

## **PRESS RELEASE**

### **Nearly 18 Years After Lewin & Lewin Files Lawsuit On Behalf of Menachem Zivotofsky US Department of State Changes Jerusalem Passport Policy To Permit US Citizens Born in Jerusalem to List Their Place of Birth as “Israel”**

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Nearly 18 years ago our father-daughter law firm filed a lawsuit in federal court in Washington, DC, on behalf of an infant, Menachem Binyamin Zivotofsky. Menachem, the child of two American citizens, was born in Jerusalem in October 2002, three weeks after the US Congress passed Public Law No. 107-228. The new law governed US passports and birth certificates and directed that for “a United States citizen born in the city of Jerusalem, the Secretary [of State] shall, upon the request of the citizen or the citizen’s legal guardian, record the place of birth as Israel.”

The law was passed with overwhelming bi-partisan support. In the Senate it passed by unanimous consent. Nonetheless, President George W. Bush issued a statement when he signed the Act into law asserting that the provision regarding Jerusalem, “impermissibly interfere[d] with the President’s constitutional authority to formulate the position of the United States, speak for the Nation in international affairs, and determine the terms on which recognition is given to foreign states.” President Bush instructed the Department of State to ignore the directive included in the new law because “U.S. policy regarding Jerusalem has not changed.” The Zivotofskys then applied for their son’s US passport and requested that his place of birth be listed as “Israel.” Their request was denied. We sued to enforce Menachem Zivotofsky’s right under the new law to have his US passport list his place of birth as “Israel.”

The policy of the State Department’s Passport Office has always been to list the *country* of birth as the place of birth on the passport of US citizens born abroad. For American citizens born in Jerusalem, however, the State Department had steadfastly refused to list the citizen’s place of birth as “Israel.” Government policy before the current administration refused to recognize any

country as having sovereignty over Jerusalem. The State Department has consistently treated Jerusalem as a city without a country. US citizens born in Jerusalem received passports listing “Jerusalem” (a city) as their place of birth, instead of a country of birth. Citizens born in other cities in Israel such as Tel Aviv or Haifa, were issued passports that followed the universal policy and designated “Israel” as their place of birth.

The State Department’s long-standing passport policy was not neutral. Recognizing that some American citizens born in Israel object to identification of “Israel” as their place of birth because they oppose the existence of the State of Israel, the State Department acceded to their wishes. US citizens who object to “Israel” on their passports are permitted to designate the city of their birth rather than any country. US citizens born before 1948 anywhere in today’s Israel may have their passports read “Palestine” rather than “Israel.” The State Department complies with these requests even though this practice contradicts the State Department’s formal policy of listing only *current* sovereigns as the place of birth.

Our lawsuit on behalf of Menachem Zivotofsky reached the United States Supreme Court twice. In 2012, in *Zivotofsky v. Clinton*, the Supreme Court found that the case did not present a non-justiciable “political question.” When the case was heard again on its merits in 2015 (*Zivotofsky v. Kerry*), six Justices of the Supreme Court, describing the status of Jerusalem as a “delicate subject” that was “among the most difficult and complex in international affairs,” ruled that Congress exceeded its authority when it passed the 2002 law. The Court majority, over three dissents (including Chief Justice Roberts) held that only the President of the United States has authority to recognize foreign sovereigns and define their boundaries.

President Donald J. Trump subsequently exercised that exclusive authority. He recognized Jerusalem as the capital of Israel and subsequently recognized Israel’s sovereignty over the Golan Heights. Contrary to the dire predictions that were repeatedly made to the courts during our years of litigation, the sky did not fall.

Nathan Lewin, who argued the first time the Zivotofsky case was before the Supreme Court, hailed the State Department’s change of policy that will now enforce the law Congress enacted in 2002. He said, “The Supreme Court’s resolution of our lawsuit seemed initially like a defeat, but it turned, with President Trump’s recognition decisions, into a victory. The Court decision established conclusively that the President’s recognition decision is constitutionally immune from reversal by either of the other two branches of government.”

“This month Menachem celebrates his 18<sup>th</sup> birthday. I am thrilled that after all these years, Menachem will be able to receive a most meaningful gift - a passport reflecting a fact of which he has been proud his entire life – namely, that he was the first of his parents’ children to be born in Israel,” said Alyza Lewin, the lawyer who orally argued before the Supreme Court on the Zivotofsky case’s second appearance.

Ms. Lewin continued, “Until today, US passport policy favored those who seek Israel’s demise. It permitted individuals who wish to erase any mention of the Jewish homeland from their US passport to do so, while denying citizens born in Jerusalem, Israel’s capital, the ability to list their country of birth as their place of birth. We are grateful to Ambassador David Friedman for his extraordinary efforts to correct this inequity. And we thank President Trump for having the courage formally to recognize that Jerusalem is indeed in Israel.”

Ari and Naomi Zivotofsky, Menachem's parents, said: "We are gratified and happy to learn that the State Department now plans to issue documents to American citizens born in Jerusalem that state that they were born in Israel. This seemingly simple but symbolically rich statement, which reflects reality, is something we have been looking forward to for quite some time. We appreciate the efforts of all those involved in this development, including, of course, the father and daughter legal duo of Nathan and Alyza Lewin. They have been working on this case pro bono publico tirelessly in the courts and behind the scenes for almost 18 years, We are grateful to Ambassador Friedman and the State Department, and to President Trump and his administration. In addition, we appreciate the support we have received from all corners of the world during this almost two-decade long process."

Menachem Zivotofsky added: "I am honored to be the representative of the many American citizens born in Jerusalem who want official documents to reflect that they were born in Israel! I thank my parents who started the process long before I understood what this is about, and I thank the many people who encouraged and helped us to reach this point."

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