

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s)

Case Name

Counsel submitting this form

Represented party/parties

Briefly describe the dispute that gave rise to this lawsuit.

The lawsuit arises from the State Department’s improper refusal to recognize E.J. D.-B. (“E.J.”) as a U.S. citizen at birth. Both E.J. and his twin brother, A.J. D.-B. (“A.J.,” together, the “Twins”), became, and should be recognized as, U.S. citizens at birth under Section 301(g) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1401(g) (“Section 301(g”). The Twins were born in Canada to Andrew Dvash-Banks (“Andrew,” and together with E.J., “Plaintiffs”), a U.S. citizen, and his husband, Elad Dvash-Banks (“Elad”), an Israeli citizen, during their marriage. Shortly after the Twins were born, Andrew and Elad applied for documents evidencing each twin’s U.S. citizenship—a Consular Report of Birth Abroad and U.S. passport. The State Department approved A.J.’s applications but denied E.J.’s, even though they are twin brothers, born four minutes apart to the same married parents. The sole ground for this determination apparently was that Andrew does not have a biological tie to E.J. (which the State Department asserts is required under Section 301(g)). Following the denial of E.J.’s applications, Plaintiffs brought claims in the district court under the Administrative Procedure Act and the Fifth Amendment. Plaintiffs also sought a declaration of E.J.’s U.S. citizenship under 8 U.S.C. § 1503.

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Briefly describe the result below and the main issues on appeal.

Following the close of discovery, the parties brought cross-motions for partial summary judgment in the district court. The district court correctly held that “Section 301 [of the INA] does not require a person born during their parents’ marriage to demonstrate a biological relationship with both of their married parents” and declared E.J. to be a U.S. citizen under 8 U.S.C. § 1503(a). The district court dismissed Plaintiffs’ claim under the Administrative Procedure Act on the ground that § 1503(a) provides an adequate remedy at law. The court dismissed Plaintiffs’ Fifth Amendment due process claim as moot given its ruling on Plaintiffs’ § 1503(a) claim. Plaintiffs do not know at this time the particular grounds on which Defendants intend to predicate their appeal.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Following the district court’s entry of judgment, Plaintiffs moved for an award of attorneys’ fees and legal costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. The district court struck the motion and directed the parties to meet and confer further before any refiling of the motion. The parties held those discussions and have jointly proposed to the district court that it defer further proceedings on the motion until after entry of a final, non-appealable judgment in the action.

Signature

Date

(use “s/[typed name]” to sign electronically-filed documents)