

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

ADA MERCEDES CONDE VIDAL and  
IVONNE ÁLVAREZ VÉLEZ; MARITZA  
LÓPEZ AVILÉS and IRIS DELIA RIVERA  
RIVERA; JOSÉ A. TORRUELLAS IGLESIAS  
and THOMAS J. ROBINSON; ZULMA  
OLIVERAS VEGA and YOLANDA ARROYO  
PIZARRO; JOHANNE VÉLEZ GARCÍA and  
FAVIOLA MELÉNDEZ RODRÍGUEZ; and  
PUERTO RICO PARA TOD@S,

*Plaintiffs,*

v.

ALEJANDRO J. GARCÍA PADILLA, in his  
official capacity as Governor of the  
Commonwealth of Puerto Rico; ANA RIUS  
ARMENDARIZ, in her official capacity as  
Secretary of the Health Department of the  
Commonwealth of Puerto Rico; WANDA  
LLOVET DÍAZ, in her official capacity as  
Director of the Commonwealth of Puerto Rico  
Registrar of Vital Records; and MELBA ACOSTA  
FEBO, in her official capacity as Director of the  
Treasury in Puerto Rico,

*Defendants.*

Civil Action No. 3:14-cv-01253-PG

**STATEMENT OF UNCONTESTED MATERIAL FACTS  
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

**TO THE HONORABLE COURT:**

**COME NOW** Plaintiffs Ada Mercedes Conde Vidal and Ivonne Álvarez Vélez, by and through their attorney; and Maritza López Avilés and Iris Delia Rivera Rivera; José A. Torruellas Iglesias and Thomas J. Robinson; Zulma Oliveras Vega and Yolanda Arroyo Pizarro; Johanne Vélez García and Faviola Meléndez Rodríguez; and Puerto Rico Para Tod@s (“Plaintiffs”), by and through their attorneys, and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56(b), submit the following Statement of Uncontested

Material Facts in support of their Motion for Summary Judgment, which is filed herewith.

**I. Plaintiffs**

1. Plaintiffs are five loving, committed same-sex couples and an organization with lesbian, gay, bisexual and transgender (“LGBT”) members who want either to marry or to have their out-of-Commonwealth marriages recognized under Puerto Rico law.

2. Plaintiffs Ada Mercedes Conde Vidal, 53, and Ivonne Álvarez Vélez, 67, reside in San Juan, Puerto Rico and married in Massachusetts in 2004. They have been in a loving, committed relationship for more than fourteen years. Conde Vidal Decl. ¶¶ 1-2; Álvarez Vélez Decl. ¶¶ 1-2.

3. Together Ada and Ivonne have cared for Ada’s daughter, A.A.C., since early in their relationship. Ivonne desires to adopt A.A.C., but she is prohibited from doing so because Puerto Rico only allows joint adoption by married couples, and does not recognize Ada and Ivonne’s marriage. A.A.C. has suffered heart problems since age eight, and Ada and Ivonne fear that Ivonne may be prevented from visiting, caring for or making medical decisions for A.A.C., if Ada is at some point unable to do so. Conde Vidal Decl. ¶¶ 9-11; Álvarez Vélez Decl. ¶¶ 8-9.

4. Because Ada and Ivonne’s marriage is not recognized in Puerto Rico, they have paid for powers of attorney to ensure that each can make health decisions for the other. They must file tax returns claiming they are single, and believe that they would owe less money in taxes if they could file as a married couple. They also are concerned that unless they pay for a will, their individual estates will be transferred to the Commonwealth under Puerto Rico inheritance law. Conde Vidal Decl. ¶ 8, 13-14; Álvarez Vélez Decl. ¶ 7, 12-13.

5. Plaintiffs José A. Torruellas Iglesias, 57, and Thomas J. Robinson, 56, live in San Juan, Puerto Rico, have been in a loving, committed relationship for more than thirteen years,

and married one another in 2007 in Toronto, Canada. Torruellas Iglesias Decl. ¶¶ 1-2; Robinson Decl. ¶¶ 1-2.

6. José works for the Puerto Rico Electric Power Authority (“PREPA”) and has made numerous attempts to add Thomas to his employer-provided health care, which provides health insurance to different-sex spouses of employees. José has been denied each time (most recently on March 17, 2014), because Thomas is not considered José’s spouse under Puerto Rico law. Torruellas Iglesias Decl. ¶¶ 6, 13; Robinson Decl. ¶ 13.

7. Because José cannot add Thomas to José’s health insurance, the couple was forced to purchase private health insurance for Thomas at a higher cost. After carrying the burden of these expenses, in March 2014, Thomas enrolled in Mi Salud, the government-administered health insurance, because he no longer could afford to purchase private individual health insurance. Torruellas Iglesias Decl. ¶¶ 13-14; Robinson Decl. ¶ 14.

8. Because José and Thomas’s marriage is not recognized by the Commonwealth, they must claim they are single when they file Commonwealth tax returns, and they believe that they would owe less in taxes if they could file jointly. In February 2014, José called the Commonwealth’s Department of the Treasury to inquire about filing a joint tax return with Thomas and was told he would not be permitted to do so. Torruellas Iglesias Decl. ¶ 15.

9. Because Thomas is a homemaker and depends economically on José, they both worry that because they are not considered married under Puerto Rico law, Thomas is not eligible to receive Social Security survivor’s benefits in the event that José predeceases him. Torruellas Iglesias ¶¶ 15-16; Thomas Decl. ¶¶ 15-16.

10. Plaintiffs Johanne Vélez García, 49, and Faviola Meléndez Rodríguez, 37, live in Guaynabo, Puerto Rico. They have been in a loving, committed relationship for more than six

years and married in New York in May 2012. Vélez García Decl. ¶¶ 1-2; Meléndez Rodríguez Decl. ¶¶ 1-2.

11. Johanne and Faviola want to adopt a child, but are not permitted to adopt jointly in Puerto Rico because even though they are now married, Puerto Rico will not recognize their marriage—due to their being a same-sex couple. Vélez García Decl. ¶¶ 12-13, 17; Meléndez Rodríguez Decl. ¶¶ 10-13.

12. Because their marriage is not recognized by the Commonwealth, Johanne and Faviola must file Commonwealth taxes as single individuals. They believe that they would owe less money in taxes if they were able to file jointly. They have also been forced to purchase individual health insurance plans at significant cost, and fear how they will safeguard each other's future well-being. Vélez García Decl. ¶¶ 14-15; Meléndez Rodríguez Decl. ¶¶ 18-20.

13. Plaintiffs Maritza López Avilés, 58, and Iris Delia Rivera Rivera, 56, reside in Toa Alta, Puerto Rico. They have been in a loving, committed relationship for nearly forty years and wish to get married in Puerto Rico. López Avilés Decl. ¶¶ 1-2, 20-21; Rivera Rivera Decl. ¶¶ 1-2, 20-21.

14. Maritza and Iris jointly have raised their daughter, A.R.B., who has lived with the couple most of her life. In 2010, when A.R.B.'s birth mother died of cancer, Maritza was granted legal custody of A.R.B. Iris and Maritza would like to give A.R.B. the legal stability of a joint adoption, but are unable to do so because joint adoption is only allowed for married couples in Puerto Rico, and, as a same-sex couple, they are not allowed to marry in the Commonwealth. López Avilés Decl. ¶¶ 16-17; Rivera Rivera Decl. ¶¶ 16-17.

15. In 1981, Iris enlisted with the Puerto Rico National Guard, and she has served in the first Gulf War and in Panama. Because Maritza and Iris could not marry, Maritza was denied

counseling and other support services customarily offered to spouses of military personnel.

Since their relationship was not legally recognized, the military would not provide Maritza with information concerning Iris's whereabouts or whether she was safe, which caused Maritza great anxiety.

16. Iris receives disability benefits based on injuries suffered or aggravated during her active service, but because Iris cannot claim Maritza and A.R.B. as dependents, which she would be able to do if they could marry in Puerto Rico, Iris receives less in veteran's disability benefits than similarly situated veterans who are allowed to marry. In addition, because the house that they lived in at the time of Iris's deployment was held only in Iris's name, the couple had to transfer title formally to Maritza, which they would not have had to do if they could marry in Puerto Rico; otherwise Maritza would not have been able to inherit the property in the event of Iris's death while on active duty. López Avilés Decl. ¶¶ 10-12, 13; Rivera Rivera Decl. ¶¶ 10-13, 19.

17. Maritza and Iris both suffer from multiple health conditions, and Maritza has had to undergo multiple surgeries. Because they are not married, Iris has been denied access to information and the right to visit Maritza during restricted visiting hours in the hospital. Iris and Maritza fear that they will be denied access to one another again or denied the opportunity to make medical decisions for one another if they are not permitted to marry. López Avilés Decl. ¶¶ 14-15; Rivera Rivera Decl. ¶¶ 14-15.

18. Plaintiffs Zulma Oliveras Vega, 43, and Yolanda Arroyo Pizarro, 43, live in Carolina, Puerto Rico. They have been in a loving, committed relationship since 2009, and held a commitment ceremony in 2012. They wish to marry in Puerto Rico. Oliveras Vega Decl. ¶¶ 1, 2, 12; Arroyo Pizarro Decl. ¶¶ 1, 2, 19.

19. Yolanda has a daughter, A.T.A., from a previous relationship, and Zulma jointly has parented A.T.A., along with A.T.A.'s father. Yolanda and Zulma worry that Puerto Rico's marriage discrimination against them can feed insecurity and negative beliefs about A.T.A.'s own self-worth or the worth of her parents. Oliveras Vega Decl. ¶¶ 9-10; Arroyo Pizarro Decl. ¶¶ 12-16.

20. Yolanda suffers from chronic asthma, which often requires medical attention. While Yolanda was hospitalized in June 2014, hospital staff questioned Zulma about the nature of her relationship with Yolanda. Both Yolanda and Zulma fear what would happen during a medical emergency, because their relationship is not recognized by the Commonwealth. Oliveras Vega Decl. ¶ 11; Arroyo Pizarro Decl. ¶¶ 17-18.

21. Organizational Plaintiff Puerto Rico Para Tod@s is a nonprofit organization dedicated to securing, protecting, and defending the equal civil rights and welfare of LGBT people and their families in Puerto Rico. It works to fulfill its mission through education, legislative advocacy, grassroots organizing, and coalition-building. Its activities include advocating to enact nondiscrimination protections for LGBT people in public accommodations, the workplace and housing; training law enforcement officers about hate crimes and LGBT awareness; and conducting workshops in schools about LGBT issues and bullying. Serrano Burgos Decl. ¶¶ 4-5.

22. Puerto Rico Para Tod@s has hundreds of members across Puerto Rico, including multiple LGBT members who are couples and desire and intend to marry in Puerto Rico, but have been prevented from doing so because they are in a same-sex relationship. Similarly, other members have entered into valid legal marriages in other jurisdictions, but their marriages are not recognized in Puerto Rico. Serrano Burgos Decl. ¶¶ 6-7.

## II. The Marriage Ban

23. Puerto Rico's civil code states, "Marriage is a civil institution . . . whereby a man and a woman mutually agree to become husband and wife . . . . Any marriage between persons of the same sex or transsexuals contracted in other jurisdictions shall not be valid . . . ." 31 L.P.R.A. § 221 (referred to, collectively with other Puerto Rico laws that prohibit Plaintiffs from marrying or having their marriage recognized, as the "Marriage Ban").

24. Puerto Rico's Penal Code states, "It shall be a misdemeanor to . . . [m]arry another person in a marriage prohibited by civil law." 33 L.P.R.A. § 4757.

25. The current version of the Marriage Ban was enacted in 1999.

26. During the legislature's consideration of the bill that became 31 L.P.R.A. § 221 (H.B. 1013, H.R. Jud. Comm., 13<sup>th</sup> Legislative Assembly, 2d Sess. (P.R. 1997)), various legislators made statements demonstrating their discriminatory intent toward LGBT people:

- a. Rep. Jiménez Cruz said, "We don't accept homosexual conduct." ("[N]o aceptamos la conducta homosexual"). H.R. Sess. Diary, 13<sup>th</sup> Legislative Assembly, 2d Sess. 99 (P.R. 1997).<sup>1</sup>
- b. Rep. Aponte Hernández stated, "I believe that homosexuality is an abomination." ("Yo creo que es abominable el homosexualismo."). *Id.* at 109.
- c. Rep. Aponte Hernández also stated, "The discrimination, if this is such, is in the Civil Code, [and] is clear: they cannot marry." ("[E]l discrimen, si es que es alguno, está en el Código Civil, es claro: no pueden contraer matrimonio."). *Id.* at 110.

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<sup>1</sup> The original statements in this and following sub-paragraphs were made in Spanish, as indicated in the parenthetical following each English translation.

- d. Rep. Ramos Rivera stated, “Supporting marriage between two people of the same sex would lead to the degradation of Puerto Rico.” (“Y avalando el que dos personas del mismo sexo se puedan casar yo estaría comenzando el deterioro del Puerto Rico.”). *Id.* at 138.
- e. Rep. Núñez González stated that allowing homosexuals to marry would set a bad example for children. (“Aquí lo que estamos tratando, con este voto a favor de este Proyecto, . . . es de dar una esperanza a nuestros niños, a esas nuevas generaciones para que . . . no piensen en la alternativa de casarse unos con otros.”). *Id.* at 145.
- f. Rep. Mundo Ríos said, “[L]et’s avoid . . . turning Puerto Rico . . . into a homosexual and lesbian paradise. If Puerto Rico were to become that . . . it would be demeaning to a people with such high morals and customs.” (“evitemos . . . convertir a Puerto Rico . . . como un paraíso para los homosexuales y las lesbianas. Cuando Puerto Rico se convierta en eso . . . realmente es denigrante para un pueblo que la moral y las costumbres están muy en altas.”). *Id.* at 132.

### **III. Concrete and Stigmatic Harms Inflicted Upon Plaintiffs by the Marriage Ban**

27. The Marriage Ban deprives Plaintiffs, their children, and similarly situated LGBT couples and their families in Puerto Rico of numerous protections, benefits, rights, and responsibilities available to different-sex couples who are permitted to marry in Puerto Rico, or whose marriages entered into elsewhere are recognized in Puerto Rico. Many of these protections can only be accessed through legally recognized marriage; for others, marriage provides a simpler and less expensive way to obtain those benefits and rights. The benefits,

rights and responsibilities denied to Plaintiffs include, but are not limited to:

- a. The right to make health care decisions for an incapacitated spouse. 24 L.P.R.A. § 3047. Without this right, Plaintiffs worry they will have no say in their spouse or partner's care. *E.g.*, Conde Vidal Decl. ¶ 12; Álvarez Vélez Decl. ¶ 11; López Avilés Decl. ¶¶ 14-15; Rivera Rivera ¶¶ 14-15.
- b. Preference given to spouses in being appointed legal guardian for an incapacitated spouse. 31 L.P.R.A. § 709.
- c. The marital privilege in litigation. 32 L.P.R.A. Ap. IV R. 27.
- d. The duty of spousal support. 31 L.P.R.A. § 562.
- e. The right to jointly adopt a child. 31 L.P.R.A. § 534. The Marriage Ban prevents plaintiffs from jointly adopting, with the attendant legal protections, children they have raised or seek to raise. *E.g.*, Conde Vidal Decl. ¶¶ 9-11; Álvarez Vélez Decl. ¶¶ 8-9; López Avilés Decl. ¶¶ 16-17; Rivera Rivera Decl. ¶¶ 16-17; Vélez García ¶¶ 12-13; Meléndez Rodríguez ¶¶ 10-12.
- f. Statutory protections granted to spouses upon death, including rights to inheritance when a spouse dies without a will. 31 L.P.R.A. §§ 2411, 3700. Because of the Marriage Ban, Plaintiffs must make alternative arrangements at their own expense. *E.g.*, Conde Vidal Decl. ¶ 13; Álvarez Vélez Decl. ¶ 12; López Avilés Decl. ¶ 13; Rivera Rivera ¶ 13.
- g. The right to claim an elective share of the estate of a deceased spouse who died without a will. 31 L.P.R.A. §§ 2361-62.
- h. Survivor benefits for the spouse of a police officer killed in the line of

duty. 25 L.P.R.A. § 402.

- i. Commonwealth retirement fund survivor benefits for spouses. 3 L.P.R.A. §§ 772-73.
- j. Commonwealth benefits for the surviving spouse of a veteran. 29 L.P.R.A. § 739.
- k. The equitable division of marital property upon divorce. 31 L.P.R.A. §§ 381, 3697.
- l. The right to file joint income tax returns in the Commonwealth. 13 L.P.R.A. §§ 30043, 30241. Without this right, Plaintiffs must file income tax returns individually, and cannot benefit from any lower tax burden that accompanies filing jointly with their spouse. Conde Vidal Decl. ¶ 14; Álvarez Vélez Decl. ¶ 13; Torruellas Iglesias Decl. ¶ 15; Thomas Decl. ¶ 15; Vélez García Decl. ¶ 18; Meléndez Rodríguez Decl. ¶ 14.

28. In addition to the consequences under Puerto Rico law, many federal benefits and protections inure only to couples whose marriages are recognized in the jurisdiction in which they reside. The Marriage Ban thus deprives LGBT Puerto Ricans and Plaintiffs of federal benefits, such as:

- a. Benefits flowing from the Family Medical Leave Act (“FMLA”), including the right to care for a partner or spouse with a serious health condition without jeopardizing one’s employment. 29 U.S.C. § 2601, *et seq.*; 29 C.F.R. § 825.012 (defining “spouse” for FMLA leave based on whether the marriage is “recognized under State law for purposes of marriage in the State where the employee resides.”).

- b. Federal spousal benefits afforded to veterans. 38 U.S.C. § 103(c) (federal spousal veterans benefits determined “according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued”). Plaintiffs who served in the armed services are not given the same benefits as those who have legally recognized spouses. Rivera Rivera Decl. ¶ 19-20, 23; López Áviles Decl. ¶ 22.
- c. Social Security spousal benefits, because the Social Security Administration determines whether an individual is a qualified spouse by looking to marriages recognized by the jurisdiction in which the couple resides. 20 C.F.R. § 404.345 ). Particularly for Plaintiffs who do not work outside of the home, the inability to receive this benefit causes great concern. *E.g.*, Torruellas Iglesias Decl. ¶ 16; Robinson Decl. ¶ 16. Rivera Rivera Decl. ¶ 19, 23; López Avilés Decl. ¶ 22.
- d. Spousal benefits under copyright statutes. 17 U.S.C. § 101 (Spouse determined by the “the law of the author’s domicile at the time of his or her death. . .”).

29. Additional benefits and rights that do not stem directly from the Commonwealth or federal governments, but for which third parties look to marital status, may also be denied to Plaintiffs because of the Marriage Ban, including the ability to obtain spousal health insurance coverage. Plaintiffs and similarly situated LGBT couples must purchase individual coverage at higher cost because they cannot obtain spousal coverage through their employers. *E.g.*, Torruellas Iglesias Decl. ¶¶ 6, 13; Robinson Decl. ¶ 13; Vélez García Decl. ¶ 19; Meléndez

Rodríguez Decl. ¶ 15.

30. The Marriage Ban also deprives Plaintiffs of the intangible benefits of marriage, including the commitment and structure marriage provides to the couple and their children, as well as the recognition from family, friends, and the community of the relationship and the couple's commitment. *E.g.*, Conde Vidal Decl. ¶ 7; Álvarez Vélez Decl. ¶ 6; Thomas Decl. ¶ 12; Rivera Rivera Decl. ¶ 20; López Avilés Decl. ¶ 20.

31. The Marriage Ban distresses unmarried Plaintiffs, who experience Puerto Rico's discriminatory marriage laws as painful, stigmatizing, and disrespectful. After so many years of building a life together, unmarried Plaintiffs want to marry at home, in Puerto Rico, celebrating alongside their friends and family. *E.g.*, Arroyo Pizarro Decl. ¶ 20; Oliveras Vega Decl. ¶ 12; Rivera Rivera Decl. ¶¶ 24-25; López Avilés Decl. ¶¶ 23-24.

32. The Marriage Ban's prohibition against recognizing existing marriages also causes married Plaintiffs a deep sense of loss. The fact that their government deems them strangers to each other, despite how committed they are, and in defiance of the legal marriage they have entered, interferes with their ability to communicate to others that they are a family and are committed to each other for life. *E.g.*, Vélez García Decl. ¶ 20; Meléndez Rodríguez Decl. ¶ 15; Torruellas Iglesias Decl. ¶ 17; Robinson Decl. ¶ 17.

Dated: September 15, 2014

Respectfully submitted,

/s/ Omar Gonzalez-Pagan  
Omar Gonzalez-Pagan\*  
Hayley Gorenberg\*  
Jael Humphrey-Skomer\*  
**LAMBDA LEGAL DEFENSE &  
EDUCATION FUND, INC.**  
120 Wall Street, 19<sup>th</sup> Floor  
New York, New York 10005-3904  
T: (212) 809-8585 | F: (212) 809-0055  
ogonzalez-pagan@lambdalegal.org

hgorenberg@lambdalegal.org  
jhumphrey@lambdalegal.org

Gary W. Kubek\*  
Harriet M. Antczak\*  
Jing Kang\*  
**DEBEVOISE & PLIMPTON LLP**  
919 Third Avenue  
New York, NY 10022  
T: (212) 909-6000 | F: (212) 909-6836  
gwkubek@debevoise.com  
hmantcza@debevoise.com  
jkang@debevoise.com

Ryan M. Kusmin\*  
**DEBEVOISE & PLIMPTON LLP**  
555 13th Street N.W.  
Washington, DC 20004  
T: (202) 383-8000 | F: (202) 383-8118  
rmkusmin@debevoise.com

Celina Romany-Siaca (USDCPR 121811)  
**Celina Romany Law Offices**  
268 Munoz Rivera Avenue, Suite 1500  
San Juan, PR 00918  
T: (787) 754-9304 | F: (787) 754-9324  
bufetecelinaromany@gmail.com

*Attorneys for Plaintiffs Maritza López Avilés  
and Iris Delia Rivera Rivera; José A.  
Torruellas Iglesias and Thomas J.  
Robinson; Zulma Oliveras Vega and  
Yolanda Arroyo Pizarro; Johanne Vélez  
García and Faviola Meléndez Rodríguez;  
and Puerto Rico Para Tod@S.*

AND

/s/ Ada M. Conde Vidal  
Ada M. Conde Vidal (USDCPR 206209)  
**Conde Attorney at Law, PSC**  
P.O. Box 13268  
San Juan, PR 00908-3268  
T: (787) 721-0401 | F: (787) 977-8072  
condelawpr@gmail.com

*Attorney for Plaintiffs Ada Mercedes Conde  
Vidal and Ivonne Álvarez Vélez*

\* Admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I, Omar Gonzalez-Pagan, an attorney, certify that on September 15, 2014, I served upon counsel for all parties by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system.

*/s/ Omar Gonzalez-Pagan*