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

21 ANDREW MASON DVASH- )  
BANKS AND E.J. D.-B., )  
22 )  
Plaintiffs, )  
23 )  
v. )  
24 )  
THE UNITED STATES )  
25 DEPARTMENT OF STATE, )  
and THE HONORABLE )  
26 MICHAEL R. POMPEO, )  
Secretary of State, )  
27 )  
Defendants. )  
28 \_\_\_\_\_ )

Case No. 2:18-cv-00523-JFW-(JCx)  
**EXCERPTS FROM THE  
DEPOSITION OF PAUL PEEK,  
DEFENDANTS' 30(b)(6)  
DESIGNEE, IN SUPPORT OF  
PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

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

1 Pursuant to Part 4(b) of the Court's Scheduling and Case Management  
2 Order (DKT 52), entered on August 21, 2018, attached hereto are excerpts from  
3 the deposition of Paul Peek, Defendants' 30(b)(6) designee, submitted in support  
4 of Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment.

5 Dated: January 14, 2019 Respectfully submitted,

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12. Q And does the State Department have any  
13. reason to doubt that Andrew or -- and Elad are E.J.  
14. D■■■■-B■■■■' parents?  
15. A His legal parents, there is no reason to  
16. doubt.

**Page 92**

6. Q In 2017, January of 2017, did the Toronto  
7. consulate have its own protocol or process for  
8. applications for a CRBA, or was there a general  
9. process that applied for all posts?  
10. MS. ANDRAPALLIYAL: Objection. Form.  
11. Objection. Exceeds the scope.  
12. A The requirements for the issuance of a  
13. CRBA are uniform worldwide, but the process may be  
14. different just depending on staffing, layout of a  
15. consulate, those sorts of things.

**Pages 102-103**

24. Q Are there any differences between the  
25. language of the INA provisions relevant to  
  
1. adjudications of passport applications and the  
2. language of the FAM provisions relevant to  
3. adjudications of passport applications?  
4. A The FAM goes in -- yes.  
5. Q What are those differences?  
6. A The FAM goes into much greater detail.  
7. Q By that -- when you say it goes into  
8. greater detail, do you mean that the FAM includes  
9. elements that the INA does not?  
10. A The FAM gives guidance to a universe of  
11. scenarios that are covered in the INA. Yeah.

**Page 104**

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

**Page 166**

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

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

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

**Pages 172-173**

21. Q Okay. Now, if a married couple used  
22. assisted reproduction technology to give birth to a  
23. child during their marriage, does the State  
24. Department consider that child to have been born in  
25. wedlock?

1. A It depends on the circumstances.

2. Q Can you elaborate, please?

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

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

12. A Not by policy, no.

**Pages 174-175**

11. Q So I want to distinguish two things. The  
12. situation where A and B are married and they go to C  
13. to act as the surrogate --

14. A Yes.

15. Q -- and a situation where A and B are  
16. married and the egg from A is implanted into B.

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17. A If an egg from A was implanted into B,  
18. then both parents would be considered to be  
19. biologically related.

20. Q Okay. So in that circumstance, the State  
21. Department does not consider one to be a surrogate  
22. even though the egg moved from A to B?

23. A I believe that, medically, they would be  
24. considered to be a surrogate, but they are also a  
25. biological parent, which is more important to us for

1. adjudication of citizenship.

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

5. A Correct.

**Page 177**

12. Q Okay. And - maybe we'll come to that in  
13. a minute, but let's just flesh out the issues.  
14. Let's say you have two men married to  
15. each other. Okay?

16. A Yes.

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

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

**Page 178**

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

12. A The Immigration and Nationality Act.

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

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

**Page 180**

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

5. A No.

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

9. A No.

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

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

**Page 183**

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

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

**Page 186**

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

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

**Page 188**

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

12. A Yes.

13. Q And the question is what provision of the

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14. INA would apply to that application?

15. A Section 309.

**Page 191**

6. Q Okay. So would you agree with me that

7. Congress saw fit to include the term "blood

8. relationship" in 309?

9. A Yes.

10. Q And saw fit not to include it in

11. section 301(g) --

12. A Yes.

13. Q -- or 301, correct?

14. A Correct.

**Page 201**

2. Q All right. Now, if two individuals who

3. were born men and are still men are married to each

4. other, would you agree that they cannot both be

5. biological parents of the same child?

6. A Correct.

7. Q Okay. So under the State Department's

8. policy, am I correct in understanding that two men

9. who are married to each other can never have a child

10. whom the State Department would consider to be born

11. in wedlock?

12. A Assuming they have both been men their

13. entire lives, that's correct.

14. Q Okay. Even though they're legally

15. married, correct?

16. A Correct.

**Pages 219-220**

25. Q Okay. So would you agree with me that

1. Plaintiffs' Deposition Exhibit 18 indicates that the

2. State Department changed the policy with respect to

3. whether gestational mothers were considered to have

4. a blood relationship for purposes of the INA, in

5. particular, section 301 of the INA?

6. A Based on the fact that it says there's

7. been a recent policy change, I would agree with that

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8. statement.

**Page 243**

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

4. A No.

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

17. A Correct.

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

20. A Yes.

**Page 244**

5. Q Is it subject to congressional approval?

6. A No.

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

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

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

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

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

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

**Page 249**

6. "Mr." -- redacted on my copy -- "also  
7. points to the U.S. Court of Appeals for the 9th  
8. Circuit recent opinion in Solis versus Espinoza  
9. versus" -- I'm sorry -- "Solis-Espinoza v. Gonzalez  
10. and argues that this case should be persuasive in  
11. the department's adjudication of the children's

12. claim. As a court of limited geographic  
13. jurisdiction, decisions of the 9th Circuit are not  
14. binding upon the department's adjudication in  
15. New Jersey or Mexico."

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

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

**Page 251**

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

9. A Yes.

**Pages 260-261**

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

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

16. A Yes.

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

20. A Yes.

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

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

1. A That's correct.

**Page 261**

16. Q Does the State Department agree that only  
17. Andrew and Elad are considered to be E.J.'s parents?

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18. A His legal parents, yes.

**Page 268**

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

5. A His legal parent at birth, yes.

**Page 271**

20. So is it the State Department's position  
21. that E.J. was born out of wedlock?

22. A Yes.

**Page 273**

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

7. A Yes.

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

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

14. Q Okay.

15. A -- to the child.

**Pages 274-275**

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

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

6. A Correct.

**Pages 296-297**

11. Q Do you know what this document is?

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12. A Give me just a moment to read it. Yes.
13. Q What is this document?
14. A It's a letter from the consulate in either  
child.  
15. Toronto to the applicant -- to Andrew Dvash-Banks  
16. advising of the procedure for undergoing DNA testing  
17. should he wish to do so.
18. Q Okay. Now, it says in the third  
19. paragraph that -- three lines down or two lines down  
20. in the third paragraph, "The Immigration and  
21. Nationality Act (INA) of 1952, as amended, requires,  
22. among other things, proof of a blood relationship  
23. between the child and the U.S. citizen parent,"  
24. correct?
25. A That's what it says, yes.

1. Q And that is the position of the State  
2. Department, correct?
3. A Correct.

**Pages 298-299**

24. Q Did the State Department deny the  
25. application because it concluded that there was no  
  
1. evidence that E.J. was biologically related to the  
2. U.S. citizenparent?
3. A Yes.
4. Q Okay. And that was the sole reason for  
5. the denial, correct?
6. A Correct.

**Page 311**

3. Q Sure. I'm just trying to understand  
4. whether any aspect of the State Department's  
5. interest in sustaining its interpretation of  
6. section 301 is rooted in an effort to prevent fraud?
7. A No.

**Page 315**

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

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12. testing?

13. A No.

**Page 317**

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

8. A Correct.

**Page 318**

4. Q Yes. At the time that the State  
5. Department sent this letter, Exhibit 27, did the  
6. State Department have an expectation that if the  
7. Dvash-Banks family applied for a Certificate of  
8. Citizenship for E.J., that USCIS would grant that  
9. application?

10. A It was certainly within the realm of  
11. possibility.

12. Q But did it have an expectation that it  
13. would be granted?

14. A I don't know that it would be accurate to  
15. say that we had an expectation.

**Pages 320-321**

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

23. A No.

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

1. a CRBA by same-sex couples versus applications for a  
2. CRBA by opposite-sex couples are granted or denied?

3. A No.