

# **EXHIBIT 12**

Andrew Mason Dvash-Banks, et al. vs The United States Dept. of State, et al.  
Terri Nathine Frances Day on 12/20/2018

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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

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

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

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APPEARANCES

ON BEHALF OF THE PLAINTIFFS:

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Also Present: Bruce Weekly, Videographer

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

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

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

12 \* \* \*

13 TERRI NATHINE FRANCES DAY,

14 having been first duly sworn, was examined and

15 testified as follows:

16 \* \* \*

17 EXAMINATION

18 BY MS. GOLDSMITH:

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

21 Have you ever been deposed before?

22 A. No.

23 Q. Have you ever testified in court?

24 A. No.

25 Q. Have you ever given testimony under

1 you explain a little bit?

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

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

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

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

20 Q. Can you describe that?

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

23 Q. What other units did you work for?

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



1 interviewing at the same time as I was.

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

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

16 A. Yes.

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

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

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

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

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

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

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

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

20 A. Yes.

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

25 THE VIDEOGRAPHER: We're going off the

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

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

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

25 Q. And you may have touched on this

1 BY MS. GOLDSMITH:

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

6 A. I would say no.

7 Q. Did you ever consult the FAM?

8 A. Yes.

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

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

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

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

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

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

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

18 Q. And when you talk about whether you had  
19 a question as to the biological tie, was that a  
20 subjective determination that you made during the  
21 course of the interview, for example?

22 A. I would say no, because the -- from my  
23 understanding, the biological connection is  
24 required to transmit the citizenship. So if -- you  
25 know, someone -- so that's not really -- you can't

1 really argue that point to say, well, maybe -- you  
2 know, kind of make a judgment call. I think it's  
3 very clear what this -- what the guidelines are.

4 So I would say that if the parent  
5 indicated to me that -- which is normally, like I  
6 said, how that would go about. If the parent  
7 indicated to me that they had used assisted  
8 reproductive technology, then we would go down that  
9 line of questioning, if I thought that -- if I saw  
10 that this was something that had, you know, had  
11 happened.

12 Q. So you testified earlier that you're  
13 familiar with the FAM; is that correct?

14 A. Yes.

15 Q. So are you aware of the language in the  
16 FAM that says, "If doubt arises," and then, you  
17 know, something to the effect of, "Officers should  
18 investigate carefully if doubt arises as to whether  
19 or not there's a biological relationship between  
20 the U.S. citizen parent and the child applicant"?

21 Are you familiar with that?

22 A. If you're asking me if I remember that  
23 specifically, no. But I do -- that -- that sounds  
24 like something that I would have read to, you know,  
25 determine my adjudication -- you know, the

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

4 A. Yes.

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

9 A. 1764. Yes.

10 Q. What is this document?

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

13 Q. And have you seen this document before?

14 A. Yes, I have.

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

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

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

24 A. Yes.

25 Q. Did you consider this document to be

1 adequate proof that Andrew and Elad Dvash-Banks

2 were E.J.'s parents?

3 MS. MARCUS: Objection. Vague as to

4 the term "parents."

5 BY MS. GOLDSMITH:

6 Q. You can answer.

7 A. I need clarification on the term

8 "parents."

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

12 A. I would say yes.

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

18 A. Okay.

19 Q. What is this document?

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

24 Q. And have you seen this document before?

25 A. I have, yes.



1 Q. Did you consider this document to be

2 adequate proof that Andrew and Elad were E.J.'s

3 parents at the time of E.J.'s birth? And, again,

4 I'm referring to legal parents.

5 A. I would say yes.

6 Q. In the course of adjudicating E.J.'s

7 applications for a U.S. passport and CRBA, did you

8 determine that E.J. was the child of Andrew and

9 Elad Dvash-Banks?

10 A. You have to specify "child."

11 Q. Did you determine that Andrew and Elad

12 Dvash-Banks were E.J.'s legal parents?

13 A. According to the documents that they

14 presented me, the courts of Ontario recognized E.J.

15 and Elad Banks [sic] as the legal parents of -- of

16 E [REDACTED], according to these documents they presented

17 to me.

18 Q. And during the course of the

19 adjudication, you determined that this was adequate

20 proof of his legal parentage?

21 A. It was adequate proof that the people

22 who presented to me could sign his documentation --

23 could sign his application.

24 Q. I'd like to turn again, please, to the

25 document that was marked previously as Plaintiffs'

1 A. I do not recall that, no.

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

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

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

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

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

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

24 A. Yes.

25 Q. Sitting here today, do you remember the

**Andrew Mason Dvash-Banks, et al. vs The United States Dept. of State, et al.  
Terri Nathine Frances Day on 12/20/2018**

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1 STATE OF NORTH CAROLINA

2 COUNTY OF MECKLENBURG

3

4 REPORTER'S CERTIFICATE

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

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

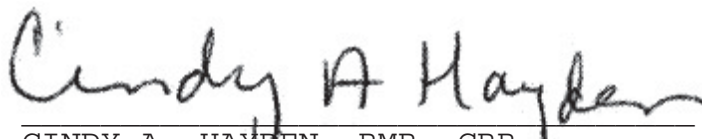
20 IN WITNESS WHEREOF, I have hereto set my  
21 hand, this the 21st day of December, 2018.

22

23

24

25



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

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# **EXHIBIT 13**

***In The Matter Of:***

***Andrew Mason Dvash-Banks***

***v.***

***Michael R. Pompeo***

---

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

***December 12, 2018***

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BH CDR Job # **1090988**

number of pages 178

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

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

DEPOSITION OF ANDREW MASON DVASH-BANKS

Taken Wednesday, December 12, 2018

At 12:00 P.M.

At 1888 Century Park East

Los Angeles, California

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

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

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11		Defendants' First Set of	
12		Discovery Requests, dated	
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13	Previously Marked Exhibits		
14	(Attached For Reference Only)		
15	Exhibit 5		
16	Exhibit 8		
17	Exhibit 9		
18	Information Requested: (None)		
19			
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23			
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1 LOS ANGELES, CALIFORNIA  
2 WEDNESDAY, DECEMBER 12, 2018  
3 12:00 P.M.

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

9  
10 EXAMINATION

11 BY MS. ZEIDNER MARCUS:

12 Q Good afternoon, Mr. Dvash-Banks.

13 A Good afternoon.

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

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

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

Andrew Mason Dvash-Banks - 12/12/2018

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

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

4 A Yes.

5 Q When did you get married?

6 A In August of 2010.

7 Q Where did you get married?

8 A In Toronto, Canada.

9 Q And you have children?

10 A I do.

11 Q EJ and AJ?

12 A Yes.

13 Q When were they born?

14 A In September of 2016.

15 Q Just over two?

16 A Yes.

17 Q Very cute ages.

18 A The best.

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

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

23 A I do, yes.

24 Q Do you live with anybody else?

25 A No.

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Andrew Mason Dvash-Banks - 12/12/2018

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

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

8 Q For a month or longer.

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

10 Q Was it one of your parents?

11 A Yes.

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

14 A No.

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

19 A That's correct.

20 Q Approximately when did you move?

21 MS. LAWSON-REMER: Objection. Vague.

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

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Andrew Mason Dvash-Banks - 12/12/2018

1 BY MS. ZEIDNER MARCUS:

2 Q Right. I -- let me rephrase.

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

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

10 MS. ZEIDNER MARCUS: EJ, ever.

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

14 BY MS. ZEIDNER MARCUS:

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

19 A To best of my knowledge, yes.

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

24 A No.

25 Q At some point prior to the birth of your

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

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

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

8 MS. LAWSON-REMER: Objection. Vague.

9 THE WITNESS: What considerations did we  
10 have with respect to our children being born?

11 Sorry. I just want to make sure I understand the  
12 question fully.

13 BY MS. ZEIDNER MARCUS:

14 Q Sure. Let me -- I'll rephrase. And I'll  
15 come back to this.

16 Do you recall a particular point during  
17 your marriage when you and your husband decided to  
18 have children?

19 A I -- I can recall several conversations  
20 that we had.

21 Q Was there a time when you both agreed that  
22 you wanted to have children?

23 A Is there a specific time where we both  
24 agreed? Yes.

25 Q At what point in your marriage did you

1 I'm getting you a correct answer.

2 Q Did you -- do you recall if you -- the  
3 order in which you selected a surrogate and selected  
4 an egg donor?

5 A I do.

6 Q Which did you do first?

7 A We selected an egg donor first.

8 Q Generally speaking, what did that entail?

9 A Generally speaking, it entailed signing up  
10 with the egg donation agency and reviewing egg donor  
11 profiles.

12 Q And I will represent for the record that  
13 the complaint refers to use of an anonymous egg  
14 donor. Was your -- do you understand that you used  
15 anonymous egg donor?

16 A Yes.

17 Q And did you know anything about the egg  
18 donor that you selected?

19 MS. LAWSON-REMER: Objection. Vague.

20 You can answer.

21 THE WITNESS: Did I know anything about  
22 her? Yes, I did know things about her.

23 BY MS. ZEIDNER MARCUS:

24 Q Generally speaking, what did you know  
25 about her?

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1 twins. And then she gave birth to my twin boys in  
2 September. I hope that was, like, not too broad of  
3 a stroke.

4 Q That --

5 A But okay.

6 Q Thank you.

7 A Okay.

8 Q Have you had any other pregnancies other  
9 than this one that you just described?

10 A I have not had any other pregnancies, no.

11 Q And have you -- has your genetic material  
12 been used to -- in conceptions that led to any other  
13 pregnancies other than the one that you just  
14 described?

15 A To the best of my knowledge, no. And I  
16 hope not.

17 Q And the -- could you describe in broad  
18 strokes how you used the fertility clinic in the  
19 process of having your children?

20 A Yes. We used the fertility -- in broad  
21 strokes --

22 Q Yes.

23 A -- we used the fertility clinic to collect  
24 our semen or sperm, to test it, to test us  
25 medically, and to create embryos and to test those

1 embryos and to implant the embryos in our surrogate.

2 Totally broad strokes there.

3 Q Sure.

4 Were the embryos created after you

5 selected the surrogate and you selected each other?

6 A No.

7 Q At what point in time were the embryos

8 created, approximately?

9 A In July -- the end of July 2015, beginning

10 August 2015.

11 Q Prior to July/August 2015, you selected  
12 the egg donor?

13 A Correct.

14 Q And you used the same egg donor for both  
15 of your sons?

16 A We only used one egg donor. Correct.

17 Q Do you know how many embryos were

18 implanted in the surrogate?

19 A Yes.

20 Q How many?

21 A Two.

22 Q And did you at the time of implantation

23 know whether your genetic material were -- was used

24 to create either of those two embryos?

25 A Did I know prior to implantation?



1 Q Yes.

2 A I believed at the time I did.

3 Q And what was your understanding at the  
4 time?

5 A From the information that was provided to  
6 me from the fertility clinic, I understood that one  
7 of the embryos had my genetic material.

8 Q And what was your understanding with  
9 respect to the other embryo?

10 A It did not have my genetic material.

11 Q Did it have your husband's genetic  
12 material?

13 A Yes.

14 Q Okay. Thank you.

15 I'm going to hand you something that's  
16 been previously marked as Plaintiff's Exhibit 5. I  
17 may have some questions for you -- more questions  
18 for you about this document later. For now, I ask  
19 you to flip towards the middle of this packet.

20 A Uh-huh.

21 Q Well, first, let's identify for the record  
22 the front page of this document.

23 A It says --

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

25 / / / /

1 that are also part of those materials that you  
2 submitted with the initial application?

3 A Some of them are, yes.

4 Q And I would like to identify for the  
5 record, if you can, the page spans that are -- that  
6 were submitted with the materials in -- with the  
7 initial application to be distinguished from  
8 anything that appears in Plaintiff's Exhibit 5 that  
9 is not either the application that we just  
10 identified or the initial application materials.

11 So my question for you is: Can you  
12 quickly go through and identify the page spans for  
13 the materials that you submitted with the initial  
14 application, please.

15 MS. LAWSON-REMER: To the extent he knows  
16 or remembers?

17 MS. ZEIDNER MARCUS: Correct.

18 MS. LAWSON-REMER: Okay.

19 THE WITNESS: Yeah. Are you asking me to,  
20 like --

21 BY MS. LAWSON-REMER:

22 Q Yes.

23 A -- say --

24 Q Please state for the record.

25 A Like, the -- the four-digit number at the

1 top; right?

2 Q Yes, please.

3 A From, like, the beginning of the  
4 application to where the end of the supporting  
5 documentation is?

6 Q I'm now -- we --

7 A Basically, I just -- I don't want to have  
8 to say every single number is what I'm asking you.

9 Q No, no. Right, right. Yes. Exactly. I  
10 want the span, so --

11 A Okay. You want the span. Got it. Okay.

12 Q I'm looking for supporting materials.  
13 We've covered the application itself.

14 A Yeah, yeah, yeah.

15 Q The supporting materials --

16 A Got it.

17 Q -- where do they start, where do they end?

18 A So supporting materials look like they  
19 begin on 1764.

20 Q Okay.

21 MS. LAWSON-REMER: And just -- I'll just  
22 make sure that I instruct you to look at every page  
23 as you do this.

24 THE WITNESS: As I do this? Okay. I'll  
25 look at every page as I do this.

1 So I believe -- this is just to the best  
2 of my knowledge -- the supporting documentation  
3 finishes on page 1808.

4 BY MS. ZEIDNER MARCUS:

5 Q Okay. And just to be clear, the materials  
6 between 1764 and 1808 are materials that you  
7 submitted with the initial application?

8 MS. LAWSON-REMER: Inclusive of 1808?

9 MS. ZEIDNER MARCUS: Yes.

10 MS. LAWSON-REMER: Okay.

11 THE WITNESS: Yes. To the best of my  
12 knowledge, yes.

13 BY MS. ZEIDNER MARCUS:

14 Q And we -- you skipped 1763.

15 A I noticed that. I didn't see a 1763 in  
16 here.

17 Q I see.

18 A Let me just double-check again. Yeah,  
19 there's no 1763.

20 Q Okay. So you have just reviewed, is it  
21 correct, and identified the first portion of  
22 Plaintiff's Exhibit 5 as being -- as consisting of  
23 your application and the supporting materials?

24 MS. LAWSON-REMER: Objection.

25 Mischaracterizes his testimony.

1 Do you know whether the Ontario equivalent  
2 of a birth certificate for your children was revised  
3 at any point?

4 MS. LAWSON-REMER: Objection. Vague.

5 THE WITNESS: Was the birth certificate  
6 revised?

7 BY MS. ZEIDNER MARCUS:

8 Q Yeah.

9 A I don't -- I don't think the birth  
10 certificate was revised.

11 Q Was there some other document that -- do  
12 you understand this court order to be a precursor to  
13 some action that was taken with respect to your  
14 children?

15 MS. LAWSON-REMER: Objection. Vague.

16 THE WITNESS: Pre- -- what do you mean by  
17 "precursor"?

18 BY MS. ZEIDNER MARCUS:

19 Q Do you have any under- -- do you know the  
20 result of this court order?

21 A Yes.

22 Q What was the result?

23 A The result was affirming Elad and myself's  
24 parentage to our twin boys.

25 Q And -- may I borrow this?

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

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

5 Q From your perspective, generally speaking,  
6 what are your claims against the Department of  
7 State?

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

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

20 Q It's not a test.

21 A Okay.

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

1 there ever an intention on your part for the  
2 surrogate to be a parent to your -- to the twins?

3 A Never.

4 Q Okay. Can you look at Plaintiff's Exhibit  
5 5, please. I will represent to you that this was --  
6 this packet that's Plaintiff's Exhibit 5 was  
7 attached to defendant's initial disclosures in this  
8 action and was identified by defendants as the  
9 passport file for EJ. Okay?

10 If you could just turn to the page that  
11 ends with the number 1767.

12 A All right. I'm here.

13 Q Okay. Do you recognize this to be a true  
14 and correct copy of your marriage license?

15 A It appears to be, yes.

16 Q All right. Do you have any reason to  
17 doubt its authenticity?

18 A I do not, no.

19 Q Does it look any different from the last  
20 time you saw it?

21 A No. I don't think so.

22 Q Okay. And it's a copy of the document  
23 that you submitted in connection with EJ's  
24 applications for CRBA and passport; is that correct?

25 A Yes, that's correct.

1 Q Okay. If we could back up a little bit.

2 In the same packet, Plaintiff's Exhibit 5, go to

3 1764.

4 A Okay. I'm here.

5 Q And do you recognize this to be a true and

6 correct copy of the statement of live birth for EJ?

7 A It appears to be, yes.

8 Q And does it list you as one of his

9 fathers?

10 A It does, yes.

11 Q And who does it list as the other father?

12 A My husband.

13 Q Okay. Do you have any doubt as to the

14 authenticity of this document?

15 A I do not, no.

16 Q Do you have any -- does it look any

17 different than the last time you saw it?

18 A It doesn't appear to, no. I would say

19 other than the stamp from Terri N. Day at the

20 bottom.

21 Q Other than that?

22 A No. It looks --

23 Q Earlier today Ms. Marcus asked you about a

24 family in Israel. Do you generally recall that area

25 of testimony?



1 June 2017; is that right?

2 A That's correct.

3 Q Okay. Are you a U.S. citizen?

4 A Yes.

5 Q Were you a U.S. citizen at birth?

6 A Yes.

7 Q Is it correct that you and Elad

8 Dvash-Banks were married on the day E [REDACTED] and A [REDACTED]

9 -- excuse me. I'll strike that.

10 Is it correct that you and Elad were

11 married on the day EJ and AJ were born?

12 A We were married on the day EJ and AJ were

13 born.

14 Q And what day was that?

15 A They were born on September 16th, 2016.

16 Q Okay. Does EJ live with you?

17 A Yes.

18 Q And -- and Elad?

19 A Yes.

20 Q Has he lived with you from the time he

21 left the hospital when he was born into -- to the

22 present?

23 A Yes.

24 MS. LAWSON-REMER: Okay. I'll just go off

25 the record for one minute, please.

1 UNITED STATES DISTRICT COURT )  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA ) ss

3 I, DONNA J. RUDOLPH, RPR, CSR No. 9652,  
4 Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place therein set forth,  
7 at which time the witness was put under oath by me;

8 That the testimony of the witness, the  
9 questions propounded, and all objections and  
10 statement made at the time of the examination were  
11 recorded stenographically by me and were thereafter  
12 transcribed;

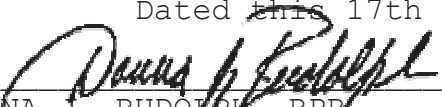
13 That a review of the transcript by the  
14 deponent was requested;

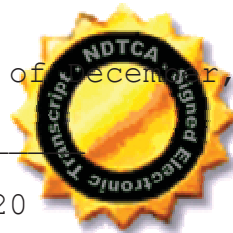
15 That the foregoing is a true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative  
18 or employee of any attorney of the parties, nor  
19 financially interested in the action.

20 I declare under penalty of perjury under  
21 the laws of California that the foregoing is true  
22 and correct.

23 Dated this 17th day of December, 2018.

24   
25 DONNA J. RUDOLPH, RPR  
CA CSR NO. 9652, NV CCR NO. 420



# **EXHIBIT 14**

In the Matter Of:

Andrew Mason Dvash-Banks, et al v.  
The United States Department of State, et al

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MARGARET RAMSAY

December 07, 2018

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Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al  
MARGARET RAMSAY on December 07, 2018

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS and)  
E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED], ) COMPLAINT FOR  
Plaintiffs, ) DECLARATION AND  
INJUNCTIVE RELIEF  
v. )  
THE UNITED STATES DEPARTMENT) Docket No. Case  
OF STATE, and THE HONORABLE ) 2:18-cv-00523-JFW-JCx  
MICHAEL R. POMPEO, Secretary) JFW  
of State, )  
Defendants.)  
-----)

--- This is the Transcript of the Videotaped  
Deposition of MARGARET RAMSAY, taken at the U.S.  
Consulate, 360 University Avenue, Toronto, Ontario,  
MSG 1S4, on the 7th day of December, 2018.

-----  
Reported By: Deana Santedicola, CSR (Ont.), RPR,  
CRR

1 A P P E A R A N C E S:

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

3 and E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED]:

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12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

14 OF STATE, AND THE HONOURABLE MICHAEL R. POMPEO,

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

23 Also Present: Jeremy Weinberg, U.S. Department of

24 State, Office of the Legal Advisor

25

I N D E X

WITNESS: MARGARET RAMSAY

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1 & Cromwell.

2 MS. KLEIN: Good morning, Jessica  
3 Klein, also from Sullivan & Cromwell, also  
4 representing the Plaintiffs Andrew and E [REDACTED]  
5 D [REDACTED]-B [REDACTED].

6 MS. ZEIDNER MARCUS: Good morning, I am  
7 Lisa Zeidner Marcus, Trial Attorney, U.S.  
8 Department of Justice, Civil Division, Federal  
9 Programs Branch. I represent the United States in  
10 this action and I represent the Defendants, the  
11 U.S. Department of State and the Secretary of State  
12 who was sued in his official capacity.

13 MR. WEINBERG: Jeremy Weinberg, U.S.  
14 Department of State, Office of the Legal Advisor.

15 THE VIDEOGRAPHER: Would the reporter  
16 please swear or affirm the witness.

17 MARGARET RAMSAY; SWORN.

18 EXAMINATION BY MS. GOLDSMITH:

19 Q. Good morning, Ms. Ramsay, thanks  
20 so much for being here today. I just have a few  
21 background questions before we get started in  
22 earnest. Have you ever been deposed before?

23 A. No.

24 Q. Have you ever testified in court?

25 A. No.



Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al  
MARGARET RAMSAY on December 07, 2018

Page 17

1 A. It is hard to say. There are many  
2 of them. They are quite specific, so I couldn't  
3 speak to all of them.

4 Q. And when you say they are quite  
5 specific, are they specific to your role of  
6 adjudicating passport applications and other  
7 applications?

8 A. Some of them are, yes.

9 Q. And when did you complete that  
10 training, if you remember?

11 A. I probably would have completed it  
12 in 2011, maybe. I'm not quite certain. I would  
13 have to go back through my training transcript.

14 Q. So it was before you came to  
15 Toronto?

16 A. Uhm-hmm.

17 Q. Did your training include teaching  
18 you the policies of the U.S. State Department in  
19 adjudicating applications for passports and  
20 Consular Reports of Birth Abroad?

21 A. Yes.

22 Q. And are the Toronto Consulate's  
23 policies for adjudicating applications for  
24 passports and Consular Reports of Birth Abroad the  
25 same as the State Department's policies?

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1 A. Yes.

2 Q. You mentioned previously that part  
3 of your job involves adjudicating applications for  
4 U.S. passports and Consular Reports of Birth  
5 Abroad; is that correct?

6 A. Yes.

7 Q. Does your job involve your  
8 determining who is a U.S. citizen?

9 A. Yes.

10 Q. Do you review any other types of  
11 applications or adjudicate any other types of  
12 applications?

13 A. Can you clarify the question?

14 Q. Other than passport applications  
15 and applications for Consular Reports of Birth  
16 Abroad, do you adjudicate any other types of  
17 applications?

18 A. No.

19 Q. Does anyone report to you?

20 A. No.

21 Q. Who do you report to?

22 A. The Supervisor of the American  
23 Citizen Services Unit, Larilyn Reffett.

24 THE COURT REPORTER: I'm sorry, did you  
25 say a name?

1 A. I told her where to find the  
2 guidance in the Foreign Affairs Manual.

3 Q. Do you recall anything else from  
4 that conversation?

5 A. I believe that I told her, you  
6 know, oftentimes people have documentation from the  
7 clinic that can be helpful, so we usually ask for  
8 that in these cases.

9 Q. And do you recall anything else  
10 from that conversation?

11 A. No.

12 Q. Did you talk to Ms. Day while the  
13 Dvash-Banks family was still at the consulate?

14 A. Yes.

15 Q. And was that a separate  
16 conversation from the one we were just discussing?

17 A. Yes, I believe so.

18 Q. And can you describe that  
19 conversation?

20 A. I believe she told me that it  
21 wasn't clear who the biological parents were and I  
22 discussed with her that the DNA testing was an  
23 option in these types of cases.

24 Q. So just to make sure that I'm  
25 understanding, while the Dvash-Banks family was at

1 the consulate for their interview, you had a second  
2 conversation with Ms. Day about how she should  
3 proceed?

4 A. I offered some guidance to her as  
5 to, you know, how the case could proceed, but  
6 ultimately she made the decision herself.

7 Q. And what decision was that?

8 A. She made the decision to place the  
9 case in a pending status, pending additional  
10 information.

11 Q. Do you know if Ms. Day consulted  
12 with anyone else while the Dvash-Banks family was  
13 still at the consulate?

14 A. Yes, I believe she consulted with  
15 our Supervisor, Larilyn Reffett.

16 Q. Were you present for that  
17 conversation?

18 A. I don't believe so.

19 Q. Do you have any knowledge of what  
20 they discussed during that conversation?

21 A. Not specifically because I wasn't  
22 present for it.

23 Q. When you spoke to Ms. Day while  
24 the Dvash-Banks family was still at the consulate,  
25 did you advise her to seek Ms. Reffett's advice?

1 A. No.

2 Q. Did you play any role in the  
3 decision to seek additional evidence, DNA evidence?

4 A. Can you clarify the question?

5 Q. What, if any, was your role in Ms.  
6 Day's decision to seek additional medical evidence  
7 such as DNA testing?

8 A. I suggested it to her.

9 Q. Did you -- why did you suggest it?

10 A. Because it can be a useful tool in  
11 cases where it is not clear if a parent and child  
12 have a biological relationship.

13 Q. Did you play a role in any other  
14 decision relevant to the denial of E [REDACTED]  
15 D [REDACTED]-B [REDACTED]'s applications?

16 MS. ZEIDNER MARCUS: Objection to form.

17 BY MS. GOLDSMITH:

18 Q. You can answer.

19 A. No.

20 Q. Okay, I am going to move on to a  
21 slightly different subject. Do you ever look at  
22 U.S. statutes in your adjudication of passport  
23 applications or CRBAs?

24 A. Yes.

25 Q. And what statutes are those?

1 legally married, they don't have a marriage  
2 certificate.

3 Q. Have you reviewed the documents  
4 that the Dvash-Banks family submitted with their  
5 children's applications for a U.S. passport and a  
6 Consular Report of Birth Abroad?

7 A. I may have looked at them at the  
8 time. I don't quite remember. I don't remember  
9 looking at them very closely.

10 Q. Do you recall whether a marriage  
11 licence or other evidence of the Dvash-Banks  
12 marriage was submitted with those applications?

13 A. I believe that they had submitted  
14 a marriage certificate.

15 Q. And is it your understanding that  
16 under the State Department's policies and  
17 procedures, Andrew and Elad Dvash-Banks are  
18 considered to be a married couple?

19 MS. ZEIDNER MARCUS: Objection to form.

20 THE WITNESS: That is my understanding.

21 BY MS. GOLDSMITH:

22 Q. And was that true in January of  
23 2017?

24 MS. ZEIDNER MARCUS: The same  
25 objection. You can answer.

1 Q. If a married man and woman came  
2 into the consulate for an interview and presented  
3 their marriage certificate, would you direct their  
4 attention to this sign and ask them to consider  
5 these questions?

6 A. Not generally, but sometimes.

7 Q. And if a same-sex couple came to  
8 the consulate for an interview and presented their  
9 marriage certificate, would you present this sign  
10 to them and ask them to consider these questions?

11 A. I would direct my line of  
12 questioning toward asking respectfully about the  
13 biological connection between a parent and child,  
14 so I would ask interview questions that pertained  
15 to that.

16 Q. And have you ever adjudicated a  
17 passport or CRBA application for a child whose  
18 legal parents are both men?

19 A. Can you restate the question?

20 MS. GOLDSMITH: Can you read the  
21 question back, please.

22 THE COURT REPORTER: "Question: And  
23 have you ever adjudicated a passport or  
24 CRBA application for a child whose  
25 legal parents are both men?"

1 Q. Are you aware of any changes that  
2 the State Department has made to its policy related  
3 to children born abroad through assisted  
4 reproductive technology during the period that you  
5 have been employed at the Toronto Consulate?

6 A. No.

7 Q. And are you aware that the State  
8 Department changed its policy to treat gestational  
9 mothers who are the legal parent of a child the  
10 same as genetic mothers for purposes of citizenship  
11 and immigration benefits?

12 A. Yes.

13 Q. And are you aware of why the State  
14 Department changed this policy?

15 A. No.

16 Q. So is it your understanding that  
17 this policy was changed before you arrived at the  
18 Toronto Consulate?

19 A. Yes.

20 Q. And are you aware of whether the  
21 change in policy was the result of an  
22 interpretation of the Immigration and Nationality  
23 Act?

24 A. I don't know.

25 Q. And do you know whether the State



1 first page is Bates-stamped 00070270-1757. Do you  
2 know what this document is?

3 A. It is the application for a  
4 Consular Report of Birth Abroad.

5 Q. And have you seen this document  
6 before?

7 A. I have.

8 Q. What is the purpose of this  
9 document?

10 A. It is to collect information ahead  
11 of a Consular Report of Birth Abroad application.

12 Q. And when you are adjudicating an  
13 application for a Consular Report of Birth Abroad,  
14 which fields would be relevant to your  
15 adjudication?

16 A. Relevant to the adjudication are  
17 especially the fields on page 2 concerning  
18 citizenship, marital status and then physical  
19 presence, periods of time in the United States.

20 Q. And is that the page 2 of 7 of  
21 this document that is indicated on the bottom right  
22 of this document?

23 A. Yes.

24 Q. And it is Bates-stamped  
25 00070270-1758?

1 A. Yes.

2 Q. Which fields specifically would  
3 you consider to determine the identities of the  
4 child's parents?

5 A. I don't quite understand the  
6 question.

7 Q. Looking at this document, who are  
8 E ██████ D ██████ -B ██████'s legal parents under State  
9 Department policy and procedure?

10 A. It would be the people listed on  
11 the child's birth certificate, so Andrew and Elad.

12 Q. All right, let's turn now to the  
13 document that is Bates-stamped 00070270-1764. It  
14 is page 7 of the same exhibit, Plaintiffs  
15 Deposition Exhibit No. 5.

16 I will represent to you that Plaintiffs  
17 Deposition Exhibit No. 5 is E ██████ D ██████ -B ██████'s  
18 application file which was provided to Plaintiffs  
19 by Defendants.

20 Now, looking at the document that  
21 starts on page 7 of Plaintiffs Exhibit No. 5, which  
22 is again Bates-stamped 00070270-1764, can you tell  
23 me what is this document?

24 MS. ZEIDNER MARCUS: Objection,  
25 foundation, form, the document speaks for itself.

1 BY MS. GOLDSMITH:

2 Q. Have you seen this document  
3 before?

4 A. Yes.

5 Q. And what does this document appear  
6 to be to you?

7 A. It appears to be an Ontario birth  
8 certificate.

9 Q. And is the form of this document  
10 consistent with other Ontario birth certificates  
11 that you have reviewed?

12 A. Yes.

13 Q. And earlier you testified about an  
14 Ontario birth certificate. Would this be an  
15 example of such an Ontario birth certificate?

16 MS. ZEIDNER MARCUS: Objection to form.

17 THE WITNESS: Yes.

18 BY MS. GOLDSMITH:

19 Q. Is this document entitled  
20 "Statement of Live Birth"?

21 A. Yes.

22 Q. And according to this document,  
23 who are E ██████ D ██████ -B ██████ 's parents?

24 A. Andrew Mason Dvash-Banks and Elad  
25 Dvash-Banks.

1 Q. And when you adjudicate CRBA  
2 applications using a Statement of Live Birth in  
3 Ontario, do you look at those fields to determine  
4 who the child's parents are?

5 A. Yes.

6 Q. Under the State Department's  
7 policies and procedures, as you understand them, is  
8 this document sufficient proof of E [REDACTED]'s  
9 parentage?

10 MS. ZEIDNER MARCUS: Objection to form.

11 THE WITNESS: It shows who the legal  
12 parents are.

13 BY MS. GOLDSMITH:

14 Q. Okay, if you stay on this page but  
15 turn back to Plaintiffs Exhibit 6, I am going to  
16 ask you a question about that document. Plaintiffs  
17 Exhibit 6 is the ACS Activity Log for E [REDACTED]  
18 D [REDACTED]-B [REDACTED]'s CRBA application; is that correct?

19 A. Yes.

20 Q. And in the description field it  
21 refers to, quote, "a timely filed Ontario birth  
22 certificate"; is that correct?

23 A. Yes.

24 Q. And is it your understanding that  
25 the Statement of Live Birth which is page 7 of

1 officer, we need to look at legal and biological  
2 parentage.

3 BY MS. GOLDSMITH:

4 Q. I'll ask you now to turn to the  
5 page of Plaintiffs Exhibit No. 5 that is  
6 Bates-stamped 00070270-1766. Do you see that page?

7 A. Yes.

8 Q. Ms. Ramsay, please flip back one  
9 page. Please go two pages further into the  
10 document.

11 MS. KLEIN: Further.

12 BY MS. GOLDSMITH:

13 Q. Okay, the Bates stamp is hard to  
14 read, but this document has a number at the top  
15 corner that says P1338811; is that correct?

16 A. Yes.

17 Q. And what is this document?

18 A. It is an Ontario marriage  
19 certificate.

20 Q. And have you seen this document  
21 before?

22 A. Yes.

23 Q. And in adjudicating applications  
24 for passports or CRBAs, would you refer to this  
25 document as a marriage certificate?

1 A. Yes.

2 Q. And under the State Department's  
3 policies and procedures, is this document  
4 sufficient proof of Andrew's and Elad's marriage?

5 MS. ZEIDNER MARCUS: Objection,  
6 foundation, form.

7 THE WITNESS: Yes.

8 BY MS. GOLDSMITH:

9 Q. And does this document appear to  
10 be the marriage licence of Andrew Dvash-Banks and  
11 Elad Dvash-Banks?

12 A. Yes.

13 Q. And can you tell when it is dated?

14 A. To me it looks like 19th August  
15 2010.

16 Q. So it appears that sometime in  
17 August 2010 this document was issued; is that  
18 correct?

19 A. Yes.

20 Q. In your practice adjudicating  
21 applications, would an Ontario marriage licence  
22 such as this one sufficiently demonstrate a valid  
23 marriage?

24 A. Yes.

25 Q. And is it your understanding based

1 on this document that Andrew and Elad Dvash-Banks

2 are validly married?

3 A. Yes.

4 Q. And is it your understanding that  
5 under the State Department's policies and  
6 procedures, this document would be sufficient proof  
7 of Andrew and Elad's marriage?

8 A. Yes.

9 Q. All right, please flip three pages  
10 further into the document, and let me know when you  
11 are looking at document Bates-stamped  
12 00070270-1768.

13 A. Okay.

14 Q. And I'll represent to you that  
15 this document appears to continue on to another  
16 page, which is Bates-stamped 00070270-1769. Have  
17 you seen this document before?

18 A. Not this particular document.

19 Q. And from looking at the document,  
20 can you tell what this document is?

21 A. It looks like a court order  
22 regarding parentage.

23 Q. And does the form of this document  
24 appear to be consistent with the form of other  
25 documents you have seen from the Ontario Superior

1 Day, would have a better sense.

2 Q. In your practice, have you  
3 received applications that you have been  
4 adjudicating that contain within the application  
5 materials surrogacy agreements?

6 A. Sometimes.

7 Q. And are those usually provided on  
8 the day of the --

9 A. Sometimes, but not always.

10 Q. Okay. You testified earlier that  
11 you provided Ms. Day, the adjudicating officer,  
12 with certain FAM citations?

13 A. Yes.

14 Q. Why did you do that?

15 A. As a more experienced officer and  
16 working alongside her that day, I wanted to make  
17 sure that she had the relevant guidance for the  
18 case.

19 Q. Did you send her any provisions of  
20 the INA itself?

21 A. I don't believe so.

22 Q. Do you know whether Ms. Day  
23 considered E ██████ D ██████ -B ██████ to be born in wedlock,  
24 as that term is used in the FAM and the INA?

25 A. I think initially, as evidenced by



1 her case notes, she may have considered them in  
2 wedlock because she saw a marriage certificate, but  
3 I believe after reviewing the guidance and as  
4 evidenced by the final denial letter, ultimately  
5 applied 309 of the INA to the decision-making.

6 Q. Is it your understanding, and if  
7 you need to refer to the case notes to refresh your  
8 memory on this, then you can do so and then point  
9 me to that section, if you do so, but is it your  
10 understanding that on the day that they visited,  
11 the Dvash-Banks family visited the Consulate  
12 Toronto that Ms. Day on that day considered them to  
13 be a married couple, the adults in the family?

14 MS. GOLDSMITH: Objection, leading.

15 THE WITNESS: I think what may have  
16 happened is when she was reviewing all the  
17 documents and she saw a marriage certificate, she  
18 started typing her notes, as we often do, and then  
19 over the course of the interview discovered that we  
20 would have to treat the case as a 309 case instead.

21 BY MS. ZEIDNER MARCUS:

22 Q. Do you know whether she  
23 communicated to the Dvash-Banks family on that day  
24 whether there was a particular provision that she  
25 was going to be applying in the case?

1 that in some cases, in some passport or CRBA  
2 adjudications, you or your colleagues consult with  
3 a desk officer located in Washington, DC; is that  
4 correct?

5 A. Yes, yes.

6 Q. Do you know whether you or any of  
7 your Consulate Toronto colleagues consulted with a  
8 desk officer in connection with adjudicating the  
9 Dvash-Banks family's applications for U.S.  
10 passports and CRBAs for their children?

11 A. I did not personally. I don't  
12 believe that my colleagues did. We normally reach  
13 out to Washington when FAM policy guidance is not  
14 clear, and it seemed to us in this case that it  
15 was.

16 Q. Why did you think that in this  
17 case the FAM guidance was clear?

18 A. Because the FAM guidance on  
19 assisted reproductive technology cases is clear  
20 with regards to a biological relationship  
21 requirement, and once we had that information after  
22 the DNA testing, it was relatively straightforward  
23 to make the decision.

24 Q. If any of your Consulate Toronto  
25 colleagues had consulted on this case with the desk

1 passport only. For the Consular Report of Birth  
2 Abroad we would have to go through the same process  
3 that we do for all CRBAs.

4 BY MS. KLEIN:

5 Q. And to your understanding, what is  
6 the difference, if any, in the legal effect of a  
7 Consular Report of Birth Abroad and a Certificate  
8 of Citizenship?

9 A. A Consular Report of Birth Abroad  
10 is a citizenship document that shows a child was  
11 born a U.S. citizen and received U.S. citizenship  
12 at birth because of a U.S. citizen parent. A  
13 Certificate of Citizenship can be issued at any  
14 time in an individual's life to show that they have  
15 acquired U.S. citizenship.

16 Q. So in my hypothetical where E [REDACTED]  
17 and his parents appear before you at the Toronto  
18 Consulate at some point in the future with a  
19 Certificate of Citizenship in hand, you would  
20 interpret that Certificate of Citizenship to mean  
21 that E [REDACTED] had acquired U.S. citizenship at some  
22 point after his birth?

23 A. Yes.

24 MS. KLEIN: I have no further questions  
25 at this time.

Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al  
MARGARET RAMSAY on December 07, 2018

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REPORTER'S CERTIFICATE.

I, DEANA SANTEDICOLA, RPR, CRR,  
CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 12th day of December, 2018



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