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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

**Defendants' Supplemental
 Memorandum in Opposition to
 Plaintiffs' Motion to Compel Additional
 Discovery**

Hearing Date: Tuesday, December 11,
 2018
 Hearing Time: 9:30 AM
 Courtroom: #750, 7th Floor
 Roybal Federal Building
 255 E. Temple St.
 Los Angeles, CA 90012

Honorable Jacqueline Choolian
 United States Magistrate Judge

1 Pursuant to Local Rule 37-2.3, Defendants respectfully submit this supplemental
2 memorandum in opposition to Plaintiffs’ motion to compel additional discovery
3 responses. As discussed below and in Defendants’ portions of the Joint Stipulation (ECF
4 No. 54-1), the Court should deny Plaintiffs’ motion. Defendants have reasonably and
5 diligently responded to Plaintiffs’ disproportional, voluminous discovery requests.
6 Defendants have continued—even after the filing of Plaintiffs’ Notice of Motion—to
7 review and produce documents to Plaintiffs on a rolling basis, to schedule and/or offer
8 dates for depositions of the Department of State (“the Department”) employees who were
9 involved with the underlying adjudication at issue in this case, and to engage with
10 Plaintiffs in an attempt to clarify and describe with reasonable particularity Plaintiffs’
11 proposed 30(b)(6) topics. Defendants have tried to narrow the discovery disputes requiring
12 this Court’s attention, and have demonstrated their commitment to completing outstanding
13 document productions consistent with their written responses.

14 This memorandum supplements Defendants’ portions of the Joint Stipulation in
15 three ways,¹ by: (1) summarizing the case background and claims, to contextualize the
16 discovery disputes at issue; (2) providing the current status of Defendants’ efforts to
17 narrow the discovery disputes at issue; and (3) outlining the contours of the discovery
18 disputes to which Plaintiffs’ motion pertains.

19 **1. Case Background.** Through this action, Plaintiffs challenge the Department’s
20 March 2, 2017 decision denying two applications for a Consular Report of Birth Abroad
21 (“CRBA”) and a U.S. passport, respectively, for plaintiff Ethan Dvash-Banks, a minor
22 child born in September 2016 in Ontario, Canada.² Plaintiffs submitted the applications in
23 person to the U.S. Consulate General Toronto (“Consulate Toronto”). Consulate Toronto
24 took the action of denying the applications—the only agency action at issue in this case—

25 ¹ Defendants respectfully refer the Court to Defendants’ portions of the Joint Stipulation
26 for a full explanation of Defendants’ positions regarding the discovery disputes at issue.

27 ² Ethan’s biological father, Elad Dvash-Banks (a non-U.S.-citizen) is married to plaintiff
28 Andrew Dvash-Banks; Ethan’s biological mother is an anonymous egg donor. Compl.
¶¶ 44–47. Ethan lacks a biological relationship to Andrew (a U.S. citizen).

1 and based its decision on the Department’s longstanding legal interpretation (as embodied
2 in the Department’s Foreign Affairs Manual (“FAM”)) of relevant portions of the
3 Immigration and Nationality Act.³ The essential facts are not disputed;⁴ rather, Plaintiffs
4 disagree with the Department’s legal interpretation on which the denials were based.

5 Plaintiffs assert that the agency action of denying Ethan’s CRBA and U.S.
6 passport applications violated Plaintiffs’ Fifth Amendment Substantive Due Process and
7 Equal Protection rights, Compl. 19–21 (Counts I and II), and the Administrative
8 Procedure Act, *id.* 21–22 (Count III). Additionally, Plaintiffs bring a claim under 8
9 U.S.C. § 1503, which allows the court to conduct *de novo* review of the denial of a
10 citizenship claim, *id.* 22–23 (Count IV). Plaintiffs seek declaratory and injunctive relief.

11 This case is likely to turn on issues of law, not issues of fact.⁵ Nonetheless,
12 Defendants have diligently engaged in discovery since the Court issued its Scheduling
13 and Case Management Order (ECF No. 52). Defendants served initial disclosures and
14 made their first production of documents on August 16, 2018; they provided—on
15 September 18, October 5, and November 16—written discovery responses; and they
16 have been engaged in rolling document productions responsive to Plaintiffs’ document
17 requests. *See generally* Defs.’ Stmt., Jt. Stip. at 6–10.

18 **2. Current Status of Discovery Disputes.** It bears noting first that Plaintiffs are
19 moving to compel certain discovery responses that, at least in Defendants’ view, are no
20 longer disputed and do not require this Court’s attention. Prior to Plaintiffs’ filing of

21 _____
22 ³ The relevant INA provisions include Sections 301(g) and 309, codified at 8 U.S.C.
23 §§ 1401(g) and 1409, respectively. *See generally* Defs.’ Stmt., Jt. Stip. at 12–13.

24 ⁴ *See, e.g.*, Answer ¶¶ 37, 39, 41, 46–50, 52–54, and 57 (ECF No. 46).

25 ⁵ Discovery is not needed to ascertain Defendants’ longstanding statutory interpretations,
26 outlined in the publicly-available FAM. Further, judicial review of APA claims is typically
27 limited to the administrative record. Discovery is likewise limited in § 1503 cases, where
28 the court makes a *de novo* determination of a plaintiff’s citizenship claim, to the agency’s
evidence supporting its conclusion that a plaintiff is not a U.S. citizen and any affirmative
discovery a plaintiff produces to support her claim to U.S. citizenship. Nonetheless,
Defendants have diligently participated in discovery covering Plaintiffs’ constitutional
claims by timely producing initial disclosures, responding to all of Plaintiffs’ written
requests, and agreeing to make certain employees of the Department available for
deposition. Plaintiffs have not shown that the additional discovery they seek is “relevant”
to their claims or “proportional to the needs of the case,” *see* Fed. R. Civ. P. 26(b)(1).

1 their Notice of Motion to Compel (ECF No. 54) and the Parties’ Joint Stipulation (ECF
2 No. 54-1), Defendants had responded in writing to all of Plaintiffs’ written discovery
3 requests, including 50 interrogatories and 23 document requests, and had started rolling
4 productions of documents. *See* Defs.’ Stmt., Jt. Stip. at 7–8. Defendants had agreed to
5 several of the individual depositions sought by Plaintiffs, *id.* at 8, while raising valid,
6 reasonable objections to three of Plaintiffs’ proposed individual depositions (including
7 one in which Plaintiffs seek to depose a former employee of the Department but failed to
8 issue a subpoena), *id.* at 212–13. Defendants had expressed willingness to produce a
9 30(b)(6) deponent, and had engaged in extended efforts to work with Plaintiffs on
10 clarifying and reasonably narrowing/specifying the proposed 30(b)(6) topics—efforts
11 that continued even after the filing of the Joint Stipulation.⁶

12 Additionally, as promised in their written responses and reiterated during meet and
13 confer conversations and in the Joint Stipulation, *see, e.g., id.* at 6, 7, 10, and 23,
14 Defendants are committed to producing a privilege log, obviating Plaintiffs’ complaints
15 on that score. Defendants will formally assert privilege (via privilege log and supporting
16 declaration(s) as needed) to the extent that they actually withhold documents on the basis
17 of privilege, which they have yet to do in the course of their rolling review and
18 productions, *see* 2d Marcus Decl. at ¶ 5.

19 **3. Issues That Remain in Dispute.** Nonetheless, differences remain as to the
20 allowable scope of discovery in this case under the Federal Rules of Civil Procedure.⁷
21 Under Rule 26(b)—as amended in 2015—Plaintiffs are only entitled to obtain discovery
22 “that is relevant to any party’s claim or defense *and* proportional to the needs of the case.”
23 Fed. R. Civ. P. 26(b) (emphasis added). Plaintiffs served unreasonably broad and
24

25 ⁶ *See* Andrapalliyal Letter (Nov. 27, 2018), attached as Ex. I to 2d Marcus Decl. (Defs’
Ex. 5).

26 ⁷ Specifically, the parties disagree on: (a) the appropriate scope of custodians for the
27 purposes of document searches and production; (b) a reasonable time-period scope for
28 responsive documents; (c) the extent to which Plaintiffs’ have sufficiently described their
proposed 30(b)(6) topics; and (d) whether Plaintiffs may, consistent with Federal Rule of
Civil Procedure 26(b), secure depositions of high-ranking State Department officials who
lack personal knowledge of the facts alleged in the Complaint.

1 disproportional discovery requests, frequently cumulative and duplicative, not tailored to
2 their specific claims that the March 2017 denial of Ethan Dvash-Bank’s Consular Report
3 of Birth Abroad (“CRBA”) and U.S. passport applications violated the Administrative
4 Procedure Act (“APA”) as well as Plaintiffs’ equal protection and substantive due process
5 rights, and also not tailored to their claim for a declaration under 8 U.S.C. § 1503(a) that
6 Ethan is a citizen. As discussed below and in Defendants’ portion of the Joint Stipulation,
7 Defendants reasonably construed the scope of Plaintiffs’ voluminous requests in an effort
8 to bring the otherwise disproportionately burdensome requests in line with what is
9 permitted under Rule 26(b), and achievable within the four-month time period the Court
10 designated for discovery. Plaintiffs’ position that they are entitled to broader discovery
11 relies on their (conclusory) statements regarding what they consider relevant to their
12 claims, but notwithstanding a handful of instances where they offer to pare back the scope
13 of a deposition, is devoid of considerations of proportionality or burden⁸—considerations
14 that are of magnified importance given the compressed schedule for discovery in this case.

15 **(a) Scope of Custodians:** As articulated in their September 18 written
16 responses, Defendants are reasonably limiting the scope of document searches to
17 information possessed by, generated by, or available to Consulate Toronto, the component
18 that adjudicated Ethan’s applications for a CRBA and a U.S. passport. *See* Joint Stip. at
19 18–20. Plaintiffs argue that Defendants’ approach unreasonably denies discovery into the
20 Department’s policies on which Consulate Toronto’s adjudication was based. *Id.* at 16.
21 But Defendants also agreed to search for and produce policy and training documents
22 located within the Bureau of Consular Affairs, the Washington-based component of the
23 Department of State responsible for providing policy guidance to the field (including to
24 Consulate Toronto). *Id.* at 9.⁹

25 _____
26 ⁸ Plaintiffs’ portion of the Joint Stipulation fails to acknowledge the 2015 amendment to
Rule 26(b) and its effect on the permissible scope of discovery. *See* Jt. Stip. at 14–15.

27 ⁹ Broader email searches would be unlikely to uncover relevant information regarding the
28 “animating rationale,” *cf.* Jt. Stip. at 16, behind the Department’s policy that a child born
abroad must be biologically related to a U.S. citizen parent in order to acquire U.S.
citizenship at birth; that policy dates back to at least 1790. *See* 8 FAM 301.4-1(B).

1 **(b) Time Period of Relevant Documents:** Plaintiffs have not explained why
2 discovery of information generated four years preceding the adjudications and after June
3 2017 is relevant or proportionate to the needs of the case. Defendants, on the other hand,
4 have established that they would incur substantial burdens in collecting and reviewing the
5 many thousands of potentially responsive documents over a six-year time frame. *See* Joint
6 Stip. at 21–22.

7 **(c) 30(b)(6) Deposition Topics.** Because Defendants must prepare a 30(b)(6)
8 deponent to testify about her organization’s collective knowledge of each given topic, “to
9 allow the Rule to effectively function, the requesting party must take care to designate,
10 *with painstaking specificity*, the particular subject areas that are intended to be questioned,
11 and that are relevant to the issues in dispute.” *Memory Integrity, LLC v. Intel Corp.*, 308
12 F.R.D. 656, 661 (D. Or. 2015) (internal citation and quotation marks omitted). Plaintiffs’
13 30(b)(6) topics, as propounded, fail to meet this standard. Defendants’ most recent
14 suggestions regarding how those topics should be clarified and narrowed are outlined in
15 a letter attached to the Second Marcus Declaration. *See* 2d Marcus Decl. Ex. J.

16 **(d) Individual Depositions.** Plaintiffs continue to seek depositions from
17 three deponents of limited to no utility in this case. Two of those individuals—(1) Karen
18 Christensen, the Principal Deputy Assistant Secretary for Consular Affairs, and (2) Brian
19 Egan, a former Department of State Legal Adviser—have provided declarations
20 explaining that they have no personal knowledge of the facts alleged in the Complaint. *See*
21 Defs.’ Exs. 2 and 3; *see also* Joint Stip. at 212–13. The third, Carlos Hernandez, has
22 explained that his limited personal knowledge all post-dates the underlying adjudication
23 being challenged in this action, *see* Defs.’ Ex. 4.

24 ***

25 For these reasons, and for the reasons set forth in Defendants’ portion of the joint
26 stipulation, Plaintiffs’ motion to compel should be denied.

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Dated: November 27, 2018

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ANTHONY COPPOLINO
Deputy Director

/s/ Lisa Zeidner Marcus

LISA ZEIDNER MARCUS
Senior Counsel

VINITA B. ANDRAPALLIYAL
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 17 MICHAEL R. POMPEO, in his
 18 official capacity as U.S. Secretary of
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 Defendants.

Case No. **2:18-cv-00523-JFW (JCx)**

DISCOVERY MATTER

**Second Declaration of Lisa Zeidner
 Marcus in support of Defendants’
 Response to Plaintiffs’ Motion to
 Compel Additional Discovery**

Hearing Date: Tuesday, December 11,
 2018
 Hearing Time: 9:30 AM
 Courtroom: #750, 7th Floor
 Roybal Federal Building
 255 E. Temple St.
 Los Angeles, CA 90012

Honorable Jacqueline Chooljian
 United States Magistrate Judge

24
 25 **SECOND DECLARATION OF LISA ZEIDNER MARCUS**

26 I, Lisa Zeidner Marcus, hereby declare:

27 1. I serve as a trial attorney for the U.S. Department of Justice, Civil Division,
 28 Federal Programs Branch, a position I have held since October 2007. My colleague

1 Vinita Andrapalliyal and I serve as co-counsel representing Defendants in the above-
2 captioned case. I have personal knowledge of the facts set forth in this Declaration.

3 2. This is my second declaration in support of Defendants' opposition to
4 Plaintiffs' motion to compel additional discovery. My first declaration, executed on
5 November 16, 2018, was filed with Plaintiffs' Notice of Motion (ECF No. 54), and
6 attached to the Parties' Joint Stipulation (ECF No. 54-1) as Defendants' Exhibit 1 (ECF
7 No. 54-18). I provide this declaration to supplement the statements I made in my first
8 declaration, and to update the Court regarding the continued progress Defendants have
9 made with respect to their responsive discovery efforts since the November 19, 2018
10 filing of Plaintiffs' Notice of Motion.

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

12 Marcus Decl. Defendants' Production Cover Letter (Nov. 23, 2018)
13 Exhibit I¹

14 Marcus Decl. Letter from Vinita Andrapalliyal to Alexa Lawson-Remer dated
15 Exhibit J November 27, 2018, regarding Plaintiffs' 30(b)(6) Deposition
16 Notice

17 4. Since the filing of Plaintiffs' Notice of Motion and the Parties' Joint
18 Stipulation, Defendants have continued their efforts to complete outstanding discovery
19 and to attempt to narrow the discovery disputes between the parties. To that end,
20 Defendants completed another production of documents on November 23, 2018. *See*
21 Marcus Decl. Ex. I. Defendants are currently reviewing documents in anticipation of
22 their next rolling production, which they plan to make on November 30. Defendants
23 generally intend to continue rolling productions on an approximately weekly basis
24 through the end of discovery.

25 5. As promised in their September 18, 2018, written responses to Plaintiffs'

26 ¹ My first declaration included eight attachments, identified as Marcus Decl. Exhibits A-
27 G. Those exhibits were identified by letters to distinguish them from Defendants'
28 Exhibits 1-4, which included my first declaration (Defs.' Ex. 1, ECF No. 54-18); the
Declaration of Karen Christensen (Defs.' Ex. 2, ECF No. 54-27); the Declaration of
Brian Egan (Defs.' Ex. 3, ECF No. 54-28); and the Declaration of Carlos Hernandez
(Defs.' Ex. 4, ECF No. 54-29).

1 First Set of Requests for Production of Documents, Defendants have also committed to
2 producing privilege logs on a rolling basis, to the extent that they actually withhold any
3 documents on the basis of privilege. *See* Marcus Decl. Ex. A ¶ 17 (ECF No. 54-19). In
4 the course of Defendants’ ongoing document review and rolling productions to date,
5 Defendants have yet to actually withhold any documents on the basis of privilege. To the
6 extent Plaintiffs challenge Defendants’ assertion of privilege through a motion to
7 compel, Defendants would formally assert privilege, as needed.²

8 6. On November 20, 2018, I along with my co-counsel Vinita B.
9 Andrapalliyal, met and conferred again with Plaintiffs by phone; the call lasted
10 approximately one and a half hours. We attempted to finalize dates and times for several
11 depositions and to narrow the issues in dispute regarding a 30(b)(6) deposition.
12 Following the call, Plaintiffs’ counsel sent a letter purporting to memorialize the
13 conversation; my co-counsel and I disagree with the letter’s characterization of the call.

14 7. In addition, during the past week since Plaintiffs’ Notice of Motion was
15 filed, the Parties have been preparing for mediation, and have exchanged confidential
16 mediation statements in advance of their upcoming mediation on November 29, 2018.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on November 27, 2018 at Pittsburgh, Pennsylvania.

19
20 /s/ Lisa Zeidner Marcus
LISA ZEIDNER MARCUS

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25 ² Defendants understand Plaintiffs’ current motion as seeking to require Defendants “to
26 produce a privilege log in accordance with Fed. R. Civ. P. 26(b)(5), and to comply with
27 the other prerequisites ... for assertions of privileges, in order for Plaintiffs (and, if
28 necessary, the Court) to assess those claims.” Pls.’ Stmt., Jt. Stip. at 22, As noted above,
Defendants have already committed to producing privilege logs for any documents that
they withhold on the basis of privilege. *See also* Defs.’ Stmt., Jt. Stip. at 23. If
Defendants withhold privileged documents and formally assert privilege(s) prior to the
December 11, 2018 scheduled hearing on Plaintiffs’ motion to compel, I will so update
the Court.



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November 23, 2018

Via email and electronic file transfer

Alexa Lawson-Remer, Esq.
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, CA 90067
Email: lawsonr@sullcrom.com

Re: Dvash Banks v. U.S. Dep't of State, No. 2:18-cv-00523-JFW-JCx (C.D. Cal.)

Dear Alexa:

Please find enclosed Defendants' second production of documents in response to Plaintiffs' First Set of Requests for Production of Documents ("RFPDs") in the above-referenced case. The documents are Bates labeled DEFS000008 – DEFS000649, and are produced in tiff and text form. These documents are produced subject and pursuant to Defendants' September 18, 2018 objections and written responses to Plaintiffs' RFPDs.

Sincerely,

/s/ Lisa Zeidner Marcus

Lisa Zeidner Marcus

Enclosures (sent via electronic file transfer)

CC via email:

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November 27, 2018

VIA E-MAIL

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Re: *Dvash-Banks v. Pompeo*, No. 18-524 (JFW-JCx)

Dear Alexa,

I write in response to the discovery letter you sent after the close of business on Wednesday, November 21, 2018, and also to follow up on the conversation Lisa and I had with you and your colleagues on November 20.

As you will recall, I had requested that conversation (via a letter I sent you on November 16) to meet and confer in an effort to reach resolution on the outstanding disputed issues with respect to Plaintiffs' proposed 30(b)(6) topics. My November 16 letter reiterated that the Department of State was willing to produce a 30(b)(6) deponent to testify about "reasonably particularized" topics, but that many of Plaintiffs' proposed topics remained—at least at that time—insufficiently particularized for Defendants to reasonably prepare a designee to testify on behalf of the Department. Thus, I had expected we would spend the majority of our conversation on November 20 discussing ways to clarify and, as needed, narrow the proposed 30(b)(6) topics in mutually agreeable way.

Instead—consistent with your subsequent November 21, 2018 letter purporting to memorialize the call¹—Plaintiffs spent much of the call generally rehashing the discovery disputes outlined by the parties in the Joint Stipulation filed on November 19, 2018. When it came time to

¹ We disagree with much of your characterization of our November 20, 2018, meet-and-confer conversation, particularly as it relates to the parties' conversation about Plaintiffs' desired 30(b)(6) deposition.

discuss potential ways to reach agreement on the proposed 30(b)(6) topics, Plaintiffs made clear that they were largely sticking to the position described in their portion of the Joint Stipulation, and that they not meaningfully considered ways to narrow the 30(b)(6) issues along the lines suggested by my letter.

Nonetheless, Defendants remain committed to producing a 30(b)(6) deponent to testify about a proportionate and specifically described set of topics and reiterate the fact that most of Plaintiffs' proposed topics remain insufficiently particularized. In an effort to resolve this dispute without need for court intervention, Defendants propose a reformulation of some of Plaintiffs' proposed topics, to make them reasonably particularized and within the appropriate scope of discovery. If Plaintiffs can agree to the topics as set forth below, Defendants are agreeable to making a designee available on December 14, 2017 or December 17, 2017, to testify about these topics.

- **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 continue to object to this topic, *inter alia*, 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. 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 believe their interrogatory responses and ongoing document production provide a sufficient response to the substance of this topic.

Notwithstanding their objections, Defendants are willing to offer a 30(b)(6) deponent who can testify about the general policies, practices, procedures, and protocols, if any, regarding the circumstances in which the Department encounters applications for Consular Reports of Birth Abroad (“CRBA”) and for U.S. passports in which (1) the applicant child's biological parents are not married to each other and (2) doubt arises that a U.S. citizen is not biologically related to a CRBA applicant. *See* Defs.' Resp. to Pls.' Interrogatories 4, 5.

- **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 continue to object to this topic, *inter alia*, 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. 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 believe their interrogatory responses and ongoing document production provide a sufficient response to the substance of this topic.

Notwithstanding their objections, Defendants are willing to offer a 30(b)(6) deponent who can testify about the general policies, practices, procedures, and protocols, if any, regarding the circumstances in which a consular officer or passport specialist would require an applicant to submit additional evidence deemed necessary to meet the burden of proof for establishing U.S. citizenship as provided in 8 FAM 304.2-2(a) and 8 FAM 304.2-2(b). *See* Defs.’ Resp. to Pls.’ Interrogatory 13.

- **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 continue to object to this topic as, *inter alia*, 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 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).

In its October 30, 2018, letter, Plaintiffs removed the language “any court ruling, including” from this topic. Plaintiffs further indicated in the parties’ November 20, 2018, meet-and-confer that they “seek information regarding whether the State Department took any action in response to these judicial decisions.” Defendants believe their ongoing document production provide a sufficient response to the substance of this topic.

Notwithstanding their objections, Defendants are willing to offer a 30(b)(6) deponent who can testify about the general policies, practices, procedures, and protocols, if any, issued regarding the above-identified court decisions in connection with Department’s consideration of applications for a Consular Report of Birth Abroad or United States passport 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 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 continue to object to this topic, *inter alia*, 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 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 believe their interrogatory responses and ongoing document production provide a sufficient response to the substance of this topic. Further, Defendants’ proposed reformulation of Topic 4 should obviate the need for this topic.

Notwithstanding their objections, Defendants are willing to offer a 30(b)(6) deponent who can testify about the general policies, practices, procedures, and protocols, if any, regarding the Department’s commitment to a systematic, randomized, regular review of adjudicated passport applications. *See* Defs.’ Resp. to Pls.’ Interrogatory 19.

- **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 continue to object to this topic, *inter alia*, 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 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 believe their interrogatory responses and ongoing document production provide a sufficient response to the substance of this topic.

Notwithstanding their objections, Defendants are willing to offer a 30(b)(6) deponent who can testify about the general policies, practices, procedures, and protocols, if any, regarding how consular officials are to conduct interview with consideration for privacy and the sensitivity of the issues. *See* Defs.’ Resp. to Pls.’ Interrogatory 16.

- **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 continue to object to this topic, *inter alia*, 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. 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 believe their interrogatory responses and ongoing document production provide a sufficient response to the substance of this topic. In any event, Defendants' proposed reformulation of Topic 4 should obviate the need for this topic.

- **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 continue to object to this topic, *inter alia*, 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 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 believe their interrogatory responses and ongoing document production provide a sufficient response to the substance of this topic. In any event, Defendants' proposed reformulation of Topics 9 and 12 should obviate the need for this topic.

Further, Defendants agree to produce a deponent to testify about Topics 15 and 16 as narrowed by Plaintiffs in their October 30, 2018, and November 21, 2018, letters. Defendants can also agree to produce a deponent to testify about Topic 10 as limited to the following time frame: January 1, 2015 to June 2, 2017. Defendants can stipulate that no relevant, substantive changes to the FAM occurred after June 2, 2017 to January 22, 2018, the date this lawsuit was filed.

Unless otherwise specified, Defendants will prepare a 30(b)(6) deponent on information about these topics as generated or maintained by the Department during January 1, 2015, and June 2, 2017.

Sincerely,

/s/ Vinita B. Andrapalliyal

VINITA B.
ANDRAPALLIYAL
Trial Attorney
Federal Programs Branch