures.
- b. A Joint Regulations Board, consisting of a representative from State (A/GIS/DIR), who is the chair, and one representative each from USAID and the Departments of Commerce and Agriculture, administers the uniform directives program. The Department of State provides leadership, but all agencies participating have equal voice in developing uniform directives.

18 FAM 201.1-3(F) Volume Coordinator

*(CT:PPP-2; 03-19-2018)**(State Only)*

Volume coordinators perform FAM oversight and liaison functions in cooperation with the Office of Directives Management (A/GIS/DIR). With the exception of Volumes 1 and 2 of the FAM, the volume coordinator for a specific volume or portion of a volume is designated by the Assistant Secretary (or equivalent), whose 1 FAM responsibilities include managerial responsibility for that particular volume or portion. Each volume coordinator also:

- (1) Oversees the assigned volume (and attendant handbooks); monitors status of pending items; and reviews issuance dates to ensure that the material contained in the FAM is current;
- (2) Coordinates FAM changes; participates in all formal submissions to A/GIS/DIR (sometimes drafting the formal submission memorandum); and may act as the conduit for all submissions and revisions between the

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substantive office and A/GIS/DIR;

- (3) Ensures proper clearances of all material before formal submission to A/GIS/DIR;
- (4) Coordinates clearances within the volume coordinator's bureau on related issues in other volumes;
- (5) Keeps management informed of the status of changes and alerts appropriate offices concerning portions of the FAM that warrant revision. Secures management's cooperation to ensure that reviews and revisions are carried out;
- (6) Coordinates with the designated A/GIS/DIR FAM analyst to ensure FAM revisions under the volume coordinator's responsibility are codified;
- (7) Identifies material for inclusion in the FAM and ensures such material is added; and
- (8) Mediates differences between offices on FAM issues.

18 FAM 201.1-3(G) Standing Committee on Directives

(CT:PPP-2; 03-19-2018)

(State Only)

The Standing Committee on Directives is chaired by the Assistant Secretary for Administration and is composed of designated representatives from other Department bureaus. It meets as necessary to provide guidance and direction on FAM issues and to resolve clearance issues between offices concerning FAM material.

18 FAM 201.1-4 DEFINITIONS

(CT:PPP-2; 03-19-2018)

(State Only)

Change Transmittal (CT): Formerly known as Transmittal Letter (TL), the official document that implements formal directive changes to the FAM or FAH. It provides effective dates and necessary instructions for incorporating changes into the FAM or FAH.

Directive: A written communication establishing and prescribing the organizations, policies, or procedures that provide an official basis of Department of State operation.

Foreign Affairs Handbook (FAH): An extension of the Foreign Affairs Manual. This supplemental series provides implementing guidelines and detailed procedures for directives contained in the FAM. The term "Handbook" denotes a Foreign Affairs Handbook. (See also 18 FAM 201.1-5(E)(1).)

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Foreign Affairs Manual (FAM): The formal written document for recording, maintaining, and issuing Department directives. The term “manual” denotes the Foreign Affairs Manual or one of its volumes.

Operating offices: These offices are responsible for carrying out the Department’s mission. They perform their functions in accordance with directives contained in the FAM.

Program offices: Department organizations that develop, implement, and manage appropriate policies and procedures regarding specified functions. Program offices also perform oversight and periodic review of operating offices to ensure their compliance with Department directives.

Uniform regulations: The term used for joint directives agreed to by the Department and other Foreign Affairs agencies and incorporated into agency directives materials (see 18 FAM 201.1-3(E)).

Valid (validity): The term used to describe those directives placed in force through proper issuance as prescribed in 18 FAM 201.1.

18 FAM 201.1-5 DIRECTIVES PROGRAM

(CT:PPP-10; 09-19-2018)

(State Only)

The directives program comprises the Foreign Affairs Manual, the Foreign Affairs Handbooks, acquisition regulations (see 18 FAM 201.1-5(D)), Department Notices and *cables* (interim issuance only), and collateral regulations (see 18 FAM 201.1-5(F)). DIR also manages delegations of authority (see 18 FAM 201.3) and agency rulemaking (see 18 FAM 201.4).

18 FAM 201.1-5(A) The Foreign Affairs Manual (FAM)

(CT:PPP-2; 03-19-2018)

(State Only)

- a. The Foreign Affairs Manual is the official articulation of directives that apply to the activities of the Department of State and the Foreign Service (see 18 FAM 201.1-1(B)). The Foreign Affairs Manual consists of multiple volumes, listed below, with brief summaries of content. Abbreviations used for numbering change transmittals follow in parentheses.

1 FAM—ORGANIZATION AND FUNCTIONS (CT:ORG-): This volume consists of the organizational structure of the Department of State, its functions, responsibilities, and authorities, and contains the official Department organization chart.

2 FAM—GENERAL (CT:GEN-): This volume contains an extensive range of unrelated materials; refer to 2 FAM Table of Contents for the list of subjects.

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3 FAM—PERSONNEL (CT:PER-): This volume contains employment information, compensation, commissions, allowances and differentials, attendance and leave, benefits, performance evaluation, labor-management relations, conduct, grievance procedures, separation/retirement, locally employed staff (LE staff), etc.

4 FAM—FINANCIAL MANAGEMENT (CT:FIN-): This volume contains information on auditing, budgeting, accounting, disbursing, vouchers and claims, payroll operations, structure and classification codes, etc.

5 FAM—INFORMATION MANAGEMENT (CT:IM-): This volume contains information management-related issues, including correspondence and records management, audio-visual management, telecommunications, software engineering, system management, equipment and services acquisition, strategic planning, Freedom of Information, and program management.

6 FAM—GENERAL SERVICES (CT:GS-): This volume contains personal services and benefits information; commissary, mess, and recreational facilities; safety program; procurement of automated data processing equipment; space allocation; and publication, library, and language services.

7 FAM—CONSULAR AFFAIRS (CT:CON-): This volume contains responsibilities regarding the welfare of U.S. citizens abroad; judicial, financial, and medical assistance; shipping and seamen; acquisition and loss of U.S. citizenship; passport services; registration abroad, including reports of birth and absentee voting; and protection of foreign interests.

8 FAM—Reserved for Passports.

9 FAM—VISAS (CT:VISA-): This volume contains information on the issuance or refusal of visas to aliens.

10 FAM—PUBLIC, EDUCATIONAL, AND CULTURAL AFFAIRS (CT:PEC-): This volume contains information on public affairs; public diplomacy; education and cultural exchange programs; press relations; U.S. Government information dissemination to and within foreign countries; and educational and cultural conferences.

11 FAM—LEGAL AND POLITICAL AFFAIRS (CT:POL-): This volume contains political reporting, policies, and programs the Office of the Legal Adviser administers; intelligence, treaties and other international agreements; and international conferences. (Much of 11 FAM is CLASSIFIED.)

12 FAM—DIPLOMATIC SECURITY (CT:DS-): This volume governs security issues for personnel, facilities, and systems; protection; investigations; courier service; and counterterrorism.

13 FAM—TRAINING AND PROFESSIONAL DEVELOPMENT (CT:TPD-): This volume contains policies and procedures for the training of employees of the Department of State, and others, as appropriate.

14 FAM—LOGISTICS MANAGEMENT (CT:LM-): This volume contains

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Exhibit H, Page 165

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logistics management, including procurement and the Diplomatic Pouch.

15 FAM—OVERSEAS BUILDINGS OPERATIONS (CT:OBO-): This volume consists of management information of the Department's facilities abroad including foreign aspects of the Department's safety program.

16 FAM—Medical and Health Program (CT:MED-): This volume provides information regarding medical clearances for personnel and acts as the Designated Agency Head for Safety Operations.

17 FAM—Reserved.

18 FAM—Programs, Practices, and Planning (CT:PPP-): Provides guidance strategic direction, policy priorities, and program management.

- b. A/GIS/DIR maintains the definitive master copy and inventory of the Foreign Affairs Manual. This office also maintains the historical record of prior FAM provisions no longer in effect.

18 FAM 201.1-5(B) Interim Directive

(CT:PPP-8; 08-14-2018)

a. POLICY

An office may issue an interim directive that has immediate effect.

- (1) Interim directive refers to a new policy or a change in policy that is announced in a cable (ALDAC) or Department Notice prior to being codified in the Foreign Affairs Manual (FAM) or associated Foreign Affairs Handbook (FAH). An interim directive is issued due to an urgent or compelling need or an emergency situation. An interim directive might result in conflicting guidance with the FAM/FAH. Due to the possible confusion that may be caused by having more than one version of a policy in existence, interim directives are valid and supersede the FAM/FAH for the time period identified within the ALDAC or Department Notice. If an interim directive expires, the effective policy will be the policy codified in the FAM/FAH.
- (2) Emergency situation includes addressing national security and public safety issues; litigation deadlines; Presidential Policy Directive Executive Orders and new legislation that have short deadlines; or other time sensitive situations.

b. PROCEDURES

- (1) Drafting:
 - (a) The first sentence of an interim directive ALDAC or Department Notice must include: "this is a policy change" and the expiration of the interim directive, not to exceed one year from date of issuance.
 - (b) The reference line of an interim directive ALDAC or Department Notice must refer to the relevant FAM or FAH section.

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(c) A point of contact (POC) must be named within the interim directive.

(2) Clearance:

- (a) The drafting bureau's Assistant Secretary or designee must approve and certify the interim directive as a new or change in policy that must be codified into the FAM in a timely manner.
- (b) The drafting office must secure all bureau clearances before the interim directive can be issued in an ALDAC or Department Notice.
- (c) The drafting office must secure clearance from all stakeholders within the Department, within two business days, before the interim directive can be issued in an ALDAC or Department Notice. Except for the requirements identified in paragraphs (d) and (e) below, if no response is received within two business days, the document will advance to the next step. If a stakeholder indicates a Do Not Clear they must concurrently provide the justification and alternate content verbiage that will allow them to clear.
- (d) The Volume Coordinator (VC) is a mandatory clearer for each interim directive.
- (e) An attorney assigned to the Office of the Legal Adviser (L) must clear before the interim directive can be issued in an ALDAC or Department Notice.
- (f) The Office of the Inspector General (OIG) will review, within two business days, the text before the interim directive can be issued in an ALDAC or Department Notice. OIG may provide comments on Department directives, ALDACs and Notices, but does not provide clearance. If no response is received within two business days, the document will advance to the next step.
- (g) A clearance sheet must be maintained that indicates the bureau and name of the clearer.
- (h) Upon request from L or OIG, A/GIS/DIR will provide a crosswalk of modifications regarding the interim guidance and current FAM/FAH text.
- (i) For interim personnel directives that require a revision or modification of 3 FAM/FAH, see 3 FAH-1 H-1116.1 for clearance guidance.

(3) Emergency Interim Directive:

- (a) In an emergency situation, an interim directive may be issued in accordance with 2 FAM 1216.2
 - (i) In an emergency, normal clearance may be dispensed with, but the action bureau assumes responsibility for departure from the prescribed process.

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- (ii) The action office must inform the units and stakeholders within the Department omitted from the clearance process of the action that has been taken at opening of business the next business day.
 - (b) An attorney assigned to the Office of the Legal Adviser (L) must clear all emergency interim directives before the interim directive can be issued in an ALDAC or Department Notice.
 - (c) Emergency interim directives issued after hours may be cleared by the drafting bureau with relevant bureau duty officers.
 - (d) The drafting bureau must notify the OIG of the emergency issuance of an interim directive at opening of business the next business day. Subsequently the OIG will conduct a review of the interim directive within five business days. OIG may provide comments on Department directives, ALDACs and Notices, but does not provide clearance. If no response is received within five business days, the document will advance to the next step.
- (4) Issuance:
- (a) Once approval and clearances are secured:
 - (i) The ALDAC draft is transmitted by the drafting bureau in the SMART system. The Operations Center (S/ES-O) will review each outgoing ALDAC electronically within SMART and authorize final issuance. The ALDACs that do not meet the standard requirements for issuance will be returned to the drafter for re-submission.
 - Detailed guidance, step-by-step instructions for entering ALDACs into SMART, and clearance guidance are available on the Executive Secretariat InfoLink page at under "Paper Guidance."
 - Additional resources on drafting and sending cables through SMART are available at the SMART apps page.
 - (ii) The Department Notice is transmitted by the drafting bureau to A/GIS for final issuance.
 - (b) Upon issuance of the interim directive, on the day of or opening of business the next business day, the drafting office must provide the following to A/GIS/DIR, at efam@state.gov, for publishing in the FAM/FAH:
 - (i) Approved ALDAC or Department Notice;
 - (ii) Clearance sheet;
 - (iii) Hyperlink URL to the specific interim directive:
 - on the SMART Search site for ALDACS;

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- on the Department Intranet site for Department Notices.
 - (c) A/GIS/DIR will notify the appropriate VC upon receipt of information regarding the interim directive.
- (5) FAM/FAH Publication:
 - (a) Within two working days after the issuance of the ALDAC or Department Notice, A/GIS/DIR will publish the hyperlink in the appropriate FAM/FAH section linking directly to the interim directive.
 - (b) Within 60 days of issuance, the interim directive will be placed in the FAM Clearance application by the VC, in the standard FAM/FAH format, in order to secure clearance from all stakeholders within the Department.
 - (c) In the event required modifications or revisions are identified within the FAM clearance process:
 - (i) The final cleared policy will be published in the FAM and will supersede the issued interim directive and prior policy.
 - (ii) The office of origin will re-issue an ALDAC or Department Notice citing the previous issuance, identifying the modifications or revisions made along with the appropriate hyperlink, and notifying the Department that the final policy is available in the FAM/FAH on the A/GIS/DIR website.
 - (d) A/GIS/DIR will notify the office of origin VC 30 days prior to expiration of an interim directive.
 - (e) Altogether, bureaus should codify an interim directive it has announced within 90 days of the announcement.

c. RESOURCES

- (1) 5 FAH-1 H-232 guidance regarding drafting ALDACs;
- (2) 5 FAH-1 H-240 guidance regarding release of ALDACs; see also 5 FAH-1 H-211 and 5 FAH-1 H-212.1 guidance regarding archive messages that convey official Department policy;
- (3) 5 FAH-1 H-710 guidance regarding use of Department Notices;
- (4) 5 FAH-1 H-720 guidance regarding preparation and clearance of Department Notices;
- (5) 2 FAM 1210 provides general guidance on action and clearance procedures and processes;
- (6) Repository:
 - (i) ALDACs are retrievable in SMART Search.
 - (ii) Department Notices are retrievable in the Department Intranet.

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- (iii) Consular policy ALDACs and Department Notices are also retrievable in the CAWeb Intranet.

18 FAM 201.1-5(C) Delegations of Authority

(CT:PPP-2; 03-19-2018)

(State Only)

Delegations of authority, when assigned numbers by A/GIS/DIR, become part of the Department's body of authorities, to be cited as appropriate in the FAM. As necessary, DIR may also include delegations of authority in the FAM. (See 18 FAM 201.3).

18 FAM 201.1-5(D) Acquisition Regulations

(CT:PPP-2; 03-19-2018)

(State Only)

- a. The Federal Acquisition Regulations System codifies under Title 48 of the Code of Federal Regulations uniform policies and procedures for acquisition by all executive agencies.
- b. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR.
- c. The Department of State Acquisition Regulation (DOSAR) implements, supplements, and in some cases, deviates from the FAR. The FAR and DOSAR cover Department of State acquisitions both domestically and abroad. The Office of the Procurement Executive (A/OPE) is responsible for the DOSAR and represents the Department on the council that revises the FAR.

18 FAM 201.1-5(E) Handbooks and Guidelines

18 FAM 201.1-5(E)(1) Foreign Affairs Handbook Series

(CT:PPP-2; 03-19-2018)

(State Only)

- a. The Foreign Affairs Handbook (FAH) series is a supplemental series providing guidelines and procedures for implementing policies and directives contained in the FAM. Material published in a FAH has the same force and effect as material published in the FAM. Each handbook in the FAH series starts with the same FAM volume number to which it relates. For example, 5 FAH-1 refers to the Correspondence Handbook. The "5" prefix refers to Volume 5, Information Management. The "1" shows that this is the first handbook in that FAH series.
- b. A/GIS/DIR maintains a complete inventory and listing of all extant handbooks. DIR also maintains the historical record of prior FAH provisions no longer in

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effect.

18 FAM 201.1-5(E)(2) Other Guidebooks and Booklets

(CT:PPP-2; 03-19-2018)

(State Only)

- a. The Office of Directives Management does not always link the FAM to other Department guidebooks (also termed guidelines, internal procedures, etc.) relating to isolated operations. A/GIS/DIR must clear all proposed guidebooks or other similar materials prior to publication to determine whether they must be incorporated in a FAM volume or FAH handbook series. Guidebooks are not enforceable.
- b. Booklets contain general information for distribution to individual employees or the public (such as health conditions or social customs in certain areas of the world). Booklets are not enforceable.

18 FAM 201.1-5(F) Collateral Regulations

(CT:PPP-10; 09-19-2018)

(State Only)

Collateral regulations comprise an organized collection of the regulatory or directives publications of Federal agencies other than the Department of State that affect the work of the Department and the Foreign Service. They have legal effect without reissuance by the Department. Such material is not ordinarily written into the Foreign Affairs Manual. It is forwarded to posts in the form in which originally issued or as extracts under cover of explanatory *cables* or change transmittals. Maintain these materials as individual manuals or sets of issuances.

18 FAM 201.1-6 ISSUING DIRECTIVES

(CT:PPP-2; 03-19-2018)

(State Only)

Procedures for drafting, clearing, formatting, and issuing FAM material are given in 2 FAH-1, Foreign Affairs Manual Standards.

18 FAM 201.1-6(A) Drafting Directives

(CT:PPP-10; 09-19-2018)

(State Only)

- a. Originating offices should coordinate with the Office of Directives Management (A/GIS/DIR) before drafting a directive for publication in the FAM (or emergency issuance by Department Notice or *cable*).
- b. The originating office is responsible for the substance, proper format, and

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necessary clearances of each directive proposed for publication as a change to the Foreign Affairs Manual or a Foreign Affairs Handbook. A/GIS/DIR may return to the originating office for correction any directives submitted for publication that are not properly formatted or contain substantive errors, such as incorrect authority citations.

- c. While any office of the Department may propose the initiation of a new or revised directive, the office having primary program responsibility or interest in the subject matter involved prepares the material. When two or more offices share in preparing a single directive, this responsibility may be assumed under mutual agreement by either office, by the volume coordinator, or the Office of Directives Management.
- d. When drafting new or revised directives, drafting officers should collaborate with their counterparts in other foreign affairs agencies to obtain uniformity. A uniform regulation may not be revised without interagency consultation.
- e. The originating office also prepares a suggested summary to be included in the change transmittal. The summary contains the specific major changes in the directive.

18 FAM 201.1-6(B) Clearance and Submission Procedure

(CT:PPP-2; 03-19-2018)
(State Only)

Specifics procedures regarding the FAM clearance process are covered in 2 FAH-1, Chapter H-100.

18 FAM 201.1-6(B)(1) Policy

(CT:PPP-2; 03-19-2018)
(State Only)

- a. A/GIS/DIR is responsible for ensuring that materials have proper clearance before issuance, printing, or other dissemination.
- b. A/GIS/DIR may specify and require clearance points and may decline issuance without those clearances.
- c. FAM material needing clearances from within the Department must be submitted to the FAM Clearance website. Procedures for using the FAM Clearance website are contained in 2 FAH-1 H-116.

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U.S. Department of State Foreign Affairs Manual Volume 18
Programs, Practices, and Planning**18 FAM 201.1-6(B)(2) Internal Clearances***(CT:PPP-2; 03-19-2018)*
(State Only)

Originating/program offices are responsible for obtaining their own bureau's internal clearances; they work with the relevant volume coordinator as needed. Drafters should be in contact with A/GIS/DIR to obtain an informal review before getting the internal clearances.

18 FAM 201.1-6(B)(3) Department Review and Clearance Points*(CT:PPP-2; 03-19-2018)*
(State Only)

- a. The originating office is responsible for identifying which bureaus/offices should review, comment, and/or clear the material.
- b. Each clearance point indicates approval or disapproval in writing, including the use of email, through the FAM Clearance website (see 2 FAH-1 H-116). In the case of disapproval, the clearance point gives its reasons.
- c. Required clearance points are:
 - (1) L—mandatory for substantive issues;
 - (2) CGFS—for financial issues;
 - (3) HR—for personnel issues; and
 - (4) A/GIS/DIR—for all Department administrative issues, policies, and procedures.
- d. OIG is always a review point for new policies. OIG will comment as appropriate, but does **not** clear.

18 FAM 201.1-6(B)(4) Formal Submission*(CT:PPP-2; 03-19-2018)*
(State Only)

- a. After all clearances are obtained, the originating office reconciles comments on proposed directives into the draft directive. It sends the request for publication and final draft in approved format (see 2 FAH-1 H-100) to the volume coordinator. The volume coordinator reviews the submission and forwards the final draft to the Office of Directives Management for review and codification.
- b. If needed or requested by A/GIS/DIR, the originating office must explain in writing reasons for nonacceptance of substantive comment from other offices identified in the clearance process. L clearance is mandatory for substantive issues.

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U.S. Department of State Foreign Affairs Manual Volume 18
Programs, Practices, and Planning

18 FAM 201.1-6(C) Review and Issuance

*(CT:PPP-2; 03-19-2018)**(State Only)*

- a. The Office of Directives Management determines and applies directives standards. It makes such editorial changes it deems necessary (without reclearance, unless substantive intent of the proposed material is affected), and it arranges for publication.
- b. A/GIS/DIR reviews and issues all directives, ensuring that:
 - (1) No conflicting and duplicating policies are published;
 - (2) Proper clearances and approvals have been obtained; and
 - (3) Directives are easy to understand.
- c. The A/GIS/DIR obtains or directs the originating office to obtain any additional clearances it deems necessary, especially if uniformity among agencies is involved. It also approves for publication new or revised directives after all offices concerned have reviewed and concurred.
- d. When the originating office or the Office of Directives Management cannot reconcile dissenting views, A/GIS/DIR must report the matter to the Standing Committee on Directives.
- e. On a uniform directive, agency dissenting views are resolved by the Joint Regulations Board or by referral by the Board to senior officials of the agencies concerned.

18 FAM 201.1-6(D) Issuance and Distribution

18 FAM 201.1-6(D)(1) General Policy

*(CT:PPP-2; 03-19-2018)**(State Only)*

- a. A/GIS/DIR is solely responsible for managing this program. Address all questions concerning this program, including validity of materials in either format, to A/GIS/DIR.
- b. A/GIS/DIR prepares its master copies for electronic use. Offices may purchase paper revisions from A/GIS/GPS and use them as backup copies and for reference as needed.
- c. A/GIS/DIR issues change transmittals (CTs) to make changes and replacements by subchapter. DIR maintains a master copy for validity and continuity purposes.
- d. Use the TAGS AINF and KFAM on all official communications concerning any FAM or FAH issuances.

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U.S. Department of State Foreign Affairs Manual Volume 18
Programs, Practices, and Planning**18 FAM 201.1-6(D)(2) Intranet***(CT:PPP-2; 03-19-2018)*
(State Only)

A/GIS/DIR posts all issued Department's directives on its websites. These electronic Web versions are the official versions of the Department's directives.

18 FAM 201.1-6(D)(3) Compact Disk Format*(CT:PPP-2; 03-19-2018)*
(State Only)

Upon requests from posts where the Internet may not be available or reliable, A/GIS/DIR can supply the FAM in CD-ROM (Compact Disk-Read Only Memory) format.

18 FAM 201.1-6(E) Volume Maintenance*(CT:PPP-2; 03-19-2018)*
(State Only)

- a. The FAM is a vital part of the Department's day-to-day operations. Posts/offices relying on nonelectronic FAM materials must maintain them and keep them current. Responsibilities for FAM maintenance include:
 - (1) Providing means to access the FAM over the Department's Intranet or ClassNet, as well as the Internet, OSIS, and SIPRNET whenever possible, or making the most recent FAM CD-ROMs or paper copies readily available;
 - (2) Distributing new material promptly; and
 - (3) Ensuring that FAM materials remain at the post/office, and not in the possession of individual officers or staff.
- b. Posts and offices that rely primarily on CD-ROM or paper versions of the FAM should include FAM maintenance as part of the job descriptions of designated employees and should include a FAM/FAH review as part of check-in and check-out procedures.

18 FAM 201.1-7 DIRECTIVES RECORDS*(CT:PPP-2; 03-19-2018)*
(State Only)

The Office of Directives Management maintains complete records showing clearances and approvals on all materials published in the FAMs and FAHs. These records are available to officers of the Department who seek information on the history of directives.

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18 FAM 201.1-8 DIRECTIVES VALIDITY AND INTERPRETATION

18 FAM 201.1-8(A) Validity

(CT:PPP-2; 03-19-2018)

(State Only)

- a. The Office of Directives Management (A/GIS/DIR), in coordination with L, determines the validity of Department of State directives. As the managing office, DIR maintains an official copy of all valid directives. In the case of legal deficiency, L may request DIR to rescind the identified material and at the same time notify the program office of the determination and the need to revise the affected material.
- b. A/GIS/DIR will respond to questions of apparent discrepancy or divergence between the official electronic version and other DIR-issued versions. (For example, due to older processing requirements, FAM citations have differed slightly between the two formats, but both are equally valid as long as their substance is the same.)
- c. Direct requests concerning the validity of directives or other similar materials to A/GIS/DIR.

18 FAM 201.1-8(B) Interpretation

(CT:PPP-2; 03-19-2018)

(State Only)

The originating office is responsible for interpreting its directives, subject to L review. The Office of Directives Management will forward inquiries it receives to the originating office. Interpretation of uniform directives is made after interagency consultation.

UNCLASSIFIED (U)

Exhibit 2

1 JOSEPH H. HUNT
Assistant Attorney General
2 JOSHUA E. GARDNER
Assistant Director
3 VINITA B. ANDRAPALLIYAL
vinita.b.andrapalliyal@usdoj.gov
4 Trial Attorney
LISA ZEIDNER MARCUS
5 lisa.marcus@usdoj.gov
Senior Counsel

6 UNITED STATES DEPARTMENT OF JUSTICE
7 Civil Division
Federal Programs Branch
8 P.O. Box 883
Washington, DC 20044
9 Tel: (202) 514-3336

10 Counsel for Defendants

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

14 ANDREW MASON DVASH-
BANKS, et al.,
15
Plaintiffs,
16
v.
17 MICHAEL R. POMPEO, in his
18 official capacity as U.S. Secretary of
State, et al.,
19
Defendants.

Case No. **2:18-cv-00523-JFW (JCx)**

DISCOVERY MATTER

**Declaration of Karen Christensen in
support of Defendants' Response to
Plaintiffs' Motion to Compel Additional
Discovery**

Hearing Date: Tuesdays
Hearing Time: 9:30 AM
Ctmm: #750, 7th Floor
Roybal Federal Building
255 E. Temple St.
Los Angeles, CA 90012

Honorable Jacqueline Chooljian
United States Magistrate Judge

24 **DECLARATION OF KAREN L. CHRISTENSEN**

25 I, Karen L. Christensen, hereby declare:

26 1. I currently serve as Principal Deputy Assistant Secretary for Consular
27 Affairs, a position I have held since August 2017. In this role, I am responsible for
28 overseeing U.S. consular operations. I previously served, from August 2014 to August

1 2017, as the Deputy Assistant Secretary for Overseas Citizens. I have been employed by
2 the Department of State since April 1985.

3 2. The Bureau of Consular Affairs (CA) formulates and implements policy
4 relating to immigration and consular services and ensures responsive and efficient
5 provision of consular services overseas. CA is responsible for the welfare and protection
6 of U.S. citizens abroad, for the issuance of passports and other documentation to citizens
7 and nationals, and for the protection of U.S. border security and the facilitation of
8 legitimate travel to the United States. CA also has a significant domestic presence, most
9 notably the 29 U.S. Passport agencies and centers, 26 of which deal directly with the
10 U.S. public. CA's far-reaching consular activities have broad foreign policy and
11 domestic political implications and involve serious legal, humanitarian, and management
12 concerns. The Department's Assistant Secretary for Consular Affairs is responsible for
13 presiding over these activities; consular officers assigned to embassies and consulates
14 abroad are responsible for their implementation. CA is also the Department's largest
15 Bureau in terms of domestic personnel and is almost entirely funded through revenue
16 generated by consular fees. This revenue totaled \$4.16 billion in 2015, making CA the
17 equivalent of a Fortune 600 company.

18 3. I have reviewed the complaint and exhibits filed in *Dvash-Banks v.*
19 *Pompeo*, 18-cv-523 (C.D. Cal 2018). I have no personal knowledge of any of the factual
20 allegations included in the complaint.

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

22 Executed on November 16, 2018 at Washington, District of Columbia.

23
24 
25 KAREN CHRISTENSEN
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EXHIBIT 3

JOSEPH H. HUNT
Assistant Attorney General
JOSHUA E. GARDNER
Assistant Director
VINITA B. ANDRAPALLIYAL
vinita.b.andrapalliyal@usdoj.gov
Trial Attorney
LISA ZEIDNER MARCUS
lisa.marcus@usdoj.gov
Senior Counsel

UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Tel: (202) 514-3336

Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. **2:18-cv-00523-JFW (JCx)**

DISCOVERY MATTER

**Declaration of Brian J. Egan in support
of Defendants' Response to Plaintiffs'
Motion to Compel Additional Discovery**

Hearing Date: Tuesdays
Hearing Time: 9:30 AM
Ctrm: #750, 7th Floor
Roybal Federal Building
255 E. Temple St.
Los Angeles, CA 90012

Honorable Jacqueline Chooljian
United States Magistrate Judge

DECLARATION OF BRIAN EGAN

I, Brian J. Egan, hereby declare:

1. I am a partner at the international law firm Steptoe & Johnson LLP, based in the firm's office in Washington, D.C. From February 22, 2016 to January 20, 2017, I served as the Legal Adviser, U.S. Department of State. Prior to my position as Legal

1 Adviser, I held several other positions within the U.S. government, including: Deputy
2 Assistant and Deputy Counsel to the President, The White House (2013-2016); National
3 Security Council, Legal Advisor, The White House (2013-2016); Assistant General
4 Counsel, U.S. Department of Treasury (2012-2013); Special Assistant and Associate
5 Counsel to the President, The White House (2011-2012); National Security Council,
6 Deputy Legal Advisor, The White House (2009-2011); and Attorney-Adviser, US
7 Department of State (2005-2009).

8 2. As Legal Adviser, I was the chief legal officer for the Department of State,
9 a Senate-confirmed position that administratively is treated as equivalent to an assistant
10 secretary. I reported directly to the Secretary of State and oversaw a staff of
11 approximately 300 people, including approximately 200 attorneys, in the Office of Legal
12 Adviser. My responsibilities included advising and representing the Bureaus and
13 missions of the Department; the Secretary and senior leadership; and, through the
14 Secretary, the Executive Branch on all legal and legal policy issues arising in connection
15 with U.S. foreign policy and the work of the Department. As Legal Adviser, I
16 participated in international negotiations and represented the United States in
17 international conferences related to legal issues, and represented the Department
18 regarding legal concerns at interagency meetings, congressional hearings, and meetings
19 of private organizations. The Legal Adviser acts as the Department's point of contact
20 with the Departments of Justice and Treasury with respect to sensitive law enforcement
21 operations, prosecutions, and other individual cases that may affect the conduct of U.S.
22 foreign policy; and has lead responsibility on behalf of the Department for domestic
23 litigation that involves the Department or its interests, coordinating the views of other
24 Departments when necessary, and assisting the Justice Department in connection with
25 such litigation. I authorized testimony of Department employees and production of
26 Departmental records in response to legal process.

27 3. I have reviewed the complaint and exhibits filed in *Dvash-Banks v.*
28 *Pompeo*, 18-cv-523 (C.D. Cal 2018). I have no personal knowledge of any of the factual

1 allegations included in the complaint.

2 4. It would be burdensome to me personally to be subjected to a deposition in
3 this matter. More broadly, it would unduly burden the workings of the Department to
4 require the current or former Legal Adviser to sit for a deposition, particularly where the
5 Legal Adviser was not personally involved with the underlying facts and lacks personal
6 knowledge related to the claims in the case.

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

8 Executed on November 15, 2018 at Washington, District of Columbia.

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11 BRIAN J. EGAN
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Exhibit 4

JOSEPH H. HUNT
Assistant Attorney General
JOSHUA E. GARDNER
Assistant Director
VINITA B. ANDRAPALLIYAL
vinita.b.andrapalliyal@usdoj.gov
Trial Attorney
LISA ZEIDNER MARCUS
lisa.marcus@usdoj.gov
Senior Counsel

UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, DC 20044
Tel: (202) 514-3336

Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDREW MASON DVASH-
BANKS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. **2:18-cv-00523-JFW (JCx)**

DISCOVERY MATTER

**Declaration of Carlos Hernandez in
support of Defendants' Response to
Plaintiffs' Motion to Compel Additional
Discovery**

Hearing Date: Tuesdays
Hearing Time: 9:30 AM
Ctrm: #750, 7th Floor
Roybal Federal Building
255 E. Temple St.
Los Angeles, CA 90012

Honorable Jacqueline Chooljian
United States Magistrate Judge

DECLARATION OF CARLOS A. HERNANDEZ

I, Carlos A. Hernandez, hereby declare:

1. I am employed in the Civil Service with the U.S. Department of State and I am currently assigned as a Citizen Services Specialist in the Bureau of Consular Affairs. I have been employed by the Department since February 20, 2000, and served as a

1 Country Officer for the Office of American Citizens Services and Crisis Management
2 between January 2014 to the present.

3 2. I have reviewed the complaint and exhibits filed in *Dvash-Banks v.*
4 *Pompeo*, 18-cv-523 (C.D. Cal 2018). A letter dated October 2, 2017, addressed to
5 Congressman Ted Lieu and bearing my signature, was described in paragraphs 55 and 56
6 of the Complaint, and appended to the Complaint as Exhibit D. That letter responded to
7 a written inquiry the Office of American Citizens Services and Crisis Management had
8 received from Congressman Lieu. Other than my involvement with finalizing and
9 signing that letter, I have no other personal knowledge of the facts alleged in the
10 Complaint.

11 3. I have searched my files for any material related to the case and have shared
12 those records with the Department of State attorneys handling the case.

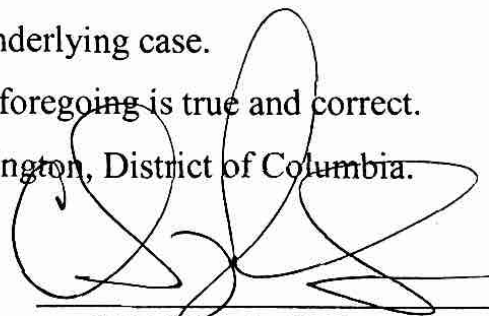
13 4. In September 2017, I was assigned to review and respond to a
14 Congressional inquiry submitted by Congressman Lieu's office on behalf of one of his
15 constituents, Mr. Dvash-Banks.

16 5. At the time I received the assignment, I was working on a hurricane task
17 force and unable to personally draft a response to the Congressional inquiry. As a result,
18 a colleague on temporary duty drafted the initial response in coordination with the Office
19 of Legal Affairs for Overseas Citizens Services. After the letter was drafted and
20 reviewed by the Office of Legal Affairs for Overseas Citizens Services, I reviewed it,
21 signed it, and sent it out to the Congressional Representative's office.

22 6. I had no other involvement in the underlying case.

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

24 Executed on November 16, 2018 at Washington, District of Columbia.

A handwritten signature in black ink, appearing to read 'CARLOS A. HERNANDEZ', is written over a horizontal line.

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CARLOS A. HERNANDEZ