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11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 WESTERN DIVISION

14 ANDREW MASON DVASH-  
15 BANKS, et al.,

16 Plaintiffs,

17 v.

18 MICHAEL R. POMPEO, in his  
19 official capacity as U.S. Secretary of  
State, et al.,

20 Defendants.

Case No. CV 18-523-JFW(JCx)

**Second Declaration of Lisa Zeidner  
Marcus**

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

Honorable John F. Walter

21  
22 **SECOND DECLARATION OF LISA ZEIDNER MARCUS**

23 I, Lisa Zeidner Marcus, hereby declare:

24 1. I serve as trial attorney for the U.S. Department of Justice, Civil Division,  
25 Federal Programs Branch, a position I have held since October 2007. My colleague  
26 Vinita Andrapalliyal and I serve as co-counsel representing Defendants in the above-  
27 captioned case. The statements set forth in this Declaration are based on my personal  
28 knowledge.



1 Ex. 9 DEFS001648-49 (August 29, 2014 letter from Consul General, U.S.  
2 Embassy Bangkok, describing rationale behind DNA testing at Embassies  
3 and Consulates worldwide).

4 This document bears the seal of the Embassy of the United States of  
5 America, Bangkok, Thailand—a subdivision of the U.S. Department of  
6 State—and a signature of the Consul General who executed the letter; as  
7 such, the document is self-authenticating pursuant to Fed. R. E. 902(1).

8 Ex. 10 Dvash-Banks00000031 (letter from Vice Consul Frankie Day to Andrew  
9 Dvash-Banks, dated Jan. 24, 2017).

10 This letter was authenticated by the recipient, Andrew Dvash-Banks, in a  
11 declaration Plaintiffs filed today. *See* Dkt. # 83-20.

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

13 Executed on January 7, 2019 at Pittsburgh, Pennsylvania.

14 /s/ Lisa Zeidner Marcus

15 Lisa Zeidner Marcus

# Defendants' Exhibit 1

(Defendants' Motion for Summary Judgment)

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23 UNITED STATES DISTRICT COURT  
24 CENTRAL DISTRICT OF CALIFORNIA

25 ANDREW MASON DVASH-  
26 BANKS and ETHAN JACOB  
27 DVASH-BANKS,

28 Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' RESPONSES TO  
DEFENDANTS' FIRST SET OF  
DISCOVERY REQUESTS**

1 Defendants' near wholesale failure to respond meaningfully to Plaintiffs' discovery  
2 requests or to do so in a timely manner. Plaintiffs reserve the right to modify or  
3 supplement their responses and objections to this interrogatory.

4 Subject to, and without waiver of, the Objections, Plaintiffs respond as  
5 follows:

6 Plaintiffs state that they have not distinguished between Andrew and Ethan  
7 for purposes of Interrogatory No. 6, therefore no further response to Interrogatory  
8 No. 7 is required.

9 **Interrogatory No. 8:**

10 Identify all bases for your contention that Defendants treated you differently  
11 than similarly situated persons, as alleged in paragraph 71 of your complaint and  
12 implied throughout your Complaint.

13 **Response to Interrogatory No. 8:**

14 Plaintiffs incorporate their Objections by reference and further object to  
15 Interrogatory No. 8 on the grounds that the term "bases," as used in Interrogatory  
16 No. 8, is vague and ambiguous. Plaintiffs also object to Interrogatory No. 8 as  
17 premature. Plaintiffs have propounded multiple discovery requests to elicit  
18 information on this issue to which Defendants have not responded or have done so  
19 in a partial and untimely manner. Plaintiffs reserve the right to modify or  
20 supplement their responses and objections to this interrogatory. Plaintiffs further  
21 object on the grounds that the Complaint speaks for itself and refer Defendants to  
22 the Complaint. Plaintiffs also object to Interrogatory No. 8 on the grounds that it is  
23 a contention interrogatory to which Plaintiffs need not respond at this stage of the  
24 Action.

25 **V. RESPONSES TO REQUESTS FOR ADMISSION**

26 **Request for Admission No. 1:**

27 Admit that you (Andrew) and/or your husband (Elad) used an anonymous  
28 egg donor to conceive Ethan, as alleged in paragraph 44 of your Complaint.

1 **Response to Request for Admission No. 1:**

2 Plaintiffs incorporate their Objections by reference.

3 Subject to, and without waiver of, any of the Objections, Plaintiffs admit that  
4 Andrew and Elad used an anonymous egg donor to conceive Ethan and Aiden.

5 **Request for Admission No. 2:**

6 Admit that in the summer of 2015 you (Andrew) and your husband (Elad)  
7 selected the anonymous egg donor used to conceive Ethan.

8 **Response to Request for Admission No. 2:**

9 Plaintiffs incorporate their Objections by reference.

10 Subject to, and without waiver of, any of the Objections, Plaintiffs admit  
11 that, in June and July of 2015, Andrew and Elad selected the anonymous egg donor  
12 used to conceive Ethan and Aiden and proceeded with arrangements to obtain the  
13 donor eggs.

14 **Request for Admission No. 3:**

15 Admit that you (Andrew) and/or your husband (Elad) used a gestational  
16 carrier to carry and give birth to Ethan.

17 **Response to Request for Admission No. 3:**

18 Plaintiffs incorporate their Objections by reference.

19 Subject to, and without waiver of, any of the Objections, Plaintiffs admit that  
20 Andrew and Elad used a gestational carrier to carry and give birth to Ethan and  
21 Aiden.

22 **Request for Admission No. 4:**

23 Admit that Amanda Marie Anne Adams was the gestational carrier who  
24 carried Ethan.

25 **Response to Request for Admission No. 4:**

26 Plaintiffs incorporate their Objections by reference and further object to  
27 Request for Admission No. 4 on the grounds that it seeks the discovery of private  
28 information protected from disclosure by the right to privacy. Plaintiffs also object

1 twins. (See ¶¶ 1.8, 1.9, 1.10 and 14.1 of the Surrogacy Agreement.) Plaintiffs  
2 further state that Andrew is listed as a parent of Ethan on Ethan’s Statement of  
3 Live Birth. Plaintiffs further refer Defendants to the Declaration of Parentage of  
4 Ethan, which declared Andrew and Elad to be Ethan’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 Ethan Dvash-Banks  
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 Ethan was not established until September 28,  
14 2016, twelve days after Ethan’s birth.

15 **Request for Admission No. 14:**

16 Admit that you (Andrew) are not biologically related to Ethan.

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 Ethan.

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 Ethan and Aiden were born, to  
25 establish the parentage of Ethan and Aiden.

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

# Defendants' Exhibit 2

(Defendants' Motion for Summary Judgment)



1 **Request for Admission 10:**

2 Admit that for purposes of issuing certificates of citizenship in the Ninth  
3 Circuit, CIS does not require a biological connection between the child and  
4 the child's U.S. citizen parent.

5 **Response:**

6 Upon conducting a reasonable inquiry, Defendants lack knowledge to  
7 definitively answer on behalf of the U.S. Citizenship and Immigration  
8 Services ("USCIS"), which is a component of the Department of Homeland  
9 Security—an Executive agency separate from the Department of State.  
10 Defendants understand generally and admit that for those applications for  
11 certificates of citizenship that USCIS receives from applicants living in the  
12 Ninth Circuit at the time of their application, USCIS applies the Ninth Circuit  
13 caselaw of *Scales v. I.N.S.*, 232 F.3d 1159, 1165 (9th Cir. 2000).

14 **Request for Admission 11:**

15 Admit that *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005),  
16 precludes the State Department from requiring a showing of a biological  
17 connection between the U.S. citizen parent and child applicant in deciding  
18 applications for Consular Reports of Birth Abroad and U.S. passports by or  
19 on behalf of residents of states located in the Ninth Circuit.

20 **Specific Objection:**

21 Defendants object to this RFA because it calls for a legal conclusion, and  
22 because it is overly broad, particularly insofar as it seeks a response regarding  
23 U.S. passport applications, which include U.S. passport applications for  
24 naturalized citizens as well as for individuals who acquired citizenship at birth  
25 because they were born in the United States.  
26  
27  
28

1                    Response:

2                    Subject to and without waiving the above-stated objection, Defendants  
3                    generally deny this statement. Defendants deny the statement with respect to  
4                    deciding applications for Consular Reports of Birth Abroad (“CRBAs”) by or  
5                    on behalf of residents of states located in the Ninth Circuit because such  
6                    residents are not eligible for a CRBA. A CRBA, also known as form FS-240,  
7                    is a consular declaration of the fact of acquisition of U.S. citizenship at birth,  
8                    and it is only available to individuals who are located abroad. See 8 FAM  
9                    101.1-1. With respect to deciding applications for U.S. passports, insofar as  
10                    the wording of the RFA and the facts presented by this case refer to  
11                    applications for first-time passports that are submitted to a U.S. Embassy or  
12                    consulate abroad by individuals who also are applying for a CRBA, such  
13                    individuals would, again, be located abroad and not in a state within the Ninth  
14                    Circuit or of any particular state within the United States.

15                    With respect to deciding applications for U.S. passports by or on behalf of  
16                    residents of states located in the Ninth Circuit, Defendants are not able to  
17                    either admit or deny the statement because as stated it is so broad that the  
18                    applicability or non-applicability of *Solis-Espinoza v. Gonzales*, 401 F.3d  
19                    1090 (9th Cir. 2005), cannot be determined.

20  
21                    **Request for Admission 12:**

22                    Admit that the only basis for the State Department’s denial of Ethan’s  
23                    applications for a Consular Report of Birth Abroad and U.S. passport is that  
24                    Ethan and Andrew are not biologically related.

25                    Response:

26                    Defendants admit that one basis for denying the applications was that there  
27                    was insufficient evidence of a biological tie between the child applicant and  
28

1           Response:

2           Based on the documents provided to Defendants in connection with Plaintiff  
3           E.J. D-B.'s CRBA and U.S. passport applications, and the CRBA and U.S.  
4           passport applications of A.J. D-B, Defendants admit this statement.

5           **Request for Admission 17:**

6           Admit that Andrew meets all residency requirements of Section 301(g).

7           Response:

8           Based on the documents provided to Defendants in connection with Plaintiff  
9           E.J. D-B.'s CRBA and U.S. passport applications, Defendants admit this  
10          statement.

11          **Request for Admission 18:**

12          Admit that Andrew and Ethan are California residents.

13          Response:

14          Based on the testimony provided by Plaintiff Andrew Dvash-Banks at his  
15          deposition, Defendants admit that Andrew and E.J. D-B are currently  
16          residents of California.  
17

18          **Request for Admission 19:**

19          Admit that Andrew and Elad are married.

20          Specific Objection:

21          Defendants object to this RFA to the extent it calls for a legal conclusion.  
22

23          Response:

24          Subject to and without waiving the above-stated objection, based on  
25          deposition testimony provided by Andrew Dvash-Banks, and the marriage  
26          certificate submitted to the Department of State with the application materials  
27  
28

# Defendants' Exhibit 3

(Defendants' Motion for Summary Judgment)

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10 *Counsel for Defendants*

11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA  
 13 WESTERN DIVISION

14 ANDREW MASON DVASH- BANKS, et al., 15 Plaintiffs, 16 v. 17 MICHAEL R. POMPEO, in his 18 official capacity as U.S. Secretary of State, et al., 19 Defendants, 20	) Case No. <b>2:18-cv-00523-JFW (JCx)</b> ) <b>Defendants’ First Set of Responses to</b> ) <b>Plaintiffs’ First Set of Interrogatories</b> ) ) October 5, 2018 )
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21 Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules  
 22 of the United States District Court for the Central District of California, Defendants,  
 23 the U.S. Department of State and Michael R. Pompeo, sued solely in his official  
 24 capacity as Secretary of State (collectively, “the Department” or “Defendants”),  
 25 hereby respond to Plaintiffs’ First Set of Interrogatories (the “Interrogatories”).  
 26  
 27  
 28

1 19. Defendants specifically decline to produce privileged information.  
2 Defendants further object to any requirement that it produce a privilege log for  
3 privileged material not otherwise properly within the scope of discovery and/or as  
4 to which no privilege log would be required pursuant to Federal Rule of Civil  
5 Procedure 26(b)(5).

6 20. Each and every response contained herein is subject to the above  
7 objections, which apply to each and every response, regardless of whether a specific  
8 objection is interposed in a specific response. The making of a specific objection in  
9 response to a particular request is not intended to constitute a waiver of any other  
10 objection not specifically referenced in the particular response.

11 21. Defendants specifically reserve the right to make further objections as  
12 necessary to the extent additional issues arise regarding the meaning of terms in  
13 and/or information sought by discovery.

14  
15 **III. OBJECTIONS AND RESPONSES TO SPECIFIC**  
16 **INTERROGATORIES**

17 **INTERROGATORY NO. 1**

18 *Identify each Person You believe to have been involved in any determination*  
19 *of, or Communications Concerning, any application for a CRBA or U.S. passport*  
20 *for Plaintiff Ethan Dvash-Banks. With respect to each such Person, Identify his or*  
*her role or involvement and any Communications responsive to this interrogatory.*

21 **Objections:**

22 Defendants object to this Interrogatory as unreasonably vague, overly broad,  
23 unduly burdensome, not relevant to any party's claim or defense, and  
24 disproportionate to the needs of the case because, for example, (a) it could be read  
25 as not limited in time to the period of the adjudication at issue, and (b) it could be  
26 read as asking Defendants to identify "each Person" Defendants "believe to be  
27 involved in any... Communications Concerning..." the Dvash-Banks applications  
28 for CRBAs and U.S. passports, regardless of whether such Persons were engaged in

1 the adjudication of the Dvash-Banks applications for CRBAs and U.S. passports, or  
 2 even employed by Defendants, and thus would have Defendants identify Plaintiffs  
 3 themselves, Plaintiffs' counsel, and other persons who were not actually involved in  
 4 the adjudication of those applications. It is unreasonable to burden Defendants with  
 5 ascertaining who outside of the Department of State might have been involved with  
 6 communications concerning the applications. It is also unreasonable and not relevant  
 7 to any party's claim or defense to burden Defendants with identifying persons who  
 8 may have communicated about the applications after the adjudications had  
 9 concluded, and/or to identify persons who may have communicated about the  
 10 applications in the course of responding to this litigation. Defendants further object  
 11 to this Interrogatory to the extent that it seeks the identification of non-fact witnesses  
 12 who may nonetheless possess relevant knowledge, such as attorneys who act as  
 13 agency counsel for the instant action. For the purposes of responding to this  
 14 Interrogatory, Defendants construe the Interrogatory as seeking to know each  
 15 Department of State employee or contractor involved in the underlying adjudication,  
 16 and as further requiring that Defendants identify each such person's "role or  
 17 involvement" and each such person's related communications.

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

21 **Answer:**

22 Subject to and without waiving the above-stated objections—including both  
 23 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–  
 24 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

25 On January 24, 2017, Consulate Toronto received an "Application for  
 26 Consular Report of Birth Abroad of a Citizen of the United States of America" for  
 27 Ethan Dvash-Banks ("the CRBA application"), and also received an "Application  
 28

1 for U.S. Passports” for Ethan (the “U.S. passport application”) (collectively, the  
2 “applications”). The applications were adjudicated between the time of their receipt  
3 and March 2, 2017, at which time Consulate Toronto issued a letter denying the  
4 applications. That letter was disclosed to Plaintiffs in Defendants’ initial disclosures.  
5 The following staff were involved in the determination of, and communications  
6 about, the applications:

- 7 • Frankie Terri Day, Consular Officer, Consulate Toronto;
- 8 • Margaret Ramsay, Consular Officer, Consulate Toronto;
- 9 • Larilyn Reffett, American Citizen Services Chief, Consulate Toronto;
- 10 and
- 11 • Ann Marie Warmenhoven, Fraud Prevention Unit Officer, Consulate  
12 Toronto.

13 For the above listed persons, Defendants describe their role and diplomatic  
14 titles as follows. Ms. Day adjudicated the applications and in doing so consulted with  
15 her supervisor, Ms. Reffett. During the relevant time period, Ms. Day’s diplomatic  
16 rank was that of “Vice Consul.” Ms. Ramsay provided the adjudicating consular  
17 officer (Ms. Day) with relevant FAM references. During the relevant time period  
18 (and continuing through today), Ms. Ramsay’s diplomatic rank was that of “Consul.”  
19 Ms. Reffett supervises American Citizen Services functions at the U.S. Consulate in  
20 Toronto, and has served in this position since August 2016. With respect to the  
21 underlying adjudication, Ms. Reffett supervised Ms. Day and discussed the  
22 adjudication with her. During the relevant time period (and continuing through  
23 today), Ms. Reffett’s diplomatic rank was that of “Consul.” Ms. Warmenhoven  
24 reviewed DNA results submitted with the CRBA application and entered findings  
25 into the appropriate Department database, and advised the adjudicating consular  
26 officer (Ms. Day) of those results.



1 claim or defense to burden Defendants with identifying persons who may have  
 2 general knowledge bearing on the process used by Consulate Toronto in specifically  
 3 adjudicating the CRBA and U.S. passport applications for Ethan. Defendants further  
 4 object to this Interrogatory to the extent that it seeks the identification of non-fact  
 5 witnesses who may nonetheless possess relevant knowledge, such as attorneys who  
 6 act as agency counsel for the instant action. For the purposes of responding to this  
 7 Interrogatory, Defendants construe the Interrogatory as seeking to know each  
 8 Department of State employee or contractor involved in the underlying adjudication,  
 9 such that he or she would have knowledge or information concerning the process by  
 10 which, the reasons why, or the basis on which, Consulate Toronto denied the  
 11 applications; Defendants further construe the Interrogatory as requesting that  
 12 Defendants identify each such person's "knowledge and/or the information he or she  
 13 possesses."

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

17 **Answer:**

18 Subject to and without waiving the above-stated objections—including both  
 19 those described in the prior two paragraphs and those outlined *supra* Part I ¶¶ 1–  
 20 12(b) and Part II ¶¶ 13–21—Defendants respond as follows:

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

- 25 • Frankie Terri Day. Ms. Day served as the adjudicating consular  
 26 officer for the underlying adjudication. Relevant knowledge or  
 27 information possessed by Ms. Day is restricted to any knowledge or  
 28

1 information she possessed in her official capacity as a Consular Officer,  
 2 Consulate Toronto. Such knowledge would include awareness of the  
 3 specific process by which the applications were adjudicated, and  
 4 awareness of the reasons and basis for the denial of those applications.

5 • Margaret Ramsay. Ms. Ramsay provided the adjudicating consular  
 6 officer (Ms. Day) with relevant FAM references. Relevant knowledge or  
 7 information possessed by Ms. Ramsay is restricted to any knowledge or  
 8 information she possessed/possesses in her official capacity as a Consular  
 9 Officer, Consulate Toronto. Such knowledge would include general  
 10 awareness of the process by which the applications were adjudicated.

11 • Larilyn Reffett. Ms. Reffett served as the supervisor for the  
 12 adjudicating consular office (Ms. Day), and supervised the underlying  
 13 adjudication, including by discussing the adjudication with Ms. Day.  
 14 Relevant knowledge or information possessed by Ms. Reffett is restricted  
 15 to any knowledge or information she possessed/possesses in her official  
 16 capacity as American Citizen Services Chief, Consulate Toronto. Such  
 17 knowledge would include awareness of the specific process by which the  
 18 applications were adjudicated, and awareness of the reasons and basis for  
 19 the denial of those applications. Additionally, as the Chief of American  
 20 Citizen Services, Consulate Toronto, Ms. Reffett possess general  
 21 knowledge regarding the process by which Consulate Toronto adjudicates  
 22 CRBA and U.S. passport applications, as well as general knowledge  
 23 regarding Consulate Toronto's interactions with U.S. citizens living in or  
 24 visiting Toronto.

25 • Ann Marie Warmenhoven. Relevant knowledge or information  
 26 possessed by Ms. Warmenhoven is restricted to any knowledge or  
 27 information she possessed/possesses in her official capacity as Fraud  
 28 Prevention Unit Officer, Consulate Toronto. Such knowledge would

1 include awareness of the basis for the denial of the applications, general  
 2 awareness of the process by which the applications were adjudicated, and  
 3 general awareness of fraud prevention concerns related to the adjudication  
 4 of CRBA and U.S. passport applications.

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

### 15 16 INTERROGATORY NO. 3

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

#### 25 Objections:

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

IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

1  
2  
3 ANDREW MASON DVASH-  
BANKS, et al.,

4 Plaintiffs,

5 v.

6 MICHAEL R. POMPEO, in his  
7 official capacity as U.S. Secretary of  
8 State, et al.,

9 Defendants,

) Case No. 2:18-cv-00523-JFW (JCx)  
)  
) **Defendants' First Set of Responses to**  
) **Plaintiffs' First Set of Interrogatories,**  
) **Signature Page**

10  
11 Certification of Margaret S. Ramsay

12 I, Margaret S. Ramsay, declare that I assisted in the preparation of and  
13 provided information for the Department of State's responses to Plaintiffs'  
14 Interrogatory Nos. 1, 2, 3A, 3B, and 3C in the above-captioned case. The responses  
15 are based upon information gathered in the course of my inquiry and information  
16 maintained in the regular course of agency activities, supplemented in some  
17 instances with personal knowledge. On behalf of the Department, I furnish the  
18 answers to Interrogatory Nos. 1 and 2; also on behalf of the Department, I furnish  
19 those portions of the answers to Interrogatory Nos. 3A, 3B, and 3C that directly  
20 relate to the U.S. Consulate General, Toronto.

21 I declare under penalty of perjury that that these answers are true and  
22 correct.

23  
24 M SRamsay  
25 Margaret S. Ramsay  
26 Consul

27  
28 10/5/18  
Date

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Assistant Director  
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6 Senior Counsel

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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
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14 ANDREW MASON DVASH-  
15 BANKS, et al.,

16 Plaintiffs,

17 v.

18 MICHAEL R. POMPEO, in his  
19 official capacity as U.S. Secretary of  
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20 Defendants,

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

Defendants' Second Set of Responses  
to Plaintiffs' First Set of  
Interrogatories

November 16, 2018

21  
22 On October 5, 2018, Defendants served Plaintiffs with "Defendants' First  
23 Set of Responses to Plaintiffs' First Set of Interrogatories" ("Defendants' First Set  
24 of Responses"). Among other objections, Defendants' First Set of Responses  
25 objected to counting Plaintiffs' Interrogatories and their discrete subparts as  
26 consisting of only twenty requests. Defs.' 1st Set Resps. ¶ 13. Defendants noted:  
27 "When the Interrogatories and their discrete subparts are properly construed as  
28

**With respect to 14(A):**<sup>12</sup>

1 The Department's rationale, governmental interests, and concerns are in  
2 faithfully executing the laws passed by Congress. The INA was enacted in 1952, a  
3 time when it was commonly understood, that outside the adoption context, a  
4 "parent" at birth referred to a biological parent. 8 FAM 301.4-1(D)(1)(a) provides,  
5 "[t]he laws on acquisition of U.S. citizenship through a parent have always  
6 contemplated the existence of a blood relationship between the child and the  
7 parent(s) through whom citizenship is claimed. It is not enough that the child is  
8 presumed to be the issue of the parents' marriage by the laws of the jurisdiction  
9 where the child was born. Absent a blood relationship between the child and the  
10 parent on whose citizenship the child's own claim is based, U.S. citizenship is not  
11 acquired. The burden of proving a claim to U.S. citizenship, including blood  
12 relationship and legal relationship, where applicable, is on the person making such  
13 claim."  
14

**With respect to 14(B):**<sup>13</sup>

15 Defendants lack knowledge with respect the rationale, governmental  
16 interests, and concerns of the Department of Homeland Security and its  
17 components.  
18  
19  
20

21 <sup>12</sup> Interrogatory 14(A) asks: "Identify and describe the State Department's...  
22 rationale, governmental interests or concerns Concerning any decision not to treat  
23 as a United States citizen a child born outside of the United States to a married  
24 couple (of which one spouse is a United States citizen) when the United States  
citizen is not the child's biological parent but is listed as a parent on the child's  
birth certificate."

25 <sup>13</sup> Interrogatory 14(B) asks: "Identify and describe... [US]CIS's or DHS's  
26 rationale, governmental interests or concerns Concerning any decision not to treat  
27 as a United States citizen a child born outside of the United States to a married  
28 couple (of which one spouse is a United States citizen) when the United States  
citizen is not the child's biological parent but is listed as a parent on the child's  
birth certificate."

IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ANDREW MASON DVASH-  
BANKS, et al.,

Plaintiffs,

v.

MICHAEL R. POMPEO, in his  
official capacity as U.S. Secretary of  
State, et al.,

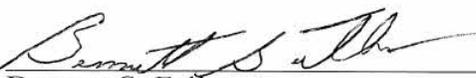
Defendants,

) Case No. **2:18-cv-00523-JFW (JCx)**  
) **Defendants' Second Set of Responses**  
) **to Plaintiffs' First Set of**  
) **Interrogatories, Signature Page**

**Certification of Bennett S. Fellows**

I, Bennett S. Fellows, declare that I assisted in the preparation of and provided information for the Department of State's responses to Plaintiffs' Interrogatory Nos. 11(A)-20 in the above-captioned case. The responses are based upon information gathered in the course of my inquiry and information maintained in the regular course of agency activities, supplemented in some instances with personal knowledge. On behalf of the Department, I furnish the answers to Interrogatory Nos. 11(A)-20.

I declare under penalty of perjury that that these answers are true and correct.



Bennett S. Fellows  
Division Chief  
U.S. Department of State  
Bureau of Consular Affairs, Office of Passport Services  
Office of Adjudication, Policy Division

11-16-18  
Date

# Defendants' Exhibit 4

(Defendants' Motion for Summary Judgment)

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

15 ANDREW MASON DVASH-  
 16 BANKS, et al.,  
 17 Plaintiffs,  
 18 v.  
 19 MICHAEL R. POMPEO, in his  
 official capacity as U.S. Secretary of  
 20 State, et al.,  
 21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition  
 Testimony of Terri Nathine Frances  
 Day, Supporting Defendants’ Motion  
 for Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

22  
 23 Pursuant to this Court’s Case Management Order, Defendants hereby file the  
 24 instant document for deponent Terri Nathine Frances Day. This document contains “only  
 25 those questions and answers, and any objections made at the time of the deposition to  
 26 those questions,” Order at 11 (Dkt. No. 52), that Defendants are relying on to support  
 27 their partial motion for summary judgment, “with a citation to the appropriate page(s)  
 28

1 and line number(s) in the deposition transcript,” *id.* Ms. Day’s deposition was taken  
2 Thursday, Deeber 20, 2018, in Charlotte, North Carolina.

3 \*\*\*

4 **Frances Day, Terri Nathine, (Pages 79:25 to 80:17)**

5 79

6 By Ms. Goldsmith:

7 25 Q. Was it your usual practice to ask every

8 80

9 1 same-sex couple whether they used assisted  
10 2 reproductive technology?

11 3 A. I would say that it was my policy to  
12 4 ask as many people as possible if they used  
13 5 assisted reproductive technology, whether they were  
14 6 same-sex or not, because there was an attempt to --  
15 7 to -- for me personally to not single anyone out.  
16 8 So it kind of -- and I -- this was something that  
17 9 I -- I can't say that I did 100 percent of the  
18 10 time, just because there are a lot of -- there are  
19 11 a lot of steps to this whole process. But just  
20 12 asking, okay, as a point of -- you know, as a  
21 13 matter of course, like, did you -- did you at some  
22 14 point use ART when you were conceiving your child?  
23 15 Just as a normal kind of question to incorporate  
24 16 into my number of hundreds of questions that I  
25 17 probably asked parents.

26  
27 **Frances Day, Terri Nathine, (Pages 94:22 to 95:25)**

28 94

1 22 BY MS. GOLDSMITH:

2 23 Q. So you stated earlier that you were  
3 24 personally involved in the adjudication of A.J.'s  
4 25 and E.J.'s applications for U.S. passports and

5 95

6 1 CRBAs; is that correct?

7 2 A. Yes.

8 3 Q. And what was your role?

9 4 A. I was the adjudicating officer. So I  
10 5 took in the -- I -- after the local staff took in  
11 6 the documents, I reviewed them and I certified  
12 7 copies. I gave an oath to the parents and had them  
13 8 sign the documents. I interviewed them, and then I  
14 9 was ultimately responsible for approving or denying  
15 10 those applications.

16 11 Q. Was anyone else involved in that  
17 12 adjudication? And we'll start with E.J.

18 13 A. Can I just say for both of them --

19 14 Q. Sure.

20 15 A. -- because they were -- they were  
21 16 treated as -- I mean, all the information that's  
22 17 true for one -- in the initial interview phase, as  
23 18 far as I knew, it would have been true for the  
24 19 other. So no one was -- I mean, I consulted with  
25 20 my manager about the case, and she brought in  
26 21 Maggie Ramsay as well. But during the -- and  
27 22 during the interview, at a certain point, Maggie  
28 23 Ramsay did speak to the family. So in that way,

1 24 people were involved, but the ultimate decision was  
2 25 mine.

3  
4 **Frances Day, Terri Nathine, (Pages 103:14 to 109:17)**

5 103

6 By Ms. Goldsmith:

7 14 Q. So can you walk me through step by step  
8 15 what happened on the day that the Dvash-Banks  
9 16 family came in for their interview, so if you did  
10 17 anything to prepare for their coming in and then  
11 18 what happened next.

12 19 A. So I can't tell you everything  
13 20 specifically because I just don't recall, and I  
14 21 also can't tell you everything that -- when they  
15 22 came in because they deal with the local staff  
16 23 first.

17 24 From my understanding -- the way that  
18 25 things normally work is there is a stack of cases

19 104

20 1 in manila folders between the two ACS officers.  
21 2 And we take one when we're finished with the one  
22 3 we've done before. So it's random how it comes up.  
23 4 You take it off the stack, you open it, and you  
24 5 have the documents, whatever documents that they've  
25 6 presented to you.

26 7 Like I said before, you certify the  
27 8 documents. You check -- you look for where they  
28 9 need to sign and you prepare whatever -- you start

1 10 thinking about what kind of questions you're going  
2 11 to have to ask, what information you may need,  
3 12 which they may be able to give you during the  
4 13 course of the interview or you may need to pend  
5 14 them for documentation.

6 15 If somebody didn't bring a birth  
7 16 certificate for their child, I'm looking through  
8 17 that and I'll make a note, okay, I need to ask them  
9 18 if they have a copy, or I'm going to prepare a  
10 19 pending document sheet and mark birth certificate  
11 20 before they even come up to the window, and -- and  
12 21 then I can give it to them or chuck it if we don't  
13 22 need it or I have it all -- I had it after all.

14 23 So then you call -- then I would call  
15 24 them up to the window. You, again, give them an  
16 25 oath. You determine that they are the person that

17 105

18 1 they -- that is on the application and the kids --  
19 2 you look -- you have to look at the kids. At the  
20 3 time the boys were infants. They're like little  
21 4 potatoes. You know, they don't look like anybody  
22 5 in particular. So I'm looking at a photo. I'm  
23 6 looking at the baby. The baby is like two times  
24 7 the size by now.

25 8 So I don't remember if I would have  
26 9 asked them to sit -- if I would have asked --  
27 10 because I know that there's one AMCIT parent. So  
28 11 sometimes I would ask the non-AMCIT parent and the

1 12 kids to sit down, if they wanted to. Sometimes  
2 13 they prefer to stay at the window. I always gave  
3 14 them a choice, even the kids, because sometimes  
4 15 they like to be at the window and see what's going  
5 16 on. Obviously, these were babies, so they didn't  
6 17 care, but -- and then you start asking them  
7 18 questions.

8 19 I don't remember exactly what order I  
9 20 asked them questions in, when the idea of the  
10 21 assisted reproductive technology might have come up  
11 22 or exactly, you know, how it came up. But after --  
12 23 during that interview, after it was clear to me  
13 24 that they had used assisted reproductive  
14 25 technology, I had to talk to them about the process

15 106

16 1 of it, how were the kids conceived, what was the  
17 2 process of donating the sperm, et cetera.

18 3 It's a sensitive subject, not just  
19 4 because it's a medical situation, it's a sensitive  
20 5 subject for the families as well. So anytime, you  
21 6 know, you're asking somebody about how their kid  
22 7 was conceived, you try to be mindful that it is a  
23 8 sensitive topic. And that was true for, you know,  
24 9 same-sex or opposite-sex couples.

25 10 And then -- and then when it became  
26 11 clear to me that it was a possibility that the two  
27 12 boys would have -- one would be biologically  
28 13 related to one of the dads and one would be

1 14 biologically related to the other dad, it became  
2 15 clear that I would need -- and this was -- by the  
3 16 way, I'm going back to Larilyn and I'm asking,  
4 17 "Okay, this is the situation. What do we think  
5 18 about this?"

6 19 It became clear that I would need to  
7 20 ask for DNA to determine the biological link to the  
8 21 kids. And they were very upset. I remember them  
9 22 telling me that they didn't know and they didn't  
10 23 want to know, which I totally understand and I  
11 24 totally appreciate, but, unfortunately, for our  
12 25 purposes, it wasn't -- we weren't able to -- you

13 107

14 1 know, that wasn't an answer that we could accept.

15 2 They were getting worked up. They were  
16 3 yelling, and I was -- I mean, I've been yelled at  
17 4 before, you know. I've been yelled at in my job  
18 5 before. I've been yelled at in ACS before. I  
19 6 don't -- you know, I'm -- in this particular case,  
20 7 as a person, as an LGBT person, as a person who,  
21 8 like, understands, you know, how these things can  
22 9 feel when, you know, you have -- you have -- you're  
23 10 othered in a way. I was -- I did feel emotional,  
24 11 but I also understood that this was not coming at  
25 12 me. This was coming at the process, which I  
26 13 completely appreciated.

27 14 So, yeah, there was times -- there was  
28 15 a point where I did step away from the window.

1 16 They were getting worked up, and I could feel that  
2 17 kind of coming back, and I had to step away from  
3 18 the window. And, you know, at this point we had  
4 19 been going for a long time. We had gotten to the  
5 20 point where I was saying, "Look, we have to have  
6 21 this. This is required for us to determine the  
7 22 biological link. We don't -- you know, because of  
8 23 the information that you've given me today, because  
9 24 of the things that we've talked about, we don't  
10 25 have a choice in this. If you don't want to do

11 108

12 1 it" -- and I understood if they didn't want to --  
13 2 if they were thinking they didn't want to do it.  
14 3 I -- you know, if you don't want to do it, I  
15 4 understand. You don't have to continue the  
16 5 application.

17 6 And I suggested other ways for them to  
18 7 have both boys, you know, documented as AMCITs, and  
19 8 just giving them -- you know, and I -- when I -- if  
20 9 I have a denial, a lot of the times, I want to give  
21 10 the family other options because I know they want  
22 11 to get their -- they want their family to be  
23 12 together. So I say, "Okay, well, this might not  
24 13 work, but here's another option that you can  
25 14 consider," or, "Here's another option that you can  
26 15 consider," and -- you know, because I am in the  
27 16 habit of -- of -- you know, the vast majority of  
28 17 cases were approved. So I'm in the habit of

1 18 approving people for their -- kids for their  
2 19 citizenship, and I like doing it. I want to do it.  
3 20 But I'm bound by U.S. -- the law. You know, so --  
4 21 by the FAM regulation and by the INAs.

5 22 So at that point, you know, I had to  
6 23 explain to them, we had re-explained. They had  
7 24 told me what they thought. You know, there was  
8 25 yelling, and I -- I had to step away from the --

9 109

10 1 from the window, and I went back to my desk, and I  
11 2 sat down, and I cried a little bit.

12 3 And Maggie, seeing kind of how it was  
13 4 affecting me, went over and said, you know, "Look,  
14 5 you know, this is what it is. We can't really do  
15 6 anything about it. We have to -- you have to --  
16 7 you know, this is kind of what's required. These  
17 8 are your choices."

18 9 And at that point, there was nothing  
19 10 really else she could explain to them. They were  
20 11 dissatisfied with the answer, and, you know, I  
21 12 don't blame them for that. But at that point, it  
22 13 was kind of out of -- it was kind of out of our  
23 14 hands, so we -- and as far as I know, they -- they  
24 15 left dissatisfied with the answer, and we, you  
25 16 know -- and that was it for the interviews for that  
26 17 day.

27  
28

1 **Frances Day, Terri Nathine, (Page 116:12 to 116:19)**

2 116

3 By Ms. Goldsmith:

4 12 wouldn't be able to issue or deny without that --

5 13 that DNA test, they were not happy with that.

6 14 Q. And how did you know that they weren't

7 15 happy at that point?

8 16 A. Well, they seemed upset. They were --

9 17 specifically, I think I spoke the most with Andrew,

10 18 the AMCIT dad. He was raising his voice. He

11 19 was -- I believe he began crying at one point.

12  
13 **Frances Day, Terri Nathine, (Page 217:9 to 217:24)**

14 217

15 By Ms. Zeidner Marcus:

16 9 Q. You don't remember if you looked at the

17 10 Foreign Affairs Manual?

18 11 A. I don't recall this specifically. I do

19 12 know that -- I do recall that -- actually, I will

20 13 say that I do recall looking at this -- the -- the

21 14 FAM provision, specifically. Because I got --

22 15 because -- it was either Maggie or Larilyn,

23 16 someone -- I don't remember who -- sent it to me.

24 17 And I was looking at it as -- as I conducted the

25 18 interview because you can kind of go step by step

26 19 and say, "Okay. Does this apply to you?" or

27 20 whatnot. So I -- I do remember having that up.

28 21 Q. You specifically remember looking at a

1 22 FAM provision during the time that you were  
2 23 interviewing the Dvash-Banks family's adults?

3 24 A. Yes.

4  
5 **Frances Day, Terri Nathine, (Page 220:3 to 220:6)**

6 220

7 By Ms. Zeidner Marcus:

8 3 Q. And to be clear, you recall looking at  
9 4 a FAM -- you do recall looking at a specific FAM  
10 5 provision, but you don't remember which one?

11 6 A. Correct.

12  
13 **Frances Day, Terri Nathine, (Pages 224:18 to 229:16)**

14 224

15 By Ms. Zeidner Marcus:

16 18 Q. Ms. Goldsmith asked you a series of  
17 19 questions at different points during today's  
18 20 deposition where she used the word "parents." Do  
19 21 you recall that?

20 22 A. I do.

21 23 Q. And do you recall when -- whether, when  
22 24 Ms. Goldsmith used that word, you understood or not  
23 25 the specific manner in which she was using the

24 225

25 1 word?

26 2 A. Sometimes.

27 3 Q. And other times?

28 4 A. And other times, not.

1           5       Q. And there were some times during your  
2           6 testimony in response to Ms. Goldsmith where you  
3           7 asked her to -- you told her you didn't understand  
4           8 some of the questions that she was asking. Do you  
5           9 remember, generally, saying that you don't  
6           10 understand?

7           11       A. Yes.

8           12       Q. Briefly, at a high level, can you  
9           13 summarize, to the extent you recall, the kinds of  
10          14 questions or the questions that she asked earlier  
11          15 that you did not understand?

12          16       A. Did you -- for example, did you  
13          17 determine that Person A or Person B was the parent  
14          18 of Person C? Does this document state that these  
15          19 people are the parents of this person? Things like  
16          20 that.

17          21       Q. Why did you not understand those  
18          22 questions?

19          23       A. Because as far as my recollection goes,  
20          24 and as far as my interaction with the family that  
21          25 we're discussing, it wasn't my determination -- I

22                               226

23          1 didn't -- I wasn't there to determine who were the  
24          2 parents of whom. My determination was, who has  
25          3 a -- does the AMCIT father have a biological link  
26          4 to the person -- the child that he is applying for?  
27          5 So that's something that I didn't feel comfortable  
28          6 kind of speculating about -- about.



1 9 which Ms. Goldsmith has been asking you earlier.  
2 10 Do you understand the term "parent" to be broad  
3 11 only when used in relation to the Dvash-Banks  
4 12 family's applications?

5 13 A. No.

6 14 Q. Do you generally understand, from your  
7 15 work in ACS and/or NIV, the term "parent" to be  
8 16 broad?

9 17 A. I would say yes.

10 18 Q. And can you explain that at a more  
11 19 general level, not referring to a specific case,  
12 20 why you think that term is broad?

13 21 A. Because you can say, for example,  
14 22 somebody is -- the legal guardian of somebody is  
15 23 not necessarily -- or the -- the legal guardian of  
16 24 somebody might not necessarily be -- might be  
17 25 called the parent.

18 228

19 1 There could be all kinds of  
20 2 relationships to a child that would be called a  
21 3 parent in different circumstances. Not to say that  
22 4 one is more definitive than the other, but there  
23 5 might be a lot of different relationships to the  
24 6 child, and the person might be called a parent.

25 7 Q. And coming back to the Dvash-Banks  
26 8 family's applications, did you understand it to be  
27 9 your role to determine whether Andrew and Elad  
28 10 Dvash-Banks were the parents of -- however that

1 11 term is defined -- of E.J. and A.J.?

2 12 A. No.

3 13 Q. It was not your role?

4 14 A. No.

5 15 Q. Why do you say that?

6 16 A. Because my role is to -- to apply the

7 17 circumstances of the FAM to the relationship

8 18 between the AMCIT father and the applicant. But

9 19 however they define "parent" is not for me to say.

10 20 Q. And by "they" here, you're talking

11 21 about this family?

12 22 A. About the family. About the parent.

13 23 About -- about Andrew and Elad.

14 24 Q. Did that -- so did that mean that you

15 25 didn't -- that you deferred -- does that mean

16 229

17 1 that --

18 2 Let me ask you this: When Andrew and

19 3 Elad Dvash-Banks were at your interview window

20 4 January 2017, did they describe themselves as the

21 5 parents to E.J. and A.J.?

22 6 A. Yes.

23 7 Q. And --

24 8 A. To the best of my recollection.

25 9 Q. And did you make any judgment that they

26 10 were incorrectly referring to themselves as

27 11 parents?

28 12 A. No.

1 13 Q. Did you accept -- for this particular  
2 14 situation, you accepted their representation that  
3 15 they were the parents of these children?

4 16 A. Yes.

5  
6 **Frances Day, Terri Nathine, (Pages 230:21 to 233:18)**

7 230

8 By Ms. Zeidner Marcus:

9 21 Q. Am I correct that you testified about  
10 22 your role, and can you state for the record for  
11 23 clarity purposes what your role was as the  
12 24 adjudicating officer for these particular  
13 25 applications?

14 231

15 1 A. For this particular case, my role was  
16 2 to determine if the AMCIT father can transmit  
17 3 citizenship to one or both of the children.

18 4 Q. Okay. And was it your role to assess  
19 5 whether there was a biological relationship between  
20 6 the AMCIT father and one or both of the applicant  
21 7 children?

22 8 A. Yes.

23 9 Q. And you sound fairly clear about that.  
24 10 Are you clear about that?

25 11 A. Yes.

26 12 Q. But you also earlier said that you  
27 13 don't remember whether you considered -- you don't  
28 14 remember, sitting here today, whether you

1 15 considered these children to have been born in  
2 16 wedlock or out of wedlock; is that also correct?

3 17 A. Correct.

4 18 Q. And -- okay. Would it have been your  
5 19 role to assess whether there is a biological  
6 20 relationship between the AMCIT father and the  
7 21 applicant child under either the framework of  
8 22 wedlock or the framework of out of wedlock?

9 23 MS. GOLDSMITH: Objection. Form.

10 24 THE WITNESS: Yes, that -- yes.

11 25 BY MS. MARCUS:

12 232

13 1 Q. Do you understand that it was -- it  
14 2 would have been necessary, and it was necessary,  
15 3 regardless of whether the children were born in  
16 4 wedlock or out of wedlock -- let me start over.  
17 5 I'm sorry.

18 6 Regardless of whether the children were  
19 7 born in wedlock or out of wedlock, was it necessary  
20 8 for the children to have a biological connection to  
21 9 the AMCIT father in order for the children to  
22 10 acquire citizenship at birth?

23 11 A. Yes.

24 12 Q. So is it your testimony that it would  
25 13 not have made a difference to your final  
26 14 adjudication decision for these cases whether you  
27 15 had considered the children to be born in wedlock  
28 16 or whether you had considered them to be born out

1 17 of wedlock?

2 18 A. Yes, that's correct.

3 19 Q. To be clear, it would not have made a  
4 20 difference?

5 21 A. Correct, it would not have made a  
6 22 difference.

7 23 Q. Would it have made a difference whether  
8 24 you had adjudicated these applications under INA  
9 25 301 versus INA 309 for these cases?

10 233

11 1 A. No, it would not have made a  
12 2 difference.

13 3 Q. Why not?

14 4 A. Because the biological connection is  
15 5 still required.

16 6 Q. And your understanding that the  
17 7 biological connection is required, what is that  
18 8 understanding based on?

19 9 A. It's based on the FAM, what I read in  
20 10 the FAM.

21 11 Q. Is it based on anything else?

22 12 A. No.

23 13 Q. Was that something that you needed to  
24 14 seek clarity from, from your supervisor?

25 15 A. No.

26 16 Q. Was it something that you needed to  
27 17 consult with Maggie Ramsay about?

28 18 A. No.

1 **Frances Day, Terri Nathine, (Pages 233:19 to 234:20)**

2 233

3 By Ms. Zeidner Marcus:

4 19 Q. Was that the -- would you describe the  
5 20 lack of a -- sorry. Let me start over.

6 21 When you're talking about the FAM --  
7 22 when you've been talking today at various points  
8 23 about the FAM, do you understand the FAM to be  
9 24 something that is completely separated from the  
10 25 Immigration and Nationality Act of 1952?

11 234

12 1 A. No.

13 2 Q. You don't consider them completely  
14 3 separated?

15 4 A. I don't consider them completely  
16 5 separated.

17 6 Q. Does the FAM have quotations from the  
18 7 statute within it?

19 8 A. As far as my recollection goes, yes.

20 9 Q. Does it describe provisions as well in  
21 10 addition to quoting them?

22 11 A. As far as my recollection goes, yes.

23 12 Q. Would you say that the FAM -- let me  
24 13 start over. I'm sorry.

25 14 MS. MARCUS: Apologies to the court  
26 15 reporter and to everybody else.

27 16 BY MS. MARCUS:

28 17 Q. Would you say that there are FAM

1 18 provisions that incorporate the Immigration and  
2 19 Nationality Act of 1952?

3 20 A. To the best of my recollection, yes.  
4

5 **Frances Day, Terri Nathine, (Page 235:17 to 235:23)**

6 235

7 By Ms. Zeidner Marcus:

8 17 Q. Did you consult FAM provisions after  
9 18 the day of the interview during your work on the  
10 19 Dvash-Banks family's -- family's applications?

11 20 A. I don't recall that.

12 21 Q. But you do recall consulting on the day  
13 22 of the interview?

14 23 A. Yes.  
15

16 **Frances Day, Terri Nathine, (Page 237:9 to 237:15)**

17 237

18 By Ms. Zeidner Marcus:

19 9 Q. But did you also -- do you recall also  
20 10 seeing specific language of the INA within the FAM  
21 11 provisions that you consulted?

22 12 A. Yes.

23 13 Q. And you looked at that specific  
24 14 language?

25 15 A. Yes.  
26  
27  
28

1 **Frances Day, Terri Nathine, (Page 243:5 to 244:10)**

2 243

3 By Ms. Zeidner Marcus:

4 5 Q. If I -- do you recall testify -- sorry.

5 6 Did the use of assisted reproductive  
6 7 technology come up exclusively in situations in  
7 8 which the legal parents of an applicant child were  
8 9 in a same-sex marriage?

9 10 A. No.

10 11 Q. Did it also come up in situations in  
11 12 which the child's applicant -- the applicant  
12 13 child's parents were in an opposite-sex marriage?

13 14 A. Yes.

14 15 Q. Do you -- did you only ask same-sex  
15 16 couples about whether they had used assisted  
16 17 reproductive technology?

17 18 A. No.

18 19 Q. Did you also ask opposite-sex couples?

19 20 A. Yes.

20 21 Q. Do I correctly understand your  
21 22 testimony from earlier today that you generally  
22 23 tried to ask all applicants that question?

23 24 A. Yes.

24 25 Q. And by "all applicants" here, I'm

25 244

26 1 talking about applicants for CRBAs and first-time  
27 2 U.S. passports for minor children. So to be clear,  
28 3 in those situations, was it your general practice

1 4 in every situation, in every case to ask whether  
2 5 assisted reproductive technology was used by the  
3 6 family?

4 7 A. Yes.

5 8 Q. And was that true throughout your  
6 9 tenure in ACS?

7 10 A. Yes.

8  
9 **Frances Day, Terri Nathine, (Page 245:2 to 245:16)**

10 245

11 2 BY MS. MARCUS:

12 3 Q. Ms. Day, do you recall in sum and  
13 4 substance -- I'm sorry.

14 5 Do you recall testifying in sum and  
15 6 substance that it became clear that you would need  
16 7 to ask for DNA to determine the biological link  
17 8 between the AMCIT father and the children?

18 9 A. Yes. I recall saying that, yes.

19 10 Q. What did you mean by you would need to  
20 11 ask for DNA to determine the biological link to the  
21 12 AMCIT -- between the AMCIT father and the kids?

22 13 A. Because during the course of the  
23 14 interview, to the best of my recollection, it was  
24 15 determined that it was unclear which of the  
25 16 children had a biological link to the AMCIT father.

26  
27  
28

1 **Frances Day, Terri Nathine, (Pages 245:22 to 246:3)**

2 245

3 By Ms. Zeidner Marcus:

4 22 Q. Did you in your time in American  
5 23 Citizen Services only ask opposite-sex couples for  
6 24 DNA evidence?

7 25 A. No.

8 246

9 1 Q. Did you also ask same-sex couples for  
10 2 DNA evidence?

11 3 A. Yes.

12  
13 **Frances Day, Terri Nathine, (Pages 246:4 to 247:23)**

14 246

15 By Ms. Zeidner Marcus:

16 4 Q. Were there, if you recall, same-sex  
17 5 couples for which you did not ask for DNA evidence?

18 6 A. Yes.

19 7 Q. Do you have maybe one particular  
20 8 example in mind or more than one?

21 9 A. I can think of one particular example  
22 10 which was a same-sex couple. There were two women,  
23 11 and one was an AMCIT, and one was a Canadian  
24 12 citizen. And medical documents showed that --

25 13 Q. Let me pause you for a second.

26 14 A. Sorry.

27 15 Q. By "medical documents showed," before  
28 16 you explain what they showed, what medical

1 17 documents are you talking about?

2 18 A. The couple presented medical documents  
3 19 during the course of their interview to me  
4 20 regarding the conception of their child.

5 21 Q. Do you recall whether there was medical  
6 22 documentation included in their applications?

7 23 A. I do not recall.

8 24 Q. Do you specifically recall that they  
9 25 provided you during the interview phase?

10 247

11 1 A. I do not recall.

12 2 Q. So when you said they presented during  
13 3 the interview, what did you mean by that?

14 4 A. I mean that we -- it was brought -- we  
15 5 brought -- I brought it up during the interview, or  
16 6 it was -- we spoke about it during the interview.

17 7 Q. Okay. You don't remember how it came  
18 8 up?

19 9 A. No, I don't remember.

20 10 Q. And -- but in this situation, you did  
21 11 not ask for DNA evidence?

22 12 A. Correct.

23 13 Q. Why did you not ask for DNA evidence in  
24 14 that situation?

25 15 A. Because the medical documents that I  
26 16 was -- that they gave to me showed that the egg  
27 17 that made the baby was from the AMCIT mother and  
28 18 was gestated in the Canadian citizen mother.

1 19 Q. And in that situation, did you consider  
2 20 that sufficient evidence to show biological  
3 21 connection between the AMCIT parent and the child  
4 22 applicant?

5 23 A. Yes.

6  
7 **Frances Day, Terri Nathine, (Page 253:4 to 253:25)**

8 253

9 By Ms. Zeidner Marcus:

10 4 Q. Do you recall whether you explained  
11 5 that option to Andrew and/or Elad?

12 6 A. I would not -- I don't recall. To the  
13 7 best of my recollection, I -- I told them that they  
14 8 had options, that they didn't have to get the DNA  
15 9 test if they didn't want to, but that it would --  
16 10 we wouldn't be able to approve the case without  
17 11 that information.

18 12 Q. I think in the very beginning of your  
19 13 answer just now, when you said, "I don't recall,"  
20 14 then you described some recollection, did you  
21 15 mean -- what did you mean when you first said, "I  
22 16 don't recall"?

23 17 A. I don't recall specifically what I said  
24 18 to them. I do remember -- I do recall  
25 19 explaining -- especially when it came to the point  
26 20 of when they wanted to cancel the application, I do  
27 21 remember explaining to them that if they, you know,  
28 22 didn't do anything, that the case would close.

1 23 Q. And that they had that option, to not  
2 24 do anything?

3 25 A. Yes.  
4

5 **Frances Day, Terri Nathine, (Pages 277:12 to 278:2)**

6 277

7 By Ms. Goldsmith:

8 12 Q. And you also stated in response to one  
9 13 of Ms. Marcus's questions that, in your opinion, it  
10 14 would not have made a difference whether you had  
11 15 adjudicated E.J.'s application under Section 301  
12 16 versus Section 309?

13 17 A. Based on my understanding, yes.

14 18 Q. What is the basis for your opinion that  
15 19 it would not have made a difference whether you had  
16 20 adjudicated E.J.'s application under Section 301  
17 21 versus 309?

18 22 A. Because both require the biological  
19 23 link -- both require the biological connection.

20 24 Q. And is your understanding that the  
21 25 basis for that requirement is a provision in the

22 278

23 1 FAM?

24 2 A. Yes.  
25  
26  
27  
28

# Defendants' Exhibit 5

(Defendants' Motion for Summary Judgment)

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14 WESTERN DIVISION

15 ANDREW MASON DVASH-  
16 BANKS, et al.,

17 Plaintiffs,

18 v.

19 MICHAEL R. POMPEO, in his  
official capacity as U.S. Secretary of  
20 State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition  
Testimony of Andrew Dvash-Banks,  
Supporting Defendants’ Motion for  
Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

22  
23 Pursuant to this Court’s Case Management Order, Defendants hereby file the  
24 instant document for deponent Andrew Dvash-Banks. This document contains “only  
25 those questions and answers, and any objections made at the time of the deposition to  
26 those questions,” Order at 11 (Dkt. No. 52), that Defendants are relying on to support  
27 their partial motion for summary judgment, “with a citation to the appropriate page(s)  
28

1 and line number(s) in the deposition transcript,” *id.* Mr. Dvash-Banks’ deposition was  
2 taken Wednesday, December 12, 2018, at 12:00 P.M., at 1888 Century Park East,  
3 Los Angeles, California.

4 \*\*\*

5 **Dvash-Banks, Andrew Mason - Vol. I, (Pages 14:25 to 15:12)**

6 14

7 By Ms. Zeidner Marcus:

8 25 Q Okay. And your parents, where were they

9 15

10 1 born?

11 2 A Toronto. Both of them in Toronto.

12 3 Q What is their citizenship?

13 4 A My father's deceased.

14 5 Q Sorry.

15 6 A Thanks. And my mother is a dual citizen.

16 7 Q Of what country?

17 8 A United States and Canada.

18 9 Q And what is your citizenship status?

19 10 A Dual citizen.

20 11 Q Of the same countries?

21 12 A Of the same countries, yeah.

22  
23 **Dvash-Banks, Andrew Mason - Vol. I, (Page 29:5 to 29:14)**

24 29

25 By Ms. Zeidner Marcus:

26 5 Q When did you get married?

27 6 A In August of 2010.

28 7 Q Where did you get married?

1 8 A In Toronto, Canada.

2 9 Q And you have children?

3 10 A I do.

4 11 Q EJ and AJ?

5 12 A Yes.

6 13 Q When were they born?

7 14 A In September of 2016.

8

9 **Dvash-Banks, Andrew Mason - Vol. I, (Page 36:15 to 36:20)**

10 36

11 By Ms. Zeidner Marcus:

12 15 Q So you believe that at some point in late

13 16 2016, you made the appointment at the Toronto

14 17 consulate?

15 18 A Yes.

16 19 Q How did you make that appointment?

17 20 A I believe we made it online.

18

19 **Dvash-Banks, Andrew Mason - Vol. I, (Page 38:6 to 38:20)**

20 38

21 By Ms. Zeidner Marcus:

22 6 Q Got it.

23 7 So were you living in Toronto when you

24 8 made the appointment at the consulate?

25 9 MS. LAWSON-REMER: Objection. Vague as to

26 10 "living."

27 11 BY MS. ZEIDNER MARCUS:

28 12 Q You can answer.

1           13     A    I'm -- I'm just not sure if we were  
2           14   physically in Canada when we made the appointment  
3           15   online or if we were physically in the U.S. We went  
4           16   to the U.S. in December of 2016. And I'm not sure  
5           17   if the appointment was made in, like, October or  
6           18   November when we were in Canada or in December when  
7           19   we were in the U.S. I just can't remember. I'm  
8           20   sorry.

9  
10           **Dvash-Banks, Andrew Mason - Vol. I, (Pages 82:1 to 83:3)**

11                               82

12           1   BY MS. ZEIDNER MARCUS:

13           2     Q    Sure. Let me rephrase.

14           3           Can you describe with broad strokes what  
15           4   occurred with respect to the surrogate from the time  
16           5   you spoke to the surrogacy agency until the children  
17           6   were born.

18           7     A    Can I describe with -- with -- what  
19           8   occurred with regard to the surrogate?

20           9     Q    Yes.

21           10    A    We -- from when we met the surrogate and  
22           11   then she selected us -- or I guess I should say,  
23           12   like, we selected each other. Probably better way  
24           13   of phrasing it. And then we "dated each other," in  
25           14   quotes, for a few months just to get to know each  
26           15   other and be comfortable with each other. And  
27           16   then -- oh, and then up until the birth you're --  
28           17   you want to know --

1 18 Q Yes.

2 19 A -- like, the time line?

3 20 Q Yes.

4 21 A And then she went for medical testing at

5 22 the fertility clinic and -- and then we did our

6 23 embryo implantation. And then lots of tests along

7 24 the way during the pregnancy, some scares along the

8 25 pregnancy, but luckily everything was fine with my

9 83

10 1 twins. And then she gave birth to my twin boys in

11 2 September. I hope that was, like, not too broad of

12 3 a stroke.

13

14 **Dvash-Banks, Andrew Mason - Vol. I, (Page 84:14 to 84:16)**

15 84

16 By Ms. Zeidner Marcus

17 14 Q And you used the same egg donor for both

18 15 of your sons?

19 16 A We only used one egg donor. Correct.

20

21 **Dvash-Banks, Andrew Mason - Vol. I, (Page 117:2 to 117:11)**

22 117

23 2 MS. ZEIDNER MARCUS: Thank you.

24 3 Q Did you make one or more applications

25 4 during that visit?

26 5 A Yes.

27 6 Q How many total applications did you make

28 7 during that visit?

1 8 A Four.

2 9 Q And of those four, you made two for each  
3 10 of your children?

4 11 A Yes.

5

6 **Dvash-Banks, Andrew Mason - Vol. I, (Pages 120:7 to 121:10)**

7 120

8 By Ms. Zeidner Marcus

9 7 Q Can you walk me through what occurred  
10 8 during the appointment. What did -- was the  
11 9 appointment scheduled in the morning or in the  
12 10 afternoon?

13 11 A I believe it was a morning.

14 12 Q And who went with you to the appointment?

15 13 A My husband.

16 14 Q Anybody else?

17 15 A And -- yeah, my twin boys. My twin sons.

18 16 Q And where was the appointment located?

19 17 A At the U.S. Consulate in Toronto, Canada.

20 18 Q And when you arrived at the U.S. Consulate  
21 19 in Toronto for the appointment, what were the steps  
22 20 that occurred during the appointment? What were  
23 21 the -- broadly speaking, what did the appointment  
24 22 consist of?

25 23 A It consisted of arriving and waiting  
26 24 outside with my twins in the cold for about 20  
27 25 minutes to get in through security and then getting

28 121

1 through security and then taking the elevator to --  
2 I don't know what floor -- and then arriving on that  
3 floor and -- this is just to the best of my  
4 recollection.

5 Q Sure.

6 A I mean, two years ago.

7 And then handing in our applications and  
8 paying the fees for the four applications. And then  
9 I believe we got a number and took a seat in the  
10 waiting area.

11  
12 **Dvash-Banks, Andrew Mason - Vol. I, (Page 152:10 to 152:13)**

13 152

14 By Ms. Zeidner Marcus:

15 Q Was it explained to you that you had 90  
16 11 days to provide anything additional to the consulate  
17 12 in connection with your applications?

18 A Yes. I believe so. Yes.

19  
20 **Dvash-Banks, Andrew Mason - Vol. I, (Pages 161:1 to 163:4)**

21 161

22 By Ms. Zeidner Marcus:

23 Q And do you know what legal claims you are  
24 2 pursuing in connection with this litigation?

25 A I'm aware of -- I mean, I'm not a lawyer;  
26 4 right? But I'm aware of my claims, yeah.

27 Q From your perspective, generally speaking,  
28 6 what are your claims against the Department of

1 7 State?

2 8 A From my perspective, my claim against the  
3 9 Department of State is that my son EJ was refused  
4 10 United States citizenship by the U.S. state  
5 11 department. And my claim is that -- that we were  
6 12 wrong and treated unfairly, and that's an unfair --  
7 13 how do I say this? And -- and that he was refused  
8 14 American citizenship because he's considered a child  
9 15 born out of wedlock. And his twin brother born four  
10 16 minutes before him was granted American citizenship.

11 17 I know our claim is, like, many, many  
12 18 pages long. I hope I did an okay job in summarizing  
13 19 it.

14 20 Q It's not a test.

15 21 A Okay.

16 22 Q Do you have -- do you know whether you  
17 23 have a claim against the Department of State  
18 24 relating to a fundamental right that you have --  
19 25 that you believe that you have?

20 162

21 1 MS. LAWSON-REMER: Objection. Calls for a  
22 2 legal opinion, but he can answer if he knows.

23 3 THE WITNESS: That I have a --

24 4 BY MS. ZEIDNER MARCUS:

25 5 Q Do you know whether you have any claims  
26 6 relating to any fundamental rights of yours?

27 7 A The claim, I believe, also addresses the  
28 8 discrimination aspects that we -- that we

1 9 experienced and that is part of the decision to  
2 10 reject my son's citizenship, if that answers your  
3 11 question.

4 12 Q Do you know whether you have any claims  
5 13 relating to your marriage?

6 14 A I believe the claim is related to our  
7 15 marriage in the sense that the state department has  
8 16 rejected my son's citizenship because they view him  
9 17 as a child born out of wedlock.

10 18 Q Do you think that that harms your  
11 19 marriage?

12 20 A Harms my marriage in what way?

13 21 MS. LAWSON-REMER: Objection. Vague.  
14 22 Ambiguous.

15 23 BY MS. ZEIDNER MARCUS:

16 24 Q Does it harm your ability to be married to  
17 25 your husband?

18 163

19 1 A It doesn't change the status of my  
20 2 marriage to my husband. It harms us in many other  
21 3 ways. But the marriage -- my marriage to my husband  
22 4 is solid.

23  
24 **Dvash-Banks, Andrew Mason - Vol. I, (Page 172:8 to 172:15)**

25 172

26 By Ms. Zeidner Marcus:

27 8 Q Mr. Dvash-Banks, did the application  
28 9 materials you submitted to the consulate Toronto

1 10 prior to your interview with -- by the consular  
2 11 officer identify that you and your husband used  
3 12 assistive reproductive technology to have your  
4 13 children?

5 14 A Did the documents that we provided  
6 15 indicate -- I believe so. Yes, they did.

7  
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# Defendants' Exhibit 6

(Defendants' Motion for Summary Judgment)

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13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 ANDREW MASON DVASH-  
16 BANKS, et al.,

17 Plaintiffs,

18 v.

19 MICHAEL R. POMPEO, in his  
official capacity as U.S. Secretary of  
20 State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition  
Testimony of Margaret “Maggie”  
Ramsay, Supporting Defendants’  
Motion for Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

22  
23 Pursuant to this Court’s Case Management Order, Defendants hereby file the  
24 instant document for deponent Margaret “Maggie” Ramsay. This document contains  
25 “only those questions and answers, and any objections made at the time of the deposition  
26 to those questions,” Order at 11 (Dkt. No. 52), that Defendants are relying on to support  
27 their partial motion for summary judgment, “with a citation to the appropriate page(s)  
28 and line number(s) in the deposition transcript,” *id.* Ms. Ramsay’s deposition was taken

1 Friday, December 7, 2018, at the U.S. Consulate, 360 University Avenue, Toronto,  
2 Canada.

3 \*\*\*

4 **Ramsay, Margaret, (Page 131:22 to 133:23)**

5 131

6 By Ms. Zeidner Marcus

7 22. . . . . Q. Do you know whether Ms. Day

8 23. considered Ethan Dvash-Banks to be born in wedlock,

9 24. as that term is used in the FAM and the INA?

10 25. . . . . A. I think initially, as evidenced by

11 132

12 1. her case notes, she may have considered them in

13 2. wedlock because she saw a marriage certificate, but

14 3. I believe after reviewing the guidance and as

15 4. evidenced by the final denial letter, ultimately

16 5. applied 309 of the INA to the decision-making.

17 6. . . . . Q. Is it your understanding, and if

18 7. you need to refer to the case notes to refresh your

19 8. memory on this, then you can do so and then point

20 9. me to that section, if you do so, but is it your

21 10. understanding that on the day that they visited,

22 11. the Dvash-Banks family visited the Consulate

23 12. Toronto that Ms. Day on that day considered them to

24 13. be a married couple, the adults in the family?

25 14. . . . . MS. GOLDSMITH: Objection, leading.

26 15. . . . . THE WITNESS: I think what may have

27 16. happened is when she was reviewing all the

28 17. documents and she saw a marriage certificate, she

1 18· ·started typing her notes, as we often do, and then  
2 19· ·over the course of the interview discovered that we  
3 20· ·would have to treat the case as a 309 case instead.  
4 21· ······ ·BY MS. ZEIDNER MARCUS:  
5 22· ······ ·Q· ·Do you know whether she  
6 23· ·communicated to the Dvash-Banks family on that day  
7 24· ·whether there was a particular provision that she  
8 25· ·was going to be applying in the case?

9 133

10 ·1· ······ ·A· ·I believe she may have told them  
11 ·2· ·about the provisions of INA 309.  
12 ·3· ······ ·Q· ·What is that belief based on?  
13 ·4· ······ ·A· ·I think I heard her talk to them  
14 ·5· ·about the requirements for it and the requirements  
15 ·6· ·for a biological relationship as well.  
16 ·7· ······ ·Q· ·Is there a requirement for a  
17 ·8· ·biological relationship under both 301 and 309, as  
18 ·9· ·you understand and apply the -- let me start over.  
19 10· ·The biological requirement that you were just  
20 11· ·describing, what is that biological requirement?  
21 12· ······ ·A· ·There must be, in order for a U.S.  
22 13· ·citizen parent to transmit citizenship to a child  
23 14· ·at birth, there must be a biological relationship  
24 15· ·between parent and child.  
25 16· ······ ·Q· ·Is that true for both INA 301 and  
26 17· ·INA 309, in your understanding?  
27 18· ······ ·A· ·Yes.  
28 19· ······ ·Q· ·So would it have made a difference

1 20· to the outcome of this case if Ms. Day had  
2 21· adjudicated these applications under INA 301  
3 22· instead of INA 309?  
4 23· . . . . .A· No.

5  
6 **Ramsay, Margaret, (Page 147:14 to 147:22)**

7 147

8 By Ms. Zeidner Marcus:

9 14· . . . . .Q· And did you also speak with the  
10 15· Dvash-Banks family personally?

11 16· . . . . .A· Yes.

12 17· . . . . .Q· How long did that conversation  
13 18· last?

14 19· . . . . .A· Probably about five minutes.

15 20· . . . . .Q· At what point did that  
16 21· conversation take place?

17 22· . . . . .A· At the end of their interview.

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# Defendants Exhibit 7

(Defendants' Motion for Summary Judgment)

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 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 14 WESTERN DIVISION

15 ANDREW MASON DVASH-  
 16 BANKS, et al.,  
 17 Plaintiffs,  
 18 v.  
 19 MICHAEL R. POMPEO, in his  
 official capacity as U.S. Secretary of  
 20 State, et al.,  
 21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition  
 Testimony of Larilyn Reffett,  
 Supporting Defendants’ Motion for  
 Summary Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

22  
 23 Pursuant to this Court’s Case Management Order, Defendants hereby file the  
 24 instant document for deponent Larilyn Reffett. This document contains “only those  
 25 questions and answers, and any objections made at the time of the deposition to those  
 26 questions,” Order at 11 (Dkt. No. 52), that Defendants are relying on to support their  
 27 partial motion for summary judgment, “with a citation to the appropriate page(s) and line  
 28 number(s) in the deposition transcript,” *id.* Ms. Ramsay’s deposition was taken

1 Thursday, December 6, 2018, at the U.S. Consulate, 360 University Avenue, Toronto,  
2 Canada.

3 \*\*\*

4 **Reffett, Larilyn, (Pages 122:17 to 123:12)**

5 122

6 17. . . . . BY MS. KLEIN:

7 18. . . . . Q. Ms. Reffett, is it correct that

8 19. before we very briefly went off the record, you

9 20. testified that with the exception of a gestational

10 21. parent, a U.S. citizen must have a biological tie

11 22. to his child in order to transmit citizenship?

12 23. . . . . A. To transmit citizenship from

13 24. birth, yes, that is correct.

14 25. . . . . Q. And that is your understanding of

15 123

16 1. the INA?

17 2. . . . . A. I mean, you would have to -- if

18 3. you have a specific example that you wanted to

19 4. present for a specific case, but yes, in general we

20 5. establish the biological relationship between the

21 6. U.S. citizen parent and the child in order to

22 7. confirm that a parent has transmitted U.S.

23 8. citizenship to their child.

24 9. . . . . Q. And is that the case even if the

25 10. U.S. citizen parent is married to the child's

26 11. biological parent?

27 12. . . . . A. Yes.

28

**Reffett, Larilyn, (Pages 124:09 to 124:22)**

124

By Ms. Klein:

·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.

**Reffett, Larilyn, (Pages 153:06 to 153:15)**

153

By Ms. Klein:

6· . . . . . Q. · When you described the row

7· ·entitled "One Amcit in Wedlock" in the Quick

8· ·Reference Citizenship Chart Bates-stamped

9· ·Defendants 684, you testified that you understand

10· ·the words "in wedlock" to require a biological tie

11· ·to both married parents; correct?

12· . . . . . A. · This is the guidance that is given

1 13· to us by the Department. It is not my  
2 14· interpretation. It is the guidance as it is put  
3 15· forward for officers who are adjudicating.

4  
5 **Reffett, Larilyn, (Pages 156:10 to 156:19)**

6 156

7 By Ms. Klein:

8 10· . . . . . Q· A blood relationship has always  
9 11· been required for a child born in wedlock to one  
10 12· U.S. citizen parent?  
11 13· . . . . . A· If the U.S. citizen parent is --  
12 14· yes, the one U.S. citizen parent has to have the  
13 15· blood relationship in order to transmit the  
14 16· citizenship to the child. That is applicable  
15 17· before November 14th, 1986, as well as after  
16 18· November 14th, 1986, which is why it is not spelled  
17 19· out here, because that was consistent.

18  
19 **Reffett, Larilyn, (Pages 167:18 to 168:19)**

20 167

21 By Ms. Klein:

22 18· . . . . . Q· What are other circumstances that  
23 19· would give rise to doubt of putative parentage?  
24 20· . . . . . A· I mean, every case is going to be  
25 21· different and this is only putative parentage as  
26 22· related by blood. Other things that might cause  
27 23· someone to question whether parentage as related by  
28 24· blood was potentially something they should look

25 into, I don't want to make a huge list of these

168

1 because they are fraud concerns, but things like a  
2 birth certificate that was amended later to add  
3 potentially a parent or to change some biographical  
4 information; that would be something that would be  
5 considered a red flag for an adjudicating officer  
6 and that would cause a line of questioning that  
7 wouldn't be asked of other applicants.  
8 . . . . . You know, other things about whether  
9 there would be questions about whether a putative  
10 parent is related by blood, again, anything that  
11 would indicate the use of assisted reproductive  
12 technology, that will raise other questions.  
13 . . . . . Anything on a birth certificate that  
14 would seem to indicate an adoption would raise  
15 questions.  
16 . . . . . These all are indicators that we look  
17 at when we are looking at documents so that we are  
18 asking the correct chain of questions to get the  
19 information that we need to make the determination.

**Reffett, Larilyn, (Pages 203:10 to 206:09)**

203

By Ms. Zeidner Marcus

10 . . . . . Q. Do you recall that earlier today  
11 you testified regarding one or more conversations  
12 you had with Frankie Day?

1 13. . . . . A. . Yes.

2 14. . . . . Q. . And do you recall generally your

3 15. . testimony that you spoke with her on the day that

4 16. . the Dvash-Banks family presented applications at

5 17. . the Toronto Consulate for CRBAs and U.S. passports

6 18. . for Ethan and Aiden Dvash-Banks?

7 19. . . . . A. . Yes.

8 20. . . . . Q. . And you testified that you spoke

9 21. . to her, I believe, twice?

10 22. . . . . A. . The day of the application, I

11 23. . believe twice was correct.

12 24. . . . . Q. . And Ms. Klein asked you that --

13 25. . asked whether Ms. Day had conveyed to you that the

14 204

15 .1. . Dvash-Banks family included a same-sex couple, and

16 .2. . you answered that; do you recall?

17 .3. . . . . A. . Yes.

18 .4. . . . . Q. . And she then asked you what did

19 .5. . Ms. Day tell you. . Do you recall your testimony,

20 .6. . that you said, quote:

21 .7. . . . . "She told me that she, as I

22 .8. . . . . mentioned, she had a case involving

23 .9. . . . . artificial reproductive technology,

24 10. . . . . that the case involved two fathers

25 11. . . . . but that the evidence did not

26 12. . . . . establish which person was the

27 13. . . . . biological parent of the children."

28 14. . . . . Then Ms. Klein asked you what else did

1 15· Ms. Day tell you during that conversation, and you  
2 16· answered, quote, "Nothing."  
3 17· . . . . . Thinking now about your answer to the  
4 18· question of what else did Ms. Day tell you during  
5 19· that conversation, is there anything that you have  
6 20· since recalled regarding what Ms. Day told you in  
7 21· addition to what you had previously testified  
8 22· about?  
9 23· . . . . . A· Yes, when she told me that she was  
10 24· requesting the DNA test, she did mention that she  
11 25· asked the applicants about the biological

12 205

13 ·1· relationship and the donation of genetic material  
14 ·2· used for the conception of the children and that I  
15 ·3· don't know which -- she wasn't specific in this  
16 ·4· conversation with me. It was just as a preference  
17 ·5· --- this was the pre, sort of back story as to why  
18 ·6· she was asking about the DNA test. She said that  
19 ·7· when she asked about the biological relationship  
20 ·8· and the genetic material that was used in the  
21 ·9· conception, that one of the parents answered that  
22 10· both parents had donated sperm in this case. They  
23 11· did not know which was used and did not want to  
24 12· know. They did not want to know which in her mind  
25 13· was why they didn't, they hadn't sought that  
26 14· information prior to this.  
27 15· . . . . . She said that as she said I'm  
28 16· requesting DNA. I asked them about the genetic

1 17 relationship. They told me they didn't know and  
2 18 didn't want to know but I am requesting DNA  
3 19 testing. How do I move forward with that.  
4 20 . . . . . Q. And you understood what she told  
5 21 you to be that she had asked them whether they knew  
6 22 which, if either, father was biologically related  
7 23 to which, if either, child?  
8 24 . . . . . A. My understanding was that she  
9 25 asked about the genetic circumstances of the

10 206

11 1 conception, who had donated sperm in this specific  
12 2 case to establish the biological relationship, and  
13 3 one of the parents said they had both donated sperm  
14 4 in this case and did not know which had been used.  
15 5 . . . . . Q. Would that --  
16 6 . . . . . A. It was not a lengthy conversation.  
17 7 It was just a very brief reference to -- basically  
18 8 as the precursor to the announcement that she was  
19 9 requesting DNA testing.

20  
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# Defendants Exhibit 8

(Defendants' Motion for Summary Judgment)

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

15 ANDREW MASON DVASH-  
16 BANKS, et al.,

17 Plaintiffs,

18 v.

19 MICHAEL R. POMPEO, in his  
official capacity as U.S. Secretary of  
20 State, et al.,

21 Defendants.

No. CV 18-523-JFW-JC

**Excerpts from the Deposition  
Testimony of Defendants’ 30(b)(6)  
Witness Paul Peek, Supporting  
Defendants’ Motion for Summary  
Judgment**

Hearing Date: Feb. 4, 2019

Honorable John F. Walter

22  
23 Pursuant to this Court’s Case Management Order, Defendants hereby file the  
24 instant document for deponent Paul Peek, who served as a 30(b)(6) witness for the  
25 Department of State. This document contains “only those questions and answers, and  
26 any objections made at the time of the deposition to those questions,” Order at 11 (Dkt.  
27 No. 52), that Defendants are relying on to support their partial motion for summary  
28 judgment, “with a citation to the appropriate page(s) and line number(s) in the deposition

1 transcript," *id.* Mr. Peek's deposition was taken Thursday, December 20, 2018, at 1700  
2 New York Avenue, Northwest, Washington, District of Columbia.

3 \*\*\*

4  
5 **Peek, Paul, (Pages 178:20 to 179:18)**

6 178

7 By Mr. Edelman:

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

14 179

15 1. . . . A. It depends.

16 2. . . . Q. What does it depend on?

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

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

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

27 13. . . . Q. Please.

28 14. . . . A. Because one of the two men could be

1 15· someone whose has transitioned and is now a man but  
2 16· is not always a man. So could theoretically have  
3 17· contributed genetic material or been the gestational  
4 18· parent.

5  
6 **Peek, Paul, (Pages 202:17 to 202:23)**

7 202

8 By Mr. Edelman:

9 17· . . . . Q· Are there circumstances in which the  
10 18· State Department treats children born into a  
11 19· same-sex marriage to be children born in wedlock?

12 20· . . . . A· Yes.

13 21· . . . . Q· And what are those circumstances?

14 22· . . . . A· If both parents had a biological  
15 23· relationship to the child.

16  
17 **Peek, Paul, (Pages 333:4 to 333:17)**

18 333

19 By Mr. Edelman:

20 4· . . . . Q· Sure. In what circumstances does a child  
21 5· born to a same-sex female couple acquire U.S.  
22 6· citizenship under INA section 301(g)?  
23 7· . . . . A· I am looking at 8 FAM 304.3-1, which I  
24 8· think would also answer your previous question. To  
25 9· read it aloud, paragraph (b), "A child born abroad  
26 10· to a U.S. citizen gestational mother who is the  
27 11· legal parent of the child at the time of birth in  
28 12· the location of birth, whose genetic parents are an

1 13. anonymous sperm donor and the U.S. citizen wife of  
2 14. the gestational legal mother, is considered for  
3 15. citizenship purposes to be a citizen born in wedlock  
4 16. of two U.S. citizens, with a citizenship claim  
5 17. adjudicated under INA 301(c)."

6  
7 **Peek, Paul, (Pages 335:10 to 335:14)**

8 335

9 By Mr. Edelman:

10 10. . . . . What is the State Department's  
11 11. understanding of USCIS' actions taken to follow the  
12 12. 9th Circuit's decision in Scales?  
13 13. A. That, in the jurisdiction of the  
14 14. 9th Circuit, they comply with the ruling.

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# Defendants' Exhibit 9

(Defendants' Motion for Summary Judgment)



*Embassy of the United States of America  
Bangkok, Thailand*

August 29, 2014

Dear **PII**

Thank you for your letter to Ambassador Kenney dated August 8 concerning your experiences at the U.S. Embassy in Bangkok when you applied for Consular Reports of Birth Abroad (CRBA) for your sons, **PII** and **PII**. Ambassador Kenney asked that I respond to your letter on her behalf. Our office has been fully engaged with Thai authorities to find expedited measures to allow surrogate-born children to depart the country safely and legally with their U.S. citizen commissioning parents.

Please know that we take the concerns voiced in your letter very seriously. Thailand's commercial surrogacy industry has grown rapidly, with few regulations and, because of general concerns regarding the fraud environment in Thailand, we have always been cautious in proceeding with verifying the birth of U.S. citizens, which is why we recommend DNA testing. According to 22 CFR 51.40, applicants for U.S. passports and Consular Reports of the Birth Abroad of a Citizen of the United States have the burden of proving by a preponderance of the evidence that they are citizens of the United States. To establish the evidence of transmission as required by U.S. citizenship law, we ask that all persons who engage in surrogacy in Thailand - regardless of sexual orientation - go through DNA testing to establish the blood relationship between parent and child. Unfortunately, several of our Embassies and Consulates have handled surrogacy cases where DNA tests have revealed that intended parents were not the genetic parent of a child born through a surrogate. Therefore, it is common practice throughout the world for our Embassies and Consulates to ask for DNA testing in surrogacy cases.

Furthermore, 8 U.S.C. 1409 (a)(1) (INA 309(a)(1)) provides that for a person born abroad out of wedlock to a U.S. citizen father, a blood relationship between the person and the father must be established by clear and convincing evidence.

As you may have noted, in recent weeks the surrogacy industry here has undergone substantial government and public scrutiny which has highlighted the lack of regulation. This scrutiny for a time impeded the departure from Thailand of parents and their U.S. citizen children born through surrogacy. We engaged with

Thai authorities at high levels to seek an interim solution, which has been successful so far.

Please be assured that recommending DNA testing is not a form of discrimination but a means of discouraging fraud and ensuring that U.S. citizenship transmission requirements are met given the unregulated surrogacy environment that prevails in Thailand. I apologize if this was not sufficiently explained to you during your first interview and subsequent meetings.

Thank you as well for sharing your experiences and I am sorry for the inconvenience you experienced. We are always looking for ways to improve our services and your insights are helpful. We wish you and your family all the best.

Regards,



signature

Elizabeth Susie Pratt  
Consul General  
U.S. Embassy Bangkok

# Defendants' Exhibit 10

(Defendants' Motion for Summary Judgment)



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 Aiden and Ethan Dvash-Banks, 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

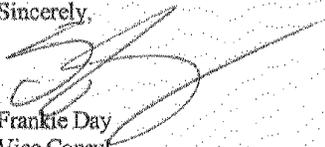
~~Attorneys' Eyes Only~~

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