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13 *Attorneys for Plaintiffs*

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

17 ANDREW MASON DVASH-
BANKS and ETHAN JACOB
18 DVASH-BANKS,
19 Plaintiffs,

20 v.

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

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

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM CONCERNING
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
Pretrial conference date: April 5, 2019
Trial date: April 16, 2019

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SUPPLEMENTAL MEMORANDUM

I. Introduction

Plaintiffs respectfully submit this supplemental brief to update the Court on the current status of the discovery disputes between the Parties. Despite Defendants' eleventh-hour machinations,¹ there remain significant disputes over Defendants' document production, refusal to produce a 30(b)(6) deponent and certain individual witnesses, and interrogatory responses.²

II. Requests for Production

As of the date of this submission, Defendants continue to stonewall Plaintiffs' efforts to obtain documents responsive to Plaintiffs' Requests for Production. During a follow-up meet-and-confer on November 20, Plaintiffs again urged Defendants to produce documents and specify a date when their production will be substantially complete reasonably before upcoming depositions. Defendants agreed to provide a portion of their production by November 23 and potentially another installment on or before November 30,³ and committed only to substantially complete their production by January 2, 2019—*i.e.*, the Court's cutoff date for *all* discovery. Putting aside that Defendants have had Plaintiffs' document requests since mid-August, Defendants' proposal to complete their document production on the same date as the discovery cutoff will severely prejudice Plaintiffs because it will not afford them sufficient opportunity to receive, let alone

¹ Plaintiffs described in the Joint Stipulation, at pp. 1-4, Defendants' belated correspondence and supplemental interrogatory responses on November 16—the due date of their portion of the Joint Stipulation. Attached to the Supplemental Declaration submitted herewith is a chart identifying the matters that remain in dispute in connection with the motion.

² Capitalized terms not defined herein have the same meanings ascribed to them in the Joint Stipulation.

³ Defendants produced an additional 24 documents at 11:16 p.m. PT on November 23, but have provided no estimate of the number of documents they intend to produce or when they intend to complete production.

1 review, the documents before depositions, evaluate any privilege log entries,
2 pursue additional depositions, or seek any necessary relief from the Court.

3 Further, Defendants' approach may lead to production of crucial documents
4 *after* witnesses have been deposed. Defendants acknowledged this problem during
5 the November 20 call, but stated they were willing to accept the risk that Plaintiffs
6 may seek to re-depose certain individuals. Plaintiffs therefore respectfully reiterate
7 their positions in the Joint Stipulation concerning their document requests:

8 Defendants should substantially complete their document production and serve
9 their privilege logs reasonably in advance of depositions. Plaintiffs also request
10 that the Court confirm by order Plaintiffs' right to re-open depositions if
11 Defendants produce relevant documents after depositions are conducted.

12 **III. 30(b)(6) Deposition**

13 Plaintiffs in good faith met and conferred regarding the 30(b)(6) Topics most
14 recently on November 20. During that call, Plaintiffs endeavored to address
15 Defendants' objections, but without success. Except for Topic 15, Defendants
16 have rejected Plaintiffs' offer for a 30(b)(6) deposition on narrowed Topics.
17 Therefore, eighteen Topics remain in dispute. Defendants' principal objection that
18 Topics 1 and 2 (about communications and decisions concerning Ethan's
19 applications for U.S. citizenship) are duplicative of individual testimony Plaintiffs
20 seek ignores that deposition testimony from percipient witnesses does not replace
21 the need for organizational testimony in a 30(b)(6) deposition. *See Stevens v.*
22 *Corelogic, Inc.*, 2016 WL 397936, at *3 (S.D. Cal. Feb. 1, 2016). This is
23 especially important here because Plaintiffs' primary contact at the State
24 Department, Ms. Frankie Terri Day, is no longer a government employee.
25 Defendants also refused to commit to produce a witness to testify about Topics 5,
26 7, 8, 10 and 16 or to respond to Plaintiffs' follow-up letter on that subject.⁴

27 _____
28 ⁴ Topics 5, 7, 8, 10, and 16 relate to communications between particular DHS agencies and the State Department regarding the application of Section 309 over

1 (Supplemental Lawson-Remer Decl. Ex. 2.) Although Plaintiffs explained these
 2 Topics in detail during the November 20 call, Defendants continue improperly to
 3 object to them on the purported grounds that they are insufficiently particularized
 4 and too broad. Defendants' refusal to cooperate with a 30(b)(6) deposition is not
 5 grounded in law, and Plaintiffs are entitled to this deposition.⁵

6 **IV. Individual Depositions**

7 Since the filing of the Joint Stipulation, Defendants have made some
 8 progress scheduling certain depositions, but several are still unresolved. First,
 9 given Defendants' representation that Ann Marie Warmenhoven is stationed in Dar
 10 es Salaam, Plaintiffs agreed to defer her deposition but asked to be informed if she
 11 returns to North America for the Christmas holidays (to permit her deposition to
 12 occur). Defendants did not commit to do so.⁶

13 Defendants also continue to refuse to produce Carlos Hernandez, Karen
 14 Christensen, or Brian Egan, and have instead submitted declarations contending
 15 their testimony is not relevant to this Action. But the declarations submitted by
 16 Defendants undermine this assertion.⁷ Ms. Christensen and Mr. Egan's

17 Section 301(g) to a particular group of people; the impact of certain court decisions
 18 on the State Department's consideration of applications for a CRBA, U.S. passport,
 19 or Certificate of Citizenship; circumstances in which the State Department treats
 20 children of same-sex male married couples as born "in wedlock;" rationales for the
 FAM's interpretation of Sections 301(g) or 309; and the organizational structure of
 the State Department and CIS.

21 ⁵ See *Kelly v. Provident Life & Acc. Ins. Co.*, 2011 WL 2448276, at *3 (S.D. Cal.
 22 June 20, 2011).

23 ⁶ In addition: 1) Defendants agreed to work with Plaintiffs to identify a date for the
 24 deposition of Frankie Terri Day, on November 20, but have not yet offered any
 25 additional dates; and 2) although the Parties previously scheduled depositions for
 26 Larilyn Reffett and Margaret Ramsay, Defendants told Plaintiffs on November 20
 27 that they are having trouble confirming start times for those depositions. Plaintiffs
 are hopeful these depositions will be resolved without the need for the Court's
 intervention, but request that if Defendants do not proceed with the scheduled
 depositions of Ms. Reffett or Ms. Ramsay and do not ultimately schedule Ms.
 Day's deposition, the Court intervene to compel these depositions.

28 ⁷ Ms. Christensen is "responsible for overseeing U.S. consular operations" for
 Consular Affairs, the agency that "formulates and implements policy relating to

1 declarations demonstrate that they each have important knowledge about the policy
2 behind the State Department's decision not to issue CRBAs and U.S. passports to
3 children like Ethan, and Mr. Hernandez should testify as to the State Department's
4 response to Congressman Ted Lieu's inquiry into Ethan's status. All this is
5 relevant to Plaintiffs' claims. Nonetheless, on the November 20 call, Plaintiffs
6 offered to defer (and possibly forego) the depositions of Ms. Christensen and
7 Mr. Egan if Defendants designate a 30(b)(6) witness to testify about the noticed
8 Topics as narrowed in Plaintiffs' October 30 letter. Defendants refused the offer.

9 The Court should therefore compel Defendants to produce Ms. Christensen,
10 Mr. Egan, and Mr. Hernandez for deposition and notify Plaintiffs if Ms.
11 Warmenhoven becomes available at any point prior to the discovery cutoff.

12 **V. Interrogatories**

13 Defendants served responses to Interrogatory Nos. 11-20 (to which they
14 previously failed to respond altogether) on November 16. Thus, although
15 Defendants' failure to respond to Interrogatory Nos. 11-20 is no longer a live issue
16 for the Court's resolution, the responses to these interrogatories suffer from the
17 same general deficiencies discussed in the Joint Stipulation at pp. 16-23
18 concerning Defendants' responses to Interrogatory Nos. 1-10,⁸ *i.e.*, Defendants

19 immigration and consular services" including "the issuance of passports and other
20 documentation" to U.S. citizens abroad. (Christensen Decl. at 2.) Brian Egan
21 serves as "the chief legal officer for the Department of State" whose
22 responsibilities include providing advisement to other government bodies "on all
23 legal and legal policy issues arising in connection with the U.S. foreign policy and
24 the work of the Department." (Egan Decl. at 2.) Carlos Hernandez signed a letter
to Congressman Ted Lieu regarding the Dvash-Banks family, demonstrating that
Mr. Hernandez has relevant knowledge, including whether the letter he "reviewed
[and] signed" conformed to the State Department's typical response to such
inquiries. (Hernandez Decl. at 2.)

25 ⁸ Defendants' responses to certain of Interrogatory Nos. 11-20 are also incomplete
and/or nonresponsive. For example, Interrogatory No. 13 asked Defendants to
26 "[i]dentify and describe the evidentiary requirements deemed necessary by the
State Department to establish United States citizenship at birth under Section
27 301(g) or Section 309." Instead of identifying the evidentiary requirements,
28 Defendants quoted paragraphs of the FAM discussing the *burden of proof* for
establishing U.S. citizenship.

1 object to various interrogatories “to the extent they seek” privileged information
2 but do not specify whether they have withheld information on this basis;
3 Defendants unreasonably limit their responses to the period from January 1, 2015
4 to June 2, 2017; and Defendants refuse to provide information that was not
5 generated or possessed by, or available to, the U.S. Consulate in Toronto.⁹

6 **VI. Conclusion**

7 Defendants have been obstructing Plaintiffs’ reasonable discovery requests
8 essentially from the outset, and Plaintiffs expect Defendants will continue with this
9 course absent the Court’s intervention. Defendants’ portions of the Joint
10 Stipulation are replete with inadequate excuses for their failure to cooperate in
11 discovery. Defendants complain, for example, that discovery has taken hundreds
12 of hours; that the timeline of the Action is compressed; that this is not Defendants’
13 counsel’s only case; and that despite having received discovery requests in August,
14 it was the very week in November that they had slated to provide responsive
15 materials when they were diverted by the receipt of Plaintiffs’ portions of a Joint
16 Stipulation. But for all the hours Defendants have supposedly spent responding to
17 discovery, they have precious little to show for it. Instead, Defendants have known
18 about the compressed discovery schedule since August yet delayed at every turn in
19 providing responsive documents and information or even engaging on discovery
20 issues. Plaintiffs respectfully request the Court grant Plaintiffs’ requested relief.

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27 ⁹ On the November 20 meet-and-confer call, Plaintiffs offered to defer (or possibly
28 forego) moving to compel supplemental interrogatory responses if Defendants
would designate a 30(b)(6) witness. Defendants rejected the proposed compromise.

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Dated: November 27, 2018

Respectfully submitted,

By: /s/ Alexa M. Lawson-Remer

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22 *Attorneys for Plaintiffs*

23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA

25 ANDREW MASON DVASH-
26 BANKS and ETHAN JACOB
27 DVASH-BANKS,
28 Plaintiffs,
v.
THE UNITED STATES
DEPARTMENT OF STATE,
and THE HONORABLE
MICHAEL R. POMPEO,
Secretary of State,
Defendants.

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

**SUPPLEMENTAL DECLARATION
OF ALEXA LAWSON-REMER IN
SUPPORT OF PLAINTIFFS’
SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
PLAINTIFFS’ MOTION TO
COMPEL**

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

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

2 1. I am an attorney duly licensed by the State of California and am
3 admitted to practice before this Court. I am an associate at Sullivan & Cromwell
4 LLP, and am one of the attorneys representing Plaintiffs *pro bono* in the above-
5 captioned action. I submit this Declaration in support of Plaintiffs' Supplemental
6 Memorandum in Support of Plaintiffs' Motion to Compel Production of
7 Documents, Interrogatory Responses, and Depositions, filed concurrently herewith.
8 I have personal knowledge of the facts set forth in this Declaration and, if called
9 upon, could testify to those facts.

10 2. Attached hereto are true and correct copies of the following
11 documents:

12 Exhibit 1 Chart identifying the matters that remain in dispute.

13 Exhibit 2 Letter from Alexa Lawson-Remer to Lisa Zeidner Marcus and Vinita
14 Andrapalliyal, dated November 21, 2018, memorializing a November
20, 2018 meet and confer call regarding discovery matters.

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

17
18 Executed this 27th day of November, 2018 in Los Angeles, California.

19 _____
20 /s/ *Alexa M. Lawson-Remer*
21 Alexa M. Lawson-Remer
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EXHIBIT 1

Issues in Dispute as of November 27, 2018

Issues Raised in the Joint Stipulation	Resolved? (Yes/No)	Comment
1. Defendants' Improper Restrictions on Scope Throughout Discovery		
a. State Department components beyond Toronto are relevant	No	
b. Appropriate time period for discovery	No	
c. Appropriate claims of privilege for documents and information	No	
2. Defendants' Responses to Plaintiffs' Requests for Production of Documents	No	
3. Defendants' Responses to Plaintiffs' Interrogatories		
a. Interrogatory Nos. 1-10	No	Plaintiffs offered to defer, and possibly forego, further responses to these interrogatories if Defendants would submit to the noticed Rule 30(b)(6) deposition. Defendants rejected that offer.
b. Interrogatory Nos. 11-20	No	Defendants provided responses and objections to Interrogatory Nos. 11-20 on November 16; however, they are deficient for the reasons discussed in Plaintiffs' Supplemental Memorandum. Plaintiffs offered to defer, and possibly forego, further responses to these interrogatories if Defendants would submit to the noticed Rule 30(b)(6) deposition. Defendants rejected that offer.
4. Rule 30(b)(6) deposition(s)	No, except for Topic No. 15.	Defendants agreed to designate a 30(b)(6) deponent to testify regarding Topic No. 15. The other topics remain in dispute.
5. Individual depositions		
a. Frankie Terri Day	No	On November 20, Defendants agreed to work with Plaintiffs

		to identify a date for the deposition of Frankie Terri Day, but have not yet offered any potential dates.
b. Larilyn Reffett	Yes, provided Defendants confirm a reasonable start time for the deposition.	Defendants informed Plaintiffs on November 20 that they are having trouble confirming a start time for this deposition.
c. Margaret Ramsay	Yes, provided Defendants confirm a reasonable start time for the deposition.	Defendants informed Plaintiffs on November 20 that they are having trouble confirming a start time for this deposition.
d. Ann Marie Warmenhoven	No	Plaintiffs agreed to defer Ms. Warmenhoven's deposition but asked to be informed if she returns to North America for the Christmas holidays (to permit her deposition to occur). Defendants did not commit to do so.
e. Carlos Hernandez	No	
f. Karen Christensen	No	Plaintiffs offered to defer, and possibly forego, this deposition if Defendants would submit to the noticed Rule 30(b)(6) deposition. Defendants rejected that offer.
g. Brian Egan	No	Plaintiffs offered to defer, and possibly forego, this deposition if Defendants would submit to the noticed Rule 30(b)(6) deposition. Defendants rejected that offer.

EXHIBIT 2

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November 21, 2018

Via E-Mail

Lisa Zeidner Marcus, Esq.,
Vinita B. Andrapalliyal, 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 to memorialize the parties' current positions regarding Plaintiffs' requests for the production of documents, interrogatories, individual depositions, and 30(b)(6) depositions, as discussed during our November 20, 2018 telephone call.

Document Production: Plaintiffs urged Defendants to provide an update on their pending document production, reiterating that documents are necessary to prepare for depositions. Despite the fact that Defendants have had the document requests since August and have made only one seven-page production, Defendants refused to commit to a deadline for the substantial completion of their document production prior to January 2, 2019, which is the Court-ordered deadline for the completion of all discovery. Plaintiffs stated that Defendants' proposed date of January 2 will prejudice Plaintiffs because it will not afford Plaintiffs sufficient time to review the documents, challenge Defendants' privilege log, adequately prepare for or seek additional depositions, or seek recourse from the Court, if necessary. Although Defendants stated that they will produce privilege logs on a rolling basis, they did not commit to provide any portion of their logs by a particular date and, even if they had, this arrangement does not address any of Plaintiffs' other concerns. Critically, Defendants' proposed schedule fails to provide Plaintiffs sufficient time to review and assess the documents before taking the depositions, which is particularly prejudicial with regard to preparations for a 30(b)(6)

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deposition.

Further, although Defendants stated that they intend to make a production of documents on Friday, November 23 and another production of documents on or before Friday, November 30, they declined to disclose the contents or volume of these anticipated productions (which is consistent with their failure to date to provide concrete details about responsive documents). While Defendants committed to prioritize producing documents from Larilyn Reffett and Margaret Ramsay, whose depositions are currently scheduled for December 6 and 7, respectively, Defendants did not commit to complete production of all of the documents relating to those deponents before the depositions. Defendants acknowledged, however, that if they fail to make an adequate production prior to these depositions or if important responsive documents are produced after these depositions, these percipient witnesses are at risk of being deposed a second time. Please understand that Plaintiffs will have no choice but to keep open any deposition that occurs before Defendants complete document production in this action.

Interrogatories: On Friday, November 16, Defendants provided their long-awaited (and very belated) responses to the second half of Plaintiffs' Interrogatories (served on Defendants on August 28) which they had previously refused to answer altogether. Although Defendants' responses to Plaintiffs' interrogatories (including those provided on November 16) are deficient, in a good faith effort to compromise, Plaintiffs proposed deferring (and potentially foregoing) a meet and confer seeking supplemental responses, on the condition that Defendants produce a 30(b)(6) witness capable of addressing the issues identified in Plaintiffs' interrogatories. Defendants responded that it is their position that their interrogatory responses are complete and accurate and that the State Department's Foreign Affairs Manual ("FAM") and its related Directives are the only source of State Department policy. Plaintiffs stated that Defendants should provide this information in an interrogatory response, or Defendants should provide a 30(b)(6) witness to speak to this issue.

The parties specifically reviewed the deficiencies in Defendants' responses to Interrogatories 4, 5 and 8, but were unable to resolve their disputes. With respect to Interrogatories 4 and 5, which seek information about the policies relating to the application of Section 301(g) and Section 309, including the reasons and basis for those policies, Plaintiffs pointed out that Defendants failed to provide the reasons for the FAM provisions identified in their responses to these interrogatories (as the interrogatory specifically asks). Defendants stated that some sections of the FAM do discuss the reasoning behind the FAM's provisions, and asked Plaintiffs to give an example of "reasons and basis" that are not in the FAM but are of interest to Plaintiffs. Plaintiffs provided the example of information regarding why the State Department requires DNA testing. Defendants responded that they would look for the information, but that this issue arises when consular officers suspect that assisted reproductive technology has been used. Plaintiffs stated that, rather than asking for further interrogatory responses, they

Vinita B. Andrapalliyal, Esq. and
Lisa Zeidner Marcus, Esq.

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would be open to asking a 30(b)(6) deponent to explain this process.

With respect to Interrogatory 8, which requests information about the requirements to be a “parent” under the Immigration and Nationality Act, Defendants failed to explain what “circumstances . . . [of] doubt” means or how Defendants might come to know assisted reproductive technology has been used to create progeny. Plaintiffs again stated that Defendants should be required to supplement their responses but that this is an area they are entitled to explore during a 30(b)(6) deposition. Defendants continued to argue that it would be burdensome to prepare a deponent to respond to this line of inquiry in a 30(b)(6) deposition and would not commit to designating a 30(b)(6) deponent on this issue.

30(b)(6) Deposition: The parties discussed the 30(b)(6) topics that Plaintiffs offered to narrow in their October 30 letter, to which Defendants provided a responsive letter on Friday, November 16. Despite Plaintiffs’ offer to narrow various of the noticed topics, Defendants continue to refuse to produce a 30(b)(6) witness for all topics except one (Topic 15). Although Defendants continue to refuse to provide a deponent for the grand majority of the topics, Defendants failed to move for a protective order and their obfuscation and non-responsiveness are inexcusable. *See Nationstar Mortg., LLC v. Flamingo Trails No. 7 Landscape Maint. Ass’n*, 316 F.R.D. 327, 337 (D. Nev. 2016) (“[T]he failure to appear for a deposition ‘is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).’”).

Defendants incorrectly assert that fact witness testimony is sufficient in this case. Defendants stated that they do not believe a 30(b)(6) witness is necessary because Plaintiffs may ask the individual deponents any questions that they would otherwise ask a 30(b)(6) witness. Plaintiffs explained (again) that relying on fact witnesses alone is insufficient because Plaintiffs are entitled to testimony from a corporate/party representative laying out Defendants’ positions on critical topics. *See Stevens v. Corelogic, Inc.*, 2016 WL 397936, at *3 (S.D. Cal. Feb. 1, 2016) (“A Rule 30(b)(6) deponent testifies as to the knowledge of [an entity] A fact witness, on the other hand, testifies as to his *individual knowledge* and gives his *personal opinions*.”) (emphasis added); *see also Sabre v. First Dominion Capital, LLC*, 2001 WL 1590544, at *1 (S.D.N.Y. Dec. 12, 2001) (“A deposition pursuant to Rule 30(b)(6) is substantially different from a witness’s deposition as an individual. A 30(b)(6) witness testifies as a representative of the entity, his answers bind the entity and he is responsible for providing all the relevant information known or reasonably available to the entity.”). Although Plaintiffs reiterated their compromise to have Defendants designate one or more of the individual deponents as their 30(b)(6) witness, Defendants stated this was not a viable compromise for them and continued to stand on their objections for the majority of the 30(b)(6) topics. In fact, as Plaintiffs explained, proceeding with a Rule 30(b)(6) deposition could reduce or eliminate the need for Defendants to supplement or amend

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Lisa Zeidner Marcus, Esq.

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their interrogatory responses or for certain depositions or deposition inquiries to occur.

With respect to specific topics in the 30(b)(6) Notice, Plaintiffs disagreed with Defendants' request to eliminate topics 1 and 2, which relate directly to Ethan Dvash-Banks, because they are appropriate in scope and are already sufficiently narrow. Plaintiffs noted Defendants' continuous position thus far has been that only the four women named in Defendants' responses to interrogatories 1 and 2 were involved in the adjudication of Ethan's applications and as such, identifying information and communications responsive to these topics should be minimally burdensome with respect to preparing a witness for a deposition. Plaintiffs further disagreed with Defendants' request to eliminate topic 5, noting that Defendants' counsel refused to produce the very same communications related to topic 5 when they were requested from the Department of Homeland Security in connection with this litigation on the ground that Plaintiffs could obtain these communications from Defendants.

The parties also discussed topics 7, 8, 10, and 16, which remain in dispute. Defendants stated topic 7, regarding the impact of particular court decisions, was duplicative of Request 3 in Plaintiffs' Requests for Production of Documents. Plaintiffs confirmed the topic was similar to RFP No. 3, explaining their intent to ask questions about documents received in response to that Request, if any are produced and if none are produced, to confirm whether any actions were taken within the State Department regarding the decisions. (In fact, Defendants have not produced any documents responsive to that Request and have not committed to do so.) Defendants next claimed the topic lacked specificity. Plaintiffs explained that they seek information regarding whether the State Department took any action in response to these judicial decisions. For example, Plaintiffs indicated that they wish to inquire about whether the State Department amended the FAM, altered the number of Consular Reports of Birth Abroad issued, or considered any such changes as a result of those judicial decisions. Defendants claimed such questions were questions of "pure law," despite Plaintiffs' pointed requests about *the State Department's reaction* to the legal changes.

With respect to topic 8, Defendants claimed their Interrogatory Responses provided adequate information responsive to this topic. Plaintiffs reiterated that Defendants' Interrogatory Responses were inadequate, and regardless sought to explore the issue further in a 30(b)(6) deposition. To the extent Defendants produce any documents relating to the State Department's construction of the term "in wedlock," Plaintiffs would—and are entitled to— inquire about those documents. Further, Plaintiffs already substantially narrowed this topic by offering to limit it to situations when the State Department would consider men in same-sex marriages to have children "in wedlock." Defendants stated that they would consider this topic further, but did not commit to any position.

Regarding topic 10, the parties disagree about the relevant time frame.

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Lisa Zeidner Marcus, Esq.

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Defendants view the relevant time frame as ending on June 2, 2017. Plaintiffs stated that subsequent changes to the FAM would be relevant, but if Defendants would stipulate that no changes occurred after June 2, 2017, except any changes that purely altered formatting, Plaintiffs would be willing to accept that proposed limitation. Defendants declined to take a position on this offer, and Plaintiffs await Defendants confirmation.

With respect to topic 16, Plaintiffs explained they expected questions regarding the organization of the State Department to be limited to explanations of the roles and responsibilities of consulate officials, including how those individuals engage with the policy and decisions makers in D.C. If Defendants stipulate to the authenticity of the organizational charts provided, Plaintiffs could quickly move through the individuals listed in those charts and review the respective roles. Defendants stated they would discuss the matter with the State Department and let Plaintiffs know if Defendants will produce a 30(b)(6) witness on this topic in view of Plaintiffs' explanation.

In light of the additional information Plaintiffs provided during the call, Defendants stated that they may be willing to provide a 30(b)(6) deponent regarding topics 7, 8, 10, and 16. Defendants asked that Plaintiffs memorialize in writing their further narrowed versions of these topics, which we have done in this letter.

Individual Depositions: The parties discussed scheduling the depositions of Frankie Terri Day, Larilyn Reffett, Margaret Ramsay, Ann Marie Warmenhoven, Carlos Hernandez, Karen Christensen, and Brian Egan. With respect to Ms. Day, Defendants agreed to accept service of her subpoena and to inquire into her availability on December 14 or the week of December 17 in Charlotte, North Carolina.

With respect to Ms. Reffett and Ms. Ramsay, whose depositions are scheduled for December 6 and 7, Defendants stated that they each have appointments in the morning on those dates and are inquiring as to later start times each day,

Regarding Ms. Warmenhoven, Plaintiffs have agreed to not seek to depose Ms. Warmenhoven at this time given Defendants' representation that she is stationed in Dar es Salaam, however, Plaintiffs have asked Defendants to please notify Plaintiffs should Ms. Warmenhoven travel to the United States, Canada or Mexico at any time before the close of fact discovery (*e.g.*, for the Christmas holiday). Because Defendants made no commitment to do so, Plaintiffs renew that request by this letter.

Plaintiffs also reiterated their interest in deposing Carlos Hernandez, who was personally involved in the process and circumstances surrounding the State Department's response to Congressman Lieu's letter relating to Ethan's applications. The letter demonstrates that Mr. Hernandez possesses personal knowledge regarding the State Department's procedures and positions that provided the basis for, or were associated with, the State Department's adjudication of Ethan's applications. Defendants

Vinita B. Andrapalliyal, Esq. and
Lisa Zeidner Marcus, Esq.

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stated that they will not agree to schedule Mr. Hernandez's deposition absent a Court order.

Plaintiffs confirmed that Defendants' deposition of Elad Dvash-Banks, scheduled for December 11, may begin at 1 P.M.

Sincerely,

/s/ Alexa M. Lawson-Remer

Alexa M. Lawson-Remer

cc: Aaron Morris (Immigration Equality)