

Exhibit S

Excerpt of the transcript of the December 7, 2018 deposition of Margaret Ramsay, filed in *Dvash-Banks v. Pompeo*, Case No. 2:18-cv-00523 (C.D. Cal. filed Jan. 7, 2019)

In the Matter Of:
Andrew Mason Dvash-Banks, et al v.
The United States Department of State, et al

MARGARET RAMSAY
December 07, 2018

neelsons

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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3
4 ANDREW MASON DVASH-BANKS and)

5 E █████ J █████ D █████ -B █████,) COMPLAINT FOR

6 Plaintiffs,) DECLARATION AND

7) INJUNCTIVE RELIEF

8 v.)

9 THE UNITED STATES DEPARTMENT) Docket No. Case

10 OF STATE, and THE HONORABLE) 2:18-cv-00523-JFW-JCx

11 MICHAEL R. POMPEO, Secretary) JFW

12 of State,)

13 Defendants.)

14 -----)

15
16 --- This is the Transcript of the Videotaped
17 Deposition of MARGARET RAMSAY, taken at the U.S.
18 Consulate, 360 University Avenue, Toronto, Ontario,
19 MSG 1S4, on the 7th day of December, 2018.

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21 -----
22 Reported By: Deana Santedicola, CSR (Ont.), RPR,
23 CRR
24
25

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

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

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

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

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

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

24 State, Office of the Legal Advisor

25

I N D E X

WITNESS: MARGARET RAMSAY

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1 & Cromwell.

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

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

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

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

17 MARGARET RAMSAY; SWORN.

18 EXAMINATION BY MS. GOLDSMITH:

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

23 A. No.

24 Q. Have you ever testified in court?

25 A. No.

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

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

8 A. Some of them are, yes.

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

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

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

16 A. Uhm-hmm.

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

21 A. Yes.

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

1 A. Yes.

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

6 A. Yes.

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

9 A. Yes.

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

13 A. Can you clarify the question?

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

18 A. No.

19 Q. Does anyone report to you?

20 A. No.

21 Q. Who do you report to?

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

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

1 Q. And when Terri Day worked with you
2 at the consulate, would that have been true for her
3 as well?

4 A. Yes.

5 Q. Switching gears just a little bit,
6 were you in any way personally involved in the
7 adjudication of E [REDACTED] D [REDACTED]-B [REDACTED]'s application for
8 a U.S. passport or a CRBA?

9 A. Can you clarify?

10 Q. Are you aware of E [REDACTED]
11 D [REDACTED]-B [REDACTED]'s application for a passport and a
12 Consular Report of Birth Abroad?

13 A. Yes.

14 Q. Who was the officer assigned to
15 his case, if you know?

16 A. It was Frankie Day.

17 Q. And were you involved in any way
18 in the process of reviewing E [REDACTED]'s applications?

19 A. Yes.

20 Q. Can you describe in what ways you
21 were involved in that process?

22 A. I assisted my colleague Frankie by
23 sending her relevant guidance from the Foreign
24 Affairs Manual.

25 Q. Did she request that you send her

1 questions, but we often used the same questions
2 when interviewing these types of cases.

3 Q. Did you observe that both of the
4 parents in the Dvash-Banks family were men?

5 A. Yes.

6 Q. And did you hear any questions
7 during the interview that were related in some way
8 to the fact that they were both men?

9 A. Yes, in terms of asking about how
10 the children were conceived and how the children
11 came to be born in Canada.

12 Q. Do you recall anything about the
13 demeanour of the Dvash-Banks family during the
14 interview?

15 A. Yes.

16 Q. Can you describe what you recall?

17 A. They were answering questions, you
18 know, just like any other family would. I think
19 towards the end they were unhappy with how things
20 were proceeding and being asked for additional
21 things, and so they were upset towards the end of
22 the interview, if I recall correctly.

23 Q. Do you recall what about their
24 demeanour gave you the impression that they were
25 upset?

1 A. They were yelling and seemed to be
2 upset about -- about the case.

3 Q. Was anyone crying?

4 A. I don't believe so.

5 Q. Do you recall what was discussed
6 about how the children came to be born in Canada?
7 And we are still talking about during the
8 interview, just to clarify.

9 A. I don't recall specific questions.

10 Q. Am I correct that you testified
11 before that you overheard some of the conversation
12 during the interview about how the children came to
13 be born?

14 A. Yes.

15 Q. And what do you recall that
16 discussion was?

17 A. I recall that they said that they
18 used a surrogate in Canada to conceive the
19 children.

20 Q. Do you remember anything else?

21 A. I think that Frankie asked the
22 question about who contributed genetic material to
23 conceive the children.

24 Q. And do you remember anything else
25 about that conversation?

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

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

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

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

11 A. No.

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

14 A. Yes.

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

17 A. Yes, I believe so.

18 Q. And can you describe that
19 conversation?

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

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

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

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

7 Q. And what decision was that?

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

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

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

16 Q. Were you present for that
17 conversation?

18 A. I don't believe so.

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

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

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

1 Q. And did you ever discuss the
2 Dvash-Banks applications again with Ms. Day before
3 the final adjudication?

4 A. I think I discussed it with her
5 when the results of the DNA testing came back.

6 Q. And what did she say?

7 A. She told me that one child was the
8 biological child of the U.S. citizen and one was
9 not.

10 Q. Do you recall anything else about
11 the conversation?

12 A. Not especially, no.

13 Q. And after that conversation and
14 the final adjudication, did you ever discuss the
15 Dvash-Banks family again with Ms. Day?

16 A. I think there was a news article
17 that someone saw and shared, and so we may have
18 discussed it at that point.

19 Q. And when you say "we," you are
20 referring to you and Ms. Day?

21 A. Uhm-hmm.

22 Q. Did you discuss it with anyone
23 else?

24 A. My Supervisor, Larilyn Reffett.

25 Q. And do you recall the content of

1 A. No.

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

4 A. Can you clarify the question?

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

8 A. I suggested it to her.

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

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

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

16 MS. ZEIDNER MARCUS: Objection to form.

17 BY MS. GOLDSMITH:

18 Q. You can answer.

19 A. No.

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

24 A. Yes.

25 Q. And what statutes are those?

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

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

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

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

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

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

19 MS. ZEIDNER MARCUS: Objection to form.

20 THE WITNESS: That is my understanding.

21 BY MS. GOLDSMITH:

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

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

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

6 A. No.

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

12 A. Yes.

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

15 A. No.

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

19 A. Yes.

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

24 A. I don't know.

25 Q. And do you know whether the State

1 A. Yes.

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

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

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

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

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

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

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

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

1 BY MS. GOLDSMITH:

2 Q. Have you seen this document
3 before?

4 A. Yes.

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

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

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

12 A. Yes.

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

16 MS. ZEIDNER MARCUS: Objection to form.

17 THE WITNESS: Yes.

18 BY MS. GOLDSMITH:

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

21 A. Yes.

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

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

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

5 A. Yes.

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

10 MS. ZEIDNER MARCUS: Objection to form.

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

13 BY MS. GOLDSMITH:

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

19 A. Yes.

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

23 A. Yes.

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

1 A. Yes.

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

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

7 THE WITNESS: Yes.

8 BY MS. GOLDSMITH:

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

12 A. Yes.

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

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

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

19 A. Yes.

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

24 A. Yes.

25 Q. And is it your understanding based

1 on this document that Andrew and Elad Dvash-Banks
2 are validly married?

3 A. Yes.

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

8 A. Yes.

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

13 A. Okay.

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

18 A. Not this particular document.

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

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

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

1 Day, would have a better sense.

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

6 A. Sometimes.

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

9 A. Sometimes, but not always.

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

13 A. Yes.

14 Q. Why did you do that?

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

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

21 A. I don't believe so.

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

25 A. I think initially, as evidenced by

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

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

14 MS. GOLDSMITH: Objection, leading.

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

21 BY MS. ZEIDNER MARCUS:

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

1 A. I believe she may have told them
2 about the provisions of INA 309.

3 Q. What is that belief based on?

4 A. I think I heard her talk to them
5 about the requirements for it and the requirements
6 for a biological relationship as well.

7 Q. Is there a requirement for a
8 biological relationship under both 301 and 309, as
9 you understand and apply the -- let me start over.
10 The biological requirement that you were just
11 describing, what is that biological requirement?

12 A. There must be, in order for a U.S.
13 citizen parent to transmit citizenship to a child
14 at birth, there must be a biological relationship
15 between parent and child.

16 Q. Is that true for both INA 301 and
17 INA 309, in your understanding?

18 A. Yes.

19 Q. So would it have made a difference
20 to the outcome of this case if Ms. Day had
21 adjudicated these applications under INA 301
22 instead of INA 309?

23 A. No.

24 Q. Ms. Ramsay, do you have more than
25 one type of title?

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

5 A. Yes, yes.

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

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

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

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

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

1 Q. You testified concerning
2 Plaintiffs Deposition Exhibit 6 and 7, the ACS
3 Activity Logs; correct?

4 A. Yes.

5 Q. Did Ms. Ramsay -- excuse me, Ms.
6 Ramsay, did Ms. Day ever discuss with you whether
7 to apply Section 301 or 309 of the INA in
8 adjudicating E [REDACTED]'s applications?

9 A. I believe we discussed it as
10 appropriately looking at the case through the lens
11 of 309 due to the fact pattern of the case in terms
12 of artificial reproductive technology being used.

13 Q. And when did that discussion
14 occur?

15 A. The morning of the interview.

16 Q. And was this the first
17 conversation you had with Ms. Day concerning the
18 Dvash-Banks applications?

19 A. No, no.

20 Q. This was the second conversation
21 you had with her that day concerning the
22 Dvash-Banks family's applications?

23 A. I think after she had interviewed
24 them, I discussed with her the different FAM
25 guidance and how the case would be, because they

1 had used a surrogate, and how we would apply 309 to
2 the case.

3 Q. So it is now your testimony that
4 you discussed with Ms. Day on the day that the
5 Dvash-Bankses appeared for their interview which
6 section of the INA applied to their application?

7 A. I believe that was part of our
8 discussion, yes.

9 Q. And did you advise Ms. Day on
10 which section of the INA to apply?

11 A. I think so, yes.

12 Q. And what did you advise her?

13 A. I told her that these types of
14 cases are considered under INA 309.

15 Q. And you testified, in response to
16 questions from counsel for Defendants, concerning
17 the notations made on the ACS Activity Log marked
18 as Plaintiffs Deposition Exhibit 6; correct?

19 A. Yes.

20 Q. And you testified concerning the
21 notation CRBA for child born in wedlock to U.S.
22 citizen father applicant; correct?

23 A. Yes.

24 Q. And was it your testimony that you
25 believe Ms. Day had initially believed that E [REDACTED]

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REPORTER'S CERTIFICATE.

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

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

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

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

Dated this 12th day of December, 2018



NEESON COURT REPORTING INC.

PER: DEANA SANTEDICOLA, RPR, CRR, CSR
CERTIFIED REAL-TIME REPORTER

Exhibit T

Plaintiffs' Combined Statement of Facts filed in *Dvash-Banks v. Pompeo*, Case No. 2:18-cv-00523 (C.D. Cal. filed Jan. 22, 2019)

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

20 ANDREW MASON DVASH-
BANKS, et al.,
21
22 Plaintiffs,
23 v.
24 MICHAEL R. POMPEO, in his
official capacity as U.S. Secretary of
25 State, et al.,
26 Defendants.

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

) **PLAINTIFFS' COMBINED**
) **STATEMENT OF FACTS**

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

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Pursuant to Local Rule 56-1 and this Court’s Standing Order (ECF No. 27) and Case Management Order (ECF No. 52), Plaintiffs Andrew Dvash-Banks and E.J. D.-B. respectfully submit the following *Combined Statement of Facts* in support of Plaintiffs’ *Reply in Further Support of Their Motion for Partial Summary Judgment*.

Any indication that Plaintiffs do not dispute, in whole or in part, statements included in “Defendants’ Additional, Relevant, Uncontroverted Facts,” (Statement Nos. 150-172), is limited to the statement or portion of the statement indicated and does not suggest agreement with any implications that Defendants may contend, in their legal memoranda or elsewhere, result from that statement.

I. Plaintiffs’ Asserted Uncontroverted Facts

A. ANDREW DVASH-BANKS IS A UNITED STATES CITIZEN

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
1. Andrew Dvash-Banks (“Andrew”) is a United States citizen. ¹	Dvash-Banks Dep. 171:3-171:6. <i>Undisputed.</i>
2. Andrew was born in California in 1981.	Dvash-Banks Dep. 13:24-14:2. <i>Undisputed.</i>

¹ Plaintiffs have numbered the specific Statements of Fact in this document to track the same numbers used in *Plaintiffs’ Statement of Undisputed Facts* (ECF 83-24). *Defendants’ Statement of Genuine Disputes* (ECF 101-1) altered this numbering for Statements of Fact Nos. 89-130. Defendants did so by deleting Plaintiffs’ Statement of Fact No. 89, as a result of which the subsequent numbering in *Defendants’ Statement of Genuine Disputes* is one number lower than the numbering in *Plaintiffs’ Statement of Undisputed Facts* for Statements of Fact Nos. 89-130. *Defendants’ Statement of Genuine Disputes* also repeats Plaintiffs’ Statement of Fact No. 130 twice, assigning that fact both numbers 130 and 131. Because of the repetition, all Statements of Fact beginning with number 131 in *Defendants’ Statement of Genuine Disputes* resume the correct numbering that properly tracks Plaintiffs’ original filing. Because Defendants did not include Plaintiffs’ Statement of Fact No. 89 in *Defendants’ Statement of Genuine Disputes*, Defendants did not assert any dispute with respect to Statement of Fact No. 89.

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>3. During his childhood, Andrew lived primarily in Beverly Hills, California.</p>	<p>Dvash-Banks Dep. 14:9-14:14. <i>Undisputed.</i></p>
<p>4. Andrew attended high school in California.</p>	<p>Dvash-Banks Dep. 15:20-15:22. <i>Undisputed.</i></p>
<p>5. Andrew attended college in California.</p>	<p>Dvash-Banks Dep. 15:23-15:25. <i>Undisputed.</i></p>
<p>6. Andrew resided in the United States continuously from 1981 through at least October 2005, as well as during other periods.</p>	<p>Dvash-Banks Dep. 169:13-169:19. <i>Undisputed.</i></p>
<p>7. In 2007, Andrew enrolled in a master’s degree program in Israel.</p>	<p>Dvash-Banks Dep. 18:1-18:4; 19:20-20:2. <i>Undisputed.</i></p>
<p>8. In 2008, while enrolled in graduate school in Israel, Andrew met his now-husband, Elad Dvash-Banks (“Elad”).</p>	<p>Dvash-Banks Dep. 19:6-20:2. <i>Undisputed.</i></p>
<p>9. Elad is an Israeli citizen.</p>	<p>CRBA App. <i>Undisputed.</i></p>
<p>B. ANDREW AND ELAD MARRY AND MAKE PREPARATIONS TO BECOME PARENTS</p>	
<p>10. Andrew and Elad moved to Toronto in 2010.</p>	<p>Dvash-Banks Dep. 22:23-22:25. <i>Undisputed.</i></p>
<p>11. Andrew and Elad were married on August 19, 2010 in Toronto, Canada.</p>	<p>Marriage Lic.; Dvash-Banks Dep. 29:5-29:8. <i>Undisputed.</i></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>12. At the time of the marriage of Andrew and Elad, two men, Ontario recognized the validity of same-sex marriages.</p>	<p>Dvash-Banks Dep. 22:10-22:11. <i>Undisputed.</i></p>
<p>13. Andrew and Elad decided to have children.</p>	<p>Dvash-Banks Dep. 67:25-68:4 <i>Undisputed.</i></p>
<p>14. Andrew and Elad obtained eggs from an anonymous egg donor (the “Donor”).</p>	<p>Dvash-Banks Dep. 79:12-79:16. <i>Undisputed.</i></p>
<p>15. Andrew and Elad donated their respective genetic material to create embryos using the eggs from the Donor.</p>	<p>Dvash-Banks Dep. 83:17-84:2; 85:3-85:13. <i>Undisputed.</i></p>
<p>16. Andrew and Elad successfully created embryos using eggs from the Donor.</p>	<p>Dvash-Banks Dep. 83:17-84:10. <i>Undisputed.</i></p>
<p>17. In December 2015, Andrew and Elad contracted with a gestational surrogate (the “Gestational Surrogate”) for the purpose of carrying one or two embryos during a pregnancy (the “Surrogacy Agreement”).</p>	<p>Surrogacy Agmt. <i>Undisputed.</i></p>
<p>18. The Surrogacy Agreement states that “Andrew and Elad (collectively called the</p>	<p>Surrogacy Agmt. at Section 1.1, AR 023. <i>Undisputed.</i></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 2 'Intended Parents') are a same- 3 sex married couple who require 4 assisted reproductive 5 technology to have a child.”</p>	
<p>6 19.The Gestational Surrogate 7 agreed to carry eggs “retrieved 8 from the third party 9 anonymous donor and Sperm 10 supplied by Andrew and/or 11 Elad” that was “incubated 12 externally” to create embryos.</p>	<p>Surrogacy Agmt. at Section 1.4, AR 023. <i>Undisputed.</i></p>
<p>13 20.The Gestational Surrogate 14 became pregnant with one 15 embryo created using genetic 16 material from Andrew and one 17 embryo created using genetic 18 material from Elad.</p>	<p>Dvash-Banks Dep. 85:3-85:13. <i>Undisputed.</i></p>
<p>19 21.Under the terms of the 20 Surrogacy Agreement, Andrew 21 and Elad “will be recognized as 22 the Child’s parents 23 immediately upon the Child’s 24 Birth.”</p>	<p>Surrogacy Agmt. at Section 1.8, AR 024. <i>Disputed in part:</i> Disputed to the extent the statement conveys or implies that the Surrogacy Agreement would be binding on anyone other than the contracting parties. • Surrogacy Agmt. at 12, AR 024 (“NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and promises contained in</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>this Agreement and with the intention of being fully bound by its terms, the Parties do hereby covenant and agree as follows.”)</p> <ul style="list-style-type: none"> • <i>Id.</i> pt. II ¶ p, AR 026 (“‘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[.]”) <p>Otherwise undisputed.</p> <p><u>Plaintiffs’ Reply:</u> Defendants’ response does not dispute the proffered fact.</p>
<p>16 22. Under the terms of the</p> <p>17 Surrogacy Agreement, Andrew</p> <p>18 and Elad, “intend to assume</p> <p>19 full care of, and all parental</p> <p>20 responsibility for the Child. . .</p> <p>21 .”</p>	<p>Surrogacy Agmt. at Section 1.9, AR 024.</p> <p><i>Undisputed.</i></p>
<p>22 23. Under the terms of the</p> <p>23 Surrogacy Agreement,</p> <p>24 “Immediately upon the Birth of</p> <p>25 the Child, the Gestational</p> <p>26 Carrier will give the Child into</p> <p>27 the permanent custody of the</p> <p>28 Intended Parents and as soon as</p>	<p>Surrogacy Agmt. at Section 1.10, AR 024.</p> <p><i>Undisputed.</i></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 reasonably possible thereafter 2 the Intended Parents will make 3 an application in the Ontario 4 Superior Court of Justice 5 seeking a declaration of 6 parentage on their part, and a 7 declaration of non-parentage 8 on the part of the Gestational 9 Carrier.” 10</p>	
<p>11 24. Under the terms of the 12 Surrogacy Agreement: “The 13 Parties acknowledge that 14 immediately upon Birth all 15 medical decisions regarding the 16 Child shall be made solely by 17 the Intended Parents.”</p>	<p>Surrogacy Agmt. at Section 14.4(c), AR 038. Undisputed.</p>
<p>18 25. The Surrogacy Agreement 19 states that: “For purposes of 20 this Agreement, ‘immediately 21 upon birth’ means as soon as 22 the umbilical cord is cut.”</p>	<p>Surrogacy Agmt. at Section 14.1, AR 038. Undisputed.</p>
<p>23 26. Under the terms of the 24 Surrogacy Agreement, “The 25 Gestational Carrier hereby 26 expressly waives all parental, 27 custodial and social rights that 28</p>	<p>Surrogacy Agmt. at Section 14.4, AR 038. Undisputed.</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 she has or may acquire to the 2 Child.”</p>	
<p>4 27. Under the terms of the 5 Surrogacy Agreement, “All 6 Parties to this Agreement wish 7 to maintain confidentiality 8 between themselves, one to 9 another, and between 10 themselves and the public.”</p>	<p>Surrogacy Agmt. at Section 1.11 at AR 024. <i>Undisputed.</i></p>
<p>11 28. Under the terms of the 12 Surrogacy Agreement, the 13 Surrogacy Agreement is 14 governed by the laws of the 15 Province of Ontario, Canada.</p>	<p>Surrogacy Agmt. at Section 35.1 at AR 051. <i>Undisputed.</i></p>
<p>C. THE TWINS ARE BORN AND ELAD AND ANDREW ARE NAMED AS THEIR PARENTS ON THEIR BIRTH CERTIFICATES AND ARE RECOGNIZED FOR ALL PURPOSES IN LAW TO BE THEIR PARENTS</p>	
<p>20 29. Twins A.J. and E.J. (the 21 “Twins”) were born on 22 September 16, 2016 in Ontario, 23 Canada.</p>	<p>E.J. Statement of Live Birth; A.J. Statement of Live Birth. <i>Undisputed except to the extent the term “twins” is intended to imply that E.J. is biologically related to Andrew, or that A.J. and E.J. share the same biological parents.</i> <u>Plaintiffs’ Reply</u>: Defendants’ response</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3	4 does not dispute the proffered fact.
5 30. The Twins were born four 6 minutes apart.	7 Dvash-Banks Dep. 161:13-161:16. 8 <i>Undisputed.</i>
9 31. Andrew and Elad were married 10 to each other on the day of the 11 Twins' birth.	12 Dvash-Banks Dep. 171:10- 171:15; E.J. 13 Statement of Live Birth. 14 <i>Undisputed.</i>
15 32. Andrew was the person who 16 cut E.J.'s umbilical cord.	17 Dvash-Banks Dep. 143:23-144:15. 18 <i>Undisputed.</i>
19 33. Andrew and Elad are listed as 20 E.J.'s parents on E.J.'s 21 Statement of Live Birth issued 22 by Ontario, Canada.	23 E.J. Statement of Live Birth. 24 <i>Undisputed.</i>
25 34. Andrew and Elad are listed as 26 A.J.'s parents on A.J.'s 27 Statement of Live Birth issued 28 by Ontario, Canada.	29 E.J. Statement of Live Birth. 30 <i>Undisputed.</i>
31 35. Andrew and Elad are the only 32 parents listed on E.J.'s 33 Statement of Live Birth.	34 E.J. Statement of Live Birth. 35 <i>Undisputed.</i>
36 36. Andrew and Elad are the only 37 parents listed on A.J.'s 38 Statement of Live Birth.	39 A.J. Statement of Live Birth. 40 <i>Undisputed.</i>
41 37. Andrew and Elad have been 42 E.J.'s and A.J.'s legal parents 43 since the Twins' birth in 2016.	44 E.J. Statement of Live Birth; A.J. Statement 45 of Live Birth; Surrogacy Agmt., at Sections 46 1.8-1.10, AR 024; Canadian Order. 47 <i>This statement comprises a conclusion</i> 48 <i>of law, not a statement of fact. The cited</i>

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p data-bbox="820 210 1494 378"><i>evidence does not establish the point(s) made in the statement, and therefore the statement is disputed in part.</i></p> <p data-bbox="820 399 1494 504">Undisputed that Andrew and Elad are E.J’s and A.J.’s parents.</p> <p data-bbox="820 588 1494 945"><u>Plaintiffs’ Reply</u>: Plaintiffs dispute that Statement of Fact No. 37 comprises a conclusion of law. The Surrogacy Agreement provisions cited as evidence by Plaintiffs in support of Statement of Fact No. 37 are set forth below:</p> <p data-bbox="820 966 1494 1134">“The Intended Parents will be recognized as the Child’s parents immediately upon the Child’s Birth.</p> <p data-bbox="820 1155 1494 1575">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.</p> <p data-bbox="820 1596 1494 1890">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</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>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.”</p> <p>Surrogacy Agmt., at Sections 1.8-1.10, AR 024.</p>
<p>38. Andrew and Elad have raised the Twins since the day the Twins were born.</p>	<p>Surrogacy Agmt., at Sections 14.1, 14.4, AR 037-38.</p> <p><i>Undisputed.</i></p>
<p>39. No other individual has acted as a parent to E.J. or A.J.</p>	<p>Canadian Order; Surrogacy Agmt. at Sections 1.7-1.10, AR 024; Dvash-Banks Dep. 29:21-30:14.</p> <p><i>This statement comprises a conclusion of law, not a statement of fact. The cited evidence does not establish the point(s) made in the statement, and therefore the statement is disputed in part.</i></p> <p>Undisputed that Andrew and Elad are E.J.’s. and A.J.’s parents.</p> <p>Disputed that no other individual ever acted as a parent.</p> <ul style="list-style-type: none"> • By providing ova, the egg donor acted as a biological/ genetic mother for E.J. and A.J. See Ex. H: Plaintiffs’ Response to Defendants’ Request for

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>Admission No. 1 (admitting anonymous donor used to conceive E.G. and A.J.)</p> <ul style="list-style-type: none">• By carrying and giving birth to E.J. and A.J., the Gestational Carrier acted as a gestational mother/parent and birth mother to the children. <i>See</i> Ex. H: Plaintiffs’ Response to Defendants’ Request for Admission No. 3 (admitting gestational surrogate was used to carry and give birth [to] E.J.) <p>Further disputed to the extent the statement conveys or implies that no other individual ever had legal rights as a parent to E.J. or A.J. under Canadian law.</p> <ul style="list-style-type: none">• Canadian Order, AR 021 (listing Amanda Marie Anne Adams as “Respondent”); <i>id.</i> at 021–22 (dated September 28, 2018, and not stating that it had retroactive effect).• Surrogacy Agmt. at Section 23.2, AR 042 (containing post-birth condition precedent that would need to occur before “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”)

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p>	<p>• Surrogacy Agmt. at Section 1.10, AR 024 (Gestational Carrier implied to be a parent until making a post-birth declaration of non-parentage).</p> <p><i>Objection</i> to reliance here on Dvash-Banks Dep. 29:21-30:14: hearsay.</p> <p><u>Plaintiffs’ Reply</u>: Plaintiffs dispute that Statement of Fact No. 39 comprises a conclusion of law and further dispute that the evidence proffered by Defendants supports Defendants’ objection. Plaintiffs also dispute the hearsay objection as outlined in Plaintiffs’ Responses to Defendants’ Evidentiary Objections (“Response to Evidentiary Objections”) filed concurrently with this document.</p>
<p>19 40.No other individual has</p> <p>20 asserted any parental rights</p> <p>21 with respect to E.J. or A.J.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Canadian Order; Dvash-Banks Dep. 112:19-112:24.</p> <p><i>This statement comprises a conclusion of law, not a statement of fact. The cited evidence does not establish the point(s) made in the statement, and therefore the statement is disputed in part.</i></p> <p>Defendants lack sufficient knowledge as to whether any individual has ever asserted any parental rights with respect to</p>

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>E.J. or A.J.</p> <p>Undisputed that the Gestational Carrier agreed to not to “assert” any parental rights she may have had with respect to babies she carried and gave birth to under the Surrogacy Agreement, assuming the “condition precedent” and any other relevant terms of the agreement were met. Surrogacy Agreement Part XIV, AR 037–39 (regarding “Custody of Child and Parental Rights”); id. Part X, AR 033–34 (regarding “Condition Precedent”).</p> <p><u>Objection</u> to reliance here on Dvash-Banks Dep. 112:19-112:24: hearsay.</p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Statement of Fact No. 40 comprises a conclusion of law and further dispute that the evidence proffered by Defendants supports Defendants’ objection. Plaintiffs also dispute the hearsay objection as outlined in the Responses to Evidentiary Objections filed concurrently herewith. Plaintiffs further dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion. The evidence set forth below</p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
<p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p>further supports Statement of Fact No. 40:</p> <p>“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.”</p> <p>Surrogacy Agmt. at 1.7, at AR 024.</p>
<p>11 41.On September 28, 2016, the</p> <p>12 Ontario Superior Court of</p> <p>13 Justice entered an Order (the</p> <p>14 “Canadian Order”) stating that:</p> <p>15 “It is declared that the</p> <p>16 Applicants, Elad Dvash-Banks</p> <p>17 and Andrew Dvash-Banks, are</p> <p>18 the parents of the child, [E.J.],</p> <p>19 born September 16, 2016 (“the</p> <p>20 child”), and that the Applicants</p> <p>21 are recognized for all purposes</p> <p>22 in law to be the parents of the</p> <p>23 child.”</p>	<p>Canadian Order.</p> <p><i>Undisputed.</i></p>
<p>24 42.The Canadian Order declared</p> <p>25 that [the Gestational Surrogate]</p> <p>26 is not the mother of the child.</p>	<p>Canadian Order.</p> <p><i>Undisputed.</i></p>
<p>27 43.The Canadian Order directed</p> <p>28 the Deputy Registrar General</p>	<p>Canadian Order.</p> <p><i>Undisputed.</i></p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 for the Province of Ontario “to 3 register the birth of the child 4 [E.J.] so as to show the 5 Applicants, Elad Dvash-Banks 6 and Andrew Dvash-Banks, as 7 the parents of the child.”	
8 44. The Canadian court issued a 9 parallel order for A.J.	Dvash-Banks Dep. 112:19-112:24. <i>Undisputed.</i>
10 45. Under the law of Ontario, 11 Canada, Andrew and Elad are 12 the legal parents of the Twins. 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Canadian Order; Dvash- Banks Dep. 112:19-112:24. <i>This statement comprises a conclusion of law, not a statement of fact. The cited evidence does not establish the point(s) made in the statement.</i> Undisputed that Andrew and Elad are E.J’s and A.J.’s parents. <i>Objection</i> to reliance here on Dvash- Banks Dep. 112:19-112:24: hearsay. <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Statement of Fact No. 45 comprises a conclusion of law and further dispute that the evidence proffered by Defendants in Defendants’ response supports Defendants’ objection. Plaintiffs also dispute the hearsay objection as outlined in Plaintiffs’ Responses to Defendants’ Evidentiary

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>Objections filed concurrently with this document. Evidence cited by Plaintiffs in support of Statement of Fact No. 45 is set forth below:</p> <p>It is declared that the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, are the parents of the child, E[] J[] D[]-B[], born September 16, 2016 (“the child”), and that the Applicants are recognized for all purposes in law to be the parents of the child.</p> <p>Canadian Court Order at 1.</p>
<p>46.E.J. was not conceived using Andrew’s sperm.</p>	<p>Pls. Disc. Responses at Request For Admission (“RFA”) No. 14.</p> <p><i>Undisputed.</i></p>
<p>47.A.J. was conceived using sperm from Andrew.</p>	<p>Viaguard A-M Letter; Dvash-Banks Dep. 84:17-85:13.</p> <p><i>Undisputed.</i></p>
<p>48.E.J. was conceived using sperm from Elad.</p>	<p>Viaguard A-M Letter; Dvash-Banks Dep. 84:17-85:13.</p> <p><i>Undisputed.</i></p>
<p>49.There is no evidence that Andrew supplied genetic material to the conception or birth of E.J.</p>	<p>Viaguard A-M Letter; Pls. Disc. Responses at RFA No. 14.</p> <p><i>Undisputed.</i></p>
<p>50.From the time the Twins left the hospital where they were</p>	<p>Dvash-Banks Dep. 29:21-30:14; 171:16-171:23.</p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 born, they have lived 3 continuously with Andrew and 4 Elad.	<i>Undisputed.</i>
5 51. Andrew, Elad and the Twins 6 have lived together as a family 7 since the Twins’ release from 8 the hospital following their 9 birth.	Dvash-Banks Dep. 29:21-30:14; 171:16- 171:23. <i>Undisputed.</i>
10 52. Andrew and Elad and the 11 Twins now reside in California.	Dvash-Banks Dep. 29:21-29:23; 34:13- 34:14. <i>Undisputed.</i>
D. E.J. AND A.J. APPLY FOR U.S. PASSPORTS AND FOR CRBAS IN RECOGNITION THAT THE TWINS ARE U.S. CITIZENS AT BIRTH	
16 53. Andrew and Elad submitted to 17 the United States Consulate in 18 Toronto, Canada (“Toronto 19 Consulate”) applications for a 20 Consular Report of Birth 21 Abroad (“CRBA”) and U.S. 22 passport for each of the Twins.	Dvash-Banks Dep. 117:3-117:11. <i>Undisputed.</i>
23 54. A CRBA demonstrates that the 24 recipient is a U.S. citizen at 25 birth.	Reffett Dep. 34:21-34:24. <i>Undisputed.</i>
26 55. On January 24, 2017, Andrew 27 and Elad appeared in person at 28 the Toronto Consulate in	Dvash-Banks Dep. 125:12-126:12; Day Dep. 121:19-122:1. <i>Undisputed.</i>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 connection with the 2 applications for a CRBA and 3 U.S. passport for each of the 4 Twins. 5</p>	
<p>6 56. Andrew and Elad provided the 7 Toronto Consulate with the 8 requisite documentation for 9 E.J.’s applications, including 10 E.J.’s Statement of Live Birth, 11 which identified Andrew and 12 Elad as the parents, evidence of 13 Andrew’s U.S. citizenship and 14 periods of residency, and 15 Andrew and Elad’s marriage 16 certificate. 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>Dvash-Banks Dep. 95:4-97:12; 165:4-166:12; Admin. Record 09-62.</p> <p><i>Disputed in part:</i></p> <p>It is undisputed that Andrew and Elad provided Consulate Toronto with documentation including E.J.’s Statement of Live Birth, evidence of Andrew’s U.S. citizenship and periods of residency, and Andrew and Elad’s marriage certificate.</p> <p>Defendants dispute the portion of the statement describing this documentation as “the requisite documentation.”</p> <ul style="list-style-type: none"> • AR 005 (consular officer’s case notes indicating: “School transcripts needed to confirm Amcit father’s physical presence in the US.”) <p>Defendants also dispute the “requisite documentation” portion of the statement to the extent it conveys or implies that the Department of State requires specific documents be submitted with CRBA and/or U.S. passport applications. It is up to applicants to select the specific documents</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p>	<p>they will submit to the Department to support their claim for citizenship.</p> <ul style="list-style-type: none"> • Reffett Depo. Tr. 92:06–93:06; 177:04–25 • <i>See also</i> 22 CFR §§ 50.2, 50.5, 51.40, 51.41, and 51.43 (burden on applicant) <p><u>Objection</u> to reliance here on Dvash-Banks Dep[.] 95:4-97:12; 165:4-166:12: hearsay.</p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion. Plaintiffs further dispute Defendants’ hearsay objection as outlined in the Responses to Evidentiary Objections filed concurrently herewith.</p>
<p>18 57.On January 24, 2017, Frances</p> <p>19 Terri Day, Vice Consul,</p> <p>20 Toronto Consulate, interviewed</p> <p>21 the Dvash-Banks family and</p> <p>22 adjudicated E.J.’s and A.J.’s</p> <p>23 respective applications for a</p> <p>24 CRBA and U.S. passport.</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Day Dep. 94:23-95:25.</p> <p><i>Disputed in part:</i></p> <p>Disputed to the extent the use of the term “adjudicated” conveys or implies that the adjudication of the applications were completed on January 24, 2017.</p> <ul style="list-style-type: none"> • ACS Activity Log, AR 002–008 (showing adjudication began but was not completed on January 24, 2017). <p>Undisputed that on January 24, 2017, Terri Nathine Francis Day, Vice Consul,</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>Toronto Consulate, interviewed the Dvash-Banks family in connection with E.J.’s and A.J.’s respective applications for a CRBA and U.S. passport, and that she started to adjudicate those applications that day.</p> <p><u>Plaintiffs’ Reply</u>: Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.</p>
<p>58.Ms. Day had authority to make the final decision as to whether to grant or deny the applications for E.J. and A.J.</p>	<p>Day Dep. 48:6-48:10.</p> <p><i>Undisputed.</i></p>
<p>59.Ms. Day accepted Andrew and Elad’s marriage license from the Ontario government as sufficient proof of their marriage.</p>	<p>Day Dep. 142:19-142:25;155:24-156:6; 161:24-162:6; Marriage Lic.</p> <p><i>Undisputed.</i></p>
<p>60.Ms. Day accepted E.J.’s Statement of Live Birth as a timely-filed Canadian birth certificate.</p>	<p>Day Dep.172:5-172:24; E.J. Statement of Live Birth.</p> <p><i>Disputed in part:</i></p> <p>Disputed to the extent this statement conveys or implies that a “Statement of Live Birth” is the equivalent of “a ... birth certificate.”</p>

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2		<ul style="list-style-type: none">• Reffett Depo. Tr. 92:06–93:06; 177:04–
3		25
4		Otherwise undisputed.
5		
6		<u>Plaintiffs’ Reply</u> : Defendants’ response
7		does not dispute the proffered fact. The
8		testimony cited by Plaintiffs in support of
9		Statement of Fact No. 60 is set forth below:
10		“Q. And can you turn, please, to the
11		document that is Bates-stamped 00070270-
12		1764. And I’ll represent for the record that
13		the title of the document is ‘Statement of
14		Live Birth.’
15		A. 1764. Yes.
16		Q. What is this document?
17		A. It seems to be a Statement of Live Birth
18		for [E.J. D.-B.].
19		Q. And have you seen this document
20		before?
21		A. Yes, I have.
22		Q. And is this document E.J.’s Canadian
23		birth certificate?
24		A. It would seem to be, yes. A copy of
25		that.
26		Q. And in your review of this document
27		during the process of adjudicating E.J.’s
28		application, did you consider this document

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3 4 5	6 to be a true and accurate copy of E.J.’s 7 timely filed Canadian birth certificate? 8 A. Yes.” 9 Day Dep. 172:5-172:24.
10 11 61. Ms. Day accepted E.J.’s 12 Statement of Live Birth as 13 sufficient proof that Andrew 14 and Elad are E.J.’s legal 15 parents.	16 Day Dep. 172:5-173:12; Ramsay Dep. 17 103:7-103:11; E.J. Statement of Live Birth. 18 <i>Undisputed.</i>
19 20 62. Ms. Day accepted the Ontario 21 Court order naming Andrew 22 and Elad as the parents of E.J. 23 as sufficient proof that Andrew 24 and Elad were E.J.’s legal 25 parents.	26 Day Dep. 173:19-174:5; Canadian Order. 27 <i>Undisputed.</i>
28 29 63. During their interview at the 30 Toronto Consulate on January 31 24, 2017, Frances Terri Day 32 asked Andrew and Elad how 33 they had conceived the Twins 34 and whose egg and sperm had 35 been used to conceive each of 36 the Twins.	37 Ramsay Dep. 45:6-45:11; 46:20-46:23; 38 Dvash-Banks Dep. 129:15-129:21; Day 39 Dep. 110:22-112:11. 40 <i>Disputed.</i> 41 Evidence does not establish that Ms. 42 Day asked Andrew and Elad these 43 questions. 44 • Day Depo. 120:14–121:3 45 This information was volunteered by 46 Andrew and Elad, at least to the extent their 47 application materials reflected that they had 48 used Assisted Reproductive Technology.

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<ul style="list-style-type: none"><li data-bbox="820 212 1052 247">• AR 021–56 <p data-bbox="820 275 1437 380"><u>Objection</u> to reliance here on Dvash-Banks Dep. 129:15-129:21: hearsay.</p> <p data-bbox="820 464 1485 1010"><u>Plaintiffs’ Reply:</u> Plaintiffs dispute the hearsay objection as outlined in the Responses to Evidentiary Objections filed concurrently herewith. Defendants’ response to Statement of Fact No. 63 is also inconsistent with the evidence. The testimony in support of Statement of Fact No. 63 that Defendants do not dispute is set forth below:</p> <p data-bbox="820 1041 1485 1209">“Q. And did you hear any questions during the interview that were related in some way to the fact that they were both men?”</p> <p data-bbox="820 1230 1442 1398">A. Yes, in terms of asking about how the children were conceived and how the children came to be born in Canada.”</p> <p data-bbox="820 1419 1211 1461">Ramsay Dep. 45:6-45:11.</p> <p data-bbox="820 1545 1386 1587">“Q. Do you remember anything else?”</p> <p data-bbox="820 1608 1453 1776">A. I think that Frankie asked the question about who contributed genetic material to conceive the children.”</p> <p data-bbox="820 1797 1227 1839">Ramsay Dep. 46:20-46:23.</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1</p> <p>2 64. Andrew had not planned to</p> <p>3 disclose to others the biological</p> <p>4 relationships among Elad and</p> <p>5 Andrew and the Twins.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>Surrogacy Agmt. at Section 1.1, AR 024.</p> <p><i>Disputed in part:</i></p> <p>Cited evidence does not establish this point. Disputed to the extent that the statement conveys or implies that other than disclosing this information to the Department of State, Andrew and Elad had always taken steps to keep this information confidential and had never disclosed this information to anyone other than themselves.</p> <p><u>Plaintiffs' Reply:</u> Defendants cite to no evidence in support of their contention.</p>
<p>16 65. Ms. Day's role in adjudicating</p> <p>17 U.S. passport and CRBA</p> <p>18 applications was to determine</p> <p>19 whether, according to the State</p> <p>20 Department's <i>Foreign Affairs</i></p> <p>21 <i>Manual</i> ("FAM"), the</p> <p>22 applicant was entitled to be</p> <p>23 recognized as a U.S. citizen.</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Day Dep. 29:17-30:3; 47:12-47:24; 59:2-59:16.</p> <p><i>Disputed in part:</i></p> <p>Defendants dispute this statement to the extent it conveys or implies that the Foreign Affairs Manual provided the only basis for the adjudicative criteria.</p> <ul style="list-style-type: none"> • Day Depo 29:17–30:3 (“My role was to determine if the applicant had a claim to U.S. citizenship... my job was to determine if that was – according to the Foreign Affairs Manual and the

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>guidelines that we had ... if they were entitled to that citizenship.”)</p> <ul style="list-style-type: none"> • <i>Id.</i> 233:19–234:20 (explaining that she did not consider FAM completely separated from Immigration and Nationality Act of 1952) <p>Defendants further dispute this statement to the extent it conveys or implies that that any applicant born abroad is “entitled” (automatically or otherwise) to be recognized or documented as a U.S. citizen at birth. See generally (22 C.F.R. §§ 50, 51.</p> <p>Otherwise undisputed.</p> <p><u>Plaintiffs’ Reply</u>: Defendants’ response mischaracterizes the evidence and is not supported by the cited evidence.</p>
<p>20 66. During the Dvash-Banks’</p> <p>21 interview at the Toronto</p> <p>22 Consulate on January 24, 2017,</p> <p>23 Ms. Day consulted with</p> <p>24 another Consular Officer,</p> <p>25 Margaret Ramsay, and with</p> <p>26 Larilyn Reffett concerning the</p> <p>27 applications for E.J. and A.J.</p> <p>28</p>	<p>Ramsay Dep. 163:5-164:14; Reffett Dep. 67:19-68:5.</p> <p><i>Undisputed.</i></p>

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2	67. Ms. Ramsay provided Ms. Day	Reffett Dep. 79:8-79:16; Ramsay Dep.
3	with the relevant sections of	40:10-40:24; AR 073.
4	the FAM so that Ms. Day	<i>Disputed in part:</i>
5	would have the opportunity to	It is undisputed that Ms. Ramsay
6	consult them in adjudicating	provided Ms. Day with a relevant section of
7	E.J.’s and A.J.’s applications.	the FAM so that Ms. Day would have the
8		opportunity to consult it in adjudicating
9		E.J.’s and A.J.’s applications.
10		Disputed that Ms. Ramsay provided
11		Ms. Day with “relevant sections” (in the
12		plural) of the FAM.
13		• AR 073 (email in which Ms. Ramsay
14		sends Ms. Day a link to 7 FAM 1100
15		Appendix D)
16		• AR Certification page (indicating that
17		all of the FAM sections included in
18		Administrative Record “were relevant to
19		and were in effect at the time of the
20		adjudication at issue..., and thus would
21		have been considered directly or
22		indirectly by the adjudicator.”).
23		• AR 081–106 (FAM sections)
24		
25		<u>Plaintiffs’ Reply:</u> Plaintiffs dispute that
26		Defendants’ proffered evidence raises a
27		genuine issue of fact material to the
28		resolution of Plaintiffs’ motion.

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 68. Ms. Day referred to the FAM 3 during the time that she was 4 interviewing the Dvash-Banks 5 family.	Day Dep. 217:21-217:24. <i>Undisputed.</i>
6 69. Ms. Day’s typed notes reflect 7 that she may originally have 8 considered the Twins to have 9 been born in wedlock because 10 of the marriage certificate 11 included in the applications.	AR 003; Ramsay Dep. 131:25-132:5. <i>Undisputed.</i>
12 70. Ms. Day ultimately applied 13 Section 309 of the Immigration 14 and Nationality Act (“INA”), 15 8 U.S.C. § 1409 (“Section 16 309”), to the adjudication of 17 the Twins’ applications. 18 19 20 21 22 23 24 25 26 27 28	Ramsay Dep. 131:25-132:5. <i>Disputed.</i> Cited evidence does not establish this point. Day Depo. 116:12–19; 231:04-233:18 <u>Plaintiffs’ Reply:</u> Defendants’ response is inconsistent with the cited testimony of Ms. Ramsay, and the testimony Defendants cite from Ms. Day is not to the contrary. See also 30(b)(6) Dep. 273:2-273:7. “A. I think initially, as evidenced by her case notes, she may have considered them in wedlock because she saw a marriage certificate, but I believe after reviewing the guidance and as evidenced by the final denial letter, ultimately applied 309 of the INA to the decision-making.”

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
<p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>Ramsay Dep. 131:25-132:5.</p> <p>“Q So now we’re talking about the State Department’s adjudication of the applications for E.J. for a U.S. passport and a CRBA. Okay? In connection with those adjudications, did the State Department apply the criteria of section 309?”</p> <p>A Yes.”</p> <p>30(b)(6) Dep. 273:2-273:7.</p>
<p>12 71.Ms. Ramsay suggested to Ms. Day that she could ask the Dvash-Banks family to provide additional biological evidence, such as DNA testing, in connection with the adjudication of the applications for E.J. and A.J.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>Ramsay Dep. 60:5-60:8.</p> <p><i>Undisputed.</i></p>
<p>20 72.During the Dvash-Banks family’s interview at the Toronto Consulate on January 24, 2017, Ms. Day told Andrew and Elad that if they wanted to proceed with the Twins’ applications, they would have to provide additional information</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Ramsay Dep. 48:12-49:10, Reffett Dep. 68:22-69:4; 72:7-72:17.</p> <p><i>Undisputed.</i></p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 demonstrating the biological 3 relationship between each child 4 and that child’s U.S. citizen 5 parent.	
6 73. During the Dvash-Banks 7 family’s interview at the 8 Toronto Consulate on January 9 24, 2017, Ms. Day told 10 Andrew and Elad that a form 11 of additional information 12 demonstrating the biological 13 relationship required by the 14 Department of State (the “State 15 Department”) is DNA 16 evidence.	Ramsay Dep. 48:12-49:10, Reffett Dep. 68:22-69:4; 72:7-72:17. <i>Undisputed.</i>
17 74. Ms. Day provided Andrew and 18 Elad with information 19 concerning certain DNA 20 testing establishments from 21 which the Toronto Consulate 22 accepts DNA testing results.	Jan. 24 Letter from Day. <i>Undisputed.</i>
23 75. By letter dated January 24, 24 2017 from Ms. Day to Andrew, 25 the State Department informed 26 the Dvash-Banks family that 27 “in reference to your 28 application for a U.S. passport	Jan. 24 Letter from Day; 30(b)(6) Dep. 296:11-297:3; Reffett Dep. At 67:14-69:4. <i>Undisputed.</i>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 and a [CRBA] for [A.J.] and 2 [E.J.]... The U.S. Consulate 3 General in Toronto has 4 considered the evidence you 5 submitted and concluded that 6 the blood relationship between 7 a U.S. citizen parent and 8 children have not been 9 established by a preponderance 10 of the evidence as required to 11 support a claim to U.S. 12 citizenship.” 13</p>	
<p>14 76.On January 24, 2017, 15 following the completion of the 16 interview of the Dvash- Banks 17 family at the Toronto 18 Consulate, Ms. Day designated 19 the status of each of the Twins’ 20 applications as “pending.”</p>	<p>Ramsay Dep. 48:24-49:10. <i>Undisputed.</i></p>
<p>21 77.A “pending” designation for 22 CRBA applications is reserved 23 for applications that cannot be 24 finally adjudicated on the day 25 of an applicant’s interview and 26 remain open pending 27 submission of additional 28</p>	<p>Reffett Dep. 67:14-68:11; Day Dep. 37:4- 37:23. <i>Disputed in part:</i> Disputed to the extent the statement conveys or implies that in all (or even any) cases that are put in “pending status” the Department of State has “requested” certain additional information be submitted.</p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 information requested by the 3 State Department. 4 5 6 7 8	• Day Depo 37:4–28 Otherwise undisputed. <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.
9 78. During the Dvash-Banks 10 family’s interview at the 11 Toronto Consulate on January 12 24, 2017, Andrew told Ms. 13 Day that “these are our 14 children. These are our sons. 15 I’m the dad, and . . . Elad is the 16 dad . . . we’re the parents of 17 these boys.”	Day Dep. 119:22-120:12. <i>Undisputed.</i>
18 79. E.J.’s and A.J.’s applications 19 for a CRBA and U.S. passport 20 were adjudicated by Ms. Day 21 under Section 309. 22 23 24 25 26 27 28	30(b)(6) Dep. 273:2-15; Ramsay Dep. 131:22-132:5; 132:22-133:6; 164:9-164:14. <i>Disputed in part:</i> Cited evidence does not establish the points made in this statement. Undisputed that the 30(b)(6) witness testified that the Department of State “appl[ied] the criteria of Section 309 in connection with those adjudications,” <i>i.e.</i> , the adjudications of E.J.’s and A.J.’s applications. The 30(b)(6) witness was not the decision maker in the

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>underlying adjudication. The testimony of Ms. Ramsay does not establish this point.</p> <p><i>See also:</i></p> <ul style="list-style-type: none"> • Day Depo. 116:12–19; 231:04-233:18 <p><u>Plaintiffs’ Reply:</u> Defendants’ response is inconsistent with the cited testimony of Ms. Ramsay, and the testimony Defendants cite from Ms. Day is not to the contrary. See also 30(b)(6) Dep. 273:2-273:7.</p> <p>“Q So now we’re talking about the State Department’s adjudication of the applications for E.J. for a U.S. passport and a CRBA. Okay? In connection with those adjudications, did the State Department apply the criteria of section 309?</p> <p>A Yes.”</p> <p>30(b)(6) Dep. 273:2-273:7.</p>
<p>20 80. The State Department applied</p> <p>21 Section 309 in adjudicating</p> <p>22 E.J.’s applications for a U.S.</p> <p>23 passport and CRBA.</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>30(b)(6) Dep. 273:2-273:7.</p> <p><i>Disputed.</i></p> <p>Cited evidence does not establish the point(s) made in this statement. Undisputed that the 30(b)(6) witness testified that the Department of State “appl[ied] the criteria of Section 309 in connection with those adjudications,” <i>i.e.</i>, the adjudications of E.J.’s and A.J.’s applications. The 30(b)(6)</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>witness was not the decision maker in the underlying adjudication.</p> <p>Cited evidence does not establish this point.</p> <ul style="list-style-type: none"> Day Depo. 116:12–19; 231:04-233:18 <p><u>Plaintiffs’ Reply:</u> The testimony of Ms. Day Defendants cite does not conflict with Statement of Fact No. 80 or with testimony of the State Department’s appointed 30(b)(6) representative. Statement of Fact No. 80 is also supported by the testimony set forth below:</p> <p>“A. I think initially, as evidenced by her case notes, she may have considered them in wedlock because she saw a marriage certificate, but I believe after reviewing the guidance and as evidenced by the final denial letter, ultimately applied 309 of the INA to the decision-making.”</p> <p>Ramsay Dep. 131:25-132:5.</p>
<p>23 81. The State Department applies</p> <p>24 Section 309 to CRBA</p> <p>25 applications submitted on</p> <p>26 behalf of children who the</p> <p>27 State Department considers to</p> <p>28</p>	<p>30(b)(6) Dep. 186:8-186:14.</p> <p><i>Undisputed.</i></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 2 have been born “out of 3 wedlock.”</p>	
<p>4 82. The State Department 5 interprets Section 309 to 6 require, among other things, 7 proof of a biological 8 relationship between a CRBA 9 applicant and that child’s U.S. 10 citizen parent.</p>	<p>30(b)(6) Dep. 273:2-273:15. <i>Undisputed.</i></p>
<p>11 83. The State Department 12 determined that Section 309 13 was the correct statutory 14 section to apply in adjudicating 15 E.J.’s applications for a U.S. 16 passport and CRBA because 17 E.J.’s biological parents were 18 not married to each other.</p>	<p>30(b)(6) Dep. 273:2-273:15. <i>Disputed in part.</i></p> <p>Cited evidence does not establish the points made in this statement. Undisputed that the 30(b)(6) witness testified that the Department of State “appl[ied] the criteria of Section 309 in connection with those adjudications,” <i>i.e.</i>, the adjudications of E.J.’s and A.J.’s applications. The 30(b)(6) witness was not the decision maker in the underlying adjudication.</p> <ul style="list-style-type: none"> • Day Depo. 116:12–19; 231:04-233:18 <p><u>Plaintiffs’ Reply:</u> The testimony of Ms. Day Defendants cite does not conflict with Statement of Fact No. 83 or with testimony of the State Department’s appointed 30(b)(6) representative. Statement of Fact</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>No. 83 is also supported by the testimony set forth below:</p> <p>“A. I think initially, as evidenced by her case notes, she may have considered them in wedlock because she saw a marriage certificate, but I believe after reviewing the guidance and as evidenced by the final denial letter, ultimately applied 309 of the INA to the decision-making.”</p> <p>Ramsay Dep. 131:25-132:5.</p>
<p>84. The State Department applies Section 301 of the INA, 8 U.S.C. § 1401 (“Section 301”), to CRBA applications submitted on behalf of children who the State Department considers to have been born “in wedlock.”</p>	<p>30(b)(6) Dep. 186:8-186:14.</p> <p><i>Undisputed.</i></p>
<p>85. The State Department interprets Section 301 to require, among other things, proof of a biological relationship between a CRBA applicant and both of his legal parents.</p>	<p>30(b)(6) Dep. 178:10-178:19.</p> <p><i>Disputed in part.</i></p> <p>Cited evidence does not establish this point. Also, the question is not the relationship between a CRBA applicant and his/her legal parents at the time of the application, but at the time of his/her birth.</p> <p>Disputed as incomplete. The Department’s interpretation of Section 301 for Assisted</p>

	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13</p>		<p>Reproductive Technology (ART) cases is stated in:</p> <ul style="list-style-type: none"> • 7 FAM 1110 Appendix D, AR 077–78 • 7 FAM 1120 Appendix D, AR 078–79 <p><u>Plaintiffs’ Reply:</u> Defendants’ response is inconsistent with the testimony cited by Plaintiffs in support of Statement of Fact No. 85, and in any event, the balance of the response does not raise a genuine issue of fact material to the resolution of Plaintiffs’ motion.</p>
<p>14 15 16 17 18 19 20 21 22 23 24</p>	<p>86. When she was adjudicating E.J.’s applications for a CRBA and U.S. passport, Ms. Day understood, based on her review of relevant provisions of the FAM, that the State Department interprets both Section 301 and Section 309 to require a biological relationship between a U.S. citizen parent and his child.</p>	<p>Day Dep. 232:23-233:10; 277:18-278:2. <i>Undisputed.</i></p>
<p>25 26 27 28</p>	<p>87. After the January 24, 2017 interview, the Dvash-Banks proceeded to have DNA testing conducted by an establishment</p>	<p>Viaguard A-M Letter. <i>Disputed in part.</i> Disputed to the extent the statement conveys or implies that the Toronto</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1</p> <p>2 approved by the Toronto</p> <p>3 Consulate.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>Consulate approved a particular establishment. The cited evidence does not establish that point.</p> <p>The Consulate would only accept DNA “processed by a lab that is accredited by the American Association of Blood Banks (AABB),” <i>see</i> AR 098, but that does not mean that the Consulate “approved” particular DNA testing facilities, <i>see id.</i></p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ response raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.</p>
<p>16 88. The Toronto Consulate</p> <p>17 received DNA results for E.J.</p> <p>18 and A.J.</p>	<p>Ramsay Dep. 54:4-54:5; Viaguard A-M Letter.</p> <p><i>Undisputed.</i></p>
<p>19 89. The DNA results received by</p> <p>20 the Toronto Consulate reflected</p> <p>21 that one of the Twins was the</p> <p>22 biological child of Andrew and</p> <p>23 one was not.</p>	<p>Ramsay Dep. 54:1-54:9.</p>

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
E. THE STATE DEPARTMENT RECOGNIZES A.J. AS A U.S. CITIZEN AT BIRTH AND REFUSES TO RECOGNIZE E.J.’S U.S. CITIZENSHIP	
<p>90. Ms. Day approved A.J.’s applications for a CRBA and U.S. passport.</p>	<p>Reffett Dep. 87:15-22; Day Dep. 166:16-166:24; A.J. CRBA. <i>Undisputed.</i></p>
<p>91. The State Department issued a CRBA to A.J., dated March 2, 2017.</p>	<p>A.J. CRBA. <i>Undisputed.</i></p>
<p>92. By letter dated March 2, 2017, on the letterhead of the Toronto Consulate, Ms. Day informed Andrew that E.J.’s “applications [for a CRBA and U.S. passport] are denied.”</p>	<p>Mar. 2 Letter from Day; Reffett Dep. 65:6-65:9. <i>Undisputed.</i></p>
<p>93. Ms. Day’s March 2, 2017 letter to Andrew stated, in part, “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</p>	<p>Mar. 2 Letter from Day. <i>Undisputed.</i></p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 other things, a blood 3 relationship between a child 4 and the U.S. citizen parent in 5 order for the parent to transmit 6 U.S. citizenship.”	
7 94. Ms. Day’s March 2, 2017 letter 8 to Andrew denying E.J.’s 9 applications for a U.S. passport 10 and CRBA was the final 11 determination of the 12 applications by the State 13 Department.	Reffett Dep. 77:14-77:17; 118:6-118:22. <i>Undisputed.</i>
14 95. Ms. Day’s March 2, 2017 letter 15 terminated the application 16 process for E.J.’s requests for a 17 CRBA and U.S. passport with 18 a denial and the State 19 Department closed the files 20 relating to E.J.’s applications. 21 22 23 24 25 26 27 28	Reffett Dep. 118:6-118:22. <i>Disputed in part:</i> Defendants do not dispute the part of the statement that reads: “Ms. Day’s March 2, 2017 letter terminated the application process for E.J.’s requests for a CRBA and U.S. passport with a denial.” Disputed to the extent the statement reads: “and the State Department closed the files relating to E.J.’s applications.” Cited evidence does not establish this point. <ul style="list-style-type: none"> • AR 002–008 (case notes) Plaintiffs’ Reply: Defendants’ Response is

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>inconsistent with the cited testimony. That testimony reads as follows:</p> <p>“Q. Does Ms. Day’s letter dated March 2nd, 2017, reflect a final adjudication of [E.J.]’s applications for a U.S. passport and Consular Report of Birth Abroad?</p> <p>A. As far as the applications that were submitted here in Toronto, that letter absolutely is a final determination. In the second-to-last paragraph:</p> <p>‘[...] therefore the applications are denied.’</p> <p>That is the termination of that case from that point forward.</p> <p>Q. So how would you describe the status of that case for the Toronto Consulate today?</p> <p>A. The case was denied and it is closed.”</p> <p>Reffett Dep. 118:6-118:22.</p>
<p>96.The reason for the State Department’s denial of E.J.’s applications for a U.S. passport and CRBA was that he did not establish a biological relationship to his U.S. citizen parent (Andrew).</p>	<p>Reffett Dep. 78:9-78:20.</p> <p><i>Undisputed.</i></p>
<p>97.The State Department acknowledges that E.J.’s lack</p>	<p>30(b)(6) Dep. 298:24-299:6.</p> <p><i>Undisputed.</i></p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 of a biological relationship to 3 Andrew was the sole reason 4 identified for the denial of 5 E.J.’s applications.	
6 98. Following the Toronto 7 Consulate’s receipt of the DNA 8 testing results for the Twins 9 from an approved testing 10 establishment, the Toronto 11 Consulate followed the FAM 12 guidance on applications 13 submitted on behalf of children 14 born by means of assisted 15 reproductive technology. 16 17 18 19 20 21 22	Ramsay Dep. 154:16-154:23. <i>Disputed in part:</i> Disputed to the extent that the statement conveys or implies that the Consulate specifically approved this or any other testing establishment. Cited evidence does not establish this proposition. <ul style="list-style-type: none"> • AR 098 (FAM provision setting requirement that Department may only accept DNA “processed by a lab that is accredited by the American Association of Blood Banks (AABB).”) <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.
23 99. Ms. Day granted A.J.’s 24 applications for a U.S. passport 25 and CRBA.	Refett Dep. 87:15-22 <i>Undisputed.</i>
26 100. As a result of the State 27 Department’s denial of E.J.’s 28	Pls. Disc. Responses at Interrogatory No. 5. <i>This statement comprises a conclusion of law, not a statement of fact. Disputed.</i>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 application, the Dvash-Banks 2 family has suffered greatly. 3 4 5 6 7 8 9 10 11 12 13 14 15</p>	<p>Cited evidence does not establish this point. Defendants lack sufficient knowledge as to what injury this averment refers. Defendants dispute that the Defendants’ actions were unlawful.</p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Statement of Fact No. 100 comprises a conclusion of law. Plaintiffs further assert that Defendants’ response cites no contrary evidence and the evidence cited by Plaintiffs describes the several types of harm Plaintiffs and the Dvash-Banks family have suffered.</p>
<p>16 101. Andrew and Elad feel the 17 indignity of the U.S. 18 Government’s refusal to 19 recognize their marriage and 20 the legitimacy of their children. 21 22 23 24 25 26</p>	<p>Pls. Disc. Responses at Interrogatory No. 5. <i>Disputed in part:</i> Defendants lack sufficient knowledge as to what Andrew and Elad may feel. Otherwise disputed that the U.S. government has refused to recognize their marriage or the legitimacy of their children.</p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs assert that Defendants’ response cites no contrary evidence.</p>
<p>27 102. The Dvash-Banks family’s 28 travel is significantly restricted</p>	<p>Pls. Disc. Responses at Interrogatory No. 5. <i>Disputed.</i></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 or impaired because E.J. 2 entered the United States on a 3 tourist visa, which has expired, 4 and although E.J. now has an 5 Advance Parole document, it 6 does not guarantee re-entry 7 into the United States. 8 9 10 11 12 13 14 15 16 17 18</p>	<ul style="list-style-type: none"> • Relevant portions of Dvash-Banks Depo at 38:22–67:24 (party admission / testimony that Dvash-Banks family has travelled into and out of the U.S. on at least five occasions, and that they did so with minimal trouble, restriction, or impairment). • Ex. I: Defs.’ Resp. to Pls.’ First Set of Requests for Admission 10 (Plaintiffs could apply for, and as residents of the Ninth Circuit may be granted, a Certificate of Citizenship from U.S. Citizenship and Immigration Services) <p><u>Plaintiffs’ Reply:</u> Plaintiffs assert that Defendants’ response cites no contrary evidence.</p>
<p>19 103. When the Dvash-Banks 20 family has traveled, it always is 21 with the fear that E.J., who 22 does not have a U.S. passport, 23 may not be permitted to re- 24 enter the United States. 25 26 27 28</p>	<p>Pls. Disc. Responses at Interrogatory No. 5.</p> <p><i>Disputed in part:</i></p> <p>Defendants lack sufficient knowledge as to what Andrew and Elad may subjectively feel but dispute that the Department of State’s actions were unlawful.</p> <ul style="list-style-type: none"> • Dvash-Banks Depo at 61:2–63:1 (E.J. entered and exited U.S. on a Canadian passport)

	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2 3 4 5		<p><u>Plaintiffs’ Reply:</u> Plaintiffs assert that Defendants’ response cites no contrary evidence.</p>
6 7 8 9 10 11 12 13 14 15 16 17	<p>104. The Dvash-Banks has spent substantial time consulting with lawyers, their accountant, and others about a range of issues, from E.J.’s immigration status to obtaining medical benefits and a Tax ID number for E.J., who does not have a Social Security number.</p>	<p>Pls. Disc. Responses at Interrogatory No. 5.</p> <p><i>Disputed in part:</i></p> <p>Undisputed that the family has spent time consulting. Disputed to the extent the statement conveys or implies that Defendants actions were unlawful, or that Defendants caused the Dvash-Banks family to spend their time as stated.</p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs assert that Defendants’ response cites no contrary evidence.</p>
18 19 20 21 22 23 24 25 26 27 28	<p>105. The Dvash-Banks family has endured, and continues to endure, the pain and stigma of the State Department’s refusal to recognize Andrew’s marriage to Elad and status as E.J.’s parent, and its treatment of E.J. as illegitimate.</p>	<p>Pls. Disc. Responses at Interrogatory No. 5.</p> <p><i>This statement comprises a conclusion of law, not a statement of fact, and is disputed.</i></p> <p>The Department has not refused to recognize Andrew and Elad’s marriage, or their current status as legal parents of E.J. The Department does not consider E.J. illegitimate; no evidence to the contrary.</p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs dispute that</p>

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>Statement of Fact No. 105 comprises a conclusion of law. Plaintiffs further assert that Defendants’ response cites no contrary evidence and is inconsistent with the deposition testimony cited in support of Statement of Fact No. 117. <i>See, e.g.</i>, 30(b)(6) Dep. 213:20-213:25:</p> <p>“THE REPORTER: “I’ll amend my question to say absent the possibility that some law would recognize the child as legitimate, the State Department doesn’t recognize the child as legitimate, yes or no?”</p> <p>A Yes.”</p> <p>30(b)(6) Dep. 213:20-213:25.</p>
<p>106. They also live with the invasion of their privacy resulting from their need to commence this litigation in federal court seeking recognition of E.J.’s U.S. citizenship at birth, which could have been provided privately at the Toronto Consulate.</p>	<p>Pls. Disc. Responses at Interrogatory No. 5.</p> <p><i>Disputed.</i></p> <p>Allegation that Defendants invaded Plaintiffs’ privacy not established by cited evidence. The Dvash-Banks family voluntarily publicized details about their lives and information (including images) of their children.</p> <ul style="list-style-type: none"> • Ex. R: Sept. 2017 (pre-litigation) news story, featuring video, showing that Andrew and Elad sought/allowed

	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
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2		publicity, including photos of their
3		children inside their home.
4		• Ex. S: “Meet the Dvash-Banks Family”
5		on the Immigration Equality web site,
6		https://www.immigrationequality.org/dvashbanks
7		
8		• Ex. T: Complaint (showing that
9		Plaintiffs choose to publicly file full
10		names of children, rather than only the
11		children’s initials).
12		
13		<u>Plaintiffs’ Reply</u> : Defendants’ response and
14		the evidence cited by Defendants does not
15		dispute the proffered fact.
16	F. THE STATE DEPARTMENT’S POLICIES	
17	107. At the time of E.J.’s birth,	Ramsay Dep. 65:15-20; 108:2-7; 108:20-
18	Andrew and Elad were validly	109:3; 30(b)(6) Dep. 260:13-16.
19	married.	<i>Undisputed.</i>
20	108. Andrew is E.J.’s legal parent.	Ramsay Dep. 103:7-11; 104:19-105:12;
21		30(b)(6) Dep. 88:12-16; 261:16-18; 268:2-
22		5.
23		<i>Undisputed.</i>
24	109. Under the State Department’s	30(b)(6) Dep. 171:1-4.
25	existing policies and	<i>Disputed in part:</i>
26	procedures, a child is born “in	Disputed to the extent that the
27	wedlock” only if the two	statement conveys or implies that the
28		Department of State is applying “policies

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 biological parents are married 2 to each other. 3 4 5 6 7 8 9 10 11</p>	<p>and procedures” as opposed to applying the Department of State’s interpretation of the Immigration and Nationality Act. Otherwise undisputed. <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion. <i>See also</i> Defendants’ response to Statement of Fact No. 112.</p>
<p>13 110. The State Department applies 14 this definition of “in wedlock” 15 when a married couple uses 16 assisted reproduction 17 technology. 18 19 20 21 22 23 24 25 26 27 28</p>	<p>30(b)(6) Dep. 173:19-174:2. <i>Disputed.</i> Cited evidence does not establish this point. • 7 FAM 1100 Appendix D (“Acquisition of U.S. Citizenship at Birth - Assisted Reproductive Technology”), AR 077–80 • 7 FAM 1110 Appendix D ¶ 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</p>

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>of two U.S. citizens, with a citizenship claim adjudicated under INA 301(c).”); id. ¶ 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).”)</p> <p><u>Plaintiffs’ Reply</u>: Defendants’ response is inconsistent with the cited evidence. Defendants’ position is also contradicted by the testimony set forth below.</p> <p>“Q. Are you aware of any changes to the biological relationship to a U.S. citizen parent requirement that have changed during your tenure at the Toronto Consulate?</p> <p>A. I don’t know the exact dates of changes as they have come and gone. I do -- we have touched on this issue earlier, but we</p>

	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
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2		have talked about the fact that the
3		biological relationship does now include a
4		gestational mother role, for example.
5		Being a gestational mother does in fact
6		meet the biological -- does in fact qualify as
7		a biological relationship. That has been a
8		change, but when it happened, I honestly
9		don't know. It is not something I keep
10		track of.”
11		Reffett Dep. 183:4-183:18.
12	111. When a male same-sex	30(b)(6) Dep. 177:14-177:22; 180:2-180:9.
13	couple uses sperm from one	<i>Disputed in part:</i>
14	parent and an egg from a donor	Disputed to the extent the statement
15	to conceive a child during their	conveys or implies that a transgendered
16	marriage, the State Department	male in a same-sex relationship could have
17	does not consider the child	a child born “in wedlock” even with the use
18	born “in wedlock.”	of an egg donor.
19		• 30(b)(6) Dep. 178:20–179:18.
20		Otherwise undisputed.
21		
22		<u>Plaintiffs’ Reply:</u> Defendants’ response is
23		inconsistent with the cited evidence.
24	112. The State Department asserts	30(b)(6) Dep. 178:10-19; 180:10-15.
25	that its understanding of “in	<i>Disputed.</i>
26	wedlock” is based on the	Cited evidence does not establish this
27	language of Section 301.	proposition. The State Department’s
28		understanding of “in wedlock” in

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2		interpreting the INA is reflected in 7 FAM
3		1140 Appendix E, AR 091 (currently
4		numbered 8 FAM § 304.1-2). <i>See also:</i>
5		<ul style="list-style-type: none"><li data-bbox="873 401 1365 443">• 30(b)(6) Dep. 180:16-181:10.
6		
7		<u>Plaintiffs’ Reply</u> : Statement of Fact No.
8		112 is consistent with the cited evidence,
9		which is set forth below. <i>See also</i>
10		Defendants’ response to Statement of Fact
11		No. 109.
12		“Q And what’s the basis for the State
13		Department’s position?
14		A The Immigration and Nationality Act.
15		Q What in particular in the Immigration
16		and Nationality Act requires that result?
17		A Well, we would be looking at 309 for
18		out of wedlock, because 301(g) addresses a
19		child born of parents, which the department
20		has interpreted to mean both parents -- a
21		blood relationship to both parents, a
22		biological relationship to both parents.”
23		30(b)(6) Dep. 178:10-19.
24		
25		“Q What is the basis for the State
26		Department’s position?
27		A Again, the interpretation that section
28		301(g) of the INA, when it uses the

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3 4	5 language ‘born of parents,’ it is referring to 6 a biological relationship to both parents.” 7 30(b)(6) Dep. 180:10-15.
8 113. The State Department’s 9 understanding of “in wedlock” 10 in interpreting the INA is 11 reflected in 8 FAM § 304.1-2 12 (previously numbered 7 FAM 13 1140 Appendix E).	14 30(b)(6) Dep. 180:16-181:10. 15 Undisputed.
16 114. Under the State Department’s 17 policies, E.J. and A.J. were 18 born “out of wedlock” within 19 the meaning of Section 309.	20 30(b)(6) Dep. 188:6-15; 271:20-22; 21 274:25-275:6. 22 Disputed in part: 23 Disputed to the extent that the 24 statement conveys or implies that the 25 Department of State applies “policies” as 26 opposed to applying the Department of 27 State’s interpretation of the Immigration 28 and Nationality Act. Otherwise undisputed. <ul style="list-style-type: none"> • Day Depo. 232:01–233:10 (showing that distinction between “in wedlock” and “out of wedlock” did not matter to the outcome of E.J.’s adjudication) <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3 4	5 resolution of Plaintiffs’ motion. <i>See also</i> 6 Defendants’ response to Statement of Fact 7 No. 112.
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	23 115. Under the State Department’s 24 policies, Andrew and Elad can 25 never have a child “in 26 wedlock” together because 27 they are two men. 30(b)(6) Dep. 274:25-275:6. <i>Disputed in part:</i> Disputed to the extent the statement conveys or implies that they could never have a child abroad together whose citizenship would be considered by the Department of State to have been established at birth. • Day Depo. 232:01–233:10 (showing that distinction between “in wedlock” and “out of wedlock” did not matter to the outcome of E.J.’s adjudication) • Ex. H: A.J.’s CRBA <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.
23 24 25 26 27 28	29 116. Under the State Department’s 30 policies, two legally married 31 men who have always been 32 men could never have a child 33 “in wedlock” for purposes of 34 30(b)(6) Dep. 201:2-16. <i>Disputed in part:</i> Disputed to the extent the statement conveys or implies that they could never have a child abroad together whose citizenship would be considered by the

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 adjudicating a CRBA 3 application. 4 5 6 7 8 9 10 11 12	Department of State to have been established at birth. • Day Depo. 232:01–233:10 (showing that distinction between “in wedlock” and “out of wedlock” did not matter to the outcome of E.J.’s adjudication) <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.
13 117. Absent the possibility that the 14 law of the country of birth or 15 domicile of a child born to a 16 married male same-sex couple 17 using assisted reproductive 18 technology provides for the 19 child’s legitimation, the State 20 Department does not consider 21 the child as legitimate.	30(b)(6) Dep. 211:23-213:25. <i>Disputed.</i> The cited evidence does not establish the statement. The Department considered E.J. and A.J. legitimate; there is no evidence to the contrary. <u>Plaintiffs’ Reply:</u> Defendants’ response is inconsistent with the cited testimony.
22 118. The State Department’s 23 policy is that Section 301 24 requires that a U.S. citizen 25 parent have a biological 26 relationship with a child born 27 outside of the United States in 28 order to transmit U.S.	Reffett Dep. 121:22-122:7; 124:9-125:3; 157:3-4; 30(b)(6) Dep. 158:25-159:13. <i>Undisputed.</i>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3 citizenship at birth to the child, 4 even if the parent is the legal 5 parent of the child and was 6 married to the child’s other 7 legal parent at the time of the 8 child’s birth.</p>	
<p>9 119. The Toronto Consulate 10 follows guidance from the 11 State Department in 12 Washington, D.C. as to the 13 requirements for issuance of a 14 CRBA, and there are no 15 Toronto-specific policies 16 concerning the adjudication of 17 CRBA applications.</p>	<p>18 Reffett Dep. 30:12-21; Ramsay Dep. 17:22- 19 18:1; Day Dep. 24:2-24:12; 30(b)(6) Dep. 20 92:6-92:15. 21 <i>Undisputed.</i></p>
<p>22 120. The Toronto Consulate is 23 expected by the State 24 Department to follow State 25 Department policies and FAM 26 guidance issued by the State 27 Department in Washington, 28 D.C. regarding applications submitted on behalf of children born by means of assisted reproductive technology.</p>	<p>30(b)(6) Dep. 93:3-93:8. <i>Undisputed.</i></p>
<p>121. The Toronto Consulate follows State Department</p>	<p>Reffett Dep. 60:18-61:6; 30(b)(6) Dep. 92:20-93:8.</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1</p> <p>2 policies and FAM guidance</p> <p>3 issued by the State Department</p> <p>4 in Washington, D.C. regarding</p> <p>5 the adjudication of CRBA and</p> <p>6 passport applications.</p>	<p><i>Undisputed.</i></p>
<p>7 122. The Toronto Consulate</p> <p>8 understood the FAM guidance</p> <p>9 to require a biological</p> <p>10 relationship between the</p> <p>11 applicant for a CRBA and/or</p> <p>12 U.S. passport and the child’s</p> <p>13 U.S. citizen parent.</p>	<p>Ramsay Dep. 154:16-154:23.</p> <p><i>Undisputed.</i></p>
<p>14 123. The State Department</p> <p>15 interprets Section 301 to</p> <p>16 require a biological connection</p> <p>17 between a married U.S. citizen</p> <p>18 and his child born outside of</p> <p>19 the United States in order to</p> <p>20 transmit U.S. citizenship at</p> <p>21 birth to the child.</p>	<p>30(b)(6) Dep. 158:25-159:13.</p> <p><i>This statement describes as “fact” a legal position taken by the Department of State; otherwise undisputed.</i></p> <p><u>Plaintiffs’ Reply:</u> Defendants’ response does not dispute the proffered fact.</p>
<p>22 124. The text of Section 301 does</p> <p>23 not contain the phrase “in</p> <p>24 wedlock.”</p>	<p>30(b)(6) Dep. 182:21-25; 183:7-183:8.</p> <p><i>Undisputed.</i></p>
<p>25 125. The text of Section 301</p> <p>26 contains no reference to a</p> <p>27 “blood” relationship.</p>	<p>30(b)(6) Dep. 183:9-13; 191:6-14.</p> <p><i>Undisputed.</i></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>126. The State Department’s interpretation of Section 301 is based on the State Department’s interpretation of the words “born . . . of parents” in Section 301 as referring to a biological parent of the child.</p>	<p>30(b)(6) Dep. 178:13-19; 180:10-15.</p> <p><i>Disputed in part:</i></p> <p>Defendants dispute that the Department’s interpretation of Section 301 is based only on the language itself.</p> <p>Otherwise undisputed.</p> <p><u>Plaintiffs’ Reply:</u> Defendants cite no contrary evidence.</p>
<p>127. The State Department changed its interpretation of Section 301 in 2014 to interpret “born . . . of parents” to include not only a genetic parent, but also a gestational mother who did not provide the genetic material (<i>i.e.</i>, egg) for the child.</p>	<p>Reffett Dep. 183:4-183:18; 30(b)(6) Dep. 166:14-166:22; Ramsay Dep. at 84:7-84:12.</p> <p><i>Disputed in part:</i></p> <p>In 2014, the Department issued policy guidance on a topic for which it had not previously published policy guidance; the issuance elaborated as to certain circumstances that were within the Department’s interpretation. The Department did not designate the witness to provide 30(b)(6) testimony on this topic during this time frame.</p> <ul style="list-style-type: none"> • ALDAC dated January 31, 2014, AR 074–76 <p>Otherwise undisputed.</p> <p><u>Plaintiffs’ Reply:</u> Defendants’ response is</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3	4 inconsistent with the cited testimony.
<p>5 128. Prior to that change, the State</p> <p>6 Department interpreted Section</p> <p>7 301 as excluding from the</p> <p>8 biological relationship that the</p> <p>9 State Department requires, a</p> <p>10 gestational mother who did not</p> <p>11 provide genetic material for the</p> <p>12 child.</p>	<p>13 30(b)(6) Dep. 172:21-173:12.</p> <p>14 <i>Disputed in part.</i></p> <p>15 The cited evidence does not establish</p> <p>16 this point. Undisputed that prior to that</p> <p>17 change (described in row No. 126), the</p> <p>18 State Department generally applied Section</p> <p>19 301 so as to exclude from the biological</p> <p>20 relationship a gestational mother who did</p> <p>21 not provide genetic material for the child.</p> <p>22 In addition, the Department did not</p> <p>23 designate the witness to provide 30(b)(6)</p> <p>24 testimony on this topic during this time</p> <p>25 frame.</p> <p>26 <u>Plaintiffs’ Reply:</u> Plaintiffs dispute that</p> <p>27 Defendants’ proffered evidence raises a</p> <p>28 genuine issue of fact material to the</p> <p>resolution of Plaintiffs’ motion.</p>
<p>21 129. The State Department made</p> <p>22 this change even though</p> <p>23 Congress had not made any</p> <p>24 corresponding amendment of</p> <p>25 the INA because the State</p> <p>26 Department simply “changed</p> <p>27 its mind” as to its interpretation</p> <p>28 of Section 301.</p>	<p>30(b)(6) Dep. 243:1-4, 15-20.</p> <p><i>Disputed in part.</i></p> <p>Undisputed that Congress had not</p> <p>amended the law.</p> <p>Otherwise disputed. The cited evidence</p> <p>does not establish this point. In addition,</p> <p>the Department did not designate the</p> <p>witness to provide 30(b)(6) testimony on</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p data-bbox="824 212 1317 254">this topic during this time frame.</p> <p data-bbox="824 275 1484 695">Disputed that the Department “simply ‘changed its mind.’” As new sets of facts and circumstances relating to the use of Assisted Reproductive Technology became more common, the Department reviewed and elaborated upon its relevant policy guidance.</p> <ul data-bbox="824 716 1435 821" style="list-style-type: none"> • ALDAC dated January 31, 2014, AR 074–76 <p data-bbox="824 905 1456 1262"><u>Plaintiffs’ Reply:</u> Defendants’ response is inconsistent with the cited testimony. Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.</p>
<p data-bbox="293 1297 797 1843">130. The State Department’s determination to interpret Section 301 as treating a child born outside the U.S. whose U.S. citizen parent was the child’s gestational mother as a U.S. citizen at birth was a policy decision made by the State Department.</p>	<p data-bbox="824 1297 1390 1339">30(b)(6) Dep. 175:2-5; 219:25-220:8.</p> <p data-bbox="824 1360 971 1402"><i>Disputed.</i></p> <p data-bbox="824 1423 1446 1528">The cited evidence does not establish this point.</p> <p data-bbox="824 1549 1446 1780">In addition, the Department did not designate the witness to provide 30(b)(6) testimony on this topic during this time frame.</p> <p data-bbox="824 1864 1468 1906"><u>Plaintiffs’ Reply:</u> Defendants’ response is</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3	inconsistent with the cited testimony.
<p>4 131. The State Department</p> <p>5 considered changing its</p> <p>6 interpretation of Section 301 to</p> <p>7 deem children born through</p> <p>8 assisted reproductive</p> <p>9 technology to same-sex</p> <p>10 couples as U.S. citizens at</p> <p>11 birth, but did not do so.</p>	<p>30(b)(6) Dep. 225:1-16; 229:1-8.</p> <p><i>Disputed.</i></p> <p>The cited evidence does not establish this point. That individual employees within the Department may have drafted—or started to draft—a memo that would have presented other choices, does not mean the “Department considered changing its interpretation.” In addition, the Department did not designate the witness to provide 30(b)(6) testimony on this topic during this time frame.</p> <p><u>Plaintiffs’ Reply:</u> Plaintiffs dispute that Defendants’ proffered evidence raises a genuine issue of fact material to the resolution of Plaintiffs’ motion.</p>
<p>20 132. An individual within the State</p> <p>21 Department wrote a</p> <p>22 memorandum to the Secretary</p> <p>23 of State stating that the State</p> <p>24 Department’s Bureau of</p> <p>25 Consular Affairs had been</p> <p>26 “studying whether we can</p> <p>27 interpret the INA to allow U.S.</p> <p>28 citizen parents to transmit U.S.</p>	<p>30(b)(6) Dep. 222:11-24.</p> <p><i>Undisputed.</i></p>

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>2 citizenship to their children 3 born abroad through [assisted 4 reproductive technology] in a 5 broader range of 6 circumstances,” and was 7 “considering how this would 8 impact children born through 9 [assisted reproductive 10 technology] overseas to same- 11 sex couples.”</p>		
<p>12 133. The State Department’s 13 interpretation of the INA as 14 requiring a biological 15 relationship between a married 16 U.S. citizen parent and a child 17 born outside the United States 18 for purposes of recognizing 19 U.S. citizenship at birth is 20 inconsistent with the rulings of 21 various federal circuit courts of 22 appeals. 23 24 25 26 27 28</p>		<p>30(b)(6) Dep. 245:9-245:19; 250:3-250:15. Disputed. Statement contains a conclusion of law, not a statement of fact. Cited evidence does not establish this point. Undisputed that some courts, including the Ninth Circuit, have concluded that that (1) “a blood relationship between a child and a U.S. citizen [is] not required to establish citizenship under 8 U.S.C. § 1401(g)” if the child was born in wedlock, Solis-Espinoza, 401 F.3d 1090, 1091 (9th Cir. 2005); and (2) a child is born in wedlock if his or her parents were married to each other at the time of the birth. Plaintiffs’ Reply: Defendants’ response is</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3	inconsistent with the cited testimony.
<p>4 134. The State Department does</p> <p>5 not follow the decisions of any</p> <p>6 federal circuit court of appeals</p> <p>7 holding that Section 301 does</p> <p>8 not include a biological</p> <p>9 relationship requirement and</p> <p>10 does not consider itself bound</p> <p>11 to do so.</p>	<p>30(b)(6) Dep. 251:4-9.</p> <p><i>Statement contains a conclusion of law, not a statement of fact.</i></p> <p>Otherwise undisputed that some courts including the Ninth Circuit have disagreed with the Department’s interpretation of Section 301 by interpreting the statute in a different manner. <i>See Scales v. I.N.S., 232 F.3d 1159, 1166 (9th Cir. 2000); Solis-Espinoza v. Gonzales, 401 F.3d 1090, 1091 (9th Cir. 2005) Solis-Espinoza, 401 F.3d 1090, 1091 (9th Cir. 2005).</i></p> <p><u>Plaintiffs’ Reply</u>: Defendants’ response does not dispute the proffered fact. Plaintiffs further dispute that Statement of Fact No. 134 comprises a conclusion of law.</p>
<p>21 135. The State Department does</p> <p>22 not follow the ruling of the</p> <p>23 Court of Appeals for the Ninth</p> <p>24 Circuit in <i>Solis-Espinoza v.</i></p> <p>25 <i>Gonzales</i>, 401 F.3d 1090 (9th</p> <p>26 Cir. 2005), which held that</p> <p>27 Section 301 does not require a</p> <p>28 biological relationship between</p>	<p>30(b)(6) Dep. 249:6-20.</p> <p><i>Statement contains a conclusion of law, not a statement of fact.</i></p> <p>Otherwise undisputed that some courts including the Ninth Circuit have disagreed with the Department’s interpretation of Section 301.</p>

1 <i>Uncontroverted Fact</i>	Supporting Evidence and Objections
2 a U.S. citizen parent and his 3 child. 4 5 6	<p data-bbox="824 212 1429 317"><u>Plaintiffs’ Reply:</u> Defendants’ response does not dispute the proffered fact.</p> <p data-bbox="824 338 1461 499">Plaintiffs further dispute that Statement of Fact No. 135 comprises a conclusion of law.</p>
7 136. The State Department does 8 not follow the ruling of the 9 Court of Appeals for the Ninth 10 Circuit in <i>Scales v. INS</i> , 232 11 F.3d 1159 (9th Cir. 2000), 12 which held that Section 301 13 does not require a biological 14 relationship between a U.S. 15 citizen parent and his child. 16 17 18 19	<p data-bbox="824 531 1166 573">30(b)(6) Dep. 251:4-9.</p> <p data-bbox="824 594 1429 699"><i>Statement contains a conclusion of law, not a statement of fact.</i></p> <p data-bbox="824 720 1461 951">Otherwise undisputed that some courts including the Ninth Circuit have disagreed with the Department’s interpretation of Section 301.</p> <p data-bbox="824 1035 1429 1140"><u>Plaintiffs’ Reply:</u> Defendants’ response does not dispute the proffered fact.</p> <p data-bbox="824 1161 1461 1329">Plaintiffs further dispute that Statement of Fact No. 136 comprises a conclusion of law.</p>
20 137. The State Department does 21 not follow the ruling of the 22 Court of Appeals for the 23 Second Circuit in <i>Jaen v.</i> 24 <i>Sessions</i> , 899 F.3d 182 (2d Cir. 25 2018), which held that Section 26 301 does not require a 27 biological relationship between 28	<p data-bbox="824 1360 1166 1402">30(b)(6) Dep. 251:4-9.</p> <p data-bbox="824 1423 1429 1528"><i>Statement contains a conclusion of law, not a statement of fact.</i></p> <p data-bbox="824 1549 1461 1780">Otherwise undisputed that some courts including the Ninth Circuit have disagreed with the Department’s interpretation of Section 301.</p> <p data-bbox="824 1864 1429 1906"><u>Plaintiffs’ Reply:</u> Defendants’ response</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 a U.S. citizen parent and his 2 child. 3 4 5</p>	<p>does not dispute the proffered fact. Plaintiffs further dispute that Statement of Fact No. 137 comprises a conclusion of law.</p>
<p>6 138. The State Department’s 7 rationale for its interpretation 8 of Section 301 is not rooted in 9 a concern that interpreting 10 Section 301 as not requiring a 11 biological relationship between 12 an applicant for a CRBA or 13 U.S. passport who was born 14 outside the United States and 15 the child’s United States 16 citizen parent would create or 17 increase the risk of fraud in 18 connection with applications 19 for recognition of U.S. 20 citizenship. 21 22 23 24 25 26 27 28</p>	<p>30(b)(6) Dep. 317:2-8. <i>Disputed.</i> The cited evidence does not establish the point(s) made in the statement. <ul style="list-style-type: none">• Ex. Q: 2012 Information Memo to the Secretary on Assisted Reproductive Technology (ART), Citizenship and Visa Law (DEFS001382).• Reffett Depo 167:18–168:19. <u>Plaintiffs’ Reply:</u> Defendants’ response mischaracterizes the evidence. Evidence cited by Plaintiffs in support of Statement of Fact No. 138 is set forth below: “THE REPORTER[Q:]: “But should I understand you still to be saying that the State Department’s view that the requirements for establishing the blood relationship between a U.S. citizen parent and a child born outside the United States is not tied really in any way to concern about fraud?”</p>

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3	4 A Correct.” 5 30(b)(6) Dep. 317:2-8.
6 139. The State Department’s 7 interpretation of Section 301 as 8 requiring a genetic or 9 gestational relationship 10 between a U.S. citizen parent 11 and a child is memorialized in 12 8 FAM § 304.1-2 (previously 13 numbered 7 FAM 1140 14 Appendix E).	15 30(b)(6) Dep. 171:18-172:20. 16 Undisputed.
17 140. The FAM is not subject to 18 notice-and- comment rule 19 making.	20 30(b)(6) Dep. 244:13-18. 21 Undisputed.
22 141. The FAM is not approved by 23 Congress.	24 30(b)(6) Dep. 244:5-6. 25 Undisputed.
26 142. The State Department 27 acknowledges that the FAM 28 policies regarding recognition of U.S. citizenship include requirements not specifically set out in the INA.	29 30(b)(6) Dep. 103:5-11; 104:8-11. 30 Disputed. Disputed as incomplete. The statement refers to procedural requirements, not the legal elements for establishing U.S. citizenship. Additionally, portions of the FAM replicate provisions of the INA. <i>See,</i> <i>e.g.,</i> 7 FAM 1120 App. E, AR 088–89. <u>Plaintiffs’ Reply: Defendants’ response</u>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	mischaracterizes the evidence.
<p>143. The FAM does not have the force of law.</p>	<p>30(b)(6) Dep. 244:20-244:25.</p> <p><i>Statement contains a conclusion of law, not a statement of fact.</i></p> <p>Cited evidence does not establish the point made in the statement. Disputed as incomplete. The FAM is comprised of Department of State directives “establishing and prescribing the organizations, policies, or procedures that provide an official basis of Department of State operation.” 18 FAM 201.1-4;² <i>see</i> 18 FAM 201.1-1(A)(a). “These directives derive their authority from statutes, Executive orders, other legal authorities, and Presidential directives, such as OMB circulars, and Department policies.” 18 FAM 201.1-1(A)(a). The FAM includes the Department’s interpretation of the Immigration and Nationality Act. <i>See, e.g.</i>, 7 FAM 1131.2, AR 082; 7 FAM 1131.4, AR 082; 7 FAM 1120 App. E, AR 088–89.</p> <p><u>Plaintiffs’ Reply</u>: Defendants’ response does not dispute the proffered fact.</p>

² 18 FAM 201.1 and its subsections are available on the Department of State’s website at <https://fam.state.gov/FAM/18FAM/18FAM020101.html>.

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p>	<p>Evidence cited by Plaintiffs in support of Statement of Fact No. 143 is set forth below:</p> <p>“Q Okay. Would you agree with me that the FAM does not have the force of law?”</p> <p>MS. ANDRAPALLIYAL: Objection. Calls for a legal conclusion. Exceeds the scope.</p> <p>A The FAM is guidance. I do not believe it has the force of the law.”</p> <p>30(b)(6) Dep. 244:20-244:25.</p>
<p>13 144. The State Department does</p> <p>14 not track how frequently</p> <p>15 CRBA applicants are asked to</p> <p>16 undergo DNA testing or how</p> <p>17 often CRBA applications</p> <p>18 submitted on behalf of children</p> <p>19 of same-sex couples are</p> <p>20 granted or denied.</p>	<p>30(b)(6) Dep. 315:10-13; 320:20-321:3.</p> <p><i>Undisputed.</i></p>
<p>21 145. The State Department</p> <p>22 acknowledges that Andrew is</p> <p>23 E.J.’s legal parent.</p>	<p>30(b)(6) Dep. 88:12-16; 261:16-18; 268:2-5.</p> <p><i>Undisputed.</i></p>
<p>24 146. The State Department</p> <p>25 considers Andrew to be E.J.’s</p> <p>26 legal parent at birth under</p> <p>27 Ontario law.</p> <p>28</p>	<p>30(b)(6) Dep. 268:2-5.</p> <p><i>Disputed in part:</i></p> <p>Undisputed that the 30(b)(6) witness testified as stated in the cited portion of the transcript; disputed that the Department</p>

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2 3 4 5 6 7 8 9		<p>made a determination regarding E.J.’s legal parents at birth. The adjudicating officer did not reach this question; she considered Andrew to be E.J.’s legal parent at the time of the January 24, 2017 applications, a sufficient condition for purposes of interviewing Andrew and Elad regarding the applications.</p>
10 11 12 13 14 15 16		<p>E.J.’s applications were rejected on the ground of a lack of a biological connection, without needing to reach whether Andrew was E.J.’s legal parent at birth under Ontario law. See supra, Defendants’ Statement of Genuine Issues of Material Facts Nos. 96.</p>
17 18 19 20 21 22 23 24 25 26		<p>The Department recognizes that under Ontario law, Andrew’s legal parentage of E.J. was established on September 28, 2017, the date the Ontario Court issued its parentage order, twelve days following E.J.’s birth. See Canadian Order, AR 021–22; see also supra, Defendants’ Statement of Genuine Issues of Material Facts Nos. 39.</p>
27 28		<p><u>Plaintiffs’ Reply</u>: Defendants’ response does not dispute the proffered fact or cite</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>any evidence in support of the portion of Statement No. 146 which Defendants dispute. Evidence cited by Plaintiffs in support of Statement of Fact No. 146 is set forth below:</p> <p>“Q Okay. And does the State Department consider Andrew to be E.J.’s parent at birth under Ontario law?</p> <p>A His legal parent at birth, yes.”</p> <p>30(b)(6) Dep. 268:2-5.</p>
<p>147. The State Department acknowledges that Andrew and Elad are E.J.’s only legal parents.</p>	<p>30(b)(6) Dep. 261:16-261:18.</p> <p><i>Undisputed</i> except to the extent that the statement conveys or implies that Andrew and Elad have always been the only persons who Ontario law recognized as legal parents of the child. See supra, Defendants’ Statement of Genuine Issues of Material Facts Nos. 37, 39, 40.</p> <p><u>Plaintiffs’ Reply:</u> Defendants cite to no evidence in support of their contention.</p>
<p>148. The State Department acknowledges that Andrew and Elad are identified as E.J.’s parents on E.J.’s Statement of Live Birth.</p>	<p>30(b)(6) Dep. 260:21-261:1.</p> <p><i>Undisputed.</i></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>149. The State Department acknowledges that Andrew and Elad were validly married at the time of the Twins' birth.</p>	<p>30(b)(6) Dep. 260:17-260:20.</p> <p><i>Undisputed.</i></p>

II. Defendants' Asserted Uncontroverted Facts.

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>150. California recognized the validity of same-sex marriages from June 16, 2008, until the passage of Proposition 8 on November 5, 2008, and then again following the U.S. Supreme Court's June 26, 2013 decision in <i>Hollingsworth v. Perry</i>.</p>	<p>The Court can take judicial notice of this fact based on the background information described in Hollingsworth v. Perry, 570 U.S. 693, 701–04 (2013) (describing In re Marriage Cases, 183 P.3d 384 (Cal. 2008) and Proposition 8), and the outcome of <i>Hollingsworth</i>, 570 U.S. at 715.</p> <p><u>DISPUTED</u></p> <p><u>OBJECTION</u></p> <p>Defendants have not complied with the requirements for judicial notice under Fed. R. Evid. 201 and, therefore, it is unclear what Defendants are asking the court to take judicial notice of.</p>
<p>151. The FAM incorporates the INA.</p>	<ul style="list-style-type: none"> • See e.g., 7 FAM 1131.1-1(b), AR 081; 7 FAM 1131.4-1(b), AR 083; 7 FAM 1131.4-1(a), 089. <p><u>DISPUTED</u></p>

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p><u>OBJECTION</u></p> <p>Plaintiffs object to Statement of Fact No. 151 as mischaracterizing the evidence and Plaintiffs further object that Statement of Fact No. 151 is contradicted by evidence that the FAM is the State Department’s implementing guidance for its interpretations of the INA and includes requirements not specifically set out in the INA.</p> <p>Cited below is additional testimony from the witness supporting Plaintiffs’ objection to Statement of Fact No. 151:</p> <p>“Q What are those differences? A The FAM goes into much greater detail. Q By that -- when you say it goes into greater detail, do you mean that the FAM includes elements that the INA does not? A The FAM gives guidance to a universe of scenarios that are covered in the INA. Yeah. 30(b)(6) Dep. 103:5-11. Q So, again, the question is, when you say, “goes into greater detail,” does the FAM include elements that the INA does not? A Yes.” 30(b)(6) Dep. 104:8-11.</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1</p> <p>2 152. Under the terms of the</p> <p>3 Surrogacy Agreement, Andrew</p> <p>4 and Elad “acknowledge[d] and</p> <p>5 agree[d] that the procedure</p> <p>6 contemplated by this</p> <p>7 Agreement are novel and new</p> <p>8 and that the law applicable to</p> <p>9 such procedures and</p> <p>10 relationships is developing and</p> <p>11 unsettled.”</p>	<p>• Surrogacy Agmt. at Section 35.3, AR 051–52.</p> <p><u>NOT DISPUTED</u></p>
<p>12 153. The Surrogacy Agreement</p> <p>13 recognized that “the possibility</p> <p>14 exists that this Agreement may</p> <p>15 be declared void as against</p> <p>16 public policy, in whole or in</p> <p>17 part, and may be held</p> <p>18 unenforceable, in whole or in</p> <p>19 part, by an Ontario Court... .”</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>• Surrogacy Agmt. at Section 35.3, AR 051–52.</p> <p><u>DISPUTED</u></p> <p><u>OBJECTION.</u></p> <p>Plaintiffs do not dispute that the Surrogacy Agreement included the provision quoted but object that Statement of Fact No. 153 mischaracterizes the evidence to the extent that the quoted portion is a fragment of the following sentence, which reads in whole: “Although the possibility exists that this 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</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>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 <i>Assisted Human Reproduction Act</i>, S.C. 2004, c.2, to the extent such Act has been proclaimed into force.”</p> <p>Surrogacy Agmt. at Section 35.3, AR 051-052.</p>
<p>154. The documentation submitted with E.J.’s application materials on January 24, 2017 was insufficient to show that Andrew met the residency requirements necessary to demonstrate that E.J. met the elements for recognition of citizenship at birth.</p>	<ul style="list-style-type: none"> AR 005 (consular officer’s case notes indicating: “School transcripts needed to confirm Amcit father’s physical presence in the US.”) <p><u>DISPUTED</u> <u>OBJECTION.</u></p> <p>Plaintiffs object that Statement of Fact No. 154 mischaracterizes the evidence to the extent that it does not reflect that Andrew’s school transcripts ultimately were included in the Administrative Record. AR 059-61.</p> <p>Cited below is testimony supporting Plaintiffs’ objection to Statement of Fact No. 154:</p> <p>“Q Okay. Is -- does the State Department agree that Andrew Dvash-Banks sufficiently demonstrated to the Toronto</p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>consulate that he met the residency requirements of section 301? A I believe that he did, yes.” 30(b)(6) Dep. 274:2-274:6.</p>
<p>155. Ms. Day testified that it would not have made a difference to her final adjudication decision for E.J.’s applications whether she had considered the children to be born “in wedlock” or whether she had considered them to be born “out of wedlock.”</p>	<ul style="list-style-type: none"> Day Depo. 232:01–233:10 <p><u>NOT DISPUTED</u></p>
<p>156. Ms. Day testified that it would not have mattered to the outcome of the adjudication if E.J.’s applications had been adjudicated pursuant to INA 301(g) rather than INA 309(a).</p>	<ul style="list-style-type: none"> Day Depo. 232:23–233:12; 277:12–278:02. <p><u>NOT DISPUTED</u></p>
<p>157. Ms. Ramsay also testified that it would not have made a difference to the outcome of the adjudication if Ms. Day had adjudicated EJ’s applications under INA 301 instead of INA 309</p>	<ul style="list-style-type: none"> Ramsay Depo. 131:22–133:23 <p><u>NOT DISPUTED</u></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 158. The Surrogacy Agreement</p> <p>2 was a contract between</p> <p>3 contacting parties consisting of</p> <p>4 Andrew, Elad, and the</p> <p>5 gestational surrogate.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>• Surrogacy Agreement at 1 (AR 023)</p> <p>(THIS IS AN AGREEMENT made on this</p> <p>21st day of December, 2015, among</p> <p>ANDREW DVASH-BANKS (herein called</p> <p>‘Andrew’) –and- ELAD DVASH-BANKS</p> <p>(herein called ‘Elad’) -and- AMANDA</p> <p>MARIE ANNE ADAMS (herein called the</p> <p>‘Gestational Carrier’); <i>id.</i> Pt. II ¶ p, AR</p> <p>026 (defining “Parties”).</p> <p><u>NOT DISPUTED</u>³</p>
<p>12 159. The Surrogacy Agreement did</p> <p>13 not purport to override the</p> <p>14 local law as to legal parentage.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	<p>• Surrogacy Agmt. at Section XXXV</p> <p>(“Governing Law”), AR 051–52.</p> <p><u>DISPUTED</u></p> <p><u>OBJECTION</u></p> <p>Plaintiffs object that Statement of Fact No.</p> <p>159 is not a statement of fact but a legal</p> <p>argument.</p> <p>The relevant portion of the Surrogacy</p> <p>Agreement cited by Defendants in support</p> <p>of Statement of Fact No. 159 is set forth</p> <p>below:</p> <p>“This Agreement will be governed by,</p> <p>subject to and construed in accordance with</p>

³ Plaintiffs do not dispute Statement of Fact No. 158 in any event, but submit that Defendants’ appear to have inadvertently described the parties as “contracting” instead of “contracting.”

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
<p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p>	<p>the laws of the Province of Ontario. 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.”</p> <p>Surrogacy Agmt., Section 35.1-35.2 at AR 51.</p>
<p>10 160. The Surrogacy Agreement</p> <p>11 acknowledged that it was</p> <p>12 subject to Ontario Law.</p> <p>13</p> <p>14</p>	<p>• Surrogacy Agmt. at Section XXXV (“Governing Law”), AR 051–52.</p> <p><u>NOT DISPUTED</u></p>
<p>15 161. The Surrogacy Agreement</p> <p>16 acknowledged that the law</p> <p>17 applicable to surrogacy</p> <p>18 “procedures and relationships</p> <p>19 is developing and unsettled.”</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>• Surrogacy Agmt. at Section 35.3, AR 051–52.</p> <p><u>DISPUTED</u></p> <p><u>OBJECTION.</u></p> <p>Plaintiffs object that Statement of Fact No. 161 mischaracterizes the evidence to the extent that it suggests that the quoted provision refers to any law other than the law of Ontario, Canada.</p>
<p>25 162. On January 24, 2017,</p> <p>26 Consulate Toronto provided</p> <p>27 Andrew with a letter, the</p> <p>28 “purpose” of which was “to</p>	<p>• Ex. J: Dvash-Banks000000031</p> <p><u>NOT DISPUTED</u></p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
2 provide you with information 3 concerning DNA testing as an 4 option to establish the requisite 5 blood relationship between the 6 child and the citizenship- 7 transmitting U.S. citizen 8 parent.”	
9 163. The letter explained, “Should 10 you wish to undergo DNA 11 testing, which could 12 conclusively establish whether 13 both children are the biological 14 children of a U.S. citizen 15 parent, please review the 16 enclosed flyer explaining DNA 17 testing and the procedures 18 under which the samples must 19 be collected and the test 20 conducted, including chain of 21 custody procedures, in order 22 for the results to be considered 23 in connection with a 24 citizenship claim.	<ul style="list-style-type: none"> • Ex. J: Dvash-Banks000000031 <p style="text-align: center;"><u>NOT DISPUTED</u></p>
25 164. The letter also stated that 26 “DNA testing must be 27 conducted at a lab accredited 28 by the American Association	<ul style="list-style-type: none"> • Ex. J: Dvash-Banks000000031 <p style="text-align: center;"><u>NOT DISPUTED</u></p>

<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
<p>1 of Blood Banks in the United 2 States,” and it “[e]nclosed ... a 3 list of laboratories in the 4 United States accredited by the 5 AABB.” 6</p>	
<p>7 165. The Department treats the 8 children of same-sex couples 9 as “born of . . . parents” for the 10 purposes of Section 1401 when 11 both parents have a biological 12 connection to the children. 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<ul style="list-style-type: none"> • 30(b)(6) Dep. 202:17–23; 333:4–17 • Ex. I: Defs.’ Response to Pls.’ First Set of Requests for Admission [9 at page 10] (denying that “under the State Department’s] current interpretation and application of” 8 U.S.C §§ 1401 and 1409, “Defendants would never conclude that two men who are married to each other may have a child in wedlock for purposes of” 8 U.S.C. § 1401.”). <p><u>DISPUTED</u></p> <p><u>OBJECTION</u></p> <p>Plaintiffs object to the mischaracterization of the evidence to the extent that Statement of Fact No. 165 purports to quote the INA. See 8 U.S.C. §1401 (the words “born” and “of” do not appear next to each other in Section 1401 of the INA). Plaintiffs further object to Statement of Fact No. 165 as misleading to the extent that it suggests that</p>

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2		both members of a same-sex male couple
3		could be biologically related to a child.
4		The testimony cited by Defendants in
5		support of Statement of Fact No. 165 is set
6		forth below:
7		
8		“Q Are there circumstances in which
9		the State Department treats children
10		born into a same-sex marriage to be
11		children born in wedlock?
12		A Yes.
13		Q And what are those
14		circumstances?
15		A If both parents had a biological
16		relationship to the child.”
17		30(b)(6) Dep. 202:17-202:23.
18		“Q Sure. In what circumstances does a
19		child born to a same-sex female couple
20		acquire U.S. citizenship under INA section
21		301(g)?
22		A I am looking at 8 FAM 304.3-1, which I
23		think would also answer your previous
24		question. To read it aloud, paragraph (b),
25		“A child born abroad to a U.S. citizen
26		gestational mother who is the legal parent
27		of the child at the time of birth in the
28		location of birth, whose genetic parents are

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2		an anonymous sperm donor and the U.S.
3		citizen wife of the gestational legal mother,
4		is considered for citizenship purposes to be
5		a citizen born in wedlock of two U.S.
6		citizens, with a citizenship claim
7		adjudicated under INA 301(c).”
8		30(b)(6) Dep. 333:4-333:17.
9		
10		Plaintiffs further object that the reference to
11		Defendants’ Response to Request for
12		Admission No. 9 is similarly misleading
13		and reprint in full Plaintiffs’ Request for
14		Admission No. 9 and Defendants’ response
15		below.
16		“Request for Admission 9: Admit that
17		under the State Department’s current
18		interpretation and application of Section
19		301 and Section 309, Defendants would
20		never conclude that two men who are
21		married to each other may have a child in
22		wedlock for purposes of Section 301.
23		Specific Objection: Defendants object to
24		this RFA as vague in that ‘have a child’ is
25		not a term used in
26		Section 301 of the INA.
27		Response: Subject to and without waiving
28		the above-stated objection, Defendants

1 <i>Uncontroverted Fact</i>	2 <i>Supporting Evidence and Objections</i>
3 4 5 6 7 8	9 deny and note that, under Department of 10 State policy, cases are adjudicated under 11 Section 301 when a child’s biological 12 parents are married to each other at 13 the time of the birth of the child, 8 FAM 14 304.1-2, and each case is determined on its 15 own set of facts.”
9 166. Where two women married to 10 each other are U.S. citizens, 11 and one is the legal, gestational 12 mother of the child and the 13 other is the genetic mother, the 14 Department adjudicates the 15 child’s citizenship claim under 16 INA 301(c).	<ul style="list-style-type: none"> • 30(b)(6) Dep. 202:17–23 • January 31, 2014 ALDAC, AR 074–75 • 7 FAM 1110 Appx. D, AR 077-78. <p>NOT DISPUTED on the understanding that SOF No. 166 is limited to current State Department policy.</p>
17 167. The Department also 18 recognizes that a child of 19 transgender and cisgender 20 males can have a child born in 21 wedlock, assuming that both 22 parents have a biological 23 relationship to the child.	<ul style="list-style-type: none"> • 30(b)(6) Dep. 178:20–179:18 <p><u>NOT DISPUTED</u></p>
24 168. The Dvash-Banks family may 25 pursue another avenue for 26 documenting E.J.’s citizenship. 27 28	<ul style="list-style-type: none"> • Ex. I: Defs.’ Resp. to Pls.’ First Set of Requests for Admission 10 <p>8 U.S.C. § 1452 (“A person who . . . is a citizen of the United States by virtue of . . . paragraph . . . (g) of section 1401 of this</p>

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>title . . . may apply” to the Secretary of Homeland Security “for a certificate of citizenship” and “[u]pon proof to the satisfaction of” the Secretary, she may receive a citizenship certification if she is within in the United States at the time.”).</p> <p><u>DISPUTED</u></p> <p><u>OBJECTION</u></p> <p>Plaintiffs object to Statement of Fact No. 168 to the extent that it constitutes a legal argument or conclusion. Plaintiffs further object that Statement of Fact No. 168 is misleading to the extent that it suggests any assertion of fact concerning the hypothetical outcome of other efforts that have not been taken by the Dvash-Banks family for “documenting E.J.’s citizenship.”</p> <p>Plaintiffs also object to Statement of Fact No. 168 to the extent that the words “documenting E.J.’s citizenship” mischaracterize recognition as a U.S. citizen through naturalization or by other means as the equivalent of acquisition of U.S. citizenship at birth.</p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
<p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	<p>Plaintiffs’ Request for Admission No. 10 and Defendants’ response to that request is set forth below:</p> <p>“Request for Admission 10: Admit that for purposes of issuing certificates of citizenship in the Ninth Circuit, CIS does not require a biological connection between the child and the child’s U.S. citizen parent. Response: Upon conducting a reasonable inquiry, Defendants lack knowledge to definitively answer on behalf of the U.S. Citizenship and Immigration Services (“USCIS”), which is a component of the Department of Homeland Security—an Executive agency separate from the Department of State. Defendants understand generally and admit that for those applications for certificates of citizenship that USCIS receives from applicants living in the Ninth Circuit at the time of their application, USCIS applies the Ninth Circuit case law of <i>Scales v. I.N.S.</i>, 232 F.3d 1159, 1165 (9th Cir. 2000). Def.’ Response to Pls.’ First Set of Requests for Admission No. 10.”</p>
<p>27 169. USCIS adjudicates</p> <p>28 applications for certificates of</p>	<ul style="list-style-type: none"> • Ex. I: Defs.’ Resp. to Pls.’ First Set of Requests for Admission 10

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2 3 4 5	citizenship domestically, and considers the jurisdiction where the applicant lives when adjudicating an application.	<p style="text-align: center;"><u>NOT DISPUTED</u></p>
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>170. For applications for certificates of citizenship that USCIS receives from applicants living in the Ninth Circuit at the time of their application, USCIS applies the Ninth Circuit caselaw of <i>Scales v. I.N.S.</i>, 232 F.3d 1159, 1165 (9th Cir. 2000).</p>	<ul style="list-style-type: none"> • Ex. I: Defs.’ Resp. to Pls.’ First Set of Requests for Admission 10 • 30(b)(6) Depo. 335:10–14 <p style="text-align: center;"><u>DISPUTED</u></p> <p style="text-align: center;"><u>OBJECTION</u></p> <p>Plaintiffs object to Statement of Fact No. 170 on the basis that there is insufficient evidence to know how USCIS would evaluate an application it has not received. Plaintiffs’ Request for Admission No. 10 and Defendants’ response to that request is set forth in response to Statement of Fact No. 168.</p> <p>Cited below is additional testimony from the witness supporting Plaintiffs’ objection to Statement of Fact No. 170:</p> <p>Q. Yes. At the time that the State Department sent this letter, Exhibit 27, did the State Department have an expectation that if the Dvash-Banks</p>

1 <i>Uncontroverted Fact</i>	1 <i>Supporting Evidence and Objections</i>
<p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>family applied for a Certificate of Citizenship for E.J., that USCIS would grant that application?</p> <p>A. It was certainly within the realm of possibility.</p> <p>Q. But did it have an expectation that it would be granted?</p> <p>A. I don't know that it would be accurate to say that we had an expectation.</p> <p>30(b)(6) Dep. 318:4-318:15.</p>
<p>12 171. The INA was enacted in</p> <p>13 1952, a time when it was</p> <p>14 commonly understood, that</p> <p>15 outside the adoption context,</p> <p>16 ‘parent’ at birth referred to a</p> <p>17 biological parent.</p> <p>18</p> <p>19</p> <p>20</p>	<ul style="list-style-type: none"> • Ex. J: Defs.’ Second Resp. to Pls.’ First Set of Interrogatories at 22 <p><u>DISPUTED</u></p> <p><u>OBJECTION</u></p> <p>Plaintiffs object that Statement of Fact No. 171 calls for a legal conclusion. Plaintiffs further object to Statement No.171 on the basis of lack of foundation.</p>
<p>21 172. The Department has</p> <p>22 expressed concerns that</p> <p>23 adopting a contrary</p> <p>24 interpretation of Section</p> <p>25 1401(g) would raise the</p> <p>26 frequency of fraudulent</p> <p>27 citizenship claims, because it</p> <p>28 would be difficult to identify</p>	<ul style="list-style-type: none"> • Ex. Q: 2012 Information Memo to the Secretary on Assisted Reproductive Technology (ART), Citizenship and Visa Law (DEFS001382) (“Because we regularly encounter people seeking to document children who are not theirs, we use DNA testing to verify parentage.”).

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	child smuggling or illegal adoption without requiring a biological link between child applicant and the transmitting parent.	<ul style="list-style-type: none">• See also Reffett Depo 167:18–168:19. <p><u>DISPUTED</u></p> <p><u>OBJECTION</u></p> <p>Plaintiffs object to Statement of Fact No. 172 as mischaracterizing the testimony. Plaintiffs further object on the basis that Statement of Fact No. 172 is inconsistent with the evidence provided by Defendants. Plaintiffs also object to Statement of Fact No. 172 on the basis of hearsay and lack of foundation to the extent that it relies on DEFS001382.</p> <p>The testimony cited by Defendants in support of Statement of Fact No. 172 is set forth below:</p> <p>“Q. What are other circumstances that would give rise to doubt of putative parentage?</p> <p>A. I mean, every case is going to be different and this is only putative parentage as related by blood. Other things that might cause someone to question whether parentage as related by blood was potentially something they should look into, I don’t want to make a huge list of these because they are fraud concerns, but</p>

1	<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
2		things like a birth certificate that was
3		amended later to add potentially a parent
4		or to change some biographical
5		information; that would be something that
6		would be considered a red flag for an
7		adjudicating officer and that would cause a
8		line of questioning that wouldn't be asked
9		of other
10		applicants.
11		You know, other things about whether
12		there would be questions about whether a
13		putative parent is
14		related by blood, again, anything that
15		would indicate the use of assisted
16		reproductive technology, that will raise
17		other questions.
18		Anything on a birth certificate that would
19		seem to indicate an adoption would raise
20		questions.
21		These all are indicators that we look at
22		when we are looking at documents so that
23		we are asking the correct chain of
24		questions to get the information that we
25		need to make the determination.”
26		Reffett Dep 167:18–168:19.
27		Cited below is additional testimony
28		supporting Plaintiffs’ objection that

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<i>Uncontroverted Fact</i>	<i>Supporting Evidence and Objections</i>
	<p>Statement of Fact No. 172 is contradicted by the evidence provided by Defendants:</p> <p>“Q Sure. I’m just trying to understand whether any aspect of the State Department’s interest in sustaining its interpretation of section 301 is rooted in an effort to prevent fraud?</p> <p>A No.</p> <p>30(b)(6) Dep. 311:3-311:7.</p> <p>THE REPORTER: “But should I understand you still to be saying that the State Department’s view that the requirements for establishing the blood relationship between a U.S. citizen parent and a child born outside the United States is not tied really in any way to concern about fraud?”</p> <p>A Correct.”</p> <p>30(b)(6) Dep. 317:2-317:8.</p>

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Respectfully submitted,

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