

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 JONATHAN D. GREGG**

I, Jonathan D. Gregg, 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 James Derek Mize ("Derek") 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. My mother is a U.S. citizen who was born and raised in the United States. My father is a citizen of the United Kingdom. My parents were married in 1978, and I was born in 1981 in London, England. Although

I was born and grew up in London, I have always been an American. My mother grew up in New York City, and I have a large extended family in South Carolina that we visited. As a child I cherished stories my mother told of her childhood and young adulthood in America. I always imagined that one day I would make the decision to return. When I met Derek, we had an instant connection. It was an easy decision to marry him and build a family in America.

4. A true and correct copy of my U.S. passport is attached to the Declaration of James Derek Mize (“Mize Declaration” or “Mize Decl.”) as **Exhibit B**. 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. Derek and I met in New York City in 2014 when I was visiting the city. After several months of dating, I arranged to transfer to my employer’s New York office and moved to New York to live with Derek in November 2014. Derek and I lived together in Derek’s apartment from November 2014 through April 2015 when we rented an apartment together. *See also* Mize. Decl., Ex. C.

6. A true and correct copy of my first U.S. pay statement is attached to the Mize Declaration as Exhibit D. Pursuant to Rule 5.2(a) of the Federal Rules of Civil Procedure, all but the last four digits of my Social Security Number have been redacted.

7. Derek and I were married on May 30, 2015 in New York City. *See also*

Mize. Decl., Ex. E.

8. Derek 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**

9. From the early stages of our relationship, Derek 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.

10. When Derek and I decided to move forward with creating our family, we decided to seek an anonymous egg donor and to accept the offer of close friend in Northamptonshire, U.K. to be our gestational surrogate. *See also* Mize. Decl., Ex. F.

11. It was extremely important to me that Derek 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. *See also* Mize. Decl., Ex. G.

12. Derek 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.

13. In the spring of 2017, an anonymously donated egg fertilized with

Derek's 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 my genetic material was implanted in the gestational surrogate. This time the surrogate became pregnant with our daughter, S.M.-G. *See also* Mize Decl., Ex. H.

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

15. Due to work commitments, I 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 I would be present for S.M.-G.'s birth, I was present in the U.K. for the last five weeks of the pregnancy.

16. S.M.-G. was born in the summer of 2018, with both Derek and I present in the delivery room. I cut the umbilical cord while Derek 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 Derek and I are both her parents. *See also* Mize Decl., Ex. I.

17. Derek, S.M.-G. and I stayed in the hospital for three days and two nights,

while Derek 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, Derek 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 S.M.-G.'s birth, Derek and I have been her only parents and no other person has ever acted as her parent.

### **The Parental Order Process**

18. In August 2018, Derek 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.

19. In September 2018, Derek and I returned to the United States with S.M.-G. *See also* Mize Decl., Ex. J.

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

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

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

22. On March 26, 2019, Derek took S.M.-G. to a local Social Security

Administration office in Atlanta, Georgia to apply for a Social Security number. Derek was very concerned when he called me after leaving the office to tell me that the staff had declined to issue the Social Security number, and stated that additional evidence of S.M.-G.'s citizenship was required. Derek told me that the staff had advised him to return to the U.S. Embassy in London to establish S.M.-G.'s citizenship.

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

24. On April 24, 2019, Derek, 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 Derek'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.

25. The staff person went into a back room for some time before returning to ask which of us was S.M.-G.'s father. Derek 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.

26. 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.

27. 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. Derek 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 I 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 Derek because he is not her biological parent. He also provided us with a letter confirming the denial of S.M.-G.'s CRBA application. *See Mize Decl., Ex. L.*

28. The State Department's denial of my daughter's citizenship has been a source of great stress for our family. In the months preceding the State Department's decision, my husband and his mother cared for me during a complex brain surgery

and months of recovery at home in Atlanta. In April 2019, when we were forced to travel to London to establish S.M.-G.'s citizenship and then denied it, we could not help but to worry that our daughter would be denied re-entry to the United States. The State Department gave us no assurances of what would happen at the border if we tried to return home.

29. The State Department's decision threatened to separate us as a family. In April 2019, it was important that I return to Atlanta for medical appointments at Emory Hospital. I also had recently begun working again. Thus, if our daughter was denied entry to the United States, our plan was that Derek would return to the U.K. with her, and that I would remain alone in Atlanta. As a long-term matter, I was extremely anxious about our daughter's ability to live in the United States with Derek, if my medical situation deteriorated. Ultimately upon arriving in Atlanta, our daughter was able to enter the United States on a temporary tourist visa. We decided to remain in the United States after that visa expired, in order to give our daughter the stable home life she deserves.

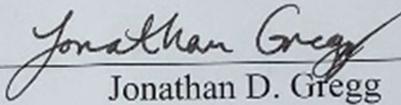
30. Our daughter now having overstayed her tourist visa, I am unable to return to the U.K. with her, because of the risk that she would not be allowed to return home to the United States. My sister, niece and my parents have been able to visit Atlanta once since April 2019, but my parents' advanced age likely means they will

not be able to make the trip again. Accordingly, my daughter is missing valuable time getting to know her family, and I am unable to see my parents unless I leave my daughter.

31. We are a family of married parents with a child. It has been difficult for the State Department to distinguish between Derek and me as parents to our daughter. Although it was my sperm that fertilized the embryo which successfully resulted in pregnancy and the birth of our daughter, Derek and I are both her parents. We carefully followed the laws to make sure this was established on her birth certificate. I am her “Dadda,” and Derek is her “Daddy.” For her own sense of identity, I pray that soon she will be recognized as a child born to married parents and as a U.S. citizen.

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

Executed in Decatur, Georgia this 16<sup>th</sup> day of January 2020.

  
Jonathan D. Gregg