

No. 19-55517

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

E.J. D.-B., a Minor, Elad Dvash-Banks as the guardian ad litem, and ANDREW
MASON DVASH-BANKS,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF STATE and MICHAEL POMPEO,

Defendants-Appellants.

On Appeal from the United States District Court
for the Central District of California

EXCERPTS OF RECORD, VOLUME I

JOSEPH H. HUNT
Assistant Attorney General

NICOLA T. HANNA
United States Attorney

H. THOMAS BYRON III
DANIEL WINIK
*Attorneys, Appellate Staff
Civil Division, Room 7245
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 305-8849*

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1 (3) The Department of State is ordered to issue to E.J. a United States
2 passport as soon as is practicable but not later than 45 days from the date of entry
3 of this Judgment.

4 (4) If E.J. and Andrew and Elad Dvash-Banks elect to apply in person
5 for a Consular Report of Birth Abroad (“CRBA”) for E.J. at the Toronto Consulate
6 General or any other Consular Office of the State Department outside of the United
7 States, the Department of State is ordered to issue to E.J. a CRBA as soon as
8 practicable but not later than 45 days from the date of the consular interview in
9 connection with that application.

10 (5) The Dvash-Banks family will not be charged any additional fees
11 by the Department of State for obtaining the aforementioned passport or CRBA,
12 having already paid these fees to the Department of State for E.J.’s initial
13 applications, which were improperly denied.

14 (6) Judgment is hereby entered in favor of Defendants with respect to
15 Plaintiffs’ Administrative Procedure Act claim.

16 (7) Plaintiffs’ claim under the Due Process Clause of the Fifth
17 Amended is moot and is hereby dismissed with prejudice.

18 (8) If any elements of any of the claims asserted in this action by any
19 party were not the subject of either summary judgment motion, the Court’s Order,
20 or this Judgment, they are similarly moot and are dismissed.

21 (9) The Court retains jurisdiction to adjudicate any applications for
22 attorneys’ fees and costs as allowed by law. Plaintiffs may move this Court
23 separately for attorneys’ fees and costs.

24 It is So Ordered.

25 Date: March 6, 2019

26 
27 The Honorable John F. Walter
28 United States District Judge

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Respectfully submitted,

By: /s/ Alexa Lawson-Remer
Alexa Lawson-Remer (SBN 268855)
lawsonr@sullcrom.com
SULLIVAN & CROMWELL LLP
1888 Century Park East, Suite 2100
Los Angeles, California 90067-1725
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

Theodore Edelman (pro hac vice)
edelmant@sullcrom.com
Jessica Klein (pro hac vice)
kleinj@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Aaron C. Morris (pro hac vice)
amorris@immigrationequality.org
IMMIGRATION EQUALITY
40 Exchange Place, Suite 1300
New York, New York, 10005-2744
Telephone: (212) 714-2904

ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES -- GENERAL

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

Date: February 21, 2019

Title: Andrew Mason Dvash-Banks, et al. -v- Michael R. Pompeo, et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

**Shannon Reilly
Courtroom Deputy**

**None Present
Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

PROCEEDINGS (IN CHAMBERS):

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT [filed 1/7/19; Docket No. 83]; and**

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION FOR PARTIAL SUMMARY
JUDGMENT [filed 1/7/19; Docket No. 89]**

On January 7, 2019, Plaintiffs Andrew Mason Dvash-Banks ("Andrew") and E.J., by and through his guardian *ad litem* Elad Dvash-Banks, ("E.J.") (collectively, "Plaintiffs") filed a Motion for Partial Summary Judgment. On January 14, 2019, Defendants the United States Department of State (the "State Department") and Michael R. Pompeo ("Pompeo") (collectively, "Defendants") filed their Opposition. On January 22, 2019, Plaintiffs filed a Reply. On January 7, 2019, Defendants filed a Motion for Partial Summary Judgment. On January 14, 2019, Plaintiffs filed their Opposition. On January 22, 2019, Defendants filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found these matters appropriate for submission on the papers without oral argument. The matters were, therefore, removed from the Court's February 11, 2019 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background¹

¹ The facts in this case are largely undisputed. To the extent that the Court has relied on evidence to which the parties have objected, the Court has considered and overruled those objections. As to the remaining objections, the Court finds that it is unnecessary to rule on those

A. Factual Background

Andrew is a citizen of the United States, who was born, raised, and attended college in California.² Andrew continuously resided in the United States from his birth in 1981 to October 2005. In 2007, Andrew enrolled in and attended a master's degree program in Israel. In 2008, Andrew met his now-husband, Elad Dvash-Banks ("Elad"), who is an Israeli citizen. In 2010, Andrew and Elad moved to Canada and they were married in Toronto on August 19, 2010.

When Andrew and Elad, who are both men, decided to start a family, they did so using assisted reproductive technology ("ART"). As part of the ART process, Andrew and Elad provided their respective genetic material to create embryos using eggs from an anonymous egg donor (the "Donor"). In December 2015, Andrew and Elad entered into a written contract with a gestational surrogate (the "Gestational Surrogate") to carry a maximum of two embryos to term. Two embryos, one of which was created using genetic material from Elad and the Donor and the other of which was created using genetic material from Andrew and the Donor, were then implanted into the Gestational Surrogate, who became pregnant with twins.

On September 16, 2016, E.J. and his brother, A.J. (collectively, the "Twins"), were born four minutes apart in Ontario, Canada. Andrew, Elad, and the Twins have lived together as a family since the Twins' birth. On September 28, 2016, Andrew and Elad petitioned the Superior Court of Justice in Toronto, Ontario, to declare them to be the legal parents of E.J. and A.J. The court granted the application, and directed the Deputy Registrar General for the Province of Ontario to register the birth of the children and to show Andrew and Elad as the legal parents of the children.

On January 24, 2017, four months after the Twins were born, Andrew, Elad, and the Twins appeared in person at the U.S. Consulate in Toronto (the "Toronto Consulate") in connection with applications for documents evidencing each Twin's U.S. citizenship – specifically, a Consular Report of Birth Abroad ("CRBA") and a U.S. passport.³ The applications submitted to the Toronto Consulate disclosed that the children had been born using ART. Andrew and Elad provided the required documentation for E.J. and A.J., including their Ontario Statements of Live Birth, which identified Andrew and Elad as A.J.'s and E.J.'s parents; evidence of Andrew's U.S. citizenship and residency history; and Andrew's and Elad's marriage certificate.

Vice Consul Frances Terri Day ("Day") was assigned to adjudicate the applications. Day accepted Andrew's and Elad's Ontario marriage license as proof of their marriage and A.J.'s and E.J.'s Statements of Live Birth as timely filed Canadian birth certificates. Day also accepted the Statements of Live Birth, which identified Andrew and Elad as A.J.'s and E.J.'s parents, as proof of A.J.'s and E.J.'s parentage. During the interview, and after consulting with her colleagues, Day informed Andrew and Elad that, absent evidence of a biological relationship with Andrew, neither Twin would qualify for U.S. citizenship. Day told Andrew and Elad that, if they opted to proceed

objections because the disputed evidence was not relied on by the Court.

² Andrew holds dual U.S. and Canadian citizenship.

³ CRBAs and passports prove the citizenship status of their holders. 22 U.S.C. § 2705.

with the Twins' applications, they would have to provide additional evidence demonstrating the existence of a biological relationship required by the State Department. Day provided the family the option of submitting DNA evidence to prove such relationship, and a letter outlining relevant steps should they choose to pursue that option. Andrew and Elad arranged to have DNA testing conducted and submitted in support of E.J.'s and A.J.'s applications.

Following the interview, Andrew underwent DNA testing, the results of which established that A.J. was the biological child of Andrew, and E.J. was not. On March 2, 2017, the Toronto Consulate issued a CRBA for A.J. By letter to Andrew dated that same day, Day informed the Dvash-Banks family that the State Department had denied E.J.'s applications for a CRBA and a U.S. passport.⁴ The basis for the denial of E.J.'s applications for a CRBA and a U.S. passport was the lack of evidence of a biological connection between Andrew and E.J. To arrive at this determination, Day applied State Department policies memorialized in the State Department's internal Foreign Affairs Manual ("FAM") for adjudicating U.S. citizenship applications for children born through the use of ART. Day's letter constituted a final adjudication of E.J.'s applications.

B. Procedural History

On January 22, 2018, Andrew filed this action on behalf of himself and E.J.⁵, challenging Defendants' decisions to deny E.J.'s applications for a CRBA and a U.S. passport. On January 14, 2019, Plaintiffs filed a First Amended Complaint, alleging three claims: (1) a claim under the Declaratory Judgment Act alleging a violation of Plaintiffs' substantive due process rights; (2) a claim alleging a violation of the Administrative Procedure Act ("APA"); and (3) a claim under 8 U.S.C. § 1503 seeking an order that E.J. is a U.S. citizen.

In their Motion for Partial Summary Judgment, Plaintiffs move for summary judgment on their first claim alleging a violation of their substantive due process rights and their third claim for a declaration pursuant to 8 U.S.C. § 1503 that E.J. is a U.S. citizen. In their Motion for Partial Summary Judgment, Defendants move for summary judgment on Plaintiffs' first claim alleging a violation of Plaintiffs' substantive due process rights and Plaintiffs' second claim for violation of the APA.

II. Legal Standard

Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Once the moving party meets its burden, a party opposing a properly made and supported motion for summary judgment may not rest upon mere denials but must set out specific facts showing a genuine issue for trial. *Id.* at 250; Fed. R. Civ. P. 56(c), (e); see also *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)

⁴ In addition to issuing CRBA, the State Department also grants and issues U.S. passports. See 22 U.S.C. § 211a.

⁵ On December 4, 2018, Elad was appointed guardian *ad litem* for E.J. in this action.

(“A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data.”). In particular, when the non-moving party bears the burden of proving an element essential to its case, that party must make a showing sufficient to establish a genuine issue of material fact with respect to the existence of that element or be subject to summary judgment. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “An issue of fact is not enough to defeat summary judgment; there must be a genuine issue of material fact, a dispute capable of affecting the outcome of the case.” *American International Group, Inc. v. American International Bank*, 926 F.2d 829, 833 (9th Cir. 1991) (Kozinski, dissenting).

An issue is genuine if evidence is produced that would allow a rational trier of fact to reach a verdict in favor of the non-moving party. *Anderson*, 477 U.S. at 248. “This requires evidence, not speculation.” *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1225 (9th Cir. 1999). The Court must assume the truth of direct evidence set forth by the opposing party. See *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 507 (9th Cir. 1992). However, where circumstantial evidence is presented, the Court may consider the plausibility and reasonableness of inferences arising therefrom. See *Anderson*, 477 U.S. at 249-50; *TW Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 631-32 (9th Cir. 1987). Although the party opposing summary judgment is entitled to the benefit of all reasonable inferences, “inferences cannot be drawn from thin air; they must be based on evidence which, if believed, would be sufficient to support a judgment for the nonmoving party.” *American International Group*, 926 F.2d at 836-37. In that regard, “a mere ‘scintilla’ of evidence will not be sufficient to defeat a properly supported motion for summary judgment; rather, the nonmoving party must introduce some ‘significant probative evidence tending to support the complaint.’” *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).

III. Discussion

A. The Immigration and Nationality Act and Its Enforcement by the State Department and the Department of Homeland Security

The Immigration and Nationality Act (“INA”) specifies the eligibility requirements for U.S. citizenship at birth. For children born abroad, these requirements differ for children born to married parents, who are subject to 8 U.S.C. § 1401 (“Section 301”), and children “born out of wedlock,” who are subject to 8 U.S.C. § 1409 (“Section 309”). Section 301(g) provides, in part, that a person born outside the United States

of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . not less than five years, at least two of which were after attaining the age of fourteen

shall be a U.S. citizen. 8 U.S.C. § 1401(g); see also *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 59 (2001).

Section 309 of the INA, which is entitled “Children born out of wedlock,” provides several additional means by which a child born outside the United States may acquire U.S. citizenship at birth in addition to those described in Section 301. Specifically, Section 309(a) provides that a person born outside the United States and “out of wedlock” shall be a U.S. citizen if

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years –
 - (A) the person is legitimated under the law of the person's residence or domicile,
 - (B) the father acknowledges paternity of the person in writing under oath, or
 - (C) the paternity of the person is established by adjudication of a competent court.

8 U.S.C. § 1409(a). Although the word “wedlock” does not appear anywhere in Section 301, courts have consistently interpreted that section as applying to children born abroad to married parents, in part, because of the differences between Sections 301 and 309, including the fact that Section 309 is entitled “Children born out of wedlock.” See, e.g., *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1686 (2017) (referring to Section 301(g) as “[a]pplicable to married couples”). In comparing the two statutes, Section 301(g) does not contain the express language of Section 309(a) requiring a “blood relationship between the person and the father” in order for citizenship to be acquired at birth.

State Department guidance regarding interpretation and administration of the INA can be found in its FAM.⁶ Despite Section 301's silence on the issue, the FAM purports to impose a biological relationship test under Section 301 on applicants for a CRBA. It does so by requiring that, to be considered born “in wedlock” (and, thus, to be covered by Section 301), a child born outside of the United States must have a biological relationship with both of his or her married parents. For example, the FAM states that “[t]o say a child was born ‘in wedlock’ means that the child's biological parents were married to each other at the time of the birth of the child.” 8 FAM § 304.1-2. The basis for the State Department's imposition of a biological requirement is its strained interpretation of the language in Section 301(g) “a person . . . born . . . of parents one of whom is a . . . citizen of the United States.”⁷

⁶ The State Department is responsible for U.S. citizenship determinations for individuals born abroad. 8 U.S.C. § 1104(a); 22 C.F.R. § 50.7; see also 22 U.S.C. § 2705. However, the Department of Homeland Security (“DHS”) is responsible for citizenship determinations made in the United States. See 8 U.S.C. § 1103(a)(1). Specifically, the U.S. Citizenship and Immigration Services (“USCIS”) within DHS adjudicates applications for certificates of citizenship. See 8 U.S.C. § 1452.

⁷ The FAM states that “[s]ince 1790, there have been two prerequisites for transmitting U.S. citizenship at birth to children born abroad.” 7 FAM 1131.2. First, “at least one biological parent must have been a U.S. citizen when the child was born.” *Id.* Second, the “U.S. citizen parent(s) must have resided or been physically present in the [U.S.] for the time required by the law in effect when the child was born.” *Id.* Therefore, Defendants interpret the phrase “born . . . of parents” in Section 301 to include a biological connection between the child and the referenced parents. The

The FAM represents the State Department's unilateral declarations and is not the product of a formal adjudication or notice-and-comment rulemaking or congressional action. See *Scales v. INS*, 232 F.3d 1159, 1166 (9th Cir. 2000); *Jaen v. Sessions*, 899 F.3d 182, 187 n.4 (2d Cir. 2018). For example, in 2014, the State Department decided to change its interpretation of born "in wedlock" to include children born of a gestational mother who is the child's legal parent, even if she did not provide the egg from which the child was conceived. This change was not occasioned by any corresponding amendments to the law or any other congressional action. Similarly, State Department employees began drafting a memorandum exploring possible ways to further modify the State Department's definition of "in wedlock" to cover other children born through the use of ART, but ultimately the State Department did not make that change.

B. Defendants Are Entitled to Summary Judgment on Plaintiffs' APA Claim.

In their second claim, brought under Section 706(2)(A) of the APA, Plaintiffs allege that Defendants' denial of E.J.'s CRBA application – and more broadly an alleged exclusion of children born abroad in same-sex marriages from the category of children who qualify for citizenship at birth under 8 U.S.C. § 1401(g) – lacks a rational basis, is arbitrary, and is contrary to law. Defendants argue that APA review is not available for Plaintiffs because there is an adequate remedy at law, which precludes Plaintiffs' APA claim. Specifically, Defendants argue that E.J. can, and has, brought a separate claim under 8 U.S.C. § 1503 challenging the State Department's denials of the CRBA and passport applications, which provides a path by which E.J. may assert a claim that he is a U.S. citizen. In addition, Defendants argue that E.J. can also apply for a certificate of citizenship from USCIS, which provides equivalent proof of U.S. citizenship. Plaintiffs argue that asking E.J. to seek relief from a second agency, the USCIS, is not an adequate remedy under the APA. Plaintiffs also argue that the relief provided by Section 1503 is inadequate because it is limited to a declaration of E.J.'s citizenship status and does not provide all the remedies provided for under the APA, such as injunctive relief.

The APA limits judicial review to "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704; *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 136 S. Ct. 1807, 1813 (2016). "[T]he Supreme Court interpreted § 704 as precluding APA review where Congress has otherwise provided a special and adequate review procedure." *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009) (citation and internal quotation marks omitted); *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988); *Coos Cnty. Bd. of County Com'rs v. Kempthorne*, 531 F.3d 792, 810 (9th Cir. 2008).

In this case, Plaintiffs have brought a separate claim under Section 1503(a), which is the statute Congress specifically enacted to provide a remedy for an individual who is denied a "right or privilege as a national of the United States" by the federal government on "the ground that [s]he is not a national of the United States." See 8 U.S.C. § 1503(a). Where an applicant challenges the State Department's denial of a right or privilege of U.S. citizenship on the basis that the plaintiff

State Department argues that the "born . . . of parents" language in Section 301 has an inherently biological connotation, and can reasonably be read and understood to serve a similar function and purpose to the "blood relationship" language of Section 309(a) of ensuring a biological connection between a child and his or her parents.

is not a U.S. citizen, courts have consistently concluded that Section 1503(a) offers an adequate alternative remedy to APA review. See, e.g., *Ortega-Morales v. Lynch*, 168 F. Supp. 3d 1228, 1233–34 (D. Ariz. 2016) (“Because 8 U.S.C. § 1503(a) affords Plaintiffs a right of action, the APA does not apply”); *Esparza v. Clinton*, 2012 WL 6738281, at *1 (D. Or. Dec. 21, 2012) (dismissing the plaintiff’s APA claim and holding “[t]hat ‘right or privilege as a national of the United States,’ a passport as sought by plaintiff here, is exactly the relief provided for by 8 U.S.C. § 1503”); *Alsaïdi v. U.S. Dep’t of State*, 292 F. Supp. 3d 320, 326 (D.D.C. 2018) (dismissing the plaintiff’s APA claim and holding that “[t]o renew her passport, plaintiff will require proof of citizenship, and under 8 U.S.C. § 1503(a), she may accomplish this directly through de novo review in the federal district court where she resides (i.e., the Northern District of California). This constitutes an adequate alternative remedy to achieve plaintiff’s desired relief”).

In addition, although Plaintiffs argue that Section 1503’s remedies are inadequate because Plaintiffs seek injunctive and declaratory relief under the APA and Plaintiffs are limited to declaratory relief and no injunctive relief under section 1503(a), the Court disagrees. First, the APA does not allow Plaintiffs to seek the type of “wholesale improvement of [a] program by court decree,” that they do in asking the Court to declare the State Department’s policy of classifying the children of same sex married couples as “children born out of wedlock” unconstitutional and a violation of the INA. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 891 (1990). Second, Plaintiffs seek to permanently enjoin Defendants from continuing to classify all children of same sex married couples as “children born out of wedlock” and denying those children the right to acquire citizenship at birth pursuant to Section 301(g) on that basis, but injunctions “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)); see also *Gill v. Whitford*, 138 S.Ct. 1916, 1933 (2018); *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018); *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1244 (9th Cir. 2018). The injunction sought by Plaintiffs is well beyond that needed to provide Plaintiffs with complete relief, namely a declaration that E.J. is a U.S. citizen.

Accordingly, Defendants are entitled to summary judgment on Plaintiffs’ second claim for violation of the APA.

C. Plaintiffs Are Entitled to Summary Judgment on Their Section 1503 Claim.

In their third claim, Plaintiffs seek a declaration pursuant to Section 1503 that E.J. is and was a U.S. citizen at birth. In their Motion for Partial Summary Judgment, Plaintiffs argue that, pursuant to Section 1503, E.J. is entitled to a declaration that he acquired U.S. citizenship at birth under Section 301(g) of the INA because the State Department’s biological relationship requirement is inconsistent with the text and legislative intent of Section 301(g). Defendants argue that because Plaintiffs now live in the United States, Andrew can apply for a certificate of citizenship on behalf of E.J. from USCIS, and, thus, the Court should deny without prejudice Plaintiffs’ Motion for Partial Summary Judgment with respect to the Section 1503 claim until Plaintiffs seek a certificate of citizenship for E.J. from USCIS.

Under Section 1503, any person who is within the United States who “claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency . . . may institute an action . . . for a judgment declaring him to be a national

of the United States.” 8 U.S.C. § 1503(a). “A suit under section 1503(a) is not one for judicial review of the agency’s action” but for “a de novo judicial determination of the status of the plaintiff as a United States national.” *Richards v. Sec’y of State*, 752 F.2d 1413, 1417 (9th Cir. 1985); *Acosta v. United States*, 2014 WL 2216105, at *3 (W.D. Wash. May 29, 2014).

E.J. claims that he acquired U.S. citizenship at birth under Section 301(g) of the INA because he was born to his married parents, Andrew and Elad, on September 16, 2016, and Andrew is a U.S. citizen. Section 301(g) provides that the following individuals are nationals and citizens of the United States at birth:

a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years

In this case, the material facts are not in dispute. Specifically, there is no dispute that: (1) Andrew is a U.S. citizen who satisfied Section 301’s residency requirements at the time of E.J.’s birth; (2) E.J.’s legal parents, Andrew and Elad, were married at the time of E.J.’s birth; (3) E.J. was born outside of the United States; (4) Andrew and Elad are E.J.’s legal parents and have acted as his only parents since his birth; (5) E.J. now resides in California; and (6) E.J. does not share a biological relationship with Andrew but does with Elad. In addition, it is undisputed that the denial of E.J.’s CRBA and U.S. passport applications constitutes the denial of “a right or privilege as a national of the United States.” 8 U.S.C. § 1503. Thus, the only issue is whether Section 301 requires E.J., who was born during the marriage of his parents, to demonstrate a biological relationship with both of his married parents.

The Court concludes that, under controlling Ninth Circuit authority, Section 301 does not require a person born during their parents’ marriage to demonstrate a biological relationship with both of their married parents. For example, in *Scales v. INS*, the petitioner was born during the marriage of his Philippine citizen mother and U.S. citizen father, but was not the biological child of his U.S. citizen father. 232 F.3d at 1162. Following a conviction in Washington for possession with intent to deliver cocaine, the INS entered an order that the petitioner be deported as an alien convicted of an aggravated felony because the petitioner was a citizen of the Philippines. *Id.* at 1162. The petitioner appealed the deportation order to the Board of Immigration Appeals (“BIA”), arguing that he was a U.S. citizen because his mother had been married to his U.S. citizen father at the time he was born and, thus, he acquired U.S. citizenship at birth through his father, even though he was not his father’s biological son. *Id.* The BIA dismissed the petitioner’s appeal, holding that there must be a blood relationship between the child and the parent through whom citizenship is claimed to acquire U.S. citizenship at birth. *Id.* The petitioner then sought review of the BIA’s decision in the Ninth Circuit. *Id.* The Ninth Circuit held that “[a] straightforward reading” of the “born of parents” language in Section 301 “indicates . . . that there is no requirement of a blood relationship.” *Id.* at 1164. The Ninth Circuit also held that “[i]f Congress had wanted to ensure” that a person born to married parents only one of whom was a U.S. citizen “actually shares a blood relationship with an American citizen,” “it knew how to do so,” as it had done in Section 309. *Id.* (quoting *Custis v. United States*, 511 U.S. 485, 492 (1994)). The Ninth Circuit expressly refused to defer to the FAM, concluding that it was so divergent from the statutory

language as to not even be appropriately considered “an interpretation of § 1401.” *Id.* at 1165-66; *see also Jaen*, 899 F.3d at 187 n.4.

The Ninth Circuit followed *Scales* in *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005). In *Solis-Espinoza*, the petitioner was born in Mexico and raised in the United States by his biological father, a Mexican citizen, and his father’s wife, a U.S. citizen who was not the petitioner’s biological mother. *Id.* The petitioner’s father and the father’s wife were married at the time of the petitioner’s birth. *Id.* at 1091-92. The Board of Immigration Appeals held that the petitioner “‘was born out of wedlock,’ because his biological father was not married to his biological mother at the time of his birth.” *Id.* at 1092. On appeal, the Ninth Circuit reversed, holding that the petitioner “was a legitimate child, not born out of wedlock, and . . . thus a United States citizen pursuant to 8 U.S.C. § 1401(g).” *Id.* at 1094. Thus, the Ninth Circuit held once again that Section 301 does not condition U.S. citizenship on the existence of a blood relationship with a U.S. citizen parent. *Id.* at 1093 (*citing Scales*, 232 F.3d at 1164).

Other than the gender of E.J.’s parents, the factual circumstances in *Scales* and *Solis-Espinoza* are indistinguishable from the facts in this case. Both *Scales* and *Solis-Espinoza* make clear that the word “parents” as used in Section 301(g) is not limited to biological parents and that the presumption of legitimacy that applies when a child is born to married parents – as codified in the INA – cannot be rebutted by evidence that the child does not have a biological tie to a U.S. citizen parent. In fact, in *Solis-Espinoza*, it was undisputed that the petitioner did not share a biological relationship with his U.S. citizen parent – his father’s wife – but the Ninth Circuit nonetheless rejected the applicability of a biological relationship test. *See Solis-Espinoza*, 401 F.3d at 1091-92; *see also Jaen*, 899 F.3d at 185 (holding that under the INA, “a child born into a lawful marriage is the lawful child of those parents, regardless of . . . any biological link”). Therefore, it is clear under *Scales* and *Solis-Espinoza* that, in the Ninth Circuit, a biological relationship is not required under Section 301(g).

In addition, the dramatic difference in the language of Section 301 and Section 309 makes it clear that a biological relationship is not required between a child and his U.S. citizen parent if that child is born during the marriage of his parents to each other. Nothing in Section 301 references a biological relationship requirement or suggests that in using the words “parent” or “born . . . of parents,” Congress intended to refer only to biological or genetic parents. However, by including a “blood relationship” requirement in Section 309, Congress made it clear that it intended children born in and out of wedlock to be treated differently for purposes of acquiring U.S. citizenship. *See Scales*, 232 F.3d at 1165; *Jaen*, 899 F.3d at 189 (“Congress clearly specified enhanced requirements for proof of parentage in the case of children born out of wedlock” and “the ‘textual distinction’ between the sections regarding children of married parents and children of unmarried parents is strongly suggestive of a clear Congressional intent to treat the two categories differently on this point”); *see also Russello v. United States*, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion”) (internal quotation marks omitted).

Moreover, concluding that Section 301 does not impose a biological relationship requirement is consistent with the legislative history of the INA, which “clearly indicates that the Congress intended to provide for a liberal treatment of children and was concerned with the

problem of keeping families of United States citizens and immigrants united.” H.R. Rep. No. 85-1199, at 7 (1957); *see also Nation v. Esperdy*, 239 F. Supp. 531, 538 (S.D.N.Y. 1965) (“[T]hese provisions are designed to clarify or adjust existing provisions of law in the interest of reuniting broken families”) (quoting 103 Cong. Rec. 15,498 (1957) (statement of Sen. John F. Kennedy)). As the Ninth Circuit recognized in *Solis-Espinoza*, “[t]he [INA] was intended to keep families together [and] should be construed in favor of family units and the acceptance of responsibility by family members.” *Solis-Espinoza*, 401 F.3d at 1094; *Sook Young Hong v. Napolitano*, 772 F. Supp. 2d 1270, 1278-79 (D. Haw. 2011) (collecting cases). In *Scales*, the Ninth Circuit also held that its interpretation of Section 301 was consistent with Congress’s purpose in enacting the INA because the concerns necessitating a blood relationship requirement in Section 309 – that “the unmarried male . . . need not participate in the decision to give birth rather than to choose an abortion; that he need not be present at the birth; and for at least 17 years thereafter he need not provide any parental support . . . in order to preserve his right to confer citizenship on the child pursuant to [Section 309]” – are “not present if a child is born in wedlock.” *Scales*, 232 F.3d at 1164 (quoting *Miller v. Albright*, 523 U.S. 420, 434 (1998)).

Accordingly, Plaintiffs are entitled to summary judgment on their third claim for a declaration pursuant to 8 U.S.C. § 1503 that E.J. acquired U.S. citizenship at birth.

D. Plaintiffs’ Declaratory Judgment Claim is Moot.

In their first claim, Plaintiffs seek a declaration that the State Department’s interpretation of Section 301 violates the due process guarantee of the Fifth Amendment by infringing on the fundamental right of same sex couples to marry. However, the parties agree that if Plaintiffs prevail on their Section 1503 claim that it would be unnecessary for the Court to decide Plaintiffs’ declaratory judgment claim. Defendants’ Motion for Partial Summary Judgment (Docket No. 92-1), 19:24-26 (“To the extent the court believes that Plaintiffs are entitled to relief on their due process claim, the court should defer ruling on Count I until it resolves Plaintiffs’ statutory claim, which may provide sufficient relief without unnecessarily addressing a constitutional question”); Plaintiffs’ Motion for Partial Summary Judgment (Docket No. 83-1), 22:4-6 and 26-28 (arguing that “E.J. is entitled to judgment as a matter of law on his claim under Section 1503 and a declaration that he is a U.S. citizen at birth” and noting that “[t]his result is necessary to avoid the serious constitutional questions raised by Plaintiffs under the Fifth Amendment”); and Defendants’ Opposition to Plaintiffs’ Motion for Partial Summary Judgment (Docket No. 101), 6:25-28 (“The parties agree that to the extent this Court can resolve Plaintiffs’ section 1503 claim, this Court need not reach Plaintiffs’ constitutional claim”). Therefore, because the Court has decided Plaintiffs’ Section 1503 claim in favor of Plaintiffs, the Court need not and will not reach the constitutional issue raised in Plaintiffs’ declaratory judgment claim. *United States v. Kenney*, 789 F.2d 783, n. 2 (9th Cir. 1986) (“Because we decide on statutory grounds, we need not reach the constitutional issue”); *Campos v. Nail*, 43 F.3d 1285, 1288 (9th Cir. 1994) (“There is no reason, however, to explore the boundaries of the constitutional guarantee of procedural due process in the present context, and we do not do so”); *Baires v. I.N.S.*, 856 F.2d 89, 91 (9th Cir. 1988) (“[W]e need not reach the constitutional issue if we find that a statutory right was violated and that the violation caused prejudice to the alien”); *see also Massachusetts v. Westcott*, 431 U.S. 322, 323 (1977) (holding that granting relief on a statutory basis foreclosed the Court from reaching a constitutional issue); *Hagans v. Lavine*, 415 U.S. 528, 547 (1974) (“a federal court should not decide federal constitutional questions where a dispositive nonconstitutional ground is available”).

Accordingly, Plaintiffs' first claim for declaratory judgment is **DISMISSED as moot**.

IV. Conclusion

For all the foregoing reasons, Plaintiffs' and Defendants' Motions for Partial Summary Judgment are **GRANTED in part and DENIED in part**. Defendants are granted summary judgment with respect to Plaintiffs' second claim and Plaintiffs are granted summary judgment with respect to Plaintiffs' third claim. Plaintiffs' first claim is **DISMISSED as moot**.

The parties are ordered to meet and confer and agree on a joint proposed Judgment which is consistent with this Order. The parties shall lodge the joint proposed Judgment with the Court on or before **February 28, 2019**. In the unlikely event that counsel are unable to agree upon a joint proposed Judgment, the parties shall each submit separate versions of a proposed Judgment along with a Joint Statement setting forth their respective positions no later than **February 28, 2019**.

IT IS SO ORDERED.

No. 19-55517

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

E.J. D.-B., a Minor, Elad Dvash-Banks as the guardian ad litem, and ANDREW
MASON DVASH-BANKS,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF STATE and MICHAEL POMPEO,

Defendants-Appellants.

On Appeal from the United States District Court
for the Central District of California

EXCERPTS OF RECORD, VOLUME II

JOSEPH H. HUNT
Assistant Attorney General

NICOLA T. HANNA
United States Attorney

H. THOMAS BYRON III
DANIEL WINIK
*Attorneys, Appellate Staff
Civil Division, Room 7245
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 305-8849*

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1 JOSEPH H. HUNT
 Assistant Attorney General
 2 ANTHONY J. COPPOLINO
 Deputy Director
 3 VINITA B. ANDRAPALLIYAL
 vinita.b.andrapalliyal@usdoj.gov
 4 Trial Attorney
 LISA ZEIDNER MARCUS
 5 lisa.marcus@usdoj.gov
 Senior Counsel
 6

7 UNITED STATES DEPARTMENT OF JUSTICE
 Civil Division
 Federal Programs Branch
 8 P.O. Box 883
 Washington, DC 20044
 9 Tel: (202) 305-0845

10 *Counsel for Defendants*

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

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

) Case No. **2:18-cv-00523-JFW (JCx)**
) **Notice of Appeal**
)
) Honorable John F. Walter

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1 Defendants Michael R. Pompeo, et al., hereby appeal the March 6,
2 2019 Judgment entered in this matter to the Ninth Circuit Court of Appeals.

3
4 Date: May 6, 2019

Respectfully submitted,

5
6 JOSEPH H. HUNT
7 Assistant Attorney General

8 ANTHONY J. COPPOLINO
9 Deputy Director

10 /s/ Vinita B. Andrapalliyal
11 VINITA B. ANDRAPALLIYAL
12 Trial Attorney
13 LISA ZEIDNER MARCUS
14 Senior Counsel

15 U.S. Department of Justice, Civil Division
16 Federal Programs Branch
17 P.O. Box 883, Benjamin Franklin Station
18 Washington, DC 20530
19 Tel: (202) 305-0845
20 Email: Vinita.b.andrapalliyal@usdoj.gov
21
22
23
24
25
26
27
28

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CERTIFICATE OF SERVICE

Case No. CV 18-523-JFW-JC

I hereby certify that I am over the age of 18 and not a party to the above-titled action. I am employed as a Trial Attorney at the United States Department of Justice, Civil Division, Federal Programs Branch. My business address is 1100 L Street NW, Washington, DC 20005.

On May 6, 2019, I served this NOTICE OF APPEAL on each person or entity named below by uploading an electronic version of this document to the Court's ECF system:

ALEXA LAWSON-REMER
lawsonr@sullcrom.com
SULLIVAN & CROMWELL
1888 Century Park East
Los Angeles, CA 90067-1725
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

THEODORE EDELMAN
edelmant@sullcrom.com
JESSICA KLEIN
kleinj@sullcrom.com
SULLIVAN & CROMWELL
125 Broad Street
New York, New York 10004-2498
Telephone (212) 558-4000
Facsimile: (212) 558-3588

IMMIGRATION EQUALITY
AARON C. MORRIS
amorris@immigrationequality.org
40 Exchange Place
Suite 1300
New York, New York, 10005-2744
Telephone: (212) 714-2904

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct.

Executed on May 6, 2019, at Washington, DC.

By: s/Vinita B. Andrapalliyal

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VINITA B. ANDRAPALLIYAL
Trial Attorney
United States Department of Justice
Civil Division

Defendants' Opposition Exhibit Q

(In Support of Defendants' Opposition to Plaintiffs'
Motion for Partial Summary Judgment)



United States Department of State

*Assistant Secretary of State
for Consular Affairs*

Washington, D.C. 20520

February 13, 2012

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INFORMATION MEMO FOR THE SECRETARY

FROM: CA – Janice L. Jacobs 

SUBJECT: Assisted Reproductive Technology (ART), Citizenship and Visa Law

The Immigration and Nationality Act grants authority to the Secretary of State to adjudicate citizenship questions abroad. The Department is receiving an increasing number of citizenship and immigration claims for children born abroad who were conceived through assisted reproductive technology (ART). Adjudicating these claims often is challenging.

Sections 301 and 309 of the Immigration and Nationality Act (INA) provide that a child born abroad acquires U.S. citizenship at birth if the child is “born of” at least one U.S. citizen parent who meets other statutory requirements. The statutory language predates the advent of ART. Under the longstanding interpretation, the term “born of” requires a genetic link (i.e., a DNA link (egg or sperm)) between the U.S. citizen parent transmitting citizenship and the child. For example, under this interpretation, a U.S. citizen mother and U.S. citizen father who use a foreign surrogate cannot transmit citizenship to their child, unless the child was conceived with the egg or sperm of one of the U.S. citizen parents. Similarly, a U.S. citizen mother who gives birth abroad cannot transmit citizenship to her child if she uses donor eggs to conceive (assuming the person providing the sperm is not a U.S. citizen, in which case the sperm donor may be able to transmit citizenship). Although children who are not genetically related to a U.S. citizen parent cannot acquire U.S. citizenship at birth, they are in some circumstances eligible for immigrant visas, which could place them on the path to U.S. citizenship.

CA and L, in consultation with DHS, have been studying whether we can interpret the INA to allow U.S. citizen parents to transmit U.S. citizenship to their children born abroad through ART in a broader range of circumstances, and in other circumstances, amend visa requirements for such children. Related to this, we are considering how this would impact children born through ART overseas to same-sex couples. Because we regularly encounter people seeking to document

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children who are not theirs, we use DNA testing to verify parentage. We are carefully reviewing any policy changes we recommend for the serious potential fraud implications. We are not the only country evaluating current law and its interpretation in light of modern ART developments and follow developments in the policies of other countries; our law is unique and we must ensure any changes in our policy are consistent with current law. We know of no current Congressional interest in this issue, but believe that significant changes to current policy might well attract Congressional interest. We do not anticipate that we would seek any legislative changes at this time. Our policy and any changes to it is of interest to the LGBT community, to single parents, as well as to many heterosexual couples who have had difficulties conceiving by traditional methods.

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Approved: CA: JJacobs

(m)

Drafted: CA/OCS/PRI- Lisa Vogel, ext. 6-9087 and cell: (703) 307-5207

Cleared:

DP/NR

1 Alexa M. Lawson-Remer (SBN 268855)
 lawsonr@sullcrom.com
 2 SULLIVAN & CROMWELL LLP
 1888 Century Park East, Suite 2100
 3 Los Angeles, California 90067-1725
 Telephone: (310) 712-6600
 4 Facsimile: (310) 712-8800

5 Theodore Edelman (*pro hoc vice*)
 edelmant@sullcrom.com
 6 Jessica Klein (*pro hoc vice*)
 kleinj@sullcrom.com
 7 SULLIVAN & CROMWELL LLP
 125 Broad Street
 8 New York, New York 10004-2498
 Telephone: (212) 558-4000
 9 Facsimile: (212) 558-3588

10 Aaron C. Morris (*pro hoc vice*)
 amorris@immigrationequality.org
 11 IMMIGRATION EQUALITY
 40 Exchange Place, Suite 1300
 12 New York, New York 10005-2744
 Telephone: (212) 714-2904

13
14 Attorneys for Plaintiffs

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

18 ANDREW MASON DVASH-
 BANKS and E.J. D.-B.,
 19
 20 Plaintiffs,

v.

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

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

**FIRST AMENDED COMPLAINT
 FOR DECLARATORY AND
 INJUNCTIVE RELIEF**

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

1 in the United States for over twenty-four years, and so clearly satisfies the residency
2 requirements of Section 301(g). Because Andrew and Elad were married to each
3 other when E.J. and A.J. were born, E.J. and A.J. have been U.S. citizens since birth
4 under Section 301(g).

5 4. The State Department, through the United States Embassy in Toronto,
6 Canada, however, failed to apply Section 301 to E.J. and A.J. Instead, it applied
7 Section 309 of the INA (codified at 8 U.S.C. § 1409), a provision of the statute
8 which applies only to children born “out of wedlock.” Because the State Department
9 wrongly considered E.J. and A.J. to have been born “out of wedlock,” it erroneously
10 concluded that they could qualify for citizenship at birth only pursuant to provisions
11 applicable to the children of unwed parents. It then incorrectly determined that the
12 twins could acquire citizenship at birth only pursuant to Section 309 and only if
13 Andrew’s sperm had been used to conceive them both.

14 5. Focusing improperly on the biological relationship between each child
15 and the parent who conceived him, the State Department then recognized A.J.’s
16 citizenship and denied E.J.’s. The State Department’s application of Section 309
17 instead of Section 301 is an unlawful, unconstitutional refusal to recognize the
18 validity of Andrew’s and Elad’s marriage and, therefore, that a child born to them
19 during their marriage is the offspring of that marriage. The fact that the State
20 Department’s policy has led children identified by their birth certificates as twins
21 with the same parents to have different nationalities listed on their passports
22 crystallizes both the indignity and absurdity of the policy’s effect.

23 6. The State Department’s failure to recognize and give effect to the
24 marriage between Andrew and Elad also denies E.J. the rights and privileges that
25 accompany U.S. citizenship, including the right to reside permanently in the U.S.,
26 the right to obtain a U.S. passport, and, when he is older, the right to run for political
27 office. Because the State Department does not recognize E.J.’s U.S. citizenship, he
28 cannot visit or live in the United States freely as other members of his family can.

1 7. Andrew and A.J. may reside in the U.S. permanently because they are
2 U.S. citizens. Elad may legally reside in the U.S. permanently because he has a
3 family-based immigrant visa through his marriage to Andrew. The State
4 Department's policy, however, renders E.J. the only member of his family without
5 the freedom to live in the U.S. permanently. The State Department's decision to
6 withhold from E.J. the same rights granted to his twin brother means that he will
7 experience the indignity and stigma of unequal treatment imposed and endorsed by
8 the U.S. government. No governmental purpose could justify imposing these
9 indignities on a child of a valid marriage or restricting a family's freedom to live as
10 a family—together.

11 8. The State Department's policy is not only wrong and harmful, it is also
12 contrary to the INA as well as the guarantee of due process enshrined in the Fifth
13 Amendment. To the extent that the State Department's policy was adopted before
14 the Supreme Court's recent precedents guaranteeing equality to same-sex married
15 couples and their families, its continued enforcement violates that precedent. The
16 Supreme Court has made clear that the Constitution requires that same-sex marriages
17 receive the same legal effects and respect as opposite-sex marriages. The State
18 Department's policy, or at least its application to E.J., violates that mandate by
19 restricting eligibility for citizenship under Section 301 of the INA solely to children
20 whose parents are in opposite-sex marriages. These violations create real and
21 significant hardships for the Dvash-Banks family and others like them.

22 9. The State Department's policy is arbitrary and capricious and serves no
23 rational, legitimate, or substantial governmental interest. The State Department's
24 policy drives families apart by treating the children of the same married parents
25 differently depending upon which father's sperm was used during fertilization. The
26 threat that this policy poses to family unity confirms that it is contrary to the
27 legislative intent of the INA, which enshrines the preservation of the family unit as
28 a paramount consideration. Neither the INA nor the U.S. Constitution permits the

1 State Department's unlawful policy to stand.

2 10. Plaintiffs bring this action both to challenge the State Department's
3 policy as well as to request that this Court, pursuant to Section 360 of the INA
4 (codified at 8 U.S.C. § 1503), declare that E.J. is a U.S. citizen at birth.

5 **THE PARTIES**

6 11. Plaintiff Andrew is a 36-year-old citizen of the United States. He was
7 born in Santa Monica, California, and currently resides with his husband and their
8 children in Los Angeles, California.

9 12. Plaintiff E.J. is two years old. He was born in Mississauga, Ontario,
10 Canada, and currently resides with his parents Andrew and Elad and twin brother
11 A.J. in Los Angeles—although, as explained below, E.J.'s permission to remain in
12 the U.S. recently has expired.

13 13. Andrew brings this action in his individual capacity and on behalf of
14 his son E.J.

15 14. Defendant the State Department is a department of the government of
16 the United States of America, whose headquarters office is located at the
17 Department of State, 2201 C St. NW, Washington, D.C. 20520. The State
18 Department oversees all U.S. embassies and sets the policy U.S. embassy
19 employees follow in determining whether to recognize the citizenship of the
20 children of U.S. citizens.

21 15. Defendant The Honorable Michael R. Pompeo is the Secretary of State,
22 whose office is located at the Department of State, 2201 C St. NW, Washington,
23 D.C. 20520, and is being sued in his official capacity.

24 **JURISDICTION AND VENUE**

25 16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

26 17. This Court is authorized to issue a declaratory judgment pursuant to
27 28 U.S.C. §§ 2201 and 2202.

28 18. This Court is authorized to issue a judgment and injunctive relief

1 pursuant to 5 U.S.C. § 702.

2 19. This Court is authorized to make a *de novo* determination and judgment
3 of citizenship pursuant to 8 U.S.C. § 1503(a).

4 20. Venue in this district is proper pursuant to 28 U.S.C. § 1391(e).

5 **STATUTORY AND REGULATORY BACKGROUND**

6 **A. United States Citizenship at Birth**

7 21. There are two pathways to become a United States citizen at birth: one
8 pursuant to the Constitution and another by statute, the INA. The “Citizenship
9 Clause” of the Fourteenth Amendment of the Constitution provides, in part, that
10 anyone born in the United States is a citizen at birth. Under the INA, persons born
11 outside the United States may be considered citizens at birth under certain statutorily
12 prescribed circumstances. If a person born outside the United States does not acquire
13 citizenship at birth, that person can acquire citizenship only through naturalization,
14 and therefore can never be eligible for the presidency as birthright citizens are.

15 22. The provisions governing eligibility for U.S. citizenship at birth by
16 individuals born outside the United States are set forth in Sections 301 through 309
17 of the INA. Section 301 is titled “Nationals and citizens of United States at birth.”
18 Under Section 301(g), a baby born abroad is a U.S. citizen at birth when (1) one of
19 the child’s parents is a married United States citizen and (2) the U.S. citizen parent
20 lived in the U.S. for at least five years, at least two of which were after the parent’s
21 fourteenth birthday.

22 23. Section 309 is titled “Children born out of wedlock,” and its provisions
23 explicitly apply only to a person “born out of wedlock.” The requirements for
24 citizenship at birth under that provision differ substantially from those in
25 Section 301, which has long been regarded as applicable to anyone whose parents
26 were lawfully married when the child was born.

27 24. For unwed fathers, Section 309(a) specifies, in part, that certain
28 provisions of Section 301—including Section 301(g)—“shall apply as of the date of

1 birth to a person born out of wedlock if—(1) a blood relationship between the person
2 and the father is established by clear and convincing evidence.” In addition, Section
3 309(a) requires that, for citizenship under Section 301 to be available to an unwed
4 father’s child, the father must have (2) acquired U.S. nationality by the time the
5 person seeking citizenship was born, (3) agreed in writing to provide financial
6 support to that person until the age of 18, and (4) while the person is under 18 years
7 old, (a) legitimated the person under the law of that person’s residence or domicile,
8 (b) acknowledged paternity in writing under oath, or (c) had paternity established by
9 a court of competent jurisdiction.

10 25. As a result of the different requirements for the children of wed and
11 unwed U.S. citizens, it is possible for people to qualify for citizenship at birth under
12 Section 301 even if they would not qualify under Section 309. Thus, the
13 determination of whether a child is born in or out of wedlock can be dispositive of
14 the ultimate question of whether or not a child acquired U.S. citizenship at birth.

15 26. Since its enactment in 1952, the INA has neither included nor been
16 amended to include definitions of the terms “parent” and “person,” as used in
17 Section 301, or the terms “mother,” “father,” and “out of wedlock,” as used in
18 Section 309.

19 27. Before and after the enactment of the INA, the majority of U.S. states
20 have followed the common law in presuming that every child born in wedlock is the
21 legitimate offspring of the child’s married parents. In general, including in
22 California, that presumption applies even when only one spouse is the child’s
23 biological parent. The structure of the INA effectively codifies the common law
24 presumption of parentage for married couples by making Section 301 applicable to
25 any person except for children who are born “out of wedlock.”

26 28. Congress has made clear that the legislative intent behind the INA
27 should be construed liberally because the INA was designed to make it easier—not
28 harder—for families of citizens and non-citizens to stay together. According to

1 Congress, “the legislative history of the Immigration and Nationality Act clearly
2 indicates that the Congress intended to provide for a liberal treatment of children and
3 was concerned with the problem of keeping families of United States Citizens and
4 Immigrants united.” H.R. Rep. 85-1199, at 2020 (1957). Congress has also declared
5 that “the statutory language makes it clear that the underlying intent [is] to preserve
6 the family unit upon immigration to the United States.” *Id.*

7 29. In amending the INA, Congress recognized that the hardships faced by
8 families fractured along citizenship lines were overwhelmingly greater than any
9 harm that could come from the liberal treatment of children with respect to
10 citizenship.

11 **B. The Constitutional Rights of Same-Sex Couples**

12 30. As the Supreme Court has recognized, same-sex couples have long
13 been subjected to illegal institutional discrimination and social stigmatization. The
14 Supreme Court’s precedent makes clear that the Constitution compels equal
15 protection and recognition of, and respect for, the rights of same-sex spouses,
16 including their right to have autonomy over the most personal and intimate of
17 choices—decisions about starting a family and sustaining a partnership in which to
18 raise and nurture a child. Accordingly, the State Department must recognize the
19 “equal dignity of same-sex marriages.” *United States v. Windsor*, 133 S. Ct. 2675,
20 2693 (2013).

21 31. After *Windsor* overturned the statute excluding same-sex marriages
22 from federal recognition, the federal government announced that it would recognize
23 same-sex marriages for immigration purposes. *See* Statement from Homeland
24 Security Secretary Janet Napolitano on July 1, 2013, available at
25 <https://www.uscis.gov/family/same-sex-marriages> (“As a general matter, the law of
26 the place where the marriage was celebrated determines whether the marriage is
27 legally valid for immigration purposes. Just as [the United States Citizenship and
28 Immigration Services] applies all relevant laws to determine the validity of an

1 opposite-sex marriage, we will apply all relevant laws to determine the validity of a
2 same-sex marriage.”).

3 32. Following *Windsor*, the Supreme Court overturned state laws that
4 barred same-sex couples from marrying as inconsistent with the Constitution’s
5 guarantees of due process and equal protection, including rights central to an
6 individual’s autonomy and dignity, such as one’s choice of intimate life partner.
7 *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

8 33. The Court further warned that failure to recognize same-sex marriages
9 “harm[s] and humiliate[s] the children of same-sex couples.” *Id.* at 2590. The Court
10 also recognized that “[w]ithout the recognition, stability, and predictability marriage
11 offers, children suffer the stigma of knowing their families are somehow lesser.” *Id.*

12 34. In *Pavan v. Nathaniel Smith*, the Supreme Court held that married
13 couples must receive the same “constellation of benefits . . . linked to marriage,”
14 regardless of whether the marriage is between spouses of the same or opposite sexes.
15 137 S. Ct. 2075, 2077 (2017). Those benefits include the legal recognition that
16 same-sex spouses may both be the parents of a child born during their marriage, even
17 if only one spouse is the child’s biological parent.

18 **C. The State Department’s Restrictive Classification of Eligible**
19 **Children**

20 35. The INA does not define or limit the class of persons born in wedlock
21 who are eligible for citizenship at birth pursuant to Section 301. Nevertheless, the
22 State Department is restricting the class to exclude *all* children of same-sex married
23 couples.

24 36. The State Department has imposed that policy by inserting a definition
25 of terms into an Appendix to the Foreign Affairs Manual (“FAM”), available at
26 <https://fam.state.gov/>. Specifically, 1140 Appendix E of the FAM, titled “‘IN
27 WEDLOCK’ AND ‘OUT OF WEDLOCK,’” includes subsection (c), which states
28 that “[t]o say a child was born ‘in wedlock’ means that the child’s biological parents
were married to each other at the time of the birth of the child.” (A copy of the

1 relevant portion of the appendix is appended to this Complaint at Exhibit A.)

2 37. 1140 Appendix E of the FAM has never been submitted to notice and
3 comment rulemaking. However, it forms the basis for the State Department's
4 conclusion that the children were born out of wedlock.

5 38. That definition has the effect of limiting birthright citizenship to
6 children who are biologically related to a U.S. citizen parent, which the United States
7 Court of Appeals for the Ninth Circuit has rejected in two separate decisions. *See*
8 *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005) (citing *Scales v. INS*,
9 232 F.3d 1159, 1166 (9th Cir. 2000)).

10 FACTUAL ALLEGATIONS

11 A. The Dvash-Banks Family

12 39. Andrew is a U.S. citizen who was born, raised, and has lived as an adult
13 in the United States. He was born in 1981 in Santa Monica, California, where he
14 lived continuously with his family from birth through the time of his high school
15 graduation in 1999. Andrew's parents were both born and raised in Toronto,
16 Canada, and as a result, Andrew is also a citizen of Canada.

17 40. After graduating from high school, Andrew attended the University of
18 California at Santa Barbara, graduating with a bachelor's degree in June 2003.
19 Andrew then moved to New York City, where he lived for three years while working
20 for a translation company. In 2005, Andrew moved to Israel; and in July 2007, he
21 enrolled in a master's program at Tel Aviv University. In March of 2008, Andrew
22 met Elad Dvash at a holiday party at Tel Aviv University.

23 41. Elad is an Israeli citizen, born in Ramat Gan, Israel, on March 20, 1985.
24 Elad had lived in Israel for his entire life when he met and began dating Andrew.
25 Thereafter, the two moved to Toronto, Canada, where they were married by a judge
26 on August 19, 2010. (A copy of Elad and Andrew's marriage certificate is appended
27 to this Complaint at Exhibit B.)

28 42. Then, as now, Canadian law recognizes the validity and equality of

1 same-sex marriages. Although Andrew and Elad wanted to move to the United
2 States to start their family in California, where four of Andrew's five siblings live
3 with their families, at the time of their marriage in August 2010, the Defense of
4 Marriage Act had not yet been ruled unconstitutional by the Supreme Court. The
5 Defense of Marriage Act precluded the United States government from recognizing
6 the validity of Andrew and Elad's marriage, and therefore barred Elad from
7 obtaining permanent residence through his marriage to Andrew.

8 43. Unlike the U.S. government, the Canadian government recognized the
9 validity of Andrew and Elad's marriage. As a result, Elad could become a legal
10 resident of Canada on the basis of his marriage to Andrew. Thus, Andrew and Elad
11 decided to move to Toronto, Canada to begin building their lives—and family—as
12 a married couple.

13 44. In the summer of 2015, Andrew and Elad selected an anonymous egg
14 donor to enable them to have and raise children as a couple.

15 45. In February 2016, the surrogate became pregnant with one embryo
16 created using sperm from Andrew and one embryo created using sperm from Elad.
17 Andrew and Elad intended to be the sole parents of the resulting children.

18 46. On September 16, 2016, Andrew and Elad's children—E.J. and A.J.—
19 were born in Mississauga, a city in Ontario, Canada. Andrew and Elad, *and only*
20 Andrew and Elad, are listed as the parents on both of their sons' birth certificates,
21 and recognized as their sons' parents under Canadian law.

22 47. E.J. and A.J. are part of the same family, with the same parents, who
23 are married to each other now, as they were at the time both children were born. In
24 terms of their relationship to Andrew, the only distinction between E.J. and A.J. is
25 that sperm from Andrew's husband instead of from Andrew was used to conceive
26 E.J. That distinction should make no difference to E.J.'s eligibility for U.S.
27 citizenship at birth because E.J. demonstrably was *not* born out of wedlock. But to
28 the State Department, this is all the difference in the world.

1
2 **B. The Application of the State Department's Policy to the Dvash-**
3 **Banks Family**

4 48. Shortly after E.J. and A.J. were born, their parents took them to the U.S.
5 consulate in Toronto to apply for their Consular Reports of Birth Abroad and U.S.
6 passports. Andrew and Elad brought both boys' birth certificates, their marriage
7 certificate, declarations of parentage, and payment for the application fees.

8 49. After hours of waiting, Andrew and Elad finally spoke with a consular
9 official. Notwithstanding Andrew's U.S. citizenship, his status as Elad's husband,
10 and his status as a parent of both E.J. and A.J., the official informed Andrew and
11 Elad that further questions would be required. The official then began to inquire
12 into the highly personal details of how Andrew and Elad—a married couple—had
13 children together. The official asked how the spouses had come to create fertilized
14 embryos with their sperm, the identity of the egg donor, and which spouse had
15 provided sperm for which child. Andrew and Elad had planned to keep the genetic
16 identity of their children private so that both children would feel equally connected
17 to each of their parents. In the hope of ensuring that the U.S. government would
18 recognize their children's citizenship, however, they disclosed the genetic links they
19 had to E.J. and A.J.

20 50. When Andrew and Elad explained that E.J. was conceived using Elad's
21 sperm, the consular official required that the children undergo a DNA test to
22 determine whether either child was genetically linked to Andrew. She stated that
23 without the biological link, neither child would qualify for U.S. citizenship at birth.
24 The official did not identify any statutory, regulatory, or other authority supporting
25 this demand.

26 51. Andrew and Elad left the consulate shocked, humiliated, and hurt.
27 They were also deeply offended by the ramifications of what they had heard. The
28 U.S. government did not recognize Andrew as the parent of his son E.J., regardless
of what E.J.'s birth certificate and applicable Canadian law said, and regardless of

1 the daily reality of Andrew and E.J.’s parent-child relationship.

2 52. Andrew and Elad submitted DNA tests for both E.J. and A.J. to the
3 consulate. Soon thereafter, Andrew and Elad received two letters in the mail, both
4 dated March 2, 2017. One letter granted A.J.’s application for his Consular Report
5 of Birth Abroad and a U.S. passport. The other letter (the “Letter”) notified Andrew
6 that E.J.’s application had been denied. (A copy of this letter is appended to this
7 Complaint at Exhibit C.) It was then that Andrew and Elad finally realized that
8 although they were the legal parents of two boys who were born on the same day,
9 minutes apart from each other, the State Department considered only one of their
10 boys to be a U.S. citizen. To the U.S. government, E.J. was an alien.

11 53. The Letter denying E.J.’s application, addressed to Andrew, stated that
12 “after careful review of the evidence you submitted with your child’s application, it
13 has been determined that his claim to U.S. citizenship has not been satisfactorily
14 established, as you are not his biological father.” The Letter went on to reference
15 the “Immigration and Nationality Act (INA) of 1952,” which according to the Letter
16 “requires among other things, a blood relationship between a child and the U.S.
17 citizen parent in order for the parent to transmit U.S. citizenship.” The letter did not
18 include any further citation to more specific statutory provisions or authority.

19 54. The Letter provided Andrew and E.J. no mechanism to appeal the State
20 Department’s denial, and merely suggested Andrew “contact the nearest office of
21 U.S. Citizenship and Immigration Services regarding [E.J.’s] citizenship status.”

22 55. Andrew reached out to his representative, Congressman Ted Lieu, for
23 assistance, and Congressman Lieu’s office contacted the State Department. In an
24 October 2, 2017 letter to Congressman Lieu, the State Department’s Office of
25 American Citizen Services and Crisis Management also failed to cite any statute or
26 regulation to explain the reasons for the Dvash-Banks family’s situation and the
27 denial of a Consular Report of Birth Abroad and U.S. passport for E.J. (A copy of
28 this letter is appended to this Complaint as Exhibit D.) The State Department’s

1 Office of American Citizen Services and Crisis Management merely suggested that
2 Andrew and Elad find “an immigration lawyer who can help explain the avenues”
3 through which E.J. could “acquire citizenship through naturalization,” or that they
4 should “consider applying for a certificate of citizenship directly from USCIS.”

5 56. The State Department’s Office of American Citizen Services and Crisis
6 Management did not explain how, or why, USCIS would recognize that E.J. had
7 acquired citizenship at birth when the consulate had not. Furthermore, the USCIS
8 application for a certificate of citizenship requires the applicant to have “at least one
9 biological or adoptive U.S. citizen parent.” *Instructions for Application for*
10 *Certificate of Citizenship*, OMB No. 1615-0057. Because E.J. does not have at least
11 one biological or adoptive U.S. citizen parent, Andrew and Elad could not complete
12 an application for citizenship on E.J.’s behalf that would satisfy the requirements of
13 USCIS.

14 57. The denial of E.J.’s Consular Report of Birth Abroad meant that E.J.
15 was denied a U.S. passport as well. This has caused difficulties and humiliation for
16 the Dvash-Banks family. After the Supreme Court’s decision in *Windsor* reversed
17 the Defense of Marriage Act, ensuring that Andrew and Elad’s marriage would be
18 recognized and respected in the U.S., Andrew and Elad decided to fulfill their long-
19 held hope of moving to California so that they could live near Andrew’s family, and
20 moved to Los Angeles on June 24, 2017.

21 58. Andrew, Elad, E.J., and A.J. all live in Los Angeles, California
22 together. Both Andrew and Elad work in Los Angeles and they have no intention of
23 moving from Los Angeles. They must keep their home in Toronto as a contingency
24 because although Andrew and A.J. both have U.S. Citizenship and Elad has
25 permanent residency in the U.S., immigration officials would allow E.J. to enter the
26 United States only on a tourist visa. The stay authorized upon that entry expired on
27 December 23, 2017. All of Andrew and Elad’s professional, personal, and familial
28 commitments are in constant jeopardy of being undone if the Department of

1 Homeland Security deports E.J.

2 59. Given the severity of these consequences, Andrew and Elad have
3 submitted an application for a green card on E.J.'s behalf to minimize the risk of
4 deportation proceedings and having to face the choice of staying together as a family
5 or staying in this country. However, Andrew and Elad should not have to bear these
6 additional burdens simply to ensure they can continue to raise their sons together in
7 this country. Their current need to do so highlights the inequality and indignity
8 imposed by the State Department's classification of children born to parents in same-
9 sex marriages as children born out of wedlock.

10 60. Andrew and Elad have also suffered indignity and emotional pain
11 because the U.S. government recognizes neither their marriage nor their parental
12 rights in determining whether their children were born in or out of wedlock.
13 According to the U.S. government, Andrew and Elad could never have children in
14 wedlock because they could not both be married to each other and be the biological
15 parents of the same child. As a result, the U.S. government is undermining,
16 disrespecting, and rendering unequal the intimate relationship between same-sex
17 married couples and the children they have and raise together within family units
18 founded on the sanctity of marriage. They also worry about the obvious inequity the
19 State Department's decision causes between their twin sons, the impact on E.J. and
20 A.J. of their different citizenship status and the awareness that the U.S. government
21 considers them illegitimate notwithstanding their parents' valid marriage.

22 **C. The State Department Erroneously Deemed E.J. to Have Been**
23 **Born "Out of Wedlock"**

24 61. As alleged herein, E.J. acquired U.S. citizenship at birth under
25 Section 301(g) of the INA. Pursuant to Section 301(g), a U.S. citizen at birth
26 includes:

27 a person born outside the geographical limits of the United States and
28 its outlying possessions of parents, one of whom is an alien, and the
other a citizen of the United States who, prior to the birth of such
person, was physically present in the United States or its outlying

1 possessions for a period or periods totaling not less than five years, at
2 least two of which were after attaining the age of fourteen years.

3 62. Because E.J. is not a child born out of wedlock, his citizenship status is
4 governed by Section 301(g). E.J. clearly satisfies the criteria for U.S. citizenship at
5 birth under Section 301(g). That is so because his father Andrew has lived in the
6 U.S. for most of his life and clearly satisfies the statutory residence requirements of
7 physical presence in the U.S. for no less than five years, including at least two after
8 turning fourteen years old.

9 63. The only way that E.J. would not be a citizen at birth under the INA is
10 if E.J. were a child born out of wedlock, as the State Department has deemed him.
11 That determination was erroneous both as a matter of statutory interpretation and as
12 a matter of the Constitution's guarantee of due process.

13 **D. The State Department's Policy Unconstitutionally Discriminates**
14 **on the Basis of Sex and Sexual Orientation**

15 64. The decision to marry—like the decision to have children—is one of
16 the most deeply personal choices one can make. For the liberty guaranteed by the
17 Constitution to be meaningful and effective, individuals must be able to make these
18 fundamental and personal life choices freely, with dignity and without unwarranted
19 consequences for the individual and his family. Accordingly, the Constitution's
20 guarantees of due process and equal protection apply with full force to an
21 individual's fundamental right to marry the spouse of his or her own choosing,
22 including a spouse of the same sex. The Constitution requires not only recognition
23 and protection of the right to enter into same-sex marriages, but also affords same-
24 sex marriages the full constellation of legal rights and benefits—including dignity
25 and respect—that have traditionally flowed from opposite-sex marriages.

26 65. The State Department's policy and its application to E.J. are
27 unconstitutional because they violate E.J.'s and Andrew's right to due process under
28 the Fifth Amendment of the Constitution. As discussed above, the State Department
refuses to apply Section 301(g) of the INA to E.J. based on its erroneous and

1 demeaning classification of him as a child born out of wedlock. Apparently on that
2 basis alone, it refuses to recognize E.J.’s citizenship.

3 66. Under the State Department’s policy, citizenship through Section 301
4 is presumptively available to any person the State Department deems born “in
5 wedlock”—a class the agency has construed to consist exclusively of children
6 conceived and carried by women who are married to men.

7 67. Nothing in the INA or the Constitution permits the State Department’s
8 limitation of birthright citizenship under Section 301 to the children of U.S. citizens
9 in opposite-sex marriages. The State Department’s requirement is unfounded and
10 ensures unconstitutionally unequal treatment of the children of same-sex married
11 couples.

12 68. The government has provided no rationale for this discriminatory
13 policy. Furthermore, there is no legitimate governmental purpose that could justify
14 limiting birthright citizenship in this way. To the contrary, such an approach
15 undermines the congressionally established, legitimate, and important government
16 purposes that underlie the INA itself. For example, the State Department’s approach
17 ultimately makes it harder, not easier, for families like the Dvash-Bankses to stay
18 together. This undermines the INA’s statutory intent of “provid[ing] for a liberal
19 treatment of children and . . . keeping families of United States Citizens and
20 Immigrants united.” H.R. Rep. 85-1199, at 2020 (1957).

21 69. In amending the INA, Congress recognized that no harm could come
22 from the liberal treatment of children with respect to citizenship, and that the
23 consequences of such treatment would fulfill “the clearly expressed legislative
24 intention to keep together the family unit wherever possible.” *Id.* at 2021.

25 70. Although the State Department’s policy may in theory apply to
26 marriages between spouses of opposite sexes, its overwhelming effect is to deprive
27 spouses in same-sex marriages—and their children—of fundamental rights and
28 equal dignity as citizens under the law. The fact that *some* opposite-sex married

1 couples *may* use assisted reproductive technology to conceive a child does not
2 change the discriminatory nature or harmful effects of the government's policy on
3 same-sex couples.

4 71. In addition to discriminating against E.J., the State Department's policy
5 discriminates against Andrew by denying him the ability to transmit citizenship to a
6 child conceived with his husband's sperm, born during their marriage, and raised as
7 a child of that marriage.

8 **COUNT I — DECLARATORY JUDGMENT**
9 **THE STATE DEPARTMENT'S POLICY VIOLATES THE DUE PROCESS**
10 **GUARANTEE OF THE FIFTH AMENDMENT**

11 72. Plaintiffs repeat, reallege, and incorporate by reference the allegations
12 contained in paragraphs 1 through 71 as if fully set forth herein.

13 73. The Fifth Amendment of the Constitution prohibits the federal
14 government from depriving individuals of their rights without due process of law.

15 74. The Due Process Clause of the Fifth Amendment prohibits the federal
16 government from depriving any person of life, liberty, or property without due
17 process of law, as well as from depriving any person of equal protection under the
18 law.

19 75. Section 301 of the INA entitles U.S. citizens to confer citizenship at
20 birth on their children born abroad in wedlock. The INA does not require U.S.
21 citizens to be in opposite-sex marriages to confer citizenship under Section 301. Nor
22 does the INA require a child's biological parents to be married to each other for the
23 child to be considered born in wedlock, and therefore eligible for citizenship under
24 Section 301. The INA merely requires that the child is *not* born out of wedlock.

25 76. Defendants have violated and continue to violate the Fifth Amendment
26 of the United States Constitution by enforcing a policy that excludes U.S. citizens in
27 same-sex marriages from conferring citizenship pursuant to Section 301, while
28 restricting access to citizenship under that provision to the children of opposite-sex
married couples. Defendants' policy has deprived and continues to deprive Plaintiffs

1 of their rights to acquire and confer citizenship at birth pursuant to INA Section 301.
2 As a result of Defendants' policy, Plaintiffs have suffered, and will suffer,
3 irreparable harm to their protected interest in conferring, and having recognized,
4 E.J.'s U.S. citizenship.

5 77. There is no rational, legitimate, or substantial government interest
6 served by denying the children of same-sex married couples access to citizenship at
7 birth pursuant to Section 301 of the INA based on the sex and/or sexual orientation
8 of the child's citizen-parent. Nor is there any rational, legitimate, or substantial
9 government interest served by denying U.S. citizens in same-sex marriages the right
10 to confer citizenship on children born abroad during their marriage based on the
11 citizen's sex and/or sexual orientation or exercise of the protected right to enter into
12 a same-sex marriage. Defendants have offered no justification for precluding
13 Andrew from conferring on E.J. citizenship pursuant to Section 301.

14 78. As a result of Defendants' arbitrary, discriminatory, and unlawful
15 implementation and enforcement of its policy prohibiting U.S. citizens in same-sex
16 marriages from conferring U.S. citizenship on their children born in wedlock outside
17 the United States, Plaintiffs have suffered injuries and will suffer further irreparable
18 harm to their constitutional rights under the Fifth Amendment if the State
19 Department's policy is not declared unconstitutional and enjoined.

20 79. Plaintiffs have no adequate remedy at law.

21 **COUNT II — ADMINISTRATIVE PROCEDURE ACT**

22 80. Plaintiffs repeat, reallege, and incorporate by reference the allegations
23 contained in paragraphs 1 through 71 as if fully set forth herein.

24 81. Plaintiffs have suffered a "legal wrong because of agency action."
25 5 U.S.C. § 702.

26 82. The Administrative Procedure Act bars any agency action that is
27 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
28 law." 5 U.S.C. § 706(2)(A).

1 83. Defendants' interpretation of Sections 301 and 309, as embodied in the
2 FAM, conflicts with the clear language and statutory purpose of the INA. This
3 interpretation, published without any public comment, is arbitrary, capricious, and
4 not in accordance with the INA.

5 84. Plaintiffs have suffered and continue to suffer legal wrongs because of
6 the U.S. Embassy's decision to deny the Consular Report of Birth Abroad
7 application submitted on behalf of E.J.

8 85. Plaintiffs have exhausted all administrative remedies available to them
9 as of right.

10 86. Plaintiffs have no other recourse to judicial review other than this
11 action.

12 87. Defendants' exclusion of children born abroad in same-sex marriages
13 from the category of children who qualify for citizenship at birth as born to valid
14 marriages lacks a rational basis, is arbitrary, and is contrary to law.

15 88. Plaintiffs have no adequate remedy at law.

16 **COUNT III — DECLARATION THAT E.J. D.-B. IS A U.S. CITIZEN**

17 89. Plaintiffs repeat, reallege, and incorporate by reference the allegations
18 contained in paragraphs 1 through 71 as if fully set forth herein.

19 90. 8 U.S.C. § 1503(a) authorizes this Court to make a *de novo* judgment
20 as to the citizenship status of E.J.

21 91. Andrew is a U.S. citizen, who was born in the U.S. and physically
22 present in the U.S. for a period of 24 years, starting from the time he was born in
23 California in 1981 until the time he moved to Israel in 2005.

24 92. Andrew and Elad were legally married to each other by a judge in
25 Canada on August 19, 2010. They have been married to each other continuously
26 since that date.

27 93. Their sons, A.J. and E.J., were born on September 16, 2016 in
28 Mississauga, Canada, during Andrew's and Elad's marriage.

1 94. Andrew and Elad are E.J.'s parents. They are identified as E.J.'s
2 parents on his birth certificate and recognized as his parents under Canadian law.

3 95. Section 301(g) of the INA is applicable to E.J.'s citizenship claim
4 because E.J. is the child of parents who were married to each other at the time of his
5 birth, and one of E.J.'s married parents is a U.S. citizen. Section 309(a) of the INA
6 is inapplicable to E.J.'s citizenship claim because he is the child of married parents,
7 and therefore is not a child born out of wedlock.

8 96. E.J. is a U.S. citizen at birth pursuant to Section 301(g) because he was
9 born: (1) outside the geographical limits of the United States and its outlying
10 possessions, (2) to parents one of whom is an alien, and the other a citizen of the
11 United States, (3) to a parent who, prior to the birth of such person, was physically
12 present in the United States or its outlying possessions for a period or periods totaling
13 not less than five years, at least two of which were after attaining the age of fourteen
14 years.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- i. Declare unconstitutional, and a violation of the INA, the State Department’s policy of classifying the children of same-sex married couples as “children born out of wedlock,” and its consequent refusal to recognize E.J.’s citizenship status on that basis, both on its face and as applied to Plaintiffs, Andrew Mason Dvash-Banks, in his individual capacity, and on behalf of his son, E.J. D.-B.;
- ii. Declare E.J. D.-B. a U.S. citizen at birth;
- iii. Permanently enjoin Defendants from continuing to classify the children of same-sex married couples as “children born out of wedlock,” and denying the children of same-sex married couples the right to acquire citizenship at birth pursuant to Section 301(g) on that basis; and
- iv. Award Plaintiffs attorneys’ fees and costs as allowed by law, and such other relief as the Court deems just and proper, including an award of reasonable litigation costs incurred in this proceeding pursuant to 28 U.S.C. § 2412.

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1 Dated: January 14, 2019

/s/ Alexa M. Lawson-Remer
Alexa M. Lawson-Remer (SBN 268855)
lawsonr@sullcrom.com
SULLIVAN & CROMWELL LLP
1888 Century Park East, Suite 2100
Los Angeles, California 90067-1725
Telephone: (310) 712-6600
Facsimile: (310) 712-8800

Theodore Edelman (*pro hoc vice*)
edelmant@sullcrom.com
Jessica Klein (*pro hoc vice*)
kleinj@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

Aaron C. Morris (*pro hoc vice*)
amorris@immigrationequality.org
IMMIGRATION EQUALITY
40 Exchange Place, Suite 1300
New York, New York 10005-2744
Telephone: (212) 714-2904

Attorneys for Plaintiffs

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Exhibit A

[Appendix A](#) and the CA Internet page on DNA and Parentage Testing. See [7 FAM 1160 Appendix E](#) for further guidance on adjudication.

NOTE:

CA/FPPs CAWeb Intranet Relationship Fraud feature.

CA/FPPs Intranet Fraud Digest includes other information about relationship fraud. For example: Relationship Fraud in Yemen; Marriage Fraud Dangerous and Pervasive.

7 FAM 1140 APPENDIX E IN WEDLOCK AND OF WEDLOCK

(CT:CON-521; 07-08-2014)

- a. The term Birth in Wedlock has been consistently interpreted to mean birth during the marriage of the biological parents to each other.
- b. This includes a child conceived before the marriage but born during the marriage.
- c. To say a child was born "in wedlock" means that the child's biological parents were married to each other at the time of the birth of the child.
- d. In the case of a marriage terminated by dissolution, death, or annulment, the term of wedlock still includes a biological child conceived during the marriage and born within 300 days after termination of the marriage.
- e. If a married woman and someone other than her spouse have a biological child together, that child is considered to have been born out of wedlock. The same is true for a child born to a married man and a person other than his spouse.

7 FAM 1150 APPENDIX E VOID AND VOIDABLE MARRIAGES

(CT:CON-576; 05-05-2015)

- a. A marriage that does not conform to the laws of the country or state in which it was performed generally is voidable and may be declared void by an appropriate authority, usually a court in the jurisdiction where the marriage occurred.
- b. Prior to such a declaration, the marriage usually is considered valid for all purposes. Even after a marriage is voided, the children's status usually is not affected. In the United States, for example, every state considers children of a void marriage to be legitimate.

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Exhibit B

2010 029232
PAGE 1

Certificate number:
Numéro du certificat: **P 1338811**

Date issued:
Date de délivrance: **Oct 05 2010**

File number:
Numéro de dossier: **01076584-01-3**

Office of the Registrar General
Ontario, Canada

Photostatic
Print of a Record

Photocopie certifiée
conforme d'un document

se trouvant dans les dossiers du
Bureau du registraire général
(Ontario) Canada

Ontario Ministry of Government Services Office of the Registrar General

Marriage Licence

Licence number: **E 0689966**

This form is a permanent legal document and can only be used to register a marriage that takes place in Ontario. Please PRINT clearly in blue or black ink.

Part 1 - To be completed by the office issuing this licence

1. Date this licence was issued (date)
19 Aug 2010

2. Municipality where licence was issued
City of Toronto

3. Name of licence issuer or deputy issuer
Catherine Masters

4. Signature of licence issuer or deputy issuer

5. Proposed place of marriage (town/city)
Toronto

6. Proposed date of marriage (date) must be within 3 months of date of issue
19 Aug 2010

Part 2 - Marriage Affidavit (Form 4)

Information about the applicant

7. Last legal name before this marriage
Banks

8. First and middle names
Andrew Mason

9. Marital status: never married widowed divorced

10. Court file number City divorce granted in court file number

11. Religious denomination
Jewish

12. Age
29

13. Province where applicant was born (if outside Canada, state the country)
USA

14. Father's name (last, first)
Banks, James Howard

15. Mother's name (last name before marriage, first name)
Mason, Ann

16. Province where the applicant's father was born (if outside Canada, state the country)
Ontario

17. Province where the applicant's mother was born (if outside Canada, state the country)
Ontario

18. Name in full of applicant
Andrew Mason Banks

Information about the joint applicant

24. Last legal name before this marriage
Drash

25. First and middle names
Eliad

26. Marital status: never married widowed divorced

27. Court file number City divorce granted in court file number

28. Religious denomination
Jewish

29. Age
25

30. Province where joint applicant was born (if outside Canada, state the country)
Israel

31. Father's name (last, first)
Drash, Mordechai

32. Mother's name (last name before marriage, first name)
Abadi, Tova

33. Province where the joint applicant's father was born (if outside Canada, state the country)
Israel

34. Province where the joint applicant's mother was born (if outside Canada, state the country)
Israel

35. Name in full of joint applicant
Eliad Drash

make oath and say affirm as follows: That I believe there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage, and that the contents set forth herein are to the best of my knowledge, information and belief, true in every particular.

Sworn/affirmed before me at City of Toronto in the Province (my or out) of Ontario this 19th day of August 2010

Signature of issuer/deputy issuer: *Catherine Masters* Signature of applicant: *Andrew Mason Banks* Signature of joint applicant: *Eliad Drash*

18. Present address of applicant (street number and name) Apartment
Toronto ON

19. Present address of joint applicant (street number and name) Apartment
Givatayim, Israel

20. City or town
Toronto

21. Province
ON

22. Postal code
M4S 2H4

23. Telephone number
M4S 2H4

24. City or town
Givatayim, Israel

25. Province
Israel

26. Postal code
53482

27. Telephone number
53482

Part 3 - Statement of marriage - to be completed following the marriage ceremony (Form 7)

40. Place of marriage (name the city or town and the county, regional municipality or district)
TORONTO ONTARIO

41. Date of marriage (date)
19 AUGUST 2010

42. Signature of applicant
X *Andrew Mason Banks*

43. Signature of joint applicant
X *Eliad Drash*

44. Signature of witness
X *Benjamin S. Bonkalo*

45. Signature of officiant
X *Benjamin S. Bonkalo*

By signing below, I certify that the marriage of the parties named in this marriage licence was performed on the date and at the place indicated above.

46. Name of person who performed marriage (last, first, middle)
BONKALO, ANNEMARIE ERIKA

47. Date (date)
19 AUGUST 2010

48. Your status: Clergy Judge Justice of the peace Other

49. Address of person who performed marriage
ONE QUEEN ST. EAST STE 2300, BOX 91, TORONTO ON M5C 2N5

50. Telephone number
416 363-5824

51. Your denomination (steno only)
J 2492

52. Your registration number
J 2492

53. Your denomination (steno only)
J 2492

For use of the Registrar General only:
I am satisfied to the correctness of this statement and register this marriage

Signature: *A. J. Lynch* Date (date): **AUG 25 2010**

Personal information contained in this form is collected under the authority of the Marriage Act, R.S.O. 1990, c.M.3 and will be used to determine whether to issue the marriage licence, to register the marriage, provide certified copies, extracts, certificates, search notices, photocopies and for statistical, research, medical, law enforcement, adoption and aviation database purposes. Consent to this collection should be directed to the Deputy Registrar General at PO Box 4000, 100 Red Row Road, Thunder Bay ON P7B 6L6. Telephone 1 800 461-2188 or 416 325-8200.

Judith M Hartman

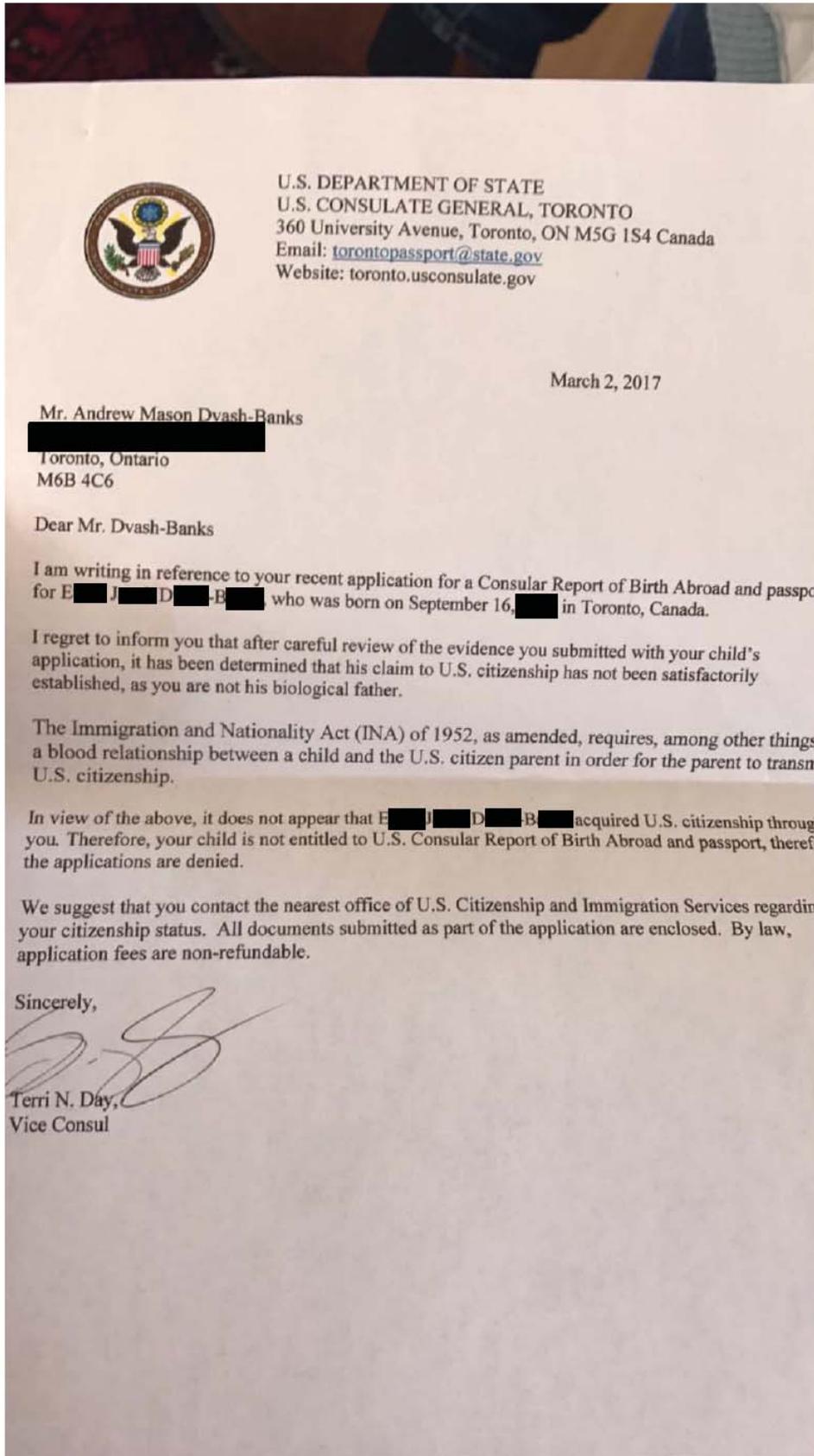
Judith M. Hartman
Deputy Registrar General
Registraire générale adjointe
de l'état civil

---CERTIFIED COPY---
NOT VALID WITHOUT ALL PAGES
Plaintiffs' First Amended Complaint
for Declaratory and Injunctive Relief Exhibit B
Page 24



Case 2:18-cv-00523-JFW-JC Document 94-3 Filed 01/14/19 Page 1 of 2 Page ID #:2106

Exhibit C



Case 2:18-cv-00523-JFW-JC Document 94-4 Filed 01/14/19 Page 1 of 2 Page ID #:2108

Exhibit D



United States Department of State

Washington, D.C. 20520

October 2, 2017

The Honorable Congressman Lieu
C/O Ashley Fumiko Dominguez
5055 Wilshire Blvd., Suite 310
Los Angeles, CA 90036

Dear Ms. Dominguez:

Thank you for the letter from Congressman Lieu of September 22nd regarding his constituent Mr. Dvash-Banks, concerning citizenship of his son.

We take the concerns voiced in Mr. Dvash-Banks' letter very seriously. 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, it is common for our Embassies and Consulates to ask persons who engage in surrogacy overseas - regardless of sexual orientation - to go through DNA testing to establish the blood relationship between parent and child required for transmission of U.S. citizenship in support of a Consular Report of Birth Abroad application. This practice is not limited to the U.S. Consulate Toronto.

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. I apologize if this was not sufficiently explained to Mr. Dvash-Banks during his initial interview and subsequent meetings. We truly regret any difficulties he experienced and wish Mr. Dvash-Banks and his family all the best.

Also, we may suggest that, in addition to finding an immigration lawyer who can help explain the avenues through which his son can acquire citizenship through naturalization, he may also wish to consider applying for a certificate of citizenship directly from USCIS.

If you have any additional questions, please contact Carlos Hernandez in the Office of American Citizens Services and Crisis Management,

Sincerely,

A handwritten signature in black ink, appearing to read 'CH', written over a faint circular stamp.

Carlos Hernandez
Country Officer
Office of American Citizens Services and Crisis
Management



United States Department of State

Washington, D.C. 20520

I, Regina Ballard, Division Chief, Law Enforcement Liaison Division, Office of Legal Affairs, Passport Services Directorate, Bureau of Consular Affairs, United States Department of State, certify under penalty of perjury that the enclosed documents are originals, or copies thereof, from the records of the U.S. Department of State. These documents relate to the subject matter in *Andrew Mason Dvash-Banks and E.J. D.-B. v. Michael R. Pompeo, et al.*, case number 2:18-cv-00523-JFW-JCx.

The record produced reflects all application documents and written guidance before the adjudicator as a part of Plaintiff E.J. D-B's passport and Consular Report of Birth Abroad applications. It also includes sections of the Foreign Affairs Manual which agency counsel have advised were relevant to and were in effect at the time of the adjudication at issue in the aforementioned case, and thus would have been considered directly or indirectly by the adjudicator.

Sincerely,

A handwritten signature in cursive script that reads "Regina Ballard".

Regina Ballard, Division Chief
Law Enforcement Liaison Division
Office of Legal Affairs
Passport Services

Date: January 3, 2019

INDEX TO ADMINISTRATIVE RECORD
Andrew Mason Dvash-Banks and E.J. D-B v. U.S. Dep't of State, et al.
18-cv-00523-JFW-JCx, Central District of California

Date	Document type	Description	AR page number(s)
March 2, 2017	Denial Letter	Letter issued by Vice Consul Terri N. Day denying passport and Consular Report of Birth Abroad applications submitted on behalf of E.J. D-B.	001
Various	Case Notes	Case notes and related entries associated with the U.S. passport and Consular Report of Birth Abroad applications submitted on behalf of E.J. D-B.	002 – 008
January 24, 2017- March 2, 2017	Application materials	Passport and Consular Report of Birth Abroad applications submitted on behalf of E.J. D-B.	009 – 072
January 24, 2017	Email and attachments	Correspondence from Consul Margaret Ramsay to Vice Consul Terri “Frankie” Day, providing “ART guidance” for adjudication of Plaintiffs’ applications.	073
January 24, 2017	Email link content	As noted in email text, “2014 Cable on ART Cases” in the original.	074 – 076
January 24, 2017	Email link content	As noted in email text, “7 FAM 1100 APPENDIX D” in the original.	077 – 080
Various	Foreign Affairs Manual Provisions	Relevant provisions in effect during the adjudication timeframe (January 24, 2017- March 2, 2017).	081 – 106



U.S. DEPARTMENT OF STATE
U.S. CONSULATE GENERAL, TORONTO
360 University Avenue, Toronto, ON M5G 1S4 Canada
Email: torontopassport@state.gov
Website: toronto.usconsulate.gov

March 2, 2017

Mr. Andrew Mason Dvash-Banks
██████████ Ave, Apt# ██████████
Toronto, Ontario
M6B 4C6

Dear Mr. Dvash-Banks

I am writing in reference to your recent application for a Consular Report of Birth Abroad and passport for E██████ J██████ D██████-B██████, who was born on September 16, 2016 in Toronto, Canada.

I regret to inform you that after careful review of the evidence you submitted with your child's application, it has been determined that his claim to U.S. citizenship has not been satisfactorily established, as you are not his biological father.

The Immigration and Nationality Act (INA) of 1952, as amended, requires, among other things, a blood relationship between a child and the U.S. citizen parent in order for the parent to transmit U.S. citizenship.

In view of the above, it does not appear that E██████ J██████ D██████-B██████ acquired U.S. citizenship through you. Therefore, your child is not entitled to U.S. Consular Report of Birth Abroad and passport, therefore the applications are denied.

We suggest that you contact the nearest office of U.S. Citizenship and Immigration Services regarding your citizenship status. All documents submitted as part of the application are enclosed. By law, application fees are non-refundable.

Sincerely,

Terri N. Day,
Vice Consul



The United States Department of State - Bureau of Consular Affairs

ACS Activity Log

Report by LEHNEID on November , 02ND 2018 10:06 ET

~~Sensitive But Unclassified (SBU) - Information Protected under The Privacy Act of 1974 (5 USC 552a as amended)~~

Activity Log

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: New Case Created

Description: New Case Created Case ID: TRT20170240541888Z

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: New Service Created

Description: New Citizenship Service Created Service ID: TRT20170240541887Z

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: New Sub-service Created

Description: New CRBA Sub-service Created Subsrv ID: TRT20170240541889Z

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: Name check executed 01/24/17 09:14 AM (UTC-05:00)

Description: Name Check batch 1 executed 1/24/2017 9:14:21 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D■■■■-B■■■■, E■■■■', received 1/24/2017 9:14 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for FatherAlias 'BANKS, ANDREW', received 1/24/2017 9:14 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for Father 'BANKS, ANDREW', received 1/24/2017 9:14 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 2 Total IPDB Hits: 0 Total MIV Hits: 4 Total SSA Hits: 0

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: Name check executed 01/24/17 09:15 AM (UTC-05:00)

Description: Name Check batch 2 executed 1/24/2017 9:15:45 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D■■■■-B■■■■, E■■■■', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for FatherAlias 'BANKS, ANDREW', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for Father 'DVASH-BANKS, ANDREW', received 1/24/2017 9:16 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 1 Total IPDB Hits: 0 Total MIV Hits: 2 Total SSA Hits: 0

Log Type: Case Note **Source:** User **Assigned To:** Processing, Automated **Date Completed:** 25-JAN-2017

Name: CCD CRBA Service Note

Description: Subject attempting to acquire citizenship through U.S. citizen father under section 301(g) INA. Submitted the following: Ontario birth cert; father's U.S. ppt, second parent foreign passport, parent's marriage cer; father's work and school records

Log Type: Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Name: CCD CRBA Service Note

Description: DNA results received. Child does not have claim to U.S. citizenship through U.S. citizen father. Case recommended for denial.

Log Type: Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Name: CON OFF CRBA NOTES

Description: CRBA for child born in wedlock to US citizen father Applicant submitted a timely filed Ontario birth certificate Parents submitted an Ontario marriage certificate, married 08/19/2010. Amcit Father presented a valid US passport. ISRL Father presented valid ISRL passport. App is the son of a male same sex couple. Because of the process of concieving the child, the fathers did not know who was the biological parent of A■■■■ (Applicant). They were advised to get a DNA test and given a list of testing sites to get the test done. Once the determination of biological parentage is done, it will be clear if A■■■■ has a direct genetic link to Amcit father, and if he automatically qualifies for US citizenship.

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Service status update

Name:

Description: CRBA service status updated Service ID: TRT20170240541887Z Sub-service ID: TRT20170240541889Z
Status updated to: APPLICATION ACCEPTED By User: FAZIL Status Date: 02-MAR-17

Log Type: Attach File **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Name: CRBA FILES

Description: Attached.

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

Name: Proof of Citizenship

Description: Citizenship Adjudicated for Case ID: TRT20170240541888Z Subject ID: TRT201702440978417
Citizenship: US CITIZEN Date Adjudicated: 06-MAR-17 Adjudicated by: DAYTN (TRT)

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

Name: Proof of Citizenship

Description: Citizenship Adjudicated for Case ID: TRT20170240541888Z Subject ID: TRT201702440978447
Citizenship: NON-CITIZEN Date Adjudicated: 06-MAR-17 Adjudicated by: DAYTN (TRT)

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

Name: Proof of Citizenship

Description: Citizenship Adjudicated for Case ID: TRT20170240541888Z Subject ID: TRT201702440978359
Citizenship: NON-CITIZEN Date Adjudicated: 06-MAR-17 Adjudicated by: DAYTN (TRT)

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

Name: Service status update

Description: CRBA service status updated Service ID: TRT20170240541887Z Sub-service ID: TRT20170240541889Z
Status updated to: DENIED By User: DAYTN Status Date: 06-MAR-17

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

Name: Service status update

Description: Service status updated Service ID: TRT20170240541887Z Status updated to: Closed By User: DAYTN
Status Date: 06-MAR-17

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017

Name: Case status update

Description: Service status updated Case ID: TRT20170240541888Z Status updated to: Closed By User: DAYTN
Status Date: 06-MAR-17



The United States Department of State - Bureau of Consular Affairs

ACS Activity Log

Report by LEHNEID on November , 02ND 2018 10:08 ET

~~Sensitive But Unclassified (SBU) Information Protected under The Privacy Act of 1974 (5 USC 552a as amended)~~

Activity Log

Log Type: Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 01-MAR-2017

Name: ECAS Status

Description: ECAS Status changed from: [Fraud Referred To ECAS] to [Fraud ECAS Case Transferred]

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: New Case

Description: A new case was created. - TRT201702440978600

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: New Citizenship Service Created

Description: New Citizenship Service Created.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: Name check executed 01/24/17 09:16 AM (UTC-05:00)

Description: Name Check batch 1 executed 1/24/2017 9:16:17 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D■■■■-B■■■■, E■■■■', received 1/24/2017 9:16 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 0 Total IPDB Hits: 0 Total MIV Hits: 0 Total SSA Hits: 0

Log Type: Case Note **Source:** User **Assigned To:** Day, Frankie **Date Completed:** 24-JAN-2017

Name: Pending -- DNA And School Transcripts

Description: CRBA for child born in wedlock to US citizen father Applicant submitted a timely filed Ontario birth certificate Parents submitted an Ontario marriage certificate, married 08/19/2010. Amcit Father presented a valid US passport. ISRL Father presented valid ISRL passport. App is the son of a male same sex couple. Because of the process of concieving the child, the fathers did not know who was the biological parent of A■■■■ (Applicant). They were advised to get a DNA test and given a list of testing sites to get the test done. Once the determination of biological parentage is done, it will be clear if A■■■■ has a direct genetic link to Amcit father, and if he automatically qualifies for US citizenship. School transcripts needed to confirm Amcit father's physical presence in the US.

Log Type: Status Update **Source:** System **Assigned To:** Sackda, Joanna **Date Completed:** 25-JAN-2017

Name: Proof of Citizenship Data Updated

Description: Modified by user: SACKDAJ Critical Field Removed: Evidence of Citizenship Field Removed: Evidence of Citizenship - Passport Regular (PRI) Critical Field Removed: Evidence of Citizenship Field Removed: Evidence of Citizenship - Passport Regular (PRI)

Log Type: Status Update **Source:** System **Assigned To:** Sackda, Joanna **Date Completed:** 25-JAN-2017
Name: Photo Audit Scan Results
Description: <FQScores THRESH_ID="FQT000000003" VERSION="2"><Enrollable ID="0" SCORE="0"/><CompArtifacts ID="1" SCORE="-1"/><AlignConfidence ID="2" SCORE="0"/><HeadSize ID="3" SCORE="-1"/><Contrast ID="4" SCORE="-1"/><ScanArtifacts ID="5" SCORE="-1"/><Interlaced ID="6" SCORE="-1"/><SensorNoise ID="7" SCORE="-1"/><DigConfidence ID="8" SCORE="-1"/><Centered ID="9" SCORE="-1"/><Cropping ID="10" SCORE="-1"/><Exposure ID="11" SCORE="-1"/><ExposureIsOver ID="12" SCORE="-1"/><ExposureRatio ID="13" SCORE="-1"/><Focus ID="14" SCORE="-1"/><MotionBlur ID="15" SCORE="-1"/><UnnaturalColor ID="16" SCORE="-1"/><PhotoConfidence ID="17" SCORE="-1"/><EyesClear ID="18" SCORE="-1"/><GlareFree ID="19" SCORE="-1"/><SunGlasses ID="20" SCORE="-1"/><EyesOpen ID="21" SCORE="-1"/><ShadowInEyeSockets ID="22" SCORE="-1"/><UniLighting ID="23" SCORE="-1"/><HotSpots ID="24" SCORE="-1"/><FacialShadows ID="25" SCORE="-1"/><BkgrndUniformity ID="26" SCORE="-1"/><BkgrndBrightness ID="27" SCORE="-1"/><BkgrndShadows ID="28" SCORE="-1"/><FrontalPose ID="29" SCORE="-1"/><SceneQConfidence ID="30" SCORE="-1"/><Faceness ID="31" SCORE="-1"/><Texture ID="32" SCORE="-1"/><AlgoQConfidence ID="33" SCORE="-1"/><EyeDistance ID="34" SCORE="0"/><Tilt ID="35" SCORE="0"/><Yaw ID="36" SCORE="-220"/><OverAll ID="37" SCORE="-1"/></FQScores>

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 28-FEB-2017
Name: Refer/View ECAS button selected
Description: The Refer/View ECAS button was selected to refer the subject/service to ECAS by DAY, Frankie Service ID: TRT201702440978604 Subsvr ID: TRT201702440978607

Log Type: Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 28-FEB-2017
Name: ECAS Status
Description: ECAS Status returned: [Fraud Referred To ECAS]

Log Type: Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 01-MAR-2017
Name: ECAS Status
Description: ECAS Status changed from: [Fraud ECAS Case Transferred] to [Fraud ECAS Case Transferred]

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017
Name: Proof of Citizenship Data Updated
Description: Modified by user: FAZIL Critical Field Added: Evidence of Identification Field Type Added: New Evidence of Identification P3319402, Issue Date: 09-Nov-2016, Place of Issue: ONTARIO BIRTH CERT. Critical Field Change: Citizenship Comments New Value: pg 405 261 919 ca Old Value: No Previous Value

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017
Name: Product Deny Recommendation Comments
Description: Subject not born to U.S. citizen father as per DNA results.

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017
Name: Product Status Changed
Description: The Passport US Full : Book's Product Status was changed to Recommended For Denial.

Log Type: Attach File **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017
Name: PPT FILE
Description: Attached.

Log Type: Case **Source:** User **Assigned To:** Day, **Date Completed:** 06-MAR-2017

Name: Note Frankie
Description: Rec Denial
Description: DNA shows no bio link between app and AmCit Father.

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017
Name: Product Denied Decision Comments
Description: DNA shows no bio link between app and AmCit dad.

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017
Name: Product Status Changed
Description: The Passport US Full : Book's Product Status was changed to Denied.

Log Type: Snapshot **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017
Name: Snapshot Generated On: 06-Mar-2017
Description: Subject Information: ===== Name: D [REDACTED]-B [REDACTED], E [REDACTED] J [REDACTED] Personal Information: Aliases: Passport Information: SSN: Gender: Male DOB: 16-Sep-2016 Age: 0 POB: MISSISSAUGA, ONTAIRO CAN Mother's Maiden Name: Primary Household Contact: Yes Emergency Contact Provided: No Subject is Warden: No Decision Information: ===== Recommendation Date: 02-Mar-2017 Recommended Denial By: FAZIL, ANEELA Recommended Denial Comments/Overrides: Subject not born to U.S. citizen father as per DNA results. Decision Date: 06-Mar-2017 Decision Denial By: DAY, Frankie Decision Denial Comments/Overrides: DNA shows no bio link between app and AmCit dad. Passport Product Information: ===== Place of Birth to Appear on Passport: Canada Endorsements:

Log Type: Status Update **Source:** System **Assigned To:** Day, Frankie **Date Completed:** 06-MAR-2017
Name: Refer/View ECAS button selected
Description: The Refer/View ECAS button was selected to refer the subject/service to ECAS by DAY, Frankie Service ID: TRT201702440978604 Subsvr ID: TRT201702440978607

Log Type: Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 06-MAR-2017
Name: ECAS Status
Description: ECAS Status changed from: [Fraud ECAS Case Transferred] to [Fraud CLASS Lookout Associated]

Log Type: Attach File **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 06-MAR-2017
Name: Denial Letter
Description: Attached.

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 06-MAR-2017
Name: Citizenship Service Closed
Description: Citizenship Service was closed on 1/24/2017 8:16:10 AM by FAZIL Citizenship Service was closed by FAZIL on 3/6/2017 3:26:26 PM

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 06-MAR-2017
Name: Case Closed
Description: Closed Case: TRT201702440978600 - Citizenship Service was closed by FAZIL on 3/6/2017 3:26:26 PM

Log Type: Case Note **Source:** System **Assigned To:** Processing, Automated **Date Completed:** 09-MAR-2017
Name: ECAS Status
Description: ECAS Status changed from: [Fraud CLASS Lookout Associated] to [No Fraud]

Log Type: Status Update **Source:** System **Assigned To:** Ramsay, Margaret **Date Completed:** 21-MAR-2017

Name: Refer/View ECAS button selected

Description: The Refer/View ECAS button was selected to refer the subject/service to ECAS by RAMSAY, MARGARET
Service ID: TRT201702440978604 Subsrv ID: TRT201702440978607

Log Type: Status Update **Source:** System **Assigned To:** Reffett, Larilyn **Date Completed:** 05-FEB-2018

Name: Refer/View ECAS button selected

Description: The Refer/View ECAS button was selected to refer the subject/service to ECAS by REFFETT, LARILYN
Service ID: TRT201702440978604 Subsrv ID: TRT201702440978607

U.S. Department of State

APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD OF A CITIZEN OF THE UNITED STATES OF AMERICA

OMB NO. 1405-0011 EXPIRES: 03/31/2019 Estimated Burden: 20 minutes

Registration Number

DENIAL

A. THIS SECTION TO BE COMPLETED BY THE CHILD'S PARENT(S) OR GUARDIAN(S) OR THE CHILD. (USE SECTION D CONTINUATION SHEET)

INFORMATION ABOUT THE CHILD

1. Name of Child in Full D [redacted] E [redacted] J [redacted] (Last/Surname) (First) (Middle)

2. Sex [X] M [] F 3. Date of Birth 09/16/2016 4. Place of Birth MISSISSAUGA, CANADA (month) (day) (year) (City) (Country)

NOTE: (If the U.S. citizen parent transmitting citizenship to the child is not present, he or she may complete State Department Form DS 5507 Affidavit of Parentage Physical Presence and Support and submit it separately. The parent completing this application should provide as much information on the parent completing the Form DS 5507 as he or she has.)

INFORMATION ON MOTHER/FATHER/PARENT

INFORMATION ON MOTHER/FATHER/PARENT

5. Full Name DVASH-BANKS ANDREW MASON (Last/Surname) (First) (Middle)

11. Full Name DVASH-BANKS ELAD AUSTIN (Last/Surname) (First) (Middle)

6. All Previous Legal Names Used BANKS ANDREW MASON (Last/Surname) (First) (Middle)

12. All Previous Legal Names Used DVASH ELAD (Last/Surname) (First) (Middle)

7. Sex [X] M [] F 8. Date of Birth [redacted] / 1981 (month) (day) (year)

13. Sex [X] M [] F 14. Date of Birth [redacted] / 1985 (month) (day) (year)

9. Place of Birth Santa Monica CA USA (City) (State/Province) (Country)

15. Place of Birth Ramat Gan ISRAEL (City) (State/Province) (Country)

10. Current Physical Address (Do not list P.O. Box) (A.P.O. Address Permitted) [redacted] AVE. # [redacted] TORONTO, ON, CANADA M6B4C6 (Address Line 1) (City, State/Province, Country, Postal Code) 647-706-9556 (Phone Number(s)) [redacted] @gmail.com (Email Address)

16. Current Physical Address (Do not list P.O. Box) (A.P.O. Address Permitted) [redacted] AVE. # [redacted] TORONTO, ON, CANADA M6B4C6 (Address Line 1) (City, State/Province, Country, Postal Code) 647-289-4389 (Phone Number(s)) [redacted] @gmail.com (Email Address)

Use this address if Consular Report of Birth will be mailed? [X] Yes [] No

Use this address if Consular Report of Birth will be mailed? [X] Yes [] No

17. Mailing Address (if different from Current Physical Address) (Do not list a P.O. Box.) (You may list an A.P.O. address.) (Address Line 1) (City, State/Province, Country and Postal Code)

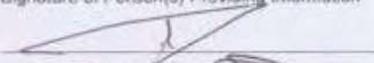
<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>19. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>																																																																																																																																																												
<p>MARITAL STATUS OF THE PARENTS</p>																																																																																																																																																													
<p>20. Were you married to the child's other biological parent when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>																																																																																																																																																													
<p>21. Date and Place of Marriage to the child's other biological parent and current status</p> <p><u>08/19/2010</u> <u>Toronto</u> <u>ON</u> <u>Canada</u> (month) (day) (year) (City) (State/Province) (Country)</p> <p><input checked="" type="checkbox"/> Still Married <input type="checkbox"/> Divorced <u> </u>/<u> </u>/<u> </u> <input type="checkbox"/> Death <u> </u>/<u> </u>/<u> </u> (month) (day) (year) (month) (day) (year)</p>																																																																																																																																																													
<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>22. Please list any other marriages. (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)</p> <p><u>None</u></p>	<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>23. Please list any other marriages (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)</p> <p><u>None</u></p>																																																																																																																																																												
<p>24. 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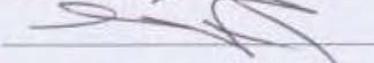
(Continued)

THIS SECTION TO BE COMPLETED BEFORE/BY CONSULAR OFFICER, NOTARY PUBLIC, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS

29. Affirmation: I SOLEMNLY SWEAR (OR AFFIRM) THAT THE STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Name of Person(s) Providing Information	Relationship to the Child (Parent, Legal Guardian, Other (Specify))	Signature of Person(s) Providing Information
---	--	--

ELAD DVASH-BANKS	Father	
------------------	--------	---

Andrew Dvash-Banks	Father	
--------------------	--------	---

Type Name and Title of Official TERRI N. DAY VICE CONSUL OF THE UNITED STATES OF AMERICA	Signature of Official 	City TORONTO	Date JAN 24 2017 (month) (day) (year)
--	--	------------------------	--

Subscribed to: (SEAL)

30. Approval of Consular Report of Birth

_____ (Printed Name of Consular Officer)	_____ (Signature of Consular Officer)				
_____ (Approving Post)	<table border="0"> <tr> <td>__/__/__</td> <td>(month) (day) (year)</td> </tr> <tr> <td>(Date of Approval)</td> <td></td> </tr> </table>	__/__/__	(month) (day) (year)	(Date of Approval)	
__/__/__	(month) (day) (year)				
(Date of Approval)					
	<table border="0"> <tr> <td>DENIAL</td> <td>(Registration Number)</td> </tr> </table>	DENIAL	(Registration Number)		
DENIAL	(Registration Number)				

C. FOR OFFICIAL USE

31. Documents Presented - Please mark accordingly and provide date of document. (If more space is required, list on separate page)

<input checked="" type="checkbox"/>	Child's Birth Certificate	11 / 09 / 2016	Mississauga 099	Ontario	Canada
		(month)(day)(year)	(City)	(Province)	(Country)
<input checked="" type="checkbox"/>	Marriage Certificate	10 / 05 / 2010		Toronto	
		(month)(day)(year) (File Date)	(month)(day)(year) (Date of Issuance)	(City)	(State)
				Ontario	Canada
				(Province)	(Country)
<input type="checkbox"/>	Divorce Decree(s)	(a) / /	/ /		
		(month)(day)(year) (File Date)	(month)(day)(year) (Date of Issuance)	(City)	(State)
				(Province)	(Country)
		(b) / /	/ /		
		(month)(day)(year) (File Date)	(month)(day)(year) (Date of Issuance)	(City)	(State)
				(Province)	(Country)
		(c) / /	/ /		
		(month)(day)(year) (File Date)	(month)(day)(year) (Date of Issuance)	(City)	(State)
				(Province)	(Country)
<input type="checkbox"/>	Death Certificate(s)	(a) / /	/ /		
		(month)(day)(year)	(month)(day)(year)	(City)	(State)
		(b) / /	/ /		
		(month)(day)(year)	(month)(day)(year)	(City)	(State)
<input checked="" type="checkbox"/>	Mother/Father/Parent's Passport		04 / 21 / 2010	Israeli citizen	
		(Passport Number)	(month)(day)(year) (Date of Issuance)	(Nationality)	
<input checked="" type="checkbox"/>	Mother/Father/Parent's Passport		03 / 23 / 2010	US Citizen	
		(Passport Number)	(month)(day)(year) (Date of Issuance)	(Nationality)	
<input type="checkbox"/>	Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate)				/ / /
		(Name of the Citizenship Document)	(Document Number)	(month)(day)(year) (Date of Issuance)	
<input type="checkbox"/>	Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate)				/ / /
		(Name of the Citizenship Document)	(Document Number)	(month)(day)(year) (Date of Issuance)	
<input type="checkbox"/>	Other Identity Document of Mother/Father/Parent (e.g. Driver's License)				/ / /
		(Name of the Identity Document)	(Document Number)	(month)(day)(year) (Date of Issuance)	
<input type="checkbox"/>	Other Identity Document of Mother/Father/Parent (e.g. Driver's License)				/ / /
		(Name of the Identity Document)	(Document Number)	(month)(day)(year) (Date of Issuance)	
<input checked="" type="checkbox"/>	Other (Legal Guardianship; Power of Attorney, etc.)	custody documents	FS-16-21123		/ / /
		(Name of the Document)	(Document Number)	(month)(day)(year) (Date of Issuance)	

00076270-1762

D. CONTINUATION SHEET (USE THIS SPACE FOR ADDITIONAL INFORMATION)

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Office of the Registrar General
Bureau du registraire général

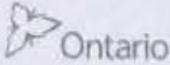
Certified A True
Photostatic
Print of a Record
Photocopie certifiée
conforme d'un document

on file at the
Office of the Registrar General
Ontario, Canada
déposée aux dossiers du
Bureau du registraire général
(Ontario) Canada

Registration Number:
Numéro d'enregistrement:
Certificate number:
Numéro de certificat
Date issued:
Date de délivrance
File number:
Numéro de dossier

P3319402

00702201884
PAGE 1
Nov 09 2016
01599220-01



ServiceOntario

Office of the Registrar General
189 Red River Road
PO Box 4000
Thunder Bay ON P7B 5L5

Statement of Live Birth
Form 2
Vital Statistics Act

This is a permanent legal record.
Please read all instructions before completing this form.
Type or print clearly in blue or black ink and complete all items.

Section A - Child's Information (see instruction #1)

Last Name D [redacted] B [redacted]	Sex of Child Male
First Name J [redacted]	Middle Name(s) [redacted]
Date of Birth (yyyy/mm/dd) 2016/09/16	Name of hospital (if not hospital give exact location where birth occurred) Credit Valley Hospital
Place of Birth (City/Town/Village/Township) Mississauga	(Regional municipality, county or other) PEEL

Section B - Father's Information - (see instruction #2)

Current Legal Last Name Dvash-Banks	Legal Last Name at Birth Banks	First and Middle Name(s) Andrew Mason	Any Other Legal Last Name(s)
Place of Birth (City/Town/Village/Township) Santa Monica	Place of Birth (Province/Country) California, USA	Date of Birth (yyyy/mm/dd) 1981 [redacted]	Age 35
Marital Status of Parent in Section B <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			

Section C - Father's Information - (see instruction #3)

Current Legal Last Name Dvash-Banks	Legal Last Name at Birth Dvash	First and Middle Name(s) Elad	Any Other Legal Last Name(s)
Place of Birth (City/Town/Village/Township) Ramat Gan	Place of Birth (Province/Country) Israel	Date of Birth (yyyy/mm/dd) 1985 [redacted]	Age 31
Marital Status of Parent in Section B <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			

Section D - Birth Information

Residence of Parent in Section B (Complete street address (City, town, village, township) if rural give First (Drive or Road) Route address) [redacted] Avenue, Toronto	Postal Code M6B4C6					
Mailing Address of Parent in Section B (if different from above - Complete street address if rural give Post Office or Rural Route address)						
Duration of pregnancy (in weeks) 32	Total number of children ever born to this parent including this birth 2	Of this Total, number born live 2	Of this Total, number stillborn 0	Weight of child at birth (kg) 3.50	Kind of Birth <input type="checkbox"/> Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/> Other	Birthdays birth, state whether this child was born 1st, 2nd, 3rd, etc. 2nd
Name of Attendant at Birth Dr. Myckan, Kerry	<input checked="" type="checkbox"/> Physician <input type="checkbox"/> Midwife <input type="checkbox"/> Other, specify					

Section E - Certification of Informant (Please read instruction #1 before signing)

If you are showing a last name that is not one of the parent's last names (or combination of those names), but is in accordance with the child's culture, ethnic, or religious heritage, check one of the following boxes.

Cultural Heritage Religious Heritage Ethnic Heritage

I (We) certify the statements made on this form are true and correct. I am (We are) aware that it is an offence to willfully make a false statement on this form.

I (We) have agreed that the child's last name will be as shown in section A.

Yes No

Signature of Father X	Date (yyyy/mm/dd) 2016/10/01
Signature of Mother X	Date (yyyy/mm/dd) 2016/10/28
Signature of Informant (See instruction #1) X	Date (yyyy/mm/dd)

Section F - Office Use Only

I approve this statement and register the birth by signing this statement.

Signature of Manager
X

Office Use Only

UPDATED GEO CODE

Date (yyyy/mm/dd)
2016/11/03

113226 (2016/05) © Queen's Printer for Ontario, 2016

A True Copy of the Signed Original.

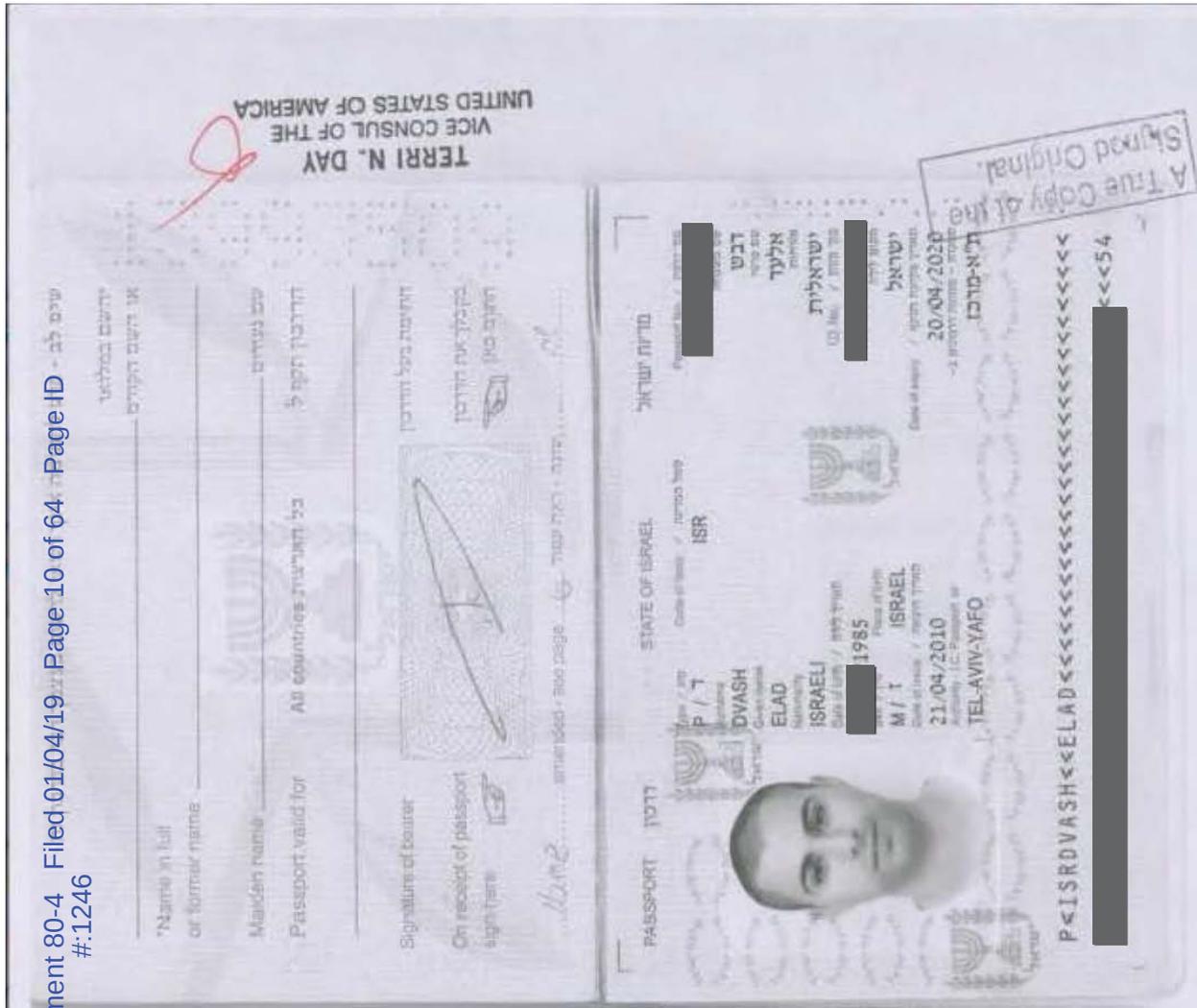
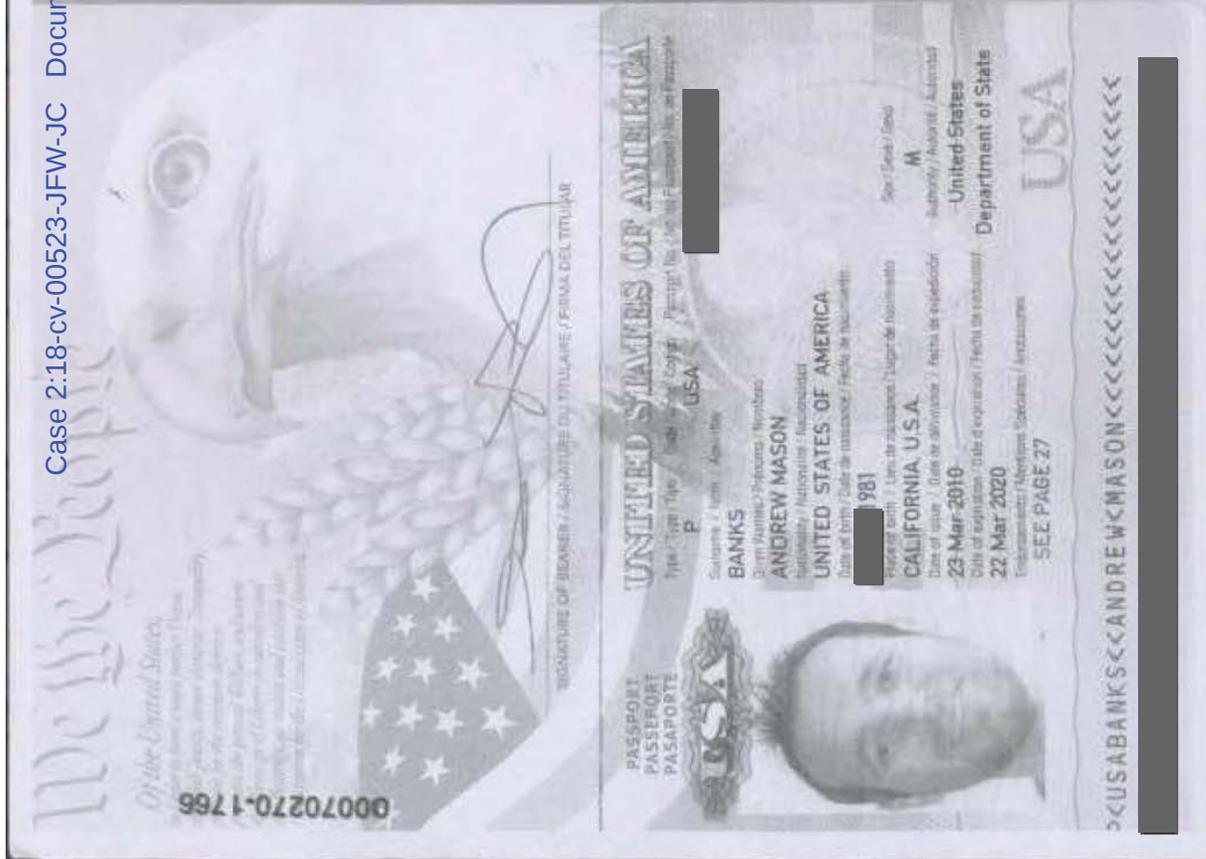
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Alexandra Schmidt

Alexandra Schmidt
Deputy Registrar General
Registraire générale adjointe

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Case 2:18-cv-00523-JFW-JC Document 80-4 Filed 01/04/19 Page 10 of 64 Page ID #:1246





Certified A True Photostatic Print of a Record

on file at the Office of the Registrar General Ontario, Canada

Registration Number: Numéro d'enregistrement :

00070270-12070 029232

PAGE 1 of 1

Certificate number: Numéro du certificat : P 1338811

Date issued: Date de délivrance :

Oct 05 2010

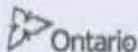
File number: Numéro de dossier :

01076584-01-3

Office of the Registrar General Bureau du registraire général

Photocopie certifiée conforme d'un document

se trouvant dans les dossiers du Bureau du registraire général (Ontario) Canada



Ministry of Government Services Office of the Registrar General

Marriage Licence

Licence number: E 0689966

This form is a permanent legal document and can only be used to register a marriage that takes place in Ontario. Please PRINT clearly in blue or black ink.

Part 1: To be completed by the office issuing this licence. 1. Date this licence was issued (only): 19 Aug 2010. 2. Municipality where licence was issued: City of Toronto. 3. Name of licence issuer or deputy issuer: Catherine Mastros. 4. Signature of issuer or deputy issuer. 5. Proposed place of marriage (township): Toronto. 6. Proposed date of marriage (only) must be within 3 months of date of issue: 19 Aug 2010. Part 2: Marriage Applicant (Form 4). Information about the applicant. 7. Last legal name before this marriage: Banks. 24. Last legal name before this marriage: Drash. 8. First and middle names: Andrew Mason. 25. First and middle names: Elad. 9. Marital status: [X] never married [] widowed [] divorced. 26. Marital status: [X] never married [] widowed [] divorced. 10. If divorced in Canada, please provide the court file number: City divorce granted in: [] Ontario. 27. Court file number: City divorce granted in: [] Ontario. 11. Religious denomination: Jewish. 28. Age: 29. Date of birth (only): [redacted] 1981. 29. Religious denomination: Jewish. 30. Age: 25. Date of birth (only): [redacted] 1985. 12. Province where applicant was born (if outside Canada, state the country): USA. 31. Province where joint applicant was born (if outside Canada, state the country): Israel. 13. Father's name (last, first): Banks, James Howard. 32. Father's name (last, first): Drash, Mordechai. 14. Mother's name (last name before marriage, first name): Mason, Ann. 33. Mother's name (last name before marriage, first name): Abadi, Yoni. 15. Province where the applicant's father was born (if outside Canada, state the country): Ontario. 34. Province where the joint applicant's father was born (if outside Canada, state the country): Israel. 16. Province where the applicant's mother was born (if outside Canada, state the country): Ontario. 35. Province where the joint applicant's mother was born (if outside Canada, state the country): Israel. 36. Name in full of applicant: Andrew Mason Banks. 37. Name in full of joint applicant: Elad Drash. 38. I solemnly swear that I believe there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to her or hinder the solemnization of the marriage, and that the contents set forth herein are to the best of my knowledge, information and belief, true in every particular. Solemnized before me at: City of Toronto in the Township of [redacted] of Ontario this 19th day of August 2010. 39. Present address of applicant (street number and name): [redacted] Avenue Toronto ON. 40. City or town: Toronto. 41. Province: ON. 42. Postal code: M4S 2B4. 43. Telephone number: (310-400-3608. 44. Present address of joint applicant (street number and name): [redacted] Street Toronto ON. 45. City or town: Givatayim, Israel. 46. Province: Givatayim, Israel. 47. Postal code: 53482. 48. Telephone number: (723-973-2339. Part 3: Statement of witnesses to be completed following the marriage ceremony (Form 7). 49. Place of marriage (name the city or town and the county, regional municipality or district): TORONTO DISTRICT. 50. Date of marriage (only): 19 AUGUST 2010. 51. Signature of applicant: [redacted]. 52. Signature of joint applicant: [redacted]. 53. Signature of witness: [redacted]. 54. Signature of witness: [redacted]. 55. By signing below, I certify that the marriage of the parties named in this marriage licence was performed on the date and at the place indicated above. 56. Signature of person who performed marriage: [redacted]. 57. Date (only): 19 AUGUST 2010. 58. Name of person who performed marriage (last, first, middle): BONKALO, ANNEMARIE REINA. 59. Your status: [] Clergy [X] Judge [] Justice of the peace [] Other. 60. Address of person who performed marriage: ONE QUEEN ST. EAST STE 2300, BOX 91, TORONTO ON. 61. Telephone number: 416 349-6824. 62. Your registration number: J 2492. 63. Your denomination (merg only): [redacted].

A True Copy of the Signed Original.

For use of the Registrar General only: I am satisfied to the correctness of the statements and register this marriage. Signature: A. J. [redacted] Date (only): AUG 25 2010

Personal information contained in this form is collected under the authority of the Access to Information Act, R.S.C. 1985, c.302 and will be used to determine whether to issue the marriage licence, to register the marriage, provide certified copies, extracts, certificates, search notices, photographs and for statistical, research, medical, law enforcement, adoption and education purposes. Questions about this information should be directed to the Deputy Registrar General at PO Box 6800, 150 Sand Street, Toronto, Ontario, M8Z 6L6. Telephone: 1-800-461-0226 or 416-325-8006.

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Judith M Hartman

Judith M. Hartman
Deputy Registrar General
Registraire générale adjointe
de l'état civil

11105(10/00)

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Superior Court of Justice

(Name of Court)

at 393 University Avenue, Toronto, Ontario M5G 1E6

(Court office address)

Court File Number
FS-16-21123

Form 25: Order (General)

Temporary
 Final

Applicant(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).

Elad Dvash-Banks and
Andrew Dvash-Banks
[REDACTED] Avenue, Unit [REDACTED]
Toronto, Ontario
M6B 4C6

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Michelle Flowerday
Flowerday Law | Fertility & Family
158 McRae Drive
Toronto, Ontario M4G 1S7
T: 416.428.5511
F: 647.341.5111
E: michelle@flowerdaylaw.ca

The Honourable

Harrison Young J.
Judge (Print or type name)

September 28, 2016

Date of order

Respondent(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).

Amanda Marie Anne Adams
[REDACTED] Avenue, Unit [REDACTED]
Mississauga, Ontario
L5A 2K7

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Deputy Registrar General for the
Province of Ontario
Ministry of the Attorney General
Legal Services Branch
77 Wellesley Street West
Ferguson Block, 6th Floor
Toronto, Ontario M7A 1N3

The court read an application/motion made by (name of person or persons)

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks.

The following persons were in court (names of parties and lawyers in court)

Michelle Flowerday, Counsel for the Applicants

The court received evidence and heard submissions on behalf of (name or names)

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

Under the *Children's Law Reform Act*, Section 4(1), (2) and (3), and the *Courts of Justice Act*, Section 97,

1. It is declared that the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, are the parents of the child, E [REDACTED] J [REDACTED] D [REDACTED] B [REDACTED] born September 16, 2016 ("the child"), and that the Applicants are recognized for all purposes in law to be the parents of the child.
2. It is declared that the Respondent, Amanda Marie Anne Adams, is not the mother of the child.

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Under the *Vital Statistics Act*,

- 3. The Deputy Registrar General for the Province of Ontario is directed to register the birth of the child so as to show the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, as the parents of the child.

~~Under the *Consolidated Provincial Practice Direction of the Ontario Superior Court of Justice*, Section F, Paragraphs 106 and 107,~~

- ~~4. Service and filing of a notice of motion or application with respect to the relief granted under paragraphs 6, 7 and 8 of this Order are dispensed with.~~
- ~~5. Notice to the media with respect to the relief granted under paragraphs 6, 7 and 8 of this Order is dispensed with.~~

Under the *Courts of Justice Act*, Section 137(2),

- 6. The Registrar of the Ontario Superior Court of Justice is directed to seal and treat as confidential all documents filed in this proceeding.
- 7. No person shall publish or make public information that has the effect of identifying either Applicant or the other persons identified in the materials filed in this proceeding.
- 8. The name of this proceeding shall be amended to show only the initials of the parties and the Registrar of the Ontario Superior Court of Justice is directed to amend the records accordingly.
- 9. The Deputy Registrar General for the Province of Ontario is directed to seal and treat as confidential the Notice of Live Birth and all other records in its possession in connection with this case, including this Order, save and except for Form 2 (Statement of Live Birth) and the Birth Certificate.

Put a line through any blank space left on this page.

Sept 28, 2016
Date of signature

Haidee Yung
Signature of judge or clerk of the court


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SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
ENTERED / ENTRÉ
SEP 28 2016
per/par Justin DiGirolamo
LOCAL REGISTRAR / GREFFIER LOCAL

CONFIDENTIAL AGREEMENT

THIS IS AN AGREEMENT made on this 21ST day of December, 2015

AMONG:

ANDREW DVASH-BANKS

(herein called "Andrew")

-and-

ELAD DVASH-BANKS

(herein called "Elad")

-and-

AMANDA MARIE ANNE ADAMS

(herein called the "Gestational Carrier")

PART I
BACKGROUND

1.1 Andrew and Elad (collectively called the "Intended Parents") are a same-sex married couple who require assisted reproductive technology to have a child.

1.2 The Intended Parents intend to conceive a Child by Transferring Ova supplied by a third party anonymous donor fertilized by Sperm supplied by Andrew and/or Elad to the Gestational Carrier.

1.3 The Gestational Carrier intends to act as the gestational carrier for the Child and to carry the Child until it is born. The Gestational Carrier has offered to carry the Child on an altruistic basis, and only those out of pocket expenses related to the surrogacy shall be reimbursed to her. The Gestational Carrier has ONE (1) child of her own and is not currently in a relationship of permanence.

1.4 Ova retrieved from the third party anonymous donor and Sperm supplied by Andrew and/or Elad will be incubated externally. Fertilization may occur during this incubation period when a Sperm penetrates the cell wall of an ovum and their nuclei join together creating a single cell fertilized ovum which develops into an embryo.

1.5 Unless in her sole discretion the Gestational Carrier agrees at the time to the insertion of a greater number of Embryos, a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier during each in vitro fertilization cycle.

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Signed Original.

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P.C.

1.6 The Intended Parents and the Gestational Carrier know that more than one child may result from this procedure and, if more than one child is born, "Child" in this Agreement, will mean "Children".

1.7 The Gestational Carrier believes that it would be in the best interests of the Child for the Child to be in the custody of the Intended Parents immediately upon Birth, and the Gestational Carrier hereby expresses her intention to waive all parental rights which she may have to any Child.

1.8 The Intended Parents will be recognized as the Child's parents immediately upon the Child's Birth.

1.9 The Intended Parents intend to assume full care of, and all parental responsibility for the Child, and the Gestational Carrier intends to allow the Intended Parents to assume this care and responsibility without reserving any care or responsibility to herself.

1.10 Immediately upon the Birth of the Child, the Gestational Carrier will give the Child into the permanent custody of the Intended Parents and as soon as reasonably possible thereafter the Intended Parents will make an application in the Ontario Superior Court of Justice seeking a declaration of parentage on their part, and a declaration of non-parentage on the part of the Gestational Carrier.

1.11 All Parties to this Agreement wish to maintain confidentiality between themselves, one to another, and between themselves and the public.

1.12 It is expressly understood that this Agreement is not intended in any way to represent a contract regarding payment in exchange for a child, or for the relinquishment of a child, and that the Parties acknowledge that no consideration has been offered to or accepted by the Gestational Carrier which would induce her to act as a surrogate.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and promises contained in this Agreement and with the intention of being fully bound by its terms, the Parties do hereby covenant and agree as follows.

**PART II
DEFINITIONS**

Where used in this, unless the context otherwise requires, the following terms will have the following meanings:

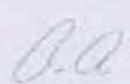
- (a) "Attending Physician" means the physician or licensed midwife attending to the maternal care of the Gestational Carrier and attending at the Birth of the Child, as may be agreed to in writing by the Parties;
- (b) "Birth" means "birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario, and includes a "Full Term Still-Birth" unless otherwise stated;

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- (c) **"Child"** means the child conceived by I.V.F. (defined below) as described in this Agreement and if there are multiple births means the children conceived by the procedure contemplated in this Agreement;
- (d) **"Clinic"** means The Toronto Institute for Reproductive Medicine, 56 Aberfoyle Crescent, Unit 300, Toronto, Ontario M8X 2W4;
- (e) **"Early Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception before the beginning of the twelfth (12th) week of gestation;
- (f) **"Embryo" or "Fertilized Ova" or "Fertilized Ovum"** means the product of I.V.F. (hereinafter defined). For clarification, Fertilized Ova may result from Sperm supplied by Andrew and Elad with the potential of the Gestational Carrier becoming Pregnant with Fetuses that are genetically connected to each of Andrew and Elad;
- (g) **"Fetus"** means the Embryo from the moment of the completion of the Transfer until the moment of Birth;
- (h) **"Full Term Still-Birth"** means a still-birth which occurs during or after the 36th week of gestation;
- (i) **"Guardians"** means Tova and Mordehay Dvash;
- (j) **"Hospital"** means Trillium Health Partners;
- (k) **"Intended Parents"** means ANDREW DVASH-BANKS and ELAD DVASH-BANKS;
- (l) **"Gestational Carrier"** means AMANDA MARIE ANNE ADAMS;
- (m) **"I.V.F."** means in vitro fertilization and embryo transfer which is a medical procedure whereby ova are inseminated with sperm and allowed to incubate so that fertilization occurs by a sperm penetrating the cell wall of an ovum and their nuclei joining together to create a single cell fertilized ovum. Several fertilized ova usually result from a single in vitro fertilization and after the single cell fertilized ova have started to divide to form an embryo, some will be Transferred into the uterus of the Gestational Carrier and some may be frozen for Transfer at a later date. The Embryo or Embryos that are Transferred pursuant to this may be from an Embryo or Embryos that have been incubated previously and frozen;
- (n) **"Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception between the twelfth (12th) and twentieth (20th) week of gestation. Miscarriage in this Agreement does not include an Early Miscarriage;

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- (o) "Ova" means the sex cells of a third party donor;
- (p) "Parties" means the parties to this Agreement, being ANDREW DVASH-BANKS, ELAD DVASH-BANKS, and AMANDA MARIE ANNE ADAMS, and "Party" means any one of the Parties individually;
- (q) "Pregnancy" means the medical condition that occurs when the Fertilized Ovum or Embryo, resulting from the third party anonymous Ova and the Sperm of Andrew and/or Elad, has been transferred to the Gestational Carrier and successfully implants, resulting in a pregnancy being diagnosed based on blood test results and does not include a chemical pregnancy;
- (r) "Requested Termination" means: (i) a termination of the Pregnancy with the consent of or at the request of the Intended Parents; or (ii) a termination of the Pregnancy performed in accordance with the recommendation of the Transfer Physician and/or the Attending Physician because the Pregnancy poses a serious risk to the health or life of the Gestational Carrier;
- (s) "Special Expense Amount" means the amount reimbursable under the section called SPECIAL EXPENSE AMOUNT, below;
- (t) "Sperm" means the sex cells of Andrew and/or Elad;
- (u) "Still-Birth" means "still-birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario and does not include a Full Term Still-Birth unless otherwise stated;
- (v) "Term of this Agreement" means, subject to Section 25.1, the period commencing on the date of execution of this Agreement by the last Party to do so, and ending on the day which is the earlier of: (i) the date of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child;
- (w) "Transfer" and "Transferred" mean the manual deposit of one or more Fertilized Ovum or Embryo into the uterus of the Gestational Carrier; and
- (x) "Transfer Physician" means Dr. Alfonso Del Valle or, in the event that Dr. Del Valle is not available, another physician in the Clinic, as may be agreed to by the Parties.

**PART III
PSYCHOLOGICAL ASSESSMENTS**

3.1 The Gestational Carrier acknowledges that prior to the execution of this Agreement, she was assessed by a counsellor at the Clinic (the "Counsellor"), who determined that she is fit to undertake the obligation to carry the Child during a Pregnancy, and that she is willing to relinquish the Child on Birth to the Intended Parents and is competent to enter into this

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Agreement. The Gestational Carrier further acknowledges that for the purposes of this Agreement only, she has made an exception to the privilege of confidentiality to allow the Counsellor to advise the Intended Parents whether or not she is psychologically fit to fulfill the obligations she has assumed under this Agreement, and has consented, and does hereby confirm the consent to the release to the Intended Parents of such information only.

3.2 The Intended Parents acknowledge receipt of the advice of the Counsellor about the assessment of the Gestational Carrier, and acknowledge that they are satisfied with the assessment and that they accept the findings and conclusions.

**PART IV
ACKNOWLEDGEMENTS AND UNDERTAKINGS**

4.1 Each Party acknowledges that the recitals are accurate, binding and form part of this Agreement.

4.2 Each Party acknowledges that he or she is fully informed about the I.V.F., egg retrieval and Transfer procedure and each understands the medical and legal issues involved.

4.3 In particular, the Gestational Carrier acknowledges that she has been informed by a physician specializing in fertility procedures of the risks to the Gestational Carrier involved in preparing her to receive the Transfer, the Transfer procedure itself, the Pregnancy and the Birth which may result, including the possibility of multiple births (or, alternatively, any termination or reduction of the Pregnancy) and further acknowledges that she understands these risks and releases the Intended Parents with respect to all such risks including, without limitation, the health of the Ova and any Embryos created with the Ova, which are transferred to the Gestational Carrier.

4.4 During the Term of this Agreement, each of the Parties agrees to inform each other forthwith, in writing, of any material change in their circumstances which may reasonably affect their performance of this Agreement in accordance with its terms. These changes include, but are not limited to, change in marital status, change of mailing address or email address, illness or death of a Party, loss of employment, changes in insurance coverage and exposure to communicable illness or any risk to health.

**PART V
MEDICAL EXAMINATIONS**

5.1 Within a reasonable period prior to undertaking any medical procedure contemplated by this Agreement, the Gestational Carrier and the Intended Parents will undergo a thorough consultation and evaluation by the Transfer Physician, to determine whether the Gestational Carrier is physically healthy and capable of conceiving and carrying a Child to Birth and to determine whether the Intended Parents are fit to proceed with the procedures contemplated by this Agreement. The evaluation of all Parties will include testing for transmittable diseases, including, but not limited to, Hepatitis B and C and HIV in order to

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protect the health of the Gestational Carrier and the Child.

5.2 The Gestational Carrier warrants and represents that she has disclosed her full medical history to the Transfer Physician and has advised the Transfer Physician of any medications which she is currently taking.

5.3 The Gestational Carrier and the Intended Parents will undergo any medical testing that the Transfer Physician and/or the Attending Physician deem necessary, within the time frame specified by the referring physician, acting reasonably, during the Term of this Agreement, at the expense of the Intended Parents.

5.4 Each Party, for the purposes of this Agreement only, has made or hereby makes an exception to the privilege of confidentiality to allow information to be given to the other Parties and their solicitors, and has consented or hereby consents, to the release of the reports, test results, and all relevant information obtained in the examination or examinations and tests to each of the other Parties, or any one or more of them.

**PART VI
COUNSELLING PROGRAM AND MEDIATION**

6.1 The Gestational Carrier acknowledges that she may choose to participate in a counselling program, or, she may choose to meet with a counsellor as required at any time during the Term of the Agreement. Any costs of this program will be included in the Special Expense Amount. Each Party for the purposes of this Agreement has made or hereby makes an exception to the privilege of confidentiality to allow information derived in counselling sessions to be given to the other Parties and their solicitors, and has consented or hereby consents to the release of relevant information pertaining to the wellbeing of the Pregnancy and obtained in the counselling sessions.

**PART VII
SEXUAL ABSTINENCE**

7.1 During the time period set out in this Agreement, the Gestational Carrier will not engage in any sexual activity whereby semen could cause her to conceive a child, or risk the health of the unborn Child. To this end, she will abstain from sexual intercourse completely for a continuous period commencing TWO (2) weeks before each Transfer and ending on the earlier of: (i) confirmation by the Transfer Physician that a Pregnancy has not been initiated; or (ii) the date on which the first ultrasound examination after each Transfer has been performed, unless the Transfer Physician recommends a longer period of abstinence.

7.2 The Intended Parents acknowledge that the Gestational Carrier is single. The Gestational Carrier agrees that she will provide notice to the Intended Parents if that status changes, and further agrees as follows:

- (a) Prior to commencing a sexual relationship with a new partner, the Gestational Carrier covenants and agrees that she will ensure that such

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individual undergoes testing for transmittable diseases, and further agrees not to engage in a sexual relationship with such new partner until the testing confirms that he does not have any transmittable diseases;

- (b) At all times during the Term of this Agreement, the Gestational Carrier shall engage only in safe sexual practices in order to protect herself and the Fetus from infection by the HIV virus or any venereal or other transmittable disease and agrees not to engage in sexual intercourse unless her partner uses a condom; and
- (c) If, during the Term of this Agreement, the Gestational Carrier becomes involved in a common law relationship, or becomes married, the Gestational Carrier agrees that she will ensure that her spouse signs an amending agreement pursuant to which he acknowledges that: (i) he is not the Child's father; (ii) he will release the Intended Parents from any claims he may have; (iii) he will co-operate with respect to any post-birth process confirming the parentage of the Intended Parents; and (iv) he will abide by the provisions of this Agreement including the requirement to refrain from sexual activity with a third party outside of his monogamous relationship with the Gestational Carrier.

7.3 At all times during the Term of this Agreement, the Intended Parents will not engage in any sexual activity with a third party outside of their marital relationship to protect themselves, the Gestational Carrier and the Child from infection by the HIV virus or any venereal or other transmittable disease.

**PART VIII
TRANSFERS**

8.1 The Gestational Carrier will hold herself available to receive Transfers under this Agreement to be scheduled at mutually convenient times for up to TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so, and will not perform any act or any thing which would interfere with the proper performance of her obligations under this Agreement.

8.2 The Gestational Carrier will accept a Transfer implanted by the Transfer Physician at the Clinic on as many as FOUR (4) separate occasions, including Transfers of frozen Embryos, if any, at times recommended by the Transfer Physician and approved by the Parties in order to achieve a Pregnancy subject to all Transfers being completed within TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so and thereafter the Gestational Carrier will have no obligation to accept any Transfer.

8.3 Unless the Parties mutually agree to a greater number of Embryos, on each Transfer a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier.

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8.4 The Gestational Carrier will follow all medical instructions prescribed by the Transfer Physician prior to a Pregnancy and during the first trimester of a Pregnancy. The Gestational Carrier will continue to follow the protocol prescribed by the Transfer Physician, which will include stimulating the Gestational Carrier so that her uterine lining is prepared for the Transfer of Embryos. The Gestational Carrier will undergo all necessary testing (including blood testing and ultrasound testing) to determine the readiness of the Gestational Carrier's uterus for the Transfer of Embryos.

8.5 If a Pregnancy does not result after FOUR (4) Transfers (including Transfers of frozen Embryos) then this Agreement may be terminated by any Party giving notice in the manner prescribed by the section called NOTICE, below, to all other Parties at any time before a Pregnancy has occurred and, upon delivery of such notice, this Agreement will terminate and the Intended Parents and the Gestational Carrier will be released from all obligations under it, except the obligation to reimburse the Gestational Carrier's allowable expenses pursuant to the section called SPECIAL EXPENSES, below, which have been incurred to the time of the termination. If no such notice of termination is given, this Agreement will remain in full force and effect until a notice of termination is given.

8.6 Notwithstanding anything contained in this Agreement, the Intended Parents or the Gestational Carrier may terminate this Agreement at any time after the first Transfer upon giving notice to the other Party, if a Pregnancy has not resulted from the Transfer. Upon such a termination the Intended Parents and the Gestational Carrier will be released from all obligations under this Agreement, except for the obligation to reimburse the Gestational Carrier for any expense incurred to the time of termination and payable under the section called SPECIAL EXPENSES, below.

8.7 If a Transfer results in a Pregnancy, the Gestational Carrier will use her best efforts to carry the Fetus to term. The Gestational Carrier will give Birth to the Child at the Hospital or such other hospital as may be agreed to in writing by the Parties.

8.8 The Gestational Carrier agrees to provide the Intended Parents with a weekly update with respect to the Pregnancy, and such update may be by email, Skype or telephone as agreed to by the Parties.

8.9 The Gestational Carrier agrees that either or both of the Intended Parents may accompany her to any obstetrical appointment, or pre-natal test or procedure. The Gestational Carrier further consents to the presence of the Intended Parents in the delivery room at the time of the Birth of the Child. In the event that the Hospital limits the number of visitors that may be present at the Birth of the Child, the Intended Parents acknowledge and agree that the Gestational Carrier shall be entitled to select one such visitor. The Gestational Carrier agrees to contact the Intended Parents at the first indication that labour has begun.

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**PART IX
PRENATAL OBLIGATIONS**

- 9.1 The Gestational Carrier warrants and represents that:
- (a) she has never abused alcohol or drugs;
 - (b) she has never taken any drugs, whether legal or illegal, which may impact upon the success of a Pregnancy contemplated by this Agreement and the Birth of a healthy Child;
 - (c) she is not now using, and has not in the TWELVE (12) months previous to the date of this Agreement, used an illegal drug;
 - (d) she will not, during the Term of the Agreement, use any illegal drugs; and
 - (e) she has never been charged with a criminal offence.

9.2 The Gestational Carrier warrants and represents that she will strictly comply with all of her obligations set out in the following paragraphs:

9.3 The Gestational Carrier will follow all medical advice given by the Transfer Physician and the Attending Physician, and will undergo all medical procedures that either of them require to ensure that her obligations under this Agreement are safely and successfully performed for both the Gestational Carrier and the Child. Without limiting the generality of the foregoing, if the Attending Physician determines that a Caesarean Birth is advisable for the health and safety of either the Gestational Carrier or the Child, then the Gestational Carrier hereby consents to such procedure. The Gestational Carrier further consents to submit to amniocentesis and all other tests recommended by the Transfer Physician and the Attending Physician and those tests requested by the Intended Parents on the advice of the Transfer Physician, should she become Pregnant pursuant to the terms of this Agreement.

9.4 The Gestational Carrier will follow a prenatal medical examination schedule and prenatal procedures prescribed by the Transfer Physician and/or the Attending Physician who will be responsible for the Gestational Carrier's medical care during the prenatal period. If a medical illness or condition is suspected or diagnosed during the Pregnancy, the Gestational Carrier agrees that she will seek medical attention, and will follow all medical instructions and course of treatment as prescribed.

9.5 The Gestational Carrier covenants and agrees to have the integrated pre-natal screen (IPS), parts one and two:

- (a) at approximately 12 weeks, Part 1 of the IPS, which consists of a nuchal translucency ultrasound and associated maternal bloodwork; and
- (b) at approximately 16 weeks, Part 2 of the IPS, which consists of the appropriate

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maternal blood tests.

The results of the IPS will be forwarded to the Attending Physician.

9.6

- (a) The Gestational Carrier warrants that she does not smoke and will not smoke, or expose herself or allow herself to be exposed to second-hand smoke, for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (b) The Gestational Carrier warrants that she will not drink alcoholic beverages for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (c) The Gestational Carrier further warrants that she will maintain a proper diet and exercise regime as recommended by the Transfer Physician and/or the Attending Physician. All costs incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 9.6(c) shall, subject to the cap on the Special Expense Amount, be included in the Special Expenses.

9.7 The Gestational Carrier will obtain adequate prenatal medical care including, without limitation, the care contemplated by this Part IX in order to enhance the success of the Pregnancy and the Birth of a healthy Child.

9.8 The Gestational Carrier covenants and agrees that during the Term of this Agreement she will not:

- (b) not ingest, inhale, inject or absorb any drugs, pharmaceutical or herbal substances including, without limitation, over the counter medication, not prescribed or approved, in writing, by the Transfer Physician or the Attending Physician (with the exception of Tylenol consumed at or below the recommended dosage for pregnant women). If the Transfer Physician approves any such medications, the Gestational Carrier agrees to follow the instructions of the Transfer Physician and/or Attending Physician with respect to dosage of substances or medication;
- (c) not have any part of her body pierced or tattooed;
- (d) use her best efforts to avoid all exposure to radiation or toxic chemicals; and
- (e) avoid any potentially hazardous situations or activities that a reasonable person would conclude are likely to result in harm to herself or the Fetus.

9.9 Failure to comply with this Part IX will constitute a material breach of the Gestational Carrier's obligations under this Agreement.

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9.10

- (a) After the Gestational Carrier becomes Pregnant with the Child, the Gestational Carrier and the Intended Parents will keep each other reasonably informed of their whereabouts.
- (b) From and after the first day of the 24th week of the Pregnancy, the Gestational Carrier may only travel outside of Canada: (i) in the event of a severe illness or death in her immediate family; (ii) if she has obtained the prior written consent of the Intended Parents, which shall not be unreasonably withheld; (ii) if she has the prior approval of the Attending Physician; and (iii) if she has a policy of travel health insurance covering her health care costs, the Birth of the Child and the Child's health care costs, which is in place prior to departure and for the duration of the travel.
- (c) From and after the first day of the 24th week of the Pregnancy, the Gestational Carrier shall not travel to or visit the Provinces of Quebec, Saskatchewan, New Brunswick and/or Prince Edward Island.
- (d) From and after the first day of the 28th week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel by airplane.
- (e) From and after the first day of the 34th week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel more than a FORTY (40) minute drive from a hospital.

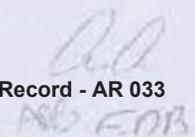
9.11 The Gestational Carrier will and hereby consents to the Transfer Physician and the Attending Physician keeping the Intended Parents informed at all material times of whether a Transfer has resulted in a Pregnancy, the progress of the Pregnancy, the results of all tests and any recommendations arising from test results, including all information relevant to the health of the Gestational Carrier and the Fetus, and the expected date of Birth. The Gestational Carrier will give the Attending Physician any further consent, authority or directions necessary to comply with this obligation to keep the Intended Parents so informed.

9.12 The Gestational Carrier hereby gives her consent, and will sign any medical consent forms to allow the Transfer Physician, the Attending Physician or any other doctor or hospital agreed to by the Parties to treat her as may be required in respect of the Pregnancy.

**PART X
CONDITION PRECEDENT**

10.1 The Parties each acknowledge that a finding by medical testing that either Andrew or Elad is a genetic parent of the Child is a condition precedent to the performance of the Intended Parents' obligations under this Agreement. For the purposes of determining the parentage of the Child, immediately after the Birth, the Intended Parents and the Gestational Carrier will submit to a DNA test and each Party consents to the immediate testing of the DNA

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of the Child.

10.2 A finding that neither Intended Parent is a genetic parent of the Child will constitute a material breach of this Agreement unless the parentage is due to a clinical or physician's error in the fertilization or Transfer procedure. If there is a finding that neither Intended Parent is a genetic parent of the Child, and the same degree of testing confirms that the Gestational Carrier is not the genetic mother of the Child, a clinical or physician's error in the fertilization or Transfer procedure shall be deemed to have occurred and the Intended Parents shall assume responsibility for the Child as if it were their own.

10.3 If the Gestational Carrier is the genetic mother of the Child, the Gestational Carrier will refund, within THIRTY (30) days of the request, any Special Expense Amount paid on her behalf, or reimbursed to her, and will forego the reimbursement of any further allowable Special Expense Amount that would otherwise be, or become, reimbursable to her and the Intended Parents shall not be obliged to accept any responsibilities, social, legal or custodial, toward the Child, without prejudice to any of the rights that the Intended Parents are entitled to claim under this Agreement.

**PART XI
WARRANTIES AND ACKNOWLEDGEMENTS**

11.1 The Gestational Carrier warrants that, to the best of her knowledge, she is physically capable of carrying the Fetus to term and is capable of carrying and bearing healthy, normal children.

11.2 The Gestational Carrier warrants that, to the best of her knowledge, she has no transmittable disease and will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.3 Andrew and Elad each warrant that, to the best of their knowledge, neither has a transmittable disease and each will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.4 The Gestational Carrier acknowledges that it will be in the best interests of the Child for the Child to be placed in the custody of the Intended Parents immediately upon the Birth of the Child and for the Gestational Carrier to forever waive all parental and other rights in and to the Child that she has or may acquire in the future immediately upon the Birth of the Child.

**PART XII
EARLY TERMINATION OF PREGNANCY**

12.1 The Parties acknowledge that the Gestational Carrier has the right to have the Pregnancy terminated at any time she and either the Transfer Physician or the Attending Physician, in their absolute discretion, determine the Pregnancy should be terminated. However, the Gestational Carrier has assured the Intended Parents that it is not her intention to have an

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abortion, unless the Intended Parents request that she does so in the circumstances set out below. The Gestational Carrier has further assured the Intended Parents that she will proceed with a Requested Termination at a time and place recommended by the Transfer Physician and/or Attending Physician if: (i) a test reveals that the Child is likely to have a serious genetic or congenital abnormality or defect; (ii) the Transfer Physician or the Attending Physician so recommends in writing; and (iii) the Intended Parents so request in writing. All costs incurred in connection with and directly related to the Requested Termination shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

12.2 In the interests of clarity, the Parties agree that any request to terminate the Pregnancy shall be in writing and signed by each of the Intended Parents.

12.3 The Gestational Carrier states that she does not intend to exercise her right to abortion:

- (a) except as set out in this Part XII, or
- (b) unless in the opinion of the Transfer Physician and/or the Attending Physician, terminating the Pregnancy is necessary to protect the Gestational Carrier's health or life, in which case the consent of the Intended Parents is not required.

12.4

- (a) The Gestational Carrier will undergo ultrasound, chorionic villus sampling, IPS, amniocentesis and similar tests and procedures to detect genetic and congenital abnormalities or defects in the Fetus, as recommended by the Transfer Physician and/or the Attending Physician.
- (b) The Intended Parents acknowledge the risks to the Pregnancy associated with any invasive testing and, provided that the Gestational Carrier is not otherwise in material breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from any invasive testing performed at the request of or with the consent of the Intended Parents.

12.5 The tests will be performed or interpreted by the Transfer Physician, the Attending Physician, a physician or a technician recommended by either or both of them that is satisfactory to the Parties to this Agreement.

12.6

- (a) If the Gestational Carrier is carrying a single Fetus and tests indicate that the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or if the Gestational Carrier is carrying a multiple pregnancy and the tests indicate that each Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, then the Intended Parents may, in accordance with Section 12.1, inform the Gestational Carrier that it is their wish that the Pregnancy be

terminated. The Gestational Carrier, in consultation with the Transfer Physician or Attending Physician, will follow the instructions of the Intended Parents to terminate the Pregnancy.

- (b) If the Gestational Carrier is carrying a multiple Pregnancy and the medical tests indicate that only one Fetus has or is likely to have, a serious genetic or congenital abnormality or defect, the Intended Parents may inform the Gestational Carrier that it is their wish that the Gestational Carrier undergo a selective reduction procedure and the provisions of Section 13.1 shall apply.

12.7 If the Gestational Carrier:

- (a) terminates the Pregnancy or undergoes a selective reduction procedure without the prior written approval of the Intended Parents where prior consent is required; or
- (b) refuses to terminate the Pregnancy, or to take all steps within her control to undergo a selective reduction procedure if requested to do so, within TWENTY (20) days of receiving notice of the Intended Parents' wish to have the Pregnancy terminated because the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or the multiple pregnancy poses a risk to the health or life of the remaining fetus(es) or the Gestational Carrier,

then the Gestational Carrier will be in material breach under this Agreement, and the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses incurred after the date of the termination or selective reduction in the event of Section 12.7(a), or the date of notice in the event of Section 12.7(b), and the Gestational Carrier will refund to the Intended Parents all amounts already reimbursed to her pursuant to the terms of this Agreement.

12.8 Subject to Section 12.1, if the Gestational Carrier refuses to terminate the Pregnancy or undergo a selective reduction procedure at the request of the Intended Parents and the Child is born with or without the serious genetic or congenital abnormality or defect detected or suspected from the tests referred to above, the Gestational Carrier will give the Child into the custody of the Intended Parents as provided in this Agreement and no expenses of the Gestational Carrier will be reimbursed after the date on which notice requesting termination or selective reduction was received, but all other terms of this Agreement will continue in full force and effect including, without limitation, the Intended Parents' obligation to take custody of and support the Child.

12.9 If the tests for congenital and genetic defects and abnormalities do not reveal any defects or abnormalities, but the Child is born with defects or abnormalities which do not result from the gross negligence of the Gestational Carrier, the Gestational Carrier will place the Child in the custody of the Intended Parents as provided in this Agreement and all other terms and obligations will remain in effect, including those in Section 26.

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**PART XIII
SELECTIVE REDUCTION**

- 13.1 If:
- (a) the Transfer of Embryos contemplated by this Agreement results in the Gestational Carrier becoming pregnant with THREE (3) or more Children; or
 - (b) the Gestational Carrier is carrying a multiple pregnancy and the test(s) indicate that one or more Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, but at least one Fetus does not have any genetic or congenital abnormality or defect; or
 - (c) in the opinion of the Transfer Physician and/or the Attending Physician, the multiple Pregnancy poses a risk to the Gestational Carrier's health or to one or more Fetus;

then if the Intended Parents so request under Section 13.1(b) or upon recommendation of the Transfer Physician and/or the Attending Physician under Section 13.1(a) or (c), the Gestational Carrier will undergo a procedure in any location specified by the Attending Physician within Canada to selectively reduce the number of Fetuses to twins or a single Fetus, as the case may be. If requested by the Intended Parents, the procedure will take place at the time and in a manner determined to be medically appropriate by the Attending Physician. The Gestational Carrier acknowledges and agrees that she will not undergo a selective reduction procedure if she is carrying two Fetuses without the consent in writing of the Intended Parents, unless the Attending Physician is of the opinion that such procedure is necessary to avoid a serious risk to the health of the Gestational Carrier or to the remaining Fetus or Fetuses. All costs incurred in connection with and directly related to the selective reduction procedure shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

13.2 The Intended Parents acknowledge the risks to the Pregnancy associated with a selective reduction procedure and, provided that the Gestational Carrier is not otherwise in breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from a selective reduction procedure performed at the request of or with the consent of the Intended Parents.

13.3 In the interests of clarity, any request to selectively reduce the Pregnancy shall be in writing and signed by each of the Intended Parents.

**PART XIV
CUSTODY OF CHILD AND PARENTAL RIGHTS**

14.1 The Gestational Carrier has met or spoken with the Intended Parents and believes that the Intended Parents will be loving and caring parents to any Child born pursuant to this Agreement. She acknowledges that it is in the best interests of the Child that the Intended Parents have sole and exclusive custody and assume the legal and social parental responsibilities

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for the Child, immediately upon Birth. For the purposes of this Agreement, "immediately upon birth" means as soon as the umbilical cord is cut.

14.2 The Gestational Carrier acknowledges that the Intended Parents will show the surname and the given names of the Child to be the names chosen by the Intended Parents on any form required on the Birth of the Child.

14.3 The Gestational Carrier will, at the request of the Intended Parents, participate in any legal proceeding or application supporting the Intended Parents' custody and parentage of the Child and will facilitate proof by affidavit or by giving evidence in person of all material facts within their knowledge and will attend at any and all court hearings, as required either prior to or after the Birth of the Child, until the proceeding or application is finally disposed of. All expenses incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 14.3, shall be borne by the Intended Parents in addition to the Special Expense Amount.

14.4 The Gestational Carrier hereby expressly waives all parental, custodial and social rights that she has or may acquire to the Child.

14.5

- (a) The Gestational Carrier will, immediately upon the Birth of the Child, relinquish any and all custody rights she has or may have, and will make custody of the Child available to the Intended Parents forthwith upon the Birth of the Child. The Intended Parents will receive custody and assume the legal and social parental responsibilities for the Child;
- (b) The Gestational Carrier agrees that she will co-operate with the hospital staff and administration with respect to the agreement of the Parties as set out in Section 14.5(a) and, prior to the expected date of Birth, she will sign a joint letter of instruction and direction to the hospital staff and administration instructing the hospital to treat the Child as the Child of the Intended Parents immediately upon the Birth of the Child, to accept the instructions of the Intended Parents with respect to the Child's medical care, and to discharge the Child from the hospital to the custody of the Intended Parents; and
- (c) The Parties acknowledge that immediately upon Birth all medical decisions regarding the Child shall be made solely by the Intended Parents. The Gestational Carrier agrees that the Intended Parents shall be the persons authorized to care for and make treatment and any other decisions with respect to the Child from the moment of Birth and thereafter. Further, the Gestational Carrier agrees that if a health care provider recognizes her as a substitute decision-maker for the Child, she shall inform such person that she is not the parent of the Child and is therefore not willing to assume the responsibility of giving or refusing consent in accordance with Section 20(2)(e) of the *Health Care Consent Act*. The Gestational Carrier shall direct the health care staff to accept the instructions of

the Intended Parents with respect to the health of the Child.

(d) Notwithstanding the above, if the Intended Parents are not available to take physical custody of the Child, or make medical decisions with respect to the Child, immediately after Birth, the Gestational Carrier shall do so on a temporary basis until the Intended Parents are available and same shall not derogate from the Intended Parents' legal parental rights with respect to the Child.

14.6 The Intended Parents will receive the custody of the Child at Birth, or as soon thereafter as is practicable, and if not present at the same time either Andrew or Elad will be deemed to receive custody on behalf of both of them.

14.7 The Parties agree that the Gestational Carrier shall not under any circumstances breastfeed the Child without the permission of the Intended Parents obtained in advance. The Parties acknowledge that the Gestational Carrier has agreed to pump breastmilk for the Child, if feasible at the time, and that the Intended Parents shall cover the direct cost of doing so in addition to the Special Expense Amount.

14.8 Each Party to this Agreement will do what is reasonably necessary to facilitate and expedite the performance of this Agreement including all things such as completing consent forms, hospital and statistical records and obtaining birth certificates.

**PART XV
RELATIONSHIP WITH THE CHILD**

15.1 The Gestational Carrier will avoid developing a parental relationship with the Child. The only time she will see the Child is in the Hospital before the Child is discharged, and thereafter upon the consent of the Intended Parents. After the Birth, the Gestational Carrier will not contact, nor attempt to contact, nor allow herself to be in contact with the Child in any manner whatsoever at any time, except with the express permission of the Intended Parents. At no time will the Gestational Carrier reveal or cause to be revealed to the Child the fact that the Gestational Carrier gave Birth to the Child, on the understanding that the Intended Parents shall have sole discretion about providing such information to the Child.

15.2 Notwithstanding the above, the Intended Parents hereby consent to allow the Gestational Carrier and her dependent child to spend time with the Child after Birth but prior to discharge from the Hospital, in the presence of the Intended Parents

**PART XVI
WAIVER AND RELEASE**

16.1 The Gestational Carrier waives all rights that she has or may in the future have to the custody of, access to, or information about the Child and releases the Intended Parents and each of them from all claims that she has, or may in the future have to the custody of, access to, or information about the Child.

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**PART XVII
FURTHER AGREEMENT AS TO CUSTODY**

17.1 After the Birth of the Child, the Gestational Carrier will, at the request of the Intended Parents, enter into a further agreement with the Intended Parents confirming the Intended Parents' custody of the Child.

17.2 On her part, the Gestational Carrier will confirm and covenant, among other things, that she waives all rights she may have in respect of the Child, and without restricting the generality of the foregoing, her right to custody of the Child and all rights incidental to custody, including the right of access to the Child.

17.3 On their part, the Intended Parents hereby agree, among other things, that:

- (a) they release the Gestational Carrier from all obligations that she has or may in the future have to provide for the support and education of the Child for such period of time as the Child is entitled to support pursuant to the laws of the jurisdiction in which he/she is habitually resident;
- (b) each of them will charge his estate with the obligation to provide for the adequate support and education of the Child; and
- (c) provided that the Gestational Carrier has made physical custody of the Child available to the Intended Parents, each of the Intended Parents will indemnify the Gestational Carrier with respect to any expense incurred by her to provide for the support or education of the Child, including without limitation any legal or other expenses the Gestational Carrier pays in connection with the defence thereof.

**PART XVIII
DEATH OF INTENDED PARENTS AND
GUARDIANSHIP OF CHILD**

18.1 The Intended Parents shall each maintain a valid Will in good standing, recognizing the Child as their issue, naming a testamentary guardian for the Child and making adequate provision for the support and education of the Child.

18.2 If either Andrew or Elad dies before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the survivor. If both Andrew and Elad die before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the Guardians named below.

18.3 Each of the Intended Parents hereby declare that, in the event of both of their deaths during the term of this Agreement, the Guardians of any Child born pursuant to this Agreement are: Tova and Mordehay Dvash, who reside in Israel and who can be reached at +972- [REDACTED], +972- [REDACTED], +972- [REDACTED] or [REDACTED]@gmail.com or

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██████████@bezeqint.net. The Guardians shall make any or all medical decisions with respect to the Child in the event that the Intended Parents are incapacitated and unable to do so.

18.4 The Gestational Carrier shall be entitled to rely on this Part XVIII without the requirement of any further evidence for the purpose of providing custody of the Child to the Guardians named herein in the event of the Intended Parents' death or for the purpose of the Guardians named herein making medical decisions for the Child in the event of the Intended Parents' inability to do so. The Intended Parents hereby warrant that they have not and will not enter into any conflicting document or agreement with respect to guardianship of the Child.

**PART XIX
SEPARATION OR DIVORCE OF INTENDED PARENTS**

19.1 If the Intended Parents separate or divorce before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the care of either Andrew or Elad who will undertake to determine custody and any incidents of custody of the Child as between themselves by mutual agreement or by the Court.

**PART XX
INCAPACITY OF GESTATIONAL CARRIER**

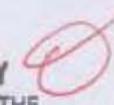
20.1 The Gestational Carrier agrees that, if she becomes incapable of making decisions for herself, or if she requires life support to sustain her life, then all decisions relating to her medical care shall be made by her Attorney for Personal Care ("Attorney") as appointed by her Power of Attorney for Personal Care or, if she does not have an Attorney, by her Substitute Decision-Maker. However, the Gestational Carrier hereby expresses her wish that if she is Pregnant at the time she is assessed as incapable, and the Attending Physician or another physician deems that the Child would benefit from prolonging her life by artificial means until it is deemed safe to deliver the Child, and that the Gestational Carrier is not enduring pain and suffering, then the Attorney, or the Substitute Decision-Maker, as the case may be, will consent to prolonging the life of the Gestational Carrier by artificial means until after the Birth of the Child.

20.2 The Intended Parents shall reimburse the Gestational Carrier for the legal expenses incurred in having a Will and a Power of Attorney for Personal Care prepared for the purpose of fulfilling Section 20.1 above, in addition to the Special Expense Amount to a maximum of Five Hundred Dollars (\$500.00).

**PART XXI
LIFE INSURANCE POLICY FOR
GESTATIONAL CARRIER**

21.1 The Gestational Carrier hereby acknowledges that she currently has a policy of Life Insurance in place with coverage in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00 Cdn.) on her life which will be kept in place for the period commencing on the date which is not later than the date of the first Transfer and shall end

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no earlier than the first to occur of the following dates (the "Insurance Termination Date"): (i) the date of termination of this Agreement; and (ii) the day which is TWO (2) months after the date of Birth. The Gestational Carrier may renew the life insurance, but the Intended Parents will have no obligation to pay for the cost of any premiums charged after the Insurance Termination Date.

21.2 The Intended Parents shall be named as revocable beneficiaries of SEVENTEEN PERCENT (17%) under the Life Insurance policy, and shall be removed as beneficiaries immediately following the earlier of: (i) the Birth; or (ii) the termination of the Agreement. The Gestational Carrier shall name the beneficiary of the remainder under the Life Insurance policy who shall hold same in trust for her children.

21.3 The Intended Parents may put an additional policy of life insurance into place on the Gestational Carrier's life and she shall take all reasonable steps to facilitate same.

**PART XXII
ENFORCEMENT**

22.1 The Parties have a right to enforce this Agreement in the Ontario Court of Justice including the right to seek an interlocutory and permanent injunction enjoining behaviour that is contrary to or in breach of the Agreement. The Parties acknowledge that a breach of this Agreement will result in irreparable harm to the aggrieved Party and to the Child.

**PART XXIII
VITAL STATISTICS**

23.1 The Gestational Carrier shall refrain from completing and filing the Statement of Live Birth after the Birth of the Child.

23.2 Upon confirmation by DNA tests, the Gestational Carrier will sign all necessary documents to obtain a legal declaration that she is not the genetic or intended mother of the Child, and that the Child was conceived through I.V.F. by the Ova fertilized with the Sperm.

**PART XXIV
SUCCESSION**

24.1 The Parties agree that for the purposes of succession law, and any Wills or estates, the Child will, at all times, be a child of the Intended Parents.

**PART XXV
EARLY TERMINATION**

25.1 If, without the fault of the Gestational Carrier, the Pregnancy ends in Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, then:

- (a) the Intended Parents will be entitled to terminate this Agreement and will be

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released from all obligations under this Agreement;

- (b) the Gestational Carrier will be entitled to terminate this Agreement and retain any reimbursement of any Special Expense Amounts paid or payable up to and including the date of Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; and
- (c) the Gestational Carrier shall be entitled to reimbursement of the Special Expenses for TWO (2) weeks after the date of an Early Miscarriage or FOUR (4) weeks after the date of a Miscarriage, Requested Termination or Still-Birth.

25.2 If the Intended Parents choose not to terminate this Agreement after an Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, the Term of the Agreement shall continue and not be at an end, but the period for reimbursement of the Special Expense Amount shall be as set out above and shall be reset to the maximum Special Expense reimbursement of Twenty Thousand Dollars (\$20,000) and shall resume TWO (2) weeks prior to the next Transfer. If the Pregnancy ends in a Full Term Still-Birth without the fault of the Gestational Carrier, the Agreement shall terminate on the day which is SIX (6) weeks after the date of the Full Term Still-Birth.

25.3 Notwithstanding anything set out in this Agreement, if the Pregnancy is terminated, results in a Still-Birth, results in a Full-Term Still Birth, or produces a Child that has a congenital abnormality or defect as a result of the negligent action or omission of the Gestational Carrier, or if the Gestational Carrier materially breaches this Agreement, the Gestational Carrier shall return to the Intended Parents an amount equal to the Special Expenses reimbursed to the Gestational Carrier within FIVE (5) days of a demand therefor, without prejudice to the Intended Parents' rights at law and pursuant to this Agreement to seek damages from the Gestational Carrier.

**PART XXVI
SPECIAL EXPENSES**

26.1 The Intended Parents will reimburse the Gestational Carrier for the following out of pocket expenses incurred by the Gestational Carrier in connection with the surrogacy to a maximum of Twenty Thousand Dollars (\$20,000.00 CDN) inclusive of all taxes (the "Special Expense Amount") for all such expenses:

- (a) medical, pharmaceutical and laboratory expenses incurred by the Gestational Carrier as a result of the Transfer, Pregnancy or Birth not otherwise covered by the Ontario Health Insurance Plan ("OHIP") or any private health care insurance plan under which she is covered. However, it is understood and agreed that the Intended Parents will pay all expenses for the I.V.F. treatment directly to the Clinic and this cost will not be included in the Special Expense Amount;
- (b) the amount actually expended by the Gestational Carrier for groceries, prepared food and meals for her own consumption commencing two weeks prior to the date

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of the first Transfer and ending on the expiration or earlier termination of the Agreement;

- (c) a reasonable amount for automobile expenses incurred for local travel at the request of the Intended Parents or made necessary for the performance of her obligations under this Agreement calculated at a rate of \$0.54 per kilometre travelled and all related parking costs;
- (d) communication costs including, without limitation, the costs of an internet account, cellular telephone charges, and the costs of acquiring a cellular telephone, and long distance telephone charges, all incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (e) vitamins and supplements required to maintain a healthy Pregnancy;
- (f) child care costs for the Gestational Carrier's ONE (1) dependent child incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (g) housekeeping, snow shovelling and lawn care costs incurred by the Gestational Carrier in order to reduce the physical strain and incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (h) counselling for the Gestational Carrier and her ONE (1) dependent child, if so required;
- (i) all expenses incurred by the Gestational Carrier for suitable maternity clothing to be worn throughout the Pregnancy and following the Birth, up to a maximum amount of Seven Hundred and Fifty Dollars (\$750.00);
- (j) a reasonable amount for the Gestational Carrier's wellness expenses including, without limitation, costs incurred for acupuncture, massage, physiotherapy, naturopath, reflexology, chiropractic care, foot care, yoga membership and fitness membership, provided that participation in any of such activities is approved by the Transfer Physician and/or the Attending Physician;
- (k) the cost of a private Hospital room for the Gestational Carrier at the time of Birth, if one is available and which expense is not otherwise covered by OHIP or any private health care insurance plan under which the Gestational Carrier is covered; and
- (l) such other expenses as may be incurred by the Gestational Carrier as a result of the Pregnancy and as may be approved by the Intended Parents. The Parties agree that if the Gestational Carrier has already incurred expenses to the maximum limit

set out in this Section 26.1, the Intended Parents may, in their sole discretion, agree to pay the cost of any such other allowable expenses in addition to the Special Expense Amount.

26.2

- (a) The Parties acknowledge that for the purposes of Section 26, the Gestational Carrier's expenses incurred during the Reimbursable Period (as hereinafter defined) shall be reimbursed to her in accordance with Schedule "A" attached hereto and Part XXVI.
- (b) For the purposes of Section 26.2(c), the "Reimbursable Period" shall commence on the date of confirmation of the Pregnancy by blood test results and shall end on the earlier of: (i) the day of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child.
- (c) The Reimbursable Period shall be divided into TEN (10) stages (individually referred to as a "Stage"):
 - (i) the first month after the Second Beta (the "First Month");
 - (ii) the second month after the Second Beta (the "Second Month");
 - (iii) the third month after the Second Beta (the "Third Month");
 - (iv) the fourth month after the Second Beta (the "Fourth Month");
 - (v) the fifth month after the Second Beta (the "Fifth Month");
 - (vi) the sixth month after the Second Beta (the "Sixth Month");
 - (vii) the seventh month after the Second Beta (the "Seventh Month");
 - (viii) the eighth month after the Second Beta (the "Eighth Month");
 - (ix) the ninth month after the Second Beta (the "Ninth Month"); and
 - (x) the period commencing on the day after Birth and ending SIX (6) weeks thereafter (the "Post-Pregnancy").
- (d) Notwithstanding anything contained herein to the contrary, the amount of the Special Expenses incurred by the Gestational Carrier and which are eligible for reimbursement by the Intended Parents shall be subject to the maximum amounts set out in the schedule attached hereto as Schedule "A", and subject to Section 25.1, if this Agreement is terminated, the current Stage shall end on the day of

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termination.

- (e) If the Special Expenses incurred by the Gestational Carrier in any Stage are less than the maximum set for that Stage, the difference between the maximum allowable and the amount claimed shall be added to the maximum available for the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Fourth Month is Three Thousand Dollars and the Gestational Carrier claims expenses of One Thousand Dollars, the unused balance of Two Thousand Dollars will be added to the maximum available to be claimed in the Fifth Month.
- (f) If the Special Expenses incurred by the Gestational Carrier in any Stage exceed the maximum set for that Stage, and if there is no unused balance to be carried forward pursuant to Section 26.2(e) or if there is insufficient unused balance to cover the excess, the amount of the excess can be claimed in the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Sixth Month is Three Thousand Dollars, and if there is no unused balance to be added to the Sixth Month maximum, and the Gestational Carrier claims expenses of Four Thousand Dollars, the excess of One Thousand Dollars may be claimed in the Seventh Month.
- (g) If, without fault of the Gestational Carrier, the Child is born: (i) prior to the beginning of the Eighth Month, the current stage shall end on the date of Birth and the post-Birth period shall commence on the day after the Child's Birth. The balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall not be available to be claimed and shall be deducted from the cap on the Special Expense Amount on the understanding that the Gestational Carrier's total out of pocket expenses related to the Pregnancy will be available only during the Pregnancy and the recovery period after Birth; or (ii) during the Eighth or Ninth Months of the Pregnancy, the current Stage shall end on the date of Birth and the balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall be added to the Post-Pregnancy Stage.

26.3 Subject to the cap set out in Section 26.1, the Gestational Carrier may be reimbursed for all Special Expenses incurred by her for the period commencing on the date of execution of this Agreement by the Gestational Carrier, and ending on the earlier of the date of termination of this Agreement, TWO (2) weeks after a Pregnancy ends in Early Miscarriage, FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth or SIX (6) weeks after the Birth of a Child, as the case may be. No receipts may be submitted to the Intended Parents after the end of the Term of the Agreement, and notwithstanding anything contained herein to the contrary, the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses which are submitted to the Intended Parents for reimbursement after the expiration of the Term of the Agreement, regardless of when such

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expenses were incurred.

26.4 In addition to the amounts set out in Section 26.1 (the "Additional Expense Amount"), the Intended Parents shall directly cover, or shall reimburse the Gestational Carrier for, all expenses related to the Pregnancy or in the event of the circumstances described below, or so that the Gestational Carrier can fulfill her obligations under this Agreement as follows:

- (a) legal fees and disbursements incurred for obtaining independent legal advice relating to this Agreement to the date of execution of the Agreement, up to a maximum of One Thousand Three Hundred Dollars (\$1,300.00) plus HST;
- (b) life insurance premiums as set out in Section 21;
- (c) travel medical insurance premiums as set out in Section 9.10(c);
- (d) all travel costs incurred by the Gestational Carrier in order to attend at the Clinic at the request of the Intended Parents before the Pregnancy and for each Transfer, including the cost of mileage, parking, meals and child care;
- (e) all expenses incurred and related to the Gestational Carrier's participation in any Transfer which she undergoes at the request of the Intended Parents to a maximum of Five Hundred Dollars (\$500.00) for general reimbursable expenses, including prenatal vitamins and wellness expenses;
- (f) if the Child is delivered by way of Caesarean delivery, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the Post-Pregnancy Stage;
- (g) if a Pregnancy results in a multiple Birth of two or more Children, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the period commencing on the first day of the Seventh Month and ending on the last day of the Post-Pregnancy Stage. (Such Additional Expense Amounts shall increase the maximum amount of Special Expenses which may be incurred by the Gestational Carrier in recognition of the additional physical toll which a multiple Pregnancy or Caesarean delivery will exert on the Gestational Carrier and the increased need for assistance which will increase the Gestational Carrier's out of pocket expenses. In the interests of clarity, if two or more Children are born by Caesarean delivery, an additional total of Seven Thousand Dollars (\$7,000.00) shall be available for maximum reimbursement under Section 26.4(f) and (g)); and
- (h) if, in the written opinion of the Transfer Physician or the Attending Physician and, at the option of the Intended Parents, in the written opinion of a second physician of their choice, complete bed rest is required in order to protect the health of the Gestational Carrier or the Fetus (the "Disability"), the Gestational Carrier will be entitled to reimbursements for the period commencing on the date of the

physician's order and ending on the earlier of: (i) the date on which the physician lifts the order for bed rest; (ii) the date of Birth, Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; or (iii) the date of termination of this Agreement, for housekeeping and child care expenses for the Gestational Carrier's ONE (1) dependent child to a maximum of Four Hundred Dollars (\$400.00) per week under this Section 26.4(h).

26.5 Notwithstanding anything to the contrary, the Parties acknowledge that regulations to Section 12 of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, which govern the reimbursements to the Gestational Carrier under this Agreement, may come into full force and effect during the Term of the Agreement. If so, then all Parties agree to abide by these regulations even where they are not in accordance with this Agreement, so as not to contravene the law. The Gestational Carrier acknowledges and agrees that, as a result, she may not be entitled to reimbursement of all of the categories of expenses set out above.

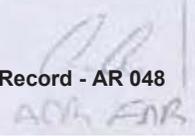
**PART XXVII
ADMINISTRATION AND PAYMENT OF SPECIAL EXPENSES**

27.1 The Gestational Carrier will obtain receipts for all expenditures and will deliver these receipts to the Intended Parents or to an agent on their behalf on a monthly basis and in any event within FIVE (5) days of a request therefor. If required by law, the Intended Parents will instruct the Clinic, or their agent, to reimburse the Gestational Carrier for all Special Expenses in accordance with the terms of this Agreement. The Parties acknowledge and agree that no Special Expenses will be reimbursed to the Gestational Carrier unless a receipt is provided to the Intended Parents or to their agent for the expenditure.

**PART XXVIII
REMEDIES FOR BREACH**

28.1 If the Gestational Carrier materially fails to perform any of her obligations under this Agreement, or if any of the warranties made by the Gestational Carrier in this Agreement are not true then, without limiting the Intended Parents' remedies in equity or at law, and in addition to such remedies, the Gestational Carrier will, within THIRTY (30) days of request, refund to the Intended Parents all allowable expenses pursuant to the section called SPECIAL EXPENSES, above, which have been reimbursed to the Gestational Carrier by the Intended Parents, to the time of such failure.

28.2 If any Party materially violates any provision contained in this Agreement without legal excuse, such violation will constitute a material breach of this Agreement and, in addition to all other remedies available at law or equity, this Agreement may be terminated forthwith at the option of the aggrieved Party, without further liability on the part of the aggrieved non-breaching Party. If the Intended Parents terminate this Agreement pursuant to this provision, then not only will the Gestational Carrier refund all Special Expenses reimbursed to that date, the Intended Parents will be under no obligation to reimburse the Gestational Carrier for any expenses incurred after the date of the breach.


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28.3 If the Intended Parents materially breach this Agreement without legal excuse, but the Gestational Carrier has performed her obligations under this Agreement then she will be entitled to have all Special Expenses reimbursed in accordance with this Agreement and the Intended Parents will be responsible for the support of the Child and all of the Child's needs until the Child is no longer entitled to support pursuant to the laws in which the Child is habitually resident. Further, if the Gestational Carrier has made physical custody of the Child available to the Intended Parents, the Intended Parents shall indemnify the Gestational Carrier for any and all amounts she pays in connection with the support of the Child, including without limitation, any legal or other fees and disbursements incurred in connection with the defence thereof.

28.4 A breach will not be considered to be a material breach of contract if it is capable of being cured. If so, the Party committing the breach will be given written notice of the alleged breach and will be given a reasonable period of time to cure it, if possible.

28.5 A breach by either of the Intended Parents will constitute a breach by both of them.

28.6 Without limiting the generality of the foregoing, any breach of warranty contained in this Agreement will constitute a material breach of this Agreement.

28.7 Any breach of this Agreement by the Intended Parents on their part, or the Gestational Carrier on her part, will cause the other of them significant damages, including emotional suffering and trauma and shall provide a cause of action for damages to the wronged Party. Each of the Parties acknowledges that because of the nature of this Agreement, monetary damages may not suffice to remedy a breach of this Agreement and that an injunction and/or any other interim judicial relief may properly be obtained to enjoin and/or address a breach of this Agreement in addition to damages.

**PART XXIX
ASSUMPTION OF RISK**

29.1 The Gestational Carrier assumes and accepts all risks related to the Transfer, Pregnancy and Birth, including but not limited to, the possibility of contracting AIDS, or other transmittable diseases, as a result of the exchange of body fluids and substances and all medical treatments, examinations and procedures involved, and any postpartum complications, and she hereby releases, indemnifies and saves harmless the Intended Parents (and each of them) from all liability, losses, costs and expenses arising, directly or indirectly, from the fulfilment of their obligations under this Agreement including, without limitation, any claim for illness, disfigurement, disability, death, funeral expenses, loss of the Gestational Carrier's future earnings or support for the Gestational Carrier's dependants, damages for loss of enjoyment of life and any other general damages, and for any legal expenses resulting from any dispute of this Agreement by the Gestational Carrier. The Gestational Carrier warrants and represents that she has independently consulted with a physician specializing in fertility procedures and has been made aware of all medical risks (including death), which may result from the procedures contemplated by this Agreement and further acknowledges that she understands these risks. The Gestational Carrier has undergone a thorough medical examination before undergoing any

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procedure contemplated by this Agreement.

**PART XXX
CONFIDENTIALITY**

30.1

- (a) The Gestational Carrier warrants and represents that she will keep strictly confidential all information respecting the identity of the Intended Parents and the Child, the terms of this Agreement, and information respecting the activities contemplated or carried out under this Agreement (the "Confidential Information") forever. The Parties shall be entitled to discuss the terms of this Agreement with their legal advisors and with their counsellor, each of whom shall be advised of and requested to abide by the confidentiality provision in this Agreement. However, the Gestational Carrier shall be entitled to disclose that the Gestational Carrier intends to carry (or is carrying, if she is already Pregnant) a Child for a same-sex couple who require third party reproduction to have a Child, provided that no Confidential Information is disclosed. The Intended Parents also warrant and represent that they will keep strictly confidential all Confidential Information. However, the Gestational Carrier acknowledges and agrees that the Intended Parents shall disclose the existence and nature of this Agreement to the individual(s) whom they have named as Guardian(s) under their respective Wills.
- (b) Except as required by law and except as set out in this Agreement, none of the Parties will disclose the Confidential Information to any person or distribute it in any public forum whatsoever including, without limitation, newspapers, magazines, Internet, television or radio at any time. This covenant will survive the Birth of any Child conceived pursuant to this Agreement and the Parties acknowledge that a claim for damages, as well as injunctive relief may be sought if there is a breach of the warranties contained herein.

30.2 In order to maintain the confidentiality contemplated by this Agreement, if litigation arises out of this Agreement including, but not limited to, court applications for a custody proceeding, each of the Parties to this Agreement and their legal counsel, their heirs and representatives, agree to make all efforts to maintain such confidentiality as is intended by this Agreement including, but not limited to, requesting that the court records be sealed, requesting the court to invoke non-publication orders, requesting the court in its procedures and in the conduct of hearings to maintain confidential the identity of all of the Parties.

**PART XXXI
ENTIRE AGREEMENT**

31.1 This Agreement sets forth the entire Agreement between the Parties pertaining to the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and communications, whether written or oral of the Parties.

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**PART XXXII
SEVERABILITY**

32.1 If any provision of this Agreement is held by the Court to be invalid or unenforceable, the remainder of the provisions of this Agreement will continue in full force and effect and will not be affected, impaired or invalidated thereby.

32.2 If a provision of this Agreement is held by the Court to be invalid or unenforceable due to its scope or breadth then it will be deemed to be valid to the extent permitted by the Court.

**PART XXXIII
SURVIVAL**

33.1 Notwithstanding any termination of this Agreement pursuant to the terms herein, or the expiration of the Term of the Agreement, the Parties agree that the provisions of the sections called REMEDIES FOR BREACH, ASSUMPTION OF RISK and CONFIDENTIALITY, above, will remain in full force and effect after the termination or expiration of the Term of the Agreement, as the case may be.

**PART XXXIV
WAIVER**

34.1 No supplement or modification of this Agreement will be binding unless executed in writing by the Party to be bound. No provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent excusing the breach is executed in writing by the Party to be charged with such waiver or consent. No waiver by a Party of any provision of this Agreement will be construed as a waiver of a further breach of the same provision and no waiver will be construed as a waiver of any other provision of this Agreement.

**PART XXXV
GOVERNING LAW**

35.1 This Agreement will be governed by, subject to and construed in accordance with the laws of the Province of Ontario.

35.2 The Parties to this Agreement acknowledge and agree that it is their express intention and desire to comply with the laws of the Province of Ontario and the Federal Laws of Canada. If during the Term of this Agreement any obligation of any Party becomes prohibited, the Parties agree that such obligation shall be severed from the Agreement (including, but not limited to, the financial obligations set out in this Agreement) and, so long as all Parties are agreeable, this Agreement shall remain in full force and effect.

35.3 The Parties to this Agreement acknowledge and agree that the procedure contemplated by this Agreement are novel and new and that the law applicable to such procedures and relationships is developing and unsettled. Although the possibility exists that this

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Agreement may be declared void as against public policy, in whole or in part, and may be held unenforceable, in whole or in part, by an Ontario Court, all Parties nonetheless agree that they are entering into this Agreement with the intention of being fully bound by its terms. It is the intention of all Parties to comply with the provisions of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, to the extent such Act has been proclaimed into force.

**PART XXXVI
INDEPENDENT LEGAL ADVICE**

36.1 The Gestational Carrier acknowledges that she has received independent legal advice in respect of this Agreement and acknowledges that she fully understands the intent and the purpose of this Agreement and her obligations under it.

36.2 The Gestational Carrier acknowledges that no coercion, force, pressure or undue influence has been used by any Party against her in making this Agreement.

36.3 The Gestational Carrier believes this Agreement to be fair, just and reasonable, that it will not result in circumstances that are unconscionable to any Party, and that it is in the best interests of the Child.

36.4 Each Party to this Agreement fully understands the Agreement and the legal consequences of this Agreement, and is signing the same freely and voluntarily. No Party to this Agreement has any reason to believe that the other Parties did not freely and voluntarily execute this Agreement.

**PART XXXVII
INTERPRETATION OF AGREEMENT**

37.1 No provision of this Agreement is to be interpreted for or against any Party to this Agreement merely because that Party, or that Party's solicitor drafted the provision.

**PART XXXVIII
FACSIMILE TRANSMISSION AND
EXECUTION IN COUNTERPART**

38.1 The Parties hereby acknowledge that this Agreement may be executed through facsimile transmission and agree to treat these documents in the same manner and with the same legal effect as if they were original documents.

38.2 This Agreement may be executed in any number of counterparts and each such counterpart shall, for all purposes, constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart, provided that each Party has signed at least one counterpart.

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**PART XXXIX
NOTICE**

39.1 All communications which may be or are required to be given by any Party to the other herein will be in writing and delivered or sent by prepaid registered mail, by personal delivery, by facsimile transmission (where possible), or by electronic mail, to the Parties at the following respective addresses:

Gestational Carrier: [REDACTED] Avenue, Apartment [REDACTED]
Mississauga, Ontario L5A 2K7

Cell: 647 [REDACTED]
Email: [REDACTED]@gmail.com

Intended Parents: [REDACTED] Avenue, Apartment [REDACTED]
Toronto, Ontario M6B 4C6

Elad Cell: 647 [REDACTED]
Andrew Cell: 647 [REDACTED]
Email: [REDACTED]@gmail.com
Email: [REDACTED]@gmail.com

39.2 If any communication is sent by prepaid registered mail, it will, subject to the following sentence, be conclusively deemed to have been received on the TENTH (10th) business day following the mailing thereof and if delivered, sent by facsimile transmission, or sent by electronic mail, it will conclusively be deemed to have been received at the time of delivery or transmission.

39.3 Notwithstanding the foregoing provisions with respect to mailing, if it may be reasonably anticipated that, due to any strike, lock-out or similar event involving an interruption in postal service, communication will not be received by the addressee by no later than the TENTH (10th) business day following the mailing thereof, then the mailing of any such communication as aforesaid will not have been an effective means of sending the notice, but rather any communication must then be sent by an alternative method which it may reasonably be anticipated will cause the payment or communication to be received reasonably expeditiously by the addressee. Any Party may from time to time change its address or facsimile number hereinbefore set forth by notice to the other of them in accordance with this Section.

**PART XL
ARBITRATION**

40.1 In the interests of the confidential nature of this Agreement and except as otherwise set out in this provision, if any dispute arises between the Parties in connection with any amounts referred to in Sections 26 or 27 of this Agreement and all matters related thereto, including, without limitation, enforcement of such provisions, the Parties agree that it shall be

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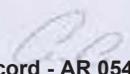
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resolved by binding arbitration in accordance with the *Arbitrations Act* (Ontario).

**PART XLI
ENUREMENT**

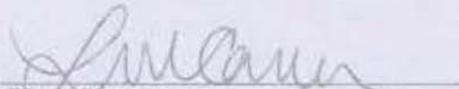
41.1 The rights and obligations under this Agreement shall enure to and bind each of the Parties and their respective heirs, executors, administrators and assigns.

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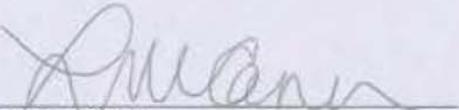

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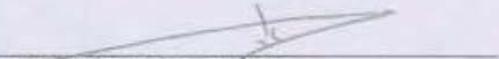
TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Agreement under seal before a witness.

SIGNED, SEALED AND DELIVERED in the presence of

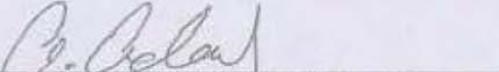

Witness Signature


ANDREW DVASH-BANKS
Date of Execution: 12/21/15


Witness Signature


ELAD DVASH-BANKS
Date of Execution: Dec 21, 2015


Witness Signature


AMANDA MARIE ANNE ADAMS
Date of Execution: Dec 21 2015

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SCHEDULE "A"

Attached to and forming part of
an Agreement dated the *21st* day of December, 2015 between
Andrew Dvash-Banks, Elad Dvash-Banks and Amanda Marie Anne Adams

<u>Maximum Reimbursements – Special Expenses</u>	
Stage 1: First Month Following Second Beta Test	\$1,000.00
Stage 2: Second Month Following Second Beta Test	\$1,000.00
Stage 3: Third Month Following Second Beta Test	\$1,000.00
Stage 4: Fourth Month Following Second Beta Test	\$2,000.00
Stage 5: Fifth Month Following Second Beta Test	\$2,000.00
Stage 6: Sixth Month Following Second Beta Test	\$2,500.00
Stage 7: Seventh Month Following Second Beta Test	\$2,500.00
Stage 8: Eighth Month Following Second Beta Test	\$3,000.00
Stage 9: Ninth Month Following Second Beta Test	\$3,000.00
Stage 10: Post-Pregnancy	\$2,000.00
TOTAL MAXIMUM REIMBURSEMENT:	<u>\$20,000.00</u>

TERRI N. DAY 
VICE CONSUL OF THE
UNITED STATES OF AMERICA

00070270-1804

Form **8879**

IRS e-file Signature Authorization

OMB No. 1545-0074

Do not send to the IRS. This is not a tax return.
Keep this form for your records.

2015

Department of the Treasury
Internal Revenue Service

Information about Form 8879 and its instructions is at www.irs.gov/form8879.

Submission Identification Number (SID)

Taxpayer's name ANDREW BANKS	Social security number [REDACTED]-4354
Spouse's name ETAD DVASH-BANKS	Spouse's social security number [REDACTED]-6984

Part I Tax Return Information – Tax Year Ending December 31, 2015 (Whole Dollars Only)

1 Adjusted gross income (Form 1040, line 38; Form 1040A, line 22; Form 1040EZ, line 4)	1	5.
2 Total tax (Form 1040, line 63; Form 1040A, line 39; Form 1040EZ, line 12)	2	
3 Federal income tax withheld (Form 1040, line 64; Form 1040A, line 40; Form 1040EZ, line 7)	3	
4 Refund (Form 1040, line 76a; Form 1040A, line 45a; Form 1040EZ, line 13a; Form 1040-SS, Part I, line 13a)	4	
5 Amount you owe (Form 1040, line 78; Form 1040A, line 50; Form 1040EZ, line 14)	5	

Part II Taxpayer Declaration and Signature Authorization (Be sure you get and keep a copy of your return)

Under penalties of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, 2015, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts from my electronic income tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the IRS and to receive from the IRS (a) an acknowledgment of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my federal taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account. This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization. To revoke (cancel) a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537. Payment cancellation requests must be received no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I further acknowledge that the personal identification number (PIN) below is my signature for my electronic income tax return and, if applicable, my Electronic Funds Withdrawal Consent.

Taxpayer's PIN: check one box only

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN [REDACTED] as my signature on my tax year 2015 electronically filed income tax return. ERO firm name Enter five digits, but do not enter all zeros

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box only if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature _____ Date **9/23/2016**

Spouse's PIN: check one box only

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN [REDACTED] as my signature on my tax year 2015 electronically filed income tax return. ERO firm name Enter five digits, but do not enter all zeros

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box only if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Spouse's signature _____ Date **9/23/2016**

Practitioner PIN Method Returns Only – continue below

Part III Certification and Authentication – Practitioner PIN Method Only

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN. [REDACTED] Do not enter all zeros

I certify that the above numeric entry is my PIN, which is my signature for the tax year 2015 electronically filed income tax return for the taxpayer(s) indicated above. I confirm that I am submitting this return in accordance with the requirements of the Practitioner PIN method and Publication 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns.

ERO's signature Deborah Schwartz, E.A. Date **9/23/2016**

ERO Must Retain This Form – See Instructions
Do Not Submit This Form to the IRS Unless Requested To Do So

TERRI N. DAY

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

VICE CONSUL OF THE UNITED STATES OF AMERICA Form 8879 (2015)

FORM 1015 11/15/15

Citibank Client Services 000
 PO Box 6201
 Sioux Falls, SD 57117-6201

410R104F000

000
 CITIBANK, N. A.
 Account

ANDREW MASON BANKS
 [REDACTED] STREET APT [REDACTED]
 LOS ANGELES CA 90035-2947

Statement Period
 Nov 3 - Dec 4, 2016

Page 1 of 4

CITIBANK ACCOUNT AS OF DECEMBER 4, 2016				
Relationship Summary:				
Checking			\$5,412.12	
Savings			\$0.00	
Investments (not FDIC Insured)			----	
Loans			----	
Credit Cards			\$0.00	
				Balance
Checking				\$5,412.12
Regular Checking				\$5,412.12
				Balance
Savings				\$0.00
Preferred Money Market				\$0.00
Total Checking and Savings at Citibank				\$5,412.12
Credit Cards	As of date	Credit Line	Amount Available	Amount You Owe
Citi®/AAAdvantage® Account XXXXXXXXXX8393	11/10/16	\$4,500.00	\$4,500.00	\$0.00

SUGGESTIONS AND RECOMMENDATIONS

Effective February 1, 2017, Citibank will no longer issue counter checks. We will continue to offer pre-printed checks and bill payment services.

CITIBANK ACCOUNT RATES AND CHARGES

When determining your rates and charges for this statement period, Citibank considered your average balances during the month of November in all of your qualifying accounts that you asked us to combine. If you have a Citibank secured credit card, then Citibank will also include the balance in your Collateral Holding Account or your Certificate of Deposit that secures your Citibank credit card. These balances may be in accounts that are reported on other statements.

Rates and Charges	Your Combined Balance Range \$6,000-\$9,999
Rates	Standard
Monthly Service Fee	\$25.00(Waived)

Ask about accounts eligible for preferred rates.

TERRI N. DAY
 VICE CONSUL OF THE
 UNITED STATES OF AMERICA

1/24/2017

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University of California, Santa Barbara

1/24/2017 12:47:14 PM

Unofficial Transcript

Andrew Banks

Perm Number [REDACTED]

<u>College/Objective/Major</u>	<u>Degree Status</u>	<u>Conferral Date</u>
L&S/ BA/ GLOBL	Awarded	6/13/2003
L&S/ BA/ ITALS	Awarded	6/13/2003

Fall 1999

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
EEMB 25 -HUMAN ANATOMY	P	13805	4.0	4.0	0.0	0.00	
ITAL 1 -ELEMENTARY ITALIAN	A-	23069	4.0	4.0	4.0	14.80	
POL S 1 -POL IDEAS MOD WORLD	C+	51821	4.0	4.0	4.0	9.20	
Quarter Total (Undergrad)	GPA 3.00		12.0	12.0	8.0	24.00	
Cumulative Total (Undergrad)	GPA 3.00		12.0	12.0	8.0	24.00	

Winter 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 8B -FRENCH CONVERSATION	A	17889	2.0	2.0	2.0	8.00	
GLOBL 1 -GLOBL HIS/CUL/IDEOL	A-	48306	4.0	4.0	4.0	14.80	
HIST 4B -WESTERN CIVILIZATIO	B-	21253	4.0	4.0	4.0	10.80	
MS 8 -20TH CENTURY WAR	A	31005	2.0	2.0	2.0	8.00	
POL S 7 -INTRO TO IR	B+	38695	4.0	4.0	4.0	13.20	
Quarter Total (Undergrad)	GPA 3.42		16.0	16.0	16.0	54.80	
Cumulative Total (Undergrad)	GPA 3.28		28.0	28.0	24.0	78.80	

Spring 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	W	52027	4.0	0.0	0.0	0.00	
HIST 4C -WESTERN CIVILIZATIO	B-	21154	4.0	4.0	4.0	10.80	
ITAL 2 -ELEMENTARY ITALIAN	A-	23218	4.0	4.0	4.0	14.80	
POL S 6 -INTRO COMP POLITICS	B-	37697	4.0	4.0	4.0	10.80	
Quarter Total (Undergrad)	GPA 3.03		12.0	12.0	12.0	36.40	
Cumulative Total (Undergrad)	GPA 3.20		40.0	40.0	36.0	115.20	

Summer 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ENV S 2 -INTRO ENV SCIENCE	P	09670	4.0	4.0	0.0	0.00	
HIST 132 -WAR AND SOCIETY	B-	04465	4.0	4.0	4.0	10.80	
ITAL 3 -ELEMENTARY ITALIAN	A+	04671	4.0	4.0	4.0	16.00	
Quarter Total (Undergrad)	GPA 3.35		12.0	12.0	8.0	26.80	
Cumulative Total (Undergrad)	GPA 3.22		52.0	52.0	44.0	142.00	

Fall 2000

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	B+	48793	4.0	4.0	4.0	13.20	
ITAL 8A -ITALIAN CONVERSATN	P	23291	2.0	2.0	0.0	0.00	
POL S 121 -INTERNATL POLITICS	A-	38596	4.0	4.0	4.0	14.80	
POL S 186A -INTRO INTL POL ECON	A	54163	4.0	4.0	4.0	16.00	

<https://my.sa.ucsb.edu/gold/UnofficialTranscriptPrintable.aspx?NameType=LegalName>

1/3

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 059

ER114

1/24/2017

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Quarter Total (Undergrad)	GPA 3.66	14.0	14.0	12.0	44.00
Cumulative Total (Undergrad)	GPA 3.32	66.0	65.0	56.0	186.00

Spring 2001

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL PV 23 -INTERMED ITALIAN	B+		16.0	16.0	16.0	52.80	
ITAL PV 30 -ITALIAN CULTURE	B+		6.0	6.0	6.0	19.80	
Quarter Total (Undergrad)	GPA 3.30		22.0	22.0	22.0	72.60	
Cumulative Total (Undergrad)	GPA 3.31		88.0	88.0	78.0	258.60	

Fall 2001

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 6 -INTERMEDIATE FRENCH	P	17764	4.0	4.0	0.0	0.00	
GLOBL 124 -GLOBAL CONFLICT	A-	20453	4.0	4.0	4.0	14.80	
GLOBL 197 -SPECIAL TOPICS	C+	54783	4.0	4.0	4.0	9.20	
ITAL 101 -ADV ITAL READ/COMP	B	22954	4.0	4.0	4.0	12.00	
Quarter Total (Undergrad)	GPA 3.00		16.0	16.0	12.0	36.00	
Cumulative Total (Undergrad)	GPA 3.27		104.0	104.0	90.0	294.60	

Winter 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBL 2 -GLOBL SOC/ECON/POL	A-	20446	4.0	4.0	4.0	14.80	
ITAL 119 -ART OF TRANSLATION	A-	45328	4.0	4.0	4.0	14.80	
ITAL 114X -DIVINE COMEDY	B-	23119	4.0	4.0	4.0	10.80	
ITAL 88 -ITALIAN CONVERSATN	A-	23077	2.0	2.0	2.0	7.40	
Quarter Total (Undergrad)	GPA 3.41		14.0	14.0	14.0	47.80	
Cumulative Total (Undergrad)	GPA 3.29		118.0	118.0	104.0	342.40	

Spring 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ART HIS 185 -HIST OF MODERNISM	B+		4.0	4.0	4.0	13.20	
INT 192DC-WASH CTR INTERNSHIP	P	22038	8.0	8.0	0.0	0.00	
INT 199DC-WASH CTR INDEP RES	A-	22046	4.0	4.0	4.0	14.80	
Quarter Total (Undergrad)	GPA 3.50		16.0	16.0	8.0	28.00	
Cumulative Total (Undergrad)	GPA 3.30		134.0	134.0	112.0	370.40	

Summer 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GEOL 4 -INTRO OCEANOGRAPHY	P	13771	4.0	4.0	0.0	0.00	
Quarter Total (Undergrad)	GPA 0.00		4.0	4.0	0.0	0.00	
Cumulative Total (Undergrad)	GPA 3.30		138.0	138.0	112.0	370.40	

Fall 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBL 194 -GROUP STUDIES	B	54619	4.0	4.0	4.0	12.00	
ITAL 144BB-GENDER & SEXUALITY	B+	53942	4.0	4.0	4.0	13.20	
ITAL 161AX-EUROPEAN UNION	B+	55384	4.0	4.0	4.0	13.20	
MS 12 -WMN/MIN IN THE ARMY	A	46201	3.0	3.0	3.0	12.00	
Quarter Total (Undergrad)	GPA 3.36		15.0	15.0	15.0	50.40	
Cumulative Total (Undergrad)	GPA 3.31		153.0	153.0	127.0	420.80	

3/24/2017

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Unofficial Transcript - Printable Version
#1289**Winter 2003**

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GPS 196 -GPS SEMINAR	B	22103	4.0	4.0	4.0	12.00	
ITAL 109 -ADV. CONVERSATION	A	58438	4.0	4.0	4.0	16.00	
ITAL 142X -WOMEN IN ITALY	B+	52944	4.0	4.0	4.0	13.20	
WRIT 109SS-WRIT SOC SCIENCE	A	47076	4.0	4.0	4.0	16.00	
Quarter Total (Undergrad)	GPA 3.57		16.0	16.0	16.0	57.20	
Cumulative Total (Undergrad)	GPA 3.34		169.0	169.0	143.0	478.00	

Spring 2003

Course	Grade	EnrId	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL 112 -ITAL NARRATIVE FICT	B+	23523	4.0	4.0	4.0	13.20	
ITAL 121 -ITALIAN DRAMA	A+	23531	4.0	4.0	4.0	16.00	
ITAL 199 -INDEPENDENT STUDIES	A	66480	4.0	4.0	4.0	16.00	
SPAN 2 -ELEMENTARY SPANISH	A-	42705	4.0	4.0	4.0	14.80	
Quarter Total (Undergrad)	GPA 3.75		16.0	16.0	16.0	60.00	
Cumulative Total (Undergrad)	GPA 3.38		185.0	185.0	159.0	538.00	
Dean's Honors (L&S)							

Transfer Work Undergraduate Total: 28.0
UC & Transfer Work Undergraduate Total: 213.0



Tel: 1877-842-4827 Fax: 1855-897-2528
E-mail: immigration@sponsorDNA.com Web: www.saitbbimmigration.com

30 January 2017

Petitioner: BANKS, ANDREW MASON

Beneficiary: D [REDACTED] B [REDACTED], E [REDACTED] J [REDACTED]

Our reference: [REDACTED]

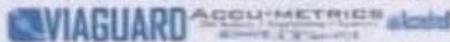
Collection Facility
VIAGUARD ACCU-METRICS
1232 Kingston Road
Toronto, ON
M1N 1P3
4166914167

A paternity test was performed to prove a parent / child relationship between alleged father: BANKS, ANDREW MASON and child: D [REDACTED] B [REDACTED], E [REDACTED] J [REDACTED]

This is to confirm that the probability of paternity percentage of 0% represents a negative result.

The client contacted us directly. No third party vendor was used. This account is paid in full.

Thank you, Harvey Tenenbaum, Director of Operations



Immigration and Citizenship Relationship Testing

immigration@sponsorDNA.com

Toll Free: 1-877-842-4827

Fax: 1-855-897-2528



1232 Kingston Road Tel: 416-691-4167 Fax: 416-691-8112
 Toronto, Ontario E-mail: immigration@sponsordna.com
 Canada, M1N 1P3 Web: www.sponsordna.com

DNA Test Report

This test was conducted in accordance with Standards for DNA analysis set forth by the American Association of Blood Banks.

Case ID: [REDACTED] Track ID: [REDACTED] Report Date: 2017-01-30 Collection Date:	Alleged Father ANDREW MASON BANKS [REDACTED] 1 2017-01-24	Child E [REDACTED] D [REDACTED] B [REDACTED] [REDACTED] 2 2017-01-24
--	---	---

Locus	Index	Allele Sizes	Allele Sizes
CSF1PO	[REDACTED]	[REDACTED]	[REDACTED]
TPOX	[REDACTED]	[REDACTED]	[REDACTED]
TH01	[REDACTED]	[REDACTED]	[REDACTED]
vWA	[REDACTED]	[REDACTED]	[REDACTED]
D16S539	[REDACTED]	[REDACTED]	[REDACTED]
D7S820	[REDACTED]	[REDACTED]	[REDACTED]
D13S317	[REDACTED]	[REDACTED]	[REDACTED]
D5S818	[REDACTED]	[REDACTED]	[REDACTED]
FGA	[REDACTED]	[REDACTED]	[REDACTED]
D8S1179	[REDACTED]	[REDACTED]	[REDACTED]
D18S51	[REDACTED]	[REDACTED]	[REDACTED]
D21S11	[REDACTED]	[REDACTED]	[REDACTED]
D3S1358	[REDACTED]	[REDACTED]	[REDACTED]
PENTA E	[REDACTED]	[REDACTED]	[REDACTED]
PENTA D	[REDACTED]	[REDACTED]	[REDACTED]
AMEL	[REDACTED]	[REDACTED]	[REDACTED]

Interpretation:
 Combined Index: 0 **Probability of Paternity: 0%**

The Alleged Father is excluded as the biological father of the tested Child. Based on the testing results obtained from the analyses of the DNA loci listed, and the Probability of Paternity is 0%. This Probability of Paternity was calculated by comparing to an untested, random individual of the Caucasian population (assumes prior probability equals 0.50).

Subscribed and sworn to before me on 2017-01-30



Sheldon Tenenbaum
 Notary Public, Private
 Barrister and Solicitor

I, the undersigned Laboratory Director, verify that the interpretation of the results is correct as reported on 2017-01-30

Harvey Tenenbaum
 Harvey Tenenbaum, Ph.D. Kyle Tsui, Ph.D.

This DNA test was performed utilizing the PowerPlex16 PCR amplification and the AB13730 DNA Analyser



USE A SEPARATE FORM FOR EACH DONOR SAMPLE

DONOR IDENTIFICATION FILE# _____

FULL NAME E. J. [REDACTED] - B. [REDACTED]

TELEPHONE _____ EMAIL _____

ADDRESS _____

IDENTIFICATION PRESENTED _____

DATE OF BIRTH 2016/09/16 GENDER (CIRCLE) MALE FEMALE

DONOR (CIRCLE) CHILD ALLEGED FATHER MOTHER AUNT/UNCLE OTHER

ETHNICITY (CIRCLE) ASIAN CAUCASIAN BLACK OTHER

I (CIRCLE) HAVE NOT UNDERGONE A BLOOD TRANSFUSION OR STEM/BONE MARROW CELL TRANSPLANT IN THE LAST 3 MONTHS. IF SO EXPLAIN _____

CONSENT AND CERTIFICATION

I AGREE TO HAVING MY BIOLOGICAL SAMPLES UNDERGO DNA EXTRACTION AND ANALYSIS. I HEREBY CONSENT TO THE USE OF THE SPECIMEN PROVIDED FOR DNA ANALYSIS AND CERTIFY THAT IT REPRESENTS A TRUE AND ACCURATE SAMPLE OF A BODY FLUID/SECRETION FROM THE ABOVE NAMED DONOR.

(PARENTS OR LEGAL GUARDIANS MUST SIGN ON BEHALF OF CHILDREN UNDER THE AGE OF 18 YEARS)

DONOR/PARENT/GUARDIAN NAME Andrew Mason Quash-Bonts

SIGNATURE _____ DATE 29/1/17

GUARANTOR IDENTIFICATION AND CERTIFICATION

COLLECTION SITE Viaguard Accu-metrics

ADDRESS 1232 Kingston Road

TELEPHONE 1277 812 0277 FAX 1265 817 2528 EMAIL _____

I HAVE VERIFIED THE IDENTIFICATION OF THE DONOR REPRESENTED ON THIS FORM AND CERTIFY THAT THE SPECIMEN WAS TAKEN FROM THIS DONOR, AND WAS COLLECTED, LABELED, AND SEALED IN MY AND DONOR'S PRESENCE. THE SAMPLES NEVER LEFT MY POSSESSION OR CONTROL FROM THE TIME OF COLLECTION TO THE TIME OF DIRECTLY MAILING THEM TO VIAGUARD ACCU-METRICS, OR SUBMITTING THEM TO A COURIER SERVICE FOR DELIVERY TO VIAGUARD ACCU-METRICS.

COLLECTOR'S NAME DR. H. Tenenbaum POSITION OR TITLE AUTHORIZED COLLECTOR

SIGNATURE [Signature] DATE 29/01/2017

TERMS AND CONDITIONS

Viaguard Inc./Accu-metrics maintains the privacy of our customers and never discloses personal information without prior customer knowledge and consent.

1. Provisions of services:

- 1.1 Viaguard Inc./Accu-metrics reserves the right to perform or have performed the testing and analysis using methods and processes Accu-metrics deems appropriate.
- 1.2 In the event that the samples provided are inadequate (by either quality or quantity) for the purpose of conducting an analysis, Viaguard Inc./Accu-metrics reserves the right to request further samples.
- 1.3 Viaguard Inc./Accu-metrics will take all reasonable steps to ensure that reports are provided within the advertised time frames but cannot accept any responsibility for delay however caused.

2. Viaguard/Accu-metrics Disclaimers and Liabilities

- 2.1 In no event, shall Viaguard/Accu-metrics, its employees, mandates and/or associates be liable to the client for any indirect, incidental, special, punitive, or consequential damages exceeding \$100.00 for each test performed. Any such claim will not be accepted unless it is made in writing within six months of the test date.

3. The Client's Warranty and Indemnity

- 3.1 The client will indemnify Viaguard/Accu-metrics from any liability in connection with this test and its results.

DATE	CHAIN OF CUSTODY	SEALED	POSITION
<u>2017/01/28</u>	<u>[Signature]</u>	<input checked="" type="checkbox"/>	Collector
<u>2017/01/28</u>	<u>[Signature]</u>	<input checked="" type="checkbox"/>	Courier
<u>2017/01/28</u>	<u>[Signature]</u>	<input checked="" type="checkbox"/>	Viaguard / Accu-metrics



USE A SEPARATE FORM FOR EACH DONOR SAMPLE

DONOR IDENTIFICATION

FULL NAME Andrew Mason Owash-Banks FILE# _____
 TELEPHONE 647- [REDACTED] EMAIL [REDACTED]@gmail.com
 ADDRESS [REDACTED] Ave # [REDACTED]
 IDENTIFICATION PRESENTED _____
 DATE OF BIRTH 1981 GENDER (CIRCLE) MALE FEMALE
 DONOR (CIRCLE) ALLEGED FATHER MOTHER CHILD AUNT/UNCLE OTHER _____
 ETHNICITY (CIRCLE) ASIAN CAUCASIAN BLACK OTHER _____
 I (CIRCLE) HAVE HAVE NOT UNDERGONE A BLOOD TRANSFUSION OR STEM/BONE MARROW CELL TRANSPLANT IN THE LAST 3 MONTHS. IF SO EXPLAIN _____
CONSENT AND CERTIFICATION
 I AGREE TO HAVING MY BIOLOGICAL SAMPLES UNDERGO DNA EXTRACTION AND ANALYSIS. I HEREBY CONSENT TO THE USE OF THE SPECIMEN PROVIDED FOR DNA ANALYSIS AND CERTIFY THAT IT REPRESENTS A TRUE AND ACCURATE SAMPLE OF A BODY FLUID/SECRETION FROM THE ABOVE NAMED DONOR.
 (PARENTS OR LEGAL GUARDIANS MUST SIGN ON BEHALF OF CHILDREN UNDER THE AGE OF 18 YEARS)
 DONOR/PARENT/GUARDIAN NAME Andrew Mason Owash-Banks
 SIGNATURE [Signature] DATE 24/1/17

GUARANTOR IDENTIFICATION AND CERTIFICATION

COLLECTION SITE Viaguard Accu-metrics
 ADDRESS 1232 Kinross Road
 TELEPHONE 1877 842 4827 FAX 1855 897 2528 EMAIL _____
 I HAVE VERIFIED THE IDENTIFICATION OF THE DONOR REPRESENTED ON THIS FORM AND CERTIFY THAT THE SPECIMEN WAS TAKEN FROM THIS DONOR AND WAS COLLECTED, LABELED, AND SEALED IN MY AND DONOR'S PRESENCE. THE SAMPLES NEVER LEFT MY POSSESSION OR CONTROL FROM THE TIME OF COLLECTION TO THE TIME OF DIRECTLY MAILING THEM TO VIAGUARD.ACCU-METRICS, OR SUBMITTING THEM TO A COURIER SERVICE FOR DELIVERY TO VIAGUARD.ACCU-METRICS.
 COLLECTOR'S NAME DR H. Tenenbaum POSITION OR TITLE AUTHORIZED COLLECTOR
 SIGNATURE [Signature] DATE 24/1/2017

TERMS AND CONDITIONS
 Viaguard Inc./Accu-metrics maintains the privacy of our customers and never discloses personal information without prior customer knowledge and consent.

1.Provisions of services

- 1.1 Viaguard Inc./Accu-metrics reserves the right to perform or have performed the testing and analysis using methods and processes Accu-metrics deems appropriate.
- 1.2 In the event that the samples provided are inadequate (by either/or quality or quantity) for the purpose of conducting an analysis, Viaguard Inc./Accu-metrics reserves the right to request further samples.
- 1.3 Viaguard Inc./Accu-metrics will take all reasonable steps to ensure that reports are provided within the advertised time frames but cannot accept any responsibility for delay however caused.

2.Viaguard/Accu-metrics Disclaimers and Liabilities

- 2.1 In no event, shall Viaguard/Accu-metrics, its employees, mandates and/or associates be liable to the client for any indirect, incidental special, punitive, or consequential damages exceeding \$100.00 for each test performed. Any such claim will not be accepted unless it is made in writing within six months of the test date.

3.The Client's Warranty and Indemnity

- 3.1 The client will indemnify Viaguard/Accu-metrics from any liability in connection with this test and its results.

DATE	CHAIN OF CUSTODY	SEALED	POSITION
<u>2017/01/24</u>	<u>[Signature]</u>	<u>—</u>	Collector
<u>2017/01/24</u>	<u>[Signature]</u>	<u>—</u>	Courier
<u>2017/01/24</u>	<u>[Signature]</u>	<u>✓</u>	Viaguard / Accu-metrics

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2-2
PPT +
CABA

APPLICATION FOR A U.S. PASSPORT

Please Print Legibly Using Black Ink Only

OMB CONTROL NO. 1405-0004
OMB EXPIRATION DATE: 08-31-2019
ESTIMATED BURDEN: 45 MIN

Attention: Read WARNING on page 1 of instructions
Please select the document(s) for which you are applying:

U.S. Passport Book U.S. Passport Card Both
The U.S. passport card is not valid for international air travel. For more information see page 1 of instructions.

Regular Book (Standard) Large Book (Non-Standard)

Note: The large book option is for those who frequently travel abroad during the passport validity period, and is recommended for applicants who have previously required the addition of visa pages.

1. Name Last: [Redacted] - [Redacted]
First: [Redacted] Middle: [Redacted]

2. Date of Birth (mm/dd/yyyy): 09 16 2016 3. Sex: M F 4. Place of Birth (City & State if in the U.S., or City & Country as it is presently known.): MISSISSAUGA, ON, CANADA

5. Social Security Number: [Redacted] 6. Email (Info alerts offered at travel.state.gov): [Redacted]@gmail.com 7. Primary Contact Phone Number: 647 706 9556



8. Mailing Address: Line 1: Street/RFD#, P.O. Box, or URB. [Redacted] AVG
 Address Line 2: Clearly label Apartment, Company, Suite, Unit, Building, Floor, In Care Of or Attention if applicable. (e.g., In Care Of - Jane Doe, Apt # 100)
 APT [Redacted]
 City: TORONTO State: ON Zip Code: M6B 4C6 Country, if outside the United States: CANADA

9. List all other names you have used. (Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed)

STOP! CONTINUE TO PAGE 2

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent on Second Signature Line (if identifying minor)

Driver's License State Issued ID Card Passport Military Other

Name: Elad Duash
 Issue Date (mm/dd/yyyy): 04 21 2010 Exp. Date (mm/dd/yyyy): 04 20 2020 State of Issuance: [Redacted]
 ID No: [Redacted] Country of Issuance: Israel

Identifying Documents - Applicant or Mother/Father/Parent on Third Signature Line (if identifying minor)

Driver's License State Issued ID Card Passport Military Other

Name: Andrew Mason Banks
 Issue Date (mm/dd/yyyy): 03 23 2010 Exp. Date (mm/dd/yyyy): 03 22 2020 State of Issuance: [Redacted]
 ID No: [Redacted] Country of Issuance: [Redacted]

Acceptance Agent (Vice) Consul USA
 Passport Staff Agent

TERRI N. DAY
 VICE CONSUL OF THE
 UNITED STATES OF AMERICA

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not, since acquiring U.S. citizenship or nationality, performed any of the acts listed under "Acts or Conditions" on page four of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page one of the instructions to the application form.

Name of courier company (if applicable): TORONTO Facility ID Number: [Redacted]

Applicant's Legal Signature - age 18 and older: [Redacted]

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor): [Redacted]

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor): [Redacted]

Signature of person authorized to accept applications: [Redacted] Date: JAN 24 2017

For Issuing Office Only: Bk Card EF Postage Execution Other

* DS 11 C 09 2013 1 *

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To whom it may concern:

I E J O B (print full name) declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration.

Executed on: 1/24/17
(DATE)

Signature: [Handwritten Signature]
(Sign using full name as indicated on the passport application)

Case 2:18-cv-00523-JFW-JC Document 80-4 Filed 01/04/19 Page 63 of 64 Page ID #:1299

Last Name Dvash-Banks		Sex of Child Male	
First Name Eli		Middle Name(s) Elad	
Date of Birth (yyyy/mm/dd) 2016/05/16		Name of hospital (if not hospital give exact location where birth occurred) Credit Valley Hospital	
Place of Birth (City/Town/Village/Township) Mississauga		(Regional municipality, county or district) PEEL	

Section B - Father's Information - (see instruction #2)		Section C - Father's Information - (see instruction #3)	
Current Legal Last Name Dvash-Banks		Current Legal Last Name Dvash-Banks	
Legal Last Name at Birth Banks		Legal Last Name at Birth Dvash	
First and Middle Name(s) Andrew Mason		First and Middle Name(s) Elad	
Any Other Legal Last Name(s)		Any Other Legal Last Name(s)	
Place of Birth (City/Town/Village/Township) Santa Monica		Place of Birth (City/Town/Village/Township) Ramat Gan	
Place of Birth (Province/Country) California, USA		Place of Birth (Province/Country) Israel	
Date of Birth (mm/dd/yyyy) 1985		Date of Birth (mm/dd/yyyy) 1985	
Age 35		Age 34	
Marital Status of Parent in Section B: <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Common Law <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			

Section D - Birth Information				
Residence of Parent in Section B - Complete street address (City, town, village, township - if rural give Post Office or Rural Route address) Avenue, Toronto				
Postal Code M6B4C6				
Making Address of Parent in Section B if different from above - Complete street address (if rural give Post Office or Rural Route address) Postal Code				
Duration of pregnancy (in weeks) 32	Total number of children born born to this parent including this birth 2	Weight at birth (in grams) 3250	Head of Birth <input type="checkbox"/> English <input checked="" type="checkbox"/> Yiddish <input type="checkbox"/> Hebrew <input type="checkbox"/> Other	# multiple births, state whether this child was born 1st 2nd 3rd etc. 2nd
Of this Total, number born live 2	Of this Total, number stillborn 0	Name of Attendant at birth Dr. Myckan, Kerry	<input checked="" type="checkbox"/> Physician <input type="checkbox"/> Midwife <input type="checkbox"/> Other, specify	

Section E - Certification of Informant (Please read instruction #1 before signing)	
If you are choosing a last name that is not one of the parent's last names or combination of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes: <input type="checkbox"/> Cultural Heritage <input type="checkbox"/> Religious Heritage <input type="checkbox"/> Ethnic Heritage	
I (We) certify the statements made on this form are true and correct. I am (We are) aware that a birth officer will make a false statement on this form. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Signature of Father Signature of Mother Signature of Informant (see instruction #1)	
Date (yyyy/mm/dd) 2016/10/08	
Date (yyyy/mm/dd) 2016/10/08	
Date (yyyy/mm/dd)	

Section F - Office Use Only	
I approve this statement and register this birth by signing this statement. Signature of Manager X	
Date (yyyy/mm/dd) 2016/11/03	
Office Use Only	
UPDATED GEO CODE	

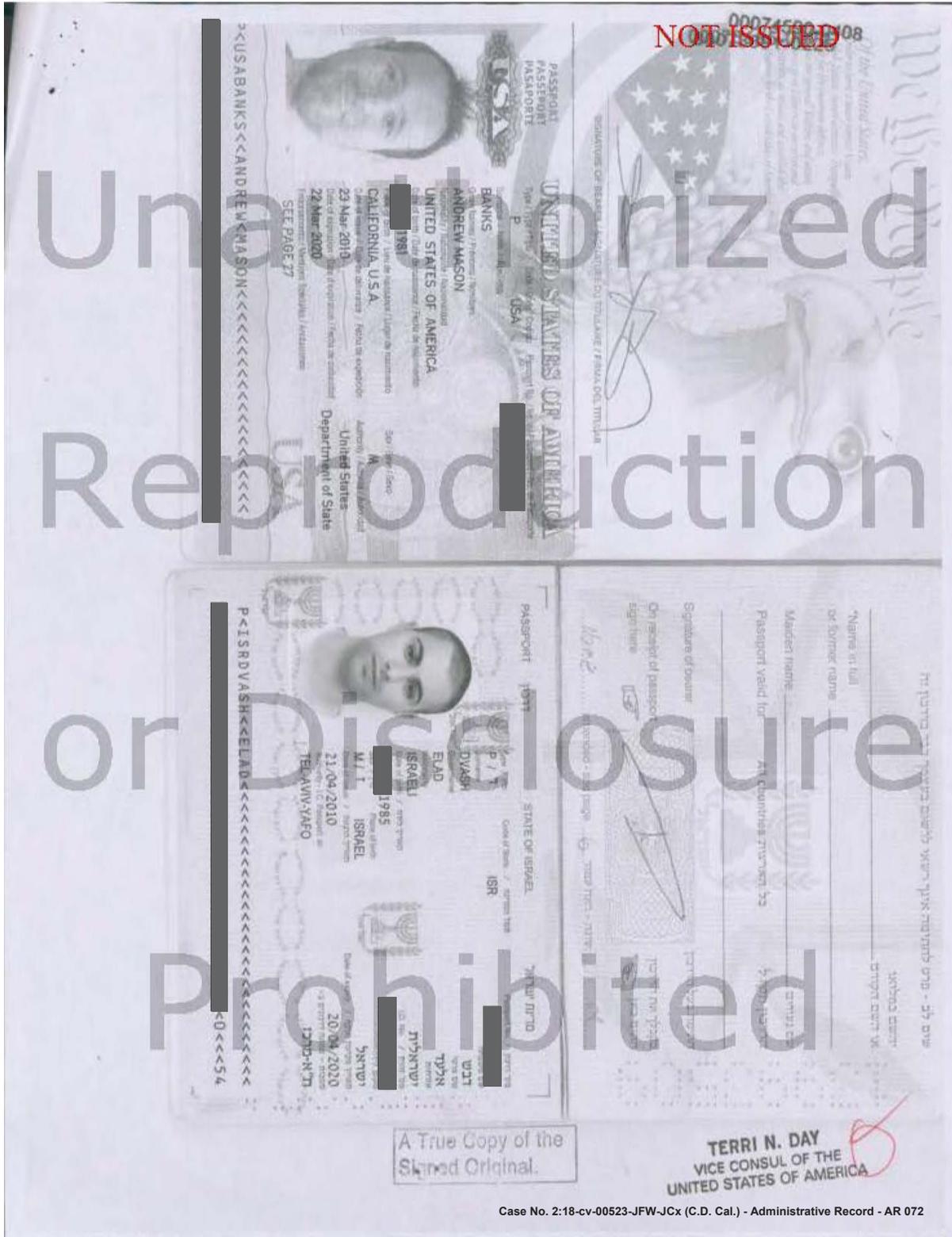
A True Copy of the Signed Original.

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TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

Alexandra Schmidt
Alexandra Schmidt
Deputy Registrar General
Registraire générale adjointe

---CERTIFIED COPY---
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TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

A True Copy of the
Signed Original.

To: Day, Frankie (Terri)[DayTN@state.gov]
From: Ramsay, Margaret S
Sent: Tue 1/24/2017 3:00:43 PM (UTC)
Subject: ART guidance

2014 Cable on ART cases

<http://repository.state.gov/archive/2014/01/31/19fc8100-1c46-4101-97ce-4a4286a6e39a/14-STATE-10952.eml.PDF>

7 FAM 1100 APPENDIX D

<http://fam.a.state.gov/fam/07fam/07fam1100apD.html#M1100>

Margaret S. Ramsay
Consul
U.S. Consulate General, Toronto
Tel: 416-595-1700 ext. 466

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From: SMART Archive
Sent: 1/30/2014 8:21:55 PM
To: svcSMARTBTSP06
Subject: POLICY CHANGE RELATED TO CHILDREN BORN ABROAD THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY (ART)

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MRN: 14 STATE 10952
Date/DTG: Jan 31, 2014 / 310123Z JAN 14
From: SECSTATE WASHDC
Action: TRIPOLI, AMEMBASSY *IMMEDIATE* ; JUBA, AMEMBASSY *IMMEDIATE* ; MINSK, AMEMBASSY *IMMEDIATE* ; ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *IMMEDIATE*
E.O.: 13526
TAGS: CASC, CPAS, CVIS
Subject: POLICY CHANGE RELATED TO CHILDREN BORN ABROAD THROUGH ASSISTED REPRODUCTIVE TECHNOLOGY (ART)

1. Summary: This ALDAC announces policy changes related to children born abroad through assisted reproductive technology (ART). Currently, only genetic mothers (egg donors) are able to transmit citizenship and immigration benefits to their children who are born abroad. Under the new policy, birth mothers (gestational mothers) who are also the legal parent of the child will be treated the same as genetic mothers for the purposes of citizenship and immigration benefits. Additional guidance will follow. End summary.

2. Transmission of Citizenship at Birth via Genetic or Gestational U.S. Citizen Legal Mothers: The Department of State and the Department of Homeland Security are now interpreting relevant U.S. law to permit acquisition of U.S. citizenship at birth based upon a genetic and/or gestational relationship to a U.S. citizen legal mother at the time and place of birth. See examples in paragraph 6.

3. Transmission After Birth under the Child Citizenship Act: Both departments are further interpreting the Immigration and Nationality Act (INA) Sections 101(c), 320, and 322 (8 U.S.C. Sections 1101(c), 1431, and 1433), such that a "parent" includes a genetic or gestational legal parent, and a "child" includes the child of a genetic or gestational parent who is also a legal parent at the time of the child's birth. This interpretation allows transmission of citizenship after birth by a U.S. citizen gestational, legal mother who is not the genetic mother of the child to whom she gave birth.

4. Immigration of Children of Gestational, Legal Mothers: Under the new interpretation, INA Section 101(b) (8 U.S.C. Section 1101(b)) treats a child as being born "in wedlock" under INA Section 101(b)(1) (A) when the genetic and/or gestational parents are legally married to each other at the time of the child's birth and both parents are the legal parents of the child at the time and place of birth. A "child legitimated" and a "legitimizing parent or parents" in INA Section 101(b)(1)(C) includes a gestational mother who is also the legal mother of the child.

The term "natural mother" in INA Section 101(b)(1)(D) includes a gestational mother who is the legal

mother of a child at the time and place of birth, as well as a genetic mother who is a legal mother of the child at the time and place of birth.

5. Retroactive Application: The new policy will be retroactive. There will be cases in which children born abroad to a gestational and legal mother were previously denied a citizenship or immigration benefit under the prior interpretation. In such cases, parent(s) must submit a new application for their child, if they wish to apply for a passport, Consular Report of Birth Abroad (CRBA), or other document. The application must include sufficient evidence demonstrating that they meet all relevant statutory and regulatory requirements as well all appropriate fees.

6. Case Examples:

A woman who gives birth abroad to a child that is not genetically related to her (i.e., the child was conceived using a donor egg), and who is also the legal mother of the child at the time and place of its birth, may transmit U.S. citizenship to the child under Section 301 and Section 309 of the INA (8 U.S.C. Sections 1401 and 1409).

A U.S. citizen who gives birth abroad to a child, but who is not the legal mother at the time and place of birth, (i.e., a gestational surrogate) may not transmit citizenship. In this example, the child also would not be born "in wedlock". Under the new interpretation, a child is considered to be born "in wedlock" for purposes of applying INA Section 301, when the child is born to persons who are:

- (1) legally married to one another at the time of the child's birth;
- (2) both the legal parents of the child at the time and place of the child's birth; and
- (3) the genetic and/or gestational parents of the child.

7. Forthcoming Additional Implementation Guidance. The FAM will be updated to reflect this policy change shortly, and a separate ALDAC will be distributed announcing the FAM updates. In the interim, use the guidance in this ALDAC.

8. CA will also post Frequently Asked Questions to the CAWeb under Overseas Citizen Services, Citizenship and Passports in the near future.

9. Contact Points for Questions: Send questions regarding citizenship cases involving children born abroad to a U.S. citizen gestational mother to Ask-OCS-L@state.gov. Please send questions relating to immigrant visas for children born abroad to a gestational and legal mother to Matt McNeil in CA/VO/L/A.

10. Minimize Considered.

Signature: Kerry

Drafted By: CA/OCS:Vogel, Lisa
Cleared By: CA:Sprague, Brenda
CA: Glazeroff, Josh
CA/OCS:Pettit, James
D
CA/OCS:Bernier-Toth, Michelle
CA/VO:Heflin, Don
CA/FPP:Schwartz, David
L/CA: Mitchell, Mary
WHA/EX:Rodriguez, Karen
EUR-IO/EX:Ballard, Juliana

EAP/EX:Stanton, Karen
AF/EX:Tabler-Stone, Melinda
M:Korhonen, Rachna
SES-O: ARADETSKY
WASHDC\RodgersGJ
CA: Janice L. Jacobs
IRM_OPS_MSO:Rodgers, George
USAREUR POLAD HEIDELBERG GE

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7 FAM 1100 APPENDIX D

ACQUISITION OF U.S. CITIZENSHIP AT BIRTH - ASSISTED REPRODUCTIVE TECHNOLOGY

(CT:CON-615; 12-15-2015)
(Office of Origin: CA/OCS/L)

7 FAM 1110 APPENDIX D BIRTH ABROAD TO A U.S. CITIZEN GESTATIONAL MOTHER WHO IS ALSO THE LEGAL MOTHER AT THE TIME SHE GIVES BIRTH (BIRTH MOTHER, BUT NOT GENETIC MOTHER)

(CT:CON-615; 12-15-2015)

- a. A child born abroad to a U.S. citizen gestational mother who is also the legal parent of the child at the time of birth in the location of birth, whose genetic parents are an anonymous egg donor and the U.S. citizen husband of the gestational legal mother, is considered for citizenship purposes to be a person born in wedlock of two U.S. citizens, with a citizenship claim adjudicated under INA 301(c).
- b. A child born abroad to a U.S. citizen gestational mother who is the legal parent of the child at the time of birth in the location of birth, whose genetic parents are an anonymous sperm donor and the U.S. citizen wife of the gestational legal mother, is considered for citizenship purposes to be a person born in wedlock of two U.S. citizens, with a citizenship claim adjudicated under INA 301(c).
- c. A child born abroad to a U.S. citizen gestational mother who is the legal parent of the child at the time of birth in the location of birth, whose genetic parents are an anonymous egg donor and the non-U.S. citizen husband of the gestational legal mother, is considered for citizenship purposes to be a person born in wedlock of a U.S. citizen mother and alien father, with a citizenship claim adjudicated under 301(g).
- d. A child born abroad to a U.S. citizen gestational mother who is the legal parent of the child at the time of birth in the location of birth, and who is not married to the genetic mother or father of the child at the time of the child's birth, is considered for citizenship purposes to be a person born out of wedlock of a U.S.

7 FAM 1100 Appendix D Page 1 of 4

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citizen mother, with a citizenship claim adjudicated under INA 309(c).

7 FAM 1120 APPENDIX D BIRTH ABROAD TO A SURROGATE OF A CHILD WHO IS THE GENETIC ISSUE OF A U.S. CITIZEN MOTHER AND/OR U.S. CITIZEN FATHER

(CT:CON-615; 12-15-2015)

- a. For purposes of this section, the term “surrogate” refers to a woman who gives birth to a child, who is not the legal parent of the child at the time of the child’s birth in the location of the birth. In such a case, the surrogate’s citizenship is irrelevant to the child’s citizenship analysis.
- b. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen mother and her U.S. citizen spouse, is considered for citizenship purposes to be a person born in wedlock of two U.S. citizen parents, with a citizenship claim adjudicated under INA 301(c).
- c. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen mother and anonymous sperm donor, is considered for citizenship purposes to be a person born out of wedlock to a U.S. citizen mother, with a citizenship claim adjudicated under INA 309(c). This is the case regardless of whether the woman is married and regardless of whether her spouse is the legal parent of the child at the time of birth.
- d. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen mother and her non-U.S. citizen spouse, is considered for citizenship purposes to be a person born in wedlock of a U.S. citizen mother and alien spouse, with a citizenship claim adjudicated under INA 301(g).
- e. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen father and his non-U.S. citizen spouse, is considered for citizenship purposes to be a person born in wedlock of a U.S. citizen father and alien spouse, with a citizenship claim adjudicated under INA 301(g).
- f. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen father and anonymous egg donor, is considered for citizenship purposes to be a person born out of wedlock of a U.S. citizen father, with a citizenship claim adjudicated under INA 309(a). This is the case regardless of whether the man is married and regardless of whether his spouse is the legal parent of the child at the time of birth.
- g. A child born abroad to a surrogate, whose genetic parents are a U.S. citizen father and the surrogate (mother) who is not married to the U.S. citizen father is considered for citizenship purposes to be a person born out of wedlock of a U.S. citizen father, with a citizenship claim adjudicated under INA 309(a). Note

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that in such a case, despite the genetic and gestational connection, the surrogate mother is not the legal parent of the child at the time of birth, usually pursuant to a surrogacy agreement.

7 FAM 1130 APPENDIX D ANONYMOUS SPERM/EGG DONORS CANNOT TRANSMIT U.S. CITIZENSHIP TO A CHILD

(CT:CON-615; 12-15-2015)

U.S. citizenship cannot be transmitted by an anonymous sperm or egg donor, even if a clinic, sperm bank, or intended parent(s) purport to certify that the sperm or egg was donated by a U.S. citizen. The applicant (or his or her parent, applying on behalf of a minor applicant) bears the burden of demonstrating the donor transmitting parent's U.S. citizenship and fulfillment of each other statutory requirement, and the evidence in support must be verified by the consular officer. This will require cooperation from the donor(s) to establish the possible claim to U.S. citizenship.

7 FAM 1140 APPENDIX D ESTABLISHING A BIOLOGICAL RELATIONSHIP IN AN ART CASE

(CT:CON-615; 12-15-2015)

- a. In most cases involving assisted reproductive technology there is no shortage of documentation, and consular officers are free, as in any case, to ask for appropriate supporting documentation that fits the circumstances of the case.
- b. Examples of appropriate supporting documentation would be: certified hospital records or physicians' records where the procedure occurred and a sworn statement from the physician who performed the procedure; medical records documenting pre-natal care of the surrogate or the gestational mother; medical records documenting underlying medical conditions that caused parent to seek ART (i.e., infertility or injury); insurance documents or other types of receipts documenting the payments made for the various different procedures. DNA testing may be recommended depending on the other medical evidence and circumstances of the case. (See 7 FAM 1100 Appendix A.)
- c. In cases involving surrogacy, in addition to the medical records discussed above, the intended parents are likely to have signed contracts or other legal instruments with any of the following: fertility clinic, physician, laboratories, the surrogate mother, and/or egg / sperm donor. These legal documents should detail the various parties' intentions with respect to future parental rights and also about fees and payments to the various parties.
- d. If consular officers are not satisfied with other evidence presented, they may

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ask to interview the surrogate and/or her spouse or other family members.

- e. In cases involving a gestational and legal mother, in addition to the medical and financial records discussed above, an officer could ask for photographs taken during the pregnancy or following the birth or other physical mementos (such as hospital bracelets). If the records are insufficient or the consular officer suspects fraud, the officer may ask for a physical exam of the woman by a panel physician.
- f. Questions relating to family/genetic/blood relationships can be considered intrusive and contacts with families in these circumstances may become somewhat emotional. Interviews should always be conducted with consideration for privacy and the sensitivity of the issues. Of course, when there are fraud indicators, posts must ensure that discrepancies are reviewed and resolved.

7 FAM 1150 APPENDIX D THROUGH 7 FAM 1190 APPENDIX D UNASSIGNED

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7 FAM 1130

ACQUISITION OF U.S. CITIZENSHIP BY BIRTH ABROAD TO U.S. CITIZEN PARENT

(CT:CON-674; 07-26-2016)
(Office of Origin: CA/OCS/L)

7 FAM 1131 BASIS FOR DETERMINATION OF ACQUISITION

7 FAM 1131.1 Authority

7 FAM 1131.1-1 Federal Statutes

(CT:CON-349; 12-13-2010)

- a. Acquisition of U.S. citizenship by birth abroad to a U.S. citizen parent is governed by Federal statutes. Only insofar as Congress has provided in such statutes, does the United States follow the traditionally Roman law principle of "jus sanguinis" under which citizenship is acquired by descent (see 7 FAM 1111 a(2)).
- b. Section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) gives the Secretary of State the responsibility for the administration and enforcement of all nationality laws relating to "the determination of nationality of a person not in the United States."

7 FAM 1131.1-2 Applicable Statute

(TL:CON-68; 04-01-1998)

The law applicable in the case of a person born abroad who claims citizenship is the law in effect when the person was born, unless a later law applies retroactively to persons who had not already become citizens. Instructions in 7 FAM 1130 will note when a law is retroactive.

7 FAM 1131.1-3 Delegation of Authority

(TL:CON-68; 04-01-1998)

Consular officers may decide cases involving acquisition of citizenship by birth abroad. Designated nationality examiners may also do so in connection with

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providing passport and related services. If guidance is needed, a case may be submitted to the Department (CA/OCS) for decision or advisory opinion.

7 FAM 1131.2 Prerequisites for Transmitting U.S. Citizenship

(CT:CON-636; 02-24-2016)

Since 1790, there have been two prerequisites for transmitting U.S. citizenship at birth to children born abroad:

- (1) At least one biological parent must have been a U.S. citizen when the child was born. The only exception is for a posthumous child.
- (2) The U.S. citizen parent(s) must have resided or been physically present in the United States for the time required by the law in effect when the child was born.

7 FAM 1131.3 Adoption By a U.S. Citizen Does Not Automatically Result in U.S. Citizenship for the Child

(CT:CON-636; 02-24-2016)

- a. Adoption of an alien minor by a U.S. citizen does not, in and of itself, result in U.S. citizenship for the child. Adoption, however, is one way in which a U.S. citizen father may be able to legitimate his biological child born out of wedlock abroad for purposes of transmitting citizenship (see 7 FAM 1133.4-2 c(4)).
- b. For provisions that govern the naturalization of adopted children, see 7 FAM 1157.

7 FAM 1131.4 A Biological Relationship, or Blood Relationship, Is Required for a U.S. Citizen Parent of a Child Born Abroad to Transmit U.S. Citizenship to the Child

7 FAM 1131.4-1 Establishing Blood Relationship

(CT:CON-636; 02-24-2016)

- a. The laws on acquisition of U.S. citizenship through a parent have always contemplated the existence of a blood relationship between the child and the parent(s) through whom citizenship is claimed. It is not enough that the child is presumed to be the issue of the parents' marriage by the laws of the jurisdiction where the child was born. Absent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired. The burden of proving a claim to U.S. citizenship,

7 FAM 1130 Page 2 of 7

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including blood relationship and legal relationship, where applicable, is on the person making such claim.

- b. Applicants must meet different standards of proof of blood relationship depending on the circumstances of their birth:
 - (1) Section 309(a) INA (8 U.S.C. 1409(a)), as amended on November 14, 1986, specifies that the blood relationship of a child born out of wedlock to a U.S. citizen father must be established by clear and convincing evidence. This standard generally means that the evidence must produce a firm belief in the truth of the facts asserted that is beyond a preponderance but does not reach the certainty required for proof beyond a reasonable doubt. There are no specific items of evidence that must be presented. DNA tests are not required, but may be submitted and can help resolve cases in which other available evidence is insufficient to establish the relationship. For the procedures for establishing legal relationship to or legitimation by a citizen father once blood relationship has been proven, see 7 FAM 1133.4. (7 FAM 1100 Appendix A provides guidance regarding DNA tests.)
 - (2) The INA does not specify a standard of proof for persons claiming transmission of U.S. citizenship based upon birth (a) in wedlock to a U.S. citizen parent or (b) out of wedlock to a U.S. citizen mother. The Department's regulations also do not explicitly establish a standard of proof in these two circumstances. Where no other standard of proof is explicitly required by law, the Department applies the general standard of a preponderance of the evidence. This standard means that the evidence of the biological relationship is of greater weight than the evidence to the contrary. In such a case, the evidence is credible and best accords with reason and probability. Meeting the standard does not depend on the quantity of evidence presented.
- c. A man has a biological relationship with his child, or a "blood relationship" as required in the current text of INA Section 309(a), when he has a genetic parental relationship to the child. A woman may have a biological relationship with her child through either a genetic parental relationship or a gestational relationship. In other words, a woman may establish a biological relationship with her child either by virtue of being the genetic mother (the woman whose egg was used in conception) or the gestational mother (the woman who carried and delivered the baby). (See 7 FAM 1100 Appendix D.)
- d. Children born in wedlock are generally presumed to be the issue of that marriage. This presumption is not determinative in citizenship cases, however, because an actual biological relationship to a U.S. citizen parent is required. If doubt arises that the U.S. citizen "parent" is biologically related to the child, the consular officer is expected to investigate carefully. Circumstances that might give rise to such a doubt include, but are not limited to:
 - (1) Conception or birth of a child when either of the alleged biological parents was married to another person during the relevant time period;

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- (2) Naming on the birth certificate, as father and/or mother, person(s) other than the alleged biological parents; and
 - (3) Evidence or indications that the child was conceived at a time when the alleged father had no physical access to the mother.
 - (4) If the child was conceived or born when the mother was married to someone other than the man claiming paternity, a statement from the man to whom the mother was married disavowing paternity, a divorce or custody decree mentioning certain of her children but omitting or specifically excluding the child in question, or credible statements from neighbors or friends having knowledge of the circumstances leading up to the birth may be required as evidence bearing on actual natural paternity.
 - (5) The child was born through surrogacy or other forms of assisted reproductive technology. (7 FAM 1100 Appendix D provides guidance about acquisition of U.S. citizenship by birth abroad and assisted reproductive technology.)
- e. In such cases, it is within the consular officer's discretion to request additional evidence pursuant to 22 CFR 51.45.

7 FAM 1131.5 Suspected False or Fraudulent Citizenship Claim of Minor Child

7 FAM 1131.5-1 General Guidance

(CT:CON-636; 02-24-2016)

Questions of possible parentage fraud must be handled sensitively. Necessary efforts to enforce the citizenship laws may result in the Department being accused of threatening the family unit and of jeopardizing the welfare of the child. Cases of this kind often have public relations ramifications or give rise to congressional interest. All such cases must be handled in a timely manner with consideration for the family. Posts may provide information on visa eligibility in cases where it has been proven that the child has no claim to U.S. citizenship and the parents wish to take the child to the United States. Posts should suggest that parents consult a lawyer knowledgeable in family law and U.S. immigration law.

7 FAM 1131.5-2 Paternity Issues

(CT:CON-636; 02-24-2016)

- a. Issues of False or Fraudulent Paternity Claims: Paternity fraud is an intentionally-filed claim to citizenship filed on behalf of a child said to have been born to a U.S. citizen father who is not, in fact, the biological father of the child. Paternity fraud is most commonly found in cases where the claimed biological mother is an alien. In some cases, the alleged father believes that he is the

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biological father in which case the claim is properly considered false rather than fraudulent. In other cases, he knows that he is not the father, and intentional fraud is involved. Circumstances that might indicate false or fraudulent claim to paternity include, but are not limited to:

- (1) The child was conceived at a time when there is doubt that the alleged father had physical access to the mother;
 - (2) The mother admits, or there is other evidence, that she had physical relationships with other men around the time of conception;
 - (3) The child allegedly was born prematurely, but its weight at birth appears to indicate that it was a full-term baby;
 - (4) The physical characteristics of the child and of the alleged father do not seem compatible; or
 - (5) There are discrepancies in the birth records.
 - (6) The record contains a DNA test that demonstrates that the putative father is not genetically related to the child.
 - (7) The record contains a court order that indicates that another man is the child's father.
- b. How to Resolve Doubts: To ascertain the true circumstances surrounding the child's conception and birth, the consular officer may wish to:
- (1) Obtain available records showing periods of time when the alleged father had physical access to the mother;
 - (2) Interview the parents separately to determine any differences in their respective stories as to when and where the child was conceived. Often, in separate interviews, one party will admit that the U.S. citizen is not the parent;
 - (3) Interview neighbors and friends to determine the facts as understood within the local community; and
 - (4) Advise DNA testing if the couple continues to pursue the claim even though the facts as developed seem to disprove it. The propriety of requesting DNA testing is discussed in 7 FAM 1100 Appendix A. If post disapproves the application, enter the "N" lookout in the Consular Lookout and Support System (CLASS) using the Passport Lookout Tracking System (PLOTS) as explained in 7 FAM 1300 Appendix A and forward the application to Passport Services for scanning and record keeping in accordance with 7 FAM 1337.

7 FAM 1131.5-3 Maternity Issues

(CT:CON-636; 02-24-2016)

- a. Indications of Fraudulent Maternity Claims: Cases in which a U.S. citizen

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woman intentionally and falsely claims a child as her biological child for citizenship purposes are relatively rare but can occur. The U.S. citizen woman, alone or in collaboration with her spouse, claims that a foreign-born child is her biological child, when instead she has adopted the child or otherwise, obtained physical custody of the child. The false claim that the child is hers is made to avoid full legal adoption and/or visa procedures and to instead fraudulently document the child as a U.S. citizen. Circumstances that might indicate a possibility of maternity fraud include, but are not limited to:

- (1) The alleged mother arrived in the foreign country a few days before the child's birth;
- (2) The alleged mother is beyond normal child-bearing years;
- (3) The child was born in a private home with the alleged mother unattended or with only a midwife present;
- (4) The alleged mother claims to have had no prenatal care and not to have known the baby's due date;
- (5) The alleged mother claims that the child was born prematurely in cases where the documentation does not suggest a premature birth (e.g. due to height/weight at birth) or the child's appearance suggests otherwise; and
- (6) The physical characteristics of the child and of the alleged parents do not seem compatible.

b. How To Resolve Doubts: If the post has any doubts about the child's parentage, further inquiry and documentation are required. Posts should take any of the following steps that seem appropriate or necessary:

- (1) Establish that pregnancy did exist by, for example, requesting copies of prenatal and post-natal records;
- (2) Request any authorization letter given to the woman by her physician stating that she could fly without endangering her health. Airlines may refuse to assume responsibility for a woman who has reached an advanced stage of pregnancy and may request such a letter before allowing a pregnant woman on board;
- (3) Investigate the clinic or hospital where the birth allegedly occurred to determine if it is a legitimate medical facility. Request medical records to determine whether the woman was a patient, and is the biological mother of the child;
- (4) When the consular officer strongly suspects that a newborn child is not the gestational child of the alleged mother, yet the alleged mother claims a gestational (but not genetic) relationship, was adopted, request that the woman undergo a physical examination as soon as possible by a physician whom the post believes to be reliable. Physical evidence of pregnancy and childbirth may be obvious for only a few weeks after the birth;

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- (5) Contact the midwife or doctor who attended the birth to confirm statements given by the alleged parents; and
- (6) If doubts remain about the child's blood relationship to the alleged parents, DNA tests might be useful (see 7 FAM 1100 Appendix A.)

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7 FAM 1100 APPENDIX E

BIRTH IN WEDLOCK, OF WEDLOCK, VOID AND VOIDABLE MARRIAGES

(CT:CON-576; 05-05-2015)
(Office of Origin: CA/OCS/L)

7 FAM 1110 APPENDIX E INTRODUCTION

(CT:CON-521; 07-08-2014)

This Appendix focuses on what birth in wedlock means as that term relates to acquisition of derivative U.S. citizenship through birth abroad.

NOTE ABOUT TERMS:

- (1) For the purposes of acquisition of U.S. citizenship, filiation is the blood relationship or kinship which exists between a child and the child's biological parents;
- (2) A putative parent is an alleged parent; and
- (3) Issue of a marriage or child of the marriage or similar words indicate that the husband is the father of the child as a matter of law.

7 FAM 1120 APPENDIX E AUTHORITIES

(CT:CON-454; 04-15-2013)

a. Immigration and Nationality Act (INA):

- (1) INA 101 (a) Definitions (8 U.S.C. 1101) provides:
 - (a) INA 101(a)(35) "The term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated."
 - (b) INA 101(a)(39) "The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married."
- (2) INA 101(c) Definitions as Used in title III INA provides:
 - (a) INA 101(c)(1) "The term "child" means an unmarried person under

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twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption."

(b) INA 101(c)(2) "The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(3) INA 301(8 U.S.C. 1401) (c), (d), (e), and (g) refer to birth of a person outside of the United States "of parents ..." INA 301 does not mention marriage expressly but implicitly references marriage with respect to INA 301(c), (d), (e), and (g) and also INA 308(2) when viewed in context of the provisions of INA 309.

(4) INA 309 (8 U.S.C. 1409) refers to children born out of wedlock.

b. U.S. Domestic Law Regarding Marriage and Parentage: The Uniform Parentage Act of 2000 (UPA), last revised in 2002, includes provisions in Section 204 regarding the presumption of paternity. Uniform laws are model acts which U.S. states may enact in part or in their entirety. All states have not adopted the UPA so individual state laws may still vary. Section 204 of the UPA provides:

SECTION 204. PRESUMPTION OF PATERNITY.

"(a) A man is presumed to be the father of a child if:

(1) he and the mother of the child are married to each other and the child is born during the marriage;

(2) he and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation;

(3) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce, or after a decree of separation;

(4) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

(a) the assertion is in a record filed with state agency maintaining birth records;

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(b) he agreed to be and is named as the child's father on the child's birth certificate; or

(c) he promised in a record to support the child as his own; or

(5) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

(b) A presumption of paternity established under this section may be rebutted only by an adjudication under Article 6."

7 FAM 1130 APPENDIX E REBUTTABLE PRESUMPTION OF PATERNITY

(CT:CON-521; 07-08-2014)

- a. All presumptions of paternity are rebuttable in appropriate circumstances. (Uniform Parentage Act (1973), Prefatory Note, 9B U.L.A. 379 (2001).)
- b. Many states have enacted paternity statutes establishing a rebuttable presumption of paternity where genetic test results report a paternity equal to or greater than a designated percentage. (See 7 FAM 1100 Appendix A for guidance about DNA testing.)
- c. When the mother is living with her husband at the time of the child's conception, and the husband is not impotent or sterile, there is a conclusive presumption under the laws of some states that the husband is the father of the child. However, DNA tests along with other credible evidence can possibly result in a finding of non-paternity.
- d. If there are indications that call into question the filiations, despite the existence of a marriage, the consular officer must consult the Fraud Prevention Manager and CA/FPP. See 7 FAM 1131.4 Blood Relationship Essential. If doubt arises that the citizen putative "parent" is related by blood to the child, the consular officer is expected to investigate carefully. Circumstances that might give rise to such a doubt include:
 - (1) Conception or birth of a child when either of the alleged biological parents was married to another;
 - (2) Naming on the birth certificate, as father and/or mother, person(s) other than the alleged biological parents; and
 - (3) Evidence or indications that the child was conceived at a time when the alleged father had no physical access to the mother.
- e. If the child was conceived or born when the mother was married to someone other than the man claiming paternity, a statement from the man to whom the mother was married disavowing paternity, a divorce or custody decree mentioning certain of her children but omitting or specifically excluding the child in question, or credible statements from neighbors or friends having

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knowledge of the circumstances leading up to the birth may be required as evidence bearing on actual natural paternity. If the Department (CA) is not satisfied by a preponderance of the evidence that filiation exists, the putative parent(s) may submit DNA evidence following procedures in 7 FAM 1100 Appendix A and the CA Internet page on DNA and Parentage Testing. See 7 FAM 1160 Appendix E for further guidance on adjudication.

NOTE:

CA/FPP's CAWeb Intranet Relationship Fraud feature.

CA/FPP's Intranet Fraud Digest includes other information about relationship fraud. For example: Relationship Fraud in Yemen; Marriage Fraud Dangerous and Pervasive.

7 FAM 1140 APPENDIX E "IN WEDLOCK" AND "OF WEDLOCK"

(CT:CON-521; 07-08-2014)

- a. The term "Birth in Wedlock" has been consistently interpreted to mean birth during the marriage of the biological parents to each other.
- b. This includes a child conceived before the marriage but born during the marriage.
- c. To say a child was born "in wedlock" means that the child's biological parents were married to each other at the time of the birth of the child.
- d. In the case of a marriage terminated by dissolution, death, or annulment, the term "of wedlock" still includes a biological child conceived during the marriage and born within 300 days after termination of the marriage.
- e. If a married woman and someone other than her spouse have a biological child together, that child is considered to have been born out of wedlock. The same is true for a child born to a married man and a person other than his spouse.

7 FAM 1150 APPENDIX E VOID AND VOIDABLE MARRIAGES

(CT:CON-576; 05-05-2015)

- a. A marriage that does not conform to the laws of the country or state in which it was performed generally is voidable and may be declared void by an appropriate authority, usually a court in the jurisdiction where the marriage occurred.
- b. Prior to such a declaration, the marriage usually is considered valid for all purposes. Even after a marriage is voided, the children's status usually is not

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affected. In the United States, for example, every state considers children of a void marriage to be legitimate.

- c. Some marriages are considered void ab initio (from the beginning), as opposed to voidable. 7 FAM 1160 Appendix E provides further guidance about adjudication. Questions from posts abroad about this subject must be referred to Ask-OCS-L@state.gov.
- d. Except where Federal statute provides to the contrary, the U.S. Supreme Court held that marriages (not polygamous or incestuous, or otherwise declared void by statute) if valid by the law of the state where entered into, will be recognized as valid in every other jurisdiction (*Meister v. Moore*, 96 U.S. 76 (1878); *Travers v. Reinhardt*, 205 U.S. 423, 440 (1907)).
- e. U.S. embassies and consulates abroad must have available a copy of the consular district's local laws on marriage and legitimation:
 - (1) If for any reason a marriage does not appear to have been valid, legitimation is a determining factor in the citizenship claim and a U.S. domicile cannot be identified, the consular officer will consult local law in an attempt to determine if children born of a void marriage are considered legitimate (*see the Foreign Legitimation Law Chart on the CAWeb*);
 - (2) If the child is not considered legitimate, the consular officer must determine that the marriage was declared void by an appropriate authority before denying the child's claim;
 - (3) A post considering a case involving legitimation in a third country must seek information on the laws of that country from the embassy of that country or from the U.S. embassy or consulate in that country; and
 - (4) If any of the above inquiry are inconclusive or questionable, posts abroad must consult CA/OCS/L (Ask-OCS-L@state.gov) as soon as possible. 7 FAM 1160 Appendix E provides further guidance about adjudication. Domestic passport agencies and centers see 7 FAM 1170 Appendix E.
- f. A law that declares legitimate a child born during a void marriage presumes that the marriage ceremony took place before the child's birth unless the law specifically mentions children born before the marriage. Cases that involve void marriages occurring after a child's birth must be referred by posts abroad to CA/OCS/L (Ask-OCS-L@state.gov).

7 FAM 1160 APPENDIX E ADJUDICATION

(CT:CON-521; 07-08-2014)

- a. In most acquisition of U.S. citizenship by birth abroad cases, adjudication of whether a citizenship claim comes within the scope of INA 301 (8 U.S.C. 1401) or rather INA 309 (8 U.S.C. 1409) will be clear. The parents will present a marriage certificate certified by the civil registry authority responsible for

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maintaining marriage certificates as proof of marriage, and adjudication will proceed in a straightforward way.

- b. On rare occasions, you may be confronted with an acquisition of citizenship adjudication in which a child is born during the course of a marriage but one or both the spouses advise that the biological father is another person not married to the biological mother. The following documents must be submitted:
 - (1) The child's birth certificate certified by the civil registry authority responsible for maintaining birth certificates;
 - (2) Form DS-5507 notarized Affidavit of Parentage, Physical Presence and Support executed by the mother and the person she claims is the father;
 - (3) An notarized affidavit executed by the husband denying paternity;
 - (4) Evidence of access by the putative father at probable time of conception including, for example, entry/exit stamps in passports, airline/hotel receipts, travel orders, etc.;
 - (5) Evidence of lack of access by the husband at probable time of conception. For example, evidence that the husband was not in the country such as overseas military assignment, imprisonment, etc.; and
 - (6) In addition, the family may submit DNA tests in accordance with procedures set forth in 7 FAM 1100 Appendix A.
- c. For posthumous children, see 7 FAM 1180.
- d. If there is indication of fraud, consular officers must consult post's Fraud Prevention Manager and CA/FPP. Domestic passport agencies and centers must consult their Fraud Prevention Managers in accordance with 7 FAM 1170 Appendix E.
- e. If a spouse contacts a post denying paternity after a passport or Consular Report of Birth of a U.S. Citizen Abroad has been issued, obtain a sworn statement from the individual and contact CA/OCS/L (Ask-OCS-L@state.gov) for guidance.
- f. If the foreign birth certificate lists the husband, post must include in analysis of the case whether it is possible to obtain an amended birth certificate. This is not feasible in all cultures. For example, in some cultures a woman could be killed for such an admission.
- g. Questions about void and voidable marriages, polygamy and common law marriage are extremely rare but usually complex. They may be brought to the attention of CA/OCS/L (Ask-OCS-L@state.gov).

7 FAM 1170 APPENDIX E PASSPORT AGENCIES AND CENTERS ADJUDICATION AND QUESTIONS

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(CT:CON-576; 05-05-2015)

The issues addressed in this Appendix arise primarily in the overseas adjudication context. Should such a question come to light in an application under consideration by a passport agency or center, follow the adjudication guidance provided in 7 FAM 1160 Appendix E, but consult Passport Services' *Office of Adjudication, Policy* Division (*CA/PPT/S/A/AP*) at AskPPTAdjudication@state.gov and your Fraud *Program* Manager for guidance.

7 FAM 1180 APPENDIX E AND 1190 APPENDIX E UNASSIGNED

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7 FAM 1100 APPENDIX A DEOXYRIBONUCLEIC ACID (DNA) TESTING AND CITIZENSHIP

*(CT:CON-576; 05-05-2015)
(Office of Origin: CA/OCS/L)*

7 FAM 1110 APPENDIX A INTRODUCTION AND AUTHORITIES

(CT:CON-335; 06-22-2010)

- a. This Appendix provides guidance to passport agencies and centers and U.S. embassies and consulates abroad about citizenship adjudication and the use of DNA testing to establish the requisite relationship between the U.S. citizen putative or alleged parent and a child claiming derivative U.S. citizenship.
- b. 7 FAM 1130 provides guidance regarding adjudication of a citizenship claim for a child born abroad attempting to establish a derivative claim to U.S. citizenship through a U.S. citizen parent. 7 FAM 1160 (under development) provides guidance about citizenship and Assisted Reproductive Technology (ART).
- c. The statutory requirement that an applicant may use DNA testing to prove the relationship between the U.S. citizen parent and the child is in Section 1993 RS, Section 201(g) of the Nationality Act of 1940 (NA), and Section 301(g) INA (“a person born ... of parents”). Determining whether a claimant meets this statute to establish a derivative claim to U.S. citizenship can usually be accomplished by review of documentary evidence provided by the claimant.
- d. Genetic testing is most commonly used to verify a parent/child relationship in conjunction with a citizenship case or an immigrant visa application, when other forms of credible evidence are insufficient (9 FAM 42.44, Notes). However, due to the expense, complexity, and logistical delays inherent in parentage testing, genetic testing should be used only if other credible proof does not establish to the satisfaction of the adjudicating officer that the relationship exists.
- e. When genetic testing appears warranted, the consular officer or passport specialist (with concurrence of the supervisor) may advise the applicant that genetic testing may establish the validity of the relationship. Such testing is entirely voluntary, and all costs of testing and related expenses must be borne by the applicant and paid to the laboratory in advance. The applicant must be cautioned that submitting to testing does not at all guarantee the subsequent issuance of a U.S. passport, and that the results of DNA testing may rather preclude issuance. Standard language for communicating with applicants about

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DNA testing is available in the Passport Services' Information Request Letter (IRL). General guidance about CA requirements for DNA parentage testing is available on the CA Internet page.

- f. Who should be tested: If at all possible, the child, mother, and father should all be tested. In the event of the death of one or both parents, the AABB-accredited testing facility will provide specific guidance regarding the utility of testing of other relatives.

NOTE: Why test the mother? DNA relationship/parentage testing favors testing the child and both the mother and father to ensure that the child is actually the child of the two alleged parents—that is, to rule out cousins, unrelated children, etc. The Bureau of Consular Affairs (CA) follows this practice even if the citizenship claim is through the U.S. citizen father. Including the biological mother in any DNA paternity test strengthens test results. Whenever possible, the mother should submit DNA samples as a participant. Testing the mother's DNA increases the likelihood of a conclusive result for any DNA test, including DNA tests for paternity, siblings, grandparents, etc.

- g. 7 FAM 1100 Appendix A authorities are:
- (1) INA Section 301 (8 U.S.C. 1101);
 - (2) INA Section 309 (8 U.S.C. 1109);
 - (3) 22 CFR 50.2: Determination of U.S. nationality of persons abroad;
 - (4) 22 CFR 51.40: Burden of proof is upon the applicant to establish a claim to U.S. citizenship;
 - (5) 22 CFR 51.41: Every application shall be accompanied by evidence of the U.S. nationality of the applicant;
 - (6) 22 CFR 51.54: Requirement of additional evidence of U.S. citizenship;
 - (7) 22 CFR 51.28: Any adjudicating official may require additional evidence of identity;
 - (8) Section 201(g) of the Nationality Act of 1940 (NA); and
 - (9) Section 1993 of the Revised Statutes (RS).

7 FAM 1120 APPENDIX A BURDEN OF PROOF FOR ESTABLISHING U.S. CITIZENSHIP AND DNA TESTING

(CT:CON-335; 06-22-2010)

- a. 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

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the evidence, also known as balance of probabilities, their identity (22 CFR 51.23) and that they are citizens of the United States (22 CFR 51.40). The standard is met if the proposition is more likely to be true than not true. Effectively, the standard is satisfied if there is greater than a 50 percent chance that the proposition is true. Nothing contained in 22 CFR 51.42 through 51.46 shall prohibit the consular officer or the passport specialist from requiring an applicant to submit additional evidence deemed necessary to meet this standard to establish U.S. citizenship or nationality (see 22 CFR 51.45).

- b. 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 is established by clear and convincing evidence. This is an intermediate level of burden of persuasion sometimes employed in U.S. civil procedure. In order to prove something by "clear and convincing evidence" the party with the burden of proof must convince the trier of fact that it is substantially more likely than not that the thing is in fact true. This is a lesser requirement than "proof beyond a reasonable doubt" which requires that the trier of fact be close to certain of the truth of the matter asserted, but a stricter requirement than proof by "preponderance of the evidence," which merely requires that the matter asserted seems more likely true than not.
- c. DNA paternity/maternity testing reliability has advanced to the industry-accepted standard of 99.5 percent. When the mother and father of the child are tested, consular officers may only accept test results reporting a 99.5 percent or greater degree of certainty with respect to paternity/maternity in citizenship cases. However, a test that supports paternity/maternity to a degree less than 99.5 percent generally can be followed by retests to determine if the 99.5 percent accuracy can be achieved.

NOTE: It is also possible to reach 99.5% certainty or better on sibling tests, although it is not possible to do it consistently enough for the testing to be conclusive.

- d. In cases where an alleged mother or father are deceased, missing, or unavailable to participate in genetic testing, both of the paternal or maternal grandparents can be tested in order to determine the likelihood of grandparentage. In a case where both grandparents are not available to contribute samples, a Family Reconstruction Test must take place. Reconstruction can include any known biological family members of the possible father or possible mother, including their siblings. This type of DNA testing is referred to as avuncular DNA analysis. Unlike a DNA paternity test which will always provide a conclusive result, avuncular DNA tests are different. It is not possible to achieve a 99.5 percent result in avuncular DNA analysis. However, CA will accept as probative DNA test results involving siblings, grandparents, aunts and uncles, etc., for U.S. citizenship, if the testing facility confirms that such test is able to produce meaningful results.

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NOTE: This differs from the 9 FAM 42.44 N4, paragraph c, policy guidance due to the differing burden of proof and evidentiary standard in citizenship cases.

7 FAM 1130 APPENDIX A SELECTION OF AN AABB LAB

(CT:CON-407; 06-29-2012)

- a. CA requires that any DNA for citizenship purposes must be processed by a lab that is accredited by the American Association of Blood Banks (AABB).
- b. Names of AABB accredited labs are available on the AABB Web page.
- c. The list of laboratories on that site is based on the physical location of the lab's headquarters but that the operations of most labs are not restricted to that location.
- d. Many of the laboratories operate nationally, therefore the applicant/parent should be able to choose from the full list of AABB laboratories which conduct DNA testing.
- e. Claimant must select and contact the AABB-accredited lab: The claimant must select an AABB-accredited laboratory, contact the lab directly, and make the necessary arrangements for conducting the genetic test, including payment for all tested parties.
- f. Third-party vendors prohibition:
 - (1) Under no circumstances can claimants use third-party vendors to select their lab, arrange appointments, or transport the specimens outside of the lab chain-of-custody controls;

For example: An applicant must independently choose his or her own AABB lab, make the appointment, and go to the collection site directly. The collection site must then send the specimen to the main AABB lab testing site directly, through the lab's internal controlled system.

- (2) Third-party vendors include, but may not be limited to, private companies or clearinghouses that serve as intermediaries to make appointments on behalf of claimants; and
 - (3) The authority for collecting DNA specimens in the United States resides exclusively with the AABB labs and their directly affiliated collection sites.
- g. Test kits may not be sent to claimants: Under no circumstances should claimants, including those in the United States, directly receive test kits for themselves or derivative claimants. The DNA samples for the claimant must be collected at the designated AABB testing site, lab, or clinic (generally in the

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United States). The AABB laboratory selected by the claimant will send a test kit, including a pre-paid, pre-addressed return envelope and explicit sampling instructions, directly to the consular section for testing of a claimant.

- h. Reporting anomalies: Posts must report to CA/OCS/L any anomalies, such as claimants traveling unusual distances to get to a collection site when other collection sites are available closer to them. CA/OCS/L will coordinate with FPP in the event there are indications of possible fraud.

7 FAM 1140 APPENDIX A DNA TESTING COLLECTION METHOD

(CT:CON-335; 06-22-2010)

- a. DNA testing is now used in over 99 percent of all parentage tests performed by AABB accredited labs.
- b. The types of tests used by the DNA scientific community continues to evolve, but currently, the Polymerase Chain Reaction-Short Tandem Repeat (PCR-STR) and the Restriction Fragment Length Polymorphism (RFLP) methods are the two tests that the Department believes to be the most advanced, offering the best results.
- c. Preferred specimen collection technique:
 - (1) The preferred specimen collection technique for DNA testing is by buccal (cheek or mouth cavity) swab. When buccal swabs are taken, cells are collected from the inside cheek using a long cotton swab. Cheek swabs are preferred over blood samples because they are easier to collect, noninvasive, painless, and easier to ship. The accuracy of a DNA test conducted with a cheek swab is equivalent to a test conducted using a blood test, and does not present the same biohazards as blood samples. Inform panel physicians and lab technicians that this is the preferred collection method for citizenship cases. The physicians or technicians collecting the specimens should follow the same CDC standards as they would if collecting swabs at their clinic or lab; and
 - (2) Under no circumstances should consular officers or domestic passport agencies or centers attempt to collect samples themselves.

7 FAM 1150 APPENDIX A STANDARDS FOR COLLECTION OF DNA SAMPLES ABROAD

(CT:CON-449; 03-25-2013)

- a. Though advanced, DNA results are only accurate if strict standards are followed for every sample collected. The AABB establishes standards for relationship

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testing, and the Department of State follows these standards for use in the collection of DNA samples abroad to verify relationships for citizenship purposes.

- b. There are four essential elements that must be understood and maintained to protect the integrity of the DNA collection and relationship testing procedures:
 - (1) As DNA testing is voluntary, the individual being tested must consent to the testing;
 - (2) The identity of the individual being tested must be verified and confirmed by a cleared American;
 - (3) The integrity of the sample must be maintained through a strict chain of custody; and
 - (4) The actual collection of the DNA sample must be witnessed by a cleared U.S. citizen Department of State employee.
- c. Effective immediately, all DNA collections abroad must take place at the embassy or consulate and not at the panel physician's office or other lab facility. Department of State medical officers may not collect biological samples for genetic testing purposes. Furthermore, under no circumstances should consular officers attempt to collect samples themselves. All sample collection must be done by medical personnel employed by the panel physician.
- d. Each panel physician's office must recommend several lab technicians who will then be cleared and approved by post. The completion of a CLASS name check and review of previous visa application(s) and RSO records is the minimum required clearance to approve a lab technician for operation inside the consulate. Post should take factors including multiple visa refusals into consideration prior to clearing the technician for conducting DNA testing.
- e. Post must choose a site in the consular section for collection of the buccal swab. The collection must be witnessed by the consular officer or another cleared American, and in certain circumstances, section management as well. Posts may wish to explore privacy options, including (but not limited to) privacy booths, interview windows with a curtain separator for privacy, or a regular interview window. Regardless of the final collection location, both the applicant and medical technician must be in the immediate presence of the cleared U.S. citizen employee witness at all times.
- f. Any U.S. citizen employee of the consular section, possessing a valid "Secret" or higher national security clearance may serve as the cleared U.S. citizen witness for DNA tests. At post's discretion, locally employed staff (LES) may accompany the cleared U.S. citizen to witness the collection. However, a cleared U.S. citizen must be the official witness of DNA testing procedures.
- g. Post must observe the guidelines outlined herein in order to maintain clear chain of custody, including a log to monitor accountability through all steps.

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h. Sample DNA accountability log:

Date Kit Received	Case Number	Sur - name	Giv en Name	Kit Num ber and Lab Name	ACO Signat ure	Date of DNA Kit Sampl ing	Name and Initial s of Cleare d Ameri can Witne ss Who Recei ved DNA Kit	ACO Sign a- ture	Date Kit Deliver ed to Shippi ng- Compa ny

- i. DNA procedures should be posted on the post's Web sites as general information to the public, and updated annually. Any questions about what should be included in this information should be directed to CA/OCS/L (Ask-OCS-L@state.gov).
- j. Any additional post-specific internal controls and procedures involving DNA testing, not included in this Appendix must be approved in advance by CA/OCS/L and CA/FPP.

7 FAM 1160 APPENDIX A GENETIC TESTING PROCEDURES

(CT:CON-335; 06-22-2010)

- a. Selection of a laboratory: The applicant and others to be tested must select the AABB-accredited laboratory, contact the laboratory directly, and make the necessary arrangements (including payment) for conducting the genetic test. The use of an AABB-accredited laboratory is required for applications before domestic passport agencies and centers and U.S. embassies and consulates abroad.
- b. Domestic Passport Agency/Center procedures: Domestic passport agencies/centers do not observe the collection of samples and procedures established by the AABB-accredited testing facility should be followed for collection of testing samples domestically. This is the responsibility of the

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laboratory conducting the testing in coordination with the facility collecting the sample. If a sample is to be collected from a family member abroad, the procedures outlined in this section should be followed.

NOTE: Domestic passport agencies/centers may only accept DNA tests conducted by an AABB-accredited testing facility performed on samples taken by local technicians approved/authorized by the AABB.

c. DNA testing procedures at U.S. embassies and consulates:

- (1) The applicant/putative parent selects AABB-accredited lab;
- (2) The selected AABB lab sends the applicant DNA testing kit(s) directly to the consular section;
- (3) The accountable consular officer (ACO) checks in all test kits on the DNA accountability log upon receipt in the consular section. This consists of ensuring that the kit has not been opened or damaged and if the kit includes a seal, confirming the kit seal is intact, adding the kit to the accountability log stored in the ACO safe, and storing it in the ACO safe or a bar-lock cabinet. The safe where the DNA kits are stored must be accessible only to the ACO or designated backup;
- (4) Once the ACO records receipt of the collection kit, the consular section must contact the applicant to schedule an appointment date for DNA collection and tell the applicant that he or she must bring his or her passport and a photograph;
- (5) On the DNA collection appointment date, a lab technician from the panel physician's office must come to the consular section to collect the DNA sample(s);
- (6) Immediately prior to the testing, the ACO checks the test kit out of the safe and gives it to the cleared U.S. citizen employee witness who will witness the collection, recording the cleared U.S. citizen employee witness's name in the accountability log. The witness verifies that the kit is unopened, and if applicable, the seal is intact. The cleared U.S. citizen employee witness is responsible for the custody of the testing materials until he or she applies the security seal to the mailing package;
- (7) The cleared U.S. citizen employee witness should review the instructions sent by the AABB lab prior to the DNA collection, so as to be familiar enough with the sample collection technique to recognize if it is not being executed properly by the lab technician;
- (8) At the time of testing, the cleared U.S. citizen employee witness must have the medical technician and applicant/beneficiary come to the interview window or designated location within the consular section, one applicant at a time;
- (9) The cleared U.S. citizen employee witness must personally verify the

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identity of the donor through:

- (a) Presentation of passport; and
 - (b) Verifying that the applicant signs on the back of his or her photograph for attachment to the chain-of-custody document(s);
- (10) Once the identity of the applicant has been confirmed, the cleared U.S. citizen employee witness must do the following:
- (a) Collect the signed applicant photograph and supporting documents from the applicant;
 - (b) Provide the sealed DNA kit to the lab technician or panel physician;
 - (c) Witness the collection of the buccal swab from the donor/applicant;
 - (d) Legibly record required information on chain-of-custody documents (this function may not be performed by LES or an outside party);

NOTE: Minimal chain of custody requirements include, but are not limited to:

Date and time of the sample collection;

Name and signature of lab technician conducting the swabs. Name is verified with the technician's ID badge or card;

Name and signature of the cleared American witness; and

Other specific information required by the AABB laboratory as indicated in the kit instructions.

- (e) Witness the lab technician placing the completed DNA sample into the protective sleeve or pouch provided by the lab, accept the specimen from the lab technician or panel physician, and personally seal and sign the sample in accordance with the kit instructions;
- (f) Seal the specimen in the pre-paid shipping envelope provided by the lab. The sample must be in the direct possession of the same cleared U.S. citizen employee who witnessed the sample collection until the return mailing envelope is sealed in accordance with the instructions from the lab or shipping company;
- (g) Record in the applicant's case notes:
 - (i) His or her name as witness to the collection;
 - (ii) Date and time of sample collection;
 - (iii) The name of the lab technician (from ID badge or card);
 - (iv) The name of the lab or panel physician where the technician is employed; and

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- (v) A clear description of the relationship(s) being tested (e.g., probability that the tested mother or father is the mother/father of the child tested);
 - (h) Scan all chain-of-custody documents into the American Citizen Services (ACS) or Passport Lookout Tracking System (PLOTS) systems and associate them with the applicant's case. Be sure that the information provided to the AABF lab clearly defines the relationship(s) to be tested. The request should be specific, not "are the parties related?", but rather "is the individual the mother/father of the tested applicant?"; and
 - (i) The passport application (or Report of Birth Application) scanned into the Passport Issuance Electronic Record System (PIERS) must include the DNA test results and all associated documents; and
- (11) For reporting purposes, DNA cases must be annotated in the text/comments fields as referrals to the Fraud Prevention Unit (FPU) in both the ACS and TDIS systems. The case must indicate that the reason for the referral is that the case is pending DNA testing.

7 FAM 1170 APPENDIX A STORING AND SHIPPING OF DNA SAMPLES

(CT:CON-335; 06-22-2010)

- a. Once the test is completed, the DNA samples must be placed into the pre-paid shipping envelope, sealed, and shipped as soon as possible—preferably the same day. The shipping envelope may not be shipped through the local mail services and must be shipped by a company similar to FedEx or DHL. The cleared U.S. citizen employee must ensure that all documentation, including supporting forms, photos of the donors, chain-of-custody documents, etc., requested in the test kit, accompany the specimen. Once the kit is sealed, the cleared U.S. citizen employee is responsible for delivering or ensuring pick-up of the test kit(s) by the mail service. He or she is responsible for the kits until they are turned over for shipment.
- b. All DNA samples must be shipped within 24-48 hours after collection is complete. If kits cannot be shipped on the same day the sample is collected, then the sample must be returned to the accountable consular officer (ACO) for storage until it is released for shipment. The DNA sample kit and all chain-of-custody materials are controlled items and must be stored securely, at minimum in a bar-lock safe, until the kit is shipped back to the U.S.-based lab.
- c. When the test kit is shipped, a receipt for all kits must be collected from the shipper, the shipment date and tracking number must be entered into the case notes, and the air bill must be scanned into the appropriate case records.

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- d. Under no circumstances may posts use the diplomatic pouch or local mail services to return samples to the testing laboratory.

7 FAM 1180 APPENDIX A COMMUNICATING THE TEST RESULTS

(CT:CON-335; 06-22-2010)

- a. In all phases of testing, communication of the results of the test must be directly between the laboratory and the consular officer and/or U.S. citizen State Department employee designated by the Assistant Secretary for Consular Affairs, including professional adjudication specialists at posts abroad or the senior passport specialist at a domestic passport agency/center and the laboratory.
- b. AABB laboratories will send all test results directly to consular sections or passport agencies/centers in envelopes sealed with the same type of security tape used when the samples are taken. Only a consular officer or U.S. citizen State Department employee designated by the Assistant Secretary for Consular Affairs, including professional adjudication specialists at posts abroad or the senior passport specialist at a domestic passport agency/center may open the sealed envelopes and perform step (1) below:
- (1) A cleared U.S. citizen receives and opens the sealed DNA results letter, and enters the results of the test into the case notes annotated on the application and citizenship worksheet, taking care to record the probability of relationship determined by the testing;
 - (2) After the results are entered into the case notes by a cleared American, the results must be scanned into the case record. For posts abroad, an LES may do the scanning provided that the results have already been entered into the case notes; and
 - (3) Since the applicant bears full financial responsibility for testing, we have no objection to that person also receiving a copy of the results directly from the laboratory or panel physician. Post should not give copies of DNA test results directly to applicant or other parties without express consent from the Department.

7 FAM 1190 APPENDIX A REPORTING POSSIBLE COMPROMISE OF DNA SAMPLE OR RESULTS

(CT:CON-576; 05-05-2015)

- a. Under no circumstances can any other party, including those being tested, be permitted to carry or transport biological samples or test results.

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- b. If the cleared U.S. citizen employee witness or any other member of the consular team observes or has any reason to suspect that the test specimen or results have been tampered with, or may have even momentarily or inadvertently been subject to a compromised chain of custody, immediately notify post management, CA/OCS/L and CA/FPP. In the case of an actual or suspected breach of custody, post must suspend processing of the citizenship case until it has consulted with, and obtained clearance from, CA/OCS/L and CA/FPP.
- c. For domestic applications, passport specialists must immediately advise the agency/center fraud prevention manager (FPM). In the case of an actual or suspected breach of custody, the agency or center must suspend processing of the citizenship case until it has consulted with, and obtained clearance from the fraud prevention manager and CA/PPT/L.
- d. Any procedural questions about this policy guidance should be directed to CA/OCS/L (Ask-OCS-L@state.gov) and CA/FPP for posts abroad; and to *the Office of Adjudication, Policy Division (CA/PPT/S/A/AP)* (AskPPTAdjudication@state.gov) for passport agencies and centers.

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ACCO,(JCx),APPEAL,CLOSED,DISCOVERY,MANADR,PROTORD

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:18-cv-00523-JFW-JC**

Andrew Mason Dvash-Banks et al v. Michael R. Pompeo et al
Assigned to: Judge John F. Walter
Referred to: Magistrate Judge Jacqueline Chooljian
Case in other court: Ninth Circuit Court, 19-55517
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 01/22/2018
Date Terminated: 03/06/2019
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government
Defendant

Plaintiff

Andrew Mason Dvash-Banks

represented by **Alexa M Lawson-Remer**
Sullivan and Cromwell LLP
1888 Century Park East Suite 2100
Los Angeles, CA 90067
310-712-6600
Fax: 310-712-8800
Email: lawsonr@sullcrom.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Aaron C Morris
Immigration Equality
40 Exchange Place Suite 1300
New York, NY 1005-2744
212-714-2904
Email:
amorris@immigrationequality.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Alexandra H Moss
Sullivan and Cromwell LLP
125 Broad Street
New York, NY 10012
212-558-4000
Fax: 212-558-3588
Email: mossa@sullcrom.com
TERMINATED: 06/01/2018
PRO HAC VICE

Andrew K Jennings
Sullivan and Cromwell LLP
125 Broad Street

New York, NY 10004
212-558-4000
Fax: 212-558-3588
Email: jenningsa@sullcrom.com
TERMINATED: 08/03/2018
PRO HAC VICE

Jessica M Klein
Sullivan and Cromwell LLP
125 Broad Street
New York, NY 10004-2498
212-558-3153
Fax: 212-558-3588
Email: kleinj@sullcrom.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lauren Goldsmith
Sullivan and Cromwell LLP
125 Broad Street 25th Floor
New York, NY 10004
212-558-4023
Fax: 212-558-3588
Email: goldsmithl@sullcrom.com
ATTORNEY TO BE NOTICED

Rebekah Tilander Raybuck
Sullivan and Cromwell LLP
1870 Embarcadero Road
Palo Alto, CA 94303
650-461-5674
Fax: 650-461-5700
Email: raybuckr@sullcrom.com
ATTORNEY TO BE NOTICED

Scott E Blair
Sullivan and Cromwell LLP
125 Broad Street
New York, NY 10004-2498
212-558-3413
Fax: 212-558-3588
Email: blairs@sullcrom.com
TERMINATED: 02/23/2018
PRO HAC VICE

Theodore Edelman
Sullivan and Cromwell LLP
125 Broad Street
New York, NY 10004-2498

212-558-3436
Fax: 212-558-3588
Email: edelmant@sullcrom.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

E. J. D.-B.

*a Minor, Elad Dvash-Banks as the
guardian ad litem*

represented by **Alexa M Lawson-Remer**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Aaron C Morris
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Alexandra H Moss
(See above for address)
TERMINATED: 06/01/2018
PRO HAC VICE

Andrew K Jennings
(See above for address)
TERMINATED: 08/03/2018
PRO HAC VICE

Jessica M Klein
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Lauren Goldsmith
(See above for address)
ATTORNEY TO BE NOTICED

Rebekah Tilander Raybuck
(See above for address)
ATTORNEY TO BE NOTICED

Scott E Blair
(See above for address)
TERMINATED: 02/23/2018
PRO HAC VICE

Theodore Edelman
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

The United States Department of State

represented by **Lisa Zeidner Marcus**
 US Department of Justice
 Civil Division - Federal Programs
 Branch
 700 Grant Street Suite 4000
 Pittsburgh, PA 15219
 202-305-0845
 Email: lisa.marcus@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vinita Andrapalliyal
 US Department of Justice
 Civil Division - Federal Programs
 Branch
 P.O. Box 883
 Washington, DC 20044
 202-305-0845
 Fax: 202-616-8470
 Email:
 vinita.b.andrapalliyal@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Michael R. Pompeo
US Secretary of State
Successor
 Rex W. Tillerson

represented by **Lisa Zeidner Marcus**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Vinita Andrapalliyal
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/22/2018	<u>1</u>	COMPLAINT Receipt No: 0973-21130560 - Fee: \$400, filed by Plaintiffs Ethan Jacob Dvash-Banks, Andrew Mason Dvash-Banks. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D) (Attorney Alexa M Lawson-Remer added to party Andrew Mason Dvash-Banks(pty:pla), Attorney Alexa M Lawson-Remer added to party Ethan Jacob Dvash-Banks(pty:pla)) (Lawson-Remer, Alexa) (Entered: 01/22/2018)
01/22/2018	<u>2</u>	

		Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening), 1 filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Lawson-Remer, Alexa) (Entered: 01/22/2018)
01/22/2018	3	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening), 1 filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Lawson-Remer, Alexa) (Entered: 01/22/2018)
01/22/2018	4	CIVIL COVER SHEET filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Lawson-Remer, Alexa) (Entered: 01/22/2018)
01/22/2018	5	NOTICE of Interested Parties filed by Plaintiff All Plaintiffs, identifying None. (Attorney Alexandra H Moss added to party Andrew Mason Dvash-Banks (pty:pla), Attorney Alexandra H Moss added to party Ethan Jacob Dvash-Banks(pty:pla))(Moss, Alexandra) (Entered: 01/22/2018)
01/24/2018	6	NOTICE OF ASSIGNMENT to District Judge John F. Walter and Magistrate Judge Jacqueline Chooljian. (ghap) (Entered: 01/24/2018)
01/24/2018	7	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (ghap) (Entered: 01/24/2018)
01/24/2018	8	60 DAY Summons Issued re Complaint (Attorney Civil Case Opening), 1 as to Defendant Rex W. Tillerson. (ghap) (Entered: 01/24/2018)
01/24/2018	9	NOTICE OF DEFICIENCIES in Request to Issue Summons RE: Summons Request 2 . The following error(s) was found: Summons is not directed to the defendant(s). The defendants name must appear in the To:section of the summons. The summons cannot be issued until this defect has been corrected. Please correct the defect and re-file your request. (ghap) (Entered: 01/24/2018)
01/24/2018	10	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Theodore Edelman. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (ghap) (Entered: 01/24/2018)
01/24/2018	11	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Jessica Klein. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov . You have been removed as counsel

		of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (ghap) (Entered: 01/24/2018)
01/24/2018	12	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Scott E Blair. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@caed.uscourts.gov . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (ghap) (Entered: 01/24/2018)
01/24/2018	13	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Aaron C Morris. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@caed.uscourts.gov . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (ghap) (Entered: 01/24/2018)
01/24/2018	14	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening), 1 filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Moss, Alexandra) (Entered: 01/24/2018)
01/25/2018	15	APPLICATION of Non-Resident Attorney Theodore Edelman to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21157871) filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Attachments: # 1 Proposed Order) (Lawson-Remer, Alexa) (Entered: 01/25/2018)
01/25/2018	16	APPLICATION of Non-Resident Attorney Jessica M. Klein to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21158143) filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Attachments: # 1 Proposed Order) (Lawson-Remer, Alexa) (Entered: 01/25/2018)
01/25/2018	17	60 DAY Summons Issued re Complaint (Attorney Civil Case Opening) 1 as to defendant The United States Department of State. (jp) (Entered: 01/25/2018)
01/26/2018	18	

		APPLICATION of Non-Resident Attorney Andrew K. Jennings to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21164726) filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Attachments: # 1 Proposed Order) (Lawson-Remer, Alexa) (Entered: 01/26/2018)
01/26/2018	19	APPLICATION of Non-Resident Attorney Scott E. Blair to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21164950) filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Attachments: # 1 Proposed Order) (Lawson-Remer, Alexa) (Entered: 01/26/2018)
01/26/2018	20	APPLICATION of Non-Resident Attorney Aaron C. Morris to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21165065) filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Attachments: # 1 Proposed Order) (Lawson-Remer, Alexa) (Entered: 01/26/2018)
01/26/2018	21	CERTIFICATE OF SERVICE filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks, re APPLICATION of Non-Resident Attorney Aaron C. Morris to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21165065) 20 , APPLICATION of Non-Resident Attorney Theodore Edelman to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21157871) 15 , APPLICATION of Non-Resident Attorney Scott E. Blair to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21164950) 19 , APPLICATION of Non-Resident Attorney Andrew K. Jennings to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21164726) 18 , APPLICATION of Non-Resident Attorney Jessica M. Klein to Appear Pro Hac Vice on behalf of Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21158143) 16 served on 01/26/2018. (Lawson-Remer, Alexa) (Entered: 01/26/2018)
02/01/2018	22	ORDER by Judge John F. Walter: Granting Application of Non-Resident Attorney Theodore Edelman to Appear Pro Hac Vice on behalf of Plaintiff Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks, designating Alexa M. Lawson-Remer as local counsel 15 . (iv) (Entered: 02/01/2018)
02/01/2018	23	ORDER by Judge John F. Walter: Granting Application of Non-Resident Attorney Jessica M. Klein to Appear Pro Hac Vice on behalf of Plaintiff Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks, designating Alexa M. Lawson-Remer as local counsel 16 . (iv) (Entered: 02/01/2018)
02/01/2018	24	

		ORDER by Judge John F. Walter: Granting Application of Non-Resident Attorney Andrew Jennings to Appear Pro Hac Vice on behalf of Plaintiff Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks, designating Alexa M. Lawson-Remer as local counsel 18 . (iv) (Entered: 02/01/2018)
02/01/2018	25	ORDER by Judge John F. Walter: Granting Application of Non-Resident Attorney Scott E. Blair to Appear Pro Hac Vice on behalf of Plaintiff Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks, designating Alexa M. Lawson-Remer as local counsel 19 . (iv) (Entered: 02/01/2018)
02/01/2018	26	ORDER by Judge John F. Walter: Granting Application of Non-Resident Attorney Aaron C. Morris to Appear Pro Hac Vice on behalf of Plaintiff Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks, designating Alexa M. Lawson-Remer as local counsel 20 . (iv) (Entered: 02/01/2018)
02/02/2018	27	STANDING ORDER by Judge John F. Walter. READ THIS ORDER CAREFULLY. IT CONTROLS THE CASE AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES. This action has been assigned to the calendar of Judge John F. Walter. (iv) (Entered: 02/02/2018)
02/02/2018	28	CERTIFICATE OF SERVICE filed by Plaintiff Attorney Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks, re Initial Order upon Filing of Complaint - form only 27 served on 02/02/2018. (Lawson-Remer, Alexa) (Entered: 02/02/2018)
02/08/2018	29	DECLARATION of Theodore Edelman filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Edelman, Theodore) (Entered: 02/08/2018)
02/12/2018	30	PROOF OF SERVICE Executed by Plaintiff Ethan Jacob Dvash-Banks, Andrew Mason Dvash-Banks, upon Defendant The United States Department of State served on 1/26/2018, answer due 3/27/2018. Service of the Summons and Complaint were executed upon the United States Attorneys Office by delivering a copy to Genoveva Ortega, Legal Clerk. Executed upon the Attorney Generals Office of the United States by delivering a copy to Ronnie DuBose, Office of the Assistant Attorney General, Justice Management Division. Executed upon the officer agency or corporation by delivering a copy to Executive Office, Office of the Legal Adviser, U.S. Department of State. Service was executed in compliance with Federal Rules of Civil Procedure. Due diligence declaration NOT attached. Registered or certified mail return receipt attached. Original Summons NOT returned. (Jennings, Andrew) (Entered: 02/12/2018)
02/12/2018	31	PROOF OF SERVICE Executed by Plaintiff Ethan Jacob Dvash-Banks, Andrew Mason Dvash-Banks, upon Defendant Rex W. Tillerson served on 1/29/2018, answer due 3/30/2018. Service of the Summons and Complaint were executed upon the United States Attorneys Office by delivering a copy to Genoveva Ortega, Legal Clerk. Executed upon the Attorney Generals Office of the United States by delivering a copy to David Burroughs, Office of the Assistant Attorney General, Justice Management Division. Executed upon the officer agency or corporation by delivering a copy to Executive Office, Office of the Legal Adviser, U.S. Department of State. Service was executed in

		compliance with Federal Rules of Civil Procedure. Due diligence declaration NOT attached. Registered or certified mail return receipt attached. Original Summons NOT returned. (Jennings, Andrew) (Entered: 02/12/2018)
02/23/2018	32	Notice of Appearance or Withdrawal of Counsel: for attorney Andrew K Jennings counsel for Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. Scott E. Blair is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by counsel Andrew Jennings. (Jennings, Andrew) (Entered: 02/23/2018)
02/23/2018	33	CERTIFICATE OF SERVICE filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks, re Notice of Appearance or Withdrawal of Counsel (G-123), 32 served on February 23, 2018. (Lawson-Remer, Alexa) (Entered: 02/23/2018)
03/22/2018	34	Notice of Appearance or Withdrawal of Counsel: for attorney Vinita Andrapalliyal counsel for Defendants The United States Department of State, Rex W. Tillerson. Adding Vinita B. Andrapalliyal as counsel of record for Defendants for the reason indicated in the G-123 Notice. Filed by Defendants U.S. Department of State, Rex W. Tillerson, Secretary, U.S. Department of State. (Attorney Vinita Andrapalliyal added to party The United States Department of State(pty:dft), Attorney Vinita Andrapalliyal added to party Rex W. Tillerson(pty:dft))(Andrapalliyal, Vinita) (Entered: 03/22/2018)
03/22/2018	35	Joint STIPULATION for Extension of Time to File Answer to May 29, 2018 re Complaint (Attorney Civil Case Opening), 1 , Joint STIPULATION for Relief from additional case deadlines for 60 days filed by Defendants The United States Department of State, Rex W. Tillerson. (Attachments: # 1 Proposed Order)(Andrapalliyal, Vinita) (Entered: 03/22/2018)
03/28/2018	36	ORDER EXTENDING CASE DEADLINES 35 by Judge John F. Walter. The case deadlines are extended by 60 days. Defendants' response to Plaintiffs' Complaint is extended from March 27, 2018 to May 29, 2018. The parties will file a joint status report by May 29, 2018. (iv) (Entered: 03/28/2018)
03/30/2018	37	DECLARATION of Vinita B. Andrapalliyal (<i>Declaration of Lead Trial Counsel</i>) filed by Defendants The United States Department of State, Rex W. Tillerson. (Andrapalliyal, Vinita) (Entered: 03/30/2018)
04/10/2018	38	NOTICE TO PARTIES by U.S. Magistrate Judge Jacqueline Chooljian. Effective, April 11, 2018, Judge Chooljian will be located at the Edward R. Roybal Federal Building and U.S. Courthouse ("Roybal Building"), located at 255 East Temple Street, Los Angeles, California 90012. All Court appearances shall be made in Courtroom 750 on the 7th floor of the Roybal Building. All mandatory chambers copies shall be hand delivered to the judge's mail box located outside of the Clerk's Office on the 12th floor of the Roybal Building. Paper civil and criminal documents exempted from electronic filing shall be filed in Room 180 on the Terrace Level of the Roybal Building. Magistrate Judge Chooljian's Courtroom Deputy Clerk, Kerri Hays, may be reached at (213) 894-2921. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (rrey) TEXT ONLY ENTRY (Entered: 04/10/2018)

05/23/2018	39	STATUS REPORT (<i>Joint</i>) filed by Defendants The United States Department of State, Rex W. Tillerson. (Andrapalliyal, Vinita) (Entered: 05/23/2018)
05/23/2018	40	Joint STIPULATION for Extension of Time to File Answer to 07/16/2018, STIPULATION for Relief from additional case management deadlines for 45 days filed by Defendants The United States Department of State, Rex W. Tillerson. (Attachments: # 1 Proposed Order)(Andrapalliyal, Vinita) (Entered: 05/23/2018)
05/25/2018	41	ORDER EXTENDING CASE DEADLINES 40 by Judge John F. Walter. The case deadlines are extended by 45 days. Defendants' response to Plaintiffs' Complaint is extended from May 29, 2018 to July 16, 2018. The parties will file a joint status report by July 16, 2018. (iv) (Entered: 05/25/2018)
06/01/2018	42	Notice of Appearance or Withdrawal of Counsel: for attorney Andrew K Jennings counsel for Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. Alexandra H. Moss is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Jennings, Andrew) (Entered: 06/01/2018)
07/11/2018	43	STATUS REPORT (<i>Joint</i>) filed by Defendants The United States Department of State, Rex W. Tillerson. (Andrapalliyal, Vinita) (Entered: 07/11/2018)
07/11/2018	44	Joint STIPULATION Extending Time to Answer the complaint as to The United States Department of State answer now due 8/6/2018; Rex W. Tillerson answer now due 8/6/2018,, Joint STIPULATION for Relief from Additional Case Management Deadlines filed by defendants The United States Department of State; Rex W. Tillerson. (Attachments: # 1 Proposed Order) (Andrapalliyal, Vinita) (Entered: 07/11/2018)
07/12/2018	45	ORDER DENYING EXTENDING CASE DEADLINES 44 by Judge John F. Walter. DENIED BY ORDER OF THE COURT. (iv) (Entered: 07/12/2018)
07/16/2018	46	ANSWER to Complaint (Attorney Civil Case Opening), 1 filed by Defendants The United States Department of State, Rex W. Tillerson.(Andrapalliyal, Vinita) (Entered: 07/16/2018)
07/31/2018	47	MINUTE ORDER IN CHAMBERS by Judge John F. Walter. Counsel are hereby notified that a Scheduling Conference has been set for August 27, 2018 at 1:15 p.m. before Judge John F. Walter in Courtroom 7A, 350 W. 1st St, Los Angeles, CA 90012. Lead Trial Counsel shall attend all proceedings before this Court, including the Scheduling Conference. Counsel are directed to comply with Rule 26 of the Federal Rules of Civil Procedure and Local Rule 26-1 in a timely fashion and to file a Joint Report, on or before August 20, 2018. (iv) (Entered: 08/01/2018)
08/03/2018	48	Notice of Appearance or Withdrawal of Counsel: for attorney Andrew K Jennings counsel for Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. Andrew K Jennings is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Plaintiff Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks. (Jennings, Andrew) (Entered: 08/03/2018)

08/03/2018	49	NOTICE filed by plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (<i>Scheduling Conference</i>) (Lawson-Remer, Alexa) (Entered: 08/03/2018)
08/20/2018	50	JOINT REPORT Rule 26(f) Discovery Plan <i>for Scheduling Conference</i> ; estimated length of trial 4 days, filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks.. (Attachments: # 1 Request: ADR Procedure Selection)(Edelman, Theodore) (Entered: 08/20/2018)
08/21/2018	51	ORDER VACATING SCHEDULING CONFERENCE AND REFERRAL TO PRIVATE MEDIATION by Judge John F. Walter. The Court has reviewed the parties' Joint Rule 26(f) Report and finds that a Scheduling Conference is not necessary. The hearing on August 27, 2018 is vacated and taken off calendar. A Scheduling and Case Management Order will issue. Any unserved DOE defendants are dismissed at this time. The Court, having considered the parties' Request: ADR Procedure Selection, the Notice to Parties of Court-Directed ADR Program, or the report submitted by the parties pursuant to Fed. R. Civ. P. 26(f) and Civil L.R. 26-1, hereby: ORDERS this case referred to: ADR PROCEDURE NO. 3: (Private mediation). The ADR proceeding is to be completed no later than: December 10, 2018. The Joint Report re: Results of Settlement Conference due on: December 14, 2018. (iv) (Entered: 08/21/2018)
08/21/2018	52	SCHEDULING AND CASE MANAGEMENT ORDER by Judge John F. Walter. The purpose of this Order is to notify the parties and their counsel of the deadlines and the schedule that will govern this action. Pretrial Conference set for 4/5/2019 at 10:00 AM. Court Trial set for 4/16/2019 at 8:30 AM. SEE ORDER FOR DETAILS. (iv) (Entered: 08/21/2018)
11/19/2018	53	NOTICE of Appearance filed by attorney Lisa Zeidner Marcus on behalf of Defendants The United States Department of State, Rex W. Tillerson (Attorney Lisa Zeidner Marcus added to party The United States Department of State (pty:dft), Attorney Lisa Zeidner Marcus added to party Rex W. Tillerson (pty:dft))(Marcus, Lisa) (Entered: 11/19/2018)
11/19/2018	54	NOTICE OF MOTION AND MOTION to Compel Production of Documents, Interrogatory Responses, and Depositions filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. Motion set for hearing on 12/11/2018 at 09:30 AM before Magistrate Judge Jacqueline Chooljian. (Attachments: # 1 Joint Stipulation, # 2 Declaration of Alexa M. Lawson-Remer, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6, # 9 Exhibit 7, # 10 Exhibit 8, # 11 Exhibit 9, # 12 Exhibit 10, # 13 Exhibit 11, # 14 Exhibit 12, # 15 Exhibit 13, # 16 Exhibit 14, # 17 Exhibit 15, # 18 Declaration of Lisa Zeidner Marcus, # 19 Exhibit A, # 20 Exhibit B, # 21 Exhibit C, # 22 Exhibit D, # 23 Exhibit E, # 24 Exhibit F, # 25 Exhibit G, # 26 Exhibit H, # 27 Declaration of Karen L. Christensen, # 28 Declaration of Brian J. Egan, # 29 Declaration of Carlos A. Hernandez)(Lawson-Remer, Alexa) (Entered: 11/19/2018)
11/27/2018	55	MEMORANDUM in Support of MOTION to Compel Production of Documents, Interrogatory Responses, and Depositions 54 <i>Supplemental Brief</i> filed by Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks.

		(Attachments: # 1 Declaration of Alexa Lawson-Remer in Support of Plaintiffs' Supplemental Memorandum, # 2 Exhibit 1, # 3 Exhibit 2)(Lawson-Remer, Alexa) (Entered: 11/27/2018)
11/27/2018	57	MINUTES (IN CHAMBERS) ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED AS TO PLAINTIFF ETHAN JACOB DVASH-BANKS by Judge John F. Walter. Plaintiffs are hereby ordered to show cause, in writing, no later than December 3, 2018, why this action should not be dismissed without prejudice as to Ethan for failure to appoint a guardian ad litem. (iv) (Entered: 11/28/2018)
11/28/2018	56	SUPPLEMENT to MOTION to Compel Production of Documents, Interrogatory Responses, and Depositions 54 <i>Supplemental Memorandum</i> filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Declaration 2d Marcus Decl, # 2 Exhibit I, # 3 Exhibit J) (Marcus, Lisa) (Entered: 11/28/2018)
12/03/2018	58	EX PARTE APPLICATION for Appointment of Elad Dvash-Banks as Guardian ad Litem for EJDB filed by plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Alexa M. Lawson-Remer, # 3 Declaration of Elad Dvash-Banks, # 4 Proposed Order) (Lawson-Remer, Alexa) (Entered: 12/03/2018)
12/03/2018	59	Notice of Appearance or Withdrawal of Counsel: for attorney Rebekah Tilander Raybuck counsel for Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. Adding Rebekah T. Raybuck as counsel of record for Plaintiffs for the reason indicated in the G-123 Notice. Filed by Plaintiffs Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks. (Attorney Rebekah Tilander Raybuck added to party Andrew Mason Dvash-Banks (pty:pla), Attorney Rebekah Tilander Raybuck added to party Ethan Jacob Dvash-Banks(pty:pla))(Raybuck, Rebekah) (Entered: 12/03/2018)
12/03/2018	60	Notice of Appearance or Withdrawal of Counsel: for attorney Alexa M Lawson-Remer counsel for Plaintiffs Andrew Mason Dvash-Banks, Ethan Jacob Dvash-Banks. Adding Lauren M. Goldsmith as counsel of record for Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks for the reason indicated in the G-123 Notice. Filed by Plaintiffs Andrew Mason Dvash-Banks and Ethan Jacob Dvash-Banks. (Lawson-Remer, Alexa) (Entered: 12/03/2018)
12/04/2018	61	ORDER GRANTING EX PARTE APPLICATION TO APPOINT GUARDIAN AD LITEM 58 by Magistrate Judge Jacqueline Chooljian. Good cause appearing, the Court GRANTS Plaintiffs' Ex Parte Application and appoints Elad Dvash-Banks as the guardian ad litem for E.J.D.-B. in the instant action. IT IS SO ORDERED. (lom) (Entered: 12/04/2018)
12/11/2018	65	MINUTES OF MOTION HEARING AND ORDERS ON PLAINTIFFS' MOTION TO COMPEL held before Magistrate Judge Jacqueline Chooljian: Case called. Counsel stated their appearances. The Court heard argument from counsel. Plaintiffs withdrew portions of the Motion to Compel as detailed below. For reasons explained on therecord and as detailed below, the Court granted in part and denied in part without prejudice Plaintiffs' Motion to

		Compel. The Court set further telephonic status conferences for discovery as detailed below and directed Defendants' counsel to provide a proposed stipulated protective order to Plaintiffs' counsel by not later December 12, 2018. (SEE DOCUMENT FOR FURTHER DETAILS) Court Recorder: CS 12-11-18. (klg) (Entered: 12/12/2018)
12/12/2018	62	TRANSCRIPT ORDER as to plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks for Court Smart (CS). Court will contact Sara Carrico at carricos@sullcrom.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the transcription company. (Lawson-Remer, Alexa) (Entered: 12/12/2018)
12/12/2018	63	COMPACT DISC Order The United States Department of State. Court will contact Tija Anderson Transcript portion requested: Hearing Date: 12/11/18. Federal Government Agency - No fee required: U.S. Dept of State - DOJ. (ha) (Entered: 12/12/2018)
12/12/2018	64	TRANSCRIPT ORDER for Court Smart (CS).Hearing Date: 12/11/18. Transcript preparation will not begin until payment has been satisfied with the transcription company. (ha) (Entered: 12/12/2018)
12/13/2018	66	TRANSCRIPT for proceedings held on 12-11-18 10:02 a.m.. Court Reporter/Electronic Court Recorder: EXCEPTIONAL REPORTING SERVICES, INC., phone number (361) 949-2988. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 1/3/2019. Redacted Transcript Deadline set for 1/14/2019. Release of Transcript Restriction set for 3/13/2019. (ha) (Entered: 12/13/2018)
12/13/2018	67	NOTICE OF FILING TRANSCRIPT filed for proceedings 12/11/18 10:02 A.M. re Transcript 66 THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (ha) TEXT ONLY ENTRY (Entered: 12/13/2018)
12/14/2018	68	MINUTE ORDER (IN CHAMBERS) RE COMMUNICATION FROM COUNSEL, VACATING DECEMBER 14, 2018 STATUS CONFERENCE AND DEEMING WITHDRAWN/DENYING AS MOOT PLAINTIFFS' MOTION TO COMPEL RELATIVE TO FED. R. CIV. P. 30(B)(6) TOPIC NO. 5 by Magistrate Judge Jacqueline Chooljian: On December 11, 2018, the Court deferred ruling on Plaintiff's Motion to Compel relative to Fed. R. Civ. P. 30(b)(6) Topic No. 5 for the purpose of allowing the parties further to meet and confer regarding the same, and scheduled a telephonic status conference for this date at 8:00 a.m. to resolve any remaining dispute regarding the same, subject to such conference being vacated if Plaintiffs' and Defendants counsel both notified the Clerk that such conference was unnecessary. As the Clerk has now been notified by counsel that they have resolved their disputes relative to Fed. R. Civ. P. 30(b)(6) Topic No. 5 and that a status conference this date is unnecessary, the Court vacates today's status conference and deems Plaintiffs Motion to Compel relative to Fed. R. Civ. P. 30(b)(6) Topic No. 5

		withdrawn/denies the motion as moot relative to the same. (klg) (Entered: 12/14/2018)
12/14/2018	69	JOINT REPORT of Settlement Conference filed by Defendants Michael R. Pompeo, The United States Department of State. (Andrapalliyal, Vinita) (Entered: 12/14/2018)
12/18/2018	70	Joint STIPULATION for Protective Order filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Supplement Redline of proposed changes to form order, # 2 Proposed Order) (Andrapalliyal, Vinita) (Entered: 12/18/2018)
12/19/2018	71	PROTECTIVE ORDER by Magistrate Judge Jacqueline Chooljian. (SEE DOCUMENT FOR DETAILS) 70 (klg) (Entered: 12/19/2018)
12/19/2018	72	MINUTE ORDER OF TELEPHONIC STATUS CONFERENCE held before Magistrate Judge Jacqueline Chooljian: Case called. Counsel stated their appearances. The parties updated the Court regarding the current status of discovery. The Court ordered the parties to confer regarding produced documents redacted on bases other than attorney-client privilege/work product and ordered defendants to produce: 1. Unredacted versions of previously produced documents that were redacted on bases other than attorney-client privilege/work product (subject to the Protective Order issued this date) by 6:00 a.m. Pacific Time on December 20, 2018; and 2. A privilege log regarding documents withheld/redacted based upon an assertion of attorney-client privilege/work product by not later than December 28, 2018. Court Recorder: CS 12-19-18. (klg) (Entered: 12/20/2018)
12/21/2018	73	Joint STIPULATION for Extension of Time to File Summary Judgment Motions filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Proposed Order)(Andrapalliyal, Vinita) (Entered: 12/21/2018)
12/26/2018	74	EX PARTE APPLICATION to Stay Case pending Discovery Cut-off and Motion Hearing Cut-off <i>in Light of Lapse of Appropriations</i> filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Declaration, # 2 Proposed Order) (Andrapalliyal, Vinita) (Entered: 12/26/2018)
12/26/2018	75	ORDER EXTENDING CASE DEADLINES 73 by Judge John F. Walter. The motion hearing cut-off date is extended to February 4, 2019. (iv) (Entered: 12/26/2018)
12/26/2018	76	ORDER 74 by Judge John F. Walter. DENIED BY ORDER OF THE COURT. (iv) (Entered: 12/26/2018)
01/03/2019	77	STATEMENT Joint Statement Regarding Local Rule 7-3 Conference filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks (Lawson-Remer, Alexa) (Entered: 01/03/2019)
01/04/2019	78	Joint STIPULATION for Order to Modify Scheduling Order Under Rule 16 (b) filed by plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. (Attachments: # 1 Proposed Order)(Lawson-Remer, Alexa) (Entered: 01/04/2019)

01/04/2019	79	(Mooted by 93) EX PARTE APPLICATION to Remove Plaintiffs' Equal Protection Claim via Amendment of the Complaint <i>by Notice of Motion and Unopposed Motion Under FRCP 15(a)</i> filed by plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. (Attachments: # 1 Declaration of Alexa M. Lawson-Remer, # 2 Exhibit A, # 3 Exhibit B, # 4 Proposed Order) (Lawson-Remer, Alexa) Modified on 1/18/2019 (sr). (Entered: 01/04/2019)
01/04/2019	80	CERTIFIED ADMINISTRATIVE RECORD filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Index to AR, # 2 AR 001, # 3 AR 002-008, # 4 AR 009-072, # 5 AR 073, # 6 AR 074-076, # 7 AR 077-080, # 8 AR 081-106)(Marcus, Lisa) (Entered: 01/04/2019)
01/07/2019	81	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Administrative Record 80 . The following error(s) was/were found: Title page is missing. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (iv) (Entered: 01/07/2019)
01/07/2019	82	NOTICE OF NON-OPPOSITION to EX PARTE APPLICATION to Remove Plaintiffs' Equal Protection Claim via Amendment of the Complaint <i>by Notice of Motion and Unopposed Motion Under FRCP 15(a)</i> 79 filed by Defendants Michael R. Pompeo, The United States Department of State. (Andrapalliyal, Vinita) (Entered: 01/07/2019)
01/07/2019	83	NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. Motion set for hearing on 2/4/2019 at 01:30 PM before Judge John F. Walter. (Attachments: # 1 Memorandum of Points and Authorities in Support of Motion for Partial Summary Judgment, # 2 Appendix A of Memoradum of Points and Authorities in Support of Motion for Partial Summary Judgment, # 3 Declaration of Alexa Lawson-Remer in Support of Motion for Partial Summary Judgment, # 4 Exhibit A of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 5 Exhibit B of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 6 Exhibit C of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 7 Exhibit D of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 8 Exhibit E of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 9 Exhibit F of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 10 Exhibit G - Section 1 of 2 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 11 Exhibit G - Section 2 of 2 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 12 Exhibit G-1 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 13 Exhibit G-2 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 14 Exhibit G-3 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 15 Exhibit G-4 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 16 Exhibit G-5 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 17 Exhibit

		G-6 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 18 Exhibit G-7 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 19 Exhibit G-8 of Lawson-Remer Declaration ISO Motion for Partial Summary Judgment, # 20 Declaration of Andrew Dvash-Banks in Support of Motion for Partial Summary Judgment, # 21 Exhibit H of Dvash-Banks Declaration ISO Motion for Partial Summary Judgment, # 22 Exhibit I of Dvash-Banks Declaration ISO Motion for Partial Summary Judgment, # 23 Exhibit J of Dvash-Banks Declaration ISO Motion for Partial Summary Judgment, # 24 Rule 56-1 Statement of Uncontroverted Facts and Conclusions of Law ISO Motion for Partial Summary Judgment, # 25 Proposed Order) (Lawson-Remer, Alexa) (Entered: 01/07/2019)
01/07/2019	84	Excerpts from the Deposition of Terri Nathine Frances Day ISO Plaintiffs' Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Lawson-Remer, Alexa) (Entered: 01/07/2019)
01/07/2019	85	Excerpts from the Deposition of Andrew Mason Dvash-Banks ISO Plaintiffs' Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Lawson-Remer, Alexa) (Entered: 01/07/2019)
01/07/2019	86	Excerpts from the Deposition of Paul Peek ISO Plaintiffs' Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Lawson-Remer, Alexa) (Entered: 01/07/2019)
01/07/2019	87	Excerpts from the Deposition of Margaret Ramsay ISO Plaintiffs' Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Lawson-Remer, Alexa) (Entered: 01/07/2019)
01/07/2019	88	Excerpts from the Deposition of Larilyn Reffett ISO Plaintiffs' Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Lawson-Remer, Alexa) (Entered: 01/07/2019)
01/07/2019	89	NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III filed by Defendants Michael R. Pompeo, The United States Department of State. Motion set for hearing on 2/4/2019 at 01:30 PM before Judge John F. Walter. (Attachments: # 1 Memorandum, # 2 Supplement

		Statement of Uncontroverted Facts and Law, # 3 Declaration, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit) (Andrapalliyal, Vinita) (Entered: 01/07/2019)
01/07/2019	90	DECLARATION of Lisa Zeidner Marcus in support of NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10)(Marcus, Lisa) (Entered: 01/07/2019)
01/07/2019	91	PROPOSED ORDER re NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 filed by Defendants Michael R. Pompeo, The United States Department of State. (Marcus, Lisa) (Entered: 01/07/2019)
01/08/2019	92	NOTICE OF ERRATA filed by Defendants Michael R. Pompeo, The United States Department of State. correcting NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 (Attachments: # 1 Exhibit A (Corrected Memorandum))(Andrapalliyal, Vinita) (Entered: 01/08/2019)
01/11/2019	93	ORDER TO MODIFY SCHEDULING ORDER UNDER RULE 16(b) 78 by Judge John F. Walter. The deadline for amending the pleadings in the Court's Scheduling and Case Management Order shall be modified to permit Plaintiffs to file a First Amended Complaint for the purpose of removing their equal protection claim (Count II of the initial Complaint). (iv) (Entered: 01/11/2019)
01/14/2019	94	First AMENDED COMPLAINT against Defendants Michael R. Pompeo, The United States Department of State amending Complaint (Attorney Civil Case Opening), 1 , filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Lawson-Remer, Alexa) (Entered: 01/14/2019)
01/14/2019	95	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. (Attachments: # 1 Plaintiffs' Statement of Genuine Disputes of Material Fact in Opposition to Defendants' Motion for Partial Summary Judgment, # 2 Declaration of Alexa Lawson-Remer, # 3 Exhibit 11, # 4 Exhibit 12, # 5 Exhibit 13, # 6 Exhibit 14, # 7 Exhibit 15, # 8 Exhibit 16, # 9 Memorandum of Evidentiary Objections in Opposition to Defendants' Motion for Partial Summary Judgment, # 10 Proposed Order)(Lawson-Remer, Alexa) (Entered: 01/14/2019)
01/14/2019	96	Excerpts from the Deposition of Terri Nathine Frances Day in Support of Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: MEMORANDUM in Opposition to Motion,, 95 (Lawson-Remer, Alexa) (Entered: 01/14/2019)
01/14/2019	97	Excerpts from the Deposition of Paul Peek, Defendants' 30(b)(6) Designee, in Support of Plaintiffs Opposition to Defendants Motion for Partial Summary

		Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: MEMORANDUM in Opposition to Motion,, 95 (Lawson-Remer, Alexa) (Entered: 01/14/2019)
01/14/2019	98	Excerpts from the Deposition of Andrew Mason Dvash-Banks in Support of Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: MEMORANDUM in Opposition to Motion,, 95 (Lawson-Remer, Alexa) (Entered: 01/14/2019)
01/14/2019	99	Excerpts from the Deposition of Margaret Ramsay in Support of Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: MEMORANDUM in Opposition to Motion,, 95 (Lawson-Remer, Alexa) (Entered: 01/14/2019)
01/14/2019	100	Excerpts from the Deposition of Larilyn Reffett in Support of Plaintiffs Opposition to Defendants Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: MEMORANDUM in Opposition to Motion,, 95 (Lawson-Remer, Alexa) (Entered: 01/14/2019)
01/14/2019	101	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Proposed Order)(Andrapalliyal, Vinita) (Entered: 01/14/2019)
01/14/2019	102	EXHIBIT Filed filed by Defendants Michael R. Pompeo, The United States Department of State. <i>Exhibits to Decl. of Lisa Zeidner Marcus [101-3]</i> , as to MEMORANDUM in Opposition to Motion,, 101 . (Attachments: # 1 Defs' Opp. Ex. H, # 2 Defs' Opp. Ex. I, # 3 Defs' Opp. Ex. J, # 4 Defs' Opp. Ex. K, # 5 Defs' Opp. Ex. L, # 6 Defs' Opp. Ex. M, # 7 Defs' Opp. Ex. N, # 8 Defs' Opp. Ex. O, # 9 Defs' Opp. Ex. P)(Marcus, Lisa) (Entered: 01/14/2019)
01/14/2019	103	EXHIBIT Filed filed by Defendants Michael R. Pompeo, The United States Department of State. <i>2d Declaration of Lisa Zeidner Marcus, with exhibits</i> , as to MEMORANDUM in Opposition to Motion,, 101 . (Attachments: # 1 Defs' Opp. Ex. Q, # 2 Defs' Opp. Ex. R, # 3 Defs' Opp. Ex. S, # 4 Defs' Opp. Ex. T) (Marcus, Lisa) (Entered: 01/14/2019)
01/15/2019	104	NOTICE OF ERRATA filed by Defendants Michael R. Pompeo, The United States Department of State. correcting MEMORANDUM in Opposition to Motion,, 101 <i>Re: 101-1: Statement of Genuine Issues of Mat. Fact</i> (Attachments: # 1 corrected document)(Marcus, Lisa) (Entered: 01/15/2019)
01/16/2019	105	AMENDED DOCUMENT filed by Defendants Michael R. Pompeo, The United States Department of State. Amendment to MEMORANDUM in Opposition to Motion,, 101 <i>Amended Statement of Genuine Issues of Material Fact [101-1]</i> (Marcus, Lisa) (Entered: 01/16/2019)
01/16/2019	106	

		NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Exhibit 102 . The following error(s) was/were found: Title page with, case number and caption is missing. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (iv) (Entered: 01/16/2019)
01/16/2019	107	NOTICE OF ERRATA filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. correcting NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Attachments: # 1 Amended Declaration of Alexa Lawson-Remer, # 2 Amended Exhibit G - Part 1, # 3 Amended Exhibit G - Part 2, # 4 Amended Exhibit G-9, # 5 Amended Exhibit G-10, # 6 Amended Declaration of Alexa Lawson-Remer - Redline)(Lawson-Remer, Alexa) (Entered: 01/16/2019)
01/16/2019	108	APPLICATION for Extension of Time to File Summary Judgment Replies and Proposed Statements of Decision filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Proposed Order) (Marcus, Lisa) (Entered: 01/16/2019)
01/18/2019	109	ORDER GRANTING ONE BUSINESS DAY EXTENSION FOR FILING SUMMARY JUDGMENT REPLIES AND PROPOSED STATEMENTS OF DECISION 108 by Judge John F. Walter. The Parties shall file their summary judgment reply briefs, along with any other papers required to be filed simultaneously with their replies, by Tuesday, January 22, 2019. They shall file their Proposed Statements of Decision by Thursday, January 24, 2019. (iv) (Entered: 01/18/2019)
01/22/2019	110	RESPONSE IN SUPPORT of NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. (Attachments: # 1 Plaintiffs' Combined Statement of Facts, # 2 Declaration of Alexa Lawson-Remer, # 3 Exhibit U, # 4 Memorandum of Evidentiary Objections in Response to Defendants' Statement of Genuine Disputes of Material Fact, # 5 Plaintiffs' Responses to Defendants' Evidentiary Objections)(Lawson-Remer, Alexa) (Entered: 01/22/2019)
01/22/2019	111	Excerpts from the Deposition of Paul Peek, Defendants' 30(b)(6) Designee, in Support of Plaintiffs' Reply in Further Support of Their Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: Response in Support of Motion,, 110 (Lawson-Remer, Alexa) (Entered: 01/22/2019)
01/22/2019	112	REPLY in support of a motion NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Combined Statement of Facts, # 2 Declaration 3d Marcus

		Decl ISO Defs Mot., # 3 Exhibit Defs' Ex. 17, # 4 Exhibit Defs' Ex. 18, # 5 Exhibit Defs' Ex. 19, # 6 Exhibit Defs' Ex. 20, # 7 Exhibit Defs' Ex. 21) (Andrapalliyal, Vinita) (Entered: 01/22/2019)
01/22/2019	113	Joint Exhibits Binder Filed in Connection with Plaintiffs' Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Attachments: # 1 Joint Exhibit Binder - Index, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G (Amended) Part 1, # 9 Exhibit G (Amended) Part 2, # 10 Exhibit G-1, # 11 Exhibit G-2, # 12 Exhibit G-3, # 13 Exhibit G-4, # 14 Exhibit G-5, # 15 Exhibit G-6, # 16 Exhibit G-7, # 17 Exhibit G-8, # 18 Exhibit G-9, # 19 Exhibit G-10, # 20 Plaintiffs' Exhibit H, # 21 Plaintiffs' Exhibit I, # 22 Plaintiffs' Exhibit J, # 23 Defendants' Exhibit I, # 24 Defendants' Exhibit J, # 25 Exhibit K, # 26 Exhibit L, # 27 Exhibit M, # 28 Exhibit N, # 29 Exhibit O, # 30 Exhibit P, # 31 Exhibit Q, # 32 Exhibit R, # 33 Exhibit S, # 34 Exhibit T, # 35 Exhibit U, # 36 Admin. Record Part 0, # 37 Admin. Record Part I, # 38 Admin. Record Part II, # 39 Admin. Record Part III, # 40 Admin. Record Part IV, # 41 Admin. Record Part V, # 42 Admin. Record Part VI, # 43 Admin. Record Part VII)(Lawson-Remer, Alexa) (Entered: 01/22/2019)
01/22/2019	114	Joint Declarations Binder Filed in Connection with Plaintiffs' Motion for Partial Summary Judgment filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks re: NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Attachments: # 1 Joint Set of Declarations - Index, # 2 Amended Declaration of Alexa Lawson-Remer in Support of Plaintiffs' Motion for Partial Summary Judgment, # 3 Declaration of Andrew Dvash-Banks in Support of Plaintiffs' Motion for Partial Summary Judgment, # 4 Declaration of Lisa Zeidner Marcus in Support of Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, # 5 Second Declaration of Lisa Zeidner Marcus in Support of Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, # 6 Declaration of Alexa Lawson-Remer in Support of Reply in Support of Plaintiffs' Motion for Partial Summary Judgment) (Lawson-Remer, Alexa) (Entered: 01/22/2019)
01/22/2019	115	PARTIES' JT. SET OF DECLARATIONS IN SUPPORT OF, AND IN OPPOSITION TO, DEFS.' MOT. FOR PARTIAL SUM. J. re NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Administrative Record Certification, # 2 Decl. of Lisa Zeidner Marcus, # 3 2d Decl. of Lisa Zeidner Marcus, # 4 Decl. of Alexa Lawson-Remer, # 5 3d Decl. of Lisa Zeidner Marcus)(Marcus, Lisa) (Entered: 01/22/2019)
01/22/2019	116	PARTIES' JT. SET OF EXHIBITS IN SUPPORT OF, AND IN OPPOSITION TO, DEFS.' MOT. FOR PARTIAL SUM. J. re NOTICE OF MOTION AND

		MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Exhibit AR Part I, # 2 Exhibit AR Part II, # 3 Exhibit AR Part III, # 4 Exhibit AR Part IV, # 5 Exhibit AR Part V, # 6 Exhibit AR Part VI, # 7 Exhibit AR Part VII, # 8 Ex. 1, # 9 Ex. 2, # 10 Ex. 3, # 11 Ex. 4, # 12 Ex. 5, # 13 Ex. 6, # 14 Ex. 7, # 15 Ex. 8, # 16 Ex. 9, # 17 Ex. 10, # 18 Ex. 11, # 19 Ex. 12, # 20 Ex. 13, # 21 Ex. 14, # 22 Ex. 15, # 23 Ex. 16, # 24 Ex. 17, # 25 Ex. 18, # 26 Ex. 19, # 27 Ex. 20, # 28 Ex. 21)(Marcus, Lisa) (Entered: 01/22/2019)
01/24/2019	117	NOTICE OF LODGING filed re NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Attachments: # 1 Proposed Statement of Decision Granting Plaintiffs' Motion for Partial Summary Judgment) (Lawson-Remer, Alexa) (Entered: 01/24/2019)
01/24/2019	118	NOTICE OF LODGING filed re NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 (Attachments: # 1 Proposed Statement of Decision Denying Defendants' Motion for Partial Summary Judgment)(Lawson-Remer, Alexa) (Entered: 01/24/2019)
01/24/2019	119	NOTICE OF LODGING filed re NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to Proposed Counts I, II, III 89 (Attachments: # 1 Statement of Proposed Decision Granting Defendants' Motion for Partial Summary Judgment)(Andrapalliyal, Vinita) (Entered: 01/24/2019)
01/24/2019	120	NOTICE OF LODGING filed re NOTICE OF MOTION AND MOTION for Partial Summary Judgment as to to the Due Process Clause of the Fifth Amendment claim on behalf of both Plaintiffs and to the U.S.C. Section 1503 claim on behalf of Plaintiff E.J.D.-B. 83 (Attachments: # 1 Statement of Proposed Decision Denying Plaintiffs' Motion for Partial Summary Judgment) (Andrapalliyal, Vinita) (Entered: 01/24/2019)
01/24/2019	121	NOTICE OF ERRATA filed by Defendants Michael R. Pompeo, The United States Department of State. correcting Notice of Lodging, 119 (Attachments: # 1 Statement of Proposed Decision Granting Defendants' Motion for Partial Summary Judgment)(Andrapalliyal, Vinita) (Entered: 01/24/2019)
01/29/2019	122	MINUTES (IN CHAMBERS) ORDER TAKING UNDER SUBMISSION PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT [filed 1/7/19; Docket No. 83]; and ORDER TAKING UNDER SUBMISSION DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT [filed 1/7/19; Docket No. 89] by Judge John F. Walter. The Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for February 4, 2019 is hereby vacated and the matter is taken off calendar. The matter will be deemed submitted on the vacated hearing date and the clerk will notify the parties when the Court has reached a decision. (iv) (Entered: 01/29/2019)
02/21/2019	123	MINUTES (IN CHAMBERS) ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR PARTIAL SUMMARY

		JUDGMENT [filed 1/7/19; Docket No. 83]; and ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT [filed 1/7/19; Docket No. 89] by Judge John F. Walter. Plaintiffs' and Defendants' Motions for Partial Summary Judgment are GRANTED in part and DENIED in part. The parties are ordered to meet and confer and agree on a joint proposed Judgment which is consistent with this Order. The parties shall lodge the joint proposed Judgment with the Court on or before February 28, 2019. (iv) (Entered: 02/21/2019)
02/28/2019	124	NOTICE OF LODGING filed re Order on Motion for Partial Summary Judgment,,,,, 123 (Attachments: # 1 Exhibit 1 - Plaintiffs' Proposed Judgment, # 2 Exhibit 2 - Defendants' Proposed Judgment)(Lawson-Remer, Alexa) (Entered: 02/28/2019)
03/06/2019	125	JUDGMENT by Judge John F. Walter. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT JUDGMENT is entered in this matter as follows: Judgment on the 8 U.S.C. 1503(a) claim is hereby entered for Plaintiffs for the reasons stated in the Court's Order. (MD JS-6, Case Terminated). (iv) (Entered: 03/06/2019)
03/20/2019	126	[stricken] NOTICE OF MOTION AND MOTION for Attorney Fees , NOTICE OF MOTION AND MOTION for Costs against Michael R. Pompeo, The United States Department of StateRE: Judgment, 125 filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. Motion set for hearing on 4/22/2019 at 01:30 PM before Judge John F. Walter. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Theodore Edleman - Part One, # 3 Declaration of Theodore Edelman - Part Two, # 4 Declaration of Theodore Edleman - Part Three, # 5 Exhibit A, # 6 Exhibit B, # 7 Exhibit C, # 8 Exhibit D, # 9 Exhibit E, # 10 Exhibit F, # 11 Exhibit G, # 12 Exhibit H, # 13 Exhibit I, # 14 Exhibit J, # 15 Exhibit K, # 16 Declaration of Aaron C. Morris, # 17 Declaration of Andrew Dvash-Banks, # 18 Proposed Order) (Lawson-Remer, Alexa) Modified on 3/21/2019 (sr). (Entered: 03/20/2019)
03/21/2019	127	Text Entry Order: Plaintiffs Motion for Attorneys Fees and Costs filed on March 20, 2019 (Docket No. 126 is STRICKEN for failure to comply with Local Rule 7-3 which requires the conference of counsel to take place at least seven days prior to the filing of the Motion and paragraph 5(b) of the Court's Standing Order which requires the Joint Statement to be filed 3 days after the Local Rule 7-3 conference. If Plaintiffs wish to re-file the Motion, counsel shall meet and confer in person by April 1, 2019. If the parties cannot resolve the issues raised in the Motion, within 3 days of the meet and confer, each party shall file a declaration setting forth the issues resolved at the conference and those issues that were not resolved with a detailed explanation of why those issues could not be resolved. If a Motion remains necessary, it shall not be filed until 2 days after each party files the declaration required by this Order. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sr) TEXT ONLY ENTRY (Entered: 03/21/2019)
04/04/2019	128	DECLARATION of Jessica M. Klein re Text Only Scheduling Notice,,,, 127 filed by Plaintiffs E. J. D.-B., Andrew Mason Dvash-Banks. (Lawson-Remer, Alexa) (Entered: 04/04/2019)

04/04/2019	129	DECLARATION of Vinita B. Andrapalliyal re Text Only Scheduling Notice,,,, 127 filed by Defendants Michael R. Pompeo, The United States Department of State. (Andrapalliyal, Vinita) (Entered: 04/04/2019)
04/05/2019	130	Text Entry Order: The Court has reviewed the Declaration of Jessica M. Klein (Docket No. 128) and the Declaration of Vinita B. Andrapalliyal Re: Plaintiffs Motion for Attorneys Fees and Costs (Docket No. 129) and agrees to continue the dates as set forth in the declarations. Counsel shall file a Stipulation and Proposed Order consistent with their agreement.THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sr) TEXT ONLY ENTRY (Entered: 04/05/2019)
04/08/2019	131	Joint STIPULATION to Continue deadline for Plaintiffs to Re-file their Motion for Attorneys' Fees and Costs from April 8, 2019 to sine die Re: Text Only Scheduling Notice, 130 filed by Defendants Michael R. Pompeo, The United States Department of State. (Attachments: # 1 Proposed Order) (Andrapalliyal, Vinita) (Entered: 04/08/2019)
04/09/2019	132	ORDER ADJOURNING DEADLINE FOR PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS 131 by Judge John F. Walter. The deadline for Plaintiffs to refile a motion for attorneys' fees and costs is adjourned sine die and; The Parties shall file a joint status report no later than May 10, 2019. (iv) (Entered: 04/09/2019)
05/06/2019	133	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Defendants Michael R. Pompeo, The United States Department of State. Appeal of Judgment, 125 . (Appeal Fee - Not Required for US Government.) (Andrapalliyal, Vinita) (Entered: 05/06/2019)
05/07/2019	134	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 19-55517 assigned to Notice of Appeal to 9th Circuit Court of Appeals 133 as to Defendant Michael R. Pompeo. (iv) (Entered: 05/08/2019)
05/09/2019	135	STATUS REPORT : <i>JOINT STATUS REPORT Pursuant to the Courts Order of April 9, 2019 (ECF No. 132)</i> filed by Defendants Michael R. Pompeo, The United States Department of State. (Marcus, Lisa) (Entered: 05/09/2019)
05/10/2019	136	TEXT ENTRY ORDER REQUIRING THE PARTIES SUBMIT/LODGE A PROPOSED ORDER RE JOINT STATUS REPORT AND REQUEST 135 . THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sr) TEXT ONLY ENTRY (Entered: 05/10/2019)
05/10/2019	137	NOTICE OF LODGING filed <i>NOTICE OF LODGING OF [PROPOSED] ORDER</i> re Status Report 135 (Attachments: # 1 Proposed Order)(Raybuck, Rebekah) (Entered: 05/10/2019)
05/13/2019	138	ORDER TO DEFER CONSIDERATION OF PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES AND COSTS 137 by Judge John F. Walter. Further proceedings in connection with the Motion shall be deferred until after entry in the Action of a final, non-appealable judgment or until such other date as shall be ordered by the Court. The Parties shall file a joint status report with the Court within 5 business days after the United States Court of Appeals for

	the Ninth Circuit issues a mandate on the Appeal, which report shall include the parties respective positions regarding, and any proposed schedule for, further proceedings concerning the Motion. (iv) (Entered: 05/14/2019)
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