

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

Anthony J. Gonzales,

Plaintiff,

v.

Nancy A. Berryhill, Acting Commissioner, Social  
Security Administration,

Defendant.

No. 1:18-cv-00603 RB-KRS

**DECLARATION OF ANTHONY J. GONZALES**

**DECLARATION OF ANTHONY J. GONZALES**

I, Anthony J. Gonzales, declare as follows:

1. I am the plaintiff in the above-captioned matter. I have actual knowledge of the matters stated in this declaration.

**Relationship of Anthony Gonzales and Mark Johnson**

2. I was born in 1955, as the fourth of five siblings, and I am now 63 years old. I grew up in New Mexico and have lived here for almost all of my life. I went to California to attend college, but I moved back to New Mexico shortly thereafter and obtained an accounting certificate from what was then Albuquerque Technical Vocational Institute.

3. I met the love of my life, Mark Johnson, in July 1998. Twenty years later, I still remember the life-changing moment when Mark entered my life: it was a Sunday afternoon, and I was at a gay bar called the Ranch in Albuquerque. Mark and I struck up a conversation with each other, and we ended up talking for hours. I gave him a ride home, and we exchanged phone numbers and said good night to each other. At the time, I was 43 and Mark was 41.

4. When Mark and I met, I was working at a non-profit organization, the Center for Civic Values (“CCV”), as an accountant. CCV was formerly the New Mexico Bar Foundation, and it ran a statewide high school mock trial program and managed the Interest on Lawyer Trust Account program. It provides education and resources for public participation in the law.

5. Mark, at the time, had only moved New Mexico a few weeks earlier. He had previously worked in New York in advertising but had decided to pursue a new career path. He therefore decided to move to New Mexico and get a master’s degree in art education from the

University of New Mexico. After he received his degree, Mark first taught at Cibola High School and then at Susie Reyes Marmon Elementary School, both in Albuquerque.

6. After we met in the summer of 1998, Mark and I started to spend most of our free time together. We shared many of the same interests such as musicals, sporting events, cooking, travel, working out, and even the types of movies we liked most. While I had had relationships before, I could tell this one was different.

7. In November 1998, a few months into our relationship, I decided to look for a house to buy. Mark was involved in that process, and we visited houses for sale together. We jointly picked a house that was close to both the University of New Mexico, where Mark was going to school, and my job. We moved in together into our home on December 7, 1998.

Attached as Exhibit A is a photo of Mark and me from 1998.

8. From the very start, Mark and I lived as a couple. We introduced ourselves to our neighbors as a couple and started to build our life together. Part of our family included animals: two adopted cats—Bigfoot and Miss Kitty Carlisle, whom I referred to as “cellmates” from the humane society—and a cocker spaniel—whom we named after Mark’s sister who had passed away. As a Christmas present one year, Mark also surprised me with another cocker spaniel whom we named Abbie. Now it is just Abbie and me who are left.

9. We intertwined our lives together, and we were as devoted to each other as any other married couple, despite the fact that we were barred from marrying. We opened a joint checking account into which we both deposited money, and we paid the mortgage and other household expenses such as cable television, electricity, gas, and water from that account. Working together, we transformed the house into our home, and transformed the backyard from

a wasteland to something we could enjoy together on summer nights. We also remodeled our kitchen and made it into something we could enjoy, since we both loved cooking. We loved to travel when we had the means to do so, and our favorite place to visit was Hawai'i. Attached as Exhibit B is a photo of us visiting Hawai'i in 2012. Although I was a nervous traveler, Mark would always put me at ease.

10. I introduced Mark to my family and workmates not long after we met. My family immediately took to Mark, who was very charming. My family has a small farm in Questa where we grow alfalfa and hay, and in the summers, I would take off time from work to help with irrigation in the field, while Mark would help with the cooking when he was out from school and could accompany me. Mark spent hours with my parents, and they grew close to him, despite their mixed feelings about our relationship because they were devoutly Catholic. Mark had an especially close relationship with my mother. Even though she was in her early 90s when Mark later got sick, she helped me to take care of him.

11. Mark and I worked through life's ups and downs together, and we were devoted to creating a relationship built on love and mutual respect.

#### **Mr. Johnson's Cancer Diagnosis and Initial Treatment**

12. In 2011, Mark was having a regular check-up with his doctor, who noticed something irregular and referred him to an oncologist. The oncologist then diagnosed him with cancer. Learning about the diagnosis was devastating for both of us.

13. Mark was determined to fight the cancer. He went through a series of radiation treatments and was not released until shortly before Christmas in 2011. Due to burning from the

radiation, Mark also had to take off time from work to recover. At least initially, the radiation treatment was successful.

14. Early in 2013, however, Mark began to experience pain that did not respond to painkillers prescribed by his doctors. He went to the emergency room, where he was told that the cancer had spread and that he should seek further treatment.

15. His primary doctor was able to pull strings and get him an appointment at the New Mexico Cancer Center. Later that night, as we were going to bed, Mark confided in me, "I'm scared. This feels different."

16. We met with the oncologist in May 2013. The doctor told Mark that the cancer had spread. The doctor told us that, with extensive treatment, he could extend his life for approximately three to five years.

17. The next three months were a whirlwind of doctors' appointments, debilitating chemotherapy treatments, and a night-long visit to the emergency room after Mark's body temperature spiked as a reaction to the chemotherapy treatment. He lost weight, his hair started to fall out, and he had no appetite, which was unusual for Mark since he loved to eat.

18. Mark took a leave of absence from his teaching job; he was determined to beat cancer and be back to work in January 2014. I continued to work while taking care of Mark, scheduling his appointments, refilling his prescriptions, cooking, running the household, taking him to chemotherapy and doctor appointments, and doing anything else to lessen his stress. I was Mark's only support during his treatment for cancer as his family was out-of-state and had shown no response to his illness. Meanwhile I was burning the candle at both ends.

### **Marriage of Mr. Gonzales and Mr. Johnson**

19. The issue of marriage for same-sex couples came to the forefront in New Mexico by the summer of 2013. I remember there was a flurry of legal activity around the issue, and on August 21, 2013, the county clerk in Doña Ana County began issuing marriage licenses to same-sex couples on his own initiative.

20. As the legal challenges seeking access to marriage unfolded, we were filled with hope. We had long wanted to be married. For example, when we attended family weddings—like the wedding of Mark’s nephew in 2005 and the wedding of my nephew in 2007—we talked about how we wished that we could also celebrate our love through marriage. Likewise, Mark and I talked about wanting to marry when marriage equality came to New York, where he had previously lived, in 2011. But it did not make sense in our minds to marry elsewhere, away from family and friends, only to come home and potentially have our marriage vanish when we crossed back into New Mexico. We wanted to be married in the eyes of the state that we were proud to call home.

21. I vividly remember Mark telling me that he was ready to drive down to Las Cruces to get married, after the clerk there began issuing licenses on August 21, 2013, even though Mark had just completed his third round of chemotherapy. As painful as this was, I had to be frank with him and tell him that he was in no condition to make a three-hour trip and that we needed to be patient.

22. Two days later, on August 23, 2013, Santa Fe also began issuing marriage licenses to same-sex couples. Mark wanted to drive to Santa Fe to get married, but because I had

been following this issue closely and was deeply concerned about his condition, I reluctantly said again that we needed to be patient and that it would come to Albuquerque.

23. Three days thereafter, on August 26, 2013, I walked from my office to the District Court building to see if I could find out anything. I ran into the county clerk, Maggie Toulouse, who told me the judge had ordered Bernalillo County to issue marriage licenses to same-sex couples. She said her office was ready to start issuing licenses the next day.

24. I immediately called Mark. We decided that, the next morning, we would go down to the county clerk's office and get our marriage license. We woke up the next day, both very quiet. I think we were in shock that this was finally happening. Mark had called a florist and ordered two boutonnières for us the previous day. We stopped by the florists, picked them up, and pinned them to each other's sports coats.

25. When we got to the clerk's office, it was a beehive of excitement. Everyone including the office workers seemed genuinely happy. We checked in at the front and got a number, 47, as I recall, and went to take a seat. We did not have the chance to invite family and friends, as we would have done if we had time to plan a ceremony. But my neighbor and friend worked next door, and when I called her to tell her Mark and I were getting married, she rushed over to see us and take a photo with us. While we were waiting, we met a couple who had been together for more than 40 years. Every time a couple came out with their license in hand, a big cheer would go up.

26. Finally, our turn came. We paid our fees, signed our documents, and finally received the license to express our love for each other through marriage that we had always

wanted. Attached as Exhibit C is a photograph of us getting our marriage license in our sports coats with the boutonnieres that Mark had bought for us.

27. An announcement was made that there was going to be a mass marriage ceremony in the Civic Plaza, which is adjacent to the county building. Mark and I turned to each other and said, "let's do it!" We went downstairs with my boss and another friend, both of whom had rushed over to join us, and the ceremony started. There were a lot of people who had shown up to show support. It was quite overwhelming.

28. After the ceremony, we went home as Mark was tired; he had just had his third chemotherapy treatment two weeks earlier. That night, we went to a restaurant for a celebratory dinner and told the waiter we were there to celebrate our wedding. As we were leaving, one of the diners asked if we had just gotten married and we said yes. The whole restaurant erupted in applause and shouts of congratulations.

29. The next day, we woke up to find our photo on the front page of the Albuquerque Journal. The following week our photo was in an article in the print edition of the New York Times. Attached as Exhibit D is a copy of the latter photo. Mark and I were also on the local newscasts almost daily for a week while the whole issue of the legality marriage for same-sex couples was being debated in New Mexico, which was quite a shock to us. Finally, in December 2013, the New Mexico Supreme Court issued an opinion that the ban on marriage by same-sex couples was unconstitutional.

#### **Mr. Johnson's Subsequent Treatment and Death**

30. Meanwhile, Mark's battle with cancer continued. He had a scan in November 2013 to see if the chemotherapy treatments had been successful. I remember sitting with him in

the examination room, making small talk while we waited. The person who came in was not Mark's doctor but an assistant. She told us that they had received the results of the scan and that the cancer was growing instead of shrinking. Mark burst into tears, and I tried to tell him that everything would be fine. The doctor's assistant said, "no it won't." It took all I had to be Mark's rock and remain strong.

31. Mark had surgery to relieve the pain he was experiencing because of the cancer, which resulted in him needing a colostomy bag. He was also scheduled for more radiation treatment in hopes of reducing the tumor so that he could have surgery to remove it.

32. Mark kept getting weaker and weaker. I was still working, and I hired a neighbor to spend the day with him, to help change his colostomy bag when I could not be there to do it, and to feed him while I was at work. I would take him to radiation treatments, which were frequent, and since I was missing a lot of work, friends offered to jump in and take him to the Cancer Center.

33. I cannot tell you what it is like to see someone you love, once a 6'0" and 180-pound man, waste away in front of you. Mark had wanted to live so badly, so that we could have even a little more time together, that he was willing to undergo painful chemotherapy and radiation treatments in order to prolong his life. Attached as Exhibit E is the last photo I have of Mark and me together, when we watched the Rose Bowl on television on January 1, 2014.

34. Mark's health declined precipitously in early 2014. After his last radiation treatment on January 2, 2014, he was dehydrated and shaky. The nurse wanted him to urinate in a cup, but he couldn't, and the next thing we knew he had peed all over his clothes. I rushed over to Target to get him clean clothes.

35. When we got home, I helped Mark to bed. But when I took his temperature, it registered 102, so I immediately called the Cancer Center, who told me to take him to the hospital. They admitted him immediately and got him settled into a room.

36. The next day, a doctor came to examine him and then asked if she could speak to me. She took me out into the hallway and said that Mark's cancer was terminal and that she estimated that he had less than two weeks to live. The radiation treatments had caused an abscess to develop, the cancer was spreading, and there was nothing more they could do.

37. Mark spoke with a counselor at the hospital and decided to go into hospice. I made arrangements to have the hospital bed placed in the living room so that Mark could at least watch television. I would come home from work and when Mark was well enough to watch television, it was often Home & Garden TV (HGTV). I would joke, "what is it, HGTV 24-hours a day here?" and we would laugh. Laughter was rare and precious for us in those final days.

38. Eventually, I exhausted all my vacation and sick leave hours staying home to take care of Mark, and the Board of Directors at CCV granted me leave so that I could stay home and care for Mark in his last days. I still continued to work from home since I was responsible for paying the bills and processing payroll. I would get help from friends and my sisters, who would spend nights so that I could get some rest.

39. Finally, after being home for a month, Mark fell into a coma on February 14, 2014. My family and friends sat vigil, and we reminisced about good times with Mark. On February 19, 2014, one of my sisters who was helping me care for Mark woke me up and said, "I think this is it." I held Mark's hand as he took his last breath and died at 3:35 am.

### **Social Security Survivor's Benefits**

40. I took some time off from my job after Mark passed. When I did go back to work, I would come home, put the leashes on the dogs, and take them for a walk as it was too difficult being at home alone. There were many "what if's": What if Mark had not had radiation, would he have lived longer? What if he had been able to get medical help earlier?

41. My job was also in limbo. A program that paid most of my salary was being moved to another organization and, as a result, I lost my job. I spoke with my financial advisor who told me that, because I was turning 60 in May 2015, I could apply for survivor's benefits.

42. I left my job at the end of January 2015, and in May 2015, I had an appointment with the local Social Security office to apply for spousal survivor's benefits. I provided all the required documents such as marriage and death certificates. The Social Security Administration (SSA) individual who processed my application told me that my survivor's benefits based on Mark's earning history would be about \$1,500 per month if I started collecting them at age 60.

43. Shortly thereafter, I received a notification from SSA dated May 21, 2015 that it had denied my application for survivor's benefits, as I had not been married for nine months, even though Mark and I married on the very first day when we could do so in Albuquerque.

44. That began the extraordinarily lengthy Social Security internal appeal process, which took three years to go through, even though I understand the agency had no power to rule on my constitutional arguments. The entire process itself has been difficult. Every time I recount the events, I start to cry because it brings the past back to the present. It has been an agonizing experience, which has caused me lots of stress and sleepless nights.

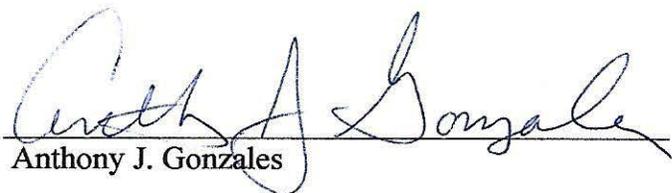
45. This situation has also put me in financial stress. I wish I could go back to work, but my mother needs 24-hour care, and my sisters and I are doing the best we can to meet her needs. This mean every ten days, I drive three hours to spend five days with my mother.

46. Mark and I paid into the Social Security system our entire working lives. We got married the first day it was legal in Bernalillo County. And now I feel that I am being punished for something that is totally out of my control.

47. I miss Mark every day, and many things remind me of our time together. In October 2015, I took Mark's ashes to our favorite place to visit, Hawai'i, where I dropped them in the Pacific Ocean off Diamondhead in Waikiki. I hope he has found peace there.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 12, 2018.

  
Anthony J. Gonzales

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13th day of December, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means:

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EDUCATION FUND, INC.

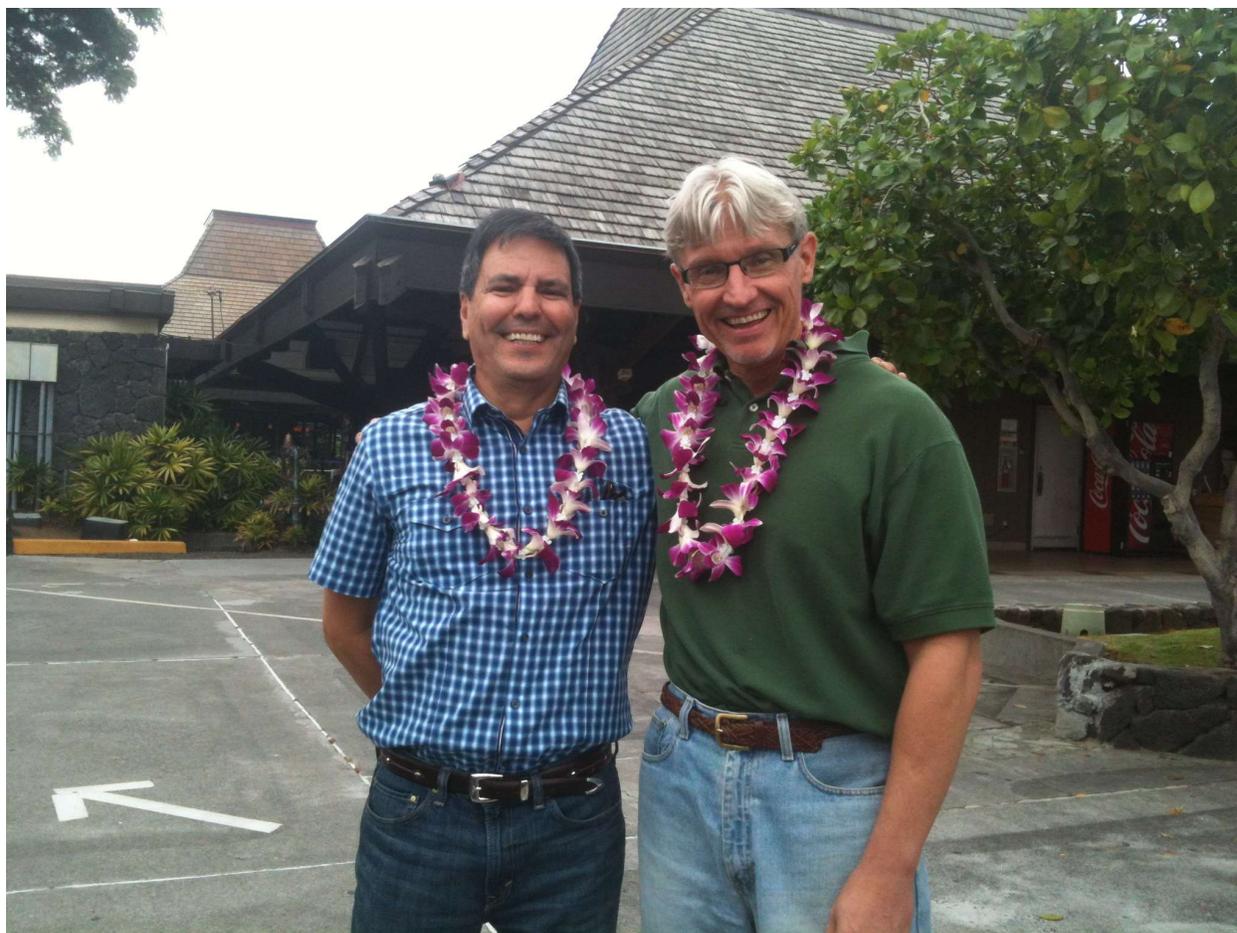
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# Exhibit A



# Exhibit B



# Exhibit C



# Exhibit D

A12 Y

TUESDAY, SEPTEMBER 3, 2013

# National

## The New York Times



# Exhibit E

