825 Fed.Appx. 479 (Mem)
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.
United States Court of Appeals, Ninth Circuit.

E. J. D.-B., a Minor, Elad Dvash-Banks as the guardian ad litem; Andrew Mason Dvash-Banks, Plaintiffs-Appellees,
v.
UNITED STATES DEPARTMENT OF STATE; Michael Pompeo, US Secretary of State Successor Rex W. Tillerson, Defendants-Appellants.

No. 19-55517
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Submitted October 7, 2020* Pasadena, California
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FILED October 9, 2020

Attorneys and Law Firms

Alexa M. Lawson-Remer, Sullivan & Cromwell LLP, Los Angeles, CA, Theodore Edelman, Lauren Maisel Goldsmith, Sullivan & Cromwell LLP, New York, NY, Aaron C. Morris, Immigration Equality, Brooklyn, NY, for Plaintiffs-Appellees

Vinita Andrapalliyal, DOJ - U.S. Department of Justice, Civil Division, Washington, DC, H. Thomas Byron, III, Attorney, Daniel L. Winik, Attorney, DOJ - U.S. Department of Justice, Washington, DC, for Defendants-Appellants

Alan E. Schoenfeld, Wilmer Cutler Pickering Hale and Dorr LLP, New York, NY, for Amici Curiae GLBTQ Legal Advocates & Defenders, National Center for Lesbian Rights

Mitchell Reich, Hogan Lovells US LLP, Washington, DC, for Amicus Curiae Family Law Professors

Appeal from the United States District Court for the Central District of California, John F. Walter, District Judge, Presiding, D.C. No. 2:18-cv-00523-JFW-JC

Before: KLEINFELD, HURWITZ, and BRESS, Circuit Judges.

***480** MEMORANDUM**

The sole issue in this case is whether the district court correctly concluded that E.J. Dvash-Banks ("E.J.") is a citizen of the United States. Because the district court's decision was correct under binding circuit precedent, we affirm.

E.J. was conceived through Assisted Reproductive Technology and born in Canada. In January 2017, his legal parents, United States citizen Andrew Dvash-Banks ("Andrew") and Israeli citizen Elad Dvash-Banks ("Elad"), applied for a passport for E.J. under 8 U.S.C. § 1401(g), which confers citizenship on "a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States." The United States consulate in Ontario, Canada, denied the application because E.J. was conceived using Elad's sperm. The district court, however, held that E.J. was a citizen under this Court's decisions in *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000), and *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), which hold that § 1401(g) does not require a biological relationship between a child and the citizen parent through whom citizenship is claimed.

The government concedes that *Scales* and *Solis-Espinoza* control this case and has appealed to preserve the argument that those cases were incorrectly decided. As a three-judge panel, we are bound by *Scales* and *Solis-Espinoza*. *See Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (en banc). Because the district court did not err in applying Ninth Circuit law, we affirm.[1]

AFFIRMED.

All Citations

825 Fed.Appx. 479 (Mem)

Footnotes

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1 Appellees' motion for judicial notice, **Dkt. 22**, is **GRANTED.**