

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

ELLEN W. GERBER; PEARL BERLIN; LYN MCCOY; JANE BLACKBURN; ESMERALDA MEJIA; CHRISTINA GINTER-MEJIA, for herself and as guardian *ad litem* for J.G.-M., a minor;

Plaintiffs,

v.

ROY COOPER, in his official capacity as the Attorney General of North Carolina; JEFF THIGPEN, in his official capacity as the Register of Deeds for Guilford County; DONNA HICKS SPENCER, in her official capacity as the Register of Deeds for Catawba County; JOHN W. SMITH, in his official capacity as the Director of the North Carolina Administrative Office of the Courts; AL JEAN BOGLE, in her official capacity as the Clerk of the Superior Court for Catawba County.

Defendants.

CIVIL ACTION NO.

1:14-cv-299

AFFIDAVIT OF ESMERALDA MEJIA

ESMERALDA MEJIA, being duly sworn, deposes and says:

1. I am over 18 years of age, legally competent to give this affidavit and have personal knowledge of the facts set forth in this affidavit.
2. I am a citizen and resident of Hickory, North Carolina where I have lived for 13 years.

3. I submit this affidavit to describe in detail the risks of immediate harm that I and my family face as a result of North Carolina's refusal to recognize my legal marriage to my spouse, Christina Ginter-Mejia. I have suffered two bouts with cancer, and suffered acute liver failure several years ago. I continue to have ongoing and serious medical conditions, and there is a real risk that I will die before Christina and my marriage can be legally recognized and I can become a legal parent to our son J.G.-M.

Military Service

4. I joined the Army in 1979 as a as a maintenance officer with certification as a paratrooper and retired as a Major (P) in 1993 for medical reasons following my first bout with cancer. During my time in the military, I earned the Bronze Star, four Meritorious Awards for outstanding performance in my duties, two Army Commendation Medals for initiative, and technical knowledge, two Army Achievement Awards, a medal from the Country of Kuwait, and Southwest Asia Service.

Marriage to Christina Ginter-Mejia

5. I met my wife Christina while we were both attending the University of Wisconsin at Madison as undergraduates. We stayed in touch after graduation and when I retired from the military in 1993, I visited Christina, who was living in Asheville. We began dating right away and have been in a committed relationship ever since.

6. For the past 20 years we have been in a loving, stable relationship and have built a family together. We love living in North Carolina. We lived in Texas and Virginia briefly, but missed North Carolina and moved back in 2000. We have lived in Hickory ever since.

7. Christina and I were legally married in Maryland on August 21, 2013 in a small ceremony with 34 friends and family members present. I would have married her 20 years ago if I could have. She has been my rock, and I don't know where I'd be without her.

8. Our marriage, however, is not recognized by the State of North Carolina.

Adoption of and Relationship with J.G.-M.

9. Both Christina and I have wanted children for many years. When I was volunteering as a translator for a local organization that serves Latino families, the director of the organization introduced us to J.G.-M.'s biological mother, who was pregnant at the time and looking for a couple to adopt her child.

10. Although we wanted to jointly adopt J.G.-M, we could not do so. I cannot obtain a second parent adoption of J.G.-M. under North Carolina law, and because the state does not recognize my marriage to Christina. Christina adopted J.G.-M. on September 21, 2007. I am not legally J.G.-M.'s mother under the laws of the State even though Christina and I share equally in the joys and responsibilities of being parents to J.G.-M, and I am a stay at home mom and devote all of my energies towards caring for him.

My Health Issues Cause Imminent Harm

11. In 1992 I was diagnosed with cervical cancer and had a hysterectomy. After that, I took medical retirement and left the Army.

12. Four years later, in 1996, I received another cancer diagnosis: I had a Pancoast tumor in my left lung. The doctors did not catch it until a relatively late stage. I underwent surgery to remove the upper lobe of my lung and three ribs and to disconnect my T1 nerve root. I also underwent chemotherapy and radiation. The chronic pain caused by these treatments was excruciating, but Christina was always by my side supporting me and helping me through it.

13. I recovered well until 2008, when I suffered from acute liver failure, caused by chemical exposure. I had to be airlifted to Charlotte, and I went into a coma until I received a liver transplant. The transplant went smoothly, but I suffered many post-surgical complications, including bleeding in my brain while I was in the coma which caused temporary cortical blindness, a huge blood clot in my subclavian vein in my neck because of past radiation damage, and difficulty with the ventilator because of my past lung issues.

14. Although I am recovering from the surgery, I have many remaining medical issues and new problems arise frequently. I have some remaining visual damage and damage to my lungs from the radiation, which causes me to cough up blood any time I get any sort of respiratory ailment. Because of the transplant, I take immunosuppressive drugs, so it always takes longer for me to recover whenever I get sick.

15. Because of the staggering trauma that my body has undergone through these medical conditions and procedures, new issues are constantly arising. Christina takes me to the emergency room at least a few times a year for various problems, and we worry each time that I could die without ever having a legal relationship with my wife or my son under North Carolina law.

16. Because of my medical history, I frequently have new and serious health problems. In light of these new issues as well as my chronic problems and generally weakened state, Christina and I worry that I could die anytime, without much warning or time to prepare. Because our marriage and my parent-child relationship with J.G.-M. are not recognized under North Carolina law, we are always worried about the consequences my death will have on our family.

17. I have been designated 100% disabled by the military. Because of my military service and my disabled status, there are many benefits and opportunities that J.G.-M. and Christina could be eligible for if they were my legal child and spouse. For example, if J.G.-M. were my natural or adopted son, he would qualify for a four-year scholarship program at North Carolina colleges. However, if I cannot adopt J.G.-M. before I die, he will not get this opportunity.

18. If I had legal relationships with them when I die, Christina and J.G.-M. would likely also be eligible for Dependency and Indemnity Compensation, which is a monthly benefit paid to eligible surviving spouses and children of veterans. Christina and J.G.-M. would likely also be entitled to a Death Pension from the VA in the event of my death, if they were my legal spouse and child. If my marriage to Christina is not recognized by North Carolina and I cannot legally adopt J.G.-M. before I die, they will not be eligible for these benefits.

19. Even if North Carolina recognizes same-sex marriages after I die, there is no assurance that Christina will be able to recoup these benefits. Once I am no longer living, there will be no way for me to adopt J.G.-M., so it would be impossible for him to be compensated for these lost opportunities and benefits.

20. The idea that I could die without my relationship with my son and my wife being recognized in the place where we have lived for the past 13 years upsets me greatly. We have built a happy, loving and stable family in North Carolina, and the fact that our family is not treated to the same dignity and respect as other families hurts us. When I die, I would like to know that the life I lead with my family was recognized as valid by the state. I would like to know that my son and spouse both have their names on my death certificate.

Ongoing Harms to Our Family

21. Because my relationships with my wife and my son are not recognized under North Carolina law, our family suffers mental, emotional and financial harms every day.

22. With my frequent and often urgent visits to the hospital, I constantly worry about my family being denied access to me in an emergency because I do not have legal relationships with them. Christina has been my rock for the past 20 years and has seen me through cancer and my liver transplant. She supported me and kept me positive even through my most painful medical procedures and treatments. It would be incredibly difficult to endure any further procedures if she were not allowed to be by my side. My son J.G.-M. is my reason to fight and gives me strength to push through any difficult procedure. If he were denied access to me during an emergency, it would be devastating.

23. Although Christina has signed a medical power of attorney for me, I worry that in an emergency, at an unfamiliar hospital, her right to make decisions on my behalf could be denied. She has been through all of my surgeries and treatments with me, and she is the person I trust to act on my behalf if I am ever unable to make decisions on my own.

24. Because Christina is not my legal spouse, her state employer refuses to grant her medical leave when I am sick and need her help. When my liver failed and I was airlifted to Charlotte, I was hospitalized for 114 days, but Christina was not granted a single day of medical leave from her job. This worries me because I frequently need her in medical emergencies, and there is a real possibility that she will have to choose between being there for me or losing her job because I am not recognized as her spouse.

25. While Christina and I made the decision to adopt a child together and share equally in all of the delights and the burdens of raising our son, only Christina is recognized as

J.G.-M.'s legal parent. This means that at any moment, my relationship with my son may be ignored, for instance at his school, in a medical situation or when we are traveling. This is a serious problem, given that I am his full-time caregiver. I am terrified that I will be unable to provide J.G.-M. with the care he needs in the event of an emergency.

26. I also worry about the mental and emotional consequences of J.G.-M.'s not having a legal relationship with one of his parents.

27. This could cause him to feel less secure and stable in his relationship with his family. That his parents' marriage is not recognized under North Carolina law may also confuse him and cause him to doubt the validity of our relationship and stability of our family as a whole.

28. Finally, our family endures ongoing financial harms that arise from the lack of legal recognition of our relationships with one another. For example, because I am 100% disabled, Christina and J.G.-M. should receive my social security benefits. However, because Christina is not my legal spouse in North Carolina and J.G.-M. is not my legal child, they do not receive these benefits.

29. That the federal government recognizes our marriage, but the state of North Carolina does not creates confusion and uncertainty around filing taxes, ownership of property, custody of our minor child, and access to each other's benefits. Since we moved to North Carolina 13 years ago, we have not been able to file joint tax returns and avail ourselves of the tax benefits that the State of North Carolina confers upon married couples, and couples with dependent children. Instead we are required to file three separate tax forms, which adds time and financial burden to filing our taxes. Because I am not J.G.-M.'s legal parent, I cannot claim the child credit, and because Christina could not be named as my spouse on the VA loan that we used to purchase our house, she cannot claim the mortgage interest credit. Also, I worry that in

the event of Christina's death I will lose J. G-M, whom I have cared for his whole life as his parent. If our marriage were recognized under North Carolina law, we could avail ourselves to the benefits conferred on other married couples and their families. It would also alleviate the anxiety and uncertainty surrounding our status as a family.

Furthermore, the affiant saith not.

This the 8th day of April, 2014.



Esmeralda Mejia

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

Sworn to and subscribed before me
this 8th day of April, 2014.




Notary Public Signature

Wanda C. Sigmon

Notary Public Name

My Commission Expires: 8/23/2018