

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

James Derek Mize, et al.

Plaintiffs,

v.

Michael R. Pompeo, et al.,

Defendants.

Civil Action No. 1:19-cv-3331-MLB

DECLARATION OF JAMES DEREK MIZE

I, James Derek Mize, hereby declare:

1. I am over 18 years of age. I have personal knowledge of the facts stated herein, except those stated on information and belief, and, if called upon, could and would testify competently to them. I submit this declaration in support of Plaintiffs' Motion for Partial Summary Judgment.

2. I am a named plaintiff in this action, which I bring along with my husband Jonathan D. Gregg ("Jonny") and our infant daughter, whom I will refer to in this declaration by her initials "S.M.-G."

3. I am a United States citizen. I was born in 1980 in Jackson, Mississippi, and grew up in the Jackson area.

4. Attached as **Exhibit A** is a true and correct copy my U.S. passport. For

security purposes, my passport number has been redacted. I will provide an unredacted copy of this document to the Court if asked to do so.

5. After graduating from high school in 1999, I moved to Ohio to attend the University of Cincinnati, where I earned undergraduate and Master's degrees, and later earned a J.D. from University of Cincinnati College of Law.

6. After graduating from law school, I moved to New York City in 2009 to begin my legal career.

7. Jonny and I met in New York City in 2014 when Jonny was visiting the city. After several months of dating, Jonny moved to New York to live with me in November 2014. Jonny and I lived together in my apartment from November 2014 through April 2015 when we rented an apartment together.

8. A true and correct copy Jonny's U.S. passport is attached as **Exhibit B**. For security purposes, his passport number has been redacted. I will provide an unredacted copy of this document to the Court if asked to do so.

9. A true and correct copy of Jonny's and my apartment lease for the period beginning on April 1, 2015 is attached as **Exhibit C**.

10. A true and correct copy of Jonny's first U.S. pay statement is attached as **Exhibit D**. Pursuant to Rule 5.2(a) of the Federal Rules of Civil Procedure, Jonny's Social Security Number has been redacted.

11. Jonny and I were married on May 30, 2015 in New York City. A true and correct copy of our marriage certificate is attached as **Exhibit E**.

12. Jonny and I moved to the Atlanta area in February 2017 to be closer to family. We currently live with S.M.-G. in Decatur, Georgia.

S.M.-G.'s Conception and Birth

13. From the early stages of our relationship, Jonny and I discussed our mutual desire to have children. When we got engaged, we did so with the understanding and hope that we would have children together.

14. When Jonny and I decided to move forward with creating our family, we decided to seek an anonymous egg donor and to accept the offer of a close friend in Northamptonshire, UK to be our gestational surrogate.

15. It was extremely important to me that Jonny and I were always the intended and only parents of any child born to us via surrogacy, including S.M.-G. Our gestational surrogate and her husband agreed to this arrangement prior to beginning the surrogacy process.

16. A true and correct copy of our consent to using an anonymously donated egg is attached as **Exhibit F**.

17. A true and correct copy of the consents of our gestational surrogate and her husband to the surrogacy arrangement is attached as **Exhibit G**. For privacy and

security purposes, certain identifying information, including the full names of our gestational surrogate and her husband, as well as their home addresses, has been redacted. I will provide an unredacted copy of this document to the Court if asked to do so.

18. Jonny and I were indifferent as to which of us would have a biological relationship to our child. We had anonymously donated eggs fertilized with each of our sperm and took turns with the implantation of ovum created with our respective genetic material.

19. In the spring of 2017, an anonymously donated egg fertilized with my genetic material was implanted in the gestational surrogate, but she did not become pregnant. In October 2017, we tried again and an anonymously donated egg fertilized with Jonny's genetic material was implanted in the gestational surrogate. This time the surrogate became pregnant with our daughter, S.M.-G.

20. Attached as **Exhibit H** is a true and correct copy of documentation from our fertility clinic indicating that the embryo that resulted in S.M.-G. was created using Jonny's sperm. For privacy and security purposes, certain identifying information, including home addresses and the name of our gestational surrogate, has been redacted. I will provide an unredacted copy of this document to the Court if directed to do so.

21. When the gestational surrogate was approximately two months pregnant, I began making regular extended trips to the U.K. to be with and care for the gestational surrogate. I was present in the U.K. for the entire third trimester of the pregnancy.

22. Due to work commitments, Jonny was primarily in the United States during the pregnancy, but for medical appointments was able to make several short trips to the U.K. during that time. To ensure that he would be present for S.M.-G.'s birth, Jonny was present in the U.K. for the last five weeks of the pregnancy.

23. S.M.-G. was born in the summer of 2018, with both Jonny and I present in the delivery room. Jonny cut the umbilical cord while I held our daughter. We named our newborn daughter together, including giving her a hyphenated last name to reflect our status as a family and that Jonny and I are both her parents.

24. A true and correct copy of S.M.-G.'s birth certificate is attached as **Exhibit I**. Pursuant to Rule 5.2(a) of the Federal Rules of Civil Procedure, S.M.-G.'s full name and birth date have been redacted from Exhibit I.

25. Jonny, S.M.-G., and I stayed in the hospital for three days and two nights, while Jonny and I cared for S.M.-G. and got to know her. The gestational surrogate also stayed in the hospital during that time. When we left the hospital, Jonny and I drove the surrogate to her home, and then brought S.M.-G. home to our

own temporary Northamptonshire residence. At all times since her birth, Jonny and I have been S.M.-G.'s only parents, and no other person has ever acted as her parent.

26. Photographs of our family are attached as **Exhibit J**.

The Parental Order Process

27. In August 2018, Jonny and I applied for a Parental Order under Section 54 of the Human Fertilisation and Embryology Act 2008 (the "Application for Parental Order") to reflect our status as S.M.-G.'s parents.

28. In September 2018, Jonny and I returned to the United States with S.M.-G.

29. On March 21, 2019 the Central London Family Court issued a Parental Order declaring "that [S.M.-G.], who was born on [] July 2018 is to be treated in law as the child of the parties to a marriage, Jonathan Daniel Gregg and James Derek Mize."

30. A true and correct copy of the March 21, 2019 Parental Order issued by the Central London Family Court is attached as **Exhibit K**. Pursuant to Rule 5.2(a) of the Federal Rules of Civil Procedure, S.M.-G.'s full name and birth date have been redacted from Exhibit K.

31. On April 17, 2019, the General Registrar Office issued a birth certificate identifying Jonny and me as S.M.-G.'s parents. *See* Ex. I.

Our Efforts to Establish Our Daughter's U.S. Citizenship

32. On March 26, 2019, I took S.M.-G. to a local Social Security Administration office in Atlanta, Georgia to apply for a Social Security number.

33. I was very surprised and disappointed when the staff declined to issue the Social Security number, and stated that additional evidence of S.M.-G.'s citizenship was required. The staff advised me to return to the U.S. Embassy in London to establish S.M.-G.'s citizenship.

34. Jonny and I immediately arranged to travel to London with S.M.-G. to obtain the necessary documents to confirm her U.S. citizenship.

35. On April 24, 2019, Jonny, S.M.-G., and I went to the U.S. Embassy in London to apply for a Consular Record of Birth Abroad (CRBA) and a U.S. Passport to establish S.M.-G.'s citizenship. We were called to a window by a staff person, to whom we presented S.M.-G.'s CRBA application (including both Jonny's and my U.S. passports, and a copy of our marriage certificate) and passport application. Embassy staff did not return copies of these applications to us.

36. The staff person went into a back room for some time before returning to ask which of us was S.M.-G.'s father. Jonny and I explained that we are both S.M.-G.'s fathers. When the staff person pressed for information on which of our sperm had been used to conceive S.M.-G., we described the assisted reproductive

technology process we used to bring our daughter into the world. The clerk asked us to wait.

37. Over the next several hours, we waited with S.M.-G. while numerous different-sex couples were called to a window, had their applications promptly processed, and received a CRBA confirming their child's U.S. citizenship. It did not appear that embassy staff asked any of these families for details regarding the conception of their child, or for additional evidence of parentage beyond a birth certificate and marriage license.

38. After approximately three hours of waiting, embassy staff called us to another window and informed us that they were denying S.M.-G.'s CRBA application. I asked to speak to a supervisor. The head of the Passport and Citizenship Unit came to speak with us. He told us that embassy staff, in consultation with other State Department personnel "up the chain," had determined that S.M.-G. did not qualify for citizenship at birth because Jonny had not lived in the United States for five years prior to S.M.-G.'s birth, and that she could not derive citizenship through me because I am not her biological parent. He also provided us with a letter confirming the denial of S.M.-G.'s CRBA application.

39. A true and correct copy of the April 24, 2019 letter is attached as **Exhibit L**. Pursuant to Rule 5.2(a) of the Federal Rules of Civil Procedure,

S.M.-G.'s full name and birth date have been redacted from Exhibit L.

40. The State Department's denial of my daughter's citizenship has been a source of significant stress for us as a family. Like all families with young children, we are working hard to balance our family lives with our careers and health. Unfortunately, we learned in November 2018 that Jonny had a benign tumor in his brain affecting his vision. The tumor needed to be removed immediately at Emory Hospital in Atlanta. Throughout 2019, Jonny required significant rehabilitation treatments and monitoring at Emory Hospital. After leaving the embassy on April 24, 2019, Jonny and I were forced to consider that I might have to live alone in the U.K. with our daughter so that he could return to Atlanta for his job and medical appointments. Ultimately, we decided that we would attempt to return home to the United States together, with our daughter on a temporary tourist visa, and that even after that visa expired we would remain together as a family to give her the stable home life she deserves.

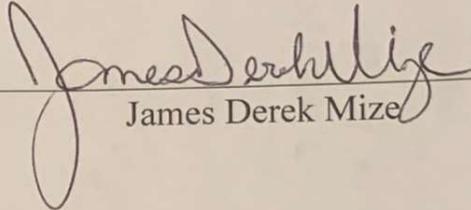
41. My entire life was transformed when our daughter was born. Jonny and I made the decision to rebalance our careers in order for me to stay at home with her. My daughter and I go to playdates with friends in the community and to classes for music, swimming, and gymnastics. I am the Room Parent at our church's preschool two days a week. We are a family with two married parents. I am my daughter's

“Daddy.” Yet, it the State Department will not recognize us as a family with two married parents.

42. When I was told at the embassy that our daughter had been denied a U.S. passport, I was extremely emotional. I hoped that the period in my life when I experienced discrimination was over. It brought back terrible memories of my adolescence, when I feared that being married and having a family was never going to be possible for me. Most heartbreaking though has been to witness my daughter experience differential treatment because of who her parents are.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Decatur, Georgia this 16th day of January 2020.


James Derek Mize