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16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION (LOS ANGELES)**  
20

21 ANDREW MASON DVASH-  
BANKS AND E.J. D.-B.,  
22  
23 Plaintiffs,

24 v.

25 THE UNITED STATES  
DEPARTMENT OF STATE,  
26 and THE HONORABLE  
MICHAEL R. POMPEO,  
Secretary of State,  
27

28 Defendants.

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

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: February 4, 2019  
Hearing Time: 1:30 P.M.  
Courtroom: 7A

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that, on February 4, 2019 at 1:30 P.M., or  
3 as soon thereafter as the matter may be heard, before the Honorable John F.  
4 Walter, United States District Judge for the Central District of California, located  
5 in Courtroom 7A, 350 W. 1st Street, Los Angeles, California 90012, Plaintiffs  
6 Andrew Mason Dvash-Banks (“Andrew”) and, by and through his guardian *ad*  
7 *litem*, E.J. D.-B. (“E.J.” and collectively, “Plaintiffs”) will, and hereby do, move  
8 for summary judgment with respect to the Due Process Clause of the Fifth  
9 Amendment claim on behalf of both Plaintiffs and, with respect to the 8 U.S.C.  
10 § 1503 claim, on behalf of E.J. on the following grounds:

11 1. Defendants’ policy of considering to be born “out of wedlock”  
12 under 8 U.S.C. § 1409 of the Immigration and Nationality Act (“INA”) a child  
13 born during the marriage of spouses who are not both the biological parents of that  
14 child unconstitutionally infringes the right to marry by unfairly burdening and  
15 stigmatizing same-sex marriage and depriving same-sex spouses and their children  
16 of the full constellation of rights and benefits of marriage in violation of the Due  
17 Process Clause of the Fifth Amendment. Plaintiffs have suffered injuries and will  
18 suffer further irreparable harm to their constitutional rights under the Fifth  
19 Amendment if the State Department’s policy is not declared unconstitutional and  
20 enjoined.

21 2. E.J. D.-B. meets all of the statutory criteria for U.S. citizenship  
22 at birth under Section 301(g) of the INA (8 U.S.C. § 1401) and is therefore entitled  
23 to be declared a U.S. citizen at birth under 8 U.S.C. §1503(a) and 28 U.S.C.  
24 § 2201.

25 Plaintiffs further request that the Court award in conjunction with this  
26 motion such other and further relief as the Court deems just and proper.

27 This motion is based on this Notice of Motion and Motion and the  
28 following documents: the concurrently-filed Memorandum of Points and

1 Authorities; the concurrently-lodged Statement of Uncontroverted Facts and  
2 Conclusions of Law; the concurrently-filed Declaration of Alexa Lawson-Remer  
3 and exhibits thereto; the concurrently-filed Declaration of Andrew Dvash-Banks  
4 and exhibits thereto; and the concurrently-lodged Proposed Order, and all  
5 pleadings on file in this matter, and any additional evidence or argument properly  
6 considered by the Court or to be received by the Court at the hearing on this  
7 matter.

8 This motion is made following the conferences of counsel pursuant to  
9 L.R. 7-3, which took place on December 21, 2018 and January 2, 2019. *See* Joint  
10 Statement Regarding Local Rule 7-3 Conference, Dkt. 77.

11  
12 Dated: January 7, 2019

Respectfully submitted,

13 By: /s/ Alexa M. Lawson-Remer  
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20 ANDREW MASON DVASH-  
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23 v.

24 THE UNITED STATES  
DEPARTMENT OF STATE,  
and THE HONORABLE  
25 MICHAEL R. POMPEO,  
Secretary of State,  
26  
27 Defendants.

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: Feb. 4, 2018  
Courtroom: 7A

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1 Plaintiffs Andrew Mason Dvash-Banks (“Andrew”) and his son E.J.  
 2 D.-B. (“E.J.”) submit the following memorandum of points and authorities in  
 3 support of their motion for partial summary judgment in the above-captioned  
 4 action (the “Action”).<sup>1</sup>

## 5 I. PRELIMINARY STATEMENT<sup>2</sup>

6 This Action challenges the improper refusal of the United States  
 7 Department of State (the “State Department,” and together with The Honorable  
 8 Michael R. Pompeo in his official capacity as Secretary of State, “Defendants”) to  
 9 recognize E.J. as a United States citizen at birth. Both E.J. and his twin brother,  
 10 A.J. D.-B. (“A.J.,” and together with E.J., the “Twins”), met the eligibility  
 11 requirements of Section 301(g) of the Immigration and Nationality Act (“INA”), 8  
 12 U.S.C. § 1401(g) (“Section 301(g)”), for U.S. citizenship at birth when they were  
 13 born on September 16, 2016 in Ontario, Canada to Andrew, a U.S. citizen, and his  
 14 husband, Elad, an Israeli citizen, during their marriage. Although the State  
 15 Department recognizes A.J. as a U.S. citizen at birth, it denies that E.J. is a U.S.  
 16 citizen, even though A.J. and E.J. are twin brothers with the same legal parents and  
 17 are being raised together in the same home. (*See* SOF ¶¶ 33-34, 50, 91, 92, 147.)

18 Andrew and Elad were married in 2010 (*id.* at ¶11), and decided to  
 19 start a family (*id.* at ¶ 13). They conceived the Twins by means of assisted  
 20 reproductive technology (“ART”) and have been the Twins’ only parents since the  
 21 Twins’ birth in 2016.<sup>3</sup> (*Id.* at ¶¶ 14, 17-18, 37, 39.) They are the only individuals

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23 <sup>1</sup> E.J. brings his claims in this Action by and through his guardian *ad litem*  
 24 and other parent, Elad Dvash-Banks (“Elad”).

25 <sup>2</sup> Citations in this memorandum to “SOF” refer to *Plaintiff’s Rule 56.1*  
 26 *Statement of Uncontroverted Facts and Conclusions of Law in Support of*  
*Plaintiffs’ Motion for Partial Summary Judgment*, filed concurrently with this  
 memorandum.

27 <sup>3</sup> Andrew and Elad each provided sperm to fertilize eggs from the same egg  
 28 donor. (*Id.* at ¶¶ 14-15.)

1 whom Ontario law recognizes as the Twins’ parents and they are named as the  
2 parents on the Ontario-issued Statement of Live Birth (the “birth certificate”) for  
3 each Twin. (*Id.* at ¶¶ 33-36, 41-42.) Andrew and Elad are the only individuals  
4 who have ever asserted any parental rights over the Twins (*id.* at ¶ 40), and they  
5 have raised the Twins as the children of their marriage since the day the Twins  
6 were born. (*Id.* at ¶¶ 37-38, 50-51.) The Superior Court of Justice, Ontario, issued  
7 an order (the “Canadian Order”) shortly after the Twins’ birth recognizing Andrew  
8 and Elad “for all purposes in law to be the parents” of E.J. (*Id.* at ¶ 41.) The court  
9 issued a parallel order for A.J. (*Id.* at ¶ 44.) This is consistent with the terms and  
10 intent of Andrew and Elad’s agreement with their gestational surrogate (the  
11 “Gestational Surrogate”), which provided that they were to have custody of the  
12 Twins “[i]mmediately upon the birth of the Child[ren]” (*id.* at ¶ 23).

13           The State Department has resisted the reality that there are no  
14 distinctions between E.J.’s familial relationships and those of his twin brother A.J.  
15 Specifically, the State Department has declined to recognize E.J.’s U.S.  
16 citizenship, and has created an artificial and unwarranted distinction in the Dvash-  
17 Banks family by granting A.J.’s applications for a Consular Report of Birth  
18 Abroad (“CRBA”), which recognizes the recipient’s U.S. citizenship at birth, and  
19 U.S. passport, and denying E.J.’s applications. (*Id.* at ¶¶ 90-92.) The sole ground  
20 cited for the denial of E.J.’s applications was that Andrew, the U.S. citizen parent  
21 of both E.J. and A.J., does not share a biological connection with E.J. (*id.* at ¶¶ 93,  
22 97), a rationale that the Ninth Circuit specifically rejected nearly twenty years ago.  
23 In effect, the State Department has by fiat declared that Andrew is not E.J.’s  
24 parent, even though (i) Andrew and Elad were married when the Twins were born;  
25 and (ii) within days of E.J.’s birth, a Canadian court confirmed that Andrew and  
26 Elad are E.J.’s parents. (*Id.* at ¶¶ 31, 41.) Moreover, Andrew acts in all respects as  
27 one of the two parents of E.J. and A.J. and has lived with E.J. and A.J. since the  
28 Twins left the hospital following their birth. (*Id.* at ¶¶ 22-23, 37, 38, 50.) In

1 declining to recognize Andrew’s status as E.J.’s parent for purposes of the INA,  
2 the State Department has failed to recognize and honor the validity of Andrew’s  
3 marriage to Elad and the legitimacy of the children born during that marriage.

4 To reach its conclusion, the State Department disregarded the INA’s  
5 plain text and erroneously required a biological relationship between E.J. and  
6 Andrew, his U.S. citizen parent. The State Department did so notwithstanding that  
7 (i) the text of the INA provision governing children born in wedlock (Section  
8 301(g)) contains no such condition; (ii) two unanimous decisions of the Ninth  
9 Circuit and a unanimous decision of the Second Circuit have held that Section  
10 301(g) does not include a biological relationship requirement, and no federal  
11 district or circuit court has interpreted Section 301(g) to include such a  
12 requirement, *see Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005); *Scales*  
13 *v. INS*, 232 F.3d 1159 (9th Cir. 2000); *Jaen v. Sessions*, 899 F.3d 182 (2d Cir.  
14 2018); and (iii) the companion provision to Section 301 which governs children  
15 born “out of wedlock,” 8 U.S.C. § 1409 (“Section 309”), imposes a biological  
16 relationship requirement, demonstrating that Congress specified such a condition  
17 when it sought to impose one and intended no such requirement for children who,  
18 like A.J. and E.J., were born in wedlock.<sup>4</sup>

19 Instead of recognizing that E.J. acquired U.S. citizenship when he was  
20 born during the marriage of his U.S. citizen parent who had resided in the U.S. for  
21 the period required by Section 301(g)—all that the INA requires—the State  
22 Department classified E.J. as a child born “out of wedlock” (SOF ¶¶ 79-81), and  
23 therefore denied him the rights and benefits of U.S. citizenship. The State  
24 Department did so in reliance on its policy of considering children born during the  
25 marriage of spouses who are not both the biological parents to have been born “out  
26

---

27 <sup>4</sup> 8 U.S.C. § 1401 (“Section 301”) and Section 309 are set out in full in  
28 Appendix A to this memorandum for the Court’s reference.

1 of wedlock”—and therefore not eligible for citizenship determinations under  
 2 Section 301(g)—which will always be the case for children of same-sex marriages  
 3 between men. This policy not only violates the statute but also unfairly burdens  
 4 and stigmatizes same-sex marriage and deprives same-sex spouses of the full  
 5 constellation of rights and benefits of marriage to spouses in opposite-sex  
 6 marriages in violation of the Due Process Clause of the Fifth Amendment. *Pavan*  
 7 *v. Nathaniel Smith*, 137 S. Ct. 2075, 2077 (2017); see also *Obergefell v. Hodges*,  
 8 *135 S. Ct. 2584, 2601-02 (2015)*.

9 Because E.J. meets all of the statutory criteria for U.S. citizenship at  
 10 birth under Section 301(g), the Court should grant summary judgment to E.J.  
 11 pursuant to 8 U.S.C. §1503(a) (“Section 1503”),<sup>5</sup> and declare E.J. to be a U.S.  
 12 citizen at birth. Not only does the plain language of the statute require this result,  
 13 but Defendants’ policy of requiring a biological relationship between a child born  
 14 outside the United States and his or her U.S. citizen parent and treating the  
 15 offspring of same-sex marriages as born “out of wedlock” infringes the  
 16 constitutional requirement to treat same-sex marriages with dignity and to accord  
 17 them the same respect and benefits as opposite-sex marriages. As a result,  
 18 Plaintiffs are entitled to summary judgment on their due process claim as well.

## 19 II. STATEMENT OF RELEVANT FACTS

### 20 A. The Dvash-Banks Family

21 Andrew is a U.S. citizen who was born and raised in California, where  
 22 he also attended high school and college. (SOF ¶¶ 1-5.) Andrew resided in the  
 23 United States for a continuous period from his birth in 1981 through at least  
 24

25 <sup>5</sup> Section 1503(a) is set out in Appendix A to the Memorandum for the  
 26 Court’s reference. It allows any person within the United States to file in the  
 27 district in which he “resides or claims a residence” an action “for a judgment  
 28 declaring him to be a national of the United States” if he “claims a right or  
 privilege as a national of the United States and is denied such right or privilege ...  
 upon the ground that he is not a national of the United States.”

1 October 2005. (*Id.* at ¶ 6.) In 2007, Andrew enrolled in a master’s degree program  
2 in Israel, where, in 2008, he met his now-husband, Elad. (*Id.* at ¶¶ 7-8.)  
3 Thereafter, Andrew and Elad moved to Toronto,<sup>6</sup> (*id.* at ¶ 10) and were married  
4 there on August 19, 2010 (*id.* at ¶ 11).

5 Andrew and Elad decided to start a family, and they sought to  
6 conceive using ART. (*Id.* at ¶¶ 13-18.) As part of that process, Andrew and Elad  
7 provided their respective genetic material to create embryos using eggs from an  
8 anonymous egg donor (the “Donor”), which they did successfully. (*Id.* at ¶¶ 14-  
9 16.) In December 2015, Andrew and Elad then contracted with the Gestational  
10 Surrogate to carry two embryos to term. (*Id.* at ¶ 17.) Andrew and Elad entered  
11 into an agreement with the Gestational Surrogate (the “Surrogacy Agreement”)  
12 setting out the terms of the surrogacy arrangement. (*Id.*) The Surrogacy  
13 Agreement provides, in part, that “Andrew and Elad (collectively called the  
14 ‘Intended Parents’) are a same-sex married couple who require assisted  
15 reproductive technology to have a child.” (*Id.* at ¶ 18.) The Surrogacy Agreement  
16 further provides that Andrew and Elad were to be “recognized as [the Twins’]  
17 parents immediately upon [their] birth,” which was understood to mean “as soon as  
18 the umbilical cord is cut”; that Andrew and Elad were “to assume full care of, and  
19 all parental responsibility for [the Twins]”; and to have “permanent custody” of the  
20 Twins. (*Id.* at ¶¶ 21-23, 25.) The Surrogacy Agreement also stated that the  
21 Gestational Surrogate waives all rights that she has or may in the future have to the  
22 custody of or access to the Twins. (*Id.* at ¶ 26.)

23 Thereafter, two embryos, one of which was created using genetic  
24 material from Elad and the other of which was created using genetic material from  
25 Andrew, were implanted into the Gestational Surrogate. (*Id.* at ¶¶ 15, 19-20.) On  
26

27 <sup>6</sup> When Andrew and Elad were married, the Defense of Marriage Act,  
28 1 U.S.C. § 7, precluded Elad from obtaining permanent residence in the United States through his marriage to Andrew.

1 September 16, 2016, the Twins were born four minutes apart in Ontario, Canada.  
2 (*Id.* at ¶ 30.) Andrew cut E.J.’s umbilical cord at E.J.’s birth. (*Id.* at ¶ 32.) On  
3 September 28, 2016, when the Twins were just twelve days old, the Ontario  
4 Superior Court entered the Canadian Order, affirming that Andrew and Elad were  
5 both the parents of E.J., who was conceived using Elad’s sperm and an egg from  
6 the Donor. (*Id.* at ¶¶ 15, 41, 48.) Under Ontario law, Andrew and Elad are E.J.’s  
7 legal parents. (*Id.* at ¶¶ 37, 41.)<sup>7</sup>

8 Andrew and Elad have raised the Twins and have been their parents  
9 since the moment the Twins were born. (*Id.* at ¶¶ 23, 38.) From the time the  
10 Twins left the hospital where they were born, Andrew, Elad and the Twins have  
11 lived together under one roof as a family. (*Id.* at ¶¶ 50-51.) Andrew and Elad are  
12 the only parents listed on E.J.’s and A.J.’s birth certificates. (*Id.* at ¶¶ 35-36.) No  
13 other individual has ever acted as a parent to A.J. or E.J., and no other individual  
14 has ever asserted parental rights over either child. (*Id.* at ¶¶ 39-40.) Andrew, Elad,  
15 A.J., and E.J. currently reside in Los Angeles, California. (*Id.* at ¶ 52.) The State  
16 Department accepts that Andrew and Elad are the Twins’ only legal parents, that  
17 the Twins were born during Andrew’s marriage to Elad, and that Andrew and Elad  
18 have provided sufficient proof of E.J.’s parentage. (*Id.* at ¶¶ 61-62, 147-149.)

19 **B. The INA**

20 The INA specifies the eligibility requirements for U.S. citizenship at  
21 birth. These requirements differ for children of a marriage, covered in Section  
22 301(g), and children “born out of wedlock,” covered in Section 309. *See* 8 U.S.C.  
23 § 1401(g) (applies to children “born . . . of parents one of whom is an alien, and the  
24

---

25 <sup>7</sup> The court’s order “directed” the appropriate official “to register the birth of  
26 the child so as to show the Applicants, Elad Dvash-Banks and Andrew Dvash-  
27 Banks, as the parents of the child.” (*Id.* at ¶ 43.) Pursuant to that order, Andrew  
28 and Elad were “recognized for all purposes in law to be the parents of the child.”  
(*Id.* at ¶ 41.) The Canadian Order also declared that the Gestational Surrogate was  
“not the mother of the child.” (*Id.* at ¶ 42.)

1 other a citizen of the United States”); *id.* § 1409 (applies to “children born out of  
2 wedlock”). On its face, Section 301(g) does not include a biological relationship  
3 requirement and, consistent with Congress’s purpose in enacting the INA of  
4 keeping families together, courts construing that provision—including the Ninth  
5 Circuit—have followed the statutory text and uniformly held that there is no such  
6 blood relationship requirement in Section 301(g).

7           Section 301(g) provides, in relevant part, that a child born abroad is a  
8 U.S. citizen at birth if one of his or her married parents is a U.S. citizen and meets  
9 certain residency requirements. Although the word “wedlock” does not appear in  
10 Section 301(g), courts have consistently interpreted that Section to apply to  
11 children born abroad to married parents, in part, because of the provision’s contrast  
12 with Section 309, which is titled “Children born out of wedlock.” *See, e.g.,*  
13 [\*Sessions v. Morales-Santana\*, 137 S. Ct. 1678, 1686 \(2017\)](#) (referring to Section  
14 301(g) as “[a]pplicable to married couples”).

15           In contrast to Section 301, which contains no reference to a “blood  
16 relationship” requirement, Section 309 imposes additional and different  
17 requirements, providing in relevant part that a child born abroad to an unwed U.S.  
18 citizen father is a citizen at birth only if the child establishes “a blood relationship  
19 between the person and the father . . . by clear and convincing evidence” and meets  
20 certain other requirements. 8 U.S.C. § 1409(a)(1).

21           Despite the silence of Section 301 on the subject, and the contrast to  
22 Section 309, the State Department’s internal *Foreign Affairs Manual* (“FAM”),  
23 purports to impose a biological relationship test for applicants for issuance of a  
24 CRBA under Section 301. It does so by requiring that, to be considered born “in  
25 wedlock” (and thus to be covered by Section 301(g)), a child born outside the  
26 United States must have a biological relationship with both his married parents.  
27 (SOF ¶ 109.) *See* 8 FAM § 304.1-2 (“To say a child was born ‘in wedlock’ means  
28 that the child’s biological parents were married to each other at the time of the

1 birth of the child.”). The State Department acknowledges that the FAM includes  
2 requirements not specifically set out in the INA (SOF ¶ 142), but purports to justify  
3 the FAM’s imposition of this requirement solely on the basis of its interpretation of  
4 the reference in Section 301(g) to “a person . . . born . . . of parents one of whom  
5 is a . . . citizen of the United States.” (*See id.* at ¶ 126.) It does not contend that  
6 the requirement is necessary for any governmental purpose, *e.g.*, to address  
7 concerns about fraud in citizenship applications. (*Id.* at ¶ 138.) The provisions of  
8 the FAM represent the unilateral declarations of the State Department and are not  
9 the product of a formal adjudication or notice-and-comment rulemaking or  
10 congressional action. (*See id.* at ¶¶ 140-141.)

11           The State Department’s interpretation of the contours of this supposed  
12 biological relationship requirement has been inconsistent. Prior to 2014, in  
13 adjudicating applications for recognition of U.S. citizenship by children born  
14 outside the United States, the State Department applied Section 309 to a gestational  
15 mother, even when she was a child’s legal parent, if she had used a donor egg. (*Id.*  
16 at ¶ 128.) In 2014, the State Department reversed this decision, and began to apply  
17 Section 301(g) to such applications. (*Id.* at ¶ 127.) This change was not  
18 occasioned by any congressional amendment of the INA: the State Department  
19 simply changed its mind as to its interpretation of Section 301. (*Id.* at ¶¶ 129-130.)  
20 In connection with this change, the State Department considered, but decided  
21 against, reading Section 301 to apply to children born through ART to same-sex  
22 couples. (*Id.* at ¶¶ 131-132.)

23           The State Department’s interpretation of Section 301(g) conflicts with  
24 the rulings of two federal circuit courts of appeals. Two Ninth Circuit decisions  
25 and a Second Circuit decision have held that Section 301(g) does not include a  
26 biological relationship requirement, and no federal court has read Section 301(g) to  
27 impose such a requirement. *See* [Solis-Espinoza, 401 F.3d 1090](#); [Scales, 232 F.3d](#)  
28

1 [1159](#); [Jaen](#), 899 F.3d 182. The State Department does not follow these court of  
2 appeals decisions and does not consider itself bound to do so. (SOF ¶¶ 134-137.)

3 **C. The Application of the State Department’s Policy to the Dvash-**  
4 **Banks Family**

5 On January 24, 2017, four months after the Twins were born, Andrew,  
6 Elad, and the Twins appeared in person at the U.S. Consulate in Toronto (the  
7 “Toronto Consulate”) to apply for documents evidencing each Twin’s U.S.  
8 citizenship—a CRBA and a U.S. passport. (SOF ¶¶ 53-55.)

9 Andrew and Elad provided the Toronto Consulate with the requisite  
10 documentation for E.J., including his Statement of Live Birth, which identified  
11 Andrew and Elad as E.J.’s parents, proof of Andrew’s U.S. citizenship and  
12 residency history, and Andrew and Elad’s marriage certificate (*id.* at ¶ 56)—all  
13 that Section 301(g) of the INA requires for the applicant to be declared a U.S.  
14 citizen at birth. Vice Consul Frances Terri Day was assigned as the adjudicating  
15 officer for the Twins’ applications. (*See id.* at ¶ 57.) Ms. Day was charged with  
16 determining whether E.J. was entitled to recognition of U.S. citizenship, and she  
17 had authority to make a final determination. (*Id.* at ¶¶ 57-58.) She reviewed the  
18 submitted documents and interviewed the Dvash-Banks family. (*Id.* at ¶ 57.) Ms.  
19 Day accepted Andrew and Elad’s marriage license from the Ontario government as  
20 sufficient proof of their marriage and E.J.’s Statement of Live Birth as a timely  
21 filed Canadian birth certificate. (*Id.* at ¶¶ 59-60.) Ms. Day also accepted the latter  
22 document—which identified Andrew and Elad as E.J.’s parents—as sufficient  
23 proof that Andrew and Elad are E.J.’s legal parents. (*Id.* at ¶ 61.)

24 Ms. Day reviewed the documentation and, during the interview,  
25 consulted with State Department colleagues, one of whom provided her with  
26 relevant sections of the FAM. (*Id.* at ¶¶ 66-67.) She referred to one or more  
27 sections of the FAM during her interview of the Dvash-Banks family. (*Id.* at ¶ 68.)  
28

1           In the course of the interview, Ms. Day asked Andrew and Elad how  
2 they had conceived the Twins and whose egg and sperm had been used to conceive  
3 each of the children. (*Id.* at ¶ 63.) After consulting with her colleagues Larilyn  
4 Reffett and Margaret Ramsay, Ms. Day informed Andrew and Elad that, absent  
5 evidence of a biological relationship to Andrew, neither twin would qualify for  
6 U.S. citizenship. (*Id.* at ¶¶ 66-72.) Ms. Day further told Andrew and Elad that, if  
7 they wanted to proceed with the Twins’ applications, they would have to provide  
8 additional information demonstrating the biological relationship required by the  
9 State Department and suggested that one way to do so would be to provide DNA  
10 evidence for each child. (*Id.* at ¶¶ 72-73.) This approach offended and bewildered  
11 Andrew and Elad because, as Andrew expressed to Ms. Day, “these are our  
12 children. These are our sons. I’m the dad, and . . . Elad is the dad. . . . we’re the  
13 parents of these boys.” (*Id.* at ¶ 78.)

14           Following the interview, Ms. Day signed a letter dated January 24,  
15 2017 addressed to Andrew, explaining that “in reference to your application for a  
16 U.S. passport and a [CRBA] for [A.J.] and [E.J.] . . . [t]he U.S. Consulate General  
17 in Toronto has considered the evidence you submitted and concluded that the  
18 blood relationship between a U.S. citizen parent and children have not been  
19 established by a preponderance of the evidence as required to support a claim to  
20 U.S. citizenship.” (*Id.* at ¶ 75.) Ms. Day designated the Twins’ applications as  
21 “pending,” a status reserved for applications that cannot be finally adjudicated on  
22 the day of an applicant’s interview. (*Id.* at ¶¶ 76-77.)

23           Andrew and Elad subsequently submitted the requested DNA tests,  
24 the results of which reflected that A.J. was the biological child of Andrew, and E.J.  
25 was not. (*Id.* at ¶ 89.) Thereafter, on March 2, 2017, Ms. Day sent Andrew a letter  
26 by mail denying E.J.’s applications for a CRBA and U.S. passport. (*Id.* at ¶ 92.)  
27 On the same day, the Toronto Consulate issued a CRBA for A.J. (*Id.* at ¶ 91.)  
28

1           The letter denying E.J.’s applications stated that “after careful review  
2 of the evidence you submitted with your child’s application, it has been determined  
3 that his claim to U.S. citizenship has not been satisfactorily established, as you are  
4 not his biological father.” (*Id.* at ¶ 93.) The letter additionally referenced the  
5 “Immigration and Nationality Act (INA) of 1952.” (*Id.*) It did so, however,  
6 without citing to any particular section, but simply asserting that the statute  
7 “requires among other things, a blood relationship between a child and the U.S.  
8 citizen parent in order for the parent to transmit U.S. citizenship.” (*Id.*) Because  
9 E.J. did not provide proof that he has a biological relationship to both Andrew and  
10 Elad, the Toronto Consulate apparently treated E.J. as a child born “out of  
11 wedlock” and adjudicated his application under Section 309.<sup>8</sup> That, in turn, meant  
12 that the State Department had determined that E.J. was not born a legitimate son of  
13 Andrew and Elad’s marriage.<sup>9</sup>

14           The sole basis for the denial of E.J.’s applications for a CRBA and  
15 U.S. passport was the lack of evidence of a biological connection between Andrew  
16 and E.J. (*Id.* at ¶ 97.) In reaching this determination, the Toronto Consulate  
17 purported to apply State Department policies for adjudicating U.S. citizenship  
18 applications for children born by means of ART processes. (*Id.* at ¶ 98.)

19           As a result of the State Department’s denial of E.J.’s application, the  
20 Dvash-Banks family has suffered greatly. (*Id.* at ¶ 100.) Andrew and Elad feel the

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21 <sup>8</sup> Because the FAM recognizes only children whose two biological parents are  
22 married to each other as born in wedlock, presumably the State Department  
23 adjudicated the applications of E.J.’s twin brother A.J. under Section 309 as well.  
24 In A.J.’s case, however, the blood relationship requirement of Section 309 was met  
because Andrew, a U.S. citizen, is A.J.’s biological father (*id.* at ¶ 47).

25 <sup>9</sup> Because the State Department improperly reads a biological relationship  
26 requirement into Section 301, it would have denied E.J.’s application in any event.  
27 As is discussed below, there is no language in Section 301 referring to a blood  
28 relationship and no basis for reading such a requirement into Section 301 under the  
statutory scheme or in light of the Congressional purpose underlying the INA.  
Any such reading, as applied to same-sex marriages, would not only be counter-  
textual, but also would raise grave constitutional issues.

1 indignity of the U.S. Government’s refusal to recognize their marriage and the  
2 legitimacy of their children. (*Id.* at ¶ 101.) Their travel is significantly restricted  
3 or impaired because E.J. entered the United States on a tourist visa, which has  
4 expired, and although E.J. now has an Advance Parole document, it does not  
5 guarantee re-entry into the United States. (*Id.* at ¶ 102.) When the Dvash-Banks  
6 family has traveled, it is always with the fear that E.J., who does not have a U.S.  
7 passport, may not be permitted to re-enter the United States. (*Id.* at ¶ 103.) The  
8 Dvash-Banks family also has spent substantial time consulting with lawyers, their  
9 accountant and others about a range of issues, from E.J.’s immigration status to  
10 obtaining medical benefits and a Tax ID number for E.J., who does not have a  
11 Social Security number. (*Id.* at ¶ 104.) Above all, the Dvash-Banks family has  
12 endured, and continues to endure, the pain and stigma of the State Department’s  
13 refusal to recognize Andrew’s marriage to Elad and status as E.J.’s parent, and its  
14 treatment of E.J. as illegitimate. (*Id.* at ¶ 105.) They also must live with the  
15 invasion of their privacy resulting from their need to commence this Action in  
16 order to obtain publicly what should have been provided privately two years ago—  
17 recognition that E.J. was a U.S. citizen at birth, which would ensure that their  
18 family will never be separated across countries. (*See id.* at ¶ 106.)

19 **D. The Complaint**

20 On January 22, 2018, Andrew and E.J. filed the Complaint in this  
21 Action, alleging that under the INA, “[a]t birth, both [E.J.] and [A.J.] qualified for  
22 United States citizenship pursuant to Section 301(g),” and seeking, in part, a  
23 declaration pursuant to Section 1503 that E.J. is a U.S. citizen at birth. The  
24 Complaint alleges that the State Department’s erroneous application of Section 309  
25 (instead of 301) is “arbitrary, capricious, an abuse of discretion, or otherwise not in  
26 accordance with law” in violation of Section 706(2)(A) of the Administrative  
27 Procedure Act (the “APA”). The Complaint further alleges that the State  
28 Department’s refusal to treat E.J. as born in wedlock during Andrew and Elad’s

1 marriage unconstitutionally discriminates against same-sex spouses and their  
2 children on the basis of sex and sexual orientation and deprives same-sex  
3 marriages of the same constellation of rights and benefits as is available to  
4 opposite-sex marriages, in violation of, among other provisions, the Due Process  
5 Clause of the Fifth Amendment. The relief sought in the Complaint includes: (i) a  
6 declaration that E.J. is a U.S. citizen at birth; (ii) a declaration that the State  
7 Department’s policy of classifying the children of same-sex married couples as  
8 “children born out of wedlock,” and its consequent refusal to recognize E.J.’s  
9 citizenship on that basis, both on its face and as applied to Plaintiffs, is  
10 unconstitutional and in conflict with the INA; (iii) an order permanently enjoining  
11 Defendants from continuing to discriminate against Plaintiffs by classifying the  
12 children of same-sex married couples as “children born out of wedlock,” and  
13 denying the children of same-sex married couples the right to acquire citizenship at  
14 birth pursuant to Section 301(g) on that basis; and (iv) an award of attorneys’ fees  
15 and costs as allowed by law, including an award of reasonable litigation costs  
16 incurred in this Action pursuant to 28 U.S.C. § 2412, and such other relief as the  
17 Court deems just and proper. (ECF No. 1.)

### 18 III. ARGUMENT

#### 19 A. E.J. is Entitled to a Declaration Under Section 1503 that He 20 Acquired U.S. Citizenship At Birth Under Section 301(g) of the INA.

21 The fundamental facts here are not in dispute. The parties agree that  
22 (i) Andrew is a U.S. citizen who satisfied Section 301’s residency requirements at  
23 the time of E.J.’s birth; (ii) E.J.’s legal parents, Andrew and Elad, were married at  
24 the time of E.J.’s birth; (iii) E.J. was born outside of the United States; (iv) Andrew  
25 and Elad are, and have been, E.J.’s legal parents and have acted as his only parents  
26 since his birth; (v) E.J. resides in California; and (vi) E.J. does not share a  
27 biological relationship with Andrew. (SOF ¶¶ 1, 2, 6, 29, 31, 37-40, 46, 52, 107,  
28

1 147.)<sup>10</sup> The parties' only dispute relating to E.J.'s Section 1503 claim is a legal  
2 one: whether the INA imposes on persons like E.J., born during their parents'  
3 legally valid marriage, a requirement to demonstrate a biological relationship with  
4 both married parents as a prerequisite to recognition of U.S. citizenship at birth.  
5 The State Department declined to apply Section 301 to E.J.'s applications because,  
6 as the child of a male, same-sex couple, he could not meet the State Department's  
7 requirement that a child's biological parents be married to each other. The State  
8 Department's construction of Section 301 to include such a requirement is  
9 inconsistent with the INA's text and purpose, and has been rejected by federal  
10 courts of appeals, including twice by the Ninth Circuit. Because there is no  
11 genuine dispute of material fact and Defendants' legal interpretation is meritless,  
12 E.J. is entitled to summary judgment on his claim under Section 1503, which  
13 "authorizes a *de novo* judicial determination of the status of the plaintiff as a  
14 United States national." [Richards v. Sec'y of State, 752 F.2d 1413, 1417 \(9th Cir.](#)  
15 [1985\)](#).

16 ***a. The State Department's biological relationship requirement is***  
17 ***inconsistent with the text of Section 301(g).***

18 There is no dispute that Section 301(g) does not expressly impose a  
19 biological relationship requirement. (SOF ¶ 125.) The State Department purports  
20 to derive its position solely from the inclusion in Section 301(g) of the phrase  
21 "born ... of parents," which it interprets to require that a child's biological parents  
22

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23 <sup>10</sup> On a motion for summary judgment, the moving party "must demonstrate  
24 that 'there is no genuine dispute as to any material fact' and that the party 'is  
25 entitled to judgment as a matter of law.'" [Fuller v. Idaho Dep't of Corr., 865 F.3d](#)  
26 [1154, 1168 \(9th Cir. 2017\)](#) (quoting Fed. R. Civ. P. 56(a)). For purposes of  
27 summary judgment, "[a] material fact is one that 'might affect the outcome of the  
28 suit under the governing law,' and a genuine dispute is one for which 'a reasonable  
jury could return a verdict for the nonmoving party.'" *Id.* (quoting [Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 \(1986\)](#)). The Court must draw all  
reasonable inferences "in the light most favorable to the nonmoving party." *Id.* at  
[1168-69](#) (internal quotation marks omitted).

1 are married to each other in order for a parent to convey U.S. citizenship under  
2 Section 301. (*Id.* at ¶¶ 123-126, 138.) That interpretation conflicts with the text  
3 and purpose of the INA and the decisions that have construed the statute.

4 It is plain on the face of Section 301(g) that the statute does not  
5 impose a biological relationship requirement. Section 301(g) states simply that “a  
6 person born outside the geographical limits of the United States and its outlying  
7 possessions of parents one of whom is an alien, and the other a citizen of the  
8 United States who, prior to the birth of such person, was physically present in the  
9 United States” for the requisite period is a citizen at birth. Nothing in Section 301,  
10 or any other provision of the INA, suggests that in using the phrase “born . . . of  
11 parents,” Congress intended to refer only to biological or genetic parents.<sup>11</sup> And,  
12 biology aside, there is no genuine dispute that Andrew is in fact and law E.J.’s  
13 parent: the State Department acknowledges that Andrew is E.J.’s legal parent; he is  
14 listed as a parent on E.J.’s birth certificate and he “is recognized for all purposes in  
15 law” under the law of Ontario, Canada to be one of E.J.’s “parents,” and he has,  
16 along with Elad, lived with the Twins since their birth. (SOF ¶¶ 33, 50, 145-148.)  
17 No individual other than Andrew and Elad is listed on E.J.’s birth certificate or has  
18 acted as his parent. (*Id.* at ¶¶ 35, 39.) The conclusion that follows from this is so

19 \_\_\_\_\_  
20 <sup>11</sup> Except to clarify that the term “parent” includes a deceased parent, Title III  
21 of the INA, the Title that includes Sections 301(g) and 309, contains no definition  
22 of the term, let alone a definition limiting it to biological and/or gestational parents.  
23 *See* 8 U.S.C. § 1101(c)(2). Under Titles I and II of the INA, the term “parent” is  
24 defined as “a parent, father, or mother only where the relationship exists by reason  
25 of any of the circumstances set forth in subdivision (1) of this subsection.”  
26 Subdivision (1), in turn, defines the term “child” to mean “an unmarried person  
27 under twenty-one years of age” who, if not born in wedlock, meets certain criteria,  
28 such as having been “legitimated under the law of the child’s residence or  
domicile, or under the law of the father’s residence or domicile . . . .” 8 U.S.C.  
§ 1101(b)(1)-(2). Taken together, Titles I, II, and III reflect that Congress intended  
a broad treatment of the term “parent” in the INA, imposing restrictions only in the  
case of children “not born in wedlock,” a situation not applicable to E.J. and others  
in his position. Furthermore, as is discussed separately below, Congress did not  
intend to replace the common law usage of the terms “legitimacy” and “birth in  
wedlock,” under which it is also plain that E.J. is the child of the marriage of  
Andrew and Elad.

1 obvious that even the Toronto Consulate, in writing to Andrew to deny E.J. his  
2 citizenship, referred to E.J. as “your child.” And so he is.

3 Congress’s inclusion of a “blood relationship” requirement in Section  
4 309 (dealing with children born “out of wedlock”), but not in Section 301(g)  
5 (dealing with the children of a marriage) is further evidence that Congress intended  
6 children born in these different circumstances to be treated differently for purposes  
7 of acquiring U.S. citizenship. Specifically, the difference between the two parallel  
8 sections of the INA demonstrates that Congress intended that there be no  
9 biological relationship requirement under Section 301(g). *See Scales, 232 F.3d at*  
10 *1165; Jaen, 899 F.3d at 189* (holding that “Congress clearly specified enhanced  
11 requirements for proof of parentage in the case of children born out of wedlock”  
12 and that “the ‘textual distinction’ between the sections regarding children of  
13 married parents and children of unmarried parents is strongly suggestive of a clear  
14 Congressional intent to treat the two categories differently on this point.”); *see also*  
15 *Russello v. United States, 464 U.S. 16, 23 (1983)* (“Where Congress includes  
16 particular language in one section of a statute but omits it in another section of the  
17 same Act, it is generally presumed that Congress acts intentionally and purposely  
18 in the disparate inclusion or exclusion.” (internal quotation marks omitted)).

19 Moreover, as the Second Circuit determined in *Jaen*, absent evidence  
20 of a contrary congressional intent, statutory language should be viewed against the  
21 background of the common law. *See Neder v. United States, 527 U.S. 1, 21 (1999)*  
22 (“It is a well-established rule of construction that where Congress uses terms that  
23 have accumulated settled meaning under the common law, a court must infer,  
24 unless the statute otherwise dictates, that Congress means to incorporate the  
25 established meanings of these terms.” (alterations and internal quotation marks  
26 omitted)). The common law meaning of “parent” rests on the presumption that,  
27 where a child is born into a marriage, the married individuals are the child’s  
28 parents irrespective of their biological relationship to the child. *See Michael H. v.*

1 [Gerald D.](#), 491 U.S. 110, 124 (1989) (describing the “presumption of legitimacy”  
2 as “a fundamental principle of the common law”). In the United States, nearly  
3 every state recognizes that the term “parent” generally refers not only to biological  
4 parents but to those who by marriage or otherwise have that status. *See e.g.*, [Jaen](#),  
5 [899 F.3d at 189](#) (“New York state—like many states—incorporates the common  
6 law presumption of parentage into its domestic relations law.”); [Elisa B. v.](#)  
7 [Superior Court](#), 37 Cal. 4th 108, 122 (2005) (explaining that California applies the  
8 “presumption of presumed parenthood”); 41 AM. JUR. 2D *Illegitimate Children* § 8  
9 (“[I]t is clear that such a presumption [of legitimacy for children born in wedlock]  
10 exists independently of statute in practically all jurisdictions.”); *see also Parent*,  
11 BLACK’S LAW DICTIONARY (10th ed. 2014) (defining the term “parent” as “[t]he  
12 lawful father or mother of someone”).

13           The common law presumption that every child born in wedlock is the  
14 legitimate offspring of the child’s married parents applies even when only one  
15 spouse is the child’s biological parent, and even when the child’s parents are of the  
16 same sex. *See* [Elisa B.](#), 37 Cal. 4th at 125 (holding that the presumption of  
17 parenthood was not rebutted by proof that the plaintiff was not the biological  
18 parent of her same-sex partner’s children “because she actively participated in  
19 causing the children to be conceived with the understanding that she would raise  
20 the children as her own together with the birth mother, she voluntarily accepted the  
21 rights and obligations of parenthood after the children were born, and there are no  
22 competing claims to her being the children’s second parent”); [Matter of](#)  
23 [Christopher YY. v. Jessica ZZ.](#), 159 A.D.3d 18, 24 (3d Dep’t 2018) (“As the child  
24 was born to respondents, a married couple, they have established that the  
25 presumption of legitimacy applies, a conclusion unaffected by the gender  
26 composition of the marital couple or the use of informal artificial insemination by  
27 donor.”). Accordingly, the common law presumption of legitimacy, regardless of  
28 “blood” ties, forms the essential background against which the Section 301

1 reference to a child having been “born . . . of parents” should be interpreted. To  
2 require a “blood relationship” not mentioned in the statute would contravene the  
3 longstanding recognition that a person need not be a biological relative of the child  
4 to be his parent and thereby to confer citizenship at birth.

5 In two controlling decisions, one in 2000 and the other in 2005, the  
6 Ninth Circuit decided this exact issue of statutory interpretation. In each case, the  
7 court held that Section 301(g) prohibits the imposition of a biological relationship  
8 requirement on children born to married parents. In *Scales*, the petitioner was born  
9 during the marriage of his Philippine citizen mother and U.S. citizen father, but  
10 was not the biological child of his U.S. citizen father. [232 F.3d 1159, 1162](#). The  
11 Ninth Circuit nevertheless held—and in so doing conclusively refuted the sole  
12 basis for Defendants’ position with respect to E.J.’s Section 1503 claim—that “[a]  
13 straightforward reading” of the “born of parents” language in Section 301  
14 “indicates . . . that there is no requirement of a blood relationship.” [Id. at 1164](#).<sup>12</sup>  
15 The court noted that, in contrast, Section 309 does require a blood relationship  
16 between a person born out of wedlock and a U.S. citizen father, but stated that the  
17 provision “d[id] not apply to Petitioner . . . because he was born to parents who  
18 were married at the time of his birth.” [Id.](#) The Ninth Circuit further explained that  
19 “[i]f Congress had wanted to ensure” that a person born to married parents only  
20 one of whom was a U.S. citizen “actually shares a blood relationship with an  
21 American citizen,” “it knew how to do so.” [Id.](#) (quoting [Custis v. United States](#),  
22 [511 U.S. 485, 492 \(1994\)](#)). The court expressly refused to defer to the FAM,  
23 concluding that it was so divergent from the statutory language as to not even be  
24

25 <sup>12</sup> See also [Scales](#), [232 F.3d at 1166](#) (“Section 1401 requires only that  
26 Petitioner be ‘born . . . of parents,’ one of whom is a U.S. citizen, in order to  
27 acquire citizenship. The record is uncontroverted that Petitioner was born to Topaz  
28 [non-U.S. citizen genetic mother] and Scales [U.S. citizen husband of genetic  
mother at time of birth] during their marriage. There is no requirement of a blood  
relationship between Petitioner and his citizen father, as there is for an illegitimate  
child.”).

1 appropriately considered “an interpretation of § 1401.” See *id.* at 1165-66. The  
2 Second Circuit similarly observed in *Jaen* that “the government’s reliance upon the  
3 FAM language is particularly perplexing” because the FAM “does not even  
4 purport to interpret the statute, let alone to apply to the situation at hand.” [899](#)  
5 [F.3d at 187 n.4.](#)

6 The Ninth Circuit reaffirmed *Scales* in [Solis-Espinoza](#), [401 F.3d 1090](#).  
7 There, the petitioner was born in Mexico and raised in the United States by his  
8 biological father, a Mexican citizen, and his father’s wife, a U.S. citizen, who were  
9 married at the time of the petitioner’s birth. [Id.](#) at 1091-92. The Board of  
10 Immigration Appeals determined that the petitioner “‘was born out of wedlock,’  
11 because his biological father was not married to his biological mother at the time  
12 of his birth.” [Id.](#) at 1092. On appeal, the Ninth Circuit reversed, holding that the  
13 petitioner “was a legitimate child, not born out of wedlock, and . . . thus a United  
14 States citizen pursuant to 8 U.S.C. § 1401(g).” [Id.](#) at 1094. The court thus  
15 reaffirmed that Section 301 does not condition eligibility for citizenship on the  
16 existence of a blood relationship with a U.S. citizen parent, confirming that “the  
17 requirement applied only to an illegitimate child and that it did not apply to  
18 someone who was not born ‘out of wedlock.’” [Id.](#) at 1093 (citing [Scales](#), [232 F.3d](#)  
19 [at 1164](#)). The court emphasized that “[i]n every practical sense,” the wife of the  
20 petitioner’s biological father was his “mother and he was her son.” [Id.](#) at 1094.<sup>13</sup>

21  
22 <sup>13</sup> The Second Circuit similarly rejected the notion that Section 301(g) includes  
23 a biological relationship requirement in *Jaen*, [899 F.3d 182](#). There, *Jaen* was born  
24 to a Panamanian mother who was married to a U.S. citizen father, but his birth  
25 certificate reflected that his “birth” or genetic father was not a U.S. citizen. See [id.](#)  
26 [at 184-85](#). Interpreting the word “parent” in former Section 301(g), which is for  
27 relevant purposes identical to the current version, the Second Circuit concluded  
28 that the former version of Section 301(g) imported the “common law meaning of  
‘parent’ . . . [and] therefore incorporated the longstanding presumption of  
parentage based on marriage” such that *Jaen*’s mother’s husband at the time of his  
birth would be considered his parent for purposes of evaluating his citizenship.  
See [id.](#) at 188. The court relied in part on the comparison of former Section 301(g)  
and former Section 309, concluding that “[t]here is no comparable additional  
requirement for the establishment of paternity in the section regarding citizenship  
via *married* parents,” former Section 301(g). [Id.](#) at 189 (emphasis in original).

1           Those decisions make clear that (1) the term “parents” as used in  
2 Section 301(g) is not limited to *biological* parents; and (2) the presumption of  
3 legitimacy that applies when a child is born to married parents—codified in the  
4 INA—cannot be rebutted by evidence that an applicant for U.S. citizenship at birth  
5 does not have a biological tie to a U.S. citizen parent. Indeed, in *Solis-Espinoza*, it  
6 was undisputed that the petitioner did not share a biological relationship with his  
7 U.S. citizen parent—his father’s wife—but the court nonetheless rejected the same  
8 interpretation of the INA that the State Department applied to the adjudication of  
9 E.J.’s applications for a CRBA and U.S. passport. (SOF ¶ 135.) See [Solis-](#)  
10 [Espinoza](#), 401 F.3d at 1091-92; see also [Jaen](#), 899 F.3d at 185 (“[T]he INA  
11 incorporates the common law meaning of ‘parent’ into [Section 301(g)], such that  
12 a child born into a lawful marriage is the lawful child of those parents, regardless  
13 of the existence or nonexistence of any biological link”). Accordingly, the plain  
14 text and structure of Sections 301(g) and 309, as interpreted in *Scales* and *Solis-*  
15 *Espinoza*, foreclose the State Department from imposing a biological relationship  
16 requirement to withhold recognition of E.J.’s U.S. citizenship under Section  
17 301(g).

18           ***b. The State Department’s interpretation of Section 301(g) also***  
19           ***conflicts with the INA’s legislative purpose of maintaining family***  
20           ***unity.***

21           The State Department’s interpretation of the INA also is inconsistent  
22 with the legislative history of the INA, which “clearly indicates that the Congress  
23 intended to provide for a liberal treatment of children and was concerned with the  
24 problem of keeping families of United States citizens and immigrants united.”  
25 H.R. Rep. No. 85-1199, at 7 (1957); see also [Nation v. Esperdy](#), 239 F. Supp. 531,  
26 [538 \(S.D.N.Y. 1965\)](#) (“[T]hese provisions are designed to clarify or adjust

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27           The Second Circuit confirmed that “our determination that a child born into a  
28 marriage is the child of that marriage is grounded in the common law and Supreme  
Court precedent, and reflected in New York state law.” [Id. at 190.](#)

1 existing provisions of law in the interest of reuniting broken families . . . .”)  
2 (quoting 103 CONG. REC. 15,498 (1957) (statement of Sen. John F. Kennedy)).  
3 The Ninth Circuit recognized this purpose in concluding that the concerns  
4 animating the blood relationship requirement for unmarried fathers in Section  
5 309—that ““the unmarried male . . . need not participate in the decision to give  
6 birth rather than to choose an abortion; that he need not be present at the birth; and  
7 for at least 17 years thereafter he need not provide any parental support . . . in order  
8 to preserve his right to confer citizenship on the child pursuant to [Section  
9 309]”— are “not present if a child is born in wedlock.” [Scales, 232 F.3d at 1164](#)  
10 (quoting [Miller v. Albright, 523 U.S. 420, 434 \(1998\)](#)). In other words, the Ninth  
11 Circuit affirmed that it is rational to transmit citizenship from father to child where  
12 the father is married and intends to provide “parental support.” In rejecting a  
13 biological requirement in Section 301(g), the Ninth Circuit thus recognized that  
14 “[t]he [INA] was intended to keep families together [and] should be construed in  
15 favor of family units and the acceptance of responsibility by family members.”  
16 [Solis-Espinoza, 401 F.3d at 1094](#); see [Sook Young Hong v. Napolitano, 772 F.](#)  
17 [Supp. 2d 1270, 1278-79 \(D. Haw. 2011\)](#) (collecting cases regarding the proposition  
18 that “maintenance of family unity and . . . the liberal treatment of children  
19 represent well-known goals of the INA”). The State Department’s interpretation of  
20 Section 301(g) to require proof of a biological relationship with a U.S. citizen does  
21 exactly the opposite, especially in cases of same-sex marriages such as Andrew  
22 and Elad’s. Indeed, this point is plainly evident from the State Department’s  
23 determinations here: it recognized A.J.’s U.S. citizenship, but not E.J.’s, even  
24 though these twin boys are being raised together in their family home by their  
25 same two parents.

26           There is no genuine dispute in this Action as to the facts necessary to  
27 determine E.J.’s eligibility for a declaration of citizenship under Section 301(g).  
28 Indeed, the State Department acknowledges that it denied E.J.’s U.S. passport and

1 CRBA applications based solely on its interpretation of Section 301 (SOF ¶¶ 96-  
2 97), an interpretation that the Ninth Circuit expressly rejected in *Scales*. That  
3 interpretation is foreclosed by the text and history of the INA, as well as binding  
4 Ninth Circuit precedent. As a result, E.J. is entitled to judgment as a matter of law  
5 on his claim under Section 1503 and a declaration that he is a U.S. citizen at  
6 birth.<sup>14</sup>

7 **B. The State Department’s Interpretation and Application of the INA**  
8 **Violates the Due Process Clause.**

9 The parties do not dispute that Andrew and Elad were married at the  
10 time of E.J.’s birth, that Andrew and Elad are E.J.’s legal parents, or that Andrew  
11 and Elad are both men. (SOF ¶¶ 11, 12, 31, 147, 149.) Given these facts, the State  
12 Department’s application of a biological relationship requirement to E.J.’s CRBA  
13 application diminishes and demeans the right to marry as guaranteed by the Fifth  
14 Amendment of the Constitution. Andrew and E.J. are thus entitled to summary  
15 judgment on this claim as well.

16 The State Department’s unilateral imposition of a biological  
17 relationship requirement denies same-sex married couples and their children the  
18 panoply of rights and benefits of marriage, including the right of a U.S. citizen  
19 parent in a same-sex marriage to transmit citizenship to his or her legal child even  
20 absent a biological relationship. See [Pavan, 137 S. Ct. at 2077](#) (“differential  
21 treatment” of same-sex couples “infringes *Obergefell*’s commitment to provide  
22 same-sex couples the constellation of benefits that the States have linked to  
23 marriage” (internal quotation marks omitted)); see also [Obergefell, 135 S. Ct. at](#)  
24 [2601-02](#) (States have “throughout our history made marriage the basis for an  
25 expanding list of governmental rights, benefits, and responsibilities”); [Zablocki v.](#)

26 \_\_\_\_\_  
27 <sup>14</sup> This result also is necessary to avoid the serious constitutional questions  
28 raised by Plaintiffs under the Fifth Amendment. Cf. [Ashwander v. Tenn. Valley](#)  
[Auth., 297 U.S. 288, 345-46 \(1936\)](#) (Brandeis, J., concurring).

1 [Redhail, 434 U.S. 374, 384 \(1978\)](#) (“[T]he right to marry is part of the fundamental  
2 ‘right of privacy’ implicit in the Fourteenth Amendment’s Due Process Clause.”).

3 The Supreme Court has long recognized the right of a married U.S.  
4 citizen parent to transmit U.S. citizenship to his or her foreign-born child. In  
5 *Miller v. Albright*, the Supreme Court explained:

6 Under the terms of the INA, the joint conduct of a citizen  
7 and an alien that results in conception is not sufficient to  
8 produce an American citizen . . . . If the two parties  
9 engage in a second joint act—if they agree to marry one  
another—citizenship will follow.

10 [523 U.S. 420, 433 \(1998\)](#). As a result of *Scales* and *Solis-Espinoza*, it is settled  
11 law in the Ninth Circuit that the transmission of citizenship to the child of a  
12 *married* U.S. citizen’s foreign-born child is one of the incidents of marriage to  
13 which *all married* couples are equally entitled. Cf. [Pavan, 137 S. Ct. at 2078](#) (due  
14 process is violated when a same-sex couple is denied a benefit state law attaches to  
15 marriage, even when one husband “is definitively not the biological father”).  
16 Unlike in *Pavan*, the settled law here is federal—the INA, as reinforced by the  
17 Ninth Circuit’s construction of the statute in *Scales* and *Solis-Espinoza*.

18 The FAM section on which the State Department apparently relied in  
19 denying E.J.’s applications in effect required that to be considered born “in  
20 wedlock,” and therefore eligible for citizenship under Section 301, a child must  
21 have been born during the marriage of the child’s biological parents to each other.  
22 See 8 FAM § 304.1-2. This is, of course, an impossibility in the case of a male  
23 same-sex couple. By applying Section 309 and reading into Section 301 a  
24 biological relationship requirement absent from its text to analyze the citizenship  
25 of such children, the FAM dictates that, if the biological parent of the child of a  
26 same-sex marriage is a foreign national, as is the case here, the child is ineligible  
27 for citizenship at birth. In so doing, the State Department’s counter-textual  
28 interpretation of the INA relegates the children of two married men inevitably to

1 the stigma of illegitimacy simply because of their parents’ sex and sexual  
2 orientation. The State Department’s interpretation thus eviscerates the right,  
3 provided in Section 301 and confirmed in *Miller* and its progeny, of a married U.S.  
4 citizen to transmit citizenship to the child of his or her marriage. Only in this way  
5 could the State Department achieve the perverse result of the Twins’ being treated  
6 differently despite their common parentage and identical living situations.

7 The deprivation of these rights and benefits violates the Fifth  
8 Amendment. See [Pavan, 137 S. Ct. at 2077](#); see also [Obergefell, 135 S. Ct. at](#)  
9 [2601-02](#) (observing that laws that deny same-sex married couples “the  
10 constellation of benefits . . . linked to marriage” violate the constitutional right to  
11 marry by consigning them “to an instability many opposite-sex couples would  
12 deem intolerable in their own lives” and by “teaching that gays and lesbians are  
13 unequal in important respects.”).

14 Any argument that the State Department applies the FAM’s biological  
15 relationship requirement to the children of opposite-sex marriages is beside the  
16 point. The INA makes the ability to transmit U.S. citizenship to the child of a  
17 marriage part of the constellation of benefits linked to marriage. The State  
18 Department’s imposition of a biological relationship requirement completely  
19 *forecloses* the children of male same-sex marriages, like E.J., from being treated as  
20 the legitimate children of their parents’ marriages and, in many cases, from being  
21 recognized as U.S. citizens at birth. In this way, the State Department’s  
22 interpretation of the INA deprives *every* male same-sex married couple of one of  
23 the incidents of marriage and discriminates against and stigmatizes their children.

24 Given that the State Department’s actions infringe a constitutional  
25 right guaranteed by the Fifth Amendment, Defendants bear the burden of  
26 establishing that there is a compelling governmental interest in doing so, and that  
27 the rule being defended is narrowly tailored to achieve that compelling  
28 governmental interest. See [Washington v. Glucksberg, 521 U.S. 702, 721 \(1997\)](#)

1 (explaining that substantive due process “forbids the government to infringe . . .  
2 ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the  
3 infringement is narrowly tailored to serve a compelling interest” (emphasis in  
4 original) (internal quotation marks omitted)); *United States v. Juvenile Male*, 670  
5 *F.3d 999, 1012 (9th Cir. 2012)* (when a statute abridges a fundamental right, “the  
6 statute will be subject to strict scrutiny and is invalidated unless it is narrowly  
7 tailored to serve a compelling state interest.” (internal quotation marks omitted)).  
8 Defendants, however, fail to assert any interest, let alone a compelling reason, for  
9 excluding from consideration for citizenship under Section 301(g) applicants who,  
10 like E.J., were born during the marriage of their U.S. citizen parent and the  
11 biological parent of the child. Indeed, the State Department has acknowledged that  
12 the only basis for this policy is its (misguided) interpretation of the text of the  
13 statute. (SOF ¶ 126.) Given this wholesale failure, Plaintiffs are entitled to  
14 summary judgment on their due process claim.

#### 15 IV. CONCLUSION

16 For the foregoing reasons, Plaintiffs request that the Court grant in full  
17 their motion for partial summary judgment and declare that E.J. is a U.S. citizen at  
18 birth under Section 301(g), declare that Defendants’ interpretation and application  
19 of Section 301(g) to require proof of a biological relationship with a U.S. citizen is  
20 unconstitutional and unlawful, enjoin Defendants from continuing to interpret  
21 Section 301(g) in that manner, and grant attorneys’ fees and costs and any such  
22 other and further relief as the Court deems to be just and proper.

23 Dated: January 7, 2019

Respectfully submitted,

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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION (LOS ANGELES)**

20 ANDREW MASON DVASH-  
BANKS AND E.J. D.-B.,

21  
22 Plaintiffs,

23 v.

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

26  
27 Defendants.  
28

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

**APPENDIX A TO MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: Feb. 4, 2018  
Courtroom: 7A

8 U.S.C.A. § 1401

§ 1401. Nationals and citizens of United States at birth

Currentness

The following shall be nationals and citizens of the United States at birth:

- (a) a person born in the United States, and subject to the jurisdiction thereof;
  
- (b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;
  
- (c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;
  
- (d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;
  
- (e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;
  
- (f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;
  
- (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in

§ 1401. Nationals and citizens of United States at birth, 8 USCA § 1401

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the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of Title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of Title 22, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

**CREDIT(S)**

(June 27, 1952, c. 477, Title III, ch. 1, § 301, 66 Stat. 235; Pub.L. 89-770, Nov. 6, 1966, 80 Stat. 1322; Pub.L. 92-584, §§ 1, 3, Oct. 27, 1972, 86 Stat. 1289; Pub.L. 95-432, §§ 1, 3, Oct. 10, 1978, 92 Stat. 1046; Pub.L. 99-653, § 12, Nov. 14, 1986, 100 Stat. 3657; Pub.L. 103-416, Title I, § 101(a), Oct. 25, 1994, 108 Stat. 4306.)

8 U.S.C.A. § 1401, 8 USCA § 1401

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-306, 115-308 to 115-324. Title 26 current through P.L. 115-324.

8 U.S.C.A. § 1409

§ 1409. Children born out of wedlock

Currentness

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title, and of paragraph (2) of section 1408 of this title, shall apply as of the date of birth to a person born out of wedlock if--

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years--

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

(b) Except as otherwise provided in section 405 of this Act, the provisions of section 1401(g) of this title shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

**CREDIT(S)**

(June 27, 1952, c. 477, Title III, ch. 1, § 309, 66 Stat. 238; Pub.L. 97-116, § 18(l), Dec. 29, 1981, 95 Stat. 1620; Pub.L. 99-653, § 13, Nov. 14, 1986, 100 Stat. 3657; Pub.L. 100-525, §§ 8(k), 9(r), Oct. 24, 1988, 102 Stat. 2617, 2621.)

8 U.S.C.A. § 1409, 8 USCA § 1409

Current through P.L. 115-281. Also includes P.L. 115-283 to 115-306, 115-308 to 115-324. Title 26 current through P.L. 115-324.

8 U.S.C.A. § 1503

§ 1503. Denial of rights and privileges as national

Currentness

**(a) Proceedings for declaration of United States nationality**

If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of Title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any removal proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such removal proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is conferred upon those courts.

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18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION (LOS ANGELES)**  
20

21 ANDREW MASON DVASH-  
BANKS AND E.J. D.-B.,  
22  
23 Plaintiffs,

24 v.

25 THE UNITED STATES  
DEPARTMENT OF STATE,  
and THE HONORABLE  
26 MICHAEL R. POMPEO,  
Secretary of State,  
27  
28 Defendants.

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

**DECLARATION OF ALEXA  
LAWSON-REMER IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: February 4, 2019  
Courtroom: 7A

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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 (“Action”). I submit this declaration in support of Plaintiffs’ Motion for Partial Summary Judgment, filed concurrently herewith. I have personal knowledge of the facts set forth in this declaration and, if called upon, could and would testify to those facts.

2. Attached to this declaration as Exhibit A is a true and correct copy of excerpts of the *Transcript of the Deposition of Paul Peek*, Defendant the United States Department of State’s designee under Federal Rule of Civil Procedure 30(b)(6), conducted on December 20, 2018, in Washington, D.C. as part of discovery in this Action.

3. Attached to this declaration as Exhibit B is a true and correct copy of excerpts of the *Transcript of the Deposition of Frances Terri Day*, conducted on December 20, 2018, in Charlotte, North Carolina as part of discovery in this Action.

4. Attached to this declaration as Exhibit C is a true and correct copy of excerpts of the *Transcript of the Deposition of Andrew Dvash-Banks*, conducted on December 12, 2018, in Los Angeles, California as part of discovery in this Action.

5. Attached to this declaration as Exhibit D is a true and correct copy of excerpts of the *Transcript of the Deposition of Margaret Ramsay*, conducted on December 7, 2018, at the United States Consulate in Toronto, Canada as part of discovery in this Action.

6. Attached to this declaration as Exhibit E is a true and correct copy of excerpts of the *Transcript of the Deposition of Larilyn Reffett*, conducted

1 on December 6, 2018, at the United States Consulate in Toronto, Canada as part of  
2 discovery in this Action.

3 7. Attached to this declaration as Exhibit F is a true and correct  
4 copy of excerpts of *Plaintiffs' Responses to Defendants' First Set of Discovery*  
5 *Responses*, served on November 19, 2018.

6 8. Attached to this declaration as Exhibit G is a true and correct  
7 copy of excerpts of the *Administrative Record*, filed by Defendants on January 4,  
8 2019 as Docket No. 80 and authenticated by Defendants therein. That  
9 *Administrative Record* contains eight documents on which Plaintiffs rely. For ease  
10 of reference, Plaintiffs have segregated each of those eight documents contained  
11 within the *Administrative Record* as follows:

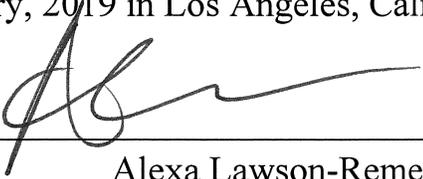
- 12 a. Exhibit G-1: Application for a Consular Report of Birth Abroad  
13 of a Citizen of the United States of America, without exhibits,  
14 submitted on behalf of plaintiff E.J.D.-B. ("E.J.");
- 15 b. Exhibit G-2: Application for a U.S. Passport, without exhibits,  
16 submitted on behalf of E.J.;
- 17 c. Exhibit G-3: Marriage License for Andrew Dvash-Banks and  
18 Elad Dvash-Banks;
- 19 d. Exhibit G-4: Surrogacy Agreement between Andrew Dvash-  
20 Banks, Elad Dvash-Banks and the surrogate who carried E.J.  
21 and his twin brother, A.J.D.-B.;
- 22 e. Exhibit G-5: Statement of Live Birth of E.J. from the Ontario  
23 Office of the Registrar General;
- 24 f. Exhibit G-6: Ontario Superior Court of Justice Order dated  
25 September 28, 2016;
- 26 g. Exhibit G-7: Letter from Viaguard Accu-Metrics dated  
27 January 30, 2017; and  
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h. Exhibit G-8: Letter from Frances Terri Day to Andrew Dvash-Banks dated March 2, 2017.

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

Executed this 7th day of January, 2019 in Los Angeles, California.

  
\_\_\_\_\_  
Alexa Lawson-Remer

# **EXHIBIT A**

CONFIDENTIAL - PROTECTIVE ORDER

PAUL PEEK - 12/20/2018

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CONFIDENTIAL - PROTECTIVE ORDER  
UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-  
BANKS and E.J.D.-B,  
Plaintiffs,

v.

Case No.

2:18-cv-00523-JFW-JCx

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

---

Video Deposition of Paul Peek  
Washington, D.C.  
Thursday, December 20, 2018  
9:15 a.m.

Job No.: NY-203388  
Pages: 1 - 351  
Reported by: Donna L. Linton, RMR-CLR

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

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Sullivan & Cromwell

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1700 New York Avenue, Northwest

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South Conference Room, Suite 800

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Washington, D.C. 20006

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(202) 956-7500

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

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Deposition of Defendant United States Department of

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State and Federal Rules of Civil Procedure, before

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Donna L. Linton, Registered Merit Reporter,

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Certified LiveNote Reporter, and Notary Public in

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and for the District of Columbia.

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:

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A P P E A R A N C E S

(continued)

ON BEHALF OF THE DEFENDANTS:

VINITA ANDRAPALLIYAL, ESQUIRE

EMILY NEWTON, ESQUIRE

United States Department of Justice

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- and -

CHRISTINE L. McLEAN, ESQUIRE

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600 19th Street, Northwest

Washington, D.C. 20006

(202) 485-8000

mcleancl@state.gov

ALSO PRESENT:

Brian Mackey, Videographer

1 Department of Justice for Defendants.

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

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

6 Would the reporter please swear in the  
7 witness?

8 Whereupon,

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

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

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

20 MR. EDELMAN: Welcome.

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

23 Q Good morning Mr. Peek.

24 A Good morning.

25 Q Can we just, to identify you to the

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

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

5 Q I asked you about E.J.

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

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

11 A Yes.

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

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

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

19 A As opposed to biological parents.

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

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

1 A Yes.

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

5 A Uh-hum. Yes.

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

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

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

16 BY MR. EDELMAN:

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

19 A Uh-hum.

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

23 A Yes.

24 Q And who set those criteria?

25 A The Department of State.

1 Q In Washington, D.C.?

2 A Yes.

3 Q Okay. Would it be fair to say that at

4 that time the Toronto consulate -- the State

5 Department expected the Toronto consulate to follow

6 the criteria set by the State Department in

7 Washington?

8 A Yes.

9 Q And would it be fair to say that at that  
10 time the State Department expected that the Toronto  
11 consulate would not depart from the criteria for  
12 issuance of a CRBA set by the State Department in  
13 Washington, D.C.?

14 A That is fair to say.

15 Q Okay. Are you familiar with the term  
16 "desk officer" as it applies to the State  
17 Department?

18 A Yes.

19 Q What do you understand that term to mean?

20 A It's a term used throughout the  
21 department for bureaus that are divided.

22 Regionally, a desk officer is generally someone who  
23 is answering questions that -- or handling issues  
24 related to a specific region, like the Africa desk  
25 or the Somalia desk or what have you.

1 Q Okay.

2 A So U.S. citizenship.

3 Q So --

4 A Excuse me.

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

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

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

13 A Both. They're very closely intertwined.

14 BY MR. EDELMAN:

15 Q What does that mean?

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

19 Q Okay.

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

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

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

4 A The FAM goes in -- yes.

5 Q What are those differences?

6 A The FAM goes into much greater detail.

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

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

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

14 A Yeah.

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

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

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

1 A In places, yes.

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

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

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

11 A Yes.

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

16 A Yes.

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

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

22 A Yes.

23 BY MR. EDELMAN:

24 Q What does it do?

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

1 sections 301(g) and 309. And you had indicated that  
2 the State Department has consulted not only with  
3 USCIS but others. And we didn't have an opportunity  
4 to ask you what others you were referring to in your  
5 answer.

6 A For instance, if there was a court case  
7 about something that was effected by 301(g) of the  
8 INA, they might consult with the Department of  
9 Justice about that.

10 Q Okay. So this isn't abstract or  
11 hypothetical, were there communications -- let's  
12 just ask the fact yes or no: Were there  
13 communications between the State Department and the  
14 Department of Justice with respect to court cases or  
15 court decisions relating to the application of INA  
16 section 301(g) or 309?

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

19 A I don't know.

20 BY MR. EDELMAN:

21 Q Okay. So my question really is were you  
22 referring to specific communications that you had in  
23 mind when you gave your answer before lunch?

24 A No.

25 Q So let's just ask, to be clear, does the

1 State Department require a biological relationship  
2 between a married U.S. citizen parent and a child  
3 born outside the United States in order to establish  
4 citizenship at birth of the child?

5 A Yes.

6 Q And what is the source of that  
7 requirement?

8 A I'm sorry. What is the what?

9 Q What's the source? What's the basis for  
10 that requirement?

11 A The Immigration and Nationality Act.

12 Q And what in particular?

13 A Section 301(g).

14 (Defendants' Exhibit Number 1 marked for  
15 identification was introduced.)

16 BY MR. EDELMAN:

17 Q Okay. So just to put some texture around  
18 it, I'm just going to show you Defendants'  
19 Deposition Exhibit 1. This has already been marked,  
20 so I'm just going to hand you a copy and one to  
21 counsel and ask you if you know what this document  
22 is.

23 A It looks like an excerpt of 7 FAM 1130,  
24 Acquisition of U.S. Citizenship by Birth Abroad to  
25 U.S. Citizen Parent.

1 BY MR. EDELMAN:

2 Q So what laws?

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

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

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

12 A Can you be more specific?

13 BY MR. EDELMAN:

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

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

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

23 BY MR. EDELMAN:

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

1 purposes of adjudicating CRBAs?

2 A Yes.

3 Q What is that definition?

4 A I will find it and read it for you.

5 Q I just want you to answer the question.

6 MS. ANDRAPALLIYAL: Can we go off the  
7 record?

8 MR. EDELMAN: No. I would like an answer  
9 to the question.

10 MS. ANDRAPALLIYAL: This is not a memory  
11 test. He's allowed to consult --

12 MR. EDELMAN: If the witness says he  
13 doesn't know, then we'll show him something to  
14 refresh his recollection.

15 BY MR. EDELMAN:

16 Q Could you answer my question, please?

17 A Could you -- what was your question  
18 again? I'm sorry.

19 MR. EDELMAN: Could you read it back,  
20 please?

21 THE REPORTER: "Does the State Department  
22 have a definition of the term "in wedlock" for  
23 purposes of adjudicating CRBAs?"

24 A Yes.

25 BY MR. EDELMAN:

1 Q What is that definition?

2 A If both biological parents -- if the two  
3 biological parents are married, then the case would  
4 be considered to be in wedlock.

5 (Plaintiffs' Exhibit Number 4 marked for  
6 identification was introduced.)

7 BY MR. EDELMAN:

8 Q Okay. Now, let's put in front of you  
9 Plaintiffs' Deposition Exhibit 4. This has been  
10 previously marked. A copy for counsel.

11 Let me ask you if this is the document  
12 for which -- that you had in mind?

13 A Yes.

14 Q Now, turn, please, to page 4. So it's  
15 page 4 of 7. There's little page numbers at the  
16 bottom.

17 A Uh-hum. Yes.

18 Q Okay. 7 FAM 1140 appendix E, In wedlock  
19 and out of wedlock.

20 Do you see that?

21 A In wedlock and of wedlock.

22 Q Of wedlock, I beg your pardon. Sorry.

23 Now, is -- do you see (a), "The term  
24 'birth in wedlock' has been consistently interpreted  
25 to mean birth during the marriage of the biological

1 parents to each other"?

2 A Yes.

3 Q Do you see that?

4 A Yes.

5 Q And (c), "To say a child was born 'in

6 wedlock' means that the child's biological parents

7 were married to each other at the time of the birth

8 of the child." Do you see that?

9 A Yes.

10 Q Is that the definition you had in mind

11 when you were asking to consult any documentation?

12 A Yes.

13 Q Okay. What's the basis for the State

14 Department's definition of "in wedlock" as embodied

15 in the material we just looked at?

16 A Their interpretation of the Immigration

17 and Nationality Act.

18 Q What in particular in the Immigration and

19 Nationality Act?

20 A Section 301(g).

21 Q Okay. Now, if a married couple used

22 assisted reproduction technology to give birth to a

23 child during their marriage, does the State

24 Department consider that child to have been born in

25 wedlock?

1 A It depends on the circumstances.

2 Q Can you elaborate, please?

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

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

12 A Not by policy, no.

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

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

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



1 adjudication of citizenship.

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

5 A Correct.

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

13 A Yes.

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

17 A It depends.

18 Q Okay. And what does it depend on?

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

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

25 A The department's interpretation of the

1 A To require which result?

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

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

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

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

16 A Yes.

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

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

23 Q Okay. In my scenario --

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

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

6 A The donor egg is from a third party.

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

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

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

12 A The Immigration and Nationality Act.

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

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

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

1 A It depends.

2 Q What does it depend on?

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

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

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

13 Q Please.

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

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

21 A Born male.

22 Q Pardon?

23 A Born male.

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

1 A Sure.

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

5 A No.

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

9 A No.

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

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

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

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

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

25 A Right.

1 Q Okay. Part (a), "The term 'birth in  
2 wedlock' has consistently -- has been consistently  
3 interpreted to mean birth during the marriage of the  
4 biological parents to each other," correct?

5 A Yes.

6 Q And is that -- I'm trying to close off  
7 this circle here. Is that what you mean in your  
8 last answer when you talk about the requirement that  
9 the biological parents be married to each other?

10 A Yes.

11 MR. EDELMAN: Okay. Now, let's mark  
12 as -- yeah. I'm going to mark -- I knew this would  
13 happen. I have now lost track of what number. Are  
14 we up to 15? Okay. So we're going to mark the  
15 first document as 15 and the second document as 16.  
16 And I'll hand copies to counsel in a moment. 15,  
17 16.

18 THE WITNESS: I'm sorry. Since we're  
19 between questions, can I just take a short break to  
20 get some water?

21 MR. EDELMAN: Yeah, by all means. We  
22 have got to go off the record first.

23 THE VIDEOGRAPHER: We're going off the  
24 record. The time is 2:16 p.m.

25 (Discussion off the record.)

1 (Plaintiffs' Deposition Exhibit  
2 Numbers 15 and 16 were marked for identification.)

3 THE VIDEOGRAPHER: We're back on the  
4 record. The time is 2:17 p.m.

5 BY MR. EDELMAN:

6 Q Okay. So Mr. Peek, we've placed before  
7 you two documents. One is Plaintiffs' Deposition  
8 Exhibit 15, which is a rescript of section 301 of  
9 the Immigration and Nationality Act of 1952, as  
10 amended, 8 U.S.C. section 1401, and Plaintiffs'  
11 Deposition Exhibit 16, which is a rescript of  
12 section 309 of the INA, 8 U.S.C. 1409.

13 Let me direct your attention first to  
14 section 301, so that's Plaintiffs' Deposition  
15 Exhibit 15.

16 A Uh-hum. Yes.

17 Q And take as long as you want or as short  
18 as you need to orientate yourself, and then I'm  
19 going to ask you a question.

20 A Go ahead.

21 Q Okay. So just for the record, so we're  
22 all singing from the same sheet, just point us,  
23 please, to where in section 301 the words "in  
24 wedlock" appear.

25 A I do not see it.

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

4 MS. ANDRAPALLIYAL: Objection.  
5 Argumentative.

6 BY MR. EDELMAN:

7 Q Is it not in the statute?

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

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

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

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

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

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

24 A I've reviewed the FAM, yes.

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

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

3 Q Yes.

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

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

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

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

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

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

1 always been male?

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

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

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

12 A Yes.

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

15 A Section 309.

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

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

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

1 A Correct.

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

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

6 Q Okay. So would you agree with me that  
7 Congress saw fit to include the term "blood  
8 relationship" in 309?

9 A Yes.

10 Q And saw fit not to include it in  
11 section 301(g) --

12 A Yes.

13 Q -- or 301, correct?

14 A Correct.

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

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

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

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

24 BY MR. EDELMAN:

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

1 would be the appropriate...

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

6 A Correct.

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

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

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

16 A Correct.

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

19 A Correct.

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

23 A Correct.

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

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#1415  
PAUL PEK = 12/20/2018

1 BY MR. EDELMAN:

2 Q Okay. Are you familiar with the  
3 legitimation laws of any country of the world?

4 MS. ANDRAPALLIYAL: Objection. Exceeds  
5 the scope.

6 A Off the top of my head?

7 BY MR. EDELMAN:

8 Q Are you familiar with the legitimation  
9 laws of any country? It's a yes or no question.

10 A Am I familiar with -- go ahead and repeat  
11 it.

12 Q Are you familiar with the legitimation  
13 laws of any country?

14 A Yes.

15 Q What laws are you familiar with?

16 A The United States.

17 Q And what do those laws provide?

18 A It depends if the child -- I -- I guess I  
19 don't know off the top of my head. I wouldn't be  
20 able to --

21 Q Okay.

22 A -- spout off the law.

23 Q I'm not going to fence with you. Isn't  
24 it true that notwithstanding your efforts to  
25 advocate to the contrary, the State Department's

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#1416  
PAUL PEEK = 12/20/2018

1 position is that when two nontransgender men who are  
2 married to each other have a child using assisted  
3 reproduction technology and that child is born  
4 outside the United States, the government of the  
5 United States tells those men their child is not  
6 legitimate unless some action happens down the line  
7 to change the status of that child to legitimate?

8 MS. ANDRAPALLIYAL: Okay.

9 Mischaracterizes testimony.

10 BY MR. EDELMAN:

11 Q Yes or no?

12 A No.

13 Q It's not true?

14 A I do not agree with that statement.

15 Q And why do you disagree with that  
16 statement?

17 A Again, I refer you to section 4(c). The  
18 law of the applicant's country of birth may deem  
19 them legitimate and the United States would honor  
20 that.

21 Q Okay. I'll amend my question to say  
22 absent the possibility that some law would recognize  
23 the child as legitimate, the State Department  
24 doesn't recognize the child as legitimate, yes or  
25 no?

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1 A It looks like a cable, an incomplete  
2 cable but -- yeah.

3 Q Meaning a cable disseminated within the  
4 State Department?

5 A Correct.

6 Q Okay. Focusing on the first sentence of  
7 text of Plaintiffs' Deposition Exhibit 18, read  
8 along with me, please, and make sure I do this  
9 properly, "There has been a recent policy change  
10 related to children born abroad through assisted  
11 reproductive technology (ART)."

12 Did I read that correctly?

13 A Yes.

14 Q "The previous policy required that a  
15 mother have a genetic connection to a child in order  
16 to qualify as a parent for the purpose of obtaining  
17 immigration benefits." Did I read that correctly?

18 A Yes.

19 Q "Under the new policy, birth mothers  
20 (gestational mothers) who are also the legal parent  
21 of the child will be treated the same as genetic  
22 mothers for the purposes of immigration benefits."

23 Do you see that?

24 A Correct. Yes.

25 Q Okay. So would you agree with me that

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

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

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

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

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

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

24 BY MR. EDELMAN:

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

1 I could get your question I was answering at the  
2 time I started looking for this.

3 Q The question, I believe, though I don't  
4 represent to you that it was said exactly this way,  
5 was how does the State Department know that USCIS  
6 interprets section 301 of the INA to require a blood  
7 relationship between the child and a U.S. citizen  
8 parent?

9 A I'm just going to start reading the third  
10 paragraph on the first page: CA and L -- which  
11 refers to the Bureau of Consular Affairs and the  
12 department's legal department -- in consultation  
13 with DHS -- the Department of Homeland Security --  
14 have been studying whether we can interpret the INA  
15 to allow U.S. citizen parents to transmit U.S.  
16 citizenship to their children born abroad through  
17 ART in a broader range of circumstances, and in  
18 other circumstances, amend visa requirements for  
19 such children. Related to this, we are considering  
20 how this would impact children born through ART  
21 overseas to same-sex couples. Because we regularly  
22 encounter people seeking to document children who  
23 are not theirs, we use DNA testing to verify  
24 parentage.

25 Q Okay. Now, just explain, if you will,

1 you see that?

2 A Yes.

3 Q Now, what consideration occurred with  
4 respect to this issue?

5 A Consideration of the various scenarios  
6 and how the broadening of the definition to include  
7 gestational parents would affect same-sex couples.

8 Q But in particular what was the  
9 consideration or was there a proposal to make a  
10 change?

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

13 MR. EDELMAN: The witness opened the  
14 door, Counsel.

15 A Could you repeat your question?

16 BY MR. EDELMAN:

17 Q Yes. What specific consideration was the  
18 State Department giving to assist you?

19 A What specific consideration was the State  
20 Department --

21 Q It says, "We are considering how this  
22 would impact children born through ART overseas to  
23 same-sex couples."

24 So I'm asking you to describe the  
25 consideration that was given.



1 how it interprets the biological relationship  
2 requirement of its policy as it relates to children  
3 born through assisted reproductive technology  
4 overseas to same-sex couples?

5 A The department did.

6 Q Did?

7 A Well -- I'm sorry. Could you repeat your  
8 question?

9 MR. EDELMAN: Why don't we read it back?

10 THE REPORTER: "So am I correct in my  
11 understanding that the State Department did not  
12 change its policy with respect to how it interprets  
13 the biological relationship requirement of its  
14 policy as it relates to children born through  
15 assisted reproductive technology overseas to  
16 same-sex couples?"

17 THE WITNESS: I'm sorry -- could you read  
18 that one more time? I'm sorry.

19 BY MR. EDELMAN:

20 Q Here. Let me see if I can make this  
21 easier. So aside from the gestational parent issue,  
22 okay, did the State Department change its  
23 interpretation of when a biological relationship  
24 between a child and a U.S. citizen parent is  
25 required for purposes of citizenship at birth?



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

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

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

13 A I apologize.

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

16 A Yes.

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

22 A Correct. And that --

23 Q Okay.

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

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

4 A No.

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

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

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

11 BY MR. EDELMAN:

12 Q Well, what would you say happened?

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

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

17 A Correct.

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

20 A Yes.

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

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

1 domain.

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

4 A No.

5 Q Is it subject to congressional approval?

6 A No.

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

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

11 MR. EDELMAN: I'm sorry.

12 BY MR. EDELMAN:

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

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

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

19 BY MR. EDELMAN:

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

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

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

1 BY MR. EDELMAN:

2 Q Okay. All right. Now, you, I believe,  
3 testified earlier -- and I'm asking you is it  
4 correct -- that the principal consideration that the  
5 State Department brings to bear in interpreting the  
6 INA is a desire to be compliant with law; is that  
7 correct?

8 A Correct.

9 Q Now, would you agree that the State  
10 Department's requirement that there be a biological  
11 relationship between a married U.S. citizen parent  
12 and a child born outside the United States for  
13 purposes of recognizing U.S. citizenship at birth --  
14 would you agree that that requirement is  
15 inconsistent with rulings by various federal  
16 appellate courts?

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

19 A I believe that it is, yes.

20 BY MR. EDELMAN:

21 Q Okay. So help us understand how --

22 A Can I clarify?

23 Q Yes. Of course.

24 A I'm not sure if it's appellate courts. I  
25 can look at my documents and see if I have an

1 formalities.

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

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

9 BY MR. EDELMAN:

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

12 A Yes.

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

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

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

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

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

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

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

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

21 Q Okay. What about the other two?

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

1 Q Okay. Well, let's make sure this is as  
2 clear as we can make it, in fairness to you.

3 So the question I asked, in its  
4 completeness, is would you agree that the State  
5 Department's requirement that it -- through its  
6 interpretation of section 301 of the INA, that there  
7 be a biological relationship between a married U.S.  
8 citizen parent and his child born outside the U.S.  
9 in order to recognize that the child acquired U.S.  
10 citizenship at birth, that that interpretation is  
11 inconsistent with the decisions that we looked at in  
12 Plaintiffs' Deposition Exhibit 10?

13 MS. ANDRAPALLIYAL: Objection. Calls for  
14 a legal conclusion.

15 A I believe that is the case.

16 BY MR. EDELMAN:

17 Q Okay. Now, should I understand your  
18 reference to paragraph 6 in Exhibit 21 as suggesting  
19 that the State Department's view is, notwithstanding  
20 the inconsistency, it just doesn't believe it has to  
21 follow those decisions?

22 A Again, the department has a worldwide  
23 scope and are consistent regardless of geographic  
24 location in our application of the INA.

25 Q So wouldn't the answer to my question be

1 yes?

2 A Could you ask your question again?

3 MR. EDELMAN: Please read it back.

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

9 A Yes.

10 BY MR. EDELMAN:

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

15 A I'm sorry. What page?

16 Q Page 7.

17 A Page 7, paragraph 7.

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

20 A Uh-hum.

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

25 A Yes.

1 A Yes.

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

7 A Correct.

8 Q -- Andrew?

9 A Correct. I'm sorry.

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

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

16 A Yes.

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

20 A Yes.

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

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



1 A The legal parent, yes.

2 Q Okay. And does the State Department  
3 consider Andrew to be E.J.'s parent at birth under  
4 Ontario law?

5 A His legal parent at birth, yes.

6 Q Okay. And you referred earlier today to  
7 a court order, correct?

8 A Yes.

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

11 A Sure.

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

14 A Okay.

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

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

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

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

1 the scope.

2 A I don't know.

3 BY MR. EDELMAN:

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

10 A Yes.

11 Q And did that issue come up?

12 A Which issue?

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

15 A I do not recall it.

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

20 So is it the State Department's position

21 that E.J. was born out of wedlock?

22 A Yes.

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

25 MS. ANDRAPALLIYAL: Objection. Exceeds

1 A -- shouldn't have done that.

2 Q So now we're talking about the State  
3 Department's adjudication of the applications for  
4 E.J. for a U.S. passport and a CRBA. Okay? In  
5 connection with those adjudications, did the State  
6 Department apply the criteria of section 309?

7 A Yes.

8 Q And just for the record, why did the  
9 State Department determine that those were the right  
10 criteria to apply?

11 A The State Department determined that INA  
12 309 was the correct statute to apply because both of  
13 the parents did not have a biological connection --

14 Q Okay.

15 A -- to the child.

16 Q Now, just so there's no confusion on this  
17 point down the line, is it the State Department's  
18 position that the adjudication by the consular  
19 officer of E.J.'s applications was correct?

20 A Yes.

21 Q Okay. And some other things just to make  
22 sure, you know, where we're on the same page and  
23 where we're not.

24 Does the State Department dispute that  
25 Andrew, the father, is a U.S. citizen?

1 A No.

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

6 A I believe that he did, yes.

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

10 A Yes.

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

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

19 Q Yes.

20 A -- male their entire lives --

21 Q Right.

22 A -- that is correct.

23 Q Correct. My bad. I should have made  
24 that clear. Yes. So putting aside the possibility

25 of a transgender male -- man. So is it the State

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

6 A Correct.

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

11 A Okay.

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

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

19 Q Margaret?

20 A Margaret.

21 Q Ramsay.

22 A Yes. I'm sorry.

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

1 that I have not actually seen this before.

2 Q Okay. Do you know what this document is?  
3 I want to just -- I want to be respectful of your  
4 time and not keep you going --

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

7 Q I would rather you --

8 A -- focus on reviewing --

9 Q -- focus on the document.

10 A Okay.

11 Q Do you know what this document is?

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

13 Q What is this document?

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

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

25 A That's what it says, yes.

1 Q And that is the position of the State

2 Department, correct?

3 A Correct.

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

6 A Correct.

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

10 A No.

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

13 A Correct.

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

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

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

23 BY MR. EDELMAN:

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

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

4 A Yes, I have seen this before.

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

7 A In preparation for this deposition.

8 Q Okay. Do you know what this is?

9 A Yes.

10 Q What is it?

11 A It is what we call a denial letter.

12 Q And denial of what?

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

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

19 A Correct.

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

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

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

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

3 A Yes.

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

6 A Correct.

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

9 A Yes.

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

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

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

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

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

25 BY MR. EDELMAN:

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

2 Q I thought you said earlier --

3 A I'm sorry. Go ahead.

4 Q No. Go ahead.

5 A I shouldn't be speaking in absolute.

6 Where -- it may happen in every case where the  
7 officer is not sure that the blood relationship  
8 between -- the biological relationship between the  
9 U.S. citizen and the child had been established.

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

13 A No.

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

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

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

1 please?

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

8 A Correct.

9 BY MR. EDELMAN:

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

14 Do you see that?

15 A Yes.

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

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

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

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

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

8 A Okay.

9 Q -- finish up and get you home.

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

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

16 A I don't know.

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

19 A Can you be more specific?

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

23 A No.

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

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

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

3 A No.

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

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

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

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

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

20 BY MR. EDELMAN:

21 Q Do you know of any?

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

24 Q Okay.

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

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CERTIFICATE OF NOTARY PUBLIC

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



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

My Commission expires: June 30, 2019

# **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS )  
and E.J. D.-B., )  
 )  
Plaintiffs, ) Case No.  
 ) 2:18-cv-00523-JFW-JCx  
vs. )  
 )  
THE UNITED STATES DEPARTMENT )  
OF STATE, and THE HONORABLE )  
MICHAEL R. POMPEO, )  
Secretary of State, )  
 )  
Defendants. )

VIDEOTAPED DEPOSITION OF TERRI NATHINE FRANCES DAY  
(Taken by Plaintiffs)  
Charlotte, North Carolina  
Thursday, December 20, 2018

Reported in Stenotype by  
Cindy A. Hayden, RMR-CRR

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Also Present: Bruce Weekly, Videographer

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

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DAY	NUMBER	DESCRIPTION	PAGE
	EXHIBIT 1	Emails, top one dated 9/25/17, Subject: DVASH-BANKS (REP.LIEU)	123
	EXHIBIT 2	Email dated 1/24/17, Subject: Conversation with Reffett, Larilyn	126
	EXHIBIT 3	Letter dated 1/24/17 to Andrew Dvash-Banks	135
	EXHIBIT 4	CRBA application and supporting documents (color copy)	154
	EXHIBIT 5	Consular Report of Birth Abroad	165
	EXHIBIT 6	Emails, top one dated 9/25/17, Subject: DVASH-BANKS (REP.LIEU)	254
	EXHIBIT 7	Emails, top one dated 9/25/17, Subject: DVASH-BANKS (REP.LIEU), with attachment	255

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

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

12 \* \* \*

13 TERRI NATHINE FRANCES DAY,

14 having been first duly sworn, was examined and  
15 testified as follows:

16 \* \* \*

17 EXAMINATION

18 BY MS. GOLDSMITH:

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

21 Have you ever been deposed before?

22 A. No.

23 Q. Have you ever testified in court?

24 A. No.

25 Q. Have you ever given testimony under

1 you explain a little bit?

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

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

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

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

20 Q. Can you describe that?

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

23 Q. What other units did you work for?

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

1 interviewing at the same time as I was.

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

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

16 A. Yes.

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

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

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

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

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

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

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

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

20 A. Yes.

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

25 THE VIDEOGRAPHER: We're going off the

1 10:59. We are back on the record.

2 MS. GOLDSMITH: So to address defense  
3 counsel's statement before we took our break,  
4 plaintiffs are fine with Ms. Marcus's suggestion  
5 that defendants review the transcript after the  
6 deposition and designate any portions confidential  
7 that they intend to at that time. We just ask that  
8 they do so promptly and that they do so within  
9 seven days, so that we can meet any other  
10 court-ordered deadlines.

11 MS. MARCUS: I agree. And thank you.

12 BY MS. GOLDSMITH:

13 Q. Okay. So we were talking about the  
14 process for adjudicating applications for passports  
15 and CRBAs, and you were talking earlier about the  
16 interview process; is that correct?

17 A. I -- yes, that sounds correct.

18 Q. And did you typically make the  
19 determination whether to approve or deny an  
20 application during the interview?

21 A. I can't say for certain. I don't  
22 remember 100 percent of my cases. So I can't say  
23 what was more prevalent than not, but I can say  
24 that quite often there was -- there was -- before I  
25 can make a determination, it would be pending for

1 further documentation, which would mean that the  
2 decision, the determination, was not made during  
3 the interview.

4 Q. And can you explain what you mean by  
5 "pending"?

6 A. "Pending," meaning in process, not  
7 determined yet.

8 Q. And was it common to put applications  
9 into this pending status?

10 A. Could you be a bit more specific? What  
11 do you mean by "common"?

12 Q. Sure. In your experience, adjudicating  
13 applications for U.S. passports and CRBA, was it  
14 your typical practice to put an application into  
15 pending status?

16 A. If the application called for it, yes,  
17 without a doubt I would have put it in a pending  
18 status, which -- so pending -- pending  
19 documentation could include a birth certificate, a  
20 photo, a signature that needed to be done. It  
21 could mean a whole list of things. So it was  
22 definitely something that was -- that happened  
23 fairly frequently.

24 Q. And is the -- is the process that  
25 you're describing of adjudicating applications for

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

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

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

25 Q. And you may have touched on this

1 before, but who -- who specifically makes the final  
2 decision whether to approve or deny an application?

3 A. The consular officer who does the  
4 interviews makes the decision, the final decision  
5 of whether to approve or deny the application.

6 Q. So in that window from January 2017 to  
7 March 2017 when you were working at the Toronto  
8 consulate, did you have authority to make a final  
9 decision whether to approve or deny applications?

10 A. Yes.

11 Q. Who communicates to the applicant the  
12 final decision to approve or deny the application?

13 MS. MARCUS: Objection. Compound.

14 BY MS. GOLDSMITH:

15 Q. You can answer.

16 A. I would say -- I'm sorry. Could you  
17 repeat the question?

18 MS. GOLDSMITH: Can you just read back  
19 the question, please.

20 (The following question was read back:

21 Q: Who communicates to the applicant  
22 the final decision to approve or deny the  
23 application?)

24 THE WITNESS: I would say that the --  
25 that comes from -- there is a letter of -- there is

1 BY MS. GOLDSMITH:

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

6 A. I would say no.

7 Q. Did you ever consult the FAM?

8 A. Yes.

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

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

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

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

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

1 MS. MARCUS: For the record, if -- if  
2 you ask a lot of questions distinguishing between  
3 the two, you may also consider -- I'd ask you also  
4 to consider referring to them generally as the  
5 approved child's applications or the denied child's  
6 applications, in case --

7 THE WITNESS: That would be very  
8 helpful.

9 MS. MARCUS: -- in case Ms. Day gets  
10 mixed up, because the initials E.J. and A.J. are  
11 not completely dissimilar. So it's my view that  
12 it's possible for any person reading the record or  
13 hearing the questions to be confused as to which  
14 specific child is being referred to at a given  
15 time. So I'd put that on the record for  
16 Ms. Goldsmith's consideration.

17 I would also put on the record for  
18 Ms. Day's hearing that you -- if you don't know at  
19 a given time which child is being referred to, you,  
20 of course, are free to ask for clarification  
21 regarding that. Thank you.

22 BY MS. GOLDSMITH:

23 Q. So you stated earlier that you were  
24 personally involved in the adjudication of A.J.'s  
25 and E.J.'s applications for U.S. passports and

1 CRBAs; is that correct?

2 A. Yes.

3 Q. And what was your role?

4 A. I was the adjudicating officer. So I  
5 took in the -- I -- after the local staff took in  
6 the documents, I reviewed them and I certified  
7 copies. I gave an oath to the parents and had them  
8 sign the documents. I interviewed them, and then I  
9 was ultimately responsible for approving or denying  
10 those applications.

11 Q. Was anyone else involved in that  
12 adjudication? And we'll start with E.J.

13 A. Can I just say for both of them --

14 Q. Sure.

15 A. -- because they were -- they were  
16 treated as -- I mean, all the information that's  
17 true for one -- in the initial interview phase, as  
18 far as I knew, it would have been true for the  
19 other. So no one was -- I mean, I consulted with  
20 my manager about the case, and she brought in  
21 Maggie Ramsay as well. But during the -- and  
22 during the interview, at a certain point, Maggie  
23 Ramsay did speak to the family. So in that way,  
24 people were involved, but the ultimate decision was  
25 mine.

1 correct?

2 A. That is correct, yes.

3 Q. And do you recall in general what sorts  
4 of documents you reviewed?

5 A. I don't recall that, no.

6 Q. And you may have answered this before,  
7 but do you recall whether you consulted with anyone  
8 before the family came in?

9 A. I don't recall that. Like I said  
10 before, if their -- if their -- if they had  
11 presented documents to us that said they used  
12 assisted reproductive technology, especially Maggie  
13 might have seen that and, you know -- because I was  
14 fairly new in the section. So if -- if I don't  
15 have a lot of experience doing cases like that,  
16 then she's going to send me the FAM -- you know,  
17 the FAM section and send me documents that could --  
18 you know, those documents that would help me, you  
19 know, any training -- you know, here's some review  
20 of some training that you may have had about ART or  
21 whatever, but I don't remember specifically.

22 Q. And then when you first met the  
23 Dvash-Banks family, did you meet them in the  
24 waiting room?

25 A. No. So I would call the family up to

1 my window. I -- we have an intercom. I would say,  
2 "Dvash-Banks family to window C."

3 Q. And then I think you testified earlier  
4 that at that point, you would have sworn the  
5 parents; is that correct?

6 A. Uh-huh.

7 Q. And then what would happen next? What  
8 happened next?

9 A. What would happen next is we would  
10 begin the interview. They would sign documents,  
11 specifically. We would get all the clerical stuff  
12 out of the way, and they would sign documents. We  
13 would -- I would -- I would confirm their identity  
14 to the photos. I would look at the kids. All of  
15 that -- those things that you have to do at the  
16 very beginning are all clerical things.

17 And then I would determine -- now, the  
18 section of the law that they would fall under is  
19 already -- you know, we already know the situation.  
20 So I'm coming into it with that mind-set. If  
21 during the course of the interview I find something  
22 out different, then, obviously, I would change.  
23 But for the most part, you know, I would ask them  
24 questions along the lines of, okay, you know, your  
25 marriage certificate, when did you get married, et

1 cetera, and then talking about the kids, how they  
2 were conceived. If I have any questions about  
3 that, I would ask that at that time. And then  
4 we -- and then that's when we would get into, okay,  
5 how they were conceived, who -- you know, who's  
6 biologically related to whom, and then -- and on  
7 through.

8 Q. And to the best of your recollection,  
9 is this what happened on the day that you  
10 interviewed the Dvash-Banks family?

11 A. I would say yes.

12 Q. So after you called the family up to  
13 the window, you got all of the clerical work out of  
14 the way, is it correct then that you began to ask  
15 them questions related to the documents that they  
16 had presented you with?

17 A. I would say that normally that's how  
18 that happens, yes.

19 Q. And to the best of your recollection,  
20 is that what happened here?

21 A. I don't recall, but I don't -- unless  
22 there was something else that -- you know, that  
23 stuck out, I would -- that's the order I would have  
24 followed.

25 Q. And I understand that you don't recall

1 that bubble of their kids and their family, which I  
2 totally get. And so they were feeling -- possibly  
3 feeling a little bit attacked because I was asking  
4 for this information that is very personal,  
5 extremely personal.

6 So it was probably around then that  
7 they -- that the mood sort of changed into the  
8 heightened emotional state that it got to.

9 Q. Do you remember anything that Andrew  
10 and Elad said to you that made you feel like they  
11 thought they were being attacked?

12 MS. MARCUS: This is going to maybe be  
13 the last question before we take a break because  
14 it's pretty -- three minutes left on the tape.

15 MS. GOLDSMITH: We'll finish the tape.

16 THE WITNESS: Do I remember -- can you  
17 repeat the question? I'm sorry.

18 MS. GOLDSMITH: Can you read the  
19 question back, please.

20 THE WITNESS: I'm sorry.

21 (The following question was read back:

22 Q: Do you remember anything that  
23 Andrew and Elad said to you that made you feel like  
24 they thought they were being attacked?)

25 THE WITNESS: I do remember them --

1 especially Andrew saying, you know, these are our  
2 children. These are our sons. I'm the dad, and  
3 this is -- you know, and Elad, I think is his name,  
4 Elad is the dad. You know, we're the parents of  
5 these boys. You know, they're -- those kinds of  
6 things, which made me kind of feel like -- I mean,  
7 they were feeling that they were, you know, being  
8 attacked. And it was directed at me, you know, no  
9 doubt, not -- not necessarily at the FAM. They  
10 probably don't -- have never heard of it until now.  
11 But, you know -- so, yeah, that was -- those were  
12 the kinds of things that they were saying.

13 BY MS. GOLDSMITH:

14 Q. And do you remember asking Andrew and  
15 Elad how they created their family?

16 A. Those specific words or --

17 Q. Or in substance how they created their  
18 family.

19 A. I don't remember asking that. If I had  
20 questions about the surrogate or about the  
21 surrogacy, about the ART, I would have asked those  
22 questions, yes. It's an awkward thing to try to  
23 say, "Which of you donated sperm to put in an egg  
24 for a baby?" So I might have said, like, you know,  
25 "So how were the boys conceived?" Something like

1 that, along those lines, yes.

2 Might we have talked about, like, how  
3 they met or something? I don't -- I don't recall.

4 MS. GOLDSMITH: Okay. All right. So  
5 we can go off the record.

6 THE VIDEOGRAPHER: Stand by.

7 This marks the end of Disc 2. We are  
8 going off the record. The time on the monitor is  
9 1309.

10 \* \* \*

11 (Whereupon, there was a recess in the  
12 proceedings from 1:09 p.m. to 2:44 p.m.)

13 \* \* \*

14 THE VIDEOGRAPHER: This is the  
15 beginning of Media Unit Number 3 for the video  
16 deposition of Frankie Terri Day. The time on the  
17 monitor is 1424. We are back on the record.

18 BY MS. GOLDSMITH:

19 Q. Still discussing the day of the  
20 interview, January 4th, 2017, your interaction  
21 with -- January 24th -- excuse me -- your  
22 interaction with the Dvash-Banks family on the day  
23 of the interview, and we were talking before the  
24 break about your conversation with the Dvash-Banks  
25 family; is that correct?

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1 A. Yes.

2 Q. So during the interview, did you tell

3 Andrew and Elad that their family was different?

4 A. Did I -- just for clarification, you're

5 asking if I used the exact words, "Your family is

6 different"?

7 Q. We can start with that.

8 A. To the best of my recollection, I don't

9 remember saying that.

10 Q. Do you remember in substance stating

11 that the Dvash-Banks family was different?

12 A. What do you mean "different"?

13 Different than what?

14 Q. Different than the typical family

15 applying for a passport or CRBA for their minor

16 child born abroad?

17 A. No, I don't recall saying that in

18 substance either.

19 Q. Did you tell Andrew and Elad that

20 heterosexual couples were not required to get DNA

21 tests?

22 A. No, I did not say that.

23 Q. Do you recall in substance telling them

24 that heterosexual couples were not required to get

25 DNA tests?

1 included fraudulent materials?

2 MS. MARCUS: Objection. Vague as to  
3 the time of the concern that's being asked about.

4 BY MS. GOLDSMITH:

5 Q. At any point during your adjudication  
6 of E.J.'s application for a U.S. passport or CRBA,  
7 did you have any concern that they had provided you  
8 with fraudulent materials?

9 A. To the best of my recollection, no.

10 Q. And in adjudicating E.J.'s application  
11 for a U.S. passport and for a CRBA, did you ever  
12 consider or apply the law of Ontario, to the best  
13 of your recollection?

14 MS. MARCUS: Objection. Vague.  
15 Compound.

16 THE WITNESS: You'll have to be more  
17 specific than that.

18 BY MS. GOLDSMITH:

19 Q. Did you consider Ontario law to  
20 determine whether Andrew and Elad were a married  
21 couple?

22 A. In that I had a copy of their marriage  
23 certificate from the Ontario government, I -- I  
24 looked at that document as a -- as proof of their  
25 marriage.

1 passport on or before January 24th, 2017?

2 A. That, I cannot say for certain. Just  
3 because I made -- because the copy was made and I  
4 stamped it doesn't mean that I received it on that  
5 day.

6 Q. Well, on or before January 24th, 2017?

7 A. It could -- I don't know. If something  
8 was presented to us afterwards and put with the  
9 case file, it -- it could also be in here.

10 Q. Would you have stamped it if you  
11 received it after the interview?

12 A. Possibly, if we made a copy of it.

13 Q. Can you turn, please, to the document  
14 that is Bates-stamped 00070270-1767. And I'll  
15 represent for the record that it's titled "Marriage  
16 License."

17 A. Yes.

18 Q. What is this document?

19 A. It seems to be a marriage license.

20 Q. Thank you.

21 A. Uh-huh.

22 Q. Have you seen this document before?

23 A. Yes.

24 Q. And is this document Andrew and Elad's  
25 Canadian marriage license?

1           A.    It would seem to be a marriage license  
2    from Ontario, yes.   It has their names on it.

3           Q.    And did you consider this document to  
4    be sufficient proof that Andrew and Elad were  
5    married at the time of E.J.'s birth?

6           A.    Yes.

7           Q.    And does this document refresh your  
8    recollection that you determined that Andrew and  
9    Elad Dvash-Banks were a married couple?

10          A.    I don't believe you asked me  
11    specifically if they were a married couple.  I --  
12    yes, that would prove that they are a married  
13    couple.

14          Q.    And in adjudicating E.J.'s application  
15    for a U.S. passport, do you recall why you  
16    determined that E.J. was born out of wedlock?

17          A.    I do not recall.

18          Q.    Ms. Day, you testified previously that  
19    you have read INA Sections 301 and 309; is that  
20    correct?

21          A.    Yes, that's correct.

22          Q.    And I believe you testified earlier  
23    that it's your understanding that Section 309 of  
24    the INA applies when a child is born out of  
25    wedlock; is that correct?

1 So am I correct in understanding that  
2 although it was your typical practice to determine  
3 whether a child's parents were married in the  
4 course of adjudicating an application for a CRBA or  
5 passport, that you do not recall whether you made  
6 that determination with respect to Andrew and Elad  
7 Dvash-Banks?

8 A. No, that's incorrect.

9 Q. Okay. Can you clarify, please.

10 A. I -- I would have made the decision  
11 before adjudicating the case at -- at some point,  
12 but I can't specifically say in this -- in this  
13 case at which point it would have happened.

14 Q. That's okay. At any point during the  
15 course of the adjudication is what I'm asking.

16 A. At any point of the adjudication, did I  
17 determine if they were in wedlock or out of  
18 wedlock, the boys? Is that what your question is?

19 Q. First, at any point during the course  
20 of the adjudication, did you determine that Andrew  
21 and Elad Dvash-Banks were a married couple?

22 A. Oh, if they were a married couple? I  
23 don't recall this specifically.

24 Q. And the marriage license document that  
25 is Bates-stamped 00070270-1767 and is marked as

1 Day Exhibit 4, does that refresh your recollection?  
2 A. It -- it does. It is a marriage  
3 license that has Andrew and Elad's name on it. So  
4 if I saw this, I would -- at this point in time I  
5 see this, and I would make the determination that  
6 they are married, which is -- yeah.

7 Q. And now, separately, in adjudicating  
8 E. [REDACTED] -- strike that.

9 In adjudicating E.J.'s application for  
10 a U.S. passport and a CRBA, do you recall whether  
11 you made the determination that E.J. was born in  
12 wedlock or out of wedlock?

13 A. I don't recall.

14 Q. Is there anything that would refresh  
15 your recollection as to whether you made the  
16 determination that he was born either in wedlock or  
17 out of wedlock?

18 A. I don't know. I'm not sure.

19 (PLAINTIFF EXHIBIT 6, ACS Activity Log,  
20 was previously marked for identification.)

21 BY MS. GOLDSMITH:

22 Q. So I've asked the court reporter to  
23 hand you a document. It was previously marked as  
24 Plaintiffs' Deposition Exhibit 6, and it is not  
25 Bates-stamped because of the manner in which it was

1 A. I do.

2 Q. And what is this document?

3 A. It is a copy of a Consular Report of  
4 Birth Abroad.

5 Q. And is this a Consular Report of Birth  
6 Abroad for A.J. D [REDACTED]-B [REDACTED]?

7 A. It would seem to be, yes.

8 Q. And does this document state that the  
9 child was -- that the child acquired U.S.  
10 citizenship at birth?

11 A. Acquired United States citizenship at  
12 birth, yes.

13 Q. And is this the CRBA that the consulate  
14 issued to A.J. D [REDACTED]-B [REDACTED]?

15 A. It would seem to be, yes.

16 Q. So does this CRBA that the consulate  
17 issued to A.J. reflect that he acquired U.S.  
18 citizenship at birth?

19 A. Yes.

20 Q. Is this document, A.J.'s CRBA,  
21 consistent, generally, with the form of a CRBA that  
22 was in effect in March 2017, to the best of your  
23 recollection?

24 A. As far as I recall, yes.

25 Q. And I believe you stated earlier today

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

4 A. Yes.

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

9 A. 1764. Yes.

10 Q. What is this document?

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

13 Q. And have you seen this document before?

14 A. Yes, I have.

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

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

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

24 A. Yes.

25 Q. Did you consider this document to be

1 adequate proof that Andrew and Elad Dvash-Banks  
2 were E.J.'s parents?

3 MS. MARCUS: Objection. Vague as to  
4 the term "parents."

5 BY MS. GOLDSMITH:

6 Q. You can answer.

7 A. I need clarification on the term  
8 "parents."

9 Q. Did you consider this document to be  
10 adequate proof that Andrew and Elad Dvash-Banks are  
11 E.J.'s legal parents?

12 A. I would say yes.

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

18 A. Okay.

19 Q. What is this document?

20 A. It is an Ontario -- it seems to be a  
21 copy of an Ontario court document that names Elad  
22 and Andrew Dvash-Banks as the parents of E [REDACTED]  
23 J [REDACTED] D [REDACTED] -B [REDACTED].

24 Q. And have you seen this document before?

25 A. I have, yes.

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

5 A. I would say yes.

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

10 A. You have to specify "child."

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

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

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

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

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

1 A. I do not recall that, no.

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

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

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

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

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

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

24 A. Yes.

25 Q. Sitting here today, do you remember the

1 Q. Do you understand that it was -- it  
2 would have been necessary, and it was necessary,  
3 regardless of whether the children were born in  
4 wedlock or out of wedlock -- let me start over.

5 I'm sorry.

6 Regardless of whether the children were  
7 born in wedlock or out of wedlock, was it necessary  
8 for the children to have a biological connection to  
9 the AMCIT father in order for the children to  
10 acquire citizenship at birth?

11 A. Yes.

12 Q. So is it your testimony that it would  
13 not have made a difference to your final  
14 adjudication decision for these cases whether you  
15 had considered the children to be born in wedlock  
16 or whether you had considered them to be born out  
17 of wedlock?

18 A. Yes, that's correct.

19 Q. To be clear, it would not have made a  
20 difference?

21 A. Correct, it would not have made a  
22 difference.

23 Q. Would it have made a difference whether  
24 you had adjudicated these applications under INA  
25 301 versus INA 309 for these cases?

1 A. No, it would not have made a  
2 difference.

3 Q. Why not?

4 A. Because the biological connection is  
5 still required.

6 Q. And your understanding that the  
7 biological connection is required, what is that  
8 understanding based on?

9 A. It's based on the FAM, what I read in  
10 the FAM.

11 Q. Is it based on anything else?

12 A. No.

13 Q. Was that something that you needed to  
14 seek clarity from, from your supervisor?

15 A. No.

16 Q. Was it something that you needed to  
17 consult with Maggie Ramsay about?

18 A. No.

19 Q. Was that the -- would you describe the  
20 lack of a -- sorry. Let me start over.

21 When you're talking about the FAM --  
22 when you've been talking today at various points  
23 about the FAM, do you understand the FAM to be  
24 something that is completely separated from the  
25 Immigration and Nationality Act of 1952?

1 the legal guardians of the children, the legal  
2 parents of the children the same individuals whose  
3 names would appear on a CRBA that was issued by the  
4 consulate?

5 A. As far as my recollection goes, the  
6 legal guardians would be listed on the CRBA in  
7 common practice.

8 Q. You stated earlier that you didn't  
9 specifically remember the text of the provisions of  
10 INA Sections 301 or 309; is that correct?

11 A. Yes, that's correct.

12 Q. And you also stated in response to one  
13 of Ms. Marcus's questions that, in your opinion, it  
14 would not have made a difference whether you had  
15 adjudicated E.J.'s application under Section 301  
16 versus Section 309?

17 A. Based on my understanding, yes.

18 Q. What is the basis for your opinion that  
19 it would not have made a difference whether you had  
20 adjudicated E.J.'s application under Section 301  
21 versus 309?

22 A. Because both require the biological  
23 link -- both require the biological connection.

24 Q. And is your understanding that the  
25 basis for that requirement is a provision in the

1 FAM?

2 A. Yes.

3 Q. You stated earlier that you don't know  
4 which FAM provisions you specifically consulted on  
5 the day of the Dvash-Banks family's interviews; is  
6 that correct?

7 A. Correct.

8 Q. And you also stated earlier that you  
9 don't recall which provisions of the INA -- strike  
10 that.

11 You also testified earlier that you  
12 don't recall specifically which provisions of the  
13 INA are incorporated into the FAM; is that correct?

14 A. That's correct.

15 Q. You also testified earlier in response  
16 to one of Ms. Marcus's questions that you do recall  
17 that the INA was incorporated into the FAM  
18 provisions that you reviewed on the day of the  
19 Dvash-Banks family's interview; is that correct?

20 A. I don't recall saying that  
21 specifically. I think the question was more broad.  
22 Were there parts of the INA in the FAM? And there  
23 are.

24 Q. So is it possible -- if I were to  
25 represent to you that you stated earlier in sum and

1 STATE OF NORTH CAROLINA

2 COUNTY OF MECKLENBURG

3

4 REPORTER'S CERTIFICATE

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

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

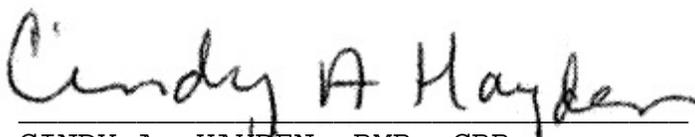
20 IN WITNESS WHEREOF, I have hereto set my  
21 hand, this the 21st day of December, 2018.

22

23

24

25



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

# **EXHIBIT C**

***In The Matter Of:***

***Andrew Mason Dvash-Banks***

***v.***

***Michael R. Pompeo***

---

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

***December 12, 2018***

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

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

DEPOSITION OF ANDREW MASON DVASH-BANKS

Taken Wednesday, December 12, 2018

At 12:00 P.M.

At 1888 Century Park East

Los Angeles, California

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

1 DEPOSITION OF ANDREW MASON DVASH-BANKS,  
2 taken at 1888 Century Park East, Los Angeles,  
3 California, on Wednesday, December 12, 2018, at  
4 12:00 P.M., before Donna J. Rudolph, RPR, Certified  
5 Shorthand Reporter, in and for the State of  
6 California.  
7 APPEARANCES:  
8 For Plaintiff:  
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23 For Defendant:  
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25 BY: LISA ZEIDNER MARCUS, ESQ.  
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\* \* \* \* \*

1 I N D E X

2 ANDREW MASON DVASH-BANKS

3 Page

4 By Ms. Zeidner Marcus 4

5 By Ms. Lawson-Remer 164

6

7 E X H I B I T S

8 Number Description Page

9 Defendant's 2 Privacy Release Form 155

10 Plaintiffs' 9 Plaintiffs' Responses to

11 Defendants' First Set of

12 Discovery Requests, dated

11-19-18 168

13 Previously Marked Exhibits

14 (Attached For Reference Only)

15 Exhibit 5

16 Exhibit 8

17 Exhibit 9

18 Information Requested: (None)

19

20

21

22

23

24

25

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

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

9  
10 EXAMINATION

11 BY MS. ZEIDNER MARCUS:

12 Q Good afternoon, Mr. Dvash-Banks.

13 A Good afternoon.

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

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

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

1 A Sorry. I just want to make --

2 Q -- if you have one.

3 A -- make sure, like, I fully understand  
4 your question. So the substance -- the substance of  
5 the deposition did I discuss with anyone other than  
6 my attorneys or my spouse? The answer's no. The  
7 substance.

8 Q You know, you might have talked about the  
9 logistics that you had a deposition. But you  
10 didn't -- do I understand you correct to say that  
11 you didn't discuss the -- the substance of the case  
12 with anybody prior -- in preparation for the  
13 deposition prior to today other than your attorneys  
14 and your spouse?

15 A Discuss in preparation for the deposition,  
16 I did not. No.

17 Q Okay. This is a yes-or-no question. Did  
18 you bring any documents with you today to the  
19 deposition?

20 A No.

21 Q Mr. Dvash-Banks, can you tell us where and  
22 when you were born.

23 A Yeah.

24 Q And where were you born?

25 A I was born in Santa Monica, California.

1 Q What year were you born?

2 A 1981.

3 Q Did you generally grow up in Santa Monica?

4 A No.

5 Q Can you quickly take us through the places  
6 that you lived prior to leaving your parents' home.

7 A Prior to leaving my parents' home. What  
8 do you mean by "leaving"?

9 Q You lived with your parents when you were  
10 a child?

11 A Yes.

12 Q And in what locations did you guys live?

13 A We lived in a few different locations.

14 Primarily in Beverly Hills, California.

15 Q Before you were 18, did you ever live  
16 abroad?

17 A Before I was 18, did I ever live abroad?  
18 What do you mean by "live"? Like, really, like,  
19 what do you mean by "live"?

20 Q Spent more than three months.

21 A More than three months, no.

22 Q Okay. Have a permanent residence abroad  
23 at any time?

24 A No.

25 Q Okay. And your parents, where were they

1 born?

2 A Toronto. Both of them in Toronto.

3 Q What is their citizenship?

4 A My father's deceased.

5 Q Sorry.

6 A Thanks. And my mother is a dual citizen.

7 Q Of what country?

8 A United States and Canada.

9 Q And what is your citizenship status?

10 A Dual citizen.

11 Q Of the same countries?

12 A Of the same countries, yeah.

13 Q Okay. Can you take us through your  
14 educational background briefly.

15 A Briefly? No.

16 Q Medium briefly?

17 A Okay. My educational background, I have a  
18 high school degree, I have a bachelor's degree, and  
19 I have a master's degree.

20 Q Where did you obtain your high school

21 degree?

22 A At Beverly Hills High School.

23 Q Where did you obtain your bachelor's

24 degree?

25 A UC Santa Barbara.

1 Q Okay. And how long did your -- what year  
2 did you enroll in graduate -- in your graduate  
3 studies?

4 A 2007.

5 Q Were you enrolled in a three-year program?

6 A No. It was a two-year program.

7 Q Did you -- I understood before you said  
8 you obtained your degree in 2010. Did you take a  
9 break during your studies?

10 A I did a third year to write my master's  
11 thesis.

12 Q What was the topic of your master's  
13 thesis?

14 A It was the Israeli-Syrian peace  
15 negotiations and comparing -- a whole other topic.  
16 I could go on and on about that, but --

17 Q Sure. Another time.

18 A Another time. Interesting stuff.

19 Q Definitely.

20 After you obtained your master's degree,  
21 what did you do for work, if anything?

22 A After I obtained my master's degree, I  
23 moved to Toronto, Canada.

24 Q Why did you move to Toronto?

25 A Because I couldn't at the time move to the

1 United States.

2 Q Why was that?

3 A Because I couldn't sponsor the man that I  
4 had fallen in love with to immigrate to the United  
5 States with me.

6 Q When did you meet this man?

7 A I met him in March of 2008.

8 Q What is his name?

9 A Elad Dvash-Banks.

10 Q And you're now married to Mr. Elad

11 Dvash-Banks; is that correct?

12 A Yes.

13 Q Congratulations.

14 A Thank you.

15 Q In March 2008, where did you meet?

16 A At a Purim party. Purim is a Jewish

17 Halloween.

18 Q I won't ask about your costume.

19 A Please don't.

20 Q Where -- in what country or --

21 A In Tel Aviv. At the University of Tel  
22 Aviv.

23 Q Were you -- this is during the time that

24 you were a student --

25 A Correct.

1 Q -- working on your master's?

2 A Correct.

3 MS. LAWSON-REMER: Wait until she finishes  
4 her question.

5 THE WITNESS: Okay.

6 BY MS. ZEIDNER MARCUS:

7 Q I will admit for the record and out loud  
8 that sometimes I have the habit of talking slowly  
9 while still thinking about what I am trying to say.  
10 So that is why, you know, it may be hard to -- to  
11 know always when I've stopped, but I will try to  
12 look up and look at you when I'm finished with my  
13 question.

14 A Okay.

15 Q What year did you move to Toronto?

16 A 2010.

17 Q Were you able to sponsor Elad as an  
18 immigrant to Toronto, Canada?

19 A In 2010?

20 Q Yeah.

21 A I didn't sponsor him in 2010.

22 Q When did you -- did you sponsor him later  
23 for -- for Canada?

24 A I'm not sure how the legal immigration --  
25 like, the terminology, but in 2010, we submitted our

1 application, if that answers the question.

2 Q Sure.

3 A Yeah, okay.

4 Q I was trying to understand and reflect  
5 back on an earlier answer that you gave to one of my  
6 questions.

7 A Uh-huh.

8 Q When I asked you why you moved to Toronto,  
9 I recalled that -- what you said then. Do you  
10 recall what your testimony was as to why you moved  
11 to Toronto?

12 A Yeah. Yes.

13 Q Do you recall that you said because you  
14 couldn't sponsor Elad as an immigrant to the United  
15 States at that time?

16 MS. LAWSON-REMER: Objection to the extent  
17 it mischaracterizes the testimony.

18 BY MS. ZEIDNER MARCUS:

19 Q Do you recall saying that? You can answer  
20 the question.

21 A I recall saying that, yeah.

22 Q Is that an accurate reason why you moved  
23 to Toronto?

24 A Yes.

25 Q And I was trying to understand if you

1 had -- I was trying to understand how Canada  
2 compared to the United States in 2010 such that you  
3 made this choice.

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

5 BY MS. ZEIDNER MARCUS:

6 Q Can you explain that further?

7 MS. LAWSON-REMER: Objection. Vague.

8 BY MS. ZEIDNER MARCUS:

9 Q You can answer.

10 A In 2010, Canada had gay -- legalized gay  
11 marriage. And in 2010, the United States did not.

12 Q Were you engaged to be married in or  
13 before 2010?

14 A Yes.

15 Q What year did you get engaged to be  
16 married?

17 A In 2010, yeah.

18 Q Do you recall approximately what month and  
19 year you were engaged?

20 A Yes.

21 Q What was that?

22 A July 2010.

23 Q In what month and year did you move to  
24 Toronto?

25 A August of 2010.

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

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

4 A Yes.

5 Q When did you get married?

6 A In August of 2010.

7 Q Where did you get married?

8 A In Toronto, Canada.

9 Q And you have children?

10 A I do.

11 Q EJ and AJ?

12 A Yes.

13 Q When were they born?

14 A In September of 2016.

15 Q Just over two?

16 A Yes.

17 Q Very cute ages.

18 A The best.

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

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

23 A I do, yes.

24 Q Do you live with anybody else?

25 A No.

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

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

8 Q For a month or longer.

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

10 Q Was it one of your parents?

11 A Yes.

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

14 A No.

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

19 A That's correct.

20 Q Approximately when did you move?

21 MS. LAWSON-REMER: Objection. Vague.

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

1 Q Have you lived in the United States, then,  
2 since June of 2017?

3 A Yes.

4 MS. LAWSON-REMER: Well --

5 BY MS. ZEIDNER MARCUS:

6 Q And --

7 A I would say just -- I still had a  
8 residence in Toronto.

9 Q Do you still currently?

10 A I do not currently, no.

11 Q When did you give up that residence?

12 A Two months ago.

13 Q And currently you live in Los Angeles?

14 A I do, yes.

15 Q Have you lived in Los Angeles since June  
16 2017?

17 A Yes.

18 Q And some of the periods of time that you  
19 were back and forth in the United States prior to  
20 June 2017, you were spending time in Florida; is  
21 that correct?

22 A Prior to June 2017, yes.

23 Q Since June 2017, you've lived in L.A.?

24 A Yes.

25 Q Why did you go back to Toronto in

1 BY MS. ZEIDNER MARCUS:

2 Q Right. I -- let me rephrase.

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

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

10 MS. ZEIDNER MARCUS: EJ, ever.

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

14 BY MS. ZEIDNER MARCUS:

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

19 A To best of my knowledge, yes.

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

24 A No.

25 Q At some point prior to the birth of your

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

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

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

8 MS. LAWSON-REMER: Objection. Vague.

9 THE WITNESS: What considerations did we  
10 have with respect to our children being born?

11 Sorry. I just want to make sure I understand the  
12 question fully.

13 BY MS. ZEIDNER MARCUS:

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

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

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

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

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

25 Q At what point in your marriage did you

1 I'm getting you a correct answer.

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

5 A I do.

6 Q Which did you do first?

7 A We selected an egg donor first.

8 Q Generally speaking, what did that entail?

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

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

16 A Yes.

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

19 MS. LAWSON-REMER: Objection. Vague.

20 You can answer.

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

23 BY MS. ZEIDNER MARCUS:

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

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

4 Q That --

5 A But okay.

6 Q Thank you.

7 A Okay.

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

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

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

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

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

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

22 Q Yes.

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

1 embryos and to implant the embryos in our surrogate.

2 Totally broad strokes there.

3 Q Sure.

4 Were the embryos created after you

5 selected the surrogate and you selected each other?

6 A No.

7 Q At what point in time were the embryos

8 created, approximately?

9 A In July -- the end of July 2015, beginning  
10 August 2015.

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

13 A Correct.

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

16 A We only used one egg donor. Correct.

17 Q Do you know how many embryos were  
18 implanted in the surrogate?

19 A Yes.

20 Q How many?

21 A Two.

22 Q And did you at the time of implantation  
23 know whether your genetic material were -- was used  
24 to create either of those two embryos?

25 A Did I know prior to implantation?

1 Q Yes.

2 A I believed at the time I did.

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

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

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

10 A It did not have my genetic material.

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

13 A Yes.

14 Q Okay. Thank you.

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

20 A Uh-huh.

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

23 A It says --

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

25 / / / /

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

3 A Some of them are, yes.

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

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

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

17 MS. ZEIDNER MARCUS: Correct.

18 MS. LAWSON-REMER: Okay.

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

21 BY MS. LAWSON-REMER:

22 Q Yes.

23 A -- say --

24 Q Please state for the record.

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

1 top; right?

2 Q Yes, please.

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

6 Q I'm now -- we --

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

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

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

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

14 A Yeah, yeah, yeah.

15 Q The supporting materials --

16 A Got it.

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

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

20 Q Okay.

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

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

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

4 BY MS. ZEIDNER MARCUS:

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

8 MS. LAWSON-REMER: Inclusive of 1808?

9 MS. ZEIDNER MARCUS: Yes.

10 MS. LAWSON-REMER: Okay.

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

13 BY MS. ZEIDNER MARCUS:

14 Q And we -- you skipped 1763.

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

17 Q I see.

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

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

24 MS. LAWSON-REMER: Objection.

25 Mischaracterizes his testimony.

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

4 MS. LAWSON-REMER: Objection. Vague.

5 THE WITNESS: Was the birth certificate  
6 revised?

7 BY MS. ZEIDNER MARCUS:

8 Q Yeah.

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

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

15 MS. LAWSON-REMER: Objection. Vague.

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

18 BY MS. ZEIDNER MARCUS:

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

21 A Yes.

22 Q What was the result?

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

25 Q And -- may I borrow this?

1 Exhibit 5 when he said some of the documents here.

2 MS. ZEIDNER MARCUS: Thank you.

3 Q Did you make one or more applications

4 during that visit?

5 A Yes.

6 Q How many total applications did you make

7 during that visit?

8 A Four.

9 Q And of those four, you made two for each

10 of your children?

11 A Yes.

12 Q And the application that is part of  
13 Plaintiff's Exhibit 5, this is one of the four  
14 applications; is that correct?

15 A Sorry. Say that first part again.

16 Q Is this application -- the application in  
17 the beginning of Plaintiff's Exhibit 5, is that one  
18 of those four applications?

19 A Yes.

20 Q What else did you do to prepare for the  
21 appointment in addition to collecting documents?

22 A And making the appointment online?

23 Q Yes.

24 A I put our winter gear on and went to the  
25 appointment.

1 I'm certain it was over an hour. I think it might  
2 have been closer to two hours. But I -- I don't  
3 want to say because I don't know. And then with the  
4 kids and the screaming and dirty diapers, it's  
5 like -- I mean, might as well have been eternity;  
6 right?

7 Q Yes. I will say at another time after  
8 this deposition, I'll share a story I'm recalling  
9 now of a first adventure I had taking my two  
10 children out and about with all those things that  
11 you were just talking about.

12 And what was the next thing to happen  
13 during the appointment?

14 A You mean after that prolonged period of  
15 waiting?

16 Q Yes.

17 A We were called up to the window.

18 Q And was it a different window from the  
19 first window that you were called up to?

20 A Yes.

21 Q And there was an individual on the other  
22 side of the window?

23 A Yes.

24 Q Do you know the position that that  
25 individual held?

1           A     Do I know now? I know -- I know now what  
2     that person's position was at the time.

3           Q     Okay. And what was that person's  
4     position?

5           A     From my understanding, the person's  
6     position was vice counsel.

7           Q     And generally speaking, you understood it  
8     -- this person to be a consular officer of the  
9     Department of State?

10          A     That's what I understood.

11          Q     And were you interviewed by that person?

12          A     Yes.

13          Q     And do you have a sense, generally  
14     speaking, of how long the interview took until the  
15     next thing happened during your appointment?

16          A     How long the interview took. So -- I  
17     mean, 30 minutes is my best guess.

18          Q     And after you and the consular officer  
19     spoke, did you return to the waiting room?

20          A     No. I don't -- I don't think we did.

21          Q     Okay. What happened next?

22          A     I remember that consular officer walking  
23     away to, like, I guess you'd call it the back room.

24          Q     Yes.

25          A     And I remember waiting at the window.

1 us was can you tell me about -- I can't, like,  
2 exactly quote her question because I don't remember  
3 exactly how she phrased, but it was something along  
4 the lines of can you tell me how you created your  
5 family or how did -- yeah. I -- "created" is the  
6 word that I believe she used.

7 Q And do you recall what your response was  
8 to that question?

9 A I remember -- I'm trying to think. I  
10 remember telling her we used a surrogate and an egg  
11 donor and created our -- our family.

12 Q Do you remember any other questions that  
13 she asked you?

14 A Yes.

15 Q What other questions do you remember?

16 A There were several. Obviously one really  
17 sticks out to me just because it was a really  
18 emotionally charged question. When she asked are  
19 your children genetically connected -- she asked me,  
20 Andrew, are your children both genetically connected  
21 to you?

22 Q And when you say that this was an  
23 emotionally charged question, what do you mean?

24 A I guess what I mean is that it's a very  
25 intrusive question that I felt at the time and I

1 "differences."

2 MS. ZEIDNER MARCUS: I'll withdraw the  
3 question. It's okay.

4 Q During the -- do you recall whether the  
5 consular officer -- either one of the consular  
6 officers that you interacted with at consulate  
7 Toronto became emotional during the time of your  
8 visit to the consulate?

9 A I don't believe they were emotional.

10 Q Do you recall whether either of them  
11 displayed any emotions that you perceived during  
12 that time?

13 MS. LAWSON-REMER: Objection. Vague as to  
14 "perceived."

15 THE WITNESS: I believe their lack of  
16 emotion in response to our extreme emotion, I would  
17 consider that rude, in my opinion.

18 BY MS. ZEIDNER MARCUS:

19 Q And -- and you describe your emotions  
20 being extreme emotion. Are you referring to  
21 emotions that you displayed to them?

22 A Yes.

23 Q And can you describe how you would display  
24 those emotions to the consular officer, please.

25 A It's not every day that you walk into your

1 home country's consulate to be told that you're  
2 essentially not the parent of your child even though  
3 you've produced a birth certificate showing that,  
4 even though you've cut his umbilical cord, even  
5 though you have, you know, fed him and stayed up all  
6 night for -- what was that? Like, four months at  
7 that point for him even though that you spent seven  
8 months -- unfortunately, it was seven months. I  
9 wish it was longer -- but seven months in utero --  
10 at every single appointment to have a representative  
11 of your country tell you that you're not his parent  
12 or question that parentage.

13 So I guess to answer your question, like,  
14 my emotions and my husband's emotions were derived  
15 from that.

16 Q And do you -- did you display the emotions  
17 in some way?

18 A Yes.

19 Q Did that include crying?

20 A Yes.

21 Q Did it include raising your voices?

22 A Yes.

23 Q What else did it include, if anything?

24 A It included just a very overall sense of  
25 despair and frustration, shock. I mean, the list

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

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

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

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

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

20 Q It's not a test.

21 A Okay.

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

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

3 A Never.

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

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

12 A All right. I'm here.

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

15 A It appears to be, yes.

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

18 A I do not, no.

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

21 A No. I don't think so.

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

25 A Yes, that's correct.

1 Q Okay. If we could back up a little bit.  
2 In the same packet, Plaintiff's Exhibit 5, go to  
3 1764.

4 A Okay. I'm here.

5 Q And do you recognize this to be a true and  
6 correct copy of the statement of live birth for EJ?

7 A It appears to be, yes.

8 Q And does it list you as one of his  
9 fathers?

10 A It does, yes.

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

12 A My husband.

13 Q Okay. Do you have any doubt as to the  
14 authenticity of this document?

15 A I do not, no.

16 Q Do you have any -- does it look any  
17 different than the last time you saw it?

18 A It doesn't appear to, no. I would say  
19 other than the stamp from Terri N. Day at the  
20 bottom.

21 Q Other than that?

22 A No. It looks --

23 Q Earlier today Ms. Marcus asked you about a  
24 family in Israel. Do you generally recall that area  
25 of testimony?

1 was that true?

2 A Yes.

3 Q Okay. Let's turn to page 17 of  
4 Plaintiff's Exhibit 9. In the middle of this --  
5 this page starts with an "Interrogatory Number 2"  
6 heading. And after that, it says "For each period  
7 of time in which you, Andrew, have been physically  
8 present in the United States, identify the addresses  
9 at which you resided and the corresponding dates for  
10 which you resided at those addresses." You see  
11 that?

12 A Yes.

13 Q And then about halfway down the page,  
14 starting on line 17 of page 17 of Plaintiff's  
15 Exhibit 9, there are -- there's a statement that  
16 says "Andrew resided in the United States from  
17 January 18, 1981, day of his birth, to  
18 October 2008." Is that statement true and correct?

19 A It is, yes.

20 Q Okay. And then the next sentence is "To  
21 the best of his recollection, Andrew's cities of  
22 residence and the approximate dates of his residence  
23 for this period are below." And there -- it's a  
24 bulleted list of locations and times from 1981  
25 through October 2008. Do you see that?

1 June 2017; is that right?

2 A That's correct.

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

4 A Yes.

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

6 A Yes.

7 Q Is it correct that you and Elad

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

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

10 Is it correct that you and Elad were

11 married on the day EJ and AJ were born?

12 A We were married on the day EJ and AJ were  
13 born.

14 Q And what day was that?

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

16 Q Okay. Does EJ live with you?

17 A Yes.

18 Q And -- and Elad?

19 A Yes.

20 Q Has he lived with you from the time he  
21 left the hospital when he was born into -- to the  
22 present?

23 A Yes.

24 MS. LAWSON-REMER: Okay. I'll just go off  
25 the record for one minute, please.

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

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

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

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

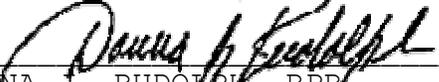
13 That a review of the transcript by the  
14 deponent was requested;

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

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

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

23 Dated this 17th day of December, 2018.

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



# **EXHIBIT D**

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

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MARGARET RAMSAY  
December 07, 2018

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77 King Street West, Suite 2020  
Toronto, ON M5K 1A2  
1.888.525.6666 | 416.413.7755

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS and)

E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED], ) COMPLAINT FOR

Plaintiffs, ) DECLARATION AND

) INJUNCTIVE RELIEF

v. )

THE UNITED STATES DEPARTMENT) Docket No. Case

OF STATE, and THE HONORABLE ) 2:18-cv-00523-JFW-JCx

MICHAEL R. POMPEO, Secretary) JFW

of State, )

Defendants.)

-----)

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

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

CRR

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

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

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

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12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

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

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

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

24 State, Office of the Legal Advisor

25

I N D E X

WITNESS: MARGARET RAMSAY

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1 & Cromwell.

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

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

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

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

17 MARGARET RAMSAY; SWORN.

18 EXAMINATION BY MS. GOLDSMITH:

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

23 A. No.

24 Q. Have you ever testified in court?

25 A. No.

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

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

8 A. Some of them are, yes.

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

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

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

16 A. Uhm-hmm.

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

21 A. Yes.

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

1 A. Yes.

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

6 A. Yes.

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

9 A. Yes.

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

13 A. Can you clarify the question?

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

18 A. No.

19 Q. Does anyone report to you?

20 A. No.

21 Q. Who do you report to?

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

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

1 Q. And when Terri Day worked with you  
2 at the consulate, would that have been true for her  
3 as well?

4 A. Yes.

5 Q. Switching gears just a little bit,  
6 were you in any way personally involved in the  
7 adjudication of E [REDACTED] D [REDACTED]-B [REDACTED]'s application for  
8 a U.S. passport or a CRBA?

9 A. Can you clarify?

10 Q. Are you aware of E [REDACTED]  
11 D [REDACTED]-B [REDACTED]'s application for a passport and a  
12 Consular Report of Birth Abroad?

13 A. Yes.

14 Q. Who was the officer assigned to  
15 his case, if you know?

16 A. It was Frankie Day.

17 Q. And were you involved in any way  
18 in the process of reviewing E [REDACTED]'s applications?

19 A. Yes.

20 Q. Can you describe in what ways you  
21 were involved in that process?

22 A. I assisted my colleague Frankie by  
23 sending her relevant guidance from the Foreign  
24 Affairs Manual.

25 Q. Did she request that you send her

1 questions, but we often used the same questions  
2 when interviewing these types of cases.

3 Q. Did you observe that both of the  
4 parents in the Dvash-Banks family were men?

5 A. Yes.

6 Q. And did you hear any questions  
7 during the interview that were related in some way  
8 to the fact that they were both men?

9 A. Yes, in terms of asking about how  
10 the children were conceived and how the children  
11 came to be born in Canada.

12 Q. Do you recall anything about the  
13 demeanour of the Dvash-Banks family during the  
14 interview?

15 A. Yes.

16 Q. Can you describe what you recall?

17 A. They were answering questions, you  
18 know, just like any other family would. I think  
19 towards the end they were unhappy with how things  
20 were proceeding and being asked for additional  
21 things, and so they were upset towards the end of  
22 the interview, if I recall correctly.

23 Q. Do you recall what about their  
24 demeanour gave you the impression that they were  
25 upset?

1 A. They were yelling and seemed to be  
2 upset about -- about the case.

3 Q. Was anyone crying?

4 A. I don't believe so.

5 Q. Do you recall what was discussed  
6 about how the children came to be born in Canada?  
7 And we are still talking about during the  
8 interview, just to clarify.

9 A. I don't recall specific questions.

10 Q. Am I correct that you testified  
11 before that you overheard some of the conversation  
12 during the interview about how the children came to  
13 be born?

14 A. Yes.

15 Q. And what do you recall that  
16 discussion was?

17 A. I recall that they said that they  
18 used a surrogate in Canada to conceive the  
19 children.

20 Q. Do you remember anything else?

21 A. I think that Frankie asked the  
22 question about who contributed genetic material to  
23 conceive the children.

24 Q. And do you remember anything else  
25 about that conversation?

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

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

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

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

11 A. No.

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

14 A. Yes.

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

17 A. Yes, I believe so.

18 Q. And can you describe that  
19 conversation?

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

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

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

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

7 Q. And what decision was that?

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

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

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

16 Q. Were you present for that  
17 conversation?

18 A. I don't believe so.

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

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

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

1 Q. And did you ever discuss the  
2 Dvash-Banks applications again with Ms. Day before  
3 the final adjudication?

4 A. I think I discussed it with her  
5 when the results of the DNA testing came back.

6 Q. And what did she say?

7 A. She told me that one child was the  
8 biological child of the U.S. citizen and one was  
9 not.

10 Q. Do you recall anything else about  
11 the conversation?

12 A. Not especially, no.

13 Q. And after that conversation and  
14 the final adjudication, did you ever discuss the  
15 Dvash-Banks family again with Ms. Day?

16 A. I think there was a news article  
17 that someone saw and shared, and so we may have  
18 discussed it at that point.

19 Q. And when you say "we," you are  
20 referring to you and Ms. Day?

21 A. Uhm-hmm.

22 Q. Did you discuss it with anyone  
23 else?

24 A. My Supervisor, Larilyn Reffett.

25 Q. And do you recall the content of

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A. No.

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

A. Can you clarify the question?

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

A. I suggested it to her.

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

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

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

MS. ZEIDNER MARCUS: Objection to form.

BY MS. GOLDSMITH:

Q. You can answer.

A. No.

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

A. Yes.

Q. And what statutes are those?

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

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

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

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

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

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

19 MS. ZEIDNER MARCUS: Objection to form.

20 THE WITNESS: That is my understanding.

21 BY MS. GOLDSMITH:

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

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

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

6 A. No.

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

12 A. Yes.

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

15 A. No.

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

19 A. Yes.

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

24 A. I don't know.

25 Q. And do you know whether the State

1 A. Yes.

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

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

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

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

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

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

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

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

1 BY MS. GOLDSMITH:

2 Q. Have you seen this document  
3 before?

4 A. Yes.

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

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

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

12 A. Yes.

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

16 MS. ZEIDNER MARCUS: Objection to form.

17 THE WITNESS: Yes.

18 BY MS. GOLDSMITH:

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

21 A. Yes.

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

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

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

5 A. Yes.

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

10 MS. ZEIDNER MARCUS: Objection to form.

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

13 BY MS. GOLDSMITH:

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

19 A. Yes.

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

23 A. Yes.

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

1 A. Yes.

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

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

7 THE WITNESS: Yes.

8 BY MS. GOLDSMITH:

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

12 A. Yes.

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

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

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

19 A. Yes.

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

24 A. Yes.

25 Q. And is it your understanding based

1 on this document that Andrew and Elad Dvash-Banks  
2 are validly married?

3 A. Yes.

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

8 A. Yes.

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

13 A. Okay.

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

18 A. Not this particular document.

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

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

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

1 Day, would have a better sense.

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

6 A. Sometimes.

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

9 A. Sometimes, but not always.

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

13 A. Yes.

14 Q. Why did you do that?

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

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

21 A. I don't believe so.

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

25 A. I think initially, as evidenced by

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

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

14 MS. GOLDSMITH: Objection, leading.

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

21 BY MS. ZEIDNER MARCUS:

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

1 A. I believe she may have told them  
2 about the provisions of INA 309.

3 Q. What is that belief based on?

4 A. I think I heard her talk to them  
5 about the requirements for it and the requirements  
6 for a biological relationship as well.

7 Q. Is there a requirement for a  
8 biological relationship under both 301 and 309, as  
9 you understand and apply the -- let me start over.  
10 The biological requirement that you were just  
11 describing, what is that biological requirement?

12 A. There must be, in order for a U.S.  
13 citizen parent to transmit citizenship to a child  
14 at birth, there must be a biological relationship  
15 between parent and child.

16 Q. Is that true for both INA 301 and  
17 INA 309, in your understanding?

18 A. Yes.

19 Q. So would it have made a difference  
20 to the outcome of this case if Ms. Day had  
21 adjudicated these applications under INA 301  
22 instead of INA 309?

23 A. No.

24 Q. Ms. Ramsay, do you have more than  
25 one type of title?

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

5 A. Yes, yes.

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

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

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

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

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

1 Q. You testified concerning  
2 Plaintiffs Deposition Exhibit 6 and 7, the ACS  
3 Activity Logs; correct?

4 A. Yes.

5 Q. Did Ms. Ramsay -- excuse me, Ms.  
6 Ramsay, did Ms. Day ever discuss with you whether  
7 to apply Section 301 or 309 of the INA in  
8 adjudicating E [REDACTED]'s applications?

9 A. I believe we discussed it as  
10 appropriately looking at the case through the lens  
11 of 309 due to the fact pattern of the case in terms  
12 of artificial reproductive technology being used.

13 Q. And when did that discussion  
14 occur?

15 A. The morning of the interview.

16 Q. And was this the first  
17 conversation you had with Ms. Day concerning the  
18 Dvash-Banks applications?

19 A. No, no.

20 Q. This was the second conversation  
21 you had with her that day concerning the  
22 Dvash-Banks family's applications?

23 A. I think after she had interviewed  
24 them, I discussed with her the different FAM  
25 guidance and how the case would be, because they

1 had used a surrogate, and how we would apply 309 to  
2 the case.

3 Q. So it is now your testimony that  
4 you discussed with Ms. Day on the day that the  
5 Dvash-Bankses appeared for their interview which  
6 section of the INA applied to their application?

7 A. I believe that was part of our  
8 discussion, yes.

9 Q. And did you advise Ms. Day on  
10 which section of the INA to apply?

11 A. I think so, yes.

12 Q. And what did you advise her?

13 A. I told her that these types of  
14 cases are considered under INA 309.

15 Q. And you testified, in response to  
16 questions from counsel for Defendants, concerning  
17 the notations made on the ACS Activity Log marked  
18 as Plaintiffs Deposition Exhibit 6; correct?

19 A. Yes.

20 Q. And you testified concerning the  
21 notation CRBA for child born in wedlock to U.S.  
22 citizen father applicant; correct?

23 A. Yes.

24 Q. And was it your testimony that you  
25 believe Ms. Day had initially believed that E [REDACTED]

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REPORTER'S CERTIFICATE.

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

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

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

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

Dated this 12th day of December, 2018



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

CERTIFIED REAL-TIME REPORTER

# **EXHIBIT E**

In the Matter Of:

Andrew Mason Dvash-Banks, et al v.  
The United States Department of State, et al

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LARILYN REFFETT

December 06, 2018

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Toronto, ON M5K 1A2  
1.888.525.6666 | 416.413.7755

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

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

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

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

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

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

4 SULLIVAN & CROMWELL LLP

5 PER: Jessica Klein, Esq.

6 Lauren M. Goldsmith, Esq.

7 125 Broad Street

8 New York, New York 10004-2498

9 Tel. 1-212-558-4000

10 Email: goldsmithl@sullcrom.com

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12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

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

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

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

24 State, Office of the Legal Advisor

25

I N D E X

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WITNESS: LARILYN REFFETT

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REDIRECT EXAMINATION BY MS. ZEIDNER

MARCUS..... 201

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

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

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

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

14 LARILYN REFFETT; AFFIRMED.

15 EXAMINATION BY MS. KLEIN:

16 Q. Good morning, Ms. Reffett.

17 A. Good morning.

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

21 A. No.

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

24 A. No.

25 Q. Have you ever given testimony

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

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

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

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

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

19 A. No.

20 Q. What about Canada-specific?

21 A. No.

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

1 for Consular Reports of Birth Abroad?

2 A. Yes, when I mentioned the  
3 adjudication piece, we don't separate. Those  
4 appointments are all at the same time. You just  
5 take whatever comes as it comes in.

6 Q. So am I correct that in addition  
7 to adjudications randomly selected for your review,  
8 you sometimes adjudicate applications for Consular  
9 Reports of Birth Abroad?

10 A. I do.

11 Q. And do you make determinations of  
12 who is a U.S. citizen?

13 A. Yes, that is part and parcel of  
14 the adjudication.

15 Q. Is a determination of who is a  
16 U.S. citizen part and parcel of adjudicating a  
17 Consular Report of Birth Abroad?

18 A. That is the purpose of the  
19 Consular Report of Birth Abroad, is to determine  
20 whether someone is a U.S. citizen.

21 Q. And is the purpose of a Consular  
22 Report of Birth Abroad to determine whether someone  
23 is a U.S. citizen from birth?

24 A. Correct.

25 Q. And is the determination of U.S.

1 I mean, it is just a chart that just kind of has  
2 the relevant scenario and then the FAM section that  
3 you would consult for that.

4 Q. Okay. Is it accurate to say that  
5 in adjudicating U.S. passport applications, the  
6 Toronto Consulate applies the Foreign Affairs  
7 Manual?

8 A. Well, we comply with the  
9 instructions in the Foreign Affairs Manual, yes.

10 Q. All right. Is there any way in  
11 which you are aware that the Toronto Consulate does  
12 not comply with the Foreign Affairs Manual in the  
13 adjudication of U.S. passport applications?

14 A. No.

15 Q. And is that also the case for the  
16 application of Consular Reports for Birth Abroad?

17 A. Correct.

18 Q. So the Toronto Consulate applies  
19 the Foreign Affairs Manual in adjudicating Consular  
20 Reports for Birth Abroad?

21 A. We consult the Foreign Affairs  
22 Manual and follow all of the relevant guidance that  
23 we are required to follow.

24 Q. Is there any way in which you are  
25 aware that the Toronto Consulate does not follow

1 the Foreign Affairs Manual in adjudicating  
2 applications for Consular Reports of Birth Abroad?

3 A. No.

4 Q. And am I correct that the same is  
5 true for U.S. passport applications?

6 A. Correct.

7 Q. Is there a practice in the Toronto  
8 Consulate of an officer placing her initials on  
9 each page of a passport application that she  
10 adjudicates?

11 A. Not on each page that you  
12 adjudicate, but we are required when we have  
13 certified true copies, we are required as the  
14 officer to put our initials to verify that we saw  
15 the original document and that it matches the copy.

16 Q. So am I correct that if an officer  
17 places her initials on a page of a U.S. passport  
18 application file, that means to you that she has  
19 consulted the original document and compared it to  
20 the copy for accuracy between the two?

21 MS. ZEIDNER MARCUS: I would like to  
22 consult with my colleague about a potential  
23 privilege and briefly go off the record.

24 AUDIO-RECORDER: We are going off the  
25 record at 11:39 a.m.

1 looks like it.

2 Q. And whose name is listed as the  
3 person sending or writing this letter?

4 A. The letter was signed by Terri  
5 Day.

6 Q. And is it your understanding that  
7 E [REDACTED] D [REDACTED]-B [REDACTED]'s applications for U.S. passport  
8 and Consular Report of Birth Abroad were denied?

9 A. Yes.

10 Q. Who adjudicated those  
11 applications?

12 A. It is my understanding that Terri  
13 Day adjudicated those two cases.

14 Q. And did Ms. Day have authority to  
15 make the ultimate determination of whether to deny  
16 those applications?

17 A. Yes, she did.

18 Q. And was she employed at the  
19 Toronto Consulate on March 2nd, 2017?

20 A. Yes.

21 Q. Okay. And what reason or reasons  
22 does this document cite as the basis for those  
23 denials?

24 MS. ZEIDNER MARCUS: Objection, form,  
25 foundation.

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

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

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

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

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

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

1 requirements of the Department of State.

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

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

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

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

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

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

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

7 A. No.

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

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

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

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

22 A. She did.

23 Q. What did Ms. Day tell you?

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

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

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

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

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

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

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

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

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

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

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

17 A. Yes, that is my understanding.

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

24 A. No.

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

1 application materials?

2 A. No.

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

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

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

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

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

20 A. No.

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

25 A. That is correct. I read it to

1 state that the denial was based on the  
2 non-establishment of the blood relationship  
3 required by the Immigration and Nationality Act.

4 Q. Do you know if anyone was involved  
5 in the adjudication of those applications other  
6 than Ms. Day?

7 A. In the adjudication, no.

8 Q. Do you know if anyone was involved  
9 in processing the applications other than Ms. Day?

10 A. I do know that the same way that I  
11 provided guidance on how to request a DNA test,  
12 that my colleague Margaret Ramsay also provided the  
13 relevant FAM citations, the Foreign Affairs Manual,  
14 so that Frankie could consult if she wanted to, if  
15 she needed to, the appropriate sections of the  
16 Foreign Affairs Manual.

17 Q. Do you know of anyone else who was  
18 involved?

19 A. No. Well, I mean, if you are  
20 talking about the adjudication, I mean, there would  
21 have been the receipt of the DNA, which that gets  
22 received by the Fraud Prevention Officer, but it is  
23 kind of a moving the mail.

24 Q. And do you know in what month and  
25 year E [REDACTED]'s applications were submitted to the

1 citizen was the parent, that application was  
2 approved.

3 Q. And were you personally involved  
4 in the adjudication of that application?

5 A. No.

6 Q. Did Ms. Day ever speak with you  
7 concerning the adjudication of that application?

8 A. Not separately. The two  
9 applications were part of the same set of  
10 circumstances, so when she informed me that she was  
11 requesting DNA for one, she informed me she was  
12 requesting DNA for the other as well. When the DNA  
13 results came back and she informed me of the  
14 results, she told me the results for each child.

15 Q. Is it your understanding that Ms.  
16 Day was the person who granted A [REDACTED]'s application  
17 for a U.S. passport?

18 A. It is my understanding that she  
19 approved that application.

20 Q. And is the same true for A [REDACTED]'s  
21 application for a Consular Report of Birth Abroad?

22 A. Yes.

23 Q. Under what circumstances does the  
24 consulate ask for DNA evidence in support of an  
25 application for a U.S. passport?

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

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

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

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

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

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

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

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

1 earlier, and it is case-specific. Medical  
2 documentation is one way that we can try and get to  
3 a point where we understand the biological  
4 relationships, but also in the interview that will  
5 be a question that will be asked.

6 Based on the answers and based on the  
7 conversation that the officer has with the  
8 applicant, that will determine whether -- what  
9 steps need to be taken next and what that entails,  
10 if it entails DNA or something else.

11 Q. Is there any example or scenario  
12 you are aware of in which two married men have  
13 applied for a U.S. passport for their child born  
14 abroad and not been asked to evidence the genetic  
15 relationships of the child?

16 A. The biological relationship has to  
17 be established, as we noted in the letter that you  
18 have provided as Exhibit 1, the Immigration and  
19 Nationality Act requires a blood relationship. We  
20 have to establish that blood relationship in every  
21 case.

22 Q. What is your understanding of in  
23 what cases the Immigration and Nationality Act  
24 requires a blood relationship between a child born  
25 outside of the United States and a U.S. citizen?

1                   A.    If the U.S. citizen is  
2   transmitting citizenship, there must be a  
3   biological relationship between the child and the  
4   parent, unless in the case of a female parent, if  
5   you are the gestational parent, that also meets the  
6   requirements.   There must be a biological or  
7   gestational relationship.

8                   MS. ZEIDNER MARCUS:   Can we go off the  
9   record for a moment for me to confer with my  
10   colleague, please.

11                  AUDIO-RECORDER:   We are going off the  
12   record at 2:25 p.m.

13                  -- RECESSED AT 2:25 P.M.

14                  -- RESUMED AT 2:27 P.M.

15                  AUDIO-RECORDER:   We are now back on the  
16   record at 2:27 p.m.

17                  BY MS. KLEIN:

18                  Q.    Ms. Reffett, is it correct that  
19   before we very briefly went off the record, you  
20   testified that with the exception of a gestational  
21   parent, a U.S. citizen must have a biological tie  
22   to his child in order to transmit citizenship?

23                  A.    To transmit citizenship from  
24   birth, yes, that is correct.

25                  Q.    And that is your understanding of

1 allow that U.S. citizen to confer citizenship upon  
2 his child?

3 A. It is not the Toronto Consulate.  
4 This would be the Immigration and Nationality Act.  
5 It will require that the biological relationship is  
6 established. Without the biological relationship,  
7 the American citizen parent cannot transmit  
8 citizenship.

9 Q. And you understand the Immigration  
10 and Nationality Act to require that even if the  
11 child's legal parents are married to each other?

12 A. That is not my understanding that  
13 that is the guidance from the Department of State.  
14 The Department of State, as referenced on our  
15 website, as in all of the information that is  
16 publicly available, requires that there be a  
17 biological relationship between the U.S. citizen  
18 parent and a child who is not born in the United  
19 States.

20 Q. Regardless of whether the parents  
21 are married?

22 A. Correct.

23 Q. And it is your understanding that  
24 that is what the INA requires?

25 A. That is the Department's guidance

1 as to the Immigration and Nationality Act. We must  
2 establish a biological relationship between the  
3 U.S. citizen parent and the child.

4 Q. Are you aware of any difference  
5 between the relevant provisions of the INA and of  
6 the guidance from the State Department concerning  
7 this issue?

8 A. No.

9 Q. And I believe you testified  
10 earlier today that in adjudicating most passport  
11 applications, the Toronto Consulate does not review  
12 any legal or policy materials; is that correct?

13 A. In many cases, it is not required.  
14 Most of the cases that we see here fall within a  
15 very limited range of, you know, circumstances, the  
16 things that we see on a very regular basis, and  
17 doesn't require us to reference the Foreign Affairs  
18 Manual every time that we see that type of case.

19 Q. And does the Toronto Consulate  
20 ever reference the INA in adjudicating applications  
21 for U.S. passports?

22 A. As I previously stated, the INA is  
23 one source of information. If we have questions  
24 about the case that is in front of us or the  
25 parameters, we could consult with the INA. Every

1 The reason that that requirement is  
2 specifically listed is to remind people who may not  
3 remember that one random date so that when they  
4 need to look at it and say, wait, what was the date  
5 that the law changed, it is right there for them.  
6 They can see very quickly what the differences are  
7 between those two requirements.

8 The blood relationship did not change  
9 on that date. It has always existed.

10 Q. A blood relationship has always  
11 been required for a child born in wedlock to one  
12 U.S. citizen parent?

13 A. If the U.S. citizen parent is --  
14 yes, the one U.S. citizen parent has to have the  
15 blood relationship in order to transmit the  
16 citizenship to the child. That is applicable  
17 before November 14th, 1986, as well as after  
18 November 14th, 1986, which is why it is not spelled  
19 out here, because that was consistent.

20 Q. And is there an exception for a  
21 woman who is a gestational parent without a  
22 biological relationship to the child?

23 A. Well, when I say a "biological,"  
24 because we have been talking about fathers and, you  
25 know, this particular, the row that you have

1 highlighted "Amcit Father out of Wedlock," we  
2 weren't discussing mothers.

3 For mothers, the relationship has to be  
4 either biological or gestational.

5 Q. And is the allowance for a  
6 gestational mother who is not biologically related  
7 to her child, as you understand it, in the INA?

8 A. I have not referenced the section  
9 of the INA that would spell that out in some time.  
10 I have seen the guidance from the Department. That  
11 isn't one that I have had to pull up recently to  
12 consult. I can't say with any confidence that I,  
13 again, can recite that section of the INA.

14 Q. Is it the case that since you have  
15 worked in the Toronto Consulate, there has been  
16 allowance of a gestational mother U.S. citizen to  
17 confer citizenship on a child who she is not  
18 biologically related to?

19 A. I don't know about the word  
20 "allowance." Whether somebody has transmitted and  
21 had approved an application to transmit citizenship  
22 as a gestational mother, I can't say for certain.  
23 I suspect yes. This wouldn't be something that was  
24 out of the unusual.

25 But again, I don't keep statistics on

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

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

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

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

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

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

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REPORTER'S CERTIFICATE

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

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

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

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

Dated this 12th day of December, 2018



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PER: DEANA SANTEDICOLA, RPR, CRR, CSR  
CERTIFIED REAL-TIME REPORTER

# **EXHIBIT F**

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*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-  
BANKS and E [REDACTED] J [REDACTED]  
D [REDACTED]-B [REDACTED],

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' RESPONSES TO  
DEFENDANTS' FIRST SET OF  
DISCOVERY REQUESTS**

2 All of these documents were previously submitted to the State Department in  
3 support of E■■■■'s Consular Report of Birth Abroad ("CRBA") and/or U.S.  
4 passport applications. Plaintiffs do not intend this answer as a complete recitation  
5 of all the support for the allegation about which Interrogatory No. 4 inquires, and  
6 Plaintiffs reserve the right to modify or supplement their responses and objections  
7 to Interrogatory No. 4.

8 **Interrogatory No. 5:**

9 Identify any and all "difficulties and humiliation" that the Dvash-Banks  
10 family has endured due to the denial of a Consular Report of Birth Abroad and a  
11 U.S. passport for E■■■■, as alleged in paragraph 57 of your Complaint.

12 **Response to Interrogatory No. 5:**

13 Plaintiffs incorporate their Objections by reference and further object to  
14 Interrogatory No. 5 on the grounds that the Complaint speaks for itself and refer  
15 Defendants to the Complaint.

16 Subject to, and without waiver of, any of the Objections, Plaintiffs respond  
17 as follows:

18 The Dvash-Banks family has endured a multitude of harm, difficulties and  
19 humiliation as a result of the State Department's improper denial of the CRBA and  
20 U.S. passport applications for E■■■■. That harm includes damage to Plaintiffs'  
21 family life and unity, dignity, as well as the other forms of denigration and distress  
22 that result from Defendants' unwarranted denial of recognition of E■■■■'s U.S.  
23 citizenship at birth and branding of E■■■■ as an illegitimate child born "out of  
24 wedlock" to Andrew and Elad. Some, but by no means all, of the harm, difficulties  
25 and humiliation include the following: Andrew and Elad have suffered dignitary  
26 and stigmatic harm as a result of being treated differently based on their sexual  
27 orientation, including the State Department's refusal to recognize their marriage or  
28 that they are entitled to the same marital rights and benefits as opposite sex

2 born “out of wedlock.” The stigma to E [REDACTED], still a young child, of being  
3 characterized as illegitimate, differentiated from his twin brother A [REDACTED], and  
4 treated as though he is not his father Andrew’s son, is expected to continue for as  
5 long as Defendants fail to recognize his U.S. citizenship and the effects of  
6 Defendants’ arbitrary and unjustified conduct may well extend in perpetuity. The  
7 practical consequences for E [REDACTED] range from how he is treated when he travels,  
8 including the passport he holds, to whether he will one day during his childhood  
9 develop the anxiety of knowing that he could be forced to leave the country at any  
10 time. Plaintiffs have been and continue to be plagued by the fear of having their  
11 family ripped apart.

12 Plaintiffs have been hampered in their ability to travel. Plaintiffs were  
13 forced to cancel a trip to Israel to visit Elad’s family because E [REDACTED] was limited to  
14 only a travel visa, which had expired, and there was a serious risk that he would be  
15 prevented from reentering the United States upon his return. Even though E [REDACTED]  
16 now has an Advance Parole document that allows travel outside the United States,  
17 the risk that E [REDACTED] may not be granted reentry continues, as mere possession of  
18 Advance Parole does not guarantee admission into the United States. Specifically,  
19 individuals who have been unlawfully present in the U.S. and subsequently depart  
20 and seek reentry through a grant of parole may be inadmissible. *See*  
21 [https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-](https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers)  
22 [authorization-and-advance-parole-card-adjustment-status-applicants-questions-](https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers)  
23 [and-answers](https://www.uscis.gov/news/questions-and-answers/uscis-issue-employment-authorization-and-advance-parole-card-adjustment-status-applicants-questions-and-answers). When the Dvash-Banks family returned home from a recent trip to  
24 Mexico, Andrew and E [REDACTED] were diverted to a room for secondary inspection,  
25 while Elad and A [REDACTED] were able to pass through ordinary immigration and  
26 customs.

27 Plaintiffs have also been harmed financially. For example, when Plaintiffs  
28 were filing their 2017 taxes, they wished to claim a dependent exemption for

2 have a social security number, Andrew and Elad had to pay an accountant to obtain  
3 an individual taxpayer identification number (“ITIN”) for E■■■■. This unnecessary  
4 complication delayed payment of Plaintiffs’ tax refund, which they received only  
5 recently. Plaintiffs also have had to expend substantial sums of money on E■■■■’s  
6 green card application, which would be entirely unnecessary had his CRBA  
7 application not been denied.

8 Plaintiffs have also had to spend countless hours dealing with the  
9 ramifications of the denial of E■■■■’s CRBA and U.S. passport applications. For  
10 instance, Plaintiffs have spent time on E■■■■’s green card application (and  
11 associated Advance Parole document application). Plaintiffs have also spent long  
12 hours attending to this Action, which has caused them to divert time and attention  
13 from other pursuits. Andrew and Elad have faced additional difficulties including  
14 explaining to their health care provider why A■■■■ has a social security number  
15 while E■■■■ does not, as well as the tax return issues described above.

16 Plaintiffs have had to deal with publicity they never wanted. Before this  
17 lawsuit, Andrew and Elad had no intention of disclosing to their children, let alone  
18 to the general public, which child was biologically related to which parent, let  
19 alone the private details of E■■■■ and A■■■■’s conception.

20 Plaintiffs reserve the right to modify or supplement their responses and  
21 objections to Interrogatory No. 5.

22 **Interrogatory No. 6:**

23 Identify who you consider to be “similarly situated persons” as alleged in  
24 paragraph 71 of your complaint and implied throughout your complaint.

25 **Response to Interrogatory No. 6:**

26 Plaintiffs incorporate their Objections by reference and further object to  
27 Interrogatory No. 6 on the grounds that it is premature. Plaintiffs are still  
28 developing their legal arguments, a process that has been substantially inhibited by

2 further state that Andrew is listed as a parent of E█████ on E█████’s Statement of  
3 Live Birth. Plaintiffs further refer Defendants to the Declaration of Parentage of  
4 E█████, which declared Andrew and Elad to be E█████’s parents “for all purposes in  
5 law.”

6 **Request for Admission No. 13:**

7 Admit that your (Andrew’s) status as a legal parent of E█████ D█████-B█████  
8 was not established until September 28, 2016.

9 **Response to Request for Admission No. 13:**

10 Plaintiffs incorporate their Objections by reference and further object on the  
11 grounds that Request for Admission No. 13 calls for a legal conclusion.

12 Subject to, and without waiver of, any of the Objections, Plaintiffs deny that  
13 Andrew’s status as a legal parent of E█████ was not established until September 28,  
14 2016, twelve days after E█████’s birth.

15 **Request for Admission No. 14:**

16 Admit that you (Andrew) are not biologically related to E█████

17 **Response to Request for Admission No. 14:**

18 Plaintiffs incorporate their Objections by reference.

19 Subject to, and without waiver of, any of the Objections, Plaintiffs admit that  
20 the DNA testing described in Plaintiffs’ Response to Request for Admission No. 6  
21 did not find a biological connection between Andrew and E█████.

22 **Request for Admission No. 15:**

23 Admit that you (Andrew) and/or your husband (Elad) arranged for DNA  
24 testing to be conducted in September 2016, after E█████ and A█████ were born, to  
25 establish the parentage of E█████ and A█████.

26 **Response to Request for Admission No. 15:**

27 Plaintiffs incorporate their Objections by reference and further object to  
28 Request for Admission No. 15 on the grounds that the phrase “establish the



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*Attorneys for Plaintiffs*

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**VERIFICATION**

I, Andrew Mason Dvash-Banks, declare as follows:

I am a named Plaintiff in this matter and I am authorized to make this verification on Plaintiffs' behalf. I have read the foregoing Plaintiffs' Responses to Defendants' First Set of Interrogatories and know their contents. On behalf of myself and E████ J████ D████-B████, I certify or declare under penalty of perjury under the laws of the United States of America that, to the best of my knowledge, the same are true and correct.

Executed on November 19, 2018 at Los Angeles, California.

A handwritten signature in black ink, appearing to be 'Andrew Mason Dvash-Banks', written over a horizontal line.

# **EXHIBIT G**

## **Part 1 of 2**



U.S. Department of State  
**APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD  
OF A CITIZEN OF THE UNITED STATES OF AMERICA**

OMB NO. 1405-0011  
EXPIRES: 03/31/2019  
Estimated Burden: 20 minutes

Registration Number DENIAL

A. THIS SECTION TO BE COMPLETED BY THE CHILD'S PARENT(S) OR GUARDIAN(S) OR THE CHILD. (USE SECTION D CONTINUATION SHEET)

**INFORMATION ABOUT THE CHILD**

1. Name of Child in Full  
D [REDACTED] - A [REDACTED] E [REDACTED] J [REDACTED]  
(Last/Surname) (First) (Middle)

2. Sex  M  F  
3. Date of Birth 09/16/2016  
(month) (day) (year)  
4. Place of Birth MISSISSAUGA, CANADA  
(City) (Country)

NOTE: (If the U.S. citizen parent transmitting citizenship to the child is not present, he or she may complete State Department Form DS 5507 Affidavit of Parentage Physical Presence and Support and submit it separately. The parent completing this application should provide as much information on the parent completing the Form DS 5507 as he or she has.)

**INFORMATION ON MOTHER/FATHER/PARENT**

5. Full Name  
DVASH-BANKS ANDREW MASON  
(Last/Surname) (First) (Middle)

6. All Previous Legal Names Used  
BANKS ANDREW MASON  
(Last/Surname) (First) (Middle)

7. Sex  M  F  
8. Date of Birth [REDACTED] 1981  
(month) (day) (year)

9. Place of Birth  
Santa Monica CA USA  
(City) (State/Province) (Country)

10. Current Physical Address (Do not list P.O. Box)  
(A.P.O. Address Permitted)  
[REDACTED] AVE. # [REDACTED]  
(Address Line 1)  
TORONTO, ON, CANADA M6B4C6  
(City, State/Province, Country, Postal Code)  
647-706-9556  
(Phone Number(s))  
[REDACTED]@gmail.com  
(Email Address)

**INFORMATION ON MOTHER/FATHER/PARENT**

11. Full Name  
DVASH-BANKS ELAD AUSTIN  
(Last/Surname) (First) (Middle)

12. All Previous Legal Names Used  
DVASH ELAD  
(Last/Surname) (First) (Middle)

13. Sex  M  F  
14. Date of Birth [REDACTED] 1985  
(month) (day) (year)

15. Place of Birth  
Ramat Gan ISRAEL  
(City) (State/Province) (Country)

16. Current Physical Address (Do not list P.O. Box)  
(A.P.O. Address Permitted)  
[REDACTED] AVE. # [REDACTED]  
(Address Line 1)  
TORONTO, ON, CANADA M6B4C6  
(City, State/Province, Country, Postal Code)  
647-289-4389  
(Phone Number(s))  
[REDACTED]@gmail.com  
(Email Address)

Use this address if Consular Report of Birth will be mailed?  Yes  No

Use this address if Consular Report of Birth will be mailed?  Yes  No

17. Mailing Address (if different from Current Physical Address) (Do not list a P.O. Box.)  
(You may list an A.P.O. address.)  
\_\_\_\_\_  
(Address Line 1) (City, State/Province, Country and Postal Code)

DS-2029  
04-2016

CLASSIFIED

<p><i>(Continued)</i></p> <p><b>INFORMATION ON MOTHER/FATHER/PARENT</b></p> <p>18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><i>(Continued)</i></p> <p><b>INFORMATION ON MOTHER/FATHER/PARENT</b></p> <p>18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>																																																																																	
<p><b>MARITAL STATUS OF THE PARENTS</b></p>																																																																																		
<p>20. Were you married to the child's other biological parent when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>																																																																																		
<p>21. Date and Place of Marriage to the child's other biological parent and current status</p> <p><u>08/19/2010</u> <u>Toronto</u> <u>ON</u> <u>Canada</u> (month) (day) (year) (City) (State/Province) (Country)</p> <p><input checked="" type="checkbox"/> Still Married <input type="checkbox"/> Divorced <u>    </u>/<u>    </u>/<u>    </u> <input type="checkbox"/> Death <u>    </u>/<u>    </u>/<u>    </u> (month) (day) (year) (month) (day) (year)</p>																																																																																		
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<p>24. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>From 12-18-2016</td><td>To 01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>From 10-21-16</td><td>To 10-23-16</td></tr> <tr><td>Los Angeles, CA</td><td>From 6-10-16</td><td>To 6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>From 2-19-16</td><td>To 2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>From 11-20-15</td><td>To 11-29-15</td></tr> <tr><td>Detroit, MI</td><td>From 9-4-15</td><td>To 9-8-15</td></tr> <tr><td>New Orleans, LA</td><td>From 5-21-15</td><td>To 5-24-15</td></tr> <tr><td>Los Angeles, CA</td><td>From 4-16-15</td><td>To 4-23-15</td></tr> <tr><td>Port St. Lucie, FL</td><td>From 1-17-15</td><td>To 1-21-15</td></tr> <tr><td>Los Angeles, CA</td><td>From 11-5-14</td><td>To 11-9-14</td></tr> <tr><td>Los Angeles, CA</td><td>1-18-81</td><td>6-1-92</td></tr> <tr><td>Los Angeles, CA</td><td>9-1-92</td><td>12-1-00</td></tr> <tr><td>Santa Barbara, CA</td><td>6-1-01</td><td>12-15-05</td></tr> <tr><td>Los Angeles, CA</td><td>6-1-06</td><td>1-1-07</td></tr> <tr><td>Los Angeles, CA</td><td>4-1-07</td><td>7-1-07</td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	From 12-18-2016	To 01-21-2017	Los Angeles, CA	From 10-21-16	To 10-23-16	Los Angeles, CA	From 6-10-16	To 6-19-16	Port St. Lucie, FL	From 2-19-16	To 2-22-16	Los Angeles, CA	From 11-20-15	To 11-29-15	Detroit, MI	From 9-4-15	To 9-8-15	New Orleans, LA	From 5-21-15	To 5-24-15	Los Angeles, CA	From 4-16-15	To 4-23-15	Port St. Lucie, FL	From 1-17-15	To 1-21-15	Los Angeles, CA	From 11-5-14	To 11-9-14	Los Angeles, CA	1-18-81	6-1-92	Los Angeles, CA	9-1-92	12-1-00	Santa Barbara, CA	6-1-01	12-15-05	Los Angeles, CA	6-1-06	1-1-07	Los Angeles, CA	4-1-07	7-1-07	<p>25. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>From 12-18-2016</td><td>To 01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>From 6-10-16</td><td>To 6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>From 2-19-16</td><td>To 2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>From 11-20-15</td><td>To 11-29-15</td></tr> <tr><td>Detroit, MI</td><td>From 9-4-15</td><td>To 9-8-15</td></tr> <tr><td>Los Angeles, CA</td><td>From 4-16-15</td><td>To 4-21-15</td></tr> <tr><td></td><td>From</td><td>To</td></tr> <tr><td></td><td>From</td><td>To</td></tr> <tr><td></td><td>From</td><td>To</td></tr> <tr><td></td><td>From</td><td>To</td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	From 12-18-2016	To 01-21-2017	Los Angeles, CA	From 6-10-16	To 6-19-16	Port St. Lucie, FL	From 2-19-16	To 2-22-16	Los Angeles, CA	From 11-20-15	To 11-29-15	Detroit, MI	From 9-4-15	To 9-8-15	Los Angeles, CA	From 4-16-15	To 4-21-15		From	To									
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**INFORMATION ON MOTHER/FATHER/PARENT**

26. Precise Periods Abroad in U.S. Armed Forces, in other U.S. Government Employment, with Qualifying International Organization, or as a dependent child of a person so employed (Specify) (if additional space is needed please use the Section D Continuation Sheet)

Branch/Agency/Org.	Date (month-day-year)	Date (month-day-year)
	From	To

(Continued)

**INFORMATION ON MOTHER/FATHER/PARENT**

27. Precise Periods Abroad in U.S. Armed Forces, in other U.S. Government Employment, with Qualifying International Organization, or as a dependent child of a person so employed (Specify) (if additional space is needed please use the Section D Continuation Sheet)

Branch/Agency/Org.	Date (month-day-year)	Date (month-day-year)
	From	To

**B. THIS SECTION TO BE COMPLETED BEFORE/BY CONSULAR OFFICER, NOTARY PUBLIC, OR OTHER PERSON QUALIFIED TO ADMINISTER OATH**

NOTE: If a U.S. citizen parent transmitting citizenship to the child born out of wedlock is not present, he or she may complete State Department Form DS 550 Affidavit of Parentage Physical Presence and Support and submit separately. Only the U.S. citizen father of a child born abroad out of wedlock must complete the acknowledgement of paternity and agreement to provide financial support.

28. I \_\_\_\_\_ do solemnly swear (or affirm) (check all that apply)  
 (Name)

I am a U.S. citizen or non-citizen national.  I am the father of \_\_\_\_\_  
 (Name of Child)

who was born on \_\_\_\_\_ in \_\_\_\_\_  My child was born out of wedlock, and I am the  
 (Date of Birth) (Place of Birth)

the father through whom he/she is claiming U.S. citizenship.  I agree to provide financial support for this child until he/she reaches the age of eighteen

\_\_\_\_\_  
 (Signature of Affiant)

SUBSCRIBED AND SWORN TO (AFFIRMED) before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
 (Signature and Title of Administering Officer)

(SEAL)

(Continued)

THIS SECTION TO BE COMPLETED BEFORE/BY CONSULAR OFFICER, NOTARY PUBLIC, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS

29. Affirmation: I SOLEMNLY SWEAR (OR AFFIRM) THAT THE STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Name of Person(s) Providing Information Relationship to the Child (Parent, Legal Guardian, Other (Specify)) Signature of Person(s) Providing Information

ELAN DVASH-BANKS Father

[Signature]

Andrew Dvash-Banks Father

[Signature]

Type Name and Title of Official Signature of Official City Date

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

[Signature]

TORONTO

JAN 24 2017  
(month) (day) (year)

Subscribed to: (SEAL)

30. Approval of Consular Report of Birth

(Printed Name of Consular Officer)

(Signature of Consular Officer)

(Approving Post)

\_\_\_/\_\_\_/\_\_\_  
(month) (day) (year)  
(Date of Approval)

DENIAL  
(Registration Number)

C. FOR OFFICIAL USE

31. Documents Presented - Please mark accordingly and provide date of document. (If more space is required, list on separate page)

Child's Birth Certificate 11/09/2016 Mississauga Ontario Canada  
(month)(day) (year) (City) (Province) (Country)

Marriage Certificate 10/05/2010 / / Toronto Ontario Canada  
(month)(day) (year) (month)(day) (year) (City) (State) (Province) (Country)  
(File Date) (Date of Issuance)

Divorce Decree(s) (a) / / / / / / / /  
(month)(day) (year) (month)(day) (year) (City) (State)  
(File Date) (Date of Issuance)

(b) / / / / / / / /  
(month)(day) (year) (month)(day) (year) (City) (State)  
(File Date) (Date of Issuance)

(c) / / / / / / / /  
(month)(day) (year) (month)(day) (year) (City) (State)  
(File Date) (Date of Issuance)

Death Certificate(s) (a) / / / / / /  
(month)(day) (year) (City) (State)

(b) / / / / / /  
(month)(day) (year) (City) (State)

Mother/Father/Parent's Passport [Redacted] 04/21/2010 Israeli citizen  
(Passport Number) (month)(day) (year) (Date of Issuance) (Nationality)

Mother/Father/Parent's Passport [Redacted] 03/23/2010 U.S. citizen  
(Passport Number) (month)(day) (year) (Date of Issuance) (Nationality)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) \_\_\_\_\_  
(Name of the Citizenship Document) (Document Number) (month)(day) (year) (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) \_\_\_\_\_  
(Name of the Citizenship Document) (Document Number) (month)(day) (year) (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) \_\_\_\_\_  
(Name of the Identity Document) (Document Number) (month)(day) (year) (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) \_\_\_\_\_  
(Name of the Identity Document) (Document Number) (month)(day) (year) (Date of Issuance)

Other (Legal Guardianship; Power of Attorney, etc.) custody documents FS-16-21123  
(Name of the Document) (Document Number) (month)(day) (year) (Date of Issuance)

DS-2029  
04-2016

Page 5 of 7

D.

CONTINUATION SHEET (USE THIS SPACE FOR ADDITIONAL INFORMATION)

DS-2029  
04-2016

Page 6 of 7

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 014



Certified A True  
Photostatic  
Print of a Record

on file at the  
Office of the Registrar General  
Ontario, Canada

Registration Number  
Numéro d'enregistrement

Certificate number  
Numéro de certificat

P3319402

Date issued  
Date de délivrance

Nov 09 2015

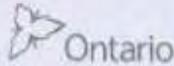
Ontario  
Office of the Registrar General  
Bureau du registraire général

Photocopie certifiée  
conforme d'un document

déposée aux dossiers du  
Bureau du registraire général  
(Ontario) Canada

File number  
Numéro de dossier

01599220-01



ServiceOntario

Office of the  
Registrar General  
189 Red River Road  
PO Box 4500  
Thunder Bay ON P7B 5L3

Statement of Live Birth  
Form 2

Vital Statistics Act

This is a permanent legal record.  
Please read all instructions before completing this form.  
Type or print clearly in blue or black ink and complete all items.

Section A - Child's Information (see instruction #1)

Last Name D [redacted]	Sex of Child Male
First Name E [redacted]	Middle Name(s) [redacted]
Date of Birth (yyyy/mm/dd) 2016/09/16	Name of hospital (if not hospital give exact location where birth occurred) Credit Valley Hospital
Place of Birth (City/Town/Village/Township) Mississauga	Regional municipality, county or district PEEL

Section B - Father's Information - (see instruction #2)

Current Legal Last Name Dvash-Banks	
Legal Last Name at Birth Banks	
First and Middle Names Andrew Mason	
Any Other Legal Last Name(s)	
Place of Birth (City/Town/Village/Township) Santa Monica	
Place of Birth (Province/State/Country) California, USA	
Date of Birth (yyyy/mm/dd) 1981 [redacted]	Age 35
Marital Status of Parent in Section B <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	

Section C - Father's Information - (see instruction #3)

Current Legal Last Name Dvash-Banks	
Legal Last Name at Birth Dvash	
First and Middle Names Elad	
Any Other Legal Last Name(s)	
Place of Birth (City/Town/Village/Township) Ramat Gan	
Place of Birth (Province/State/Country) Israel	
Date of Birth (yyyy/mm/dd) 1985 [redacted]	Age 31
Marital Status of Parent in Section B <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	

Section D - Birth Information

Residence of Parent in Section B - Complete street address (City, town, village, township - if rural give Post Office or Rural Route address) [redacted] Avenue, Toronto	Postal Code M6B4C6			
Mailing Address of Parent in Section B - Complete street address (if rural give Post Office or Rural Route address)	Postal Code			
Duration of pregnancy (in weeks) 32	Total number of children ever born to this parent including this birth 2	Weight of child at birth (Grams) 3550	Sex of child <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	Multiple birth - state whether this child was born 1st, 2nd, 3rd, etc. 2nd
Name of Attendant at Birth Dr Mykian, Kerry	<input checked="" type="checkbox"/> Midwife <input type="checkbox"/> Nurse <input type="checkbox"/> Other, specify			

Section E - Certification of Informant (Please read instruction #1 before signing)

If you are showing a last name that is not one of the parent's last names or combinations of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes:

Cultural heritage  Religious heritage  Ethnic heritage

I (We) certify the statements made on this form are true and correct. I am (We are) aware that it is an offence to wilfully make a false statement on this form.

I (We) have agreed that the child's last name will be as shown in section A.

Yes  No

Signature of Father [Signature]	Date (yyyy/mm/dd) 2016/11/01
Signature of Mother [Signature]	Date (yyyy/mm/dd) 2016/10/28
Signature of Informant (see instruction #1)	Date (yyyy/mm/dd)

Section F - Office Use Only

I approve this statement and register this birth by signing this statement.

Signature of Manager  
[Signature]
 Date (yyyy/mm/dd) 2016/11/03 |

Office Use Only

UPDATED GEO CODE

11322E (2016/06) © Queen's Printer for Ontario, 2016

A True Copy of the  
Signed Original.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*Alexandra Schmidt*

Alexandra Schmidt  
Deputy Registrar General  
Registraire générale adjointe

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Ontario

Office of the Registrar General  
Bureau du registraire général

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on file at the  
Office of the Registrar General  
Ontario, Canada

se trouvant dans les dossiers du  
Bureau du registraire général  
(Ontario) Canada

Registration Number:  
Numéro d'enregistrement :

00070270-1 2010 029232

PAGE 1 of 1

Certificate number:  
Numéro du certificat :

P 1338811

Date issued:  
Date de délivrance :

Oct 05 2010

File number:  
Numéro de dossier :

01076584-01-3



Ontario

Ministry of  
Government Services Office of the  
Registrar General

Marriage Licence

Licence number: E 0689966

This form is a permanent legal document and can only be used to register a marriage that takes place in Ontario. Please PRINT clearly in blue or black ink.

Part 1. To be completed by the office issuing this licence

1. Date this licence was issued (day): 19 Aug 2010	2. Municipality where licence was issued City of Toronto
3. Name of licence issuer or deputy issuer Catherine Manning	4. Signature of licence issuer or deputy issuer
5. Proposed place of marriage (township): Toronto	6. Proposed date of marriage (day) must be within 3 months of date of issue 19 Aug 2010

Part 2. Marriage Applicant (Form 4)

7. Last legal name before this marriage Banks	24. Last legal name before this marriage Dvash
8. First and middle names Andrew Mason	25. First and middle names Elad
9. Marital status: <input checked="" type="checkbox"/> never married <input type="checkbox"/> widowed <input type="checkbox"/> divorced	26. Marital status: <input checked="" type="checkbox"/> never married <input type="checkbox"/> widowed <input type="checkbox"/> divorced

7. (Record in Canada, if Court file number) City divorce granted in please provide the court file number.

11. Religious denomination Jewish	12. Age 29	13. Date of birth (day): [redacted]	27. (Record in Canada, if Court file number) City divorce granted in please provide the court file number.	28. Religious denomination Jewish	29. Age 25	30. Date of birth (day): [redacted]
14. Province where applicant was born (if outside Canada, state the country) USA	15. Father's name (last, first) Banks, James Howard	16. Mother's name (last name before marriage, first name) Mason, Ann	31. Province where joint applicant was born (if outside Canada, state the country) Israel	32. Father's name (last, first) Dvash, Mordchai	33. Mother's name (last name before marriage, first name) Abuall, Tova	34. Province where the joint applicant's father was born (if outside Canada, state the country) Israel

35. Name in full of applicant  
Andrew Mason Banks

36. Name in full of joint applicant  
Elad Dvash

I make oath and say before me that I believe there is no affidavit, consanguinity, prior marriage or other lawful cause or legal impediment to the marriage, and that the contents set forth herein are to the best of my knowledge, information and belief true in every particular.  
Subscribed before me at City of Toronto in the Province of Ontario on the 19th day of August 2010.

37. Present address of applicant (street number and name) [redacted] Avenue	38. City or town Toronto	39. Postal code M4S 2H4	40. Province ON	41. Present address of joint applicant (street number and name) [redacted] Street	42. City or town Givatayim, Israel	43. Postal code 53482	44. Province Givatayim, Israel
--------------------------------------------------------------------------------	-----------------------------	----------------------------	--------------------	--------------------------------------------------------------------------------------	---------------------------------------	--------------------------	-----------------------------------

Part 3. Statement of witnesses to be completed following the marriage ceremony (Form 7)

45. Place of marriage (name the city or town and the county, regional municipality or district):  
TORONTO DISTRICT

46. Date of marriage (day):  
19 AUGUST 2010

47. Signature of applicant  
48. Signature of joint applicant

49. Signature of witness  
50. Signature of witness

51. Signature of person who performed marriage  
52. Date (day):  
19 AUGUST 2010

53. Name of person who performed marriage (last, first, middle)  
BONKALO, ANNEMARIE REIKA

54. Address of person who performed marriage  
454 QUEEN ST. EAST STE 2300, Box 91, TORONTO ON

55. Your registration number  
J 2492

56. Your denomination (Merry only)

For use of the Registrar General only:  
I am satisfied to the correctness of this statement and register this marriage  
Signature: [redacted] Date (day): AUG 25 2010

A True Copy of the  
Signed Original.

Personal information contained in this form is collected under the authority of the Marriage Act, R.S.O. 1990, c.323 and will be used to determine whether to issue the marriage licence, to register the marriage, provide certified copies, extracts, certificates, search indices, photocopies and for statistical, research, medical, law enforcement, adoption and election disclosure purposes. Questions about this collection should be directed to the Deputy Registrar General at PO Box 6000, 138 West Beaver Road, Thornhill, ON L3T 6L4. Telephone: 1 800 461-4756 or 416 325-0206.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*Judith M Hartman*

Judith M. Hartman  
Deputy Registrar General  
Registraire générale adjointe  
de l'état civil

11106(10/00)

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Superior Court of Justice

(Name of Court)

at 393 University Avenue, Toronto, Ontario M5G 1E6

(Court office address)

Court File Number

FS-16-21123

Form 25: Order (General)

Temporary

Final

Applicant(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).

Elad Dvash-Banks and  
Andrew Dvash-Banks  
[redacted] Avenue, Unit [redacted]  
Toronto, Ontario  
M6B 4C6

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Michelle Flowerday  
Flowerday Law | Fertility & Family  
158 McRae Drive  
Toronto, Ontario M4G 1S7  
T: 416.428.5511  
F: 647.341.5111  
E: michelle@flowerdaylaw.ca

The Honourable

*Terrin N. Day*  
Judge (Print or type name)

September 28, 2016

Date of order

Respondent(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).

Amanda Marie Anne Adams  
[redacted] Avenue, Unit [redacted]  
Mississauga, Ontario  
L5A 2K7

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Deputy Registrar General for the  
Province of Ontario  
Ministry of the Attorney General  
Legal Services Branch  
77 Wellesley Street West  
Ferguson Block, 6<sup>th</sup> Floor  
Toronto, Ontario M7A 1N3

The court read an application/motion made by (name of person or persons)

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks.

The following persons were in court (names of parties and lawyers in court)

Michelle Flowerday, Counsel for the Applicants

The court received evidence and heard submissions on behalf of (name or names)

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

Under the *Children's Law Reform Act*, Section 4(1), (2) and (3), and the *Courts of Justice Act*, Section 97,

1. It is declared that the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, are the parents of the child, E [redacted] J [redacted] D [redacted] B [redacted], born September 16, 2016 ("the child"), and that the Applicants are recognized for all purposes in law to be the parents of the child.
2. It is declared that the Respondent, Amanda Marie Anne Adams, is not the mother of the child.

A True Copy of the  
Signed Original.

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Under the *Vital Statistics Act*,

- 3. The Deputy Registrar General for the Province of Ontario is directed to register the birth of the child so as to show the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, as the parents of the child.

~~Under the *Consolidated Provincial Practice Direction of the Ontario Superior Court of Justice*, Section F, Paragraphs 106 and 107,~~

- ~~4. Service and filing of a notice of motion or application with respect to the relief granted under paragraphs 6, 7 and 8 of this Order are dispensed with.~~
- ~~5. Notice to the media with respect to the relief granted under paragraphs 6, 7 and 8 of this Order is dispensed with.~~

Under the *Courts of Justice Act*, Section 137(2),

- 6. The Registrar of the Ontario Superior Court of Justice is directed to seal and treat as confidential all documents filed in this proceeding.
- 7. No person shall publish or make public information that has the effect of identifying either Applicant or the other persons identified in the materials filed in this proceeding.
- 8. The name of this proceeding shall be amended to show only the initials of the parties and the Registrar of the Ontario Superior Court of Justice is directed to amend the records accordingly.
- 9. The Deputy Registrar General for the Province of Ontario is directed to seal and treat as confidential the Notice of Live Birth and all other records in its possession in connection with this case, including this Order, save and except for Form 2 (Statement of Live Birth) and the Birth Certificate.

*Put a line through any blank space left on this page.*

Sept 28, 2016  
Date of signature

Harrison Young  
Signature of judge or clerk of the court

  
**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

SUPERIOR COURT OF JUSTICE  
COUR SUPÉRIEURE DE JUSTICE  
ENTERED / ENTRÉ  
SEP 28 2016  
per/par Justin DiGirolamo  
LOCAL REGISTRAR / GREFFIER LOCAL

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 022

CONFIDENTIAL AGREEMENT

THIS IS AN AGREEMENT made on this 21<sup>ST</sup> day of December, 2015

AMONG:

ANDREW DVASH-BANKS

(herein called "Andrew")

-and-

ELAD DVASH-BANKS

(herein called "Elad")

-and-

AMANDA MARIE ANNE ADAMS

(herein called the "Gestational Carrier")

PART I  
BACKGROUND

1.1 Andrew and Elad (collectively called the "Intended Parents") are a same-sex married couple who require assisted reproductive technology to have a child.

1.2 The Intended Parents intend to conceive a Child by Transferring Ova supplied by a third party anonymous donor fertilized by Sperm supplied by Andrew and/or Elad to the Gestational Carrier.

1.3 The Gestational Carrier intends to act as the gestational carrier for the Child and to carry the Child until it is born. The Gestational Carrier has offered to carry the Child on an altruistic basis, and only those out of pocket expenses related to the surrogacy shall be reimbursed to her. The Gestational Carrier has ONE (1) child of her own and is not currently in a relationship of permanence.

1.4 Ova retrieved from the third party anonymous donor and Sperm supplied by Andrew and/or Elad will be incubated externally. Fertilization may occur during this incubation period when a Sperm penetrates the cell wall of an ovum and their nuclei join together creating a single cell fertilized ovum which develops into an embryo.

1.5 Unless in her sole discretion the Gestational Carrier agrees at the time to the insertion of a greater number of Embryos, a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier during each in vitro fertilization cycle.

A True Copy of the  
Signed Original.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

P.C.

1.6 The Intended Parents and the Gestational Carrier know that more than one child may result from this procedure and, if more than one child is born, "Child" in this Agreement, will mean "Children".

1.7 The Gestational Carrier believes that it would be in the best interests of the Child for the Child to be in the custody of the Intended Parents immediately upon Birth, and the Gestational Carrier hereby expresses her intention to waive all parental rights which she may have to any Child.

1.8 The Intended Parents will be recognized as the Child's parents immediately upon the Child's Birth.

1.9 The Intended Parents intend to assume full care of, and all parental responsibility for the Child, and the Gestational Carrier intends to allow the Intended Parents to assume this care and responsibility without reserving any care or responsibility to herself.

1.10 Immediately upon the Birth of the Child, the Gestational Carrier will give the Child into the permanent custody of the Intended Parents and as soon as reasonably possible thereafter the Intended Parents will make an application in the Ontario Superior Court of Justice seeking a declaration of parentage on their part, and a declaration of non-parentage on the part of the Gestational Carrier.

1.11 All Parties to this Agreement wish to maintain confidentiality between themselves, one to another, and between themselves and the public.

1.12 It is expressly understood that this Agreement is not intended in any way to represent a contract regarding payment in exchange for a child, or for the relinquishment of a child, and that the Parties acknowledge that no consideration has been offered to or accepted by the Gestational Carrier which would induce her to act as a surrogate.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and promises contained in this Agreement and with the intention of being fully bound by its terms, the Parties do hereby covenant and agree as follows.

**PART II  
DEFINITIONS**

Where used in this, unless the context otherwise requires, the following terms will have the following meanings:

- (a) "Attending Physician" means the physician or licensed midwife attending to the maternal care of the Gestational Carrier and attending at the Birth of the Child, as may be agreed to in writing by the Parties;
- (b) "Birth" means "birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario, and includes a "Full Term Still-Birth" unless otherwise stated;

Dyash-Banks and Adams Surrogacy Agreement | Final Version

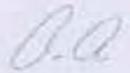
**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

*EDB*  
*DOB*

- (c) **"Child"** means the child conceived by I.V.F. (defined below) as described in this Agreement and if there are multiple births means the children conceived by the procedure contemplated in this Agreement;
- (d) **"Clinic"** means The Toronto Institute for Reproductive Medicine, 56 Aberfoyle Crescent, Unit 300, Toronto, Ontario M8X 2W4;
- (e) **"Early Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception before the beginning of the twelfth (12<sup>th</sup>) week of gestation;
- (f) **"Embryo" or "Fertilized Ova" or "Fertilized Ovum"** means the product of I.V.F. (hereinafter defined). For clarification, Fertilized Ova may result from Sperm supplied by Andrew and Elad with the potential of the Gestational Carrier becoming Pregnant with Fetuses that are genetically connected to each of Andrew and Elad;
- (g) **"Fetus"** means the Embryo from the moment of the completion of the Transfer until the moment of Birth;
- (h) **"Full Term Still-Birth"** means a still-birth which occurs during or after the 36<sup>th</sup> week of gestation;
- (i) **"Guardians"** means Tova and Mordehay Dvash;
- (j) **"Hospital"** means Trillium Health Partners;
- (k) **"Intended Parents"** means ANDREW DVASH-BANKS and ELAD DVASH-BANKS;
- (l) **"Gestational Carrier"** means AMANDA MARIE ANNE ADAMS;
- (m) **"I.V.F."** means in vitro fertilization and embryo transfer which is a medical procedure whereby ova are inseminated with sperm and allowed to incubate so that fertilization occurs by a sperm penetrating the cell wall of an ovum and their nuclei joining together to create a single cell fertilized ovum. Several fertilized ova usually result from a single in vitro fertilization and after the single cell fertilized ova have started to divide to form an embryo, some will be Transferred into the uterus of the Gestational Carrier and some may be frozen for Transfer at a later date. The Embryo or Embryos that are Transferred pursuant to this may be from an Embryo or Embryos that have been incubated previously and frozen;
- (n) **"Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception between the twelfth (12<sup>th</sup>) and twentieth (20<sup>th</sup>) week of gestation. Miscarriage in this Agreement does not include an Early Miscarriage;

Dvash-Banks and Adams Surrogacy Agreement | Final Version

  
**TERRI N. DAY**  
 VICE CONSUL OF THE  
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 MVB EDB

- (o) "Ova" means the sex cells of a third party donor;
- (p) "Parties" means the parties to this Agreement, being ANDREW DVASH-BANKS, ELAD DVASH-BANKS, and AMANDA MARIE ANNE ADAMS, and "Party" means any one of the Parties individually;
- (q) "Pregnancy" means the medical condition that occurs when the Fertilized Ovum or Embryo, resulting from the third party anonymous Ova and the Sperm of Andrew and/or Elad, has been transferred to the Gestational Carrier and successfully implants, resulting in a pregnancy being diagnosed based on blood test results and does not include a chemical pregnancy;
- (r) "Requested Termination" means: (i) a termination of the Pregnancy with the consent of or at the request of the Intended Parents; or (ii) a termination of the Pregnancy performed in accordance with the recommendation of the Transfer Physician and/or the Attending Physician because the Pregnancy poses a serious risk to the health or life of the Gestational Carrier;
- (s) "Special Expense Amount" means the amount reimbursable under the section called SPECIAL EXPENSE AMOUNT, below;
- (t) "Sperm" means the sex cells of Andrew and/or Elad;
- (u) "Still-Birth" means "still-birth" as defined in s. 1 of the *Vital Statistics Act of Ontario* and does not include a Full Term Still-Birth unless otherwise stated;
- (v) "Term of this Agreement" means, subject to Section 25.1, the period commencing on the date of execution of this Agreement by the last Party to do so, and ending on the day which is the earlier of: (i) the date of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child;
- (w) "Transfer" and "Transferred" mean the manual deposit of one or more Fertilized Ovum or Embryo into the uterus of the Gestational Carrier; and
- (x) "Transfer Physician" means Dr. Alfonso Del Valle or, in the event that Dr. Del Valle is not available, another physician in the Clinic, as may be agreed to by the Parties.

**PART III  
PSYCHOLOGICAL ASSESSMENTS**

3.1 The Gestational Carrier acknowledges that prior to the execution of this Agreement, she was assessed by a counsellor at the Clinic (the "Counsellor"), who determined that she is fit to undertake the obligation to carry the Child during a Pregnancy, and that she is willing to relinquish the Child on Birth to the Intended Parents and is competent to enter into this

Dvash-Banks and Adams Surrogacy Agreement | Final Version

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 026

ADB EDB

Agreement. The Gestational Carrier further acknowledges that for the purposes of this Agreement only, she has made an exception to the privilege of confidentiality to allow the Counsellor to advise the Intended Parents whether or not she is psychologically fit to fulfill the obligations she has assumed under this Agreement, and has consented, and does hereby confirm the consent to the release to the Intended Parents of such information only.

3.2 The Intended Parents acknowledge receipt of the advice of the Counsellor about the assessment of the Gestational Carrier, and acknowledge that they are satisfied with the assessment and that they accept the findings and conclusions.

**PART IV  
ACKNOWLEDGEMENTS AND UNDERTAKINGS**

4.1 Each Party acknowledges that the recitals are accurate, binding and form part of this Agreement.

4.2 Each Party acknowledges that he or she is fully informed about the I.V.F., egg retrieval and Transfer procedure and each understands the medical and legal issues involved.

4.3 In particular, the Gestational Carrier acknowledges that she has been informed by a physician specializing in fertility procedures of the risks to the Gestational Carrier involved in preparing her to receive the Transfer, the Transfer procedure itself, the Pregnancy and the Birth which may result, including the possibility of multiple births (or, alternatively, any termination or reduction of the Pregnancy) and further acknowledges that she understands these risks and releases the Intended Parents with respect to all such risks including, without limitation, the health of the Ova and any Embryos created with the Ova, which are transferred to the Gestational Carrier.

4.4 During the Term of this Agreement, each of the Parties agrees to inform each other forthwith, in writing, of any material change in their circumstances which may reasonably affect their performance of this Agreement in accordance with its terms. These changes include, but are not limited to, change in marital status, change of mailing address or email address, illness or death of a Party, loss of employment, changes in insurance coverage and exposure to communicable illness or any risk to health.

**PART V  
MEDICAL EXAMINATIONS**

5.1 Within a reasonable period prior to undertaking any medical procedure contemplated by this Agreement, the Gestational Carrier and the Intended Parents will undergo a thorough consultation and evaluation by the Transfer Physician, to determine whether the Gestational Carrier is physically healthy and capable of conceiving and carrying a Child to Birth and to determine whether the Intended Parents are fit to proceed with the procedures contemplated by this Agreement. The evaluation of all Parties will include testing for transmittable diseases, including, but not limited to, Hepatitis B and C and HIV in order to

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protect the health of the Gestational Carrier and the Child.

5.2 The Gestational Carrier warrants and represents that she has disclosed her full medical history to the Transfer Physician and has advised the Transfer Physician of any medications which she is currently taking.

5.3 The Gestational Carrier and the Intended Parents will undergo any medical testing that the Transfer Physician and/or the Attending Physician deem necessary, within the time frame specified by the referring physician, acting reasonably, during the Term of this Agreement, at the expense of the Intended Parents.

5.4 Each Party, for the purposes of this Agreement only, has made or hereby makes an exception to the privilege of confidentiality to allow information to be given to the other Parties and their solicitors, and has consented or hereby consents, to the release of the reports, test results, and all relevant information obtained in the examination or examinations and tests to each of the other Parties, or any one or more of them.

**PART VI  
COUNSELLING PROGRAM AND MEDIATION**

6.1 The Gestational Carrier acknowledges that she may choose to participate in a counselling program, or, she may choose to meet with a counsellor as required at any time during the Term of the Agreement. Any costs of this program will be included in the Special Expense Amount. Each Party for the purposes of this Agreement has made or hereby makes an exception to the privilege of confidentiality to allow information derived in counselling sessions to be given to the other Parties and their solicitors, and has consented or hereby consents to the release of relevant information pertaining to the wellbeing of the Pregnancy and obtained in the counselling sessions.

**PART VII  
SEXUAL ABSTINENCE**

7.1 During the time period set out in this Agreement, the Gestational Carrier will not engage in any sexual activity whereby semen could cause her to conceive a child, or risk the health of the unborn Child. To this end, she will abstain from sexual intercourse completely for a continuous period commencing TWO (2) weeks before each Transfer and ending on the earlier of: (i) confirmation by the Transfer Physician that a Pregnancy has not been initiated; or (ii) the date on which the first ultrasound examination after each Transfer has been performed, unless the Transfer Physician recommends a longer period of abstinence.

7.2 The Intended Parents acknowledge that the Gestational Carrier is single. The Gestational Carrier agrees that she will provide notice to the Intended Parents if that status changes, and further agrees as follows:

- (a) Prior to commencing a sexual relationship with a new partner, the Gestational Carrier covenants and agrees that she will ensure that such

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individual undergoes testing for transmittable diseases, and further agrees not to engage in a sexual relationship with such new partner until the testing confirms that he does not have any transmittable diseases;

- (b) At all times during the Term of this Agreement, the Gestational Carrier shall engage only in safe sexual practices in order to protect herself and the Fetus from infection by the HIV virus or any venereal or other transmittable disease and agrees not to engage in sexual intercourse unless her partner uses a condom; and
- (c) If, during the Term of this Agreement, the Gestational Carrier becomes involved in a common law relationship, or becomes married, the Gestational Carrier agrees that she will ensure that her spouse signs an amending agreement pursuant to which he acknowledges that: (i) he is not the Child's father; (ii) he will release the Intended Parents from any claims he may have; (iii) he will co-operate with respect to any post-birth process confirming the parentage of the Intended Parents; and (iv) he will abide by the provisions of this Agreement including the requirement to refrain from sexual activity with a third party outside of his monogamous relationship with the Gestational Carrier.

7.3 At all times during the Term of this Agreement, the Intended Parents will not engage in any sexual activity with a third party outside of their marital relationship to protect themselves, the Gestational Carrier and the Child from infection by the HIV virus or any venereal or other transmittable disease.

**PART VIII  
TRANSFERS**

8.1 The Gestational Carrier will hold herself available to receive Transfers under this Agreement to be scheduled at mutually convenient times for up to TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so, and will not perform any act or any thing which would interfere with the proper performance of her obligations under this Agreement.

8.2 The Gestational Carrier will accept a Transfer implanted by the Transfer Physician at the Clinic on as many as FOUR (4) separate occasions, including Transfers of frozen Embryos, if any, at times recommended by the Transfer Physician and approved by the Parties in order to achieve a Pregnancy subject to all Transfers being completed within TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so and thereafter the Gestational Carrier will have no obligation to accept any Transfer.

8.3 Unless the Parties mutually agree to a greater number of Embryos, on each Transfer a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier.

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8.4 The Gestational Carrier will follow all medical instructions prescribed by the Transfer Physician prior to a Pregnancy and during the first trimester of a Pregnancy. The Gestational Carrier will continue to follow the protocol prescribed by the Transfer Physician, which will include stimulating the Gestational Carrier so that her uterine lining is prepared for the Transfer of Embryos. The Gestational Carrier will undergo all necessary testing (including blood testing and ultrasound testing) to determine the readiness of the Gestational Carrier's uterus for the Transfer of Embryos.

8.5 If a Pregnancy does not result after FOUR (4) Transfers (including Transfers of frozen Embryos) then this Agreement may be terminated by any Party giving notice in the manner prescribed by the section called NOTICE, below, to all other Parties at any time before a Pregnancy has occurred and, upon delivery of such notice, this Agreement will terminate and the Intended Parents and the Gestational Carrier will be released from all obligations under it, except the obligation to reimburse the Gestational Carrier's allowable expenses pursuant to the section called SPECIAL EXPENSES, below, which have been incurred to the time of the termination. If no such notice of termination is given, this Agreement will remain in full force and effect until a notice of termination is given.

8.6 Notwithstanding anything contained in this Agreement, the Intended Parents or the Gestational Carrier may terminate this Agreement at any time after the first Transfer upon giving notice to the other Party, if a Pregnancy has not resulted from the Transfer. Upon such a termination the Intended Parents and the Gestational Carrier will be released from all obligations under this Agreement, except for the obligation to reimburse the Gestational Carrier for any expense incurred to the time of termination and payable under the section called SPECIAL EXPENSES, below.

8.7 If a Transfer results in a Pregnancy, the Gestational Carrier will use her best efforts to carry the Fetus to term. The Gestational Carrier will give Birth to the Child at the Hospital or such other hospital as may be agreed to in writing by the Parties.

8.8 The Gestational Carrier agrees to provide the Intended Parents with a weekly update with respect to the Pregnancy, and such update may be by email, Skype or telephone as agreed to by the Parties.

8.9 The Gestational Carrier agrees that either or both of the Intended Parents may accompany her to any obstetrical appointment, or pre-natal test or procedure. The Gestational Carrier further consents to the presence of the Intended Parents in the delivery room at the time of the Birth of the Child. In the event that the Hospital limits the number of visitors that may be present at the Birth of the Child, the Intended Parents acknowledge and agree that the Gestational Carrier shall be entitled to select one such visitor. The Gestational Carrier agrees to contact the Intended Parents at the first indication that labour has begun.

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**PART IX  
PRENATAL OBLIGATIONS**

9.1 The Gestational Carrier warrants and represents that:

- (a) she has never abused alcohol or drugs;
- (b) she has never taken any drugs, whether legal or illegal, which may impact upon the success of a Pregnancy contemplated by this Agreement and the Birth of a healthy Child;
- (c) she is not now using, and has not in the TWELVE (12) months previous to the date of this Agreement, used an illegal drug;
- (d) she will not, during the Term of the Agreement, use any illegal drugs; and
- (e) she has never been charged with a criminal offence.

9.2 The Gestational Carrier warrants and represents that she will strictly comply with all of her obligations set out in the following paragraphs:

9.3 The Gestational Carrier will follow all medical advice given by the Transfer Physician and the Attending Physician, and will undergo all medical procedures that either of them require to ensure that her obligations under this Agreement are safely and successfully performed for both the Gestational Carrier and the Child. Without limiting the generality of the foregoing, if the Attending Physician determines that a Caesarean Birth is advisable for the health and safety of either the Gestational Carrier or the Child, then the Gestational Carrier hereby consents to such procedure. The Gestational Carrier further consents to submit to amniocentesis and all other tests recommended by the Transfer Physician and the Attending Physician and those tests requested by the Intended Parents on the advice of the Transfer Physician, should she become Pregnant pursuant to the terms of this Agreement.

9.4 The Gestational Carrier will follow a prenatal medical examination schedule and prenatal procedures prescribed by the Transfer Physician and/or the Attending Physician who will be responsible for the Gestational Carrier's medical care during the prenatal period. If a medical illness or condition is suspected or diagnosed during the Pregnancy, the Gestational Carrier agrees that she will seek medical attention, and will follow all medical instructions and course of treatment as prescribed.

9.5 The Gestational Carrier covenants and agrees to have the integrated pre-natal screen (IPS), parts one and two:

- (a) at approximately 12 weeks, Part 1 of the IPS, which consists of a nuchal translucency ultrasound and associated maternal bloodwork; and
- (b) at approximately 16 weeks, Part 2 of the IPS, which consists of the appropriate

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maternal blood tests.

The results of the IPS will be forwarded to the Attending Physician.

9.6

- (a) The Gestational Carrier warrants that she does not smoke and will not smoke, or expose herself or allow herself to be exposed to second-hand smoke, for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (b) The Gestational Carrier warrants that she will not drink alcoholic beverages for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (c) The Gestational Carrier further warrants that she will maintain a proper diet and exercise regime as recommended by the Transfer Physician and/or the Attending Physician. All costs incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 9.6(c) shall, subject to the cap on the Special Expense Amount, be included in the Special Expenses.

9.7 The Gestational Carrier will obtain adequate prenatal medical care including, without limitation, the care contemplated by this Part IX in order to enhance the success of the Pregnancy and the Birth of a healthy Child.

9.8 The Gestational Carrier covenants and agrees that during the Term of this Agreement she will not:

- (b) not ingest, inhale, inject or absorb any drugs, pharmaceutical or herbal substances including, without limitation, over the counter medication, not prescribed or approved, in writing, by the Transfer Physician or the Attending Physician (with the exception of Tylenol consumed at or below the recommended dosage for pregnant women). If the Transfer Physician approves any such medications, the Gestational Carrier agrees to follow the instructions of the Transfer Physician and/or Attending Physician with respect to dosage of substances or medication;
- (c) not have any part of her body pierced or tattooed;
- (d) use her best efforts to avoid all exposure to radiation or toxic chemicals; and
- (e) avoid any potentially hazardous situations or activities that a reasonable person would conclude are likely to result in harm to herself or the Fetus.

9.9 Failure to comply with this Part IX will constitute a material breach of the Gestational Carrier's obligations under this Agreement.

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- (a) After the Gestational Carrier becomes Pregnant with the Child, the Gestational Carrier and the Intended Parents will keep each other reasonably informed of their whereabouts.
- (b) From and after the first day of the 24<sup>th</sup> week of the Pregnancy, the Gestational Carrier may only travel outside of Canada: (i) in the event of a severe illness or death in her immediate family; (ii) if she has obtained the prior written consent of the Intended Parents, which shall not be unreasonably withheld; (iii) if she has the prior approval of the Attending Physician; and (iii) if she has a policy of travel health insurance covering her health care costs, the Birth of the Child and the Child's health care costs, which is in place prior to departure and for the duration of the travel.
- (c) From and after the first day of the 24<sup>th</sup> week of the Pregnancy, the Gestational Carrier shall not travel to or visit the Provinces of Quebec, Saskatchewan, New Brunswick and/or Prince Edward Island.
- (d) From and after the first day of the 28<sup>th</sup> week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel by airplane.
- (e) From and after the first day of the 34<sup>th</sup> week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel more than a FORTY (40) minute drive from a hospital.

9.11 The Gestational Carrier will and hereby consents to the Transfer Physician and the Attending Physician keeping the Intended Parents informed at all material times of whether a Transfer has resulted in a Pregnancy, the progress of the Pregnancy, the results of all tests and any recommendations arising from test results, including all information relevant to the health of the Gestational Carrier and the Fetus, and the expected date of Birth. The Gestational Carrier will give the Attending Physician any further consent, authority or directions necessary to comply with this obligation to keep the Intended Parents so informed.

9.12 The Gestational Carrier hereby gives her consent, and will sign any medical consent forms to allow the Transfer Physician, the Attending Physician or any other doctor or hospital agreed to by the Parties to treat her as may be required in respect of the Pregnancy.

**PART X  
CONDITION PRECEDENT**

10.1 The Parties each acknowledge that a finding by medical testing that either Andrew or Elad is a genetic parent of the Child is a condition precedent to the performance of the Intended Parents' obligations under this Agreement. For the purposes of determining the parentage of the Child, immediately after the Birth, the Intended Parents and the Gestational Carrier will submit to a DNA test and each Party consents to the immediate testing of the DNA

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of the Child.

10.2 A finding that neither Intended Parent is a genetic parent of the Child will constitute a material breach of this Agreement unless the parentage is due to a clinical or physician's error in the fertilization or Transfer procedure. If there is a finding that neither Intended Parent is a genetic parent of the Child, and the same degree of testing confirms that the Gestational Carrier is not the genetic mother of the Child, a clinical or physician's error in the fertilization or Transfer procedure shall be deemed to have occurred and the Intended Parents shall assume responsibility for the Child as if it were their own.

10.3 If the Gestational Carrier is the genetic mother of the Child, the Gestational Carrier will refund, within THIRTY (30) days of the request, any Special Expense Amount paid on her behalf, or reimbursed to her, and will forego the reimbursement of any further allowable Special Expense Amount that would otherwise be, or become, reimbursable to her and the Intended Parents shall not be obliged to accept any responsibilities, social, legal or custodial, toward the Child, without prejudice to any of the rights that the Intended Parents are entitled to claim under this Agreement.

**PART XI  
WARRANTIES AND ACKNOWLEDGEMENTS**

11.1 The Gestational Carrier warrants that, to the best of her knowledge, she is physically capable of carrying the Fetus to term and is capable of carrying and bearing healthy, normal children.

11.2 The Gestational Carrier warrants that, to the best of her knowledge, she has no transmittable disease and will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.3 Andrew and Elad each warrant that, to the best of their knowledge, neither has a transmittable disease and each will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.4 The Gestational Carrier acknowledges that it will be in the best interests of the Child for the Child to be placed in the custody of the Intended Parents immediately upon the Birth of the Child and for the Gestational Carrier to forever waive all parental and other rights in and to the Child that she has or may acquire in the future immediately upon the Birth of the Child.

**PART XII  
EARLY TERMINATION OF PREGNANCY**

12.1 The Parties acknowledge that the Gestational Carrier has the right to have the Pregnancy terminated at any time she and either the Transfer Physician or the Attending Physician, in their absolute discretion, determine the Pregnancy should be terminated. However, the Gestational Carrier has assured the Intended Parents that it is not her intention to have an

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abortion, unless the Intended Parents request that she does so in the circumstances set out below. The Gestational Carrier has further assured the Intended Parents that she will proceed with a Requested Termination at a time and place recommended by the Transfer Physician and/or Attending Physician if: (i) a test reveals that the Child is likely to have a serious genetic or congenital abnormality or defect; (ii) the Transfer Physician or the Attending Physician so recommends in writing; and (iii) the Intended Parents so request in writing. All costs incurred in connection with and directly related to the Requested Termination shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

12.2 In the interests of clarity, the Parties agree that any request to terminate the Pregnancy shall be in writing and signed by each of the Intended Parents.

12.3 The Gestational Carrier states that she does not intend to exercise her right to abortion:

- (a) except as set out in this Part XII, or
- (b) unless in the opinion of the Transfer Physician and/or the Attending Physician, terminating the Pregnancy is necessary to protect the Gestational Carrier's health or life, in which case the consent of the Intended Parents is not required.

12.4

- (a) The Gestational Carrier will undergo ultrasound, chorionic villus sampling, IPS, amniocentesis and similar tests and procedures to detect genetic and congenital abnormalities or defects in the Fetus, as recommended by the Transfer Physician and/or the Attending Physician.
- (b) The Intended Parents acknowledge the risks to the Pregnancy associated with any invasive testing and, provided that the Gestational Carrier is not otherwise in material breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from any invasive testing performed at the request of or with the consent of the Intended Parents.

12.5 The tests will be performed or interpreted by the Transfer Physician, the Attending Physician, a physician or a technician recommended by either or both of them that is satisfactory to the Parties to this Agreement.

12.6

- (a) If the Gestational Carrier is carrying a single Fetus and tests indicate that the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or if the Gestational Carrier is carrying a multiple pregnancy and the tests indicate that each Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, then the Intended Parents may, in accordance with Section 12.1, inform the Gestational Carrier that it is their wish that the Pregnancy be

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terminated. The Gestational Carrier, in consultation with the Transfer Physician or Attending Physician, will follow the instructions of the Intended Parents to terminate the Pregnancy.

- (b) If the Gestational Carrier is carrying a multiple Pregnancy and the medical tests indicate that only one Fetus has or is likely to have, a serious genetic or congenital abnormality or defect, the Intended Parents may inform the Gestational Carrier that it is their wish that the Gestational Carrier undergo a selective reduction procedure and the provisions of Section 13.1 shall apply.

12.7 If the Gestational Carrier:

- (a) terminates the Pregnancy or undergoes a selective reduction procedure without the prior written approval of the Intended Parents where prior consent is required; or
- (b) refuses to terminate the Pregnancy, or to take all steps within her control to undergo a selective reduction procedure if requested to do so, within TWENTY (20) days of receiving notice of the Intended Parents' wish to have the Pregnancy terminated because the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or the multiple pregnancy poses a risk to the health or life of the remaining fetus(es) or the Gestational Carrier,

then the Gestational Carrier will be in material breach under this Agreement, and the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses incurred after the date of the termination or selective reduction in the event of Section 12.7(a), or the date of notice in the event of Section 12.7(b), and the Gestational Carrier will refund to the Intended Parents all amounts already reimbursed to her pursuant to the terms of this Agreement.

12.8 Subject to Section 12.1, if the Gestational Carrier refuses to terminate the Pregnancy or undergo a selective reduction procedure at the request of the Intended Parents and the Child is born with or without the serious genetic or congenital abnormality or defect detected or suspected from the tests referred to above, the Gestational Carrier will give the Child into the custody of the Intended Parents as provided in this Agreement and no expenses of the Gestational Carrier will be reimbursed after the date on which notice requesting termination or selective reduction was received, but all other terms of this Agreement will continue in full force and effect including, without limitation, the Intended Parents' obligation to take custody of and support the Child.

12.9 If the tests for congenital and genetic defects and abnormalities do not reveal any defects or abnormalities, but the Child is born with defects or abnormalities which do not result from the gross negligence of the Gestational Carrier, the Gestational Carrier will place the Child in the custody of the Intended Parents as provided in this Agreement and all other terms and obligations will remain in effect, including those in Section 26.

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**PART XIII  
SELECTIVE REDUCTION**

13.1 If:

- (a) the Transfer of Embryos contemplated by this Agreement results in the Gestational Carrier becoming pregnant with THREE (3) or more Children; or
- (b) the Gestational Carrier is carrying a multiple pregnancy and the test(s) indicate that one or more Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, but at least one Fetus does not have any genetic or congenital abnormality or defect; or
- (c) in the opinion of the Transfer Physician and/or the Attending Physician, the multiple Pregnancy poses a risk to the Gestational Carrier's health or to one or more Fetus;

then if the Intended Parents so request under Section 13.1(b) or upon recommendation of the Transfer Physician and/or the Attending Physician under Section 13.1(a) or (c), the Gestational Carrier will undergo a procedure in any location specified by the Attending Physician within Canada to selectively reduce the number of Fetuses to twins or a single Fetus, as the case may be. If requested by the Intended Parents, the procedure will take place at the time and in a manner determined to be medically appropriate by the Attending Physician. The Gestational Carrier acknowledges and agrees that she will not undergo a selective reduction procedure if she is carrying two Fetuses without the consent in writing of the Intended Parents, unless the Attending Physician is of the opinion that such procedure is necessary to avoid a serious risk to the health of the Gestational Carrier or to the remaining Fetus or Fetuses. All costs incurred in connection with and directly related to the selective reduction procedure shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

13.2 The Intended Parents acknowledge the risks to the Pregnancy associated with a selective reduction procedure and, provided that the Gestational Carrier is not otherwise in breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from a selective reduction procedure performed at the request of or with the consent of the Intended Parents.

13.3 In the interests of clarity, any request to selectively reduce the Pregnancy shall be in writing and signed by each of the Intended Parents.

**PART XIV  
CUSTODY OF CHILD AND PARENTAL RIGHTS**

14.1 The Gestational Carrier has met or spoken with the Intended Parents and believes that the Intended Parents will be loving and caring parents to any Child born pursuant to this Agreement. She acknowledges that it is in the best interests of the Child that the Intended Parents have sole and exclusive custody and assume the legal and social parental responsibilities

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for the Child, immediately upon Birth. For the purposes of this Agreement, "immediately upon birth" means as soon as the umbilical cord is cut.

14.2 The Gestational Carrier acknowledges that the Intended Parents will show the surname and the given names of the Child to be the names chosen by the Intended Parents on any form required on the Birth of the Child.

14.3 The Gestational Carrier will, at the request of the Intended Parents, participate in any legal proceeding or application supporting the Intended Parents' custody and parentage of the Child and will facilitate proof by affidavit or by giving evidence in person of all material facts within their knowledge and will attend at any and all court hearings, as required either prior to or after the Birth of the Child, until the proceeding or application is finally disposed of. All expenses incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 14.3, shall be borne by the Intended Parents in addition to the Special Expense Amount.

14.4 The Gestational Carrier hereby expressly waives all parental, custodial and social rights that she has or may acquire to the Child.

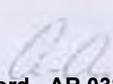
14.5

- (a) The Gestational Carrier will, immediately upon the Birth of the Child, relinquish any and all custody rights she has or may have, and will make custody of the Child available to the Intended Parents forthwith upon the Birth of the Child. The Intended Parents will receive custody and assume the legal and social parental responsibilities for the Child;
- (b) The Gestational Carrier agrees that she will co-operate with the hospital staff and administration with respect to the agreement of the Parties as set out in Section 14.5(a) and, prior to the expected date of Birth, she will sign a joint letter of instruction and direction to the hospital staff and administration instructing the hospital to treat the Child as the Child of the Intended Parents immediately upon the Birth of the Child, to accept the instructions of the Intended Parents with respect to the Child's medical care, and to discharge the Child from the hospital to the custody of the Intended Parents; and
- (c) The Parties acknowledge that immediately upon Birth all medical decisions regarding the Child shall be made solely by the Intended Parents. The Gestational Carrier agrees that the Intended Parents shall be the persons authorized to care for and make treatment and any other decisions with respect to the Child from the moment of Birth and thereafter. Further, the Gestational Carrier agrees that if a health care provider recognizes her as a substitute decision-maker for the Child, she shall inform such person that she is not the parent of the Child and is therefore not willing to assume the responsibility of giving or refusing consent in accordance with Section 20(2)(e) of the *Health Care Consent Act*. The Gestational Carrier shall direct the health care staff to accept the instructions of

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the Intended Parents with respect to the health of the Child.

- (d) Notwithstanding the above, if the Intended Parents are not available to take physical custody of the Child, or make medical decisions with respect to the Child, immediately after Birth, the Gestational Carrier shall do so on a temporary basis until the Intended Parents are available and same shall not derogate from the Intended Parents' legal parental rights with respect to the Child.

14.6 The Intended Parents will receive the custody of the Child at Birth, or as soon thereafter as is practicable, and if not present at the same time either Andrew or Elad will be deemed to receive custody on behalf of both of them.

14.7 The Parties agree that the Gestational Carrier shall not under any circumstances breastfeed the Child without the permission of the Intended Parents obtained in advance. The Parties acknowledge that the Gestational Carrier has agreed to pump breastmilk for the Child, if feasible at the time, and that the Intended Parents shall cover the direct cost of doing so in addition to the Special Expense Amount.

14.8 Each Party to this Agreement will do what is reasonably necessary to facilitate and expedite the performance of this Agreement including all things such as completing consent forms, hospital and statistical records and obtaining birth certificates.

**PART XV  
RELATIONSHIP WITH THE CHILD**

15.1 The Gestational Carrier will avoid developing a parental relationship with the Child. The only time she will see the Child is in the Hospital before the Child is discharged, and thereafter upon the consent of the Intended Parents. After the Birth, the Gestational Carrier will not contact, nor attempt to contact, nor allow herself to be in contact with the Child in any manner whatsoever at any time, except with the express permission of the Intended Parents. At no time will the Gestational Carrier reveal or cause to be revealed to the Child the fact that the Gestational Carrier gave Birth to the Child, on the understanding that the Intended Parents shall have sole discretion about providing such information to the Child.

15.2 Notwithstanding the above, the Intended Parents hereby consent to allow the Gestational Carrier and her dependent child to spend time with the Child after Birth but prior to discharge from the Hospital, in the presence of the Intended Parents

**PART XVI  
WAIVER AND RELEASE**

16.1 The Gestational Carrier waives all rights that she has or may in the future have to the custody of, access to, or information about the Child and releases the Intended Parents and each of them from all claims that she has, or may in the future have to the custody of, access to, or information about the Child.

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**PART XVII  
FURTHER AGREEMENT AS TO CUSTODY**

17.1 After the Birth of the Child, the Gestational Carrier will, at the request of the Intended Parents, enter into a further agreement with the Intended Parents confirming the Intended Parents' custody of the Child.

17.2 On her part, the Gestational Carrier will confirm and covenant, among other things, that she waives all rights she may have in respect of the Child, and without restricting the generality of the foregoing, her right to custody of the Child and all rights incidental to custody, including the right of access to the Child.

17.3 On their part, the Intended Parents hereby agree, among other things, that:

- (a) they release the Gestational Carrier from all obligations that she has or may in the future have to provide for the support and education of the Child for such period of time as the Child is entitled to support pursuant to the laws of the jurisdiction in which he/she is habitually resident;
- (b) each of them will charge his estate with the obligation to provide for the adequate support and education of the Child; and
- (c) provided that the Gestational Carrier has made physical custody of the Child available to the Intended Parents, each of the Intended Parents will indemnify the Gestational Carrier with respect to any expense incurred by her to provide for the support or education of the Child, including without limitation any legal or other expenses the Gestational Carrier pays in connection with the defence thereof.

**PART XVIII  
DEATH OF INTENDED PARENTS AND  
GUARDIANSHIP OF CHILD**

18.1 The Intended Parents shall each maintain a valid Will in good standing, recognizing the Child as their issue, naming a testamentary guardian for the Child and making adequate provision for the support and education of the Child.

18.2 If either Andrew or Elad dies before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the survivor. If both Andrew and Elad die before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the Guardians named below.

18.3 Each of the Intended Parents hereby declare that, in the event of both of their deaths during the term of this Agreement, the Guardians of any Child born pursuant to this Agreement are: Tova and Mordehay Dvash, who reside in Israel and who can be reached at +972- [REDACTED] +972- [REDACTED] +972- [REDACTED] or [REDACTED]@gmail.com or

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██████████@bezeqint.net. The Guardians shall make any or all medical decisions with respect to the Child in the event that the Intended Parents are incapacitated and unable to do so.

18.4 The Gestational Carrier shall be entitled to rely on this Part XVIII without the requirement of any further evidence for the purpose of providing custody of the Child to the Guardians named herein in the event of the Intended Parents' death or for the purpose of the Guardians named herein making medical decisions for the Child in the event of the Intended Parents' inability to do so. The Intended Parents hereby warrant that they have not and will not enter into any conflicting document or agreement with respect to guardianship of the Child.

**PART XIX  
SEPARATION OR DIVORCE OF INTENDED PARENTS**

19.1 If the Intended Parents separate or divorce before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the care of either Andrew or Elad who will undertake to determine custody and any incidents of custody of the Child as between themselves by mutual agreement or by the Court.

**PART XX  
INCAPACITY OF GESTATIONAL CARRIER**

20.1 The Gestational Carrier agrees that, if she becomes incapable of making decisions for herself, or if she requires life support to sustain her life, then all decisions relating to her medical care shall be made by her Attorney for Personal Care ("Attorney") as appointed by her Power of Attorney for Personal Care or, if she does not have an Attorney, by her Substitute Decision-Maker. However, the Gestational Carrier hereby expresses her wish that if she is Pregnant at the time she is assessed as incapable, and the Attending Physician or another physician deems that the Child would benefit from prolonging her life by artificial means until it is deemed safe to deliver the Child, and that the Gestational Carrier is not enduring pain and suffering, then the Attorney, or the Substitute Decision-Maker, as the case may be, will consent to prolonging the life of the Gestational Carrier by artificial means until after the Birth of the Child.

20.2 The Intended Parents shall reimburse the Gestational Carrier for the legal expenses incurred in having a Will and a Power of Attorney for Personal Care prepared for the purpose of fulfilling Section 20.1 above, in addition to the Special Expense Amount to a maximum of Five Hundred Dollars (\$500.00).

**PART XXI  
LIFE INSURANCE POLICY FOR  
GESTATIONAL CARRIER**

21.1 The Gestational Carrier hereby acknowledges that she currently has a policy of Life Insurance in place with coverage in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00 Cdn.) on her life which will be kept in place for the period commencing on the date which is not later than the date of the first Transfer and shall end

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no earlier than the first to occur of the following dates (the "Insurance Termination Date"): (i) the date of termination of this Agreement; and (ii) the day which is TWO (2) months after the date of Birth. The Gestational Carrier may renew the life insurance, but the Intended Parents will have no obligation to pay for the cost of any premiums charged after the Insurance Termination Date.

21.2 The Intended Parents shall be named as revocable beneficiaries of SEVENTEEN PERCENT (17%) under the Life Insurance policy, and shall be removed as beneficiaries immediately following the earlier of: (i) the Birth; or (ii) the termination of the Agreement. The Gestational Carrier shall name the beneficiary of the remainder under the Life Insurance policy who shall hold same in trust for her children.

21.3 The Intended Parents may put an additional policy of life insurance into place on the Gestational Carrier's life and she shall take all reasonable steps to facilitate same.

**PART XXII  
ENFORCEMENT**

22.1 The Parties have a right to enforce this Agreement in the Ontario Court of Justice including the right to seek an interlocutory and permanent injunction enjoining behaviour that is contrary to or in breach of the Agreement. The Parties acknowledge that a breach of this Agreement will result in irreparable harm to the aggrieved Party and to the Child.

**PART XXIII  
VITAL STATISTICS**

23.1 The Gestational Carrier shall refrain from completing and filing the Statement of Live Birth after the Birth of the Child.

23.2 Upon confirmation by DNA tests, the Gestational Carrier will sign all necessary documents to obtain a legal declaration that she is not the genetic or intended mother of the Child, and that the Child was conceived through I.V.F. by the Ova fertilized with the Sperm.

**PART XXIV  
SUCCESSION**

24.1 The Parties agree that for the purposes of succession law, and any Wills or estates, the Child will, at all times, be a child of the Intended Parents.

**PART XXV  
EARLY TERMINATION**

25.1 If, without the fault of the Gestational Carrier, the Pregnancy ends in Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, then:

- (a) the Intended Parents will be entitled to terminate this Agreement and will be

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released from all obligations under this Agreement;

- (b) the Gestational Carrier will be entitled to terminate this Agreement and retain any reimbursement of any Special Expense Amounts paid or payable up to and including the date of Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; and
- (c) the Gestational Carrier shall be entitled to reimbursement of the Special Expenses for TWO (2) weeks after the date of an Early Miscarriage or FOUR (4) weeks after the date of a Miscarriage, Requested Termination or Still-Birth.

25.2 If the Intended Parents choose not to terminate this Agreement after an Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, the Term of the Agreement shall continue and not be at an end, but the period for reimbursement of the Special Expense Amount shall be as set out above and shall be reset to the maximum Special Expense reimbursement of Twenty Thousand Dollars (\$20,000) and shall resume TWO (2) weeks prior to the next Transfer. If the Pregnancy ends in a Full Term Still-Birth without the fault of the Gestational Carrier, the Agreement shall terminate on the day which is SIX (6) weeks after the date of the Full Term Still-Birth.

25.3 Notwithstanding anything set out in this Agreement, if the Pregnancy is terminated, results in a Still-Birth, results in a Full-Term Still Birth, or produces a Child that has a congenital abnormality or defect as a result of the negligent action or omission of the Gestational Carrier, or if the Gestational Carrier materially breaches this Agreement, the Gestational Carrier shall return to the Intended Parents an amount equal to the Special Expenses reimbursed to the Gestational Carrier within FIVE (5) days of a demand therefor, without prejudice to the Intended Parents' rights at law and pursuant to this Agreement to seek damages from the Gestational Carrier.

**PART XXVI  
SPECIAL EXPENSES**

26.1 The Intended Parents will reimburse the Gestational Carrier for the following out of pocket expenses incurred by the Gestational Carrier in connection with the surrogacy to a maximum of Twenty Thousand Dollars (\$20,000.00 CDN) inclusive of all taxes (the "Special Expense Amount") for all such expenses:

- (a) medical, pharmaceutical and laboratory expenses incurred by the Gestational Carrier as a result of the Transfer, Pregnancy or Birth not otherwise covered by the Ontario Health Insurance Plan ("OHIP") or any private health care insurance plan under which she is covered. However, it is understood and agreed that the Intended Parents will pay all expenses for the I.V.F. treatment directly to the Clinic and this cost will not be included in the Special Expense Amount;
- (b) the amount actually expended by the Gestational Carrier for groceries, prepared food and meals for her own consumption commencing two weeks prior to the date

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of the first Transfer and ending on the expiration or earlier termination of the Agreement;

- (c) a reasonable amount for automobile expenses incurred for local travel at the request of the Intended Parents or made necessary for the performance of her obligations under this Agreement calculated at a rate of \$0.54 per kilometre travelled and all related parking costs;
- (d) communication costs including, without limitation, the costs of an internet account, cellular telephone charges, and the costs of acquiring a cellular telephone, and long distance telephone charges, all incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (e) vitamins and supplements required to maintain a healthy Pregnancy;
- (f) child care costs for the Gestational Carrier's ONE (1) dependent child incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (g) housekeeping, snow shovelling and lawn care costs incurred by the Gestational Carrier in order to reduce the physical strain and incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (h) counselling for the Gestational Carrier and her ONE (1) dependent child, if so required;
- (i) all expenses incurred by the Gestational Carrier for suitable maternity clothing to be worn throughout the Pregnancy and following the Birth, up to a maximum amount of Seven Hundred and Fifty Dollars (\$750.00);
- (j) a reasonable amount for the Gestational Carrier's wellness expenses including, without limitation, costs incurred for acupuncture, massage, physiotherapy, naturopath, reflexology, chiropractic care, foot care, yoga membership and fitness membership, provided that participation in any of such activities is approved by the Transfer Physician and/or the Attending Physician;
- (k) the cost of a private Hospital room for the Gestational Carrier at the time of Birth, if one is available and which expense is not otherwise covered by OHIP or any private health care insurance plan under which the Gestational Carrier is covered; and
- (l) such other expenses as may be incurred by the Gestational Carrier as a result of the Pregnancy and as may be approved by the Intended Parents. The Parties agree that if the Gestational Carrier has already incurred expenses to the maximum limit

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set out in this Section 26.1, the Intended Parents may, in their sole discretion, agree to pay the cost of any such other allowable expenses in addition to the Special Expense Amount.

26.2

- (a) The Parties acknowledge that for the purposes of Section 26, the Gestational Carrier's expenses incurred during the Reimbursable Period (as hereinafter defined) shall be reimbursed to her in accordance with Schedule "A" attached hereto and Part XXVI.
- (b) For the purposes of Section 26.2(c), the "Reimbursable Period" shall commence on the date of confirmation of the Pregnancy by blood test results and shall end on the earlier of: (i) the day of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child.
- (c) The Reimbursable Period shall be divided into TEN (10) stages (individually referred to as a "Stage"):
  - (i) the first month after the Second Beta (the "First Month");
  - (ii) the second month after the Second Beta (the "Second Month");
  - (iii) the third month after the Second Beta (the "Third Month");
  - (iv) the fourth month after the Second Beta (the "Fourth Month");
  - (v) the fifth month after the Second Beta (the "Fifth Month");
  - (vi) the sixth month after the Second Beta (the "Sixth Month");
  - (vii) the seventh month after the Second Beta (the "Seventh Month");
  - (viii) the eighth month after the Second Beta (the "Eighth Month");
  - (ix) the ninth month after the Second Beta (the "Ninth Month"); and
  - (x) the period commencing on the day after Birth and ending SIX (6) weeks thereafter (the "Post-Pregnancy").
- (d) Notwithstanding anything contained herein to the contrary, the amount of the Special Expenses incurred by the Gestational Carrier and which are eligible for reimbursement by the Intended Parents shall be subject to the maximum amounts set out in the schedule attached hereto as Schedule "A", and subject to Section 25.1, if this Agreement is terminated, the current Stage shall end on the day of

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- (e) If the Special Expenses incurred by the Gestational Carrier in any Stage are less than the maximum set for that Stage, the difference between the maximum allowable and the amount claimed shall be added to the maximum available for the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Fourth Month is Three Thousand Dollars and the Gestational Carrier claims expenses of One Thousand Dollars, the unused balance of Two Thousand Dollars will be added to the maximum available to be claimed in the Fifth Month.
- (f) If the Special Expenses incurred by the Gestational Carrier in any Stage exceed the maximum set for that Stage, and if there is no unused balance to be carried forward pursuant to Section 26.2(e) or if there is insufficient unused balance to cover the excess, the amount of the excess can be claimed in the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Sixth Month is Three Thousand Dollars, and if there is no unused balance to be added to the Sixth Month maximum, and the Gestational Carrier claims expenses of Four Thousand Dollars, the excess of One Thousand Dollars may be claimed in the Seventh Month.
- (g) If, without fault of the Gestational Carrier, the Child is born: (i) prior to the beginning of the Eighth Month, the current stage shall end on the date of Birth and the post-Birth period shall commence on the day after the Child's Birth. The balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall not be available to be claimed and shall be deducted from the cap on the Special Expense Amount on the understanding that the Gestational Carrier's total out of pocket expenses related to the Pregnancy will be available only during the Pregnancy and the recovery period after Birth; or (ii) during the Eighth or Ninth Months of the Pregnancy, the current Stage shall end on the date of Birth and the balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall be added to the Post-Pregnancy Stage.

26.3 Subject to the cap set out in Section 26.1, the Gestational Carrier may be reimbursed for all Special Expenses incurred by her for the period commencing on the date of execution of this Agreement by the Gestational Carrier, and ending on the earlier of the date of termination of this Agreement, TWO (2) weeks after a Pregnancy ends in Early Miscarriage, FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth or SIX (6) weeks after the Birth of a Child, as the case may be. No receipts may be submitted to the Intended Parents after the end of the Term of the Agreement, and notwithstanding anything contained herein to the contrary, the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses which are submitted to the Intended Parents for reimbursement after the expiration of the Term of the Agreement, regardless of when such

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expenses were incurred.

26.4 In addition to the amounts set out in Section 26.1 (the "Additional Expense Amount"), the Intended Parents shall directly cover, or shall reimburse the Gestational Carrier for, all expenses related to the Pregnancy or in the event of the circumstances described below, or so that the Gestational Carrier can fulfill her obligations under this Agreement as follows:

- (a) legal fees and disbursements incurred for obtaining independent legal advice relating to this Agreement to the date of execution of the Agreement, up to a maximum of One Thousand Three Hundred Dollars (\$1,300.00) plus HST;
- (b) life insurance premiums as set out in Section 21;
- (c) travel medical insurance premiums as set out in Section 9.10(c);
- (d) all travel costs incurred by the Gestational Carrier in order to attend at the Clinic at the request of the Intended Parents before the Pregnancy and for each Transfer, including the cost of mileage, parking, meals and child care;
- (e) all expenses incurred and related to the Gestational Carrier's participation in any Transfer which she undergoes at the request of the Intended Parents to a maximum of Five Hundred Dollars (\$500.00) for general reimbursable expenses, including prenatal vitamins and wellness expenses;
- (f) if the Child is delivered by way of Caesarean delivery, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the Post-Pregnancy Stage;
- (g) if a Pregnancy results in a multiple Birth of two or more Children, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the period commencing on the first day of the Seventh Month and ending on the last day of the Post-Pregnancy Stage. (Such Additional Expense Amounts shall increase the maximum amount of Special Expenses which may be incurred by the Gestational Carrier in recognition of the additional physical toll which a multiple Pregnancy or Caesarean delivery will exert on the Gestational Carrier and the increased need for assistance which will increase the Gestational Carrier's out of pocket expenses. In the interests of clarity, if two or more Children are born by Caesarean delivery, an additional total of Seven Thousand Dollars (\$7,000.00) shall be available for maximum reimbursement under Section 26.4(f) and (g)); and
- (h) if, in the written opinion of the Transfer Physician or the Attending Physician and, at the option of the Intended Parents, in the written opinion of a second physician of their choice, complete bed rest is required in order to protect the health of the Gestational Carrier or the Fetus (the "Disability"), the Gestational Carrier will be entitled to reimbursements for the period commencing on the date of the

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physician's order and ending on the earlier of: (i) the date on which the physician lifts the order for bed rest; (ii) the date of Birth, Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; or (iii) the date of termination of this Agreement, for housekeeping and child care expenses for the Gestational Carrier's ONE (1) dependent child to a maximum of Four Hundred Dollars (\$400.00) per week under this Section 26.4(h).

26.5 Notwithstanding anything to the contrary, the Parties acknowledge that regulations to Section 12 of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, which govern the reimbursements to the Gestational Carrier under this Agreement, may come into full force and effect during the Term of the Agreement. If so, then all Parties agree to abide by these regulations even where they are not in accordance with this Agreement, so as not to contravene the law. The Gestational Carrier acknowledges and agrees that, as a result, she may not be entitled to reimbursement of all of the categories of expenses set out above.

**PART XXVII  
ADMINISTRATION AND PAYMENT OF SPECIAL EXPENSES**

27.1 The Gestational Carrier will obtain receipts for all expenditures and will deliver these receipts to the Intended Parents or to an agent on their behalf on a monthly basis and in any event within FIVE (5) days of a request therefor. If required by law, the Intended Parents will instruct the Clinic, or their agent, to reimburse the Gestational Carrier for all Special Expenses in accordance with the terms of this Agreement. The Parties acknowledge and agree that no Special Expenses will be reimbursed to the Gestational Carrier unless a receipt is provided to the Intended Parents or to their agent for the expenditure.

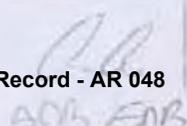
**PART XXVIII  
REMEDIES FOR BREACH**

28.1 If the Gestational Carrier materially fails to perform any of her obligations under this Agreement, or if any of the warranties made by the Gestational Carrier in this Agreement are not true then, without limiting the Intended Parents' remedies in equity or at law, and in addition to such remedies, the Gestational Carrier will, within THIRTY (30) days of request, refund to the Intended Parents all allowable expenses pursuant to the section called SPECIAL EXPENSES, above, which have been reimbursed to the Gestational Carrier by the Intended Parents, to the time of such failure.

28.2 If any Party materially violates any provision contained in this Agreement without legal excuse, such violation will constitute a material breach of this Agreement and, in addition to all other remedies available at law or equity, this Agreement may be terminated forthwith at the option of the aggrieved Party, without further liability on the part of the aggrieved non-breaching Party. If the Intended Parents terminate this Agreement pursuant to this provision, then not only will the Gestational Carrier refund all Special Expenses reimbursed to that date, the Intended Parents will be under no obligation to reimburse the Gestational Carrier for any expenses incurred after the date of the breach.

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28.3 If the Intended Parents materially breach this Agreement without legal excuse, but the Gestational Carrier has performed her obligations under this Agreement then she will be entitled to have all Special Expenses reimbursed in accordance with this Agreement and the Intended Parents will be responsible for the support of the Child and all of the Child's needs until the Child is no longer entitled to support pursuant to the laws in which the Child is habitually resident. Further, if the Gestational Carrier has made physical custody of the Child available to the Intended Parents, the Intended Parents shall indemnify the Gestational Carrier for any and all amounts she pays in connection with the support of the Child, including without limitation, any legal or other fees and disbursements incurred in connection with the defence thereof.

28.4 A breach will not be considered to be a material breach of contract if it is capable of being cured. If so, the Party committing the breach will be given written notice of the alleged breach and will be given a reasonable period of time to cure it, if possible.

28.5 A breach by either of the Intended Parents will constitute a breach by both of them.

28.6 Without limiting the generality of the foregoing, any breach of warranty contained in this Agreement will constitute a material breach of this Agreement.

28.7 Any breach of this Agreement by the Intended Parents on their part, or the Gestational Carrier on her part, will cause the other of them significant damages, including emotional suffering and trauma and shall provide a cause of action for damages to the wronged Party. Each of the Parties acknowledges that because of the nature of this Agreement, monetary damages may not suffice to remedy a breach of this Agreement and that an injunction and/or any other interim judicial relief may properly be obtained to enjoin and/or address a breach of this Agreement in addition to damages.

**PART XXIX  
ASSUMPTION OF RISK**

29.1 The Gestational Carrier assumes and accepts all risks related to the Transfer, Pregnancy and Birth, including but not limited to, the possibility of contracting AIDS, or other transmittable diseases, as a result of the exchange of body fluids and substances and all medical treatments, examinations and procedures involved, and any postpartum complications, and she hereby releases, indemnifies and saves harmless the Intended Parents (and each of them) from all liability, losses, costs and expenses arising, directly or indirectly, from the fulfilment of their obligations under this Agreement including, without limitation, any claim for illness, disfigurement, disability, death, funeral expenses, loss of the Gestational Carrier's future earnings or support for the Gestational Carrier's dependants, damages for loss of enjoyment of life and any other general damages, and for any legal expenses resulting from any dispute of this Agreement by the Gestational Carrier. The Gestational Carrier warrants and represents that she has independently consulted with a physician specializing in fertility procedures and has been made aware of all medical risks (including death), which may result from the procedures contemplated by this Agreement and further acknowledges that she understands these risks. The Gestational Carrier has undergone a thorough medical examination before undergoing any

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procedure contemplated by this Agreement.

**PART XXX  
CONFIDENTIALITY**

30.1

- (a) The Gestational Carrier warrants and represents that she will keep strictly confidential all information respecting the identity of the Intended Parents and the Child, the terms of this Agreement, and information respecting the activities contemplated or carried out under this Agreement (the "Confidential Information") forever. The Parties shall be entitled to discuss the terms of this Agreement with their legal advisors and with their counsellor, each of whom shall be advised of and requested to abide by the confidentiality provision in this Agreement. However, the Gestational Carrier shall be entitled to disclose that the Gestational Carrier intends to carry (or is carrying, if she is already Pregnant) a Child for a same-sex couple who require third party reproduction to have a Child, provided that no Confidential Information is disclosed. The Intended Parents also warrant and represent that they will keep strictly confidential all Confidential Information. However, the Gestational Carrier acknowledges and agrees that the Intended Parents shall disclose the existence and nature of this Agreement to the individual(s) whom they have named as Guardian(s) under their respective Wills.
- (b) Except as required by law and except as set out in this Agreement, none of the Parties will disclose the Confidential Information to any person or distribute it in any public forum whatsoever including, without limitation, newspapers, magazines, Internet, television or radio at any time. This covenant will survive the Birth of any Child conceived pursuant to this Agreement and the Parties acknowledge that a claim for damages, as well as injunctive relief may be sought if there is a breach of the warranties contained herein.

30.2 In order to maintain the confidentiality contemplated by this Agreement, if litigation arises out of this Agreement including, but not limited to, court applications for a custody proceeding, each of the Parties to this Agreement and their legal counsel, their heirs and representatives, agree to make all efforts to maintain such confidentiality as is intended by this Agreement including, but not limited to, requesting that the court records be sealed, requesting the court to invoke non-publication orders, requesting the court in its procedures and in the conduct of hearings to maintain confidential the identity of all of the Parties.

**PART XXXI  
ENTIRE AGREEMENT**

31.1 This Agreement sets forth the entire Agreement between the Parties pertaining to the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and communications, whether written or oral of the Parties.

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**PART XXXII  
SEVERABILITY**

32.1 If any provision of this Agreement is held by the Court to be invalid or unenforceable, the remainder of the provisions of this Agreement will continue in full force and effect and will not be affected, impaired or invalidated thereby.

32.2 If a provision of this Agreement is held by the Court to be invalid or unenforceable due to its scope or breadth then it will be deemed to be valid to the extent permitted by the Court.

**PART XXXIII  
SURVIVAL**

33.1 Notwithstanding any termination of this Agreement pursuant to the terms herein, or the expiration of the Term of the Agreement, the Parties agree that the provisions of the sections called REMEDIES FOR BREACH, ASSUMPTION OF RISK and CONFIDENTIALITY, above, will remain in full force and effect after the termination or expiration of the Term of the Agreement, as the case may be.

**PART XXXIV  
WAIVER**

34.1 No supplement or modification of this Agreement will be binding unless executed in writing by the Party to be bound. No provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent excusing the breach is executed in writing by the Party to be charged with such waiver or consent. No waiver by a Party of any provision of this Agreement will be construed as a waiver of a further breach of the same provision and no waiver will be construed as a waiver of any other provision of this Agreement.

**PART XXXV  
GOVERNING LAW**

35.1 This Agreement will be governed by, subject to and construed in accordance with the laws of the Province of Ontario.

35.2 The Parties to this Agreement acknowledge and agree that it is their express intention and desire to comply with the laws of the Province of Ontario and the Federal Laws of Canada. If during the Term of this Agreement any obligation of any Party becomes prohibited, the Parties agree that such obligation shall be severed from the Agreement (including, but not limited to, the financial obligations set out in this Agreement) and, so long as all Parties are agreeable, this Agreement shall remain in full force and effect.

35.3 The Parties to this Agreement acknowledge and agree that the procedure contemplated by this Agreement are novel and new and that the law applicable to such procedures and relationships is developing and unsettled. Although the possibility exists that this

Dvash-Bankes and Adams Snrogacy Agreement | Final Version

**TERRI N. DAY**   
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Agreement may be declared void as against public policy, in whole or in part, and may be held unenforceable, in whole or in part, by an Ontario Court, all Parties nonetheless agree that they are entering into this Agreement with the intention of being fully bound by its terms. It is the intention of all Parties to comply with the provisions of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, to the extent such Act has been proclaimed into force.

**PART XXXVI  
INDEPENDENT LEGAL ADVICE**

36.1 The Gestational Carrier acknowledges that she has received independent legal advice in respect of this Agreement and acknowledges that she fully understands the intent and the purpose of this Agreement and her obligations under it.

36.2 The Gestational Carrier acknowledges that no coercion, force, pressure or undue influence has been used by any Party against her in making this Agreement.

36.3 The Gestational Carrier believes this Agreement to be fair, just and reasonable, that it will not result in circumstances that are unconscionable to any Party, and that it is in the best interests of the Child.

36.4 Each Party to this Agreement fully understands the Agreement and the legal consequences of this Agreement, and is signing the same freely and voluntarily. No Party to this Agreement has any reason to believe that the other Parties did not freely and voluntarily execute this Agreement.

**PART XXXVII  
INTERPRETATION OF AGREEMENT**

37.1 No provision of this Agreement is to be interpreted for or against any Party to this Agreement merely because that Party, or that Party's solicitor drafted the provision.

**PART XXXVIII  
FACSIMILE TRANSMISSION AND  
EXECUTION IN COUNTERPART**

38.1 The Parties hereby acknowledge that this Agreement may be executed through facsimile transmission and agree to treat these documents in the same manner and with the same legal effect as if they were original documents.

38.2 This Agreement may be executed in any number of counterparts and each such counterpart shall, for all purposes, constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart, provided that each Party has signed at least one counterpart.

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**PART XXXIX  
NOTICE**

39.1 All communications which may be or are required to be given by any Party to the other herein will be in writing and delivered or sent by prepaid registered mail, by personal delivery, by facsimile transmission (where possible), or by electronic mail, to the Parties at the following respective addresses:

Gestational Carrier: [REDACTED] Avenue, Apartment [REDACTED]  
Mississauga, Ontario L5A 2K7  
  
Cell: 647 [REDACTED]  
Email: [REDACTED]@gmail.com

Intended Parents: [REDACTED] Avenue, Apartment [REDACTED]  
Toronto, Ontario M6B 4C6  
  
Elad Cell: 647 [REDACTED]  
Andrew Cell: 647 [REDACTED]  
Email: [REDACTED]@gmail.com  
Email: [REDACTED]@gmail.com

39.2 If any communication is sent by prepaid registered mail, it will, subject to the following sentence, be conclusively deemed to have been received on the TENTH (10th) business day following the mailing thereof and if delivered, sent by facsimile transmission, or sent by electronic mail, it will conclusively be deemed to have been received at the time of delivery or transmission.

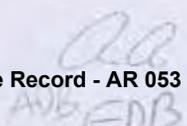
39.3 Notwithstanding the foregoing provisions with respect to mailing, if it may be reasonably anticipated that, due to any strike, lock-out or similar event involving an interruption in postal service, communication will not be received by the addressee by no later than the TENTH (10th) business day following the mailing thereof, then the mailing of any such communication as aforesaid will not have been an effective means of sending the notice, but rather any communication must then be sent by an alternative method which it may reasonably be anticipated will cause the payment or communication to be received reasonably expeditiously by the addressee. Any Party may from time to time change its address or facsimile number hereinbefore set forth by notice to the other of them in accordance with this Section.

**PART XL  
ARBITRATION**

40.1 In the interests of the confidential nature of this Agreement and except as otherwise set out in this provision, if any dispute arises between the Parties in connection with any amounts referred to in Sections 26 or 27 of this Agreement and all matters related thereto, including, without limitation, enforcement of such provisions, the Parties agree that it shall be

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resolved by binding arbitration in accordance with the *Arbitrations Act* (Ontario).

**PART XLI  
ENUREMENT**

41.1 The rights and obligations under this Agreement shall enure to and bind each of the Parties and their respective heirs, executors, administrators and assigns.

[The remainder of this page is intentionally blank.]

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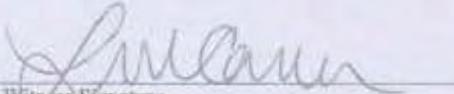
**TERRI N. DAY**  
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Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 054

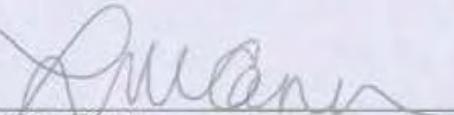
PP  
AOS EDR

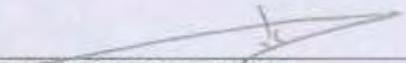
TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Agreement under seal before a witness.

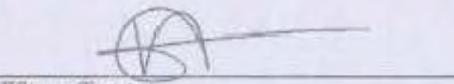
SIGNED, SEALED AND DELIVERED in the presence of

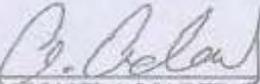
  
Witness Signature

  
ANDREW DVASH-BANKS  
Date of Execution: 12/21/15

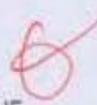
  
Witness Signature

  
ELAD DVASH-BANKS  
Date of Execution: Dec. 21, 2015

  
Witness Signature

  
AMANDA MARIE ANNE ADAMS  
Date of Execution: Dec 21 2015

Dvash-Banks and Adams Surrogacy Agreement | Final Version

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UNITED STATES OF AMERICA

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 055

**SCHEDULE "A"**

Attached to and forming part of  
an Agreement dated the 21<sup>st</sup> day of December, 2015 between  
Andrew Dvash-Banks, Elad Dvash-Banks and Amanda Marie Anne Adams

<u>Maximum Reimbursements – Special Expenses</u>	
Stage 1: First Month Following Second Beta Test	\$1,000.00
Stage 2: Second Month Following Second Beta Test	\$1,000.00
Stage 3: Third Month Following Second Beta Test	\$1,000.00
Stage 4: Fourth Month Following Second Beta Test	\$2,000.00
Stage 5: Fifth Month Following Second Beta Test	\$2,000.00
Stage 6: Sixth Month Following Second Beta Test	\$2,500.00
Stage 7: Seventh Month Following Second Beta Test	\$2,500.00
Stage 8: Eighth Month Following Second Beta Test	\$3,000.00
Stage 9: Ninth Month Following Second Beta Test	\$3,000.00
Stage 10: Post-Pregnancy	\$2,000.00
<b>TOTAL MAXIMUM REIMBURSEMENT:</b>	<b><u>\$20,000.00</u></b>

TERRI N. DAY  
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UNITED STATES OF AMERICA

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 056

Form **8879**

**IRS e-file Signature Authorization**

OMB No. 1545-0074

**2015**

Department of the Treasury  
Internal Revenue Service

Do not send to the IRS. This is not a tax return.  
Keep this form for your records.  
Information about Form 8879 and its instructions is at [www.irs.gov/form8879](http://www.irs.gov/form8879).

Submission Identification Number (SID) ▶

Taxpayer's name <b>ANDREW BANKS</b>	Social security number [REDACTED]-4354
Spouse's name <b>ELAD DVASH-BANKS</b>	Spouse's social security number [REDACTED]-6984

**Part I Tax Return Information – Tax Year Ending December 31, 2015 (Whole Dollars Only)**

1 Adjusted gross income (Form 1040, line 38; Form 1040A, line 22; Form 1040EZ, line 4)	1	5.
2 Total tax (Form 1040, line 63; Form 1040A, line 39; Form 1040EZ, line 12)	2	
3 Federal income tax withheld (Form 1040, line 64; Form 1040A, line 40; Form 1040EZ, line 7)	3	
4 Refund (Form 1040, line 76a; Form 1040A, line 48a; Form 1040EZ, line 13a; Form 1040-SS, Part I, line 13a)	4	
5 Amount you owe (Form 1040, line 78; Form 1040A, line 50; Form 1040EZ, line 14)	5	

**Part II Taxpayer Declaration and Signature Authorization (Be sure you get and keep a copy of your return)**

Under penalties of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, 2015, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts from my electronic income tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the IRS and to receive from the IRS (a) an acknowledgement of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund, if applicable. I authorize the U.S. Treasury and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my federal taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account. This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization. To revoke (cancel) a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537. Payment cancellation requests must be received no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I further acknowledge that the personal identification number (PIN) below is my signature for my electronic income tax return and, if applicable, my Electronic Funds Withdrawal Consent.

**Taxpayer's PIN: check one box only**

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN [REDACTED] as my signature on my tax year 2015 electronically filed income tax return.  
ERO firm name Enter five digits, but do not enter all zeros

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box **only** if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature ▶ \_\_\_\_\_ Date ▶ 9/23/2016

**Spouse's PIN: check one box only**

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN [REDACTED] as my signature on my tax year 2015 electronically filed income tax return.  
ERO firm name Enter five digits, but do not enter all zeros

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box **only** if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Spouse's signature ▶ \_\_\_\_\_ Date ▶ 9/23/2016

**Practitioner PIN Method Returns Only – continue below**

**Part III Certification and Authentication – Practitioner PIN Method Only**

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN. [REDACTED]  
Do not enter all zeros.

I certify that the above numeric entry is my PIN, which is my signature for the tax year 2015 electronically filed income tax return for the taxpayer(s) indicated above. I confirm that I am submitting this return in accordance with the requirements of the Practitioner PIN method and Publication 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns.

ERO's signature ▶ Deborah Schwartz, E.A. Date ▶ 9/23/2016

ERO Must Retain This Form – See Instructions  
Do Not Submit This Form to the IRS Unless Requested To Do So

**TERRI N. DAY**

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

VICE CONSUL OF THE UNITED STATES OF AMERICA Form 8879 (2015)

FD-8879 (01-11-15)

Citibank Client Services 000  
 PO Box 6201  
 Sioux Falls, SD 57117-6201

410R104F000

000  
 CITIBANK, N. A.  
 Account

Statement Period  
 Nov 3 - Dec 4, 2016

ANDREW MASON BANKS  
 STREET APT  
 LOS ANGELES CA 90035-2947

Page 1 of 4

CITIBANK ACCOUNT AS OF DECEMBER 4, 2016				
<b>Relationship Summary:</b>				
Checking				\$5,412.12
Savings				\$0.00
Investments (not FDIC Insured)			-----	
Loans			-----	
Credit Cards				\$0.00
<b>Checking</b>				<b>Balance</b>
Regular Checking				\$5,412.12
<b>Savings</b>				<b>Balance</b>
Preferred Money Market				\$0.00
<b>Total Checking and Savings at Citibank</b>				<b>\$5,412.12</b>
<b>Credit Cards</b>	<b>As of date</b>	<b>Credit Line</b>	<b>Amount Available</b>	<b>Amount You Owe</b>
Citi®/AAAdvantage® Account XXXXXXXXXXXX8393	11/10/16	\$4,500.00	\$4,500.00	\$0.00

**SUGGESTIONS AND RECOMMENDATIONS**

Effective February 1, 2017, Citibank will no longer issue counter checks. We will continue to offer pre-printed checks and bill payment services.

**CITIBANK ACCOUNT RATES AND CHARGES**

When determining your rates and charges for this statement period, Citibank considered your average balances during the month of November in all of your qualifying accounts that you asked us to combine. If you have a Citibank secured credit card, then Citibank will also include the balance in your Collateral Holding Account or your Certificate of Deposit that secures your Citibank credit card. These balances may be in accounts that are reported on other statements.

Rates and Charges	Your Combined Balance Range
Rates	\$5,000-\$9,999
Monthly Service Fee	Standard
	\$25.00(Waived)

Ask about accounts eligible for preferred rates.

**TERRI N. DAY**  
 VICE CONSUL OF THE  
 UNITED STATES OF AMERICA

University of California, Santa Barbara

1/24/2017 12:47:14 PM

### Unofficial Transcript

Andrew Banks  
Perm Number [REDACTED]

College/Objective/Major	Degree Status	Conferral Date
L&S/ BA/ GLOBL	Awarded	6/13/2003
L&S/ BA/ ITAL S	Awarded	6/13/2003

**Fall 1999**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
EEMB 25 -HUMAN ANATOMY	P	13805	4.0	4.0	0.0	0.00	
ITAL 1 -ELEMENTARY ITALIAN	A-	23069	4.0	4.0	4.0	14.80	
POL S 1 -POL IDEAS MOD WORLD	C+	51821	4.0	4.0	4.0	9.20	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.00</b>		12.0	12.0	8.0	24.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.00</b>		12.0	12.0	8.0	24.00	

**Winter 2000**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 8B -FRENCH CONVERSATION	A	17889	2.0	2.0	2.0	8.00	
GLOBL 1 -GLOBL HIS/CUL/IDEOL	A-	48306	4.0	4.0	4.0	14.80	
HIST 4B -WESTERN CIVILIZATIO	B-	21253	4.0	4.0	4.0	10.80	
MS 8 -20TH CENTURY WAR	A	31005	2.0	2.0	2.0	8.00	
POL S 7 -INTRO TO IR	B+	38695	4.0	4.0	4.0	13.20	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.42</b>		16.0	16.0	16.0	54.80	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.28</b>		28.0	28.0	24.0	78.80	

**Spring 2000**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	W	52027	4.0	0.0	0.0	0.00	
HIST 4C -WESTERN CIVILIZATIO	B-	21154	4.0	4.0	4.0	10.80	
ITAL 2 -ELEMENTARY ITALIAN	A-	23218	4.0	4.0	4.0	14.80	
POL S 6 -INTRO COMP POLITICS	B-	37697	4.0	4.0	4.0	10.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.03</b>		12.0	12.0	12.0	36.40	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.20</b>		40.0	40.0	36.0	115.20	

**Summer 2000**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ENV S 2 -INTRO ENV SCIENCE	P	09670	4.0	4.0	0.0	0.00	
HIST 132 -WAR AND SOCIETY	B-	04465	4.0	4.0	4.0	10.80	
ITAL 3 -ELEMENTARY ITALIAN	A+	04671	4.0	4.0	4.0	16.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.35</b>		12.0	12.0	8.0	26.80	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.22</b>		52.0	52.0	44.0	142.00	

**Fall 2000**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	B+	48793	4.0	4.0	4.0	13.20	
ITAL 8A -ITALIAN CONVERSATN	P	23291	2.0	2.0	0.0	0.00	
POL S 121 -INTERNATL POLITICS	A-	38596	4.0	4.0	4.0	14.80	
POL S 186A -INTRO INTL POL ECON	A	54163	4.0	4.0	4.0	16.00	

<b>Quarter Total (Undergrad)</b>	<b>GPA 3.66</b>	14.0	14.0	12.0	44.00
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.32</b>	66.0	65.0	56.0	186.00

**Spring 2001**

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL PV 23 -INTERMED ITALIAN	B+		16.0	16.0	16.0	52.80	
ITAL PV 30 -ITALIAN CULTURE	B+		6.0	6.0	6.0	19.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.30</b>		22.0	22.0	22.0	72.60	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.31</b>		88.0	88.0	78.0	258.60	

**Fall 2001**

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 6 -INTERMEDIATE FRENCH	P	17764	4.0	4.0	0.0	0.00	
GLOBL 124 -GLOBAL CONFLICT	A-	20453	4.0	4.0	4.0	14.80	
GLOBL 197 -SPECIAL TOPICS	C+	54783	4.0	4.0	4.0	9.20	
ITAL 101 -ADV ITAL READ/COMP	B	22954	4.0	4.0	4.0	12.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.00</b>		16.0	16.0	12.0	36.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.27</b>		104.0	104.0	90.0	294.60	

**Winter 2002**

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBL 2 -GLOBL SOC/ECON/POL	A-	20446	4.0	4.0	4.0	14.80	
ITAL 119 -ART OF TRANSLATION	A-	45328	4.0	4.0	4.0	14.80	
ITAL 114X -DIVINE COMEDY	B-	23119	4.0	4.0	4.0	10.80	
ITAL 8B -ITALIAN CONVERSATN	A-	23077	2.0	2.0	2.0	7.40	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.41</b>		14.0	14.0	14.0	47.80	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.29</b>		118.0	118.0	104.0	342.40	

**Spring 2002**

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ART HIS 185 -HIST OF MODERNISM	B+		4.0	4.0	4.0	13.20	
INT 192DC-WASH CTR INTERNSHIP	P	22038	8.0	8.0	0.0	0.00	
INT 199DC-WASH CTR INDEP RES	A-	22046	4.0	4.0	4.0	14.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.50</b>		16.0	16.0	8.0	28.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.30</b>		134.0	134.0	112.0	370.40	

**Summer 2002**

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GEOL 4 -INTRO OCEANOGRAPHY	P	13771	4.0	4.0	0.0	0.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 0.00</b>		4.0	4.0	0.0	0.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.30</b>		138.0	138.0	112.0	370.40	

**Fall 2002**

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBL 194 -GROUP STUDIES	B	54619	4.0	4.0	4.0	12.00	
ITAL 144BB-GENDER & SEXUALITY	B+	53942	4.0	4.0	4.0	13.20	
ITAL 161AX-EUROPEAN UNION	B+	55384	4.0	4.0	4.0	13.20	
MS 12 -WMN/MIN IN THE ARMY	A	46201	3.0	3.0	3.0	12.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.36</b>		15.0	15.0	15.0	50.40	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.31</b>		153.0	153.0	127.0	420.80	

**Winter 2003**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GPS 196 -GPS SEMINAR	B	22103	4.0	4.0	4.0	12.00	
ITAL 109 -ADV. CONVERSATION	A	58438	4.0	4.0	4.0	16.00	
ITAL 142X -WOMEN IN ITALY	B+	52944	4.0	4.0	4.0	13.20	
WRIT 109SS-WRIT SOC SCIENCE	A	47076	4.0	4.0	4.0	16.00	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.57</b>		16.0	16.0	16.0	57.20	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.34</b>		169.0	169.0	143.0	478.00	

**Spring 2003**

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL 112 -ITAL NARRATIVE FICT	B+	23523	4.0	4.0	4.0	13.20	
ITAL 121 -ITALIAN DRAMA	A+	23531	4.0	4.0	4.0	16.00	
ITAL 199 -INDEPENDENT STUDIES	A	66480	4.0	4.0	4.0	16.00	
SPAN 2 -ELEMENTARY SPANISH	A-	42705	4.0	4.0	4.0	14.80	
<b>Quarter Total (Undergrad)</b>	<b>GPA 3.75</b>		16.0	16.0	16.0	60.00	
<b>Cumulative Total (Undergrad)</b>	<b>GPA 3.38</b>		185.0	185.0	159.0	538.00	
<b>Dean's Honors (L&amp;S)</b>							

Transfer Work Undergraduate Total: 28.0  
 UC & Transfer Work Undergraduate Total: 213.0



30 January 2017

Petitioner: BANKS, ANDREW MASON

Beneficiary: D [REDACTED] B [REDACTED] E [REDACTED] J [REDACTED]

Our reference: [REDACTED]

Collection Facility  
 VIAGUARD ACCU-METRICS  
 1232 Kingston Road  
 Toronto, ON  
 M1N 1P3  
 4166914167

A paternity test was performed to prove a parent / child relationship between alleged father: BANKS, ANDREW MASON and child: D [REDACTED] B [REDACTED] E [REDACTED] J [REDACTED]

This is to confirm that the probability of paternity percentage of 0% represents a negative result.

The client contacted us directly. No third party vendor was used. This account is paid in full.

Thank you, Harvey Tenenbaum, Director of Operations

**VIAGUARD** ACCU-METRICS *alcalde*  
 Immigration and Citizenship Relationship Testing  
[immigration@sponsorDNA.com](mailto:immigration@sponsorDNA.com)  
 Toll Free: 1-877-842-4827  
 Fax: 1-855-897-2528



1232 Kingston Road Tel: 416-691-4167 Fax: 416-691-8112  
 Toronto, Ontario E-mail: immigration@sponsordna.com  
 Canada, M1N 1P3 Web: www.sponsordna.com

### DNA Test Report

This test was conducted in accordance with Standards for DNA analysis set forth by the American Association of Blood Banks.

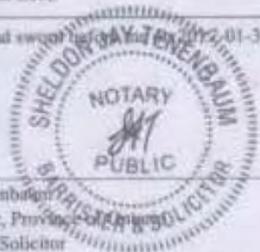
Case ID: [REDACTED]	<b>Alleged Father</b> ANDREW MASON BANKS	<b>Child</b> E [REDACTED] D [REDACTED]
Track ID: [REDACTED]	[REDACTED] 1	B [REDACTED]
Report Date: 2017-01-30	2017-01-24	[REDACTED] 2
Collection Date:		2017-01-24

Locus	Index	Allele Sizes	Allele Sizes
CSF1PO	[REDACTED]	[REDACTED]	[REDACTED]
TPOX	[REDACTED]	[REDACTED]	[REDACTED]
TH01	[REDACTED]	[REDACTED]	[REDACTED]
vWA	[REDACTED]	[REDACTED]	[REDACTED]
D16S539	[REDACTED]	[REDACTED]	[REDACTED]
D7S820	[REDACTED]	[REDACTED]	[REDACTED]
D13S317	[REDACTED]	[REDACTED]	[REDACTED]
D5S818	[REDACTED]	[REDACTED]	[REDACTED]
FGA	[REDACTED]	[REDACTED]	[REDACTED]
D8S1179	[REDACTED]	[REDACTED]	[REDACTED]
D18S51	[REDACTED]	[REDACTED]	[REDACTED]
D21S11	[REDACTED]	[REDACTED]	[REDACTED]
D3S1358	[REDACTED]	[REDACTED]	[REDACTED]
PENTA E	[REDACTED]	[REDACTED]	[REDACTED]
PENTA D	[REDACTED]	[REDACTED]	[REDACTED]
AMEL	[REDACTED]	[REDACTED]	[REDACTED]

**Interpretation:**  
 Combined Index: 0 **Probability of Paternity: 0%**

The Alleged Father is excluded as the biological father of the tested Child. Based on the testing results obtained from the analysis of the DNA loci listed, and the Probability of Paternity is 0%. This Probability of Paternity was calculated by comparing to an untested, random individual of the Caucasian population (assumes prior probability equals 0.50).

Subscribed and sworn to before me on 2017-01-30



Sheldon Tenenbaum  
 Notary Public, Private  
 Barrister and Solicitor

I, the undersigned Laboratory Director, verify that the interpretation of the results is correct as reported on 2017-01-30

*Harvey Tenenbaum*  
 Harvey Tenenbaum, Ph.D. Kyle Tsui, Ph.D.

This DNA test was performed utilizing the PowerPlex 16 PCR amplification and the AB13730 DNA Analyser



ACCU-METRICS

DNA Analysis / fingerprinting / forensics



New York, United States of America / Ontario, Canada Toll Free: 1-877-842-4827 Fax: 1-855-897-2528  
E-mail: sponsordna@immigration.com Web: www.austbimmigrationsdna.com

USE A SEPARATE FORM FOR EACH DONOR SAMPLE

**DONOR IDENTIFICATION** FILE# \_\_\_\_\_  
 FULL NAME E [REDACTED] J [REDACTED] O [REDACTED] B [REDACTED]  
 TELEPHONE \_\_\_\_\_ EMAIL \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
**IDENTIFICATION PRESENTED**  
 DATE OF BIRTH 2016/09/16 GENDER (CIRCLE) MALE FEMALE  
 DONOR (CIRCLE) ALLEGED FATHER MOTHER CHILD AUNT/UNCLE OTHER  
 ETHNICITY (CIRCLE) ASIAN CAUCASIAN BLACK OTHER  
 I (CIRCLE) HAVE / HAVE NOT UNDERGONE A BLOOD TRANSFUSION OR STEM/BONE MARROW CELL TRANSPLANT IN THE LAST 3 MONTHS. IF SO EXPLAIN \_\_\_\_\_  
**CONSENT AND CERTIFICATION**  
 I AGREE TO HAVING MY BIOLOGICAL SAMPLES UNDERGO DNA EXTRACTION AND ANALYSIS. I HEREBY CONSENT TO THE USE OF THE SPECIMEN PROVIDED FOR DNA ANALYSIS AND CERTIFY THAT IT REPRESENTS A TRUE AND ACCURATE SAMPLE OF A BODY FLUID/SECRETION FROM THE ABOVE NAMED DONOR.  
 (PARENTS OR LEGAL GUARDIANS MUST SIGN ON BEHALF OF CHILDREN UNDER THE AGE OF 18 YEARS)  
 DONOR/PARENT/GUARDIAN NAME Andrew Masin Wash-Bant  
 SIGNATURE \_\_\_\_\_ DATE 2/1/17

\_\_\_\_\_  
 \_\_\_\_\_

**GUARANTOR IDENTIFICATION AND CERTIFICATION**  
 COLLECTION SITE Viguard Accu-metrics  
 ADDRESS 1232 Kingston Road  
 TELEPHONE 1-877-842-4827 FAX 1-855-897-2528 EMAIL \_\_\_\_\_  
 I HAVE VERIFIED THE IDENTIFICATION OF THE DONOR REPRESENTED ON THIS FORM AND CERTIFY THAT THE SPECIMEN WAS TAKEN FROM THIS DONOR, AND WAS COLLECTED, LABELED, AND SEALED IN MY AND DONOR'S PRESENCE. THE SAMPLES NEVER LEFT MY POSSESSION OR CONTROL FROM THE TIME OF COLLECTION TO THE TIME OF DIRECTLY MAILING THEM TO VIAGUARD/ACCU-METRICS, OR SUBMITTING THEM TO A COURIER SERVICE FOR DELIVERY TO VIAGUARD/ACCU-METRICS.  
 COLLECTOR'S NAME DR. H. Tenenbaum POSITION OR TITLE AUTHORIZED COLLECTOR  
 SIGNATURE [Signature] DATE 2/1/17

**TERMS AND CONDITIONS**  
 Viguard Inc./Accu-metrics maintains the privacy of our customers and never discloses personal information without prior customer knowledge and consent.  
 1. Provisions of service:  
 1.1 Viguard Inc./Accu-metrics reserves the right to perform or have performed the testing and analysis using methods and processes Accu-metrics deems appropriate.  
 1.2 In the event that the samples provided are inadequate (by either quality or quantity) for the purpose of conducting an analysis, Viguard Inc./Accu-metrics reserves the right to request further samples.  
 1.3 Viguard Inc./Accu-metrics will take all reasonable steps to ensure that reports are provided within the advertised time frames but cannot accept any responsibility for delay however caused.  
 2. Viguard/Accu-metrics Disclaimers and Liabilities  
 2.1 In no event, shall Viguard/Accu-metrics, its employees, mandates and/or associates be liable to the client for any indirect, incidental special, punitive, or consequential damages exceeding \$100.00 for each test performed. Any such claim will not be accepted unless it is made in writing within six months of the test date.  
 3. The Client's Warranty and Indemnity  
 3.1 The client will indemnify Viguard/Accu-metrics from any liability in connection with this test and its results.

DATE	CHAIN OF CUSTODY	SEALED	POSITION
2017/01/24	[Signature]	✓	Collector
		✓	Courier
02/01/17	[Signature]	✓	Viguard / Accu-metrics





USE A SEPARATE FORM FOR EACH DONOR SAMPLE

**DONOR IDENTIFICATION** FILE# \_\_\_\_\_

FULL NAME Andrew Mason Ovesh-Banks

TELEPHONE 647- [REDACTED] EMAIL [REDACTED]@gmail.com

ADDRESS [REDACTED] Ave # [REDACTED]

IDENTIFICATION PRESENTED \_\_\_\_\_

DATE OF BIRTH 1991 GENDER (CIRCLE)  MALE  FEMALE

DONOR (CIRCLE)  ALLEGED FATHER  MOTHER  CHILD  AUNT/UNCLE  OTHER \_\_\_\_\_

ETHNICITY (CIRCLE)  ASIAN  CAUCASIAN  BLACK  OTHER \_\_\_\_\_

I (CIRCLE)  HAVE  HAVE NOT UNDERGONE A BLOOD TRANSFUSION OR STEM/BONE MARROW CELL TRANSPLANT IN THE LAST 3 MONTHS IF SO EXPLAIN \_\_\_\_\_

**CONSENT AND CERTIFICATION**

I AGREE TO HAVING MY BIOLOGICAL SAMPLES UNDERGO DNA EXTRACTION AND ANALYSIS. I HEREBY CONSENT TO THE USE OF THE SPECIMEN PROVIDED FOR DNA ANALYSIS AND CERTIFY THAT IT REPRESENTS A TRUE AND ACCURATE SAMPLE OF A BODY FLUID/SECRETION FROM THE ABOVE NAMED DONOR.

(PARENTS OR LEGAL GUARDIANS MUST SIGN ON BEHALF OF CHILDREN UNDER THE AGE OF 18 YEARS)

DONOR/PARENT/GUARDIAN NAME Andrew Mason Ovesh-Banks

SIGNATURE [Signature] DATE 24/1/17

**GUARANTOR IDENTIFICATION AND CERTIFICATION**

COLLECTION SITE Viaguard Accu-metrics

ADDRESS 1232 Kipling Road

TELEPHONE 905-947-0327 FAX 905-947-2528 EMAIL \_\_\_\_\_

I HAVE VERIFIED THE IDENTIFICATION OF THE DONOR REPRESENTED ON THIS FORM AND CERTIFY THAT THE SPECIMEN WAS TAKEN FROM THIS DONOR, AND WAS COLLECTED, LABELED, AND SEALED IN MY AND DONOR'S PRESENCE. THE SAMPLES NEVER LEFT MY POSSESSION OR CONTROL FROM THE TIME OF COLLECTION TO THE TIME OF DIRECTLY MAILING THEM TO VIAGUARD/ACCU-METRICS, OR SUBMITTING THEM TO A COURIER SERVICE FOR DELIVERY TO VIAGUARD, ACCU-METRICS.

COLLECTOR'S NAME DR. H. Tenenbaum POSITION OR TITLE AUTHORIZED COLLECTOR

SIGNATURE [Signature] DATE 24/1/2017

**TERMS AND CONDITIONS**

Viaguard Inc./Accu-metrics maintains the privacy of our customers and never discloses personal information without prior customer knowledge and consent.

1. Provisions of services

- 1.1 Viaguard Inc./Accu-metrics reserves the right to perform or have performed the testing and analysis using methods and processes Accu-metrics deems appropriate.
- 1.2 In the event that the samples provided are inadequate (by either/or quality or quantity) for the purpose of conducting an analysis, Viaguard Inc./Accu-metrics reserves the right to request further samples.
- 1.3 Viaguard Inc./Accu-metrics will take all reasonable steps to ensure that reports are provided within the advertised time frames but cannot accept any responsibility for delay however caused.

2. Viaguard/Accu-metrics Disclaimers and Liabilities

- 2.1 In no event, shall Viaguard/Accu-metrics, its employees, mandates and/or associates be liable to the client for any indirect, incidental special, punitive, or consequential damages exceeding \$100.00 for each test performed. Any such claim will not be accepted unless it is made in writing within six months of the test date.

3. The Client's Warranty and Indemnity

- 3.1 The client will indemnify Viaguard/Accu-metrics from any liability in connection with the test and its results.

DATE	CHAIN OF CUSTODY	SEALED	POSITION
2017/01/24	[Signature]	✓	Collector
		✓	Courier
2017/01/24	1356	✓	Viaguard / Accu-metrics



NOT ISSUED

2-2  
PPT +  
CLBA

### APPLICATION FOR A U.S. PASSPORT

Please Print Legibly Using Black Ink Only

OMB CONTROL NO. 1405-0004  
OMB EXPIRATION DATE: 09-31-2019  
ESTIMATED BURDEN: 85 MIN

Attention: Read WARNING on page 1 of instructions

Please select the document(s) for which you are applying:

- U.S. Passport Book  U.S. Passport Card  Both
- Regular Book (Standard)  Large Book (Non-Standard)

Note: The large book option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.



1. Name Last

D [REDACTED]

First

E [REDACTED]

Middle

J [REDACTED]

D  O  Dep. DOTS

End. #

Exp.

2. Date of Birth (mm/dd/yyyy)

09 16 2016

3. Sex

M F  
X

4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.)

MISSISSAUGA, ON, CANADA

5. Social Security Number

6. Email (Info alerts offered at [travel.state.gov](http://travel.state.gov))

[REDACTED]@gmail.com

7. Primary Contact Phone Number

647 706 9556

8. Mailing Address: Line 1: Street/RFD#, P.O. Box, or URB.

[REDACTED] AVG.

Address Line 2: Clearly label Apartment, Company, Suite, Unit, Building, Floor, In Care Of or Attention if applicable. (e.g., In Care Of - Jane Doe, Apt # 100)

Apt. [REDACTED]

City

TORONTO

State

ON M6B 4C6

Zip Code

Country, if outside the United States

CANADA

9. List all other names you have used. (Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)

A.

B.

### STOP! CONTINUE TO PAGE 2

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent on Second Signature Line (if identifying minor)

- Driver's License  State issued ID Card  Passport  Military  Other

Name Elad Avash

Issue Date (mm/dd/yyyy)

04 21 2010

Exp. Date (mm/dd/yyyy)

04 20 2020

State of Issuance

ID No. [REDACTED]

Country of Issuance

Israel

Identifying Documents - Applicant or Mother/Father/Parent on Third Signature Line (if identifying minor)

- Driver's License  State issued ID Card  Passport  Military  Other

Name Andrew Mason Banks

Issue Date (mm/dd/yyyy)

03 23 2010

Exp. Date (mm/dd/yyyy)

03 22 2020

State of Issuance

ID No. [REDACTED]

Country of Issuance

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Name of courier company (if applicable)

Facility ID Number

Applicant's Legal Signature - age 16 and older

Facility Name/Location

TORONTO

Agent ID Number

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Signature of person authorized to accept applications

Date

JAN 24 2017

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

For Issuing Office Only → Bk  Card  EF  Postage  Execution  Other

\* DS 11 C 09 2013 1 \*

NOT ISSUED

Name of Applicant (Last, First, & Middle) **D [REDACTED] - B [REDACTED], E [REDACTED] J [REDACTED]** Date of Birth (mm/dd/yyyy) **09/16/2016**

10. Parental Information  
 Mother/Father/Parent - First & Middle Name **ANDREW MASON** Last Name (at Parent's Birth) **BANKS**  
 Date of Birth (mm/dd/yyyy) **[REDACTED] 1981** Place of Birth **Santa Monica, California, USA** Sex  Male  Female U.S. Citizen?  Yes  No  
 Mother/Father/Parent - First & Middle Name **ELAD AUSTIN** Last Name (at Parent's Birth) **DVASH**  
 Date of Birth (mm/dd/yyyy) **[REDACTED] 1985** Place of Birth **Ramat Gan, ISRAEL** Sex  Male  Female U.S. Citizen?  Yes  No

11. Have you ever been married? Yes  No  If yes, complete the remaining items in #11  
 Full Name of Current Spouse or Most Recent Spouse \_\_\_\_\_ Date of Birth (mm/dd/yyyy) \_\_\_\_\_ Place of Birth \_\_\_\_\_

U.S. Citizen?  Yes  No Date of Marriage (mm/dd/yyyy) \_\_\_\_\_ Have you ever been widowed or divorced? Yes  No  Widow/Divorce Date (mm/dd/yyyy) \_\_\_\_\_

12. Additional Contact Phone Number **647 289 4389** Home  Cell  Work  13. Occupation (if age 16 or older) \_\_\_\_\_ 14. Employer or School (if applicable) \_\_\_\_\_

15. Height **23"** 16. Hair Color **Black** 17. Eye Color **Brown** 18. Travel Plans  
 Departure Date (mm/dd/yyyy) **02/08/2017** Return Date (mm/dd/yyyy) \_\_\_\_\_ Countries to be Visited **USA, ISRAEL**

19. Permanent Address - If P.O. Box is listed under Mailing Address or if residence is different from Mailing Address.  
 Street/RFD # or URB (No P.O. Box) \_\_\_\_\_ Apartment/Unit \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

20. Emergency Contact - Provide the information of a person not traveling with you to be contacted in the event of an emergency.  
 Name **ANN BANKS** Address: Street/RFD # or P.O. Box **[REDACTED]** Apartment/Unit \_\_\_\_\_  
 City **Port Saint Lucie** State **FL** Zip Code **34986** Phone Number **805-[REDACTED]** Relationship **Grandmother**

21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? Yes  No  If yes, complete the remaining items in #21.  
 Name as printed on your most recent passport book \_\_\_\_\_ Most recent passport book number \_\_\_\_\_ Most recent passport book issue date (mm/dd/yyyy) \_\_\_\_\_  
 Status of your most recent passport book:  Submitting with application  Stolen  Lost  In my possession (if expired)  
 Name as printed on your most recent passport card \_\_\_\_\_ Most recent passport card number \_\_\_\_\_ Most recent passport card issue date (mm/dd/yyyy) \_\_\_\_\_  
 Status of your most recent passport card:  Submitting with application  Stolen  Lost  In my possession (if expired)

**PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY**

Name as it appears on citizenship evidence **E [REDACTED] J [REDACTED] D [REDACTED] - E [REDACTED]**

Birth Certificate SR CR City Filed Issued \_\_\_\_\_  
 Nat. / Citz. Cert. USCIS USDC Date/Place Acquired: \_\_\_\_\_  
 Report of Birth Filed/Place \_\_\_\_\_  
 Passport C/R S/R Per PIERS #/DOI: \_\_\_\_\_  
 Other \_\_\_\_\_  
 Attached \_\_\_\_\_

P/C of Citz  P/C of ID  DS-71  DS-3053  DS-64  DS-6520  DS-6525  PAW  NPIC  IRL  Citz W/S

**CLASS CLEARED**

**DENIED**

TORONTO MAR 02 2017

\* DS 11 C 09 2013 2 \*

00074590-0406  
NOT ISSUED  
00000001-0223

Unauthorized  
Reproduction  
or Disclosure  
Prohibited

To whom it may concern:

I E [REDACTED] J [REDACTED] C [REDACTED] B [REDACTED] (print full name) declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration.

Executed on: 1/24/17  
(DATE)

Signature:   
(Sign using full name as indicated on the passport application)

Last Name: [Redacted] Sex of Child: [Redacted]  
 Date of Birth (yyyy/mm/dd): 2016/05/16 Name of hospital (if not hospital give exact location where birth occurred): Credit Valley Hospital  
 Place of Birth (City/Town/Village/Township): Mississauga (Regional municipality, county or district): PEEL

**Section B - Father's Information - (see instruction #2)** **Section C - Father's Information - (see instruction #3)**

Current Legal Last Name: Dvash-Banks  
 Legal Last Name at Birth: Banks  
 First and Middle Name(s): Andrew Mason  
 Any Other Legal Last Name(s): [Redacted]

Current Legal Last Name: Dvash-Banks  
 Legal Last Name at Birth: Dvash  
 First and Middle Name(s): Elad  
 Any Other Legal Last Name(s): [Redacted]

Place of Birth (City/Town/Village/Township): Santa Monica  
 Place of Birth (Province/Country): California, USA  
 Date of Birth (yyyy/mm/dd): 198 [Redacted] Age: 35

Place of Birth (City/Town/Village/Township): Ramat Gan  
 Place of Birth (Province/Country): Israel  
 Date of Birth (yyyy/mm/dd): 1985 Age: 34

Marital Status of Parent in Section B:  Single  Married  Common Law  Divorced  Widowed

**Section D - Birth Information**

Residence of Parent in Section B: Complete street address (City, town, village, township, if rural give Post Office or Rural Route address): [Redacted] Avenue, Toronto  
 Postal Code: M6B4C6

Mailing Address of Parent in Section B (if different from above - Complete street address (if rural give Post Office or Rural Route address):  
 Postal Code:

Duration of pregnancy (in weeks): 32	Total number of children ever born to this parent including this birth: 2	Weight at or at birth: 1350	Sex of Birth: <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	If multiple births, state whether this child was born 1st, 2nd, 3rd, etc.: 2nd
	Of this Total, Number born live: 2		<input type="checkbox"/> Single <input checked="" type="checkbox"/> Twin	
	Of this Total, Number stillborn: 0		<input type="checkbox"/> Triplet <input type="checkbox"/> Other	

Name of physician at birth: Dr. Myckan Kerry  
 Physician  Midwife  Other, specify:

**Section E - Certification of Informant (Please read instructions #1 before signing)**

If you are choosing a last name that is not one of the parent's last names or combination of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes:

Cultural Heritage  Religious Heritage  Ethnic Heritage

I (We) certify the statements made on this form are true and correct. I am (We are) aware that any attempt to make a false statement on this form is a criminal offence.  
 Signature of [Redacted] Date (yyyy/mm/dd): 2016/10/06

I (We) have agreed that the child's last name will be as shown in section A.  
 Yes  No  
 Signature of [Redacted] Date (yyyy/mm/dd): 2016/10/08

**Section F - Office Use Only**

I approve this statement and register this birth by signing this statement.  
 Signature of Manager: [Signature] Date (yyyy/mm/dd): 2016/11/03

Office Use Only:  
 UPDATED GEO CODE

11132E (2018/08) © Queen's Printer for Ontario, 2018

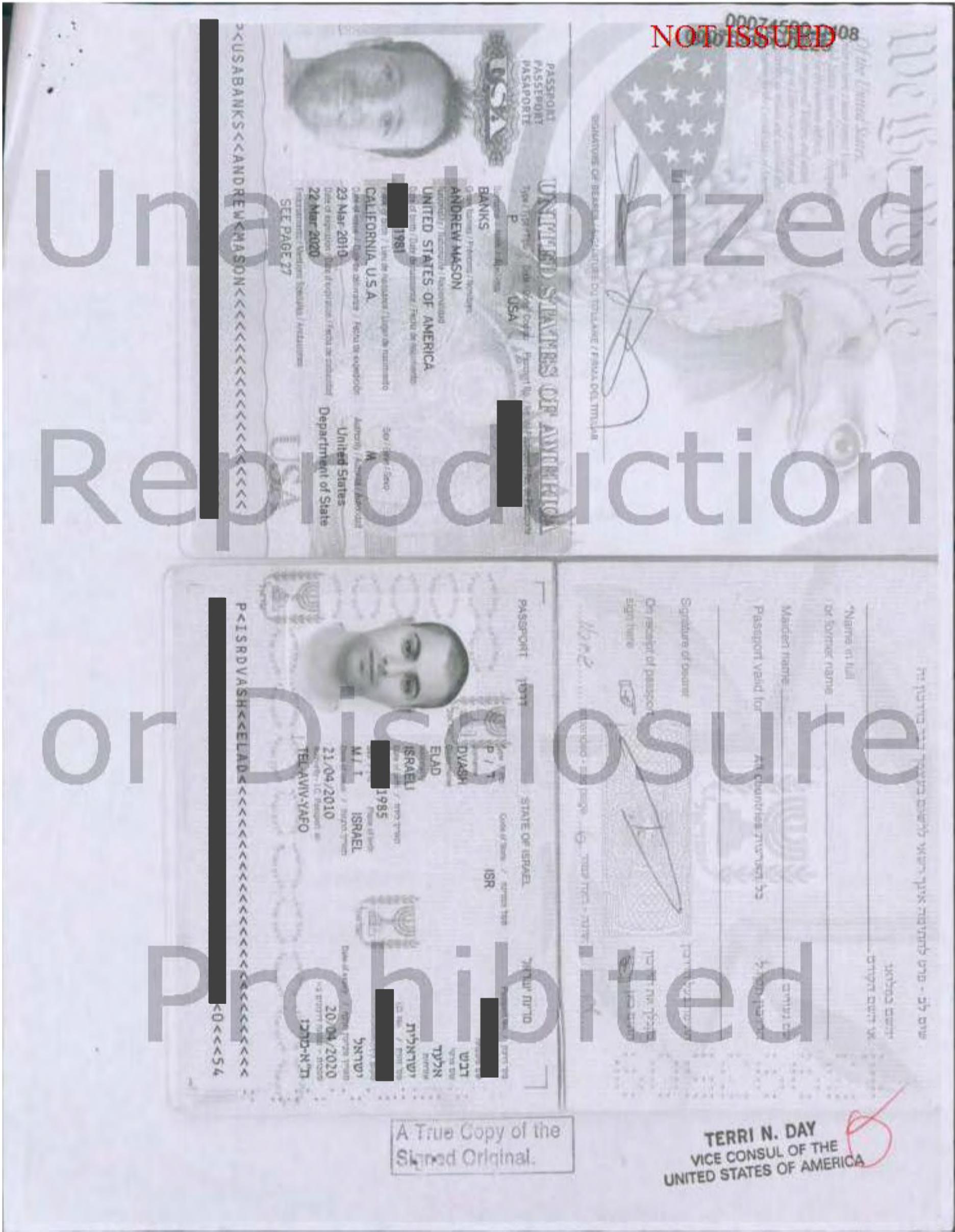
Stamp: A True Copy of the Signed Original.

Prohibited

TERRI N. DAY  
 VICE CONSUL OF THE  
 UNITED STATES OF AMERICA

Alexandra Schmidt  
 Alexandra Schmidt  
 Deputy Registrar General  
 Registraire générale adjointe

---CERTIFIED COPY---  
 NOT VALID WITHOUT ALL PAGES



NOT ISSUED

PASSPORT  
PASAPORTE

00071500-1108

00071500-1108

of the United States

UNited STATES OF AMERICA

Andrew Mason

1981

23 Mar 2010

22 Mar 2020

SEE PAGE 27

California, U.S.A.

United States Department of State

PASSPORT

1011

STATE OF ISRAEL

ISRAEL

1985

21/04/2010

ISRAEL

20/04/2020

ISRAEL

Name at full or tourist name

Marked name

Passport valid for

Signature of owner

On receipt of passport sign here

None

תאריך יציאת הנסיעה

תאריך תפילת הנסיעה

תאריך תפילת הנסיעה

A True Copy of the Signed Original.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

# **EXHIBIT G-1**

U.S. Department of State  
APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD  
OF A CITIZEN OF THE UNITED STATES OF AMERICA

OMB NO: 1405-0011  
EXPIRES: 03/1/2019  
Estimated Burden: 20 minutes

Registration Number DENIAL

A. THIS SECTION TO BE COMPLETED BY THE CHILD'S PARENT(S) OR GUARDIAN(S) OR THE CHILD. (USE SECTION D CONTINUATION SHEET)

INFORMATION ABOUT THE CHILD

1. Name of Child in Full  
D EA J  
(Last/Surname) (First) (Middle)  
2. Sex  M  F  
3. Date of Birth 09/16/2016  
(month) (day) (year)  
4. Place of Birth MISSISSAUGA, CANADA  
(City) (Country)

NOTE: (If the U.S. citizen parent transmitting citizenship to the child is not present, he or she may complete State Department Form DS 5507 Affidavit of Parentage Physical Presence and Support and submit it separately. The parent completing this application should provide as much information on the parent completing the Form DS 5507 as he or she has.)

INFORMATION ON MOTHER/FATHER/PARENT

INFORMATION ON MOTHER/FATHER/PARENT

5. Full Name  
DVASH-BANKS ANDREW MASON  
(Last/Surname) (First) (Middle)  
6. All Previous Legal Names Used  
BANKS ANDREW MASON  
(Last/Surname) (First) (Middle)

11. Full Name  
DVASH-BANKS ELAD AUSTIN  
(Last/Surname) (First) (Middle)  
12. All Previous Legal Names Used  
DVASH ELAD  
(Last/Surname) (First) (Middle)

7. Sex  M  F  
8. Date of Birth 1/19/81  
(month) (day) (year)  
9. Place of Birth  
Santa Monica CA USA  
(City) (State/Province) (Country)

13. Sex  M  F  
14. Date of Birth 1/19/85  
(month) (day) (year)  
15. Place of Birth  
Ramat Gan ISRAEL  
(City) (State/Province) (Country)

10. Current Physical Address (Do not list P.O. Box)  
(A.P.O. Address Permitted)  
AVG. #  
(Address Line 1)  
TORONTO, ON, CANADA M6B4C6  
(City, State/Province, Country, Postal Code)  
417-706-9556  
(Phone Number(s))  
@gmail.com  
(Email Address)  
Use this address if Consular Report of Birth will be mailed?  Yes  No

16. Current Physical Address (Do not list P.O. Box)  
(A.P.O. Address Permitted)  
AVG. #  
(Address Line 1)  
TORONTO, ON, CANADA M6B4C6  
(City, State/Province, Country, Postal Code)  
647-289-4389  
(Phone Number(s))  
@gmail.com  
(Email Address)  
Use this address if Consular Report of Birth will be mailed?  Yes  No

17. Mailing Address (if different from Current Physical Address) (Do not list a P.O. Box.)  
(You may list an A.P.O. address)  
(Address Line 1) (City, State/Province, Country and Postal Code)

DS-2029  
04-2016

CLASS CLEARED

Page 1 of 7

(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>	(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>
18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**MARITAL STATUS OF THE PARENTS**

20. Were you married to the child's other biological parent when the child was born?  Yes  No

21. Date and Place of Marriage to the child's other biological parent and current status

08/19/2010 Toronto ON Canada  
(month) (day) (year) (City) (State/Province) (Country)

Still Married  Divorced     /    /      Death     /    /      
(month) (day) (year) (month) (day) (year)

(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>	(Continued) <b>INFORMATION ON MOTHER/FATHER/PARENT</b>
22. Please list any other marriages. (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)	23. Please list any other marriages. (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)
None	None

<p>24. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>12-18-2016</td><td>01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>10-21-16</td><td>10-23-16</td></tr> <tr><td>Los Angeles, CA</td><td>6-10-16</td><td>6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>2-19-16</td><td>2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>11-20-15</td><td>11-29-15</td></tr> <tr><td>Detroit, MI</td><td>9-4-15</td><td>9-8-15</td></tr> <tr><td>New Orleans, LA</td><td>5-21-15</td><td>5-24-15</td></tr> <tr><td>Los Angeles, CA</td><td>4-16-15</td><td>4-23-15</td></tr> <tr><td>Port St. Lucie, FL</td><td>1-17-15</td><td>1-21-15</td></tr> <tr><td>Los Angeles, CA</td><td>11-5-14</td><td>11-9-14</td></tr> <tr><td>Los Angeles, CA</td><td>1-18-01</td><td>6-1-92</td></tr> <tr><td>Los Angeles, CA</td><td>9-1-92</td><td>12-1-00</td></tr> <tr><td>Santa Barbara, CA</td><td>6-1-01</td><td>12-15-05</td></tr> <tr><td>Los Angeles, CA</td><td>6-1-06</td><td>1-1-07</td></tr> <tr><td>Los Angeles, CA</td><td>4-1-07</td><td>7-1-07</td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	12-18-2016	01-21-2017	Los Angeles, CA	10-21-16	10-23-16	Los Angeles, CA	6-10-16	6-19-16	Port St. Lucie, FL	2-19-16	2-22-16	Los Angeles, CA	11-20-15	11-29-15	Detroit, MI	9-4-15	9-8-15	New Orleans, LA	5-21-15	5-24-15	Los Angeles, CA	4-16-15	4-23-15	Port St. Lucie, FL	1-17-15	1-21-15	Los Angeles, CA	11-5-14	11-9-14	Los Angeles, CA	1-18-01	6-1-92	Los Angeles, CA	9-1-92	12-1-00	Santa Barbara, CA	6-1-01	12-15-05	Los Angeles, CA	6-1-06	1-1-07	Los Angeles, CA	4-1-07	7-1-07	<p>25. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>12-18-2016</td><td>01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>6-10-16</td><td>6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>2-19-16</td><td>2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>11-20-15</td><td>11-29-15</td></tr> <tr><td>Detroit, MI</td><td>9-4-15</td><td>9-8-15</td></tr> <tr><td>Los Angeles, CA</td><td>4-16-15</td><td>4-21-15</td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	12-18-2016	01-21-2017	Los Angeles, CA	6-10-16	6-19-16	Port St. Lucie, FL	2-19-16	2-22-16	Los Angeles, CA	11-20-15	11-29-15	Detroit, MI	9-4-15	9-8-15	Los Angeles, CA	4-16-15	4-21-15																		
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(Continued)

THIS SECTION TO BE COMPLETED BEFORE/BY CONSULAR OFFICER, NOTARY PUBLIC, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS

29. Affirmation: I SOLEMNLY SWEAR (OR AFFIRM) THAT THE STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Name of Person(s) Providing Information

Relationship to the Child (Parent, Legal Guardian, Other (Specify))

Signature of Person(s) Providing Information

ELAN DVASH-BANKS

Father

[Signature]

Andrew Dvash-Banks

Father

[Signature]

Type Name and Title of Official

Signature of Official

City

Date

TERRI N. DAY

[Signature]

TORONTO

JAN 24 2017

VICE CONSUL OF THE UNITED STATES OF AMERICA

(month) (day) (year)

Subscribed to: (SEAL)

30. Approval of Consular Report of Birth

(Printed Name of Consular Officer)

(Signature of Consular Officer)

(Approving Post)

1/2/17 (month) (day) (year) (Date of Approval)

DENIAL (Registration Number)

**C. FOR OFFICIAL USE**

31. Documents Presented - Please mark accordingly and provide date of document. (If more space is required, list on separate page)

Child's Birth Certificate 11 / 09 / 2016 MISSISSAUGA Ontario Canada  
 (month)(day)(year) (City) (Province) (Country)

Marriage Certificate 10 / 05 / 2010 1 / 1 / Toronto \_\_\_\_\_  
 (month)(day)(year) (month)(day)(year) (City) (State)  
Ontario Canada  
 (Province) (Country)

Divorce Decree(s) (a) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (month)(day)(year) (month)(day)(year) (City) (State)  
 (File Date) (Date of Issuance)  
 \_\_\_\_\_ \_\_\_\_\_  
 (Province) (Country)

(b) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (month)(day)(year) (month)(day)(year) (City) (State)  
 (File Date) (Date of Issuance)  
 \_\_\_\_\_ \_\_\_\_\_  
 (Province) (Country)

(c) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (month)(day)(year) (month)(day)(year) (City) (State)  
 (File Date) (Date of Issuance)  
 \_\_\_\_\_ \_\_\_\_\_  
 (Province) (Country)

Death Certificate(s) (a) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (month)(day)(year) (City) (State)

(b) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (month)(day)(year) (City) (State)

Mother/Father/Parent's Passport [REDACTED] 04/21/2010 Israeli citizen  
 (Passport Number) (month)(day)(year) (Date of Issuance) (Nationality)

Mother/Father/Parent's Passport [REDACTED] 03/03/2010 US citizen  
 (Passport Number) (month)(day)(year) (Date of Issuance) (Nationality)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (Name of the Citizenship Document) (Document Number) (month)(day)(year) (Date of Issuance)

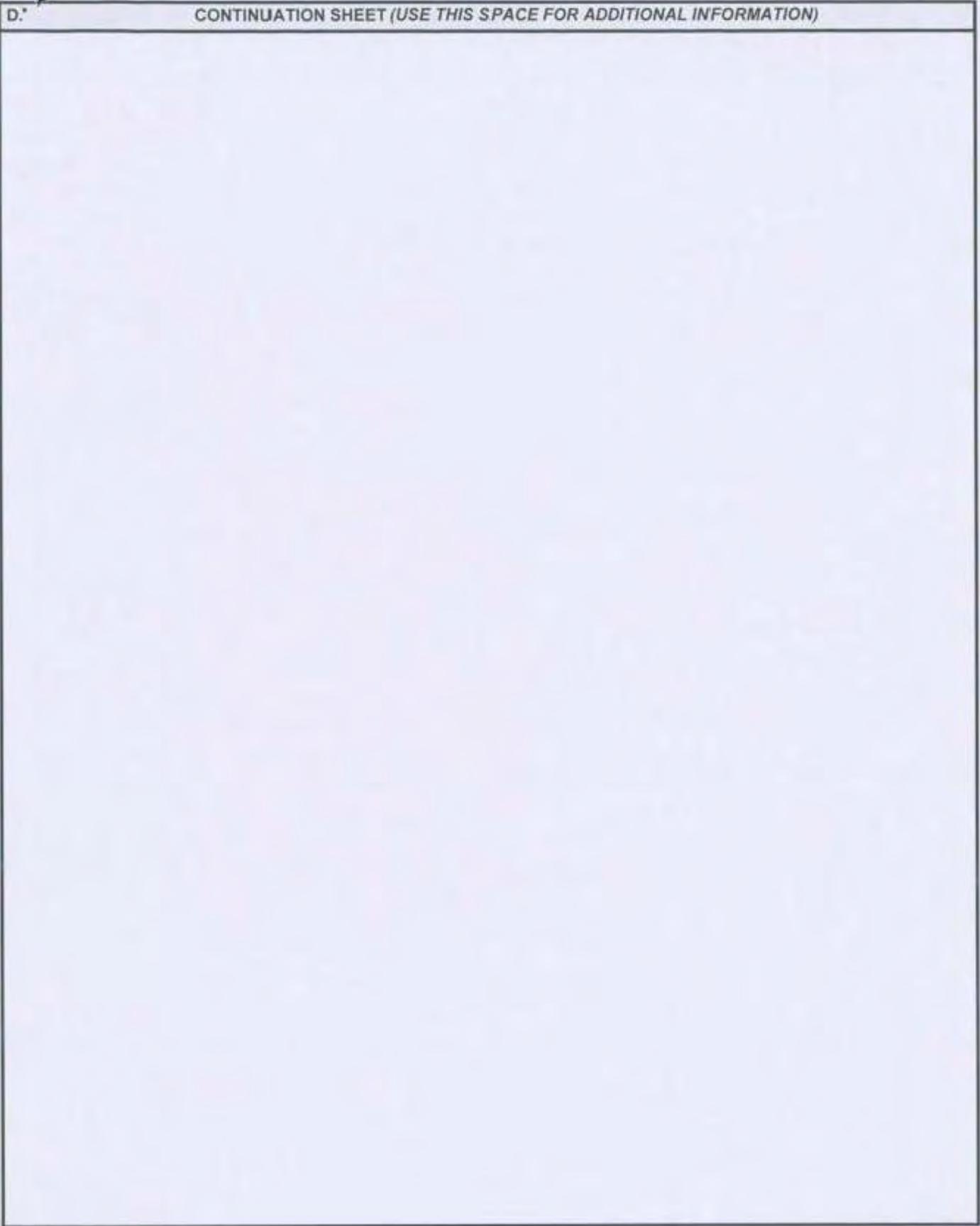
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Other Identity Document of Mother/Father/Parent (e.g. Driver's License) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (Name of the Identity Document) (Document Number) (month)(day)(year) (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_  
 (Name of the Identity Document) (Document Number) (month)(day)(year) (Date of Issuance)

Other (Legal Guardianship; Power of Attorney, etc.) custody documents FS-16-21123 \_\_\_\_\_  
 (Name of the Document) (Document Number) (month)(day)(year) (Date of Issuance)

D. CONTINUATION SHEET (USE THIS SPACE FOR ADDITIONAL INFORMATION)



# **EXHIBIT G-2**

2-2  
PPT  
CHBA

NOT ISSUED

### APPLICATION FOR A U.S. PASSPORT

Please Print Legibly Using Black Ink Only

OMB CONTROL NO. 1405-0004  
OMB EXPIRATION DATE: 08-31-2019  
ESTIMATED BURDEN: 85 MIN

Attention: Read WARNING on page 1 of instructions

Please select the document(s) for which you are applying:

U.S. Passport Book  U.S. Passport Card  Both

The U.S. passport card is not valid for international air travel. For more information see page 1 of instructions.

Regular Book (Standard)  Large Book (Non-Standard)

Note: The large book option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.



RS0109003

D  O  Dep DOTS

End. # Exp.

1. Name Last

D [REDACTED]

First

E [REDACTED]

Middle

J [REDACTED]

2. Date of Birth (mm/dd/yyyy)

09 16 2016

3. Sex

M F  
X

4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.)

MISSISSAUGA, ON, CANADA

5. Social Security Number

6. Email (Info alerts offered at [travel.state.gov](http://travel.state.gov))

[REDACTED]@gmail.com

7. Primary Contact Phone Number

647 706 9556

8. Mailing Address: Line 1: Street/RFD#, P.O. Box, or URB.

[REDACTED]

AVG.

Address Line 2: Clearly label Apartment, Company, Suite, Unit, Building, Floor, In Care Of or Attention if applicable. (e.g. In Care Of - Jane Doe, Apt # 100)

APT. [REDACTED]

City

TORONTO

State

ON

Zip Code

M6B 4C6

Country, if outside the United States

CANADA

9. List all other names you have used. (Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)

A.

B.



**STOP! CONTINUE TO PAGE 2**  
DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent on Second Signature Line (if identifying minor)

Driver's License  State issued ID Card  Passport  Military  Other

Name Elad Avash

Issue Date (mm/dd/yyyy)

09 21 2010

Exp. Date (mm/dd/yyyy)

09 20 2020

State of Issuance

ID No. [REDACTED]

Country of Issuance

Israel

Identifying Documents - Applicant or Mother/Father/Parent on Third Signature Line (if identifying minor)

Driver's License  State issued ID Card  Passport  Military  Other

Name Andrew Mason Banks

Issue Date (mm/dd/yyyy)

03 23 2010

Exp. Date (mm/dd/yyyy)

03 27 2020

State of Issuance

ID No. [REDACTED]

Country of Issuance

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.

Acceptance Agent  (Vice) Consul USA  
 Passport Staff Agent

**TERRI N. DAY**  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Name of courier company (if applicable)

Facility ID Number

Applicant's Legal Signature - age 16 and older

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Signature of person authorized to accept applications

Date

JAN 24 2017

For Issuing Office Only → Bk  Card  EF  Postage  Execution  Other



\*DS 11 C 09 2013 1\*

NOT ISSUED

Name of Applicant (Last, First, & Middle) **D [REDACTED] - B [REDACTED], E [REDACTED], J [REDACTED]** Date of Birth (mm/dd/yyyy) **09/16/2016**

10. Parental Information  
 Mother/Father/Parent - First & Middle Name **ANDREW MASON** Last Name (at Parent's Birth) **BANKS**  
 Date of Birth (mm/dd/yyyy) **[REDACTED] 1981** Place of Birth **Santa Monica, California, USA** Sex  Male  Female U.S. Citizen?  Yes  No  
 Mother/Father/Parent - First & Middle Name **ELAD AUSTIN** Last Name (at Parent's Birth) **DVASH**  
 Date of Birth (mm/dd/yyyy) **[REDACTED] 1985** Place of Birth **Ramat Gan, ISRAEL** Sex  Male  Female U.S. Citizen?  Yes  No

11. Have you ever been married? Yes  No  If yes, complete the remaining items in #11  
 Full Name of Current Spouse or Most Recent Spouse \_\_\_\_\_ Date of Birth (mm/dd/yyyy) \_\_\_\_\_ Place of Birth \_\_\_\_\_

U.S. Citizen?  Yes  No Date of Marriage (mm/dd/yyyy) \_\_\_\_\_ Have you ever been widowed or divorced? Yes  No  Widow/Divorce Date (mm/dd/yyyy) \_\_\_\_\_

12. Additional Contact Phone Number **647 289 4389** Home  Cell  Work  13. Occupation (if age 16 or older) \_\_\_\_\_ 14. Employer or School (if applicable) \_\_\_\_\_

15. Height **23"** 16. Hair Color **Black** 17. Eye Color **Brown** 18. Travel Plans  
 Departure Date (mm/dd/yyyy) **02/08/2017** Return Date (mm/dd/yyyy) \_\_\_\_\_ Countries to be Visited **USA, ISRAEL**

19. Permanent Address - If P.O. Box is listed under Mailing Address or if residence is different from Mailing Address  
 Street/RFD # or URB (No P.O. Box) \_\_\_\_\_ Apartment/Unit \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

20. Emergency Contact - Provide the information of a person not traveling with you to be contacted in the event of an emergency.  
 Name **ANN BANKS** Address: Street/RFD # or P.O. Box \_\_\_\_\_ Apartment/Unit \_\_\_\_\_  
 City **Port Saint Lucie** State **FL** Zip Code **34986** Phone Number **805- [REDACTED]** Relationship **Grandmother**

21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? Yes  No  If yes, complete the remaining items in #21.  
 Name as printed on your most recent passport book \_\_\_\_\_ Most recent passport book number \_\_\_\_\_ Most recent passport book issue date (mm/dd/yyyy) \_\_\_\_\_  
 Status of your most recent passport book:  Submitting with application  Stolen  Lost  In my possession (if expired)  
 Name as printed on your most recent passport card \_\_\_\_\_ Most recent passport card number \_\_\_\_\_ Most recent passport card issue date (mm/dd/yyyy) \_\_\_\_\_  
 Status of your most recent passport card:  Submitting with application  Stolen  Lost  In my possession (if expired)

**PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY**

Name as it appears on citizenship evidence **E [REDACTED] J [REDACTED] D [REDACTED] B [REDACTED]**

Birth Certificate SR CR City Filed Issued \_\_\_\_\_  
 Nat. / Citz. Cert. USCIS USDO Date/Place Acquired \_\_\_\_\_  
 Report of Birth Filed/Place \_\_\_\_\_  
 Passport C/R S/R Per-PIERS #/DOI: \_\_\_\_\_  
 Other \_\_\_\_\_  
 Attached \_\_\_\_\_

P/C of Citz  P/C of ID  DS-71  DS-3053  DS-64  DS-5520  DS-5525  PAW  NPIC  IRL  Citz W/S

**CLASS CLEARED**

**DENIED**  
**TORONTO** MAR 02 2017  
 \* DS 11 C 09 2013 2 \*

00074590-0406  
NOT ISSUED  
00000001-0223

Unauthorized  
Reproduction  
or Disclosure  
Prohibited

To whom it may concern:

I E. J. [REDACTED] [REDACTED] [REDACTED] [REDACTED] (print full name) declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration.

Executed on: 1/24/17  
(DATE)

Signature:   
(Sign using full name as indicated on the passport application)

Box of Child  
Sex of Child  
Last Name  
First Name  
Middle Name(s)  
Date of Birth (yyyy/mm/dd)  
2016/09/16  
Name of hospital (if not hospital give exact location where birth occurred)  
Credit Valley Hospital  
Place of Birth (City/Town/Village/Township)  
Mississauga  
Regional municipality, county or district  
PEEL

Section B - Father's Information - (see instruction #2)  
Current Legal Last Name  
Dvash-Banks  
Legal Last Name at Birth  
Banks  
First and Middle Name(s)  
Andrew Mason  
Any Other Legal Last Name(s)  
Place of Birth (City/Town/Village/Township)  
Santa Monica  
Place of Birth (Province/Country)  
California, USA  
Date of Birth (yyyy/mm/dd)  
1981  
Age  
35  
Marital Status of Parent at Section B  
 Single  Married  Common Law  Divorced  Widowed

Section C - Father's Information - (see instruction #3)  
Current Legal Last Name  
Dvash-Banks  
Legal Last Name at Birth  
Dvash  
First and Middle Name(s)  
Elad  
Any Other Legal Last Name(s)  
Place of Birth (City/Town/Village/Township)  
Ramat Gan  
Place of Birth (Province/Country)  
Israel  
Date of Birth (yyyy/mm/dd)  
1985  
Age  
31

Section D - Birth Information  
Residence of Parent in Section B - Complete street address (City, town, village, township - if rural give Post Office or Rural Route address)  
Avenue, Toronto  
Postal Code  
M6B4C6  
Mailing Address of Parent in Section B (if different from above - Complete street address if rural give Post Office or Rural Route address)  
Postal Code  
Duration of pregnancy (in weeks)  
32  
Total number of children ever born to this parent including this birth  
2  
Of this Total, number born live  
2  
Of this Total, number stillborn  
0  
Weight of child at birth  
1350  
Head of Birth  
 Single  Twin  Other  
 Triplet  Other  
If multiple birth, state whether this child was born 1st 2nd 3rd etc.  
2nd  
Name of Attendant at birth  
Dr. Myckany, Kerry  
 Physician  Midwife  Other, specify

Section E - Certification of Informant (Please read instruction #1 before signing)  
If you are choosing a last name that is not one of the parent's last names or combination of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes.  
 Cultural Heritage  Religious Heritage  Ethnic Heritage  
I (We) certify the statements made on this form are true and correct. I am (We are) aware that a false statement may constitute a false statement on this form.  
Signature of Father  
Date (yyyy/mm/dd)  
2016/10/01  
Signature of Mother  
Date (yyyy/mm/dd)  
2016/10/08  
I (We) have agreed that the child's last name will be as shown in section A.  
 Yes  No  
Signature of Informant (see instruction #1)  
Date (yyyy/mm/dd)

Section F - Office Use Only  
I approve this statement and register this birth by signing this statement.  
Signature of Manager  
Date (yyyy/mm/dd)  
2016/11/03  
Office Use Only  
UPDATED GEO CODE  
11332E (2016/04) © Queen's Printer for Ontario, 2016

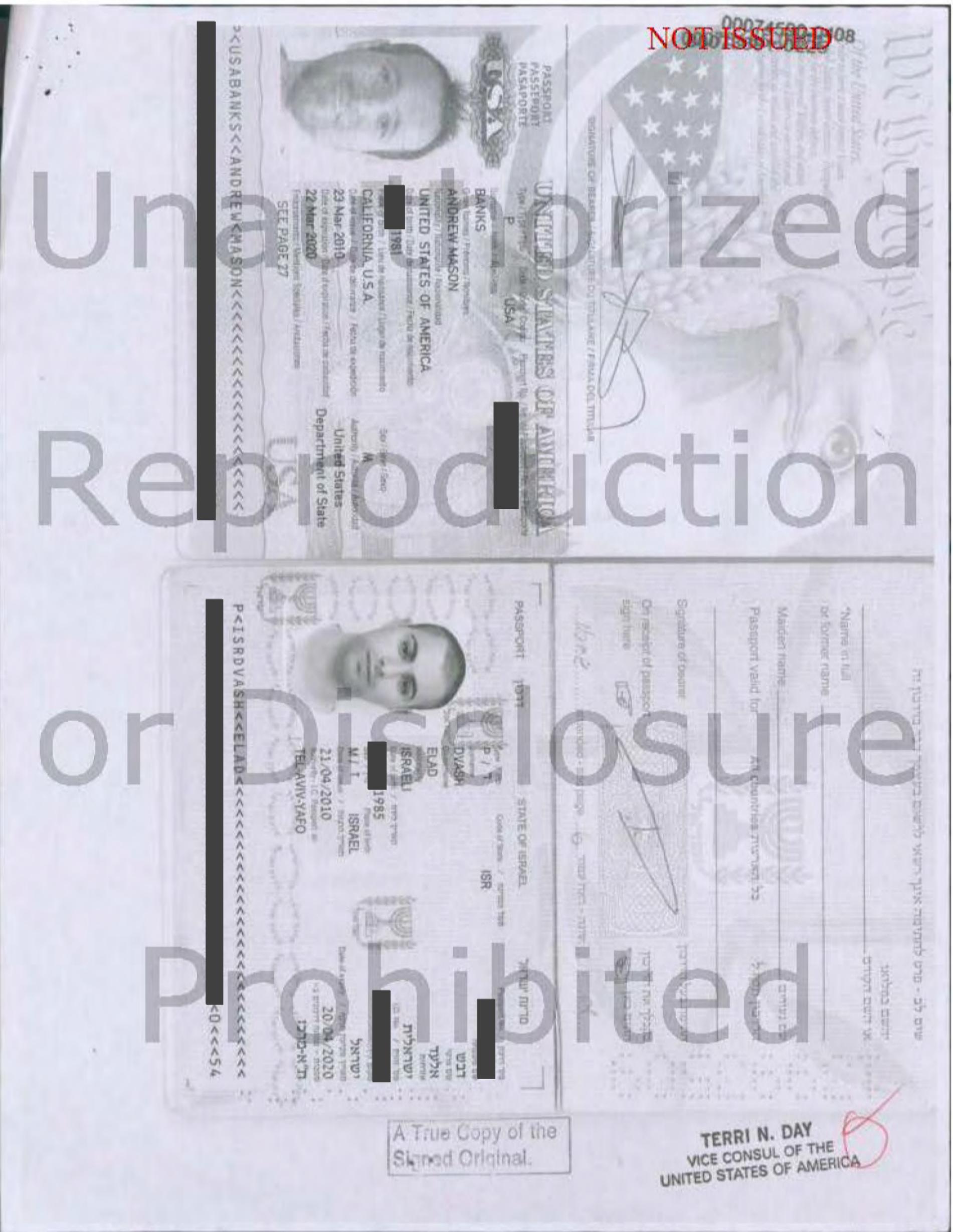
A True Copy of the Signed Original.

Prohibited

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Alexandra Schmidt  
Alexandra Schmidt  
Deputy Registrar General  
Registraire générale adjointe

---CERTIFIED COPY---  
NOT VALID WITHOUT ALL PAGES



NOT ISSUED

PASSPORT  
PASSEPORT  
PASAPORTE

0007458008

UNITED STATES OF AMERICA

ANDREW MASON

1981

23 Mar 2010

22 Mar 2020

SEE PAGE 27

UNITED STATES OF AMERICA  
Department of State

PASSPORT

ELAD

ISRAELI

1985

21/04/2010

TEL-AVIV-YAFO

ISRAEL

20/04/2020

Name at full or former name

Maiden name

Passport valid for All countries (מדינות כולל)

Signature of owner

On receipt of passport sign here

None

מדינות כולל

חתימת ה持照人

על קבלת הדרכון חתום כאן

אין

A True Copy of the Signed Original.

TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

# **EXHIBIT G-3**



Certified A True Photostatic Print of a Record

on file at the Office of the Registrar General Ontario, Canada

Registration Number: Numéro d'enregistrement :

PAGE 1 of 1

Certificate number: Numéro du certificat : P 1338811

Date issued: Date de délivrance :

Oct 05 2010

Office of the Registrar General Bureau du registraire général

Photocopie certifiée conforme d'un document

se trouvant dans les dossiers du Bureau du registraire général (Ontario) Canada

File number: Numéro de dossier :

01076584-01-3

Ontario Ministry of Government Services Office of the Registrar General Marriage Licence

Licence number: E 0689966

This form is a permanent legal document and can only be used to register a marriage that takes place in Ontario. Please PRINT clearly in blue or black ink.

Part 1 - To be completed by the office issuing this licence

1. Date this licence was issued (day/month/year): 19 Aug 2010
2. Municipality where licence was issued: City of Toronto
3. Name of licence issuer or deputy issuer: Catherine Mason
4. Signature of licence issuer or deputy issuer: [Signature]
5. Proposed place of marriage (township): Toronto
6. Proposed date of marriage (day/month/year) must be within 3 months of date of issue: 19 Aug 2010

Part 2 - Marriage Applicants (Form 4) Information about the applicants

7. Last legal name before this marriage: Banks
8. First and middle names: Andrew Mason
9. Marital status: [X] never married [ ] widowed [ ] divorced
10. If divorced in Canada, Court file number and City divorce granted in please provide the court file number.
11. Religious denomination: Jewish, Age: 29, Date of birth (day/month/year): [redacted] 1981
12. Province where applicant was born (if outside Canada, state the country): USA
13. Father's name (last, first, middle): Banks, James Howard
14. Mother's name (last name before marriage, first name): Mason, Ann
15. Province where the applicant's father was born (if outside Canada, state the country): Ontario
16. Province where the applicant's mother was born (if outside Canada, state the country): Ontario
17. Name in full of applicant: Andrew Mason Banks
18. Name in full of joint applicant: Elad Dvash
19. make each and say solemnly as follows: That I believe there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to her or under the administration of the marriage, and that the contents set forth herein are to the best of my knowledge, information and belief, true in every particular.
20. Signed before me at: City of Toronto, in the Township of [redacted] of Ontario, this 19th day of August, 2010.
21. Signature of licensee issuer: [Signature]
22. Signature of applicant: [Signature]
23. Signature of joint applicant: [Signature]

24. Last legal name before this marriage: Dvash
25. First and middle names: Elad
26. Marital status: [X] never married [ ] widowed [ ] divorced
27. If divorced in Canada, Court file number and City divorce granted in please provide the court file number.
28. Religious denomination: Jewish, Age: 35, Date of birth (day/month/year): [redacted] 1985
29. Province where joint applicant was born (if outside Canada, state the country): Israel
30. Father's name (last, first, middle): Dvash, Mordechai
31. Mother's name (last name before marriage, first name): Abail, Tova
32. Province where the joint applicant's father was born (if outside Canada, state the country): Israel
33. Province where the joint applicant's mother was born (if outside Canada, state the country): Israel
34. Name in full of applicant: Andrew Mason Banks and Elad Dvash
35. Present address of applicant (street number and name, apartment, city or town, province, postal code, telephone number): [redacted] Avenue, Toronto, ON, M4S 2H4, (416) 400-3568
36. Present address of joint applicant (street number and name, apartment, city or town, province, postal code, telephone number): [redacted] Street, Givatayim, Israel, 53482, (972) 573-2339

Part 3 - Statement of witnesses - to be completed following the marriage ceremony (Form 7)

40. Place of marriage (name the city or town and the county, regional municipality or district): TORONTO ONTARIO
41. Date of marriage (day/month/year): 19 AUGUST 2010
42. Signature of applicant: [Signature]
43. Signature of joint applicant: [Signature]
44. Signature of witness: [Signature]
45. Signature of witness: [Signature]

By signing below, I certify that the marriage of the parties named in this marriage licence was performed on the date and at the place indicated above.

46. Signature of person who performed marriage: [Signature]
47. Date (day/month/year): 19 AUGUST 2010

Please print clearly in blue or black ink.

48. Name of person who performed marriage (last, first, middle): BONKALO, ANNEMARIE KEIRA
49. Your status: [ ] Clergy [X] Judge [ ] Justice of the peace [ ] Other

50. Address of person who performed marriage: ONE QUEEN ST. EAST STE 2300, BOX 91, TORONTO ON M5C 2W5
51. Telephone number: 416 593-8824

52. Your registration number: J 2492
53. Your denomination (clergy only):

For use of the Registrar General only: I am satisfied to the completeness of this statement and register this marriage

Signature: [Signature] Date (day/month/year): AUG 25 2010

Personal information contained in this form is collected under the authority of the Marriage Act, R.S.C. 1985, c.383 and will be used to determine whether to issue the marriage licence, to register the marriage, provide certified copies, extracts, certificates, search indices, photographs and for statistical, research, medical, law enforcement, taxation and education certificate purposes. Questions about this collection should be directed to the Deputy Registrar General at PO Box 4900, 156 Red Wing Road, Thunder Bay ON P7B 6L8. Telephone: 1 800 461-5158 or 416 529-8008.

A True Copy of the Signed Original.

# **EXHIBIT G-4**

CONFIDENTIAL AGREEMENT

THIS IS AN AGREEMENT made on this 21<sup>ST</sup> day of December, 2015

AMONG:

ANDREW DVASH-BANKS

(herein called "Andrew")

-and-

ELAD DVASH-BANKS

(herein called "Elad")

-and-

AMANDA MARIE ANNE ADAMS

(herein called the "Gestational Carrier")

PART I  
BACKGROUND

1.1 Andrew and Elad (collectively called the "Intended Parents") are a same-sex married couple who require assisted reproductive technology to have a child.

1.2 The Intended Parents intend to conceive a Child by Transferring Ova supplied by a third party anonymous donor fertilized by Sperm supplied by Andrew and/or Elad to the Gestational Carrier.

1.3 The Gestational Carrier intends to act as the gestational carrier for the Child and to carry the Child until it is born. The Gestational Carrier has offered to carry the Child on an altruistic basis, and only those out of pocket expenses related to the surrogacy shall be reimbursed to her. The Gestational Carrier has ONE (1) child of her own and is not currently in a relationship of permanence.

1.4 Ova retrieved from the third party anonymous donor and Sperm supplied by Andrew and/or Elad will be incubated externally. Fertilization may occur during this incubation period when a Sperm penetrates the cell wall of an ovum and their nuclei join together creating a single cell fertilized ovum which develops into an embryo.

1.5 Unless in her sole discretion the Gestational Carrier agrees at the time to the insertion of a greater number of Embryos, a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier during each in vitro fertilization cycle.

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1.6 The Intended Parents and the Gestational Carrier know that more than one child may result from this procedure and, if more than one child is born, "Child" in this Agreement, will mean "Children".

1.7 The Gestational Carrier believes that it would be in the best interests of the Child for the Child to be in the custody of the Intended Parents immediately upon Birth, and the Gestational Carrier hereby expresses her intention to waive all parental rights which she may have to any Child.

1.8 The Intended Parents will be recognized as the Child's parents immediately upon the Child's Birth.

1.9 The Intended Parents intend to assume full care of, and all parental responsibility for the Child, and the Gestational Carrier intends to allow the Intended Parents to assume this care and responsibility without reserving any care or responsibility to herself.

1.10 Immediately upon the Birth of the Child, the Gestational Carrier will give the Child into the permanent custody of the Intended Parents and as soon as reasonably possible thereafter the Intended Parents will make an application in the Ontario Superior Court of Justice seeking a declaration of parentage on their part, and a declaration of non-parentage on the part of the Gestational Carrier.

1.11 All Parties to this Agreement wish to maintain confidentiality between themselves, one to another, and between themselves and the public.

1.12 It is expressly understood that this Agreement is not intended in any way to represent a contract regarding payment in exchange for a child, or for the relinquishment of a child, and that the Parties acknowledge that no consideration has been offered to or accepted by the Gestational Carrier which would induce her to act as a surrogate.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and promises contained in this Agreement and with the intention of being fully bound by its terms, the Parties do hereby covenant and agree as follows.

**PART II  
DEFINITIONS**

Where used in this, unless the context otherwise requires, the following terms will have the following meanings:

- (a) "Attending Physician" means the physician or licensed midwife attending to the maternal care of the Gestational Carrier and attending at the Birth of the Child, as may be agreed to in writing by the Parties;
- (b) "Birth" means "birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario, and includes a "Full Term Still-Birth" unless otherwise stated;

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- (c) **"Child"** means the child conceived by I.V.F. (defined below) as described in this Agreement and if there are multiple births means the children conceived by the procedure contemplated in this Agreement;
- (d) **"Clinic"** means The Toronto Institute for Reproductive Medicine, 56 Aberfoyle Crescent, Unit 300, Toronto, Ontario M8X 2W4;
- (e) **"Early Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception before the beginning of the twelfth (12<sup>th</sup>) week of gestation;
- (f) **"Embryo" or "Fertilized Ova" or "Fertilized Ovum"** means the product of I.V.F. (hereinafter defined). For clarification, Fertilized Ova may result from Sperm supplied by Andrew and Elad with the potential of the Gestational Carrier becoming Pregnant with Fetuses that are genetically connected to each of Andrew and Elad;
- (g) **"Fetus"** means the Embryo from the moment of the completion of the Transfer until the moment of Birth;
- (h) **"Full Term Still-Birth"** means a still-birth which occurs during or after the 36<sup>th</sup> week of gestation;
- (i) **"Guardians"** means Tova and Mordehay Dvash;
- (j) **"Hospital"** means Trillium Health Partners;
- (k) **"Intended Parents"** means ANDREW DVASH-BANKS and ELAD DVASH-BANKS;
- (l) **"Gestational Carrier"** means AMANDA MARIE ANNE ADAMS;
- (m) **"I.V.F."** means in vitro fertilization and embryo transfer which is a medical procedure whereby ova are inseminated with sperm and allowed to incubate so that fertilization occurs by a sperm penetrating the cell wall of an ovum and their nuclei joining together to create a single cell fertilized ovum. Several fertilized ova usually result from a single in vitro fertilization and after the single cell fertilized ova have started to divide to form an embryo, some will be Transferred into the uterus of the Gestational Carrier and some may be frozen for Transfer at a later date. The Embryo or Embryos that are Transferred pursuant to this may be from an Embryo or Embryos that have been incubated previously and frozen;
- (n) **"Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception between the twelfth (12<sup>th</sup>) and twentieth (20<sup>th</sup>) week of gestation. Miscarriage in this Agreement does not include an Early Miscarriage;

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- (o) "Ova" means the sex cells of a third party donor;
- (p) "Parties" means the parties to this Agreement, being ANDREW DVASH-BANKS, ELAD DVASH-BANKS, and AMANDA MARIE ANNE ADAMS, and "Party" means any one of the Parties individually;
- (q) "Pregnancy" means the medical condition that occurs when the Fertilized Ovum or Embryo, resulting from the third party anonymous Ova and the Sperm of Andrew and/or Elad, has been transferred to the Gestational Carrier and successfully implants, resulting in a pregnancy being diagnosed based on blood test results and does not include a chemical pregnancy;
- (r) "Requested Termination" means: (i) a termination of the Pregnancy with the consent of or at the request of the Intended Parents; or (ii) a termination of the Pregnancy performed in accordance with the recommendation of the Transfer Physician and/or the Attending Physician because the Pregnancy poses a serious risk to the health or life of the Gestational Carrier;
- (s) "Special Expense Amount" means the amount reimbursable under the section called SPECIAL EXPENSE AMOUNT, below;
- (t) "Sperm" means the sex cells of Andrew and/or Elad;
- (u) "Still-Birth" means "still-birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario and does not include a Full Term Still-Birth unless otherwise stated;
- (v) "Term of this Agreement" means, subject to Section 25.1, the period commencing on the date of execution of this Agreement by the last Party to do so, and ending on the day which is the earlier of: (i) the date of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child;
- (w) "Transfer" and "Transferred" mean the manual deposit of one or more Fertilized Ovum or Embryo into the uterus of the Gestational Carrier; and
- (x) "Transfer Physician" means Dr. Alfonso Del Valle or, in the event that Dr. Del Valle is not available, another physician in the Clinic, as may be agreed to by the Parties.

### PART III PSYCHOLOGICAL ASSESSMENTS

3.1 The Gestational Carrier acknowledges that prior to the execution of this Agreement, she was assessed by a counsellor at the Clinic (the "Counsellor"), who determined that she is fit to undertake the obligation to carry the Child during a Pregnancy, and that she is willing to relinquish the Child on Birth to the Intended Parents and is competent to enter into this

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Agreement. The Gestational Carrier further acknowledges that for the purposes of this Agreement only, she has made an exception to the privilege of confidentiality to allow the Counsellor to advise the Intended Parents whether or not she is psychologically fit to fulfill the obligations she has assumed under this Agreement, and has consented, and does hereby confirm the consent to the release to the Intended Parents of such information only.

3.2 The Intended Parents acknowledge receipt of the advice of the Counsellor about the assessment of the Gestational Carrier, and acknowledge that they are satisfied with the assessment and that they accept the findings and conclusions.

**PART IV  
ACKNOWLEDGEMENTS AND UNDERTAKINGS**

4.1 Each Party acknowledges that the recitals are accurate, binding and form part of this Agreement.

4.2 Each Party acknowledges that he or she is fully informed about the I.V.F., egg retrieval and Transfer procedure and each understands the medical and legal issues involved.

4.3 In particular, the Gestational Carrier acknowledges that she has been informed by a physician specializing in fertility procedures of the risks to the Gestational Carrier involved in preparing her to receive the Transfer, the Transfer procedure itself, the Pregnancy and the Birth which may result, including the possibility of multiple births (or, alternatively, any termination or reduction of the Pregnancy) and further acknowledges that she understands these risks and releases the Intended Parents with respect to all such risks including, without limitation, the health of the Ova and any Embryos created with the Ova, which are transferred to the Gestational Carrier.

4.4 During the Term of this Agreement, each of the Parties agrees to inform each other forthwith, in writing, of any material change in their circumstances which may reasonably affect their performance of this Agreement in accordance with its terms. These changes include, but are not limited to, change in marital status, change of mailing address or email address, illness or death of a Party, loss of employment, changes in insurance coverage and exposure to communicable illness or any risk to health.

**PART V  
MEDICAL EXAMINATIONS**

5.1 Within a reasonable period prior to undertaking any medical procedure contemplated by this Agreement, the Gestational Carrier and the Intended Parents will undergo a thorough consultation and evaluation by the Transfer Physician, to determine whether the Gestational Carrier is physically healthy and capable of conceiving and carrying a Child to Birth and to determine whether the Intended Parents are fit to proceed with the procedures contemplated by this Agreement. The evaluation of all Parties will include testing for transmittable diseases, including, but not limited to, Hepatitis B and C and HIV in order to

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protect the health of the Gestational Carrier and the Child.

5.2 The Gestational Carrier warrants and represents that she has disclosed her full medical history to the Transfer Physician and has advised the Transfer Physician of any medications which she is currently taking.

5.3 The Gestational Carrier and the Intended Parents will undergo any medical testing that the Transfer Physician and/or the Attending Physician deem necessary, within the time frame specified by the referring physician, acting reasonably, during the Term of this Agreement, at the expense of the Intended Parents.

5.4 Each Party, for the purposes of this Agreement only, has made or hereby makes an exception to the privilege of confidentiality to allow information to be given to the other Parties and their solicitors, and has consented or hereby consents, to the release of the reports, test results, and all relevant information obtained in the examination or examinations and tests to each of the other Parties, or any one or more of them.

**PART VI  
COUNSELLING PROGRAM AND MEDIATION**

6.1 The Gestational Carrier acknowledges that she may choose to participate in a counselling program, or, she may choose to meet with a counsellor as required at any time during the Term of the Agreement. Any costs of this program will be included in the Special Expense Amount. Each Party for the purposes of this Agreement has made or hereby makes an exception to the privilege of confidentiality to allow information derived in counselling sessions to be given to the other Parties and their solicitors, and has consented or hereby consents to the release of relevant information pertaining to the wellbeing of the Pregnancy and obtained in the counselling sessions.

**PART VII  
SEXUAL ABSTINENCE**

7.1 During the time period set out in this Agreement, the Gestational Carrier will not engage in any sexual activity whereby semen could cause her to conceive a child, or risk the health of the unborn Child. To this end, she will abstain from sexual intercourse completely for a continuous period commencing TWO (2) weeks before each Transfer and ending on the earlier of: (i) confirmation by the Transfer Physician that a Pregnancy has not been initiated; or (ii) the date on which the first ultrasound examination after each Transfer has been performed, unless the Transfer Physician recommends a longer period of abstinence.

7.2 The Intended Parents acknowledge that the Gestational Carrier is single. The Gestational Carrier agrees that she will provide notice to the Intended Parents if that status changes, and further agrees as follows:

- (a) Prior to commencing a sexual relationship with a new partner, the Gestational Carrier covenants and agrees that she will ensure that such

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individual undergoes testing for transmittable diseases, and further agrees not to engage in a sexual relationship with such new partner until the testing confirms that he does not have any transmittable diseases;

- (b) At all times during the Term of this Agreement, the Gestational Carrier shall engage only in safe sexual practices in order to protect herself and the Fetus from infection by the HIV virus or any venereal or other transmittable disease and agrees not to engage in sexual intercourse unless her partner uses a condom; and
- (c) If, during the Term of this Agreement, the Gestational Carrier becomes involved in a common law relationship, or becomes married, the Gestational Carrier agrees that she will ensure that her spouse signs an amending agreement pursuant to which he acknowledges that: (i) he is not the Child's father; (ii) he will release the Intended Parents from any claims he may have; (iii) he will co-operate with respect to any post-birth process confirming the parentage of the Intended Parents; and (iv) he will abide by the provisions of this Agreement including the requirement to refrain from sexual activity with a third party outside of his monogamous relationship with the Gestational Carrier.

7.3 At all times during the Term of this Agreement, the Intended Parents will not engage in any sexual activity with a third party outside of their marital relationship to protect themselves, the Gestational Carrier and the Child from infection by the HIV virus or any venereal or other transmittable disease.

### PART VIII TRANSFERS

8.1 The Gestational Carrier will hold herself available to receive Transfers under this Agreement to be scheduled at mutually convenient times for up to TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so, and will not perform any act or any thing which would interfere with the proper performance of her obligations under this Agreement.

8.2 The Gestational Carrier will accept a Transfer implanted by the Transfer Physician at the Clinic on as many as FOUR (4) separate occasions, including Transfers of frozen Embryos, if any, at times recommended by the Transfer Physician and approved by the Parties in order to achieve a Pregnancy subject to all Transfers being completed within TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so and thereafter the Gestational Carrier will have no obligation to accept any Transfer.

8.3 Unless the Parties mutually agree to a greater number of Embryos, on each Transfer a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier.

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8.4 The Gestational Carrier will follow all medical instructions prescribed by the Transfer Physician prior to a Pregnancy and during the first trimester of a Pregnancy. The Gestational Carrier will continue to follow the protocol prescribed by the Transfer Physician, which will include stimulating the Gestational Carrier so that her uterine lining is prepared for the Transfer of Embryos. The Gestational Carrier will undergo all necessary testing (including blood testing and ultrasound testing) to determine the readiness of the Gestational Carrier's uterus for the Transfer of Embryos.

8.5 If a Pregnancy does not result after FOUR (4) Transfers (including Transfers of frozen Embryos) then this Agreement may be terminated by any Party giving notice in the manner prescribed by the section called NOTICE, below, to all other Parties at any time before a Pregnancy has occurred and, upon delivery of such notice, this Agreement will terminate and the Intended Parents and the Gestational Carrier will be released from all obligations under it, except the obligation to reimburse the Gestational Carrier's allowable expenses pursuant to the section called SPECIAL EXPENSES, below, which have been incurred to the time of the termination. If no such notice of termination is given, this Agreement will remain in full force and effect until a notice of termination is given.

8.6 Notwithstanding anything contained in this Agreement, the Intended Parents or the Gestational Carrier may terminate this Agreement at any time after the first Transfer upon giving notice to the other Party, if a Pregnancy has not resulted from the Transfer. Upon such a termination the Intended Parents and the Gestational Carrier will be released from all obligations under this Agreement, except for the obligation to reimburse the Gestational Carrier for any expense incurred to the time of termination and payable under the section called SPECIAL EXPENSES, below.

8.7 If a Transfer results in a Pregnancy, the Gestational Carrier will use her best efforts to carry the Fetus to term. The Gestational Carrier will give Birth to the Child at the Hospital or such other hospital as may be agreed to in writing by the Parties.

8.8 The Gestational Carrier agrees to provide the Intended Parents with a weekly update with respect to the Pregnancy, and such update may be by email, Skype or telephone as agreed to by the Parties.

8.9 The Gestational Carrier agrees that either or both of the Intended Parents may accompany her to any obstetrical appointment, or pre-natal test or procedure. The Gestational Carrier further consents to the presence of the Intended Parents in the delivery room at the time of the Birth of the Child. In the event that the Hospital limits the number of visitors that may be present at the Birth of the Child, the Intended Parents acknowledge and agree that the Gestational Carrier shall be entitled to select one such visitor. The Gestational Carrier agrees to contact the Intended Parents at the first indication that labour has begun.

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**PART IX  
PRENATAL OBLIGATIONS**

9.1 The Gestational Carrier warrants and represents that:

- (a) she has never abused alcohol or drugs;
- (b) she has never taken any drugs, whether legal or illegal, which may impact upon the success of a Pregnancy contemplated by this Agreement and the Birth of a healthy Child;
- (c) she is not now using, and has not in the TWELVE (12) months previous to the date of this Agreement, used an illegal drug;
- (d) she will not, during the Term of the Agreement, use any illegal drugs; and
- (e) she has never been charged with a criminal offence.

9.2 The Gestational Carrier warrants and represents that she will strictly comply with all of her obligations set out in the following paragraphs:

9.3 The Gestational Carrier will follow all medical advice given by the Transfer Physician and the Attending Physician, and will undergo all medical procedures that either of them require to ensure that her obligations under this Agreement are safely and successfully performed for both the Gestational Carrier and the Child. Without limiting the generality of the foregoing, if the Attending Physician determines that a Caesarean Birth is advisable for the health and safety of either the Gestational Carrier or the Child, then the Gestational Carrier hereby consents to such procedure. The Gestational Carrier further consents to submit to amniocentesis and all other tests recommended by the Transfer Physician and the Attending Physician and those tests requested by the Intended Parents on the advice of the Transfer Physician, should she become Pregnant pursuant to the terms of this Agreement.

9.4 The Gestational Carrier will follow a prenatal medical examination schedule and prenatal procedures prescribed by the Transfer Physician and/or the Attending Physician who will be responsible for the Gestational Carrier's medical care during the prenatal period. If a medical illness or condition is suspected or diagnosed during the Pregnancy, the Gestational Carrier agrees that she will seek medical attention, and will follow all medical instructions and course of treatment as prescribed.

9.5 The Gestational Carrier covenants and agrees to have the integrated pre-natal screen (IPS), parts one and two:

- (a) at approximately 12 weeks, Part 1 of the IPS, which consists of a nuchal translucency ultrasound and associated maternal bloodwork; and
- (b) at approximately 16 weeks, Part 2 of the IPS, which consists of the appropriate

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maternal blood tests.

The results of the IPS will be forwarded to the Attending Physician.

9.6

- (a) The Gestational Carrier warrants that she does not smoke and will not smoke, or expose herself or allow herself to be exposed to second-hand smoke, for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (b) The Gestational Carrier warrants that she will not drink alcoholic beverages for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (c) The Gestational Carrier further warrants that she will maintain a proper diet and exercise regime as recommended by the Transfer Physician and/or the Attending Physician. All costs incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 9.6(c) shall, subject to the cap on the Special Expense Amount, be included in the Special Expenses.

9.7 The Gestational Carrier will obtain adequate prenatal medical care including, without limitation, the care contemplated by this Part IX in order to enhance the success of the Pregnancy and the Birth of a healthy Child.

9.8 The Gestational Carrier covenants and agrees that during the Term of this Agreement she will not:

- (b) not ingest, inhale, inject or absorb any drugs, pharmaceutical or herbal substances including, without limitation, over the counter medication, not prescribed or approved, in writing, by the Transfer Physician or the Attending Physician (with the exception of Tylenol consumed at or below the recommended dosage for pregnant women). If the Transfer Physician approves any such medications, the Gestational Carrier agrees to follow the instructions of the Transfer Physician and/or Attending Physician with respect to dosage of substances or medication;
- (c) not have any part of her body pierced or tattooed;
- (d) use her best efforts to avoid all exposure to radiation or toxic chemicals; and
- (e) avoid any potentially hazardous situations or activities that a reasonable person would conclude are likely to result in harm to herself or the Fetus.

9.9 Failure to comply with this Part IX will constitute a material breach of the Gestational Carrier's obligations under this Agreement.

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Handwritten initials and signature, possibly "A.B." and "A.B. FDR".

9.10

- (a) After the Gestational Carrier becomes Pregnant with the Child, the Gestational Carrier and the Intended Parents will keep each other reasonably informed of their whereabouts.
- (b) From and after the first day of the 24<sup>th</sup> week of the Pregnancy, the Gestational Carrier may only travel outside of Canada: (i) in the event of a severe illness or death in her immediate family; (ii) if she has obtained the prior written consent of the Intended Parents, which shall not be unreasonably withheld; (iii) if she has the prior approval of the Attending Physician; and (iii) if she has a policy of travel health insurance covering her health care costs, the Birth of the Child and the Child's health care costs, which is in place prior to departure and for the duration of the travel.
- (c) From and after the first day of the 24<sup>th</sup> week of the Pregnancy, the Gestational Carrier shall not travel to or visit the Provinces of Quebec, Saskatchewan, New Brunswick and/or Prince Edward Island.
- (d) From and after the first day of the 28<sup>th</sup> week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel by airplane.
- (e) From and after the first day of the 34<sup>th</sup> week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel more than a FORTY (40) minute drive from a hospital.

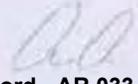
9.11 The Gestational Carrier will and hereby consents to the Transfer Physician and the Attending Physician keeping the Intended Parents informed at all material times of whether a Transfer has resulted in a Pregnancy, the progress of the Pregnancy, the results of all tests and any recommendations arising from test results, including all information relevant to the health of the Gestational Carrier and the Fetus, and the expected date of Birth. The Gestational Carrier will give the Attending Physician any further consent, authority or directions necessary to comply with this obligation to keep the Intended Parents so informed.

9.12 The Gestational Carrier hereby gives her consent, and will sign any medical consent forms to allow the Transfer Physician, the Attending Physician or any other doctor or hospital agreed to by the Parties to treat her as may be required in respect of the Pregnancy.

**PART X  
CONDITION PRECEDENT**

10.1 The Parties each acknowledge that a finding by medical testing that either Andrew or Elad is a genetic parent of the Child is a condition precedent to the performance of the Intended Parents' obligations under this Agreement. For the purposes of determining the parentage of the Child, immediately after the Birth, the Intended Parents and the Gestational Carrier will submit to a DNA test and each Party consents to the immediate testing of the DNA

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of the Child.

10.2 A finding that neither Intended Parent is a genetic parent of the Child will constitute a material breach of this Agreement unless the parentage is due to a clinical or physician's error in the fertilization or Transfer procedure. If there is a finding that neither Intended Parent is a genetic parent of the Child, and the same degree of testing confirms that the Gestational Carrier is not the genetic mother of the Child, a clinical or physician's error in the fertilization or Transfer procedure shall be deemed to have occurred and the Intended Parents shall assume responsibility for the Child as if it were their own.

10.3 If the Gestational Carrier is the genetic mother of the Child, the Gestational Carrier will refund, within THIRTY (30) days of the request, any Special Expense Amount paid on her behalf, or reimbursed to her, and will forego the reimbursement of any further allowable Special Expense Amount that would otherwise be, or become, reimbursable to her and the Intended Parents shall not be obliged to accept any responsibilities, social, legal or custodial, toward the Child, without prejudice to any of the rights that the Intended Parents are entitled to claim under this Agreement.

**PART XI  
WARRANTIES AND ACKNOWLEDGEMENTS**

11.1 The Gestational Carrier warrants that, to the best of her knowledge, she is physically capable of carrying the Fetus to term and is capable of carrying and bearing healthy, normal children.

11.2 The Gestational Carrier warrants that, to the best of her knowledge, she has no transmittable disease and will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.3 Andrew and Elad each warrant that, to the best of their knowledge, neither has a transmittable disease and each will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.4 The Gestational Carrier acknowledges that it will be in the best interests of the Child for the Child to be placed in the custody of the Intended Parents immediately upon the Birth of the Child and for the Gestational Carrier to forever waive all parental and other rights in and to the Child that she has or may acquire in the future immediately upon the Birth of the Child.

**PART XII  
EARLY TERMINATION OF PREGNANCY**

12.1 The Parties acknowledge that the Gestational Carrier has the right to have the Pregnancy terminated at any time she and either the Transfer Physician or the Attending Physician, in their absolute discretion, determine the Pregnancy should be terminated. However, the Gestational Carrier has assured the Intended Parents that it is not her intention to have an

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abortion, unless the Intended Parents request that she does so in the circumstances set out below. The Gestational Carrier has further assured the Intended Parents that she will proceed with a Requested Termination at a time and place recommended by the Transfer Physician and/or Attending Physician if: (i) a test reveals that the Child is likely to have a serious genetic or congenital abnormality or defect; (ii) the Transfer Physician or the Attending Physician so recommends in writing; and (iii) the Intended Parents so request in writing. All costs incurred in connection with and directly related to the Requested Termination shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

12.2 In the interests of clarity, the Parties agree that any request to terminate the Pregnancy shall be in writing and signed by each of the Intended Parents.

12.3 The Gestational Carrier states that she does not intend to exercise her right to abortion:

- (a) except as set out in this Part XII, or
- (b) unless in the opinion of the Transfer Physician and/or the Attending Physician, terminating the Pregnancy is necessary to protect the Gestational Carrier's health or life, in which case the consent of the Intended Parents is not required.

12.4

- (a) The Gestational Carrier will undergo ultrasound, chorionic villus sampling, IPS, amniocentesis and similar tests and procedures to detect genetic and congenital abnormalities or defects in the Fetus, as recommended by the Transfer Physician and/or the Attending Physician.
- (b) The Intended Parents acknowledge the risks to the Pregnancy associated with any invasive testing and, provided that the Gestational Carrier is not otherwise in material breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from any invasive testing performed at the request of or with the consent of the Intended Parents.

12.5 The tests will be performed or interpreted by the Transfer Physician, the Attending Physician, a physician or a technician recommended by either or both of them that is satisfactory to the Parties to this Agreement.

12.6

- (a) If the Gestational Carrier is carrying a single Fetus and tests indicate that the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or if the Gestational Carrier is carrying a multiple pregnancy and the tests indicate that each Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, then the Intended Parents may, in accordance with Section 12.1, inform the Gestational Carrier that it is their wish that the Pregnancy be

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terminated. The Gestational Carrier, in consultation with the Transfer Physician or Attending Physician, will follow the instructions of the Intended Parents to terminate the Pregnancy.

- (b) If the Gestational Carrier is carrying a multiple Pregnancy and the medical tests indicate that only one Fetus has or is likely to have, a serious genetic or congenital abnormality or defect, the Intended Parents may inform the Gestational Carrier that it is their wish that the Gestational Carrier undergo a selective reduction procedure and the provisions of Section 13.1 shall apply.

12.7 If the Gestational Carrier:

- (a) terminates the Pregnancy or undergoes a selective reduction procedure without the prior written approval of the Intended Parents where prior consent is required; or
- (b) refuses to terminate the Pregnancy, or to take all steps within her control to undergo a selective reduction procedure if requested to do so, within TWENTY (20) days of receiving notice of the Intended Parents' wish to have the Pregnancy terminated because the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or the multiple pregnancy poses a risk to the health or life of the remaining fetus(es) or the Gestational Carrier,

then the Gestational Carrier will be in material breach under this Agreement, and the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses incurred after the date of the termination or selective reduction in the event of Section 12.7(a), or the date of notice in the event of Section 12.7(b), and the Gestational Carrier will refund to the Intended Parents all amounts already reimbursed to her pursuant to the terms of this Agreement.

12.8 Subject to Section 12.1, if the Gestational Carrier refuses to terminate the Pregnancy or undergo a selective reduction procedure at the request of the Intended Parents and the Child is born with or without the serious genetic or congenital abnormality or defect detected or suspected from the tests referred to above, the Gestational Carrier will give the Child into the custody of the Intended Parents as provided in this Agreement and no expenses of the Gestational Carrier will be reimbursed after the date on which notice requesting termination or selective reduction was received, but all other terms of this Agreement will continue in full force and effect including, without limitation, the Intended Parents' obligation to take custody of and support the Child.

12.9 If the tests for congenital and genetic defects and abnormalities do not reveal any defects or abnormalities, but the Child is born with defects or abnormalities which do not result from the gross negligence of the Gestational Carrier, the Gestational Carrier will place the Child in the custody of the Intended Parents as provided in this Agreement and all other terms and obligations will remain in effect, including those in Section 26.

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**PART XIII  
SELECTIVE REDUCTION**

13.1 If:

- (a) the Transfer of Embryos contemplated by this Agreement results in the Gestational Carrier becoming pregnant with THREE (3) or more Children; or
- (b) the Gestational Carrier is carrying a multiple pregnancy and the test(s) indicate that one or more Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, but at least one Fetus does not have any genetic or congenital abnormality or defect; or
- (c) in the opinion of the Transfer Physician and/or the Attending Physician, the multiple Pregnancy poses a risk to the Gestational Carrier's health or to one or more Fetus;

then if the Intended Parents so request under Section 13.1(b) or upon recommendation of the Transfer Physician and/or the Attending Physician under Section 13.1(a) or (c), the Gestational Carrier will undergo a procedure in any location specified by the Attending Physician within Canada to selectively reduce the number of Fetuses to twins or a single Fetus, as the case may be. If requested by the Intended Parents, the procedure will take place at the time and in a manner determined to be medically appropriate by the Attending Physician. The Gestational Carrier acknowledges and agrees that she will not undergo a selective reduction procedure if she is carrying two Fetuses without the consent in writing of the Intended Parents, unless the Attending Physician is of the opinion that such procedure is necessary to avoid a serious risk to the health of the Gestational Carrier or to the remaining Fetus or Fetuses. All costs incurred in connection with and directly related to the selective reduction procedure shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

13.2 The Intended Parents acknowledge the risks to the Pregnancy associated with a selective reduction procedure and, provided that the Gestational Carrier is not otherwise in breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from a selective reduction procedure performed at the request of or with the consent of the Intended Parents.

13.3 In the interests of clarity, any request to selectively reduce the Pregnancy shall be in writing and signed by each of the Intended Parents.

**PART XIV  
CUSTODY OF CHILD AND PARENTAL RIGHTS**

14.1 The Gestational Carrier has met or spoken with the Intended Parents and believes that the Intended Parents will be loving and caring parents to any Child born pursuant to this Agreement. She acknowledges that it is in the best interests of the Child that the Intended Parents have sole and exclusive custody and assume the legal and social parental responsibilities

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for the Child, immediately upon Birth. For the purposes of this Agreement, "immediately upon birth" means as soon as the umbilical cord is cut.

14.2 The Gestational Carrier acknowledges that the Intended Parents will show the surname and the given names of the Child to be the names chosen by the Intended Parents on any form required on the Birth of the Child.

14.3 The Gestational Carrier will, at the request of the Intended Parents, participate in any legal proceeding or application supporting the Intended Parents' custody and parentage of the Child and will facilitate proof by affidavit or by giving evidence in person of all material facts within their knowledge and will attend at any and all court hearings, as required either prior to or after the Birth of the Child, until the proceeding or application is finally disposed of. All expenses incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 14.3, shall be borne by the Intended Parents in addition to the Special Expense Amount.

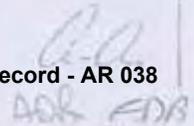
14.4 The Gestational Carrier hereby expressly waives all parental, custodial and social rights that she has or may acquire to the Child.

14.5

- (a) The Gestational Carrier will, immediately upon the Birth of the Child, relinquish any and all custody rights she has or may have, and will make custody of the Child available to the Intended Parents forthwith upon the Birth of the Child. The Intended Parents will receive custody and assume the legal and social parental responsibilities for the Child;
- (b) The Gestational Carrier agrees that she will co-operate with the hospital staff and administration with respect to the agreement of the Parties as set out in Section 14.5(a) and, prior to the expected date of Birth, she will sign a joint letter of instruction and direction to the hospital staff and administration instructing the hospital to treat the Child as the Child of the Intended Parents immediately upon the Birth of the Child, to accept the instructions of the Intended Parents with respect to the Child's medical care, and to discharge the Child from the hospital to the custody of the Intended Parents; and
- (c) The Parties acknowledge that immediately upon Birth all medical decisions regarding the Child shall be made solely by the Intended Parents. The Gestational Carrier agrees that the Intended Parents shall be the persons authorized to care for and make treatment and any other decisions with respect to the Child from the moment of Birth and thereafter. Further, the Gestational Carrier agrees that if a health care provider recognizes her as a substitute decision-maker for the Child, she shall inform such person that she is not the parent of the Child and is therefore not willing to assume the responsibility of giving or refusing consent in accordance with Section 20(2)(e) of the *Health Care Consent Act*. The Gestational Carrier shall direct the health care staff to accept the instructions of

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the Intended Parents with respect to the health of the Child.

- (d) Notwithstanding the above, if the Intended Parents are not available to take physical custody of the Child, or make medical decisions with respect to the Child, immediately after Birth, the Gestational Carrier shall do so on a temporary basis until the Intended Parents are available and same shall not derogate from the Intended Parents' legal parental rights with respect to the Child.

14.6 The Intended Parents will receive the custody of the Child at Birth, or as soon thereafter as is practicable, and if not present at the same time either Andrew or Elad will be deemed to receive custody on behalf of both of them.

14.7 The Parties agree that the Gestational Carrier shall not under any circumstances breastfeed the Child without the permission of the Intended Parents obtained in advance. The Parties acknowledge that the Gestational Carrier has agreed to pump breastmilk for the Child, if feasible at the time, and that the Intended Parents shall cover the direct cost of doing so in addition to the Special Expense Amount.

14.8 Each Party to this Agreement will do what is reasonably necessary to facilitate and expedite the performance of this Agreement including all things such as completing consent forms, hospital and statistical records and obtaining birth certificates.

**PART XV  
RELATIONSHIP WITH THE CHILD**

15.1 The Gestational Carrier will avoid developing a parental relationship with the Child. The only time she will see the Child is in the Hospital before the Child is discharged, and thereafter upon the consent of the Intended Parents. After the Birth, the Gestational Carrier will not contact, nor attempt to contact, nor allow herself to be in contact with the Child in any manner whatsoever at any time, except with the express permission of the Intended Parents. At no time will the Gestational Carrier reveal or cause to be revealed to the Child the fact that the Gestational Carrier gave Birth to the Child, on the understanding that the Intended Parents shall have sole discretion about providing such information to the Child.

15.2 Notwithstanding the above, the Intended Parents hereby consent to allow the Gestational Carrier and her dependent child to spend time with the Child after Birth but prior to discharge from the Hospital, in the presence of the Intended Parents

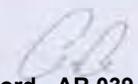
**PART XVI  
WAIVER AND RELEASE**

16.1 The Gestational Carrier waives all rights that she has or may in the future have to the custody of, access to, or information about the Child and releases the Intended Parents and each of them from all claims that she has, or may in the future have to the custody of, access to, or information about the Child.

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**PART XVII  
FURTHER AGREEMENT AS TO CUSTODY**

17.1 After the Birth of the Child, the Gestational Carrier will, at the request of the Intended Parents, enter into a further agreement with the Intended Parents confirming the Intended Parents' custody of the Child.

17.2 On her part, the Gestational Carrier will confirm and covenant, among other things, that she waives all rights she may have in respect of the Child, and without restricting the generality of the foregoing, her right to custody of the Child and all rights incidental to custody, including the right of access to the Child.

17.3 On their part, the Intended Parents hereby agree, among other things, that:

- (a) they release the Gestational Carrier from all obligations that she has or may in the future have to provide for the support and education of the Child for such period of time as the Child is entitled to support pursuant to the laws of the jurisdiction in which he/she is habitually resident;
- (b) each of them will charge his estate with the obligation to provide for the adequate support and education of the Child; and
- (c) provided that the Gestational Carrier has made physical custody of the Child available to the Intended Parents, each of the Intended Parents will indemnify the Gestational Carrier with respect to any expense incurred by her to provide for the support or education of the Child, including without limitation any legal or other expenses the Gestational Carrier pays in connection with the defence thereof.

**PART XVIII  
DEATH OF INTENDED PARENTS AND  
GUARDIANSHIP OF CHILD**

18.1 The Intended Parents shall each maintain a valid Will in good standing, recognizing the Child as their issue, naming a testamentary guardian for the Child and making adequate provision for the support and education of the Child.

18.2 If either Andrew or Elad dies before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the survivor. If both Andrew and Elad die before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the Guardians named below.

18.3 Each of the Intended Parents hereby declare that, in the event of both of their deaths during the term of this Agreement, the Guardians of any Child born pursuant to this Agreement are: Tova and Mordehay Dvash, who reside in Israel and who can be reached at +972- [REDACTED] +972- [REDACTED] +972- [REDACTED] or [REDACTED]@gmail.com or

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██████████@bezeqint.net. The Guardians shall make any or all medical decisions with respect to the Child in the event that the Intended Parents are incapacitated and unable to do so.

18.4 The Gestational Carrier shall be entitled to rely on this Part XVIII without the requirement of any further evidence for the purpose of providing custody of the Child to the Guardians named herein in the event of the Intended Parents' death or for the purpose of the Guardians named herein making medical decisions for the Child in the event of the Intended Parents' inability to do so. The Intended Parents hereby warrant that they have not and will not enter into any conflicting document or agreement with respect to guardianship of the Child.

**PART XIX  
SEPARATION OR DIVORCE OF INTENDED PARENTS**

19.1 If the Intended Parents separate or divorce before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the care of either Andrew or Elad who will undertake to determine custody and any incidents of custody of the Child as between themselves by mutual agreement or by the Court.

**PART XX  
INCAPACITY OF GESTATIONAL CARRIER**

20.1 The Gestational Carrier agrees that, if she becomes incapable of making decisions for herself, or if she requires life support to sustain her life, then all decisions relating to her medical care shall be made by her Attorney for Personal Care ("Attorney") as appointed by her Power of Attorney for Personal Care or, if she does not have an Attorney, by her Substitute Decision-Maker. However, the Gestational Carrier hereby expresses her wish that if she is Pregnant at the time she is assessed as incapable, and the Attending Physician or another physician deems that the Child would benefit from prolonging her life by artificial means until it is deemed safe to deliver the Child, and that the Gestational Carrier is not enduring pain and suffering, then the Attorney, or the Substitute Decision-Maker, as the case may be, will consent to prolonging the life of the Gestational Carrier by artificial means until after the Birth of the Child.

20.2 The Intended Parents shall reimburse the Gestational Carrier for the legal expenses incurred in having a Will and a Power of Attorney for Personal Care prepared for the purpose of fulfilling Section 20.1 above, in addition to the Special Expense Amount to a maximum of Five Hundred Dollars (\$500.00).

**PART XXI  
LIFE INSURANCE POLICY FOR  
GESTATIONAL CARRIER**

21.1 The Gestational Carrier hereby acknowledges that she currently has a policy of Life Insurance in place with coverage in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00 Cdn.) on her life which will be kept in place for the period commencing on the date which is not later than the date of the first Transfer and shall end

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no earlier than the first to occur of the following dates (the "Insurance Termination Date"): (i) the date of termination of this Agreement; and (ii) the day which is TWO (2) months after the date of Birth. The Gestational Carrier may renew the life insurance, but the Intended Parents will have no obligation to pay for the cost of any premiums charged after the Insurance Termination Date.

21.2 The Intended Parents shall be named as revocable beneficiaries of SEVENTEEN PERCENT (17%) under the Life Insurance policy, and shall be removed as beneficiaries immediately following the earlier of: (i) the Birth; or (ii) the termination of the Agreement. The Gestational Carrier shall name the beneficiary of the remainder under the Life Insurance policy who shall hold same in trust for her children.

21.3 The Intended Parents may put an additional policy of life insurance into place on the Gestational Carrier's life and she shall take all reasonable steps to facilitate same.

**PART XXII  
ENFORCEMENT**

22.1 The Parties have a right to enforce this Agreement in the Ontario Court of Justice including the right to seek an interlocutory and permanent injunction enjoining behaviour that is contrary to or in breach of the Agreement. The Parties acknowledge that a breach of this Agreement will result in irreparable harm to the aggrieved Party and to the Child.

**PART XXIII  
VITAL STATISTICS**

23.1 The Gestational Carrier shall refrain from completing and filing the Statement of Live Birth after the Birth of the Child.

23.2 Upon confirmation by DNA tests, the Gestational Carrier will sign all necessary documents to obtain a legal declaration that she is not the genetic or intended mother of the Child, and that the Child was conceived through I.V.F. by the Ova fertilized with the Sperm.

**PART XXIV  
SUCCESSION**

24.1 The Parties agree that for the purposes of succession law, and any Wills or estates, the Child will, at all times, be a child of the Intended Parents.

**PART XXV  
EARLY TERMINATION**

25.1 If, without the fault of the Gestational Carrier, the Pregnancy ends in Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, then:

- (a) the Intended Parents will be entitled to terminate this Agreement and will be

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released from all obligations under this Agreement;

- (b) the Gestational Carrier will be entitled to terminate this Agreement and retain any reimbursement of any Special Expense Amounts paid or payable up to and including the date of Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; and
- (c) the Gestational Carrier shall be entitled to reimbursement of the Special Expenses for TWO (2) weeks after the date of an Early Miscarriage or FOUR (4) weeks after the date of a Miscarriage, Requested Termination or Still-Birth.

25.2 If the Intended Parents choose not to terminate this Agreement after an Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, the Term of the Agreement shall continue and not be at an end, but the period for reimbursement of the Special Expense Amount shall be as set out above and shall be reset to the maximum Special Expense reimbursement of Twenty Thousand Dollars (\$20,000) and shall resume TWO (2) weeks prior to the next Transfer. If the Pregnancy ends in a Full Term Still-Birth without the fault of the Gestational Carrier, the Agreement shall terminate on the day which is SIX (6) weeks after the date of the Full Term Still-Birth.

25.3 Notwithstanding anything set out in this Agreement, if the Pregnancy is terminated, results in a Still-Birth, results in a Full-Term Still Birth, or produces a Child that has a congenital abnormality or defect as a result of the negligent action or omission of the Gestational Carrier, or if the Gestational Carrier materially breaches this Agreement, the Gestational Carrier shall return to the Intended Parents an amount equal to the Special Expenses reimbursed to the Gestational Carrier within FIVE (5) days of a demand therefor, without prejudice to the Intended Parents' rights at law and pursuant to this Agreement to seek damages from the Gestational Carrier.

**PART XXVI  
SPECIAL EXPENSES**

26.1 The Intended Parents will reimburse the Gestational Carrier for the following out of pocket expenses incurred by the Gestational Carrier in connection with the surrogacy to a maximum of Twenty Thousand Dollars (\$20,000.00 CDN) inclusive of all taxes (the "Special Expense Amount") for all such expenses:

- (a) medical, pharmaceutical and laboratory expenses incurred by the Gestational Carrier as a result of the Transfer, Pregnancy or Birth not otherwise covered by the Ontario Health Insurance Plan ("OHIP") or any private health care insurance plan under which she is covered. However, it is understood and agreed that the Intended Parents will pay all expenses for the I.V.F. treatment directly to the Clinic and this cost will not be included in the Special Expense Amount;
- (b) the amount actually expended by the Gestational Carrier for groceries, prepared food and meals for her own consumption commencing two weeks prior to the date

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of the first Transfer and ending on the expiration or earlier termination of the Agreement;

- (c) a reasonable amount for automobile expenses incurred for local travel at the request of the Intended Parents or made necessary for the performance of her obligations under this Agreement calculated at a rate of \$0.54 per kilometre travelled and all related parking costs;
- (d) communication costs including, without limitation, the costs of an internet account, cellular telephone charges, and the costs of acquiring a cellular telephone, and long distance telephone charges, all incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (e) vitamins and supplements required to maintain a healthy Pregnancy;
- (f) child care costs for the Gestational Carrier's ONE (1) dependent child incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (g) housekeeping, snow shovelling and lawn care costs incurred by the Gestational Carrier in order to reduce the physical strain and incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (h) counselling for the Gestational Carrier and her ONE (1) dependent child, if so required;
- (i) all expenses incurred by the Gestational Carrier for suitable maternity clothing to be worn throughout the Pregnancy and following the Birth, up to a maximum amount of Seven Hundred and Fifty Dollars (\$750.00);
- (j) a reasonable amount for the Gestational Carrier's wellness expenses including, without limitation, costs incurred for acupuncture, massage, physiotherapy, naturopath, reflexology, chiropractic care, foot care, yoga membership and fitness membership, provided that participation in any of such activities is approved by the Transfer Physician and/or the Attending Physician;
- (k) the cost of a private Hospital room for the Gestational Carrier at the time of Birth, if one is available and which expense is not otherwise covered by OHIP or any private health care insurance plan under which the Gestational Carrier is covered; and
- (l) such other expenses as may be incurred by the Gestational Carrier as a result of the Pregnancy and as may be approved by the Intended Parents. The Parties agree that if the Gestational Carrier has already incurred expenses to the maximum limit

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set out in this Section 26.1, the Intended Parents may, in their sole discretion, agree to pay the cost of any such other allowable expenses in addition to the Special Expense Amount.

26.2

- (a) The Parties acknowledge that for the purposes of Section 26, the Gestational Carrier's expenses incurred during the Reimbursable Period (as hereinafter defined) shall be reimbursed to her in accordance with Schedule "A" attached hereto and Part XXVI.
- (b) For the purposes of Section 26.2(c), the "Reimbursable Period" shall commence on the date of confirmation of the Pregnancy by blood test results and shall end on the earlier of: (i) the day of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child.
- (c) The Reimbursable Period shall be divided into TEN (10) stages (individually referred to as a "Stage"):
  - (i) the first month after the Second Beta (the "First Month");
  - (ii) the second month after the Second Beta (the "Second Month");
  - (iii) the third month after the Second Beta (the "Third Month");
  - (iv) the fourth month after the Second Beta (the "Fourth Month");
  - (v) the fifth month after the Second Beta (the "Fifth Month");
  - (vi) the sixth month after the Second Beta (the "Sixth Month");
  - (vii) the seventh month after the Second Beta (the "Seventh Month");
  - (viii) the eighth month after the Second Beta (the "Eighth Month");
  - (ix) the ninth month after the Second Beta (the "Ninth Month"); and
  - (x) the period commencing on the day after Birth and ending SIX (6) weeks thereafter (the "Post-Pregnancy").
- (d) Notwithstanding anything contained herein to the contrary, the amount of the Special Expenses incurred by the Gestational Carrier and which are eligible for reimbursement by the Intended Parents shall be subject to the maximum amounts set out in the schedule attached hereto as Schedule "A", and subject to Section 25.1, if this Agreement is terminated, the current Stage shall end on the day of

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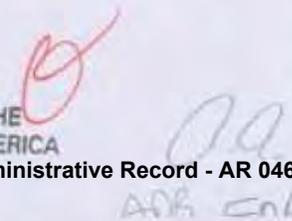
termination.

- (e) If the Special Expenses incurred by the Gestational Carrier in any Stage are less than the maximum set for that Stage, the difference between the maximum allowable and the amount claimed shall be added to the maximum available for the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Fourth Month is Three Thousand Dollars and the Gestational Carrier claims expenses of One Thousand Dollars, the unused balance of Two Thousand Dollars will be added to the maximum available to be claimed in the Fifth Month.
- (f) If the Special Expenses incurred by the Gestational Carrier in any Stage exceed the maximum set for that Stage, and if there is no unused balance to be carried forward pursuant to Section 26.2(e) or if there is insufficient unused balance to cover the excess, the amount of the excess can be claimed in the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Sixth Month is Three Thousand Dollars, and if there is no unused balance to be added to the Sixth Month maximum, and the Gestational Carrier claims expenses of Four Thousand Dollars, the excess of One Thousand Dollars may be claimed in the Seventh Month.
- (g) If, without fault of the Gestational Carrier, the Child is born: (i) prior to the beginning of the Eighth Month, the current stage shall end on the date of Birth and the post-Birth period shall commence on the day after the Child's Birth. The balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall not be available to be claimed and shall be deducted from the cap on the Special Expense Amount on the understanding that the Gestational Carrier's total out of pocket expenses related to the Pregnancy will be available only during the Pregnancy and the recovery period after Birth; or (ii) during the Eighth or Ninth Months of the Pregnancy, the current Stage shall end on the date of Birth and the balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall be added to the Post-Pregnancy Stage.

26.3 Subject to the cap set out in Section 26.1, the Gestational Carrier may be reimbursed for all Special Expenses incurred by her for the period commencing on the date of execution of this Agreement by the Gestational Carrier, and ending on the earlier of the date of termination of this Agreement, TWO (2) weeks after a Pregnancy ends in Early Miscarriage, FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth or SIX (6) weeks after the Birth of a Child, as the case may be. No receipts may be submitted to the Intended Parents after the end of the Term of the Agreement, and notwithstanding anything contained herein to the contrary, the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses which are submitted to the Intended Parents for reimbursement after the expiration of the Term of the Agreement, regardless of when such

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expenses were incurred.

26.4 In addition to the amounts set out in Section 26.1 (the "Additional Expense Amount"), the Intended Parents shall directly cover, or shall reimburse the Gestational Carrier for, all expenses related to the Pregnancy or in the event of the circumstances described below, or so that the Gestational Carrier can fulfill her obligations under this Agreement as follows:

- (a) legal fees and disbursements incurred for obtaining independent legal advice relating to this Agreement to the date of execution of the Agreement, up to a maximum of One Thousand Three Hundred Dollars (\$1,300.00) plus HST;
- (b) life insurance premiums as set out in Section 21;
- (c) travel medical insurance premiums as set out in Section 9.10(c);
- (d) all travel costs incurred by the Gestational Carrier in order to attend at the Clinic at the request of the Intended Parents before the Pregnancy and for each Transfer, including the cost of mileage, parking, meals and child care;
- (e) all expenses incurred and related to the Gestational Carrier's participation in any Transfer which she undergoes at the request of the Intended Parents to a maximum of Five Hundred Dollars (\$500.00) for general reimbursable expenses, including prenatal vitamins and wellness expenses;
- (f) if the Child is delivered by way of Caesarean delivery, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the Post-Pregnancy Stage;
- (g) if a Pregnancy results in a multiple Birth of two or more Children, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the period commencing on the first day of the Seventh Month and ending on the last day of the Post-Pregnancy Stage. (Such Additional Expense Amounts shall increase the maximum amount of Special Expenses which may be incurred by the Gestational Carrier in recognition of the additional physical toll which a multiple Pregnancy or Caesarean delivery will exert on the Gestational Carrier and the increased need for assistance which will increase the Gestational Carrier's out of pocket expenses. In the interests of clarity, if two or more Children are born by Caesarean delivery, an additional total of Seven Thousand Dollars (\$7,000.00) shall be available for maximum reimbursement under Section 26.4(f) and (g)); and
- (h) if, in the written opinion of the Transfer Physician or the Attending Physician and, at the option of the Intended Parents, in the written opinion of a second physician of their choice, complete bed rest is required in order to protect the health of the Gestational Carrier or the Fetus (the "Disability"), the Gestational Carrier will be entitled to reimbursements for the period commencing on the date of the

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physician's order and ending on the earlier of: (i) the date on which the physician lifts the order for bed rest; (ii) the date of Birth, Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; or (iii) the date of termination of this Agreement, for housekeeping and child care expenses for the Gestational Carrier's ONE (1) dependent child to a maximum of Four Hundred Dollars (\$400.00) per week under this Section 26.4(h).

26.5 Notwithstanding anything to the contrary, the Parties acknowledge that regulations to Section 12 of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, which govern the reimbursements to the Gestational Carrier under this Agreement, may come into full force and effect during the Term of the Agreement. If so, then all Parties agree to abide by these regulations even where they are not in accordance with this Agreement, so as not to contravene the law. The Gestational Carrier acknowledges and agrees that, as a result, she may not be entitled to reimbursement of all of the categories of expenses set out above.

**PART XXVII  
ADMINISTRATION AND PAYMENT OF SPECIAL EXPENSES**

27.1 The Gestational Carrier will obtain receipts for all expenditures and will deliver these receipts to the Intended Parents or to an agent on their behalf on a monthly basis and in any event within FIVE (5) days of a request therefor. If required by law, the Intended Parents will instruct the Clinic, or their agent, to reimburse the Gestational Carrier for all Special Expenses in accordance with the terms of this Agreement. The Parties acknowledge and agree that no Special Expenses will be reimbursed to the Gestational Carrier unless a receipt is provided to the Intended Parents or to their agent for the expenditure.

**PART XXVIII  
REMEDIES FOR BREACH**

28.1 If the Gestational Carrier materially fails to perform any of her obligations under this Agreement, or if any of the warranties made by the Gestational Carrier in this Agreement are not true then, without limiting the Intended Parents' remedies in equity or at law, and in addition to such remedies, the Gestational Carrier will, within THIRTY (30) days of request, refund to the Intended Parents all allowable expenses pursuant to the section called SPECIAL EXPENSES, above, which have been reimbursed to the Gestational Carrier by the Intended Parents, to the time of such failure.

28.2 If any Party materially violates any provision contained in this Agreement without legal excuse, such violation will constitute a material breach of this Agreement and, in addition to all other remedies available at law or equity, this Agreement may be terminated forthwith at the option of the aggrieved Party, without further liability on the part of the aggrieved non-breaching Party. If the Intended Parents terminate this Agreement pursuant to this provision, then not only will the Gestational Carrier refund all Special Expenses reimbursed to that date, the Intended Parents will be under no obligation to reimburse the Gestational Carrier for any expenses incurred after the date of the breach.

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28.3 If the Intended Parents materially breach this Agreement without legal excuse, but the Gestational Carrier has performed her obligations under this Agreement then she will be entitled to have all Special Expenses reimbursed in accordance with this Agreement and the Intended Parents will be responsible for the support of the Child and all of the Child's needs until the Child is no longer entitled to support pursuant to the laws in which the Child is habitually resident. Further, if the Gestational Carrier has made physical custody of the Child available to the Intended Parents, the Intended Parents shall indemnify the Gestational Carrier for any and all amounts she pays in connection with the support of the Child, including without limitation, any legal or other fees and disbursements incurred in connection with the defence thereof.

28.4 A breach will not be considered to be a material breach of contract if it is capable of being cured. If so, the Party committing the breach will be given written notice of the alleged breach and will be given a reasonable period of time to cure it, if possible.

28.5 A breach by either of the Intended Parents will constitute a breach by both of them.

28.6 Without limiting the generality of the foregoing, any breach of warranty contained in this Agreement will constitute a material breach of this Agreement.

28.7 Any breach of this Agreement by the Intended Parents on their part, or the Gestational Carrier on her part, will cause the other of them significant damages, including emotional suffering and trauma and shall provide a cause of action for damages to the wronged Party. Each of the Parties acknowledges that because of the nature of this Agreement, monetary damages may not suffice to remedy a breach of this Agreement and that an injunction and/or any other interim judicial relief may properly be obtained to enjoin and/or address a breach of this Agreement in addition to damages.

**PART XXIX  
ASSUMPTION OF RISK**

29.1 The Gestational Carrier assumes and accepts all risks related to the Transfer, Pregnancy and Birth, including but not limited to, the possibility of contracting AIDS, or other transmittable diseases, as a result of the exchange of body fluids and substances and all medical treatments, examinations and procedures involved, and any postpartum complications, and she hereby releases, indemnifies and saves harmless the Intended Parents (and each of them) from all liability, losses, costs and expenses arising, directly or indirectly, from the fulfilment of their obligations under this Agreement including, without limitation, any claim for illness, disfigurement, disability, death, funeral expenses, loss of the Gestational Carrier's future earnings or support for the Gestational Carrier's dependants, damages for loss of enjoyment of life and any other general damages, and for any legal expenses resulting from any dispute of this Agreement by the Gestational Carrier. The Gestational Carrier warrants and represents that she has independently consulted with a physician specializing in fertility procedures and has been made aware of all medical risks (including death), which may result from the procedures contemplated by this Agreement and further acknowledges that she understands these risks. The Gestational Carrier has undergone a thorough medical examination before undergoing any

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procedure contemplated by this Agreement.

**PART XXX  
CONFIDENTIALITY**

30.1

- (a) The Gestational Carrier warrants and represents that she will keep strictly confidential all information respecting the identity of the Intended Parents and the Child, the terms of this Agreement, and information respecting the activities contemplated or carried out under this Agreement (the "Confidential Information") forever. The Parties shall be entitled to discuss the terms of this Agreement with their legal advisors and with their counsellor, each of whom shall be advised of and requested to abide by the confidentiality provision in this Agreement. However, the Gestational Carrier shall be entitled to disclose that the Gestational Carrier intends to carry (or is carrying, if she is already Pregnant) a Child for a same-sex couple who require third party reproduction to have a Child, provided that no Confidential Information is disclosed. The Intended Parents also warrant and represent that they will keep strictly confidential all Confidential Information. However, the Gestational Carrier acknowledges and agrees that the Intended Parents shall disclose the existence and nature of this Agreement to the individual(s) whom they have named as Guardian(s) under their respective Wills.
- (b) Except as required by law and except as set out in this Agreement, none of the Parties will disclose the Confidential Information to any person or distribute it in any public forum whatsoever including, without limitation, newspapers, magazines, Internet, television or radio at any time. This covenant will survive the Birth of any Child conceived pursuant to this Agreement and the Parties acknowledge that a claim for damages, as well as injunctive relief may be sought if there is a breach of the warranties contained herein.

30.2 In order to maintain the confidentiality contemplated by this Agreement, if litigation arises out of this Agreement including, but not limited to, court applications for a custody proceeding, each of the Parties to this Agreement and their legal counsel, their heirs and representatives, agree to make all efforts to maintain such confidentiality as is intended by this Agreement including, but not limited to, requesting that the court records be sealed, requesting the court to invoke non-publication orders, requesting the court in its procedures and in the conduct of hearings to maintain confidential the identity of all of the Parties.

**PART XXXI  
ENTIRE AGREEMENT**

31.1 This Agreement sets forth the entire Agreement between the Parties pertaining to the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and communications, whether written or oral of the Parties.

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**PART XXXII  
SEVERABILITY**

32.1 If any provision of this Agreement is held by the Court to be invalid or unenforceable, the remainder of the provisions of this Agreement will continue in full force and effect and will not be affected, impaired or invalidated thereby.

32.2 If a provision of this Agreement is held by the Court to be invalid or unenforceable due to its scope or breadth then it will be deemed to be valid to the extent permitted by the Court.

**PART XXXIII  
SURVIVAL**

33.1 Notwithstanding any termination of this Agreement pursuant to the terms herein, or the expiration of the Term of the Agreement, the Parties agree that the provisions of the sections called REMEDIES FOR BREACH, ASSUMPTION OF RISK and CONFIDENTIALITY, above, will remain in full force and effect after the termination or expiration of the Term of the Agreement, as the case may be.

**PART XXXIV  
WAIVER**

34.1 No supplement or modification of this Agreement will be binding unless executed in writing by the Party to be bound. No provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent excusing the breach is executed in writing by the Party to be charged with such waiver or consent. No waiver by a Party of any provision of this Agreement will be construed as a waiver of a further breach of the same provision and no waiver will be construed as a waiver of any other provision of this Agreement.

**PART XXXV  
GOVERNING LAW**

35.1 This Agreement will be governed by, subject to and construed in accordance with the laws of the Province of Ontario.

35.2 The Parties to this Agreement acknowledge and agree that it is their express intention and desire to comply with the laws of the Province of Ontario and the Federal Laws of Canada. If during the Term of this Agreement any obligation of any Party becomes prohibited, the Parties agree that such obligation shall be severed from the Agreement (including, but not limited to, the financial obligations set out in this Agreement) and, so long as all Parties are agreeable, this Agreement shall remain in full force and effect.

35.3 The Parties to this Agreement acknowledge and agree that the procedure contemplated by this Agreement are novel and new and that the law applicable to such procedures and relationships is developing and unsettled. Although the possibility exists that this

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Agreement may be declared void as against public policy, in whole or in part, and may be held unenforceable, in whole or in part, by an Ontario Court, all Parties nonetheless agree that they are entering into this Agreement with the intention of being fully bound by its terms. It is the intention of all Parties to comply with the provisions of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, to the extent such Act has been proclaimed into force.

**PART XXXVI  
INDEPENDENT LEGAL ADVICE**

36.1 The Gestational Carrier acknowledges that she has received independent legal advice in respect of this Agreement and acknowledges that she fully understands the intent and the purpose of this Agreement and her obligations under it.

36.2 The Gestational Carrier acknowledges that no coercion, force, pressure or undue influence has been used by any Party against her in making this Agreement.

36.3 The Gestational Carrier believes this Agreement to be fair, just and reasonable, that it will not result in circumstances that are unconscionable to any Party, and that it is in the best interests of the Child.

36.4 Each Party to this Agreement fully understands the Agreement and the legal consequences of this Agreement, and is signing the same freely and voluntarily. No Party to this Agreement has any reason to believe that the other Parties did not freely and voluntarily execute this Agreement.

**PART XXXVII  
INTERPRETATION OF AGREEMENT**

37.1 No provision of this Agreement is to be interpreted for or against any Party to this Agreement merely because that Party, or that Party's solicitor drafted the provision.

**PART XXXVIII  
FACSIMILE TRANSMISSION AND  
EXECUTION IN COUNTERPART**

38.1 The Parties hereby acknowledge that this Agreement may be executed through facsimile transmission and agree to treat these documents in the same manner and with the same legal effect as if they were original documents.

38.2 This Agreement may be executed in any number of counterparts and each such counterpart shall, for all purposes, constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart, provided that each Party has signed at least one counterpart.

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ADAMS  
EDB

**PART XXXIX  
NOTICE**

39.1 All communications which may be or are required to be given by any Party to the other herein will be in writing and delivered or sent by prepaid registered mail, by personal delivery, by facsimile transmission (where possible), or by electronic mail, to the Parties at the following respective addresses:

Gestational Carrier: [redacted] Avenue, Apartment [redacted]  
Mississauga, Ontario L5A 2K7  
Cell: 647 [redacted]  
Email: [redacted]@gmail.com

Intended Parents: [redacted] Avenue, Apartment [redacted]  
Toronto, Ontario M6B 4C6  
Elad Cell: 647 [redacted]  
Andrew Cell: 647 [redacted]  
Email: [redacted]@gmail.com  
Email: [redacted]@gmail.com

39.2 If any communication is sent by prepaid registered mail, it will, subject to the following sentence, be conclusively deemed to have been received on the TENTH (10th) business day following the mailing thereof and if delivered, sent by facsimile transmission, or sent by electronic mail, it will conclusively be deemed to have been received at the time of delivery or transmission.

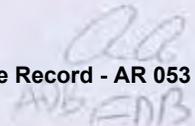
39.3 Notwithstanding the foregoing provisions with respect to mailing, if it may be reasonably anticipated that, due to any strike, lock-out or similar event involving an interruption in postal service, communication will not be received by the addressee by no later than the TENTH (10th) business day following the mailing thereof, then the mailing of any such communication as aforesaid will not have been an effective means of sending the notice, but rather any communication must then be sent by an alternative method which it may reasonably be anticipated will cause the payment or communication to be received reasonably expeditiously by the addressee. Any Party may from time to time change its address or facsimile number hereinbefore set forth by notice to the other of them in accordance with this Section.

**PART XL  
ARBITRATION**

40.1 In the interests of the confidential nature of this Agreement and except as otherwise set out in this provision, if any dispute arises between the Parties in connection with any amounts referred to in Sections 26 or 27 of this Agreement and all matters related thereto, including, without limitation, enforcement of such provisions, the Parties agree that it shall be

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resolved by binding arbitration in accordance with the *Arbitrations Act* (Ontario).

**PART XLI  
ENUREMENT**

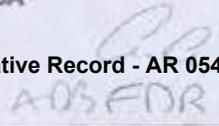
41.1 The rights and obligations under this Agreement shall enure to and bind each of the Parties and their respective heirs, executors, administrators and assigns.

[The remainder of this page is intentionally blank.]

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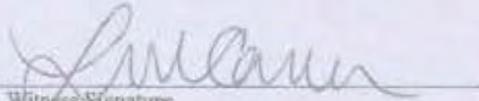
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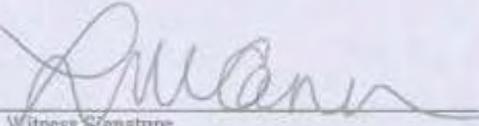


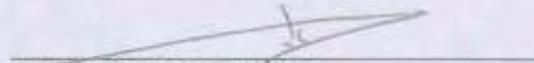
TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Agreement under seal before a witness.

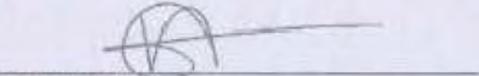
SIGNED, SEALED AND DELIVERED in the presence of

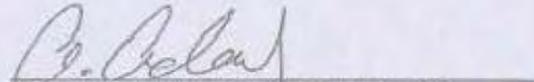
  
Witness Signature

  
ANDREW DVASH-BANKS  
Date of Execution: 12/21/15

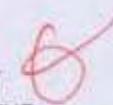
  
Witness Signature

  
ELAD DVASH-BANKS  
Date of Execution: Dec. 21, 2015

  
Witness Signature

  
AMANDA MARIE ANNE ADAMS  
Date of Execution: Dec 21 2015

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**SCHEDULE "A"**

Attached to and forming part of  
an Agreement dated the 21<sup>st</sup> day of December, 2015 between  
Andrew Dvash-Banks, Elad Dvash-Banks and Amanda Marie Anne Adams

<u>Maximum Reimbursements – Special Expenses</u>	
Stage 1: First Month Following Second Beta Test	\$1,000.00
Stage 2: Second Month Following Second Beta Test	\$1,000.00
Stage 3: Third Month Following Second Beta Test	\$1,000.00
Stage 4: Fourth Month Following Second Beta Test	\$2,000.00
Stage 5: Fifth Month Following Second Beta Test	\$2,000.00
Stage 6: Sixth Month Following Second Beta Test	\$2,500.00
Stage 7: Seventh Month Following Second Beta Test	\$2,500.00
Stage 8: Eighth Month Following Second Beta Test	\$3,000.00
Stage 9: Ninth Month Following Second Beta Test	\$3,000.00
Stage 10: Post-Pregnancy	\$2,000.00
<b>TOTAL MAXIMUM REIMBURSEMENT:</b>	<b><u>\$20,000.00</u></b>

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Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 056

# **EXHIBIT G-5**



Certified A True Photostatic Print of a Record

on file at the Office of the Registrar General Ontario, Canada

Registration Number: Numéro d'enregistrement: P3319402

Certificate number: Numéro de certificat: P3319402

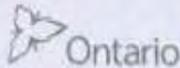
Date issued: Date de délivrance: Nov 09 2016

File number: Numéro de dossier: 01599220-01-

Office of the Registrar General Bureau du registraire général

Photocopie certifiée conforme d'un document

déposée aux dossiers du Bureau du registraire général (Ontario) Canada



ServiceOntario

Office of the Registrar General 189 Red River Road PO Box 4000 Thunder Bay ON P7B 5L3

Statement of Live Birth Form 2

Vital Statistics Act

This is a permanent legal record. Please read all instructions before completing this form. Type or print clearly in blue or black ink and complete all items.

Section A - Child's Information (see instruction #1)

Section A - Child's Information form fields: Last Name, First Name, Date of Birth, Name of hospital, Place of Birth, Sex of Child.

Section B - Father's Information - (see instruction #2)

Section B - Father's Information form fields: Current Legal Last Name, Legal Last Name at Birth, First and Middle Name(s), Any Other Legal Last Name(s), Place of Birth, Date of Birth, Marital Status.

Section C - Father's Information - (see instruction #3)

Section C - Father's Information form fields: Current Legal Last Name, Legal Last Name at Birth, First and Middle Name(s), Any Other Legal Last Name(s), Place of Birth, Date of Birth, Marital Status.

Section D - Birth Information

Section D - Birth Information form fields: Residence of Parent, Making Address of Parent, Duration of pregnancy, Total number of children ever born, Weight of child at birth, Date of birth, Sex of child, Multiple birth, Name of Attendant at Birth.

Section E - Certification of Information (Please read instruction #1 before signing)

Section E - Certification of Information form fields: Cultural/Religious/Ethnic heritage, Signature of Father, Signature of Mother, Date of signatures.

Section F - Office Use Only

Section F - Office Use Only form fields: Signature of Manager, Date of registration, Updated Geo Code.

113326 (2016/06) © Queen's Printer for Ontario, 2016

A True Copy of the Signed Original.

TERRI N. DAY VICE CONSUL OF THE UNITED STATES OF AMERICA

*Alexandra Schmidt*

Alexandra Schmidt  
Deputy Registrar General  
Registraire générale adjointe

--CERTIFIED COPY--  
NOT VALID WITHOUT ALL PAGES

# **EXHIBIT G-6**



ONTARIO  
Superior Court of Justice  
*(Name of Court)*  
at 393 University Avenue, Toronto, Ontario M5G 1E6  
*(Court office address)*

Court File Number  
FS-16-21123

Form 25: Order (General)

Temporary  
 Final

**Applicant(s)**

*(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)*

Elad Dvash-Banks and  
Andrew Dvash-Banks  
[REDACTED] Avenue, Unit [REDACTED]  
Toronto, Ontario  
M6B 4C6

*Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).*

Michelle Flowerday  
Flowerday Law | Fertility & Family  
158 McRae Drive  
Toronto, Ontario M4G 1S7  
T: 416.428.5511  
F: 647.341.5111  
E: michelle@flowerdaylaw.ca

The Honourable  
*Harrison Young J.*  
Judge (Print or type name)  
September 28, 2016  
Date of order

**Respondent(s)**

*(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)*

Amanda Marie Anne Adams  
[REDACTED] Avenue, Unit [REDACTED]  
Mississauga, Ontario  
L5A 2K7

*Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).*

Deputy Registrar General for the  
Province of Ontario  
Ministry of the Attorney General  
Legal Services Branch  
77 Wellesley Street West  
Ferguson Block, 6<sup>th</sup> Floor  
Toronto, Ontario M7A 1N3

The court read an application/motion made by *(name of person or persons)*

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

The following persons were in court *(names of parties and lawyers in court)*

Michelle Flowerday, Counsel for the Applicants

The court received evidence and heard submissions on behalf of *(name or names)*

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

Under the *Children's Law Reform Act*, Section 4(1), (2) and (3), and the *Courts of Justice Act*, Section 97,

1. It is declared that the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, are the parents of the child, E [REDACTED] J [REDACTED] D [REDACTED] B [REDACTED] born September 16, 2016 ("the child"), and that the Applicants are recognized for all purposes in law to be the parents of the child.
2. It is declared that the Respondent, Amanda Marie Anne Adams, is not the mother of the child.

A True Copy of the  
Signed Original.

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VICE CONSUL OF THE  
UNITED STATES OF AMERICA

Under the *Vital Statistics Act*,

3. The Deputy Registrar General for the Province of Ontario is directed to register the birth of the child so as to show the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, as the parents of the child.

~~Under the *Consolidated Provincial Practice Direction of the Ontario Superior Court of Justice*, Section F, Paragraphs 106 and 107,~~

- ~~4. Service and filing of a notice of motion or application with respect to the relief granted under paragraphs 6, 7 and 8 of this Order are dispensed with.~~
- ~~5. Notice to the media with respect to the relief granted under paragraphs 6, 7 and 8 of this Order is dispensed with.~~

Under the *Courts of Justice Act*, Section 137(2),

6. The Registrar of the Ontario Superior Court of Justice is directed to seal and treat as confidential all documents filed in this proceeding.
7. No person shall publish or make public information that has the effect of identifying either Applicant or the other persons identified in the materials filed in this proceeding.
8. The name of this proceeding shall be amended to show only the initials of the parties and the Registrar of the Ontario Superior Court of Justice is directed to amend the records accordingly.
9. The Deputy Registrar General for the Province of Ontario is directed to seal and treat as confidential the Notice of Live Birth and all other records in its possession in connection with this case, including this Order, save and except for Form 2 (Statement of Live Birth) and the Birth Certificate.

Put a line through any blank space left on this page.

Sept 28, 2016  
Date of signature

Haroon Yousaf  
Signature of judge or clerk of the court

  
TERRI N. DAY  
VICE CONSUL OF THE  
UNITED STATES OF AMERICA

SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE ENTERED / ENTRÉ
SEP 28 2016
per/par <u>Justin DiGirolamo</u> LOCAL REGISTRAR / GREFFIER LOCAL

Case No. 2:18-cv-00523-JFW-JCX (C.D. Cal.) - Administrative Record - AR 022

# **EXHIBIT G-7**



Tel: 1877-842-4827 Fax: 1855-897-2528  
E-mail: [immigration@sponsorDNA.com](mailto:immigration@sponsorDNA.com) Web: [www.asibimmigration.com](http://www.asibimmigration.com)

30 January 2017

Petitioner: BANKS, ANDREW MASON

Beneficiary: D [REDACTED] B [REDACTED] E [REDACTED] J [REDACTED]

Our reference: [REDACTED]

Collection Facility  
VIAGUARD ACCU-METRICS  
1232 Kingston Road  
Toronto, ON  
M1N 1P3  
4166914167

A paternity test was performed to prove a parent / child relationship between alleged father: BANKS, ANDREW MASON and child: D [REDACTED] B [REDACTED] E [REDACTED] J [REDACTED]

This is to confirm that the probability of paternity percentage of 0% represents a negative result.

The client contacted us directly. No third party vendor was used. This account is paid in full.

Thank you, Harvey Tenenbaum, Director of Operations



Immigration and Citizenship Relationship Testing

[immigration@sponsorDNA.com](mailto:immigration@sponsorDNA.com)

Toll Free: 1-877-842-4827

Fax: 1-855-897-2528

# **EXHIBIT G-8**



U.S. DEPARTMENT OF STATE  
U.S. CONSULATE GENERAL, TORONTO  
360 University Avenue, Toronto, ON M5G 1S4 Canada  
Email: [torontopassport@state.gov](mailto:torontopassport@state.gov)  
Website: [toronto.usconsulate.gov](http://toronto.usconsulate.gov)

March 2, 2017

Mr. Andrew Mason Dvash-Banks  
[redacted] Ave, Apt# [redacted]  
Toronto, Ontario  
M6B 4C6

Dear Mr. Dvash-Banks

I am writing in reference to your recent application for a Consular Report of Birth Abroad and passport for E [redacted] J [redacted] D [redacted] -B [redacted], who was born on September 16, 2016 in Toronto, Canada.

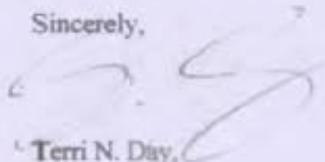
I regret to inform you that after careful review of the evidence you submitted with your child's application, it has been determined that his claim to U.S. citizenship has not been satisfactorily established, as you are not his biological father.

The Immigration and Nationality Act (INA) of 1952, as amended, requires, among other things, a blood relationship between a child and the U.S. citizen parent in order for the parent to transmit U.S. citizenship.

In view of the above, it does not appear that E [redacted] J [redacted] D [redacted] -B [redacted] acquired U.S. citizenship through you. Therefore, your child is not entitled to U.S. Consular Report of Birth Abroad and passport, therefore the applications are denied.

We suggest that you contact the nearest office of U.S. Citizenship and Immigration Services regarding your citizenship status. All documents submitted as part of the application are enclosed. By law, application fees are non-refundable.

Sincerely,

  
Terri N. Day,  
Vice Consul

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

5 Theodore Edelman (*pro hac vice*)  
edlemant@sullcrom.com  
6 Jessica Klein (*pro hac vice*)  
kleinj@sullcrom.com  
7 Lauren M. Goldsmith (SBN 293269)  
goldsmithl@sullcrom.com  
8 SULLIVAN & CROMWELL LLP  
125 Broad Street  
9 New York, New York 10004-2498  
Telephone: (212) 558-4000  
10 Facsimile: (212) 558-3588

11 Aaron C. Morris (*pro hac vice*)  
amorris@immigrationequality.org  
12 IMMIGRATION EQUALITY  
40 Exchange Place, Suite 1300  
13 New York, New York 10005-2744  
Telephone: (212) 714-2904  
14

15 *Attorneys for Plaintiffs*

16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION (LOS ANGELES)**  
20

21 ANDREW MASON DVASH-  
BANKS AND E.J. D.-B.,

22 Plaintiffs,  
23

24 v.

25 THE UNITED STATES  
DEPARTMENT OF STATE,  
and THE HONORABLE  
26 MICHAEL R. POMPEO,  
Secretary of State,  
27

28 Defendants.

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

**DECLARATION OF ANDREW  
DVASH-BANKS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: February 4, 2019  
Courtroom: 7A

1 I, ANDREW DVASH-BANKS, declare as follows:

2 1. I am one of the Plaintiffs in the above-captioned action  
3 (“Action”) and submit this declaration in support of Plaintiffs’ Motion for Partial  
4 Summary Judgment in the above-captioned action. I have personal knowledge of  
5 the facts set forth within this declaration. If called to testify, I would and could  
6 testify competently as to the facts described herein.

7 2. Attached to this declaration as Exhibit H is a true and correct  
8 copy of the Consular Report of Birth Abroad I received on or about March 2, 2017  
9 from the United States Consulate in Toronto for my son A.J.D.-B. I understand  
10 that my counsel has produced this document to Defendants during the course of  
11 this Action with production number DVASH-BANKS00000017.

12 3. Attached to this declaration as Exhibit I is a true and correct  
13 copy of the Statement of Live Birth for A.J.D.-B., which I received on or about  
14 November 3, 2016 from the Ontario Office of the Registrar General. I understand  
15 that my counsel has produced this document to Defendants during the course of  
16 this Action with production number DVASH-BANKS00000034.

17 4. Attached to this declaration as Exhibit J is a true and correct  
18 copy of a letter dated January 24, 2017 that I received in January or February of  
19 2017. The letter is written on the letterhead of the United States Department of  
20 State, United States Consulate General, Toronto, and is signed by Frankie Day. I  
21 understand that my counsel has produced this document to Defendants during the  
22 course of this Action with production number DVASH-BANKS00000031.

23 //

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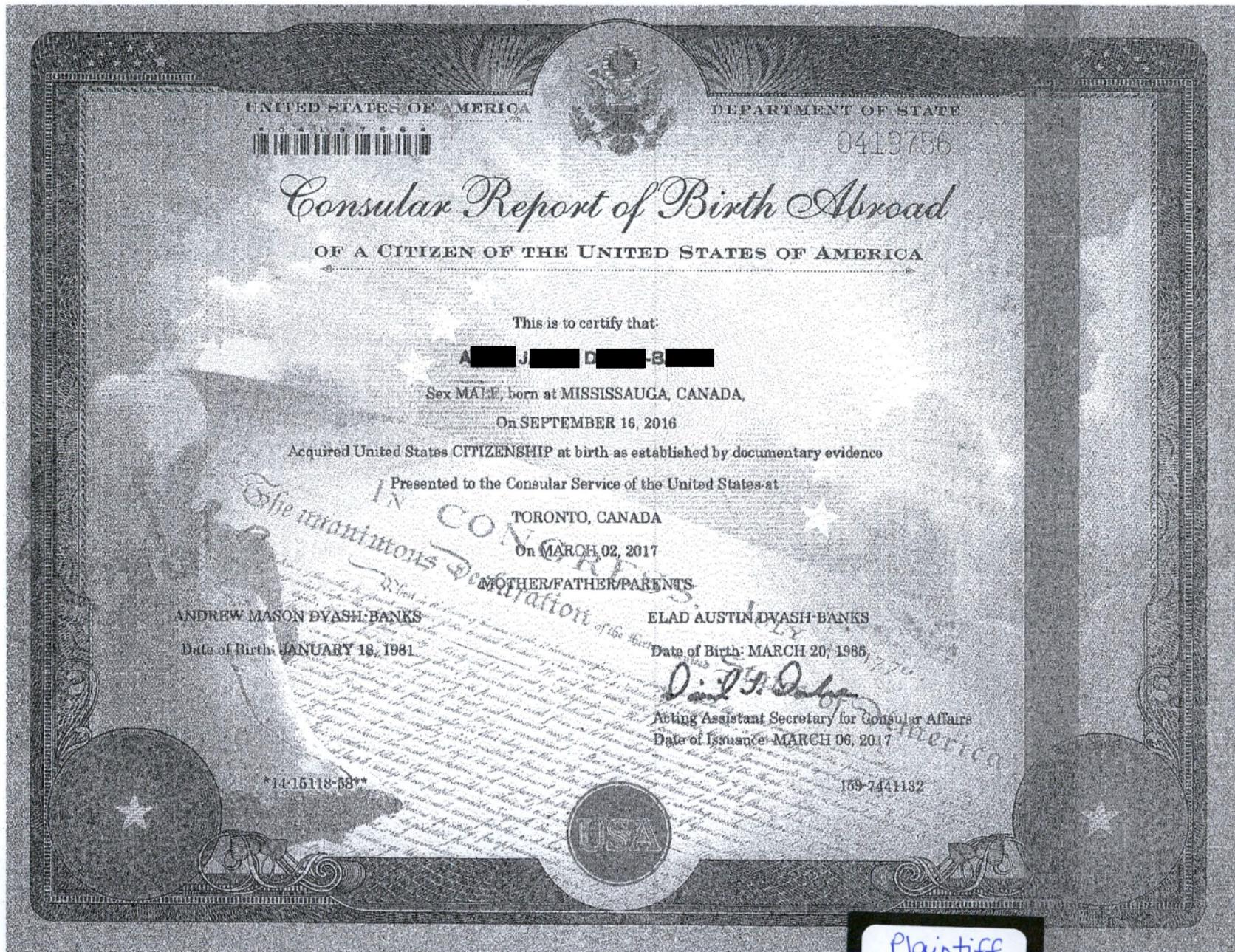
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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on the 7th day of January, 2019, at Los Angeles, California.



Andrew Dvash-Banks

# **EXHIBIT H**



UNITED STATES OF AMERICA

DEPARTMENT OF STATE



0419756

# Consular Report of Birth Abroad

OF A CITIZEN OF THE UNITED STATES OF AMERICA

This is to certify that:

A [REDACTED] J [REDACTED] D [REDACTED] - B [REDACTED]

Sex MALE, born at MISSISSAUGA, CANADA,

On SEPTEMBER 16, 2016

Acquired United States CITIZENSHIP at birth as established by documentary evidence

Presented to the Consular Service of the United States at

TORONTO, CANADA

On MARCH 02, 2017

MOTHER/FATHER/PARENTS

ANDREW MASON DVASH-BANKS

Date of Birth: JANUARY 18, 1981

ELAD AUSTIN DVASH-BANKS

Date of Birth: MARCH 20, 1986

*Daniel J. Dalrymple*  
Acting Assistant Secretary for Consular Affairs

Date of Issuance: MARCH 06, 2017

\*14-16118-58\*

159-2441132



Attorneys' Eyes Only

Plaintiff  
Deposition Exhibit  
12 for ID  
12-20-18 dll

DVASH-BANKS00000017

Since 1790, U.S. law has provided for transmittal of U.S. citizenship to children born abroad to a U.S. citizen parent. The U.S. citizen parent(s) must have resided or been physically present in the United States for the time required by the law in effect when the child was born. Since 1919, such births have been recorded on Form FS-240 Consular Report of Birth Abroad of a Citizen of the United States of America.

This document is a permanent record of the bearer's acquisition of U.S. citizenship. Under the provisions of Section 2705 of Title 22 of the United States Code, the Consular Report of Birth Abroad of a Citizen of the United States is proof of U.S. citizenship.

# **EXHIBIT I**



Certified A True  
Photostatic  
Print of a Record

on file at the  
Office of the Registrar General  
Ontario, Canada

Registration Number:  
Numéro d'enregistrement:  
Certificate number:  
Numéro de certificat: **P3319404**

2016 113722  
PAGE 1 of 1

Ontario  
Office of the Registrar General  
Bureau du registraire général

Photocopie certifiée  
conforme d'un document

déposée aux dossiers du  
Bureau du registraire général  
(Ontario) Canada

Date issued:  
Date de délivrance:  
File number:  
Numéro de dossier:

Nov 09 2016  
01596220-02-4

		Office of the Registrar General 108 Red River Road P.O. Box 4000 Thunder Bay ON P7B 6L8		<b>Statement of Live Birth</b> Form 2 Vital Statistics Act	
This is a permanent legal record. Please read all instructions before completing this form. Type or print clearly in blue or black ink and complete all items.					
<b>Section A - Child's Information (see instruction #1)</b>					
Last Name D [redacted]		First Name A [redacted]		Middle Name(s) [redacted]	
Date of Birth (yyyy/mm/dd) 2016/09/16		Name of hospital (if not hospital give exact location where birth occurred) Credit Valley Hospital			
Place of Birth (City/Town/Village/Township) Mississauga		Regional municipality, county or district PEEL			
<b>Section B - Father's Information (see instruction #2)</b>			<b>Section C - Mother's Information (see instruction #3)</b>		
Current Legal Last Name Dvash-Banks			Current Legal Last Name Dvash-Banks		
Legal Last Name at Birth Banks			Legal Last Name at Birth Dvash		
First and Middle Name(s) Andrew Mason			First and Middle Name(s) Eliad		
Any Other Legal Last Name(s)			Any Other Legal Last Name(s)		
Place of Birth (City/Town/Village/Township) Santa Monica			Place of Birth (City/Town/Village/Township) Ramat Gan		
Place of Birth (Province/Country) California, USA		Date of Birth (yyyy/mm/dd) 1981	Age 35	Place of Birth (Province/Country) Israel	
Date of Birth (yyyy/mm/dd) 1985		Age 31		Marital Status of Parent in Section B <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	
<b>Section D - Birth Information</b>					
Residence at Birth (City/Town/Village/Township - Complete street address (City, town, village, township - if rural give Post Office or Rural Route address)) 1601 [redacted] Toronto				Postal Code M5B4C6	
Mailing Address of Parent in Section B (if different from above - Complete street address if rural give Post Office or Rural Route address)				Postal Code	
Duration of pregnancy (in weeks) 32		Total number of children ever born to this parent (including this one) 3 Of this total, Number born live 3		Weight of child at birth Grams, 2820	
Name of Attendant at Birth Dr. Myckan Perry		Kind of Birth <input type="checkbox"/> Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/> Other		If multiple birth, state whether this child was born on 1st, 2nd, 3rd, etc. 1st	
Section E - Certification of Informant (Please read instruction #4 before signing) If you are choosing a last name that is not one of the parent's last names or combination of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes: <input type="checkbox"/> Cultural Heritage <input type="checkbox"/> Religious Heritage <input type="checkbox"/> Ethnic Heritage		Signature of [redacted] Date (yyyy/mm/dd) 2016/10/08		Signature of [redacted] Date (yyyy/mm/dd) 2016/10/08	
I (We) certify the statements made on this form are true and correct. I am (We are) aware that it is an offence to wilfully make a false statement on this form. I (We) have agreed that the child's last name will be as shown in Section A. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Signature of Informant (see instruction #1) [redacted]		Date (yyyy/mm/dd) 2016/11/03	
<b>Section F - Office Use Only</b>					
I authorize this statement, and register this birth by signing this statement. Signature of Marriage X [redacted]				Date (yyyy/mm/dd) 2016/11/03	
UPDATED GEO CODE 1132E (2014-08) © Queen's Printer for Ontario 2014					

*Alexandra Schmidt*  
Alexandra Schmidt  
Deputy Registrar General  
Registraire générale adjointe  
de l'état civil

---CERTIFIED COPY---  
NOT VALID WITHOUT ALL PAGES



Attorneys' Eyes Only

DVASH-BANKS00000034

*Alexandra Schmidt*

Alexandra Schmidt  
Deputy Registrar General  
Registraire générale adjointe

—CERTIFIED COPY—  
NOT VALID WITHOUT ALL PAGES

1727  
-1

# **EXHIBIT J**



U.S. DEPARTMENT OF STATE  
U.S. CONSULATE GENERAL, TORONTO  
360 University Avenue, Toronto, ON M5G 1S4 Canada  
Email: [torontopassport@state.gov](mailto:torontopassport@state.gov)  
Website: [toronto.usconsulate.gov](http://toronto.usconsulate.gov)

January 24, 2017

Mr. Andrew Dvash-Banks  
135 Marlee Ave #1601  
Toronto, Ontario

Dear Mr. Dvash-Banks,

I am writing in reference to your application for a U.S. passport and a Consular Report of Birth Abroad for A [REDACTED] and E [REDACTED] D [REDACTED] B [REDACTED] born on September 16, 2016, in Mississauga, Canada

The U.S. Consulate General in Toronto has considered the evidence you submitted and concluded that the blood relationship between a U.S. citizen parent and children have not been established by a preponderance of the evidence as required to support a claim to U.S. citizenship. The purpose of this letter is to provide you with information concerning DNA testing as an option to establish the requisite blood relationship between the child and the citizenship-transmitting U.S. citizen parent.

As noted above, in order to establish that both above mentioned children acquired U.S. citizenship by birth abroad to a U.S. citizen parent (and thus is eligible to apply for a CRBA and U.S. passport), the Immigration and Nationality Act (INA) of 1952, as amended, requires, among other things, proof of a blood relationship between the child and the U.S. citizen parent. Volume 22 of the Code of Federal Regulations, Section 51.40 provides that the burden of proof is upon the applicant to establish a claim to U.S. citizenship.

Should you wish to undergo DNA testing, which could conclusively establish whether both children are the biological children of a U.S. citizen parent, please review the enclosed flyer explaining DNA testing and the procedures under which the samples must be collected and the test conducted, including chain of custody procedures, in order for the results to be considered in connection with a citizenship claim. DNA testing must be conducted at a lab accredited by the American Association of Blood Banks in the United States. The laboratory conducting the tests must send the test results and an interpretation of the data to the U.S. Consulate General directly. All expenses are to be borne by the applicant, including shipping costs, and must be paid in advance.

If you choose to have DNA testing conducted in the United States, the sample collection, chain of custody procedures, and the conduct of the test must be in accordance with the joint AMA-ABA Guidelines and the guidelines set forth by the American Association of Blood Banks (AABB), as well as the guidelines of the Department of State. For DNA sample collection overseas, upon your request, the AABB accredited laboratory will provide sample collection kits, packing materials and instructions directly to the U.S. Consulate General in Toronto. DNA sample collection overseas must be done by an authorized lab technician in the presence of a designated U.S. citizen at the U.S. Consulate General Toronto, where the application is pending. The Consulate General will ship the samples directly to the AABB accredited

Plaintiffs'  
Deposition Exhibit  
25 for ID  
12-20-18 dll

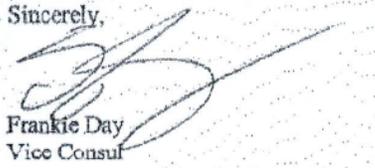
Attorneys' Eyes Only

DVASH-BANKS00000031

laboratory that you selected. Enclosed is a list of laboratories in the United States accredited by the AABB.

We appreciate you may not have considered DNA testing, but under the circumstances, it appears this may be the most expeditious way to establish children's claim to U.S. citizenship. You are, of course, free to submit any additional evidence you believe pertinent. Should you have any questions, please do not hesitate to contact us at [TorontoPassport@state.gov](mailto:TorontoPassport@state.gov).

Sincerely,



Frankie Day  
Vice Consul

Attorneys' Eyes Only

DVASH-BANKS00000032

1 Alexa M. Lawson-Remer (SBN 268855)  
lawsonr@sullcrom.com  
2 SULLIVAN & CROMWELL LLP  
1888 Century Park East, Suite 2100  
3 Los Angeles, California 90067-1725  
Telephone: (310) 712-6600  
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5 Theodore Edelman (*pro hac vice*)  
edlemant@sullcrom.com  
6 Jessica Klein (*pro hac vice*)  
kleinj@sullcrom.com  
7 Lauren M. Goldsmith (SBN 293269)  
goldsmithl@sullcrom.com  
8 SULLIVAN & CROMWELL LLP  
125 Broad Street  
9 New York, New York 10004-2498  
Telephone: (212) 558-4000  
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11 Aaron C. Morris (*pro hac vice*)  
amorris@immigrationequality.org  
12 IMMIGRATION EQUALITY  
40 Exchange Place, Suite 1300  
13 New York, New York 10005-2744  
Telephone: (212) 714-2904  
14

15 *Attorneys for Plaintiffs*

16  
17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **WESTERN DIVISION (LOS ANGELES)**  
20

21 ANDREW MASON DVASH- )  
BANKS and E.J. D.-B., )  
22 )  
Plaintiffs, )  
23 )  
v. )  
24 )  
THE UNITED STATES )  
25 DEPARTMENT OF STATE, )  
and THE HONORABLE )  
26 MICHAEL R. POMPEO, )  
Secretary of State, )  
27 )  
Defendants. )  
28 )

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

**STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Judge: Hon. John F. Walter  
Hearing Date: February 4, 2018  
Courtroom: 7A

**INDEX TO SUMMARY JUDGMENT EXHIBITS<sup>1</sup>**

SJ Ex. Letter:	Abbreviation:	Refers to:
<b>Depositions</b>		
A	“30(b)(6) Dep.”	Transcript of Paul Peek, Defendants’ 30(b)(6) designee, dated December 20, 2018.
B	“Day Dep.”	Transcript of Frances Terri Day Deposition, dated December 20, 2018.
C	“Dvash-Banks Dep.”	Transcript of Andrew Dvash-Banks Deposition, dated December 12, 2018.
D	“Ramsay Dep.”	Transcript of Margaret Ramsay Deposition, dated December 7, 2018.
E	“Reffett Dep.”	Transcript of Larilyn Reffett Deposition, dated December 6, 2018.
<b>Discovery Responses</b>		
F	“Pls. Disc. Responses”	Plaintiffs’ Responses to Defendants’ First Set of Discovery Requests, served November 19, 2018.
<b>Documents</b>		
G	“Admin. Record” or “AR”	Administrative Record, filed by Defendants on January 4, 2019 and authenticated by Defendants therein.
G-1	“CRBA App.”	Application for a Consular Report of Birth Abroad of a Citizen of the United States, without exhibits, submitted on behalf of E.J. D.-B. This document is contained within the Administrative Record.
G-2	“Passport App.”	Application For a U.S. Passport, without exhibits, submitted on behalf of E.J. D.-B. This document is contained within the Administrative Record.
G-3	“Marriage Lic.”	Marriage License for Andrew Dvash-Banks and Elad Dvash-Banks. This document is contained within the Administrative Record.
G-4	“Surrogacy Agmt.”	Surrogacy Agreement between Andrew Dvash-Banks, Elad Dvash-Banks, and the surrogate who carried A.J. D.-B. and E.J.D.-B. This document is contained within the Administrative Record.
G-5	“E.J. Statement of Live Birth”	Statement of Live Birth for E.J. D.-B. from the Ontario Office of the Registrar General. This document is contained

<sup>1</sup> All summary judgment exhibits are authenticated in the Declaration of Alexa Lawson-Remer, Declaration of Andrew Dvash-Banks, and in the Administrative Record, filed by Defendants at Dkt. 80. Pursuant to Federal Rule of Civil Procedure 5.2(a), Plaintiffs have redacted the full names of any minor children present in all exhibits on which they rely such that only the minor’s initials are visible.

1			within the Administrative Record.
2	G-6	“Canadian Order”	Declaration that Andrew Dvash-Banks and Elad Dvash-Banks are the parents of E.J. D.-B. This document is contained within the Administrative Record.
3	G-7	“Viaguard A-M Letter”	Letter from Viaguard Accu-Metrics, dated January 30, 2017. This document is contained within the Administrative Record.
4			
5	G-8	“Mar. 2 Letter from Day”	Letter from Frances Terri Day to Andrew Dvash-Banks, dated March 2, 2017. This document is contained within the Administrative Record.
6			
7	H	“A.J. CRBA”	Consular Report of Birth Abroad for A.J. D.-B., dated March 2, 2017.
8	I	“A.J. Statement of Live Birth”	Statement of Live Birth for A.J. D.-B. from the Ontario Office of the Registrar General.
9			
10	J	“Jan. 24 Letter from Day”	Letter from Frances Terri Day to Andrew Dvash-Banks, dated January 24, 2017.

11  
12 Pursuant to Federal Rule of Civil Procedure 56(c) and Local Rule 56-  
13 1, Plaintiffs Andrew Dvash-Banks and E.J. D.-B., as the moving parties on the  
14 motion for partial summary judgment referred to in the Notice filed herewith,  
15 respectfully submit this Statement of Uncontroverted Facts and Conclusions of  
16 Law.

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<b>ANDREW DVASH-BANKS IS A UNITED STATES CITIZEN</b>		
	UNDISPUTED FACT	SUPPORTING EVIDENCE
1.	Andrew Dvash-Banks (“Andrew”) is a United States citizen.	Dvash-Banks Dep. 171:3-171:6.
2.	Andrew was born in California in 1981.	Dvash-Banks Dep. 13:24-14:2.
3.	During his childhood, Andrew lived primarily in Beverly Hills, California.	Dvash-Banks Dep. 14:9-14:14.
4.	Andrew attended high school in California.	Dvash-Banks Dep. 15:20-15:22.
5.	Andrew attended college in California.	Dvash-Banks Dep. 15:23-15:25.
6.	Andrew resided in the United States continuously from 1981 through at least October 2005, as well as during other periods.	Dvash-Banks Dep. 169:13-169:19.
7.	In 2007, Andrew enrolled in a master’s degree program in Israel.	Dvash-Banks Dep. 18:1-18:4; 19:20-20:2.
8.	In 2008, while enrolled in graduate school in Israel, Andrew met his now-husband, Elad Dvash-Banks (“Elad”).	Dvash-Banks Dep. 19:6-20:2.
9.	Elad is an Israeli citizen.	CRBA App.

<b>ANDREW AND ELAD MARRY AND MAKE PREPARATIONS TO BECOME PARENTS</b>		
	UNDISPUTED FACT	SUPPORTING EVIDENCE
10.	Andrew and Elad moved to Toronto in 2010.	Dvash-Banks Dep. 22:23-22:25.
11.	Andrew and Elad were married on August 19, 2010 in Toronto, Canada.	Marriage Lic.; Dvash-Banks Dep. 29:5-29:8.
12.	At the time of the marriage of Andrew and Elad, two men, Ontario recognized the validity of same-sex marriages.	Dvash-Banks Dep. 22:10-22:11.
13.	Andrew and Elad decided to have children.	Dvash-Banks Dep. 67:25-68:4
14.	Andrew and Elad obtained eggs from an anonymous egg donor (the “Donor”).	Dvash-Banks Dep. 79:12-79:16.
15.	Andrew and Elad donated their respective genetic material to create embryos using the eggs from the Donor.	Dvash-Banks Dep. 83:17-84:2; 85:3-85:13.
16.	Andrew and Elad successfully created embryos using eggs from the Donor.	Dvash-Banks Dep. 83:17-84:10.
17.	In December 2015, Andrew and Elad contracted with a gestational surrogate (the “Gestational Surrogate”) for the purpose of carrying one or two embryos during a pregnancy (the “Surrogacy Agreement”).	Surrogacy Agmt.

1	18.	The Surrogacy Agreement states that	Surrogacy Agmt. at Section
2		“Andrew and Elad (collectively called the	1.1, AR 023. <sup>2</sup>
3		‘Intended Parents’) are a same-sex married	
4		couple who require assisted reproductive	
5		technology to have a child.”	
6	19.	The Gestational Surrogate agreed to carry	Surrogacy Agmt. at Section
7		eggs “retrieved from the third party	1.4, AR 023.
8		anonymous donor and Sperm supplied by	
9		Andrew and/or Elad” that was “incubated	
10		externally” to create embryos.	
11	20.	The Gestational Surrogate became pregnant	Dvash-Banks Dep. 85:3-
12		with one embryo created using genetic	85:13.
13		material from Andrew and one embryo	
14		created using genetic material from Elad.	
15	21.	Under the terms of the Surrogacy Agreement,	Surrogacy Agmt. at Section
16		Andrew and Elad “will be recognized as the	1.8, AR 024.
17		Child’s parents immediately upon the Child’s	
18		Birth.”	
19	22.	Under the terms of the Surrogacy Agreement,	Surrogacy Agmt. at Section
20		Andrew and Elad, “intend to assume full care	1.9, AR 024.
21		of, and all parental responsibility for the Child	
22		. . . .”	
23	23.	Under the terms of the Surrogacy Agreement,	Surrogacy Agmt. at Section
24		“Immediately upon the Birth of the Child, the	1.10, AR 024.

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<sup>2</sup> All references to page numbers of the Administrative Record (“AR”) cite to the internal page numbering therein. For example, the twenty-fourth page of the Administrative Record is cited as AR 024, which appears on the bottom right corner of that page of the Administrative Record.

1	Gestational Carrier will give the Child into the	
2	permanent custody of the Intended Parents	
3	and as soon as reasonably possible thereafter	
4	the Intended Parents will make an application	
5	in the Ontario Superior Court of Justice	
6	seeking a declaration of parentage on their	
7	part, and a declaration of non-parentage on the	
8	part of the Gestational Carrier.”	
9	24. Under the terms of the Surrogacy Agreement:	Surrogacy Agmt. at
10	“The Parties acknowledge that immediately	Section 14.4(c), AR 038.
11	upon Birth all medical decisions regarding the	
12	Child shall be made solely by the Intended	
13	Parents.”	
14	25. The Surrogacy Agreement states that: “For	Surrogacy Agmt. at Section
15	purposes of this Agreement, ‘immediately	14.1, AR 038.
16	upon birth’ means as soon as the umbilical	
17	cord is cut.”	
18	26. Under the terms of the Surrogacy Agreement,	Surrogacy Agmt. at Section
19	“The Gestational Carrier hereby expressly	14.4, AR 038.
20	waives all parental, custodial and social rights	
21	that she has or may acquire to the Child.”	
22	27. Under the terms of the Surrogacy Agreement,	Surrogacy Agmt. at Section
23	“All Parties to this Agreement wish to	1.11 at AR 024.
24	maintain confidentiality between	
25	themselves, one to another, and between	
26	themselves and the public.”	
27	28. Under the terms of the Surrogacy Agreement,	Surrogacy Agmt. at Section
28	the Surrogacy Agreement is governed by the	35.1 at AR 051.

1	laws of the Province of Ontario, Canada.	
2	<b>THE TWINS ARE BORN AND ELAD AND ANDREW ARE NAMED AS</b>	
3	<b>THEIR PARENTS ON THEIR BIRTH CERTIFICATES AND ARE</b>	
4	<b>RECOGNIZED FOR ALL PURPOSES IN LAW TO BE THEIR PARENTS</b>	
5	UNDISPUTED FACT	SUPPORTING EVIDENCE
6	29. Twins A.J. and E.J. (the “Twins”) were born	E.J. Statement of Live Birth;
7	on September 16, 2016 in Ontario, Canada.	A.J. Statement of Live Birth.
8	30. The Twins were born four minutes apart.	Dvash-Banks Dep. 161:13-
9		161:16.
10	31. Andrew and Elad were married to each other	Dvash-Banks Dep. 171:10-
11	on the day of the Twins’ birth.	171:15; E.J. Statement of
12		Live Birth.
13	32. Andrew was the person who cut E.J.’s	Dvash-Banks Dep. 143:23-
14	umbilical cord.	144:15.
15	33. Andrew and Elad are listed as E.J.’s parents	E.J. Statement of Live Birth.
16	on E.J.’s Statement of Live Birth issued by	
17	Ontario, Canada.	
18	34. Andrew and Elad are listed as A.J.’s parents	E.J. Statement of Live Birth.
19	on A.J.’s Statement of Live Birth issued by	
20	Ontario, Canada.	
21	35. Andrew and Elad are the only parents listed	E.J. Statement of Live Birth.
22	on E.J.’s Statement of Live Birth.	
23	36. Andrew and Elad are the only parents listed	A.J. Statement of Live Birth.
24	on A.J.’s Statement of Live Birth.	
25	37. Andrew and Elad have been E.J.’s and A.J.’s	E.J. Statement of Live Birth;
26	legal parents since the Twins’ birth in 2016.	A.J. Statement of Live Birth;
27		Surrogacy Agmt., at Sections
28		1.8-1.10, AR 024; Canadian

1		Order.
2	38. Andrew and Elad have raised the Twins since	Surrogacy Agmt., at Sections
3	the day the Twins were born.	14.1, 14.4, AR 037-38.
4	39. No other individual has acted as a parent to	Canadian Order; Surrogacy
5	E.J. or A.J.	Agmt. at Sections 1.7-1.10,
6		AR 024; Dvash-Banks Dep.
7		29:21-30:14.
8	40. No other individual has asserted any parental	Canadian Order; Dvash-
9	rights with respect to E.J. or A.J.	Banks Dep. 112:19-112:24.
10	41. On September 28, 2016, the Ontario Superior	Canadian Order.
11	Court of Justice entered an Order (the	
12	“Canadian Order”) stating that: “It is declared	
13	that the Applicants, Elad Dvash-Banks and	
14	Andrew Dvash-Banks, are the parents of the	
15	child, [E.J.], born September 16, 2016 (“the	
16	child”), and that the Applicants are recognized	
17	for all purposes in law to be the parents of the	
18	child.”	
19	42. The Canadian Order declared that [the	Canadian Order.
20	Gestational Surrogate] is not the mother of the	
21	child.	
22	43. The Canadian Order directed the Deputy	Canadian Order.
23	Registrar General for the Province of Ontario	
24	“to register the birth of the child [E.J.] so as to	
25	show the Applicants, Elad Dvash-Banks and	
26	Andrew Dvash-Banks, as the parents of the	
27	child.”	
28	44. The Canadian court issued a parallel order for	Dvash-Banks Dep. 112:19-

1	A.J.	112:24.
2	45. Under the law of Ontario, Canada, Andrew	Canadian Order; Dvash-
3	and Elad are the legal parents of the Twins.	Banks Dep. 112:19-112:24.
4	46. E.J. was not conceived using Andrew’s sperm.	Pls. Disc. Responses at
5		Request For Admission
6		(“RFA”) No. 14.
7	47. A.J. was conceived using sperm from	Viaguard A-M Letter;
8	Andrew.	Dvash-Banks Dep. 84:17-
9		85:13.
10	48. E.J. was conceived using sperm from Elad.	Viaguard A-M Letter; Dvash-
11		Banks Dep. 84:17-85:13.
12	49. There is no evidence that Andrew supplied	Viaguard A-M Letter; Pls.
13	genetic material to the conception or birth of	Disc. Responses at RFA
14	E.J.	No. 14.
15	50. From the time the Twins left the hospital	Dvash-Banks Dep. 29:21-
16	where they were born, they have lived	30:14; 171:16-171:23.
17	continuously with Andrew and Elad.	
18	51. Andrew, Elad and the Twins have lived	Dvash-Banks Dep. 29:21-
19	together as a family since the Twins’ release	30:14; 171:16-171:23.
20	from the hospital following their birth.	
21	52. Andrew and Elad and the Twins now reside in	Dvash-Banks Dep. 29:21-
22	California.	29:23; 34:13-34:14.
23	<b>E.J. AND A.J. APPLY FOR U.S. PASSPORTS AND FOR CRBAS IN</b>	
24	<b>RECOGNITION THAT THE TWINS ARE U.S. CITIZENS AT BIRTH</b>	
25	UNDISPUTED FACT	SUPPORTING EVIDENCE
26	53. Andrew and Elad submitted to the United	Dvash-Banks Dep. 117:3-
27	States Consulate in Toronto, Canada	117:11.
28	(“Toronto Consulate”) applications for a	

1	Consular Report of Birth Abroad (“CRBA”)	
2	and U.S. passport for each of the Twins.	
3	54. A CRBA demonstrates that the recipient is a	Reffett Dep. 34:21-34:24.
4	U.S. citizen at birth.	
5	55. On January 24, 2017, Andrew and Elad	Dvash-Banks Dep. 125:12-
6	appeared in person at the Toronto Consulate	126:12; Day Dep. 121:19-
7	in connection with the applications for a	122:1.
8	CRBA and U.S. passport for each of the	
9	Twins.	
10	56. Andrew and Elad provided the Toronto	Dvash-Banks Dep. 95:4-
11	Consulate with the requisite documentation	97:12; 165:4-166:12; Admin.
12	for E.J.’s applications, including E.J.’s	Record 09-62.
13	Statement of Live Birth, which identified	
14	Andrew and Elad as the parents, evidence of	
15	Andrew’s U.S. citizenship and periods of	
16	residency, and Andrew and Elad’s marriage	
17	certificate.	
18	57. On January 24, 2017, Frances Terri Day, Vice	Day Dep. 94:23-95:25.
19	Consul, Toronto Consulate, interviewed the	
20	Dvash-Banks family and adjudicated E.J.’s	
21	and A.J.’s respective applications for a CRBA	
22	and U.S. passport.	
23	58. Ms. Day had authority to make the final	Day Dep. 48:6-48:10.
24	decision as to whether to grant or deny the	
25	applications for E.J. and A.J.	
26	59. Ms. Day accepted Andrew and Elad’s	Day Dep. 142:19-142:25;
27	marriage license from the Ontario government	155:24-156:6; 161:24-162:6;
28	as sufficient proof of their marriage.	Marriage Lic.

1	60.	Ms. Day accepted E.J.’s Statement of Live Birth as a timely-filed Canadian birth certificate.	Day Dep.172:5-172:24; E.J. Statement of Live Birth.
2			
3			
4	61.	Ms. Day accepted E.J.’s Statement of Live Birth as sufficient proof that Andrew and Elad are E.J.’s legal parents.	Day Dep. 172:5-173:12; Ramsay Dep. 103:7-103:11; E.J. Statement of Live Birth.
5			
6			
7	62.	Ms. Day accepted the Ontario Court order naming Andrew and Elad as the parents of E.J. as sufficient proof that Andrew and Elad were E.J.’s legal parents.	Day Dep. 173:19-174:5; Canadian Order.
8			
9			
10			
11	63.	During their interview at the Toronto Consulate on January 24, 2017, Frances Terri Day asked Andrew and Elad how they had conceived the Twins and whose egg and sperm had been used to conceive each of the Twins.	Ramsay Dep. 45:6-45:11; 46:20-46:23; Dvash-Banks Dep. 129:15-129:21; Day Dep. 110:22-112:11.
12			
13			
14			
15			
16			
17	64.	Andrew had not planned to disclose to others the biological relationships among Elad and Andrew and the Twins.	Surrogacy Agmt. at Section 1.1, AR 024.
18			
19			
20	65.	Ms. Day’s role in adjudicating U.S. passport and CRBA applications was to determine whether, according to the State Department’s <i>Foreign Affairs Manual</i> (“FAM”), the applicant was entitled to be recognized as a U.S. citizen.	Day Dep. 29:17-30:3; 47:12-47:24; 59:2-59:16.
21			
22			
23			
24			
25			
26	66.	During the Dvash-Banks’ interview at the Toronto Consulate on January 24, 2017, Ms. Day consulted with another Consular	Ramsay Dep. 163:5-164:14; Reffett Dep. 67:19-68:5.
27			
28			

1	Officer, Margaret Ramsay, and with Larilyn	
2	Reffett concerning the applications for E.J.	
3	and A.J.	
4	67. Ms. Ramsay provided Ms. Day with the	Reffett Dep. 79:8-79:16;
5	relevant sections of the FAM so that Ms. Day	Ramsay Dep. 40:10-40:24;
6	would have the opportunity to consult them in	AR 073.
7	adjudicating E.J.’s and A.J.’s applications.	
8	68. Ms. Day referred to the FAM during the time	Day Dep. 217:21-217:24.
9	that she was interviewing the Dvash-Banks	
10	family.	
11	69. Ms. Day’s typed notes reflect that she may	AR 003; Ramsay Dep.
12	originally have considered the Twins to have	131:25-132:5.
13	been born in wedlock because of the marriage	
14	certificate included in the applications.	
15	70. Ms. Day ultimately applied Section 309 of the	Ramsay Dep. 131:25-132:5.
16	Immigration and Nationality Act (“INA”),	
17	8 U.S.C. § 1409 (“Section 309”), to the	
18	adjudication of the Twins’ applications.	
19	71. Ms. Ramsay suggested to Ms. Day that she	Ramsay Dep. 60:5-60:8.
20	could ask the Dvash-Banks family to provide	
21	additional biological evidence, such as DNA	
22	testing, in connection with the adjudication of	
23	the applications for E.J. and A.J.	
24	72. During the Dvash-Banks family’s interview at	Ramsay Dep. 48:12-49:10,
25	the Toronto Consulate on January 24, 2017,	Reffett Dep. 68:22-69:4;
26	Ms. Day told Andrew and Elad that if they	72:7-72:17.
27	wanted to proceed with the Twins’	
28	applications, they would have to provide	

1	additional information demonstrating the	
2	biological relationship between each child and	
3	that child’s U.S. citizen parent.	
4	73. During the Dvash-Banks family’s interview at	Ramsay Dep. 48:12-49:10,
5	the Toronto Consulate on January 24, 2017,	Reffett Dep. 68:22-69:4;
6	Ms. Day told Andrew and Elad that a form of	72:7-72:17.
7	additional information demonstrating the	
8	biological relationship required by the	
9	Department of State (the “State Department”)	
10	is DNA evidence.	
11	74. Ms. Day provided Andrew and Elad with	Jan. 24 Letter from Day.
12	information concerning certain DNA testing	
13	establishments from which the Toronto	
14	Consulate accepts DNA testing results.	
15	75. By letter dated January 24, 2017 from	Jan. 24 Letter from Day;
16	Ms. Day to Andrew, the State Department	30(b)(6) Dep. 296:11-297:3;
17	informed the Dvash-Banks family that “in	Reffett Dep. At 67:14-69:4.
18	reference to your application for a U.S.	
19	passport and a [CRBA] for [A.J.] and [E.J.]...	
20	The U.S. Consulate General in Toronto has	
21	considered the evidence you submitted and	
22	concluded that the blood relationship between	
23	a U.S. citizen parent and children have not	
24	been established by a preponderance of the	
25	evidence as required to support a claim to	
26	U.S. citizenship.”	
27	76. On January 24, 2017, following the	Ramsay Dep. 48:24-49:10.
28	completion of the interview of the Dvash-	

1	Banks family at the Toronto Consulate,	
2	Ms. Day designated the status of each of the	
3	Twins’ applications as “pending.”	
4	77. A “pending” designation for CRBA	Reffett Dep. 67:14-68:11;
5	applications is reserved for applications that	Day Dep. 37:4-37:23.
6	cannot be finally adjudicated on the day of an	
7	applicant’s interview and remain open	
8	pending submission of additional information	
9	requested by the State Department.	
10	78. During the Dvash-Banks family’s interview at	Day Dep. 119:22-120:12.
11	the Toronto Consulate on January 24, 2017,	
12	Andrew told Ms. Day that “these are our	
13	children. These are our sons. I’m the dad,	
14	and . . . Elad is the dad . . . we’re the parents	
15	of these boys.”	
16	79. E.J.’s and A.J.’s applications for a CRBA and	30(b)(6) Dep. 273:2-15;
17	U.S. passport were adjudicated by Ms. Day	Ramsay Dep. 131:22-132:5;
18	under Section 309.	132:22-133:6; 164:9-164:14.
19	80. The State Department applied Section 309 in	30(b)(6) Dep. 273:2-7.
20	adjudicating E.J.’s applications for a U.S.	
21	passport and CRBA.	
22	81. The State Department applies Section 309 to	30(b)(6) Dep. 186:8-14.
23	CRBA applications submitted on behalf of	
24	children who the State Department considers	
25	to have been born “out of wedlock.”	
26	82. The State Department interprets Section 309	30(b)(6) Dep. 273:2-273:15.
27	to require, among other things, proof of a	
28	biological relationship between a CRBA	

1	applicant and that child’s U.S. citizen parent.	
2	83. The State Department determined that Section	30(b)(6) Dep. 273:2-15.
3	309 was the correct statutory section to apply	
4	in adjudicating E.J.’s applications for a U.S.	
5	passport and CRBA because E.J.’s biological	
6	parents were not married to each other.	
7	84. The State Department applies Section 301 of	30(b)(6) Dep. 186:8-14.
8	the INA, 8 U.S.C. § 1401, (“Section 301”) to	
9	CRBA applications submitted on behalf of	
10	children who the State Department considers	
11	to have been born “in wedlock.”	
12	85. The State Department interprets Section 301	30(b)(6) Dep. 178:10-178:19.
13	to require, among other things, proof of a	
14	biological relationship between a CRBA	
15	applicant and both of his legal parents.	
16	86. When she was adjudicating E.J.’s applications	Day Dep. 232:23-233:10;
17	for a CRBA and U.S. passport, Ms. Day	277:18-278:2.
18	understood, based on her review of relevant	
19	provisions of the FAM, that the State	
20	Department interprets both Section 301 and	
21	Section 309 to require a biological	
22	relationship between a U.S. citizen parent and	
23	his child.	
24	87. After the January 24, 2017 interview, the	Viaguard A-M Letter.
25	Dvash-Banks proceeded to have DNA testing	
26	conducted by an establishment approved by	
27	the Toronto Consulate.	
28	88. The Toronto Consulate received DNA results	Ramsay Dep. 54:4-54:5;

1	for E.J. and A.J.	Vianguard A-M Letter.
2	89. The DNA results received by the Toronto	Ramsay Dep. 54:1-54:9.
3	Consulate reflected that one of the Twins was	
4	the biological child of Andrew and one was	
5	not.	
6	<b>THE STATE DEPARTMENT RECOGNIZES A.J. AS A U.S. CITIZEN AT</b>	
7	<b>BIRTH AND REFUSES TO RECOGNIZE E.J.’S U.S. CITIZENSHIP</b>	
8	UNDISPUTED FACT	SUPPORTING EVIDENCE
9	90. Ms. Day approved A.J.’s applications for a	Reffett Dep. 87:15-22; Day
10	CRBA and U.S. passport.	Dep. 166:16-166:24; A.J.
11		CRBA.
12	91. The State Department issued a CRBA to A.J.,	A.J. CRBA.
13	dated March 2, 2017.	
14	92. By letter dated March 2, 2017, on the	Mar. 2 Letter from Day;
15	letterhead of the Toronto Consulate, Ms. Day	Reffett Dep. 65:6-65:9.
16	informed Andrew that E.J.’s “applications [for	
17	a CRBA and U.S. passport] are denied.”	
18	93. Ms. Day’s March 2, 2017 letter to Andrew	Mar. 2 Letter from Day.
19	stated, in part, “after careful review of the	
20	evidence you submitted with your child’s	
21	application, it has been determined that his	
22	claim to U.S. citizenship has not been	
23	satisfactorily established, as you are not his	
24	biological father. The Immigration and	
25	Nationality Act (INA) of 1952, as amended,	
26	requires, among other things, a blood	
27	relationship between a child and the U.S.	
28	citizen parent in order for the parent to	

1	transmit U.S. citizenship.”	
2	94. Ms. Day’s March 2, 2017 letter to Andrew	Reffett Dep. 77:14-17; 118:6-
3	denying E.J.’s applications for a U.S. passport	118:22.
4	and CRBA was the final determination of the	
5	applications by the State Department.	
6	95. Ms. Day’s March 2, 2017 letter terminated the	Reffett Dep. 118:6-22.
7	application process for E.J.’s requests for a	
8	CRBA and U.S. passport with a denial and the	
9	State Department closed the files relating to	
10	E.J.’s applications.	
11	96. The reason for the State Department’s denial	Reffett Dep. 78:9-78:20.
12	of E.J.’s applications for a U.S. Passport and	
13	CRBA was that he did not establish a	
14	biological relationship to his U.S. citizen	
15	parent (Andrew).	
16	97. The State Department acknowledges that	30(b)(6) Dep. 298:24-299:6.
17	E.J.’s lack of a biological relationship to	
18	Andrew was the sole reason identified for the	
19	denial of E.J.’s applications.	
20	98. Following the Toronto Consulate’s receipt of	Ramsay Dep. 154:16-154:23.
21	the DNA testing results for the Twins from an	
22	approved testing establishment, the Toronto	
23	Consulate followed the FAM guidance on	
24	applications submitted on behalf of children	
25	born by means of assisted reproductive	
26	technology.	
27	99. Ms. Day granted A.J.’s applications for a U.S.	Reffett Dep. 87:15-22
28	Passport and CRBA.	

1	100.	As a result of the State Department’s denial of	Pls. Disc. Responses at
2		E.J.’s application, the Dvash-Banks family	Interrogatory No. 5.
3		has suffered greatly.	
4	101.	Andrew and Elad feel the indignity of the U.S.	Pls. Disc. Responses at
5		Government’s refusal to recognize their	Interrogatory No. 5.
6		marriage and the legitimacy of their children.	
7	102.	The Dvash-Banks family’s travel is	Pls. Disc. Responses at
8		significantly restricted or impaired because	Interrogatory No. 5.
9		E.J. entered the United States on a tourist visa,	
10		which has expired, and although E.J. now has	
11		an Advance Parole document, it does not	
12		guarantee re-entry into the United States.	
13	103.	When the Dvash-Banks family has traveled, it	Pls. Disc. Responses at
14		always is with the fear that E.J., who does not	Interrogatory No. 5.
15		have a U.S. passport, may not be permitted to	
16		re-enter the United States.	
17	104.	The Dvash-Banks has spent substantial time	Pls. Disc. Responses at
18		consulting with lawyers, their accountant, and	Interrogatory No. 5.
19		others about a range of issues, from E.J.’s	
20		immigration status to obtaining medical	
21		benefits and a Tax ID number for E.J., who	
22		does not have a Social Security number.	
23	105.	The Dvash-Banks family has endured, and	Pls. Disc. Responses at
24		continues to endure, the pain and stigma of the	Interrogatory No. 5.
25		State Department’s refusal to recognize	
26		Andrew’s marriage to Elad and status as E.J.’s	
27		parent, and its treatment of E.J. as illegitimate.	
28	106.	They also live with the invasion of their	Pls. Disc. Responses at

1	privacy resulting from their need to	Interrogatory No. 5.
2	commence this litigation in federal court	
3	seeking recognition of E.J.’s U.S. citizenship	
4	at birth, which could have been provided	
5	privately at the Toronto Consulate.	
6	<b>THE STATE DEPARTMENT’S POLICIES</b>	
7	<b>UNDISPUTED FACT</b>	<b>SUPPORTING EVIDENCE</b>
8	107. At the time of E.J.’s birth, Andrew and Elad	Ramsay Dep. 65:15-20; 108: 2-7; 108:20-109:3; 30(b)(6) Dep. 260: 13-16.
9	were validly married.	
10		
11	108. Andrew is E.J.’s legal parent.	Ramsay Dep. 103:7-11; 104:19-105:12; 30(b)(6) Dep. 88:12-16; 261:16-18; 268:2- 5.
12		
13		
14		
15	109. Under the State Department’s existing policies	30(b)(6) Dep. 171:1-4.
16	and procedures, a child is born “in wedlock”	
17	only if the two biological parents are married	
18	to each other.	
19	110. The State Department applies this definition	30(b)(6) Dep. 173:19-174:2.
20	of “in wedlock” when a married couple uses	
21	assisted reproduction technology.	
22	111. When a male same-sex couple uses sperm	30(b)(6) Dep. 177:14-177:22; 180:2-9.
23	from one parent and an egg from a donor to	
24	conceive a child during their marriage, the	
25	State Department does not consider the child	
26	born “in wedlock.”	
27	112. The State Department asserts that its	30(b)(6) Dep. 178:10-19; 180:10-15.
28	understanding of “in wedlock” is based on the	

1		language of Section 301.	
2	113.	The State Department’s understanding of “in wedlock” in interpreting the INA is reflected	30(b)(6) Dep. 180:16-181:10.
3		in 8 FAM § 304.1-2 (previously numbered 7	
4		FAM 1140 Appendix E).	
5			
6	114.	Under the State Department’s policies, E.J.	30(b)(6) Dep. 188:6-15;
7		and A.J. were born “out of wedlock” within	271:20-22; 274:25-275:6.
8		the meaning of Section 309.	
9	115.	Under the State Department’s policies,	30(b)(6) Dep. 274:25-275:6.
10		Andrew and Elad can never have a child “in	
11		wedlock” together because they are two men.	
12	116.	Under the State Department’s policies, two	30(b)(6) Dep. 201:2-16.
13		legally married men who have always been	
14		men could never have a child “in wedlock”	
15		for purposes of adjudicating a CRBA	
16		application.	
17	117.	Absent the possibility that the law of the	30(b)(6) Dep. 211:23-213:
18		country of birth or domicile of a child born to	25.
19		a married male same-sex couple using assisted	
20		reproductive technology provides for the	
21		child’s legitimation, the State Department	
22		does not consider the child as legitimate.	
23	118.	The State Department’s policy is that Section	Reffett Dep. 121:22-122:7;
24		301 requires that a U.S. citizen parent have a	124:9-125:3; 157:3-4;
25		biological relationship with a child born	30(b)(6) Dep. 158:25-159:13.
26		outside of the United States in order to	
27		transmit U.S. citizenship at birth to the child,	
28		even if the parent is the legal parent of the	

1	child and was married to the child's other	
2	legal parent at the time of the child's birth.	
3	119. The Toronto Consulate follows guidance from	Reffett Dep. 30:12-21;
4	the State Department in Washington, D.C. as	Ramsay Dep. 17:22-18:1;
5	to the requirements for issuance of a CRBA,	Day Dep. 24:2-24:12;
6	and there are no Toronto-specific policies	30(b)(6) Dep. 92:6-92:15.
7	concerning the adjudication of CRBA	
8	applications.	
9	120. The Toronto Consulate is expected by the	30(b)(6) Dep. 93:3-93:8.
10	State Department to follow State Department	
11	policies and FAM guidance issued by the	
12	State Department in Washington, D.C.	
13	regarding applications submitted on behalf of	
14	children born by means of assisted	
15	reproductive technology.	
16	121. The Toronto Consulate follows State	Reffett Dep. 60:18-61:6;
17	Department policies and FAM guidance	30(b)(6) Dep. 92:20-93:8.
18	issued by the State Department in	
19	Washington, D.C. regarding the adjudication	
20	of CRBA and passport applications.	
21	122. The Toronto Consulate understood the FAM	Ramsay Dep. 154:16-154:23.
22	guidance to require a biological relationship	
23	between the applicant for a CRBA and/or U.S.	
24	passport and the child's U.S. citizen parent.	
25	123. The State Department interprets Section 301	30(b)(6) Dep. 158:25-159:13.
26	to require a biological connection between a	
27	married U.S. citizen and his child born outside	
28	of the United States in order to transmit U.S.	

1		citizenship at birth to the child.	
2	124.	The text of Section 301 does not contain the	30(b)(6) Dep. 182:21-25;
3		phrase “in wedlock.”	183:7-183:8.
4	125.	The text of Section 301 contains no reference	30(b)(6) Dep. 183:9-13;
5		to a “blood” relationship.	191:6-14.
6	126.	The State Department’s interpretation of	30(b)(6) Dep. 178:13-19;
7		Section 301 is based on the State	180:10-15.
8		Department’s interpretation of the words	
9		“born . . . of parents” in Section 301 as	
10		referring to a biological parent of the child.	
11	127.	The State Department changed its	Reffett Dep. 183:4-183:18;
12		interpretation of Section 301 in 2014 to	30(b)(6) Dep. 166:14-22;
13		interpret “born . . . of parents” to include not	Ramsay Dep. at 84:7-84:12.
14		only a genetic parent, but also a gestational	
15		mother who did not provide the genetic	
16		material ( <i>i.e.</i> , egg) for the child.	
17	128.	Prior to that change, the State Department	30(b)(6) Dep. 172:21-173:12.
18		interpreted Section 301 as excluding from the	
19		biological relationship that the State	
20		Department requires, a gestational mother	
21		who did not provide genetic material for the	
22		child.	
23	129.	The State Department made this change even	30(b)(6) Dep. 243:1-4, 15-20.
24		though Congress had not made any	
25		corresponding amendment of the INA because	
26		the State Department simply “changed its	
27		mind” as to its interpretation of Section 301.	
28	130.	The State Department’s determination to	30(b)(6) Dep. 175:2-5;

<p>1 2 3 4 5</p>	<p>interpret Section 301 as treating a child born outside the U.S. whose U.S. citizen parent was the child’s gestational mother as a U.S. citizen at birth was a policy decision made by the State Department.</p>	<p>219:25-220:8.</p>
<p>6 7 8 9 10</p>	<p>131. The State Department considered changing its interpretation of Section 301 to deem children born through assisted reproductive technology to same-sex couples as U.S. citizens at birth, but did not do so.</p>	<p>30(b)(6) Dep. 225:1-16; 229:1-8.</p>
<p>11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>132. An individual within the State Department wrote a memorandum to the Secretary of State stating that the State Department’s Bureau of Consular Affairs had been “studying whether we can interpret the INA to allow U.S. citizen parents to transmit U.S. citizenship to their children born abroad through [assisted reproductive technology] in a broader range of circumstances,” and was “considering how this would impact children born through [assisted reproductive technology] overseas to same-sex couples.”</p>	<p>30(b)(6) Dep. 222:11-24.</p>
<p>23 24 25 26 27 28</p>	<p>133. The State Department’s interpretation of the INA as requiring a biological relationship between a married U.S. citizen parent and a child born outside the United States for purposes of recognizing U.S. citizenship at birth is inconsistent with the rulings of various</p>	<p>30(b)(6) Dep. 245:9-19; 250:3-250:15.</p>

1		federal circuit courts of appeals.	
2	134.	The State Department does not follow the	30(b)(6) Dep. 251:4-9.
3		decisions of any federal circuit court of	
4		appeals holding that Section 301 does not	
5		include a biological relationship requirement	
6		and does not consider itself bound to do so.	
7	135.	The State Department does not follow the	30(b)(6) Dep. 249:6-20.
8		ruling of the Court of Appeals for the Ninth	
9		Circuit in <i>Solis-Espinoza v. Gonzales</i> , 401	
10		F.3d 1090 (9th Cir. 2005), which held that	
11		Section 301 does not require a biological	
12		relationship between a U.S. citizen parent and	
13		his child.	
14	136.	The State Department does not follow the	30(b)(6) Dep. 251:4-9.
15		ruling of the Court of Appeals for the Ninth	
16		Circuit in <i>Scales v. INS</i> , 232 F.3d 1159 (9th	
17		Cir. 2000), which held that Section 301 does	
18		not require a biological relationship between a	
19		U.S. citizen parent and his child.	
20	137.	The State Department does not follow the	30(b)(6) Dep. 251:4-9.
21		ruling of the Court of Appeals for the Second	
22		Circuit in <i>Jaen v. Sessions</i> , 899 F.3d 182 (2d	
23		Cir. 2018), which held that Section 301 does	
24		not require a biological relationship between a	
25		U.S. citizen parent and his child.	
26	138.	The State Department's rationale for its	30(b)(6) Dep. 317:2-8.
27		interpretation of Section 301 is not rooted in a	
28		concern that interpreting Section 301 as not	

1	requiring a biological relationship between an	
2	applicant for a CRBA or U.S. passport who	
3	was born outside the United States and the	
4	child's United States citizen parent would	
5	create or increase the risk of fraud in	
6	connection with applications for recognition	
7	of U.S. citizenship.	
8	139. The State Department's interpretation of	30(b)(6) Dep. 171:18-172:20.
9	Section 301 as requiring a genetic or	
10	gestational relationship between a U.S. citizen	
11	parent and a child is memorialized in 8 FAM	
12	§ 304.1-2 (previously numbered 7 FAM 1140	
13	Appendix E).	
14	140. The FAM is not subject to notice-and-	30(b)(6) Dep. 244:13-18.
15	comment rule making.	
16	141. The FAM is not approved by Congress.	30(b)(6) Dep. 244:5-6.
17	142. The State Department acknowledges that the	30(b)(6) Dep. 103:5-11;
18	FAM policies regarding recognition of U.S.	104:8-11.
19	citizenship include requirements not	
20	specifically set out in the INA.	
21	143. The FAM does not have the force of law.	30(b)(6) Dep. 244:20-244:25.
22	144. The State Department does not track how	30(b)(6) Dep. 315:10-13;
23	frequently CRBA applicants are asked to	320:20-321:3.
24	undergo DNA testing or how often CRBA	
25	applications submitted on behalf of children	
26	of same-sex couples are granted or denied.	
27	145. The State Department acknowledges that	30(b)(6) Dep. 88:12-16;
28	Andrew is E.J.'s legal parent.	261:16-18; 268:2-5.

1	146.	The State Department considers Andrew to be E.J.’s legal parent at birth under Ontario law.	30(b)(6) Dep. 268:2-5.
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3	147.	The State Department acknowledges that Andrew and Elad are E.J.’s only legal parents.	30(b)(6) Dep. 261:16-261:18.
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5	148.	The State Department acknowledges that Andrew and Elad are identified as E.J.’s parents on E.J.’s Statement of Live Birth.	30(b)(6) Dep. 260:21-261:1.
6			
7			
8	149.	The State Department acknowledges that Andrew and Elad were validly married at the time of the Twins’ birth.	30(b)(6) Dep. 260:17-260:20.
9			
10			
11	<b>CONCLUSIONS OF LAW</b>		
12	CONCLUSION OF LAW		SUPPORTING LAW
13	150.	E.J. was born in wedlock under the INA.	<i>See</i> 8 U.S.C. § 1401; <i>Solis-Espinoza v. Gonzales</i> , 401 F.3d 1090 (9th Cir. 2005); <i>Scales v. INS</i> , 232 F.3d 1159 (9th Cir. 2000); <i>see also Jaen v. Sessions</i> , 899 F.3d 182 (2d Cir. 2018).
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20	151.	Andrew is a U.S. citizen who meets the residency requirements imposed by Section 301(g).	<i>See</i> 8 U.S.C. § 1401(g); Dvash-Banks Dep. 169:13-169:19; Dvash-Banks Dep. 171:3-171:6.
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24	152.	Andrew was married to Elad at the time of E.J.’s birth.	Marriage Lic.; Dvash-Banks Dep. 29:5-29:8.
25			
26	153.	Andrew and Elad are E.J.’s legal parents under Ontario law.	Canadian Order; E.J. Statement of Live Birth; Surrogacy Agmt.
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1	154.	Section 301 does not require a biological relationship between a U.S. citizen and his child in order to transmit U.S. citizenship.	8 U.S.C. § 1401; <i>Solis-Espinoza v. Gonzales</i> , 401 F.3d 1090 (9th Cir. 2005); <i>Scales v. INS</i> , 232 F.3d 1159 (9th Cir. 2000); <i>see also Jaen v. Sessions</i> , 899 F.3d 182 (2d Cir. 2018).
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8	155.	Section 301 does not require that a child’s biological parents be married to each other in order for the child to acquire U.S. citizenship at birth.	8 U.S.C. § 1401; <i>Solis-Espinoza v. Gonzales</i> , 401 F.3d 1090 (9th Cir. 2005); <i>Scales v. INS</i> , 232 F.3d 1159 (9th Cir. 2000); <i>Jaen v. Sessions</i> , 899 F.3d 182 (2d Cir. 2018).
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15	156.	E.J.’s applications for a CRBA and U.S. passport were improperly adjudicated by the State Department under Section 309 instead of Section 301.	<i>See</i> 8 U.S.C. § 1401; <i>Solis-Espinoza v. Gonzales</i> , 401 F.3d 1090 (9th Cir. 2005); <i>Scales v. INS</i> , 232 F.3d 1159 (9th Cir. 2000); <i>see also Jaen v. Sessions</i> , 899 F.3d 182 (2d Cir. 2018).
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22	157.	Ninth Circuit law forecloses the State Department’s interpretation of Section 301 as requiring a biological relationship between a U.S. citizen and his child.	<i>Solis-Espinoza v. Gonzales</i> , 401 F.3d 1090 (9th Cir. 2005); <i>Scales v. INS</i> , 232 F.3d 1159 (9th Cir. 2000).
23			
24			
25			
26	158.	E.J. is a United States citizen at birth.	<i>See</i> 8 U.S.C. § 1401; <i>Solis-Espinoza v. Gonzales</i> , 401 F.3d 1090 (9th Cir. 2005);
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1		<i>Scales v. INS</i> , 232 F.3d 1159
2		(9th Cir. 2000); <i>see also Jaen</i>
3		<i>v. Sessions</i> , 899 F.3d 182 (2d
4		Cir. 2018).
5	159. E.J. is entitled to a declaration of citizenship	<i>See</i> 8 U.S.C. § 1503; 28
6	at birth pursuant to 8 U.S.C. § 1503 and the	U.S.C. 2201; <i>see also</i>
7	Declaratory Judgment Act.	8 U.S.C. § 1401; <i>Solis-</i>
8		<i>Espinoza v. Gonzales</i> , 401
9		F.3d 1090 (9th Cir. 2005);
10		<i>Scales v. INS</i> , 232 F.3d 1159
11		(9th Cir. 2000); <i>Jaen v.</i>
12		<i>Sessions</i> , 899 F.3d 182 (2d
13		Cir. 2018).
14	160. The State Department’s interpretation of the	<i>See Pavan v. Nathaniel</i>
15	INA infringes the fundamental right to marry.	<i>Smith</i> , 137 S. Ct. 2075
16		(2017); <i>Obergefell v.</i>
17		<i>Hodges</i> , 135 S. Ct. 2584
18		(2015); <i>Zablocki v. Redhail</i> ,
19		434 U.S. 374 (1978).
20	161. The State Department has not articulated any	<i>See</i> 30(b)(6) Dep. 317:2-8.
21	governmental interest underlying the	
22	imposition of a biological relationship	
23	requirement under Section 301.	
24	162. The State Department has not articulated any	<i>See</i> 30(b)(6) Dep. 317:2-8;
25	governmental interest underlying, or	<i>Washington v. Glucksberg</i> ,
26	justification for, the imposition of a biological	521 U.S. 702 (1997); <i>United</i>
27	relationship requirement under Section 301	<i>States v. Juvenile Male</i> , 670
28	that is either compelling or narrowly tailored	F.3d 999, 1012 (9th Cir.

1	to achieve a compelling governmental	2012).
2	interest.	
3	163. The State Department’s interpretation of	<i>See Solis-Espinoza v.</i>
4	Section 301 as requiring a biological	<i>Gonzales</i> , 401 F.3d 1090 (9th
5	relationship between a U.S. citizen parent and	Cir. 2005); <i>Scales v. INS</i> , 232
6	his child violates Ninth Circuit law.	F.3d 1159 (9th Cir. 2000).
7	164. The State Department’s interpretation of	<i>See</i> 8 U.S.C. §§ 1401, 1409;
8	Section 301 as requiring a biological	<i>Solis-Espinoza v. Gonzales</i> ,
9	relationship between a U.S. citizen parent and	401 F.3d 1090 (9th Cir.
10	his child conflicts with the text of the INA.	2005); <i>Scales v. INS</i> , 232
11		F.3d 1159 (9th Cir. 2000);
12		<i>see also Jaen v. Sessions</i> , 899
13		F.3d 182 (2d Cir. 2018).
14	165. The legislative purpose of the INA is to keep	H.R. Rep. No. 85-1199
15	families together.	(1957); <i>see also Sook Young</i>
16		<i>Hong v. Napolitano</i> , 772 F.
17		Supp. 2d 1270 (D. Haw.
18		2011); <i>Nation v. Esperdy</i> ,
19		239 F. Supp. 531 (S.D.N.Y.
20		1965).
21	166. The State Department’s interpretation of	<i>See</i> H.R. Rep. No. 85-1199
22	Section 301 as requiring a biological	(1957); <i>see also Nation v.</i>
23	relationship between a U.S. citizen parent and	<i>Esperdy</i> , 239 F. Supp. 531
24	his child conflicts with the purpose of the	(S.D.N.Y. 1965); <i>see also</i>
25	INA.	<i>Solis-Espinoza v. Gonzales</i> ,
26		401 F.3d 1090 (9th Cir.
27		2005); <i>Scales v. INS</i> , 232
28		F.3d 1159 (9th Cir. 2000);

1		<i>Jaen v. Sessions</i> , 899 F.3d
2		182 (2d Cir. 2018).
3	167. The State Department's interpretation of	U.S. CONST., art. V; <i>see</i>
4	Section 301 as requiring a biological	<i>Pavan v. Nathaniel Smith</i> ,
5	relationship between a U.S. citizen parent and	137 S. Ct. 2075 (2017);
6	his child violates the Due Process Clause of	<i>Obergefell v. Hodges</i> , 135 S.
7	the Fifth Amendment.	Ct. 2584 (2015); <i>Zablocki v.</i>
8		<i>Redhail</i> , 434 U.S. 374
9		(1978).
10	168. Andrew and E.J. are entitled to a declaration	<i>See</i> U.S. CONST., art. V;
11	that the State Department's interpretation and	28 U.S.C. §§ 2201, 2202.
12	application of Section 301 is unconstitutional	
13	and unlawful.	
14	169. Andrew and E.J. are entitled to an injunction	U.S. CONST., art. V; 5 U.S.C.
15	precluding the State Department from	§ 702.
16	continuing to impose a biological relationship	
17	requirement under Section 301.	
18	170. Andrew and E.J. are entitled to attorneys' fees	28 U.S.C. § 2412.
19	and costs incurred on behalf of Plaintiffs in	
20	connection with the above-captioned action.	

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1 Dated: January 7, 2019

Respectfully submitted,

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1 appearing therefore, finds that the undisputed facts establish that Plaintiffs prevail  
2 as a matter of law under the Due Process Clause of the Fifth Amendment and that  
3 E.J. prevails as a matter of law under 8 U.S.C. § 1503(a).

4 **IT IS THEREFORE ORDERED AND DECLARED THAT:**

5 (1) Plaintiffs’ Motion for Partial Summary Judgment is GRANTED.  
6 Judgment on Plaintiffs’ claim under the Due Process Clause of the Fifth  
7 Amendment is hereby entered for Plaintiffs, and judgment on the 8 U.S.C.  
8 § 1503(a) claim is hereby entered for E.J.

9 (2) Defendants’ interpretation of Section 301 of the Immigration and  
10 Nationality Act of 1952, 8 U.S.C. § 1401, (“Section 301”) to require proof of a  
11 biological relationship with a U.S. citizen is unconstitutional and unlawful, and  
12 Defendants are hereby enjoined from continuing to interpret and apply Section 301  
13 in that manner.

14 (3) E.J. is a United States citizen at birth, who acquired his citizenship  
15 pursuant to Section 301(g) on September 16, 2016.

16 (4) Plaintiffs are hereby awarded attorneys’ fees and costs as allowed  
17 by law, pursuant to 28 U.S.C. § 2412, including an award of reasonable litigation  
18 fees and costs incurred in this action.

19  
20 Date: \_\_\_\_\_

\_\_\_\_\_  
The Honorable John F. Walter  
United States District Judge

