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DISTRICT COURT OF GUAM

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11 **IN THE DISTRICT COURT OF GUAM**

12 TERRITORY OF GUAM

13  
14 KATHLEEN M. AGUERO and LORETTA  
M. PANGELINAN,

15 Plaintiffs,

16 v.

17 EDDIE BAZA CALVO in his official capacity  
18 as Governor of Guam and CAROLYN  
GARRIDO in her official capacity as  
19 Registrar in the Office of Vital Statistics,

20 Defendants.

CIVIL CASE NO. 15-00009

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

1 Plaintiffs KATHLEEN M. AGUERO and LORETTA M. PANGELINAN, by  
2 and through their attorneys, file this Complaint against Defendants, EDDIA BAZA CALVO, in  
3 his official capacity as Governor of Guam, and CAROLYN GARRIDO, in her official capacity  
4 as Registrar of the Office of Vital Statistics, and allege as follows:

### 5 INTRODUCTION

6 1. Plaintiffs are a loving, committed same-sex couple who reside in Guam. They  
7 bring this action, pursuant to 42 U.S.C. Section 1983, to challenge the discriminatory denial of  
8 their freedom to marry in the Territory of Guam. In defiance of the mandates of the U.S.  
9 Constitution and the rule of law, the Government of Guam (“GovGuam”) will not allow same-  
10 sex couples, including Plaintiffs Kathleen M. Aguero and Loretta M. Pangelinan, to exercise  
11 their fundamental right to marry. Plaintiffs therefore seek declaratory and injunctive relief for  
12 the violation of their guarantees of liberty and equality under both the Fourteenth Amendment  
13 to the United States Constitution and 48 U.S.C. Sections 1421b (e), (n) and (u), caused by  
14 Defendants’ interpretation and enforcement of 10 G.C.A. Section 3207(h) and any other source  
15 of law that precludes Plaintiffs from marrying in Guam (hereinafter the “Marriage Ban”).

16 2. Despite the clear pronouncement from the U.S. Court of Appeals for the Ninth  
17 Circuit that laws “preventing same-sex couples from marrying . . . impose profound legal,  
18 financial, social and psychic harms” and “[l]aws that treat people differently based on sexual  
19 orientation are unconstitutional unless a ‘legitimate purpose . . . overcome[s]’ the injury  
20 inflicted by the law on lesbians and gays and their families,” *Latta v. Otter*, 771 F.3d 456, 476  
21 (9th Cir. 2014), GovGuam has precluded Plaintiffs from marrying and refused to accord their  
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23  
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1 relationship the same legal status as that of other residents, based solely on the fact that they  
2 are lesbians in a same-sex relationship.

3 3. The right to marry the person of one's choice and to direct the course of one's  
4 life in this intimate realm without undue government interference is one of the fundamental  
5 liberty interests protected for all by the Due Process Clause of the Fourteenth Amendment to  
6 United States Constitution. The Commonwealth's exclusion of Plaintiff Couple and other  
7 Banned Couples from marriage based on their sexual orientation and/or sex of the individuals  
8 in the couples violates their fundamental right to marry without any compelling, important or  
9 even legitimate justification.

10 4. Civil marriage plays a unique role in society as a universally recognized and  
11 celebrated hallmark of a couple's commitment to build family life together. It confers upon  
12 couples a dignity and status of immense import. Plaintiffs have formed a committed, enduring  
13 family bond equally worthy of the respect afforded by GovGuam to different-sex couples  
14 through access to the status of marriage. GovGuam, without any adequate justification, has  
15 enacted, and Defendants have interpreted and enforced the laws in ways that single out Guam's  
16 gay, lesbian, and bisexual residents and deprives them of the right to marry based solely on  
17 their sexual orientation and/or sex.

18 5. This exclusion from marriage and relegation to second-class status inflicts  
19 serious and irreparable harms upon Plaintiffs and other same-sex couples and their children.  
20 Plaintiffs are not married and wish to marry for the same reasons as different-sex couples: to  
21 publicly declare their love and commitment before their family, friends, and community, and to  
22 give one another and any children that they may raise in the future, the security and legal  
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1 protections that marriage provides. Plaintiffs seek the freedom to marry the one unique and  
2 irreplaceable person each loves, and thereby to assume the responsibilities and obtain the  
3 myriad protections, obligations, and benefits conferred upon married couples and upon their  
4 children under Guam and federal law.

5 6. Because the freedom to marry is one of the vital personal rights central to the  
6 orderly pursuit of happiness, Plaintiffs seek equal access to the freedom to marry to eliminate  
7 the myriad serious harms inflicted on Plaintiffs and their families by the Marriage Ban and  
8 Defendants' enforcement of it Plaintiffs seek equal access to the freedom to marry as the only  
9 means to eliminate the myriad harms inflicted upon them and other same-sex couples by  
10 GovGuam's Marriage Ban and Defendants' enforcement of it.

11 **PARTIES**

12 **A. Plaintiffs**

13 7. KATHLEEN M. AGUERO ("Kate") and LORETTA M. PANGELINAN ("Lo")  
14 are individuals who together are a committed same-sex couple residing in Yigo, Guam. Both  
15 were born and raised on Guam. Kate works for a local financial institution, and Lo runs her  
16 own maintenance and cleaning firm. They have been in a committed relationship for over nine  
17 years.

18 8. Both Kate and Lo are registered with GovGuam's Department of Public Health  
19 and Social Services ("DPHSS") as foster parents, and they have cared for a number of foster  
20 children over the years. Kate and Lo feel that it is important to give back to the community by  
21 helping to raise and care for children in need on Guam. They are currently caring for three  
22 foster children.



1           9.     Kate and Lo wish to marry each other because they love each other and are  
2 committed to each other for life.

3           10.    While Kate and Lo could travel thousands of miles to another state where same-  
4 sex marriage is recognized to get married, such travel would be costly and difficult to arrange,  
5 given their busy schedules, responsibilities, and limited financial resources. More importantly,  
6 they want to be able to invite their friends and family on Guam to bear witness to their love and  
7 commitment for each other in the same way that different-sex couples in Guam are able to do,  
8 through marriage. Kate and Lo believe that they should not have to leave Guam to have their  
9 love and commitment recognized

10           **B.     Defendants**

11           11.    Defendant EDDIA BAZA CALVO is sued in his official capacity as Governor  
12 of the Territory of Guam. Governor Calvo is vested with the executive power of the Territory,  
13 has the duty to see that the Territory's laws are faithfully executed, has general supervision and  
14 control of all departments and agencies of the executive branch of GovGuam, including the  
15 power to hire and terminate all employees of the executive branch under 42 U.S.C. Section  
16 1422. Governor Calvo is a "person" within the meaning of 42 U.S.C. Section 1983 and was  
17 acting under color of state law at all times relevant to this Complaint.

18           12.    Defendant CAROLYN GARRIDO is sued in her official capacity as Registrar  
19 of the Office of Vital Statistics within the GovGuam DPHSS. Ms. Garrido's duties include  
20 issuing marriage licenses, and maintaining records relating to marriage licenses. Ms. Garrido  
21 must ensure compliance through all of these functions with relevant Guam laws, including  
22 those that exclude same-sex couples from marriage. Ms. Garrido is a "person" within the

1 meaning of 42 U.S.C. Section 1983 and was acting under color of law at all times relevant to  
2 this complaint.

3 13. Each of the Defendants, and those subject to their supervision, direction, and  
4 control, intentionally performed, participated in, aided and/or abetted in some manner the acts  
5 alleged herein, proximately caused the harm alleged herein, and will continue to injure  
6 Plaintiffs irreparably if not enjoined.

7 **JURISDICTION AND VENUE**

8 14. Plaintiffs bring this action under 42 U.S.C. Sections 1983 and 1988 to redress  
9 the deprivation under color of law of rights secured by the United States Constitution and  
10 under 48 U.S.C. Sections 1421b (e), (n) and (u).

11 15. This Court has original jurisdiction over the subject matter of this action  
12 pursuant to 28 U.S.C. Sections 1331 and 1343 because the matters in controversy arise under  
13 the Constitution and laws of the United States.

14 16. Venue is proper in this Court under 28 U.S.C. Section 1391(b) because all  
15 Defendants reside within the District of Guam and the events that gave rise to Plaintiffs' claims  
16 took place within the District of Guam.

17 17. This Court has the authority to enter a declaratory judgment and to provide  
18 preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of  
19 Civil Procedure, and 28 U.S.C. Sections 2201 and 2202.

20 18. This Court has personal jurisdiction over Defendants because they are domiciled  
21 in Guam.



1 STATEMENT OF FACTS

2 19. Plaintiffs are residents of Guam who experience the same joys and shoulder the  
3 same challenges of family life as their heterosexual neighbors, co-workers, and other  
4 community members who freely may marry. Plaintiffs are productive, contributing citizens  
5 who support their families and nurture their children, but must do so without the same dignity  
6 and respect afforded by the Territory to other families through access to the universally  
7 celebrated status of marriage. GovGuam's exclusion of Plaintiffs from marriage subjects  
8 Plaintiffs to legal vulnerability and related stress, while depriving them and their children of  
9 equal dignity and security. GovGuam sends a purposeful message that the Territory views  
10 lesbians and gay men and their children as second-class citizens who are undeserving of the  
11 legal sanction, respect, and support that different-sex spouses and their family enjoy.

12 **A. Plaintiffs' Attempts to Marry and Marriages in Other Jurisdictions.**

13 20. But for the fact that they are of the same-sex, each unmarried Plaintiff is legally  
14 qualified to marry under the law of Guam and wishes to marry in the Territory. Each Plaintiff  
15 is over the requisite age of 18, neither Plaintiff is precluded from marriage as a result of being  
16 closely related to her life partner, and no Plaintiff is recognized by Guam as having another  
17 spouse.

18 21. On April 8, 2015, Plaintiffs appeared in person at the Office of Vital Statistics  
19 within DPHSS in Mangilao, Guam to seek a marriage license. They both presented valid forms  
20 of identification to prove their names and ages, completed a marriage application, and stood  
21 ready to pay the required fee. When the couple requested a marriage license, the employee  
22 working behind the counter refused their request, citing 10 G.C.A. Section 3207(h) which  
23

1 defines marriage as between opposite sex couples and well as a six-year old opinion letter from  
2 the Acting Attorney General of Guam addressing the matter of "common law" marriages in  
3 Guam. Based on these reasons, and no others, the employee refused to accept Plaintiffs' Guam  
4 Marriage License Application; and Plaintiffs were thereby denied the opportunity to obtain a  
5 marriage license based solely on GovGuam's purported statutory definition of marriage as "the  
6 legal union of persons of opposite sex," to the exclusion of same-sex couples.

7 **B. Marriage Ban Inflicts Profound Harms and Injury Upon Plaintiffs and**  
8 **Other Same-Sex Couples.**

9 22. Barring same-sex couples from marriage disqualifies them from critically  
10 important rights and responsibilities under Guam law that different-sex couples rely upon to  
11 protect one another and themselves, to secure their commitment to each other, and to safeguard  
12 their families. Marriage is the only route to access many rights and responsibilities; for others,  
13 marriage is the least complex and least expensive route. By way of example only, the Marriage  
14 Ban denies same-sex couples who wish to marry:

15 a. The ability to safeguard family resources under an array of laws that  
16 protect spousal finances, including for example, the ability to file jointly to reduce tax liability,  
17 and tax benefits when transferring or inheriting interests in real and personal property; the  
18 benefit of a homestead exemption; an exemption for a portion of a deceased spouse's personal  
19 estate from the deceased's debts or liabilities; and, the ability for the surviving spouse of a  
20 workers compensation beneficiary to receive compensation.;

21 b. Family health insurance coverage, including spousal health benefits;



1 c. The benefit of the presumption that both spouses are parents to a child  
2 born during the marriage, including the automatic listing of a birth mother's spouse as a parent  
3 on a child's birth certificate;

4 d. A streamlined and relatively inexpensive process for bringing children  
5 into the family through adoption, whether through joint adoption, or by one spouse adopting  
6 another spouse's child through a step-parent adoption;

7 e. Retirement benefits, and surviving spouse annuity benefits for public  
8 employees;

9 f. Family leave for a public employee to care for a spouse;

10 g. In the event that a couple separates, access to an orderly dissolution  
11 process for terminating the relationship, assuring an equitable division of the couple's assets  
12 and debts, and adjudication of issues relating to custody, visitation, and support with respect to  
13 any children the couple may have;

14 h. The ability to make caretaking decisions for one another in times of  
15 serious illness, including priority to make medical decisions for an incapacitated spouse;

16 i. The ability to make decisions for one another at the time of death,  
17 including the ability to authorize an autopsy, the automatic right to make burial decisions and  
18 other decisions concerning disposition and handling of remains of deceased spouses; and

19 j. The right to inheritance under the laws of intestacy and the right of a  
20 surviving spouse to an elective share.

21 23. The Marriage Ban not only denies Plaintiffs and other same-sex couples and  
22 their children access to protections, benefits, rights, and responsibilities afforded to different  
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1 sex couples and their children under Guam law, it also denies them eligibility for a host of  
2 federal rights and responsibilities that span the entire United States Code and federal  
3 regulations. Unmarried same-sex couples are denied recognition for virtually all purposes  
4 throughout the more than 1,000 statutes and federal regulations relating to marriage – including  
5 laws that pertain to Social Security benefits, housing, taxes, criminal sanctions, copyrights, and  
6 veterans benefits. Many of these deprivations drain family economic resources, causing  
7 financial harm not only to same-sex couples but to their children as well.

8 **C. Exclusion of Same-Sex Couples from Marriage and Consignment of Same-**  
9 **Sex Couples to an Inferior Status.**

10 24. In addition to the tangible harms listed above, same-sex couples are denied  
11 unique social significance and recognition that marriage conveys. Without access to the  
12 familiar language and legal label of marriage, Plaintiffs are unable instantly or adequately to  
13 communicate to others the depth and permanence of their commitment, or to obtain respect for  
14 that commitment as other do simply by invoking their married status.

15 25. Plaintiffs' exclusion from marriage frustrates their life goals and dreams, their  
16 personal happiness, and their self-determination. For example, Plaintiffs have family and  
17 friends eagerly awaiting the day that they can attend the couple's wedding in Guam.

18 26. Moreover, like Plaintiffs, many same-sex couples are rearing children in Guam.  
19 The substantive and dignitary inequities imposed on committed same-sex couples include  
20 particular harms for same-sex couples' children, who are equally deserving of the stability,  
21 permanence, and legitimacy that children of different-sex spouses enjoy. Civil marriage  
22 affords official sanctuary to the family unit, offering parents and children a familiar and public  
23 means of demonstrating to third parties a legal basis for the parent-child relationship. By  
24



1 denying same-sex couples marriage, GovGuam reinforces the view held by some that the  
2 family bonds that tie same-sex parents and their children are less consequential, enduring and  
3 meaningful than those of different-sex parents and their children. Same-sex parents and their  
4 children thus are deprived of the family security that inheres in a ready and familiar method of  
5 communicating to others the significance and permanence of their familial relationships.  
6 Same-sex couples and their children accordingly must live with the vulnerability and stress  
7 inflicted by the ever-present possibility that others may question their familial relationship—in  
8 social, educational, and medical settings and in moments of crisis—in a way that spouses can  
9 avoid by simple reference to being married.

10       27. Children from a young age understand that marriage signifies an enduring  
11 family unit, and likewise understand when GovGuam has deemed a class of families as less  
12 worthy than other families undeserving of marriage, and not entitled to the same societal  
13 recognition and support as other families. GovGuam has no adequate interest to justify  
14 marking the children of same-sex couples with a badge of inferiority that invites disrespect in  
15 school on the playground, and in every other sphere of their lives.

16       28. GovGuam refuses same-sex couples the same opportunity to celebrate their  
17 marriage with official governmental sanction, which can negatively affect how their family  
18 members and others view the couples' relationship. By treating same-sex couples as unworthy  
19 of state-sanctioned solemnization, GovGuam denies them the dignity, respect, and stature  
20 afforded to different-sex couples who can marry.

21       29. The government is a powerful teacher of discrimination to others. Bearing the  
22 imprimatur of the government, GovGuam's refusal to recognize same-sex marriage also causes  
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1 others to follow the government's example in discriminating against them. Many private  
2 entities defer to GovGuam's bestowment of marital status in defining "family" for purposes of  
3 an array of important benefits, often resulting in the exclusion of same-sex couples and their  
4 children from important safety nets such as private employer-provided health insurance for  
5 family members. GovGuam's also encourages disrespect of committed same-sex couples and  
6 their children by others in workplaces, schools, businesses, and other major arenas of life, in  
7 ways that would be less likely to occur and more readily corrected if marriage were available to  
8 same-sex couples.

9 **D. The Territory's Exclusion of Plaintiffs from Marriage Is Not Narrowly**  
10 **Tailored to a Compelling State Purpose or Even Reasonably Related to a**  
11 **Legitimate Territory Purpose.**

12 30. No legitimate, let alone important or compelling, interest exists to exclude same-  
13 sex couples from the historic and highly venerated institution of marriage. An individual's  
14 capacity to establish a loving and enduring relationship does not depend upon sexual  
15 orientation or his or her sex in relation to his or her committed life partner, nor is there even  
16 any legitimate interest justifying denial of spousal protections, rights, and responsibilities on  
17 such bases.

18 31. GovGuam's decision to exclude same-sex couples from marriage bears no  
19 relation to interests in parenting or child welfare.

20 32. Barring lesbians and gay men from civil marriage does not affect who becomes  
21 a parent. Guam's same-sex couples can and do bear children through use of reproductive  
22 technology that is available to same-sex and different-sex couples. They also bring children  
23 into their families through foster care or adoption.



1           33.     Parentage can be determined for all children regardless of marital status and  
2 parents are required to support their children regardless of marital status. Moreover, marriage  
3 has never been the sole province of couples who are parents. Neither GovGuam nor any  
4 jurisdiction in this country has ever restricted marriage to those capable of or intending to  
5 procreate.

6           34.     The consensus within the scientific community is that children and adolescents  
7 reared by same-sex parents are as successful psychologically, emotionally, and socially as  
8 children and adolescents raised by different-sex parents. The consensus among respected  
9 researchers in the field is that parenting abilities are not a function of gender, sexual  
10 orientation, or biological connection.

11          35.     This consensus is reflected by numerous leading organizations of child welfare,  
12 medical, and mental health professionals, who have issued statements confirming that same-sex  
13 parents are as effective as different-sex parents in rearing well-adjusted children and  
14 adolescents. GovGuam's own public policy also incorporates this view by making no  
15 distinction with respect to the parenting rights of same-sex and different-sex couples, as  
16 evidenced by DPHSS's licensing of Plaintiffs to act as foster parents.

17          36.     Excluding same-sex couples from civil marriage will not make children of  
18 different-sex spouses more secure. Different-sex spouses' children will continue to enjoy the  
19 benefits that flow from their parents' marriage, regardless of whether same-sex couples are  
20 permitted to marry.

1           37.     Excluding same-sex couples from marriage does, however, harm same-sex  
2 couples' children, including by branding their families as inferior or less deserving of respect,  
3 and by encouraging private bias and discrimination.

4           38.     GovGuam's interest in the welfare of children of lesbian and gay parents is as  
5 great as its interest in the welfare of any other children. The family security that comes from  
6 GovGuam's official recognition and support is no less important for same-sex parents and their  
7 children than it is for different-sex parents and their children.

8           39.     Excluding same-sex couples from marriage does nothing to protect or enhance  
9 the rights of different-sex spouses. Different-sex spouses will continue to enjoy the same rights  
10 and status conferred by marriage regardless of whether same-sex couples may marry,  
11 unimpaired by the acknowledgement that this freedom belongs equally to lesbians and gay  
12 men.

13           40.     As the Ninth Circuit held in *Latta*, neither history nor tradition can justify  
14 GovGuam's discriminatory exclusion of same-sex couples. 771 F.3d at 475-476. Marriage has  
15 remained vital and enduring because of, not despite, its resiliency in response to a dynamic  
16 society, as society and the courts have cast off prior restrictions on interracial marriage and  
17 coverture. The right to Equal Protection of the law is not confined to historic notions of  
18 equality, and no excuse for GovGuam's discriminatory restriction can be found in the ancient  
19 pedigree of such discrimination.

20           41.     Although GovGuam has a valid interest in protecting the public fisc, it may not  
21 pursue that interest by making invidious distinctions between classes of its citizens without  
22 adequate justification. Moreover, GovGuam not only lacks any such fiscal justification but  
23



1 rather would likely accrue cost-savings by allowing same-sex couples to enter the institution of  
2 marriage.

3 **FIRST CLAIM FOR RELIEF**

4 **Deprivation of Equal Protection**  
5 **on the Basis of Sexual Orientation and Sex**  
6 **U.S. Const. Amend. XIV**  
7 **(42 U.S.C. Section 1983)**

8 42. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs  
9 of this complaint as though fully set forth herein.

10 43. Plaintiffs state this cause of action against Defendants in their official capacities  
11 for purposes of seeking declaratory and injunctive relief.

12 44. The Fourteenth Amendment to the United States Constitution, enforceable  
13 pursuant to 42 U.S.C. Section 1983, provides that no state shall deny to any person the equal  
14 protection of the laws. This provision of the U.S. Constitution applies on Guam. 48 U.S.C.  
15 Section 1421b (u). There is a separate statutory provision requiring equal protection of law in  
16 Guam. 48 U.S.C. Section 1421b (n). The conduct of Defendants and their agents and all other  
17 sources of law that preclude marriage for same-sex couples violates Plaintiffs' right to equal  
18 protection of the laws by discriminating impermissibly on the basis of sexual orientation and  
19 sex.

20 45. As GovGuam's chief executive officer, Defendant Governor Calvo's duties and  
21 actions to enforce Guam's discriminatory marriage ban violate Plaintiffs' constitutional rights  
22 to equal treatment, without regard to sexual orientation or sex, under the Fourteenth  
23 Amendment to the United States Constitution and the right to equal protection under 42 U.S.C.  
24 Section 1421b (n).

1           46.     As the Registrar of the Office of Vital Statistics, Defendant Garrido's duties and  
2 actions through denying a marriage license to Plaintiffs and other same-sex couples, violates  
3 Plaintiffs' rights to equal treatment, without regard to sexual orientation or sex, under the  
4 Fourteenth Amendment of the United States Constitution, and under 48 U.S.C. Section 1421b  
5 (n).

6           47.     By acting intentionally to enforce GovGuam's discriminatory marriage ban,  
7 each Defendant has set in motion, or has refused to terminate, acts by others to enforce and  
8 implement those laws that Defendants know, or reasonably should know, will cause others to  
9 inflict these constitutional injuries upon the Plaintiffs. Through this conduct, each Defendant  
10 also knowingly has acquiesced in the constitutional deprivations of those that he or she  
11 supervises, and has shown a reckless or callous indifference to the rights of Plaintiffs, thereby  
12 proximately causing them injury. No reasonable governmental official, in light of current  
13 controlling law on Guam, would believe that it is lawful to deny a marriage license to a same-  
14 sex couple such as Plaintiffs.

15           48.     GovGuam's marriage ban, and Defendants' actions to enforce it, denies same-  
16 sex couples equal dignity and respect and relegates them to a separate-and-unequal status that is  
17 demonstrably inferior. GovGuam's marriage ban brands lesbians and gay men and their  
18 children as second-class citizens through a message of government-imposed stigma and causes  
19 private bias and discrimination. GovGuam's marriage ban and Defendants' actions reflect  
20 moral disapproval and antipathy toward lesbians and gay men.

21           49.     Same-sex couples, such as the plaintiffs, are identical to different-sex couples in  
22 all of the characteristics relevant to marriage. Same-sex couples make the same commitment to  
23



1 one another as different-sex couples. Like different-sex couples, same-sex couples fall in love,  
2 build their lives together, plan their futures together, and hope to grow old together. Like  
3 different-sex couples, same-sex couples support one another emotionally and financially and  
4 take care of one another physically when faced with injury or illness. The emotional, romantic,  
5 and dignitary reasons Plaintiffs seek to marry are similar to those of different-sex couples who  
6 choose to marry.

7 50. Like some different-sex couples, some same-sex couples are parents raising  
8 children together. Plaintiffs are raising three foster children jointly. Plaintiffs and their children  
9 are equally worthy of the tangible rights and responsibilities, as well as the respect, dignity, and  
10 concrete protections that access to marriage confers on different-sex couples and their children.  
11 For the many children being raised by same-sex couples, the tangible resources and societal  
12 esteem that access to marriage confers is no less precious than for children of different-sex  
13 couples.

#### 14 **Discrimination Based on Sexual Orientation**

15 51. The Marriage Ban targets Guam's lesbian and gay residents as a class for  
16 exclusion from marriage and discriminates against Plaintiffs based on their sexual orientation,  
17 both facially and as applied.

18 52. Because "the laws at issue distinguish on their face between opposite-sex  
19 couples, who are permitted to marry and whose out-of-state marriages are recognized, and  
20 same-sex couples, who are not permitted to marry and whose marriages are not recognized,"  
21 GovGuam's Marriage Ban "discriminate[s] on the basis of sexual orientation." *Latta*, 771 F.3d  
22 at 467-468.

1           53.     Within the Ninth Circuit, “classifications on the basis of sexual orientation are  
2 subject to heightened scrutiny.” *Latta*, 771 F.3d at 468. The exclusion of Plaintiffs and other  
3 same-sex couples from marriage based on their sexual orientation is thus subject to heightened  
4 scrutiny, which Defendants’ conduct cannot withstand because the exclusion does not even  
5 serve any legitimate governmental interests, let alone any important or compelling interests, nor  
6 does it serve any such interests in an adequately-tailored manner.

7           54.     Lesbians and gay men have suffered a long history of discrimination. They have  
8 endured hostility and antipathy from both public and private parties. Being gay or lesbian has  
9 been classified as a mental illness. The intimate relationships of same-sex couples have been  
10 criminalized. Lesbian and gay civil servants have been purged from federal and municipal  
11 employment. Lesbians and gay men disproportionately have been the victims of brutal hate  
12 crimes.

13           55.     Sexual orientation is a core, defining trait and is so fundamental to one’s identity  
14 and conscience that a person cannot be required to abandon it as a condition of equal treatment.

15           56.     Sexual orientation generally is fixed at an early age and highly resistant to  
16 change through intervention. No credible evidence supports the notion that such interventions  
17 are either effective or safe; indeed, they often are harmful and damaging. No mainstream  
18 mental health professional organization approves interventions to change sexual orientation,  
19 and virtually all of them have adopted policy statements cautioning professionals and the public  
20 about these treatments.

21           57.     Lesbians and gay men are a small minority of the population, and the legacy of  
22 discrimination against them is evident in their ongoing relative vulnerability and lack of  
23



1 political power. Lesbians and gay men lack statutory protection against discrimination in  
2 employment, public accommodations, and housing at the federal level and in numerous states;  
3 are systematically underrepresented in federal, state, and local democratic bodies; have been  
4 stripped of the right to marry through state constitutional amendments and now have been  
5 targeted through the voter initiative process more than any other group.

#### 6 **Discrimination Based on Sex**

7 58. The Marriage Ban discriminates against Plaintiffs on the basis of sex, both  
8 facially and as applied, by barring Plaintiffs from marriage on the basis of their sex. The sex-  
9 based restriction is plain on the face of GovGuam's Marriage Ban, which defines marriage as a  
10 "the legal union of persons of opposite sex." 10 G.C.A. Section 3207(h).

11 59. Because of these sex-based classifications, Kate is precluded from marrying the  
12 person to whom she is devoted, solely because Kate is a woman and not a man; were Kate a  
13 man, she could marry Lo. "A law that facially dictates that a man may do X while a woman  
14 may not, or vice versa, constitutes, without more, a gender classification." *Latta*, 771 F.3d at  
15 480 (Berzon, J., concurring).

16 60. GovGuam's Marriage Ban "also, implicitly and explicitly, draw[s] on 'archaic  
17 and stereotypic notions' about the purportedly distinctive roles and abilities of men and  
18 women." *Latta*, 771 F.3d at 485 (Berzon, J., concurring). As such, the Marriage Ban  
19 impermissibly seeks to enforce conformity with gender stereotypes about the proper gender  
20 roles for marriage—namely, that a man should marry a woman, and a woman marry a man—  
21 and, consequently, impermissibly excludes each Plaintiff from marriage with the one person  
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1 she loves, because of Plaintiffs' failure to conform to the prevailing and State-enforced  
2 stereotype.

3 61. The exclusion of Plaintiffs from marriage based on their sex and the  
4 enforcement of gender-based stereotypes cannot survive the heightened scrutiny required for  
5 sex-based discrimination.

6 **Discrimination in regard to Parental Status.**

7 62. The Marriage Ban impermissibly restricts same-sex parents from establishing  
8 parental status, for example through the parental presumption afforded when a child is born  
9 into a marriage, on the bases of their parents' sex, sexual orientation, and marital status,  
10 denying such parents and their children the dignity, legitimacy, security, support, and  
11 protections available when parents can marry. GovGuam's differential treatment of families  
12 and children based upon their parents' sex, sexual orientation, and marital status cannot survive  
13 the heightened scrutiny required for classifications based on parental status.

14 **Discrimination With Respect to Fundamental Rights and Liberty Interests  
15 Secured by the Due Process Clause.**

16 63. The Marriage Ban discriminates against Plaintiffs based on sexual orientation  
17 and/or sex with respect to the fundamental right to marry and with respect to their liberty  
18 interests in dignity, autonomy, and family integrity and association. Differential treatment with  
19 respect to the exercise of fundamental rights and liberty interests, based on Plaintiffs' sexual  
20 orientation and/or sex, subjects Defendants' conduct to strict or at least heightened scrutiny,  
21 which Defendants' conduct cannot withstand.  
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1 **SECOND CLAIM FOR RELIEF**

2 **Deprivation of Due Process**  
3 **U.S. Const. Amend. XIV**  
4 **(42 U.S.C. Section 1983)**

5 64. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs  
6 of this complaint as though fully set forth herein.

7 65. Plaintiffs state this cause of action against Defendants in their official capacities  
8 for purposes of seeking declaratory and injunctive relief.

9 66. The Fourteenth Amendment to the United States Constitution, enforceable  
10 pursuant to 42 U.S.C. Section 1983, bars the GovGuam, from depriving any person of life,  
11 liberty, or property without due process of law (the "Due Process Clause"). This provision of  
12 the U.S. Constitution applies on Guam. 48 U.S.C. Section 1421b (u). A separate statutory  
13 provision sets forth that "[n]o person shall be deprived of life, liberty, or property without due  
14 process of law" in Guam. 48 U.S.C. Section 1421b(e). The conduct of Defendants and their  
15 agents and all other sources of law that preclude marriage for same-sex couples violates  
16 Plaintiffs' fundamental right to marry and other liberty interests.

17 67. The right to marry the unique and irreplaceable person of one's choice and to  
18 direct the course of one's life in this intimate realm without undue government restriction is  
19 one of the fundamental liberty interests protected by the Due Process Clause. Indeed, the  
20 essence of the fundamental right to marry is freedom of personal choice in selecting one's  
21 spouse.

22 68. Guam's Laws, 10 G.C.A. Section 3207(h), and all other sources of Guam law  
23 that preclude same-sex couples from marrying on the basis of their member's sexual orientation  
24

1 and/or sex violate the due process guarantee of the Fourteenth Amendment, both facially and as  
2 applied to Plaintiffs. Defendants' actions to enforce the Marriage Ban directly and  
3 impermissibly infringe on Plaintiffs' choice of whom to marry, interfering with a core, life-  
4 altering, and intimate personal choice.

5 69. The Due Process Clause also protects choices central to personal dignity and  
6 autonomy, including each individual's rights to family integrity and association. Defendants'  
7 actions to enforce the Marriage Ban directly and impermissibly infringe on Plaintiffs' deeply  
8 intimate, personal, and private decisions regarding family life, and preclude them from  
9 obtaining full liberty, dignity, and security for themselves and their families.

10 70. The duties and actions of Defendant Calvo, as Governor of the Territory of  
11 Guam, and Defendant Garrido, as Registrar of the Office of Vital Statistics, to ensure  
12 compliance with Guam's discriminatory Marriage Ban by, for example, denying same-sex  
13 couples marriage licenses, violate Plaintiffs' fundamental right to marry and rights to liberty,  
14 dignity, autonomy, family integrity, association, and due process contained in the Fourteenth  
15 Amendment to the United States Constitution.

16 71. Defendants cannot satisfy the Due Process Clause's decree that government's  
17 denial of a fundamental right or substantial infringement of a liberty interest may be sustained  
18 only upon a showing that the burden is narrowly tailored to serve a compelling or even  
19 important governmental interest, as the Marriage Ban is not even tailored to any legitimate  
20 interest at all.

21 72. Thus, Defendants, acting under color of law, are depriving Plaintiffs of rights  
22 secured by the Due Process Clause of the Fourteenth Amendment to the United States  
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1 Constitution in violation of 42 U.S.C. Section 1983, and the right to due process under 48  
2 U.S.C. Section 1421(b)(e).

3 **DECLARATORY AND INJUNCTIVE RELIEF**

4 **28 U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure, Rules 57 and 65**

5 73. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs  
6 of this complaint as though fully set forth herein.

7 74. This case presents an actual controversy because Defendants' present and  
8 ongoing denial of equal treatment to Plaintiffs subjects them to serious and immediate harms,  
9 warranting the issuance of declaratory relief.

10 75. Plaintiffs seek preliminary and/or permanent injunctive relief to protect their  
11 constitutional rights and avoid the injuries described above. A favorable decision enjoining  
12 Defendants would redress and prevent the irreparable injuries to Plaintiffs identified herein, for  
13 which Plaintiffs have no adequate remedy at law or in equity.

14 76. GovGuam will incur little to no burden in allowing same-sex couples to marry  
15 and in recognizing the valid marriages of same-sex couples from other jurisdictions on the  
16 same terms as different-sex couples, whereas the hardship for Plaintiffs of being denied equal  
17 treatment and relegated to a demonstrably inferior relationship status is severe, subjecting them  
18 to an irreparable denial of their constitutional rights. The balance of hardships thus tips  
19 strongly in favor of Plaintiffs.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

3 A. Declaring that the provisions and enforcement by Defendants of 10 G.C.A.  
4 Section 3207(h) and any other sources of Guam law or regulation that exclude same-sex  
5 couples from marriage or bar recognition of valid marriages of same-sex couples entered into in  
6 another jurisdiction violate Plaintiffs' rights under the Due Process Clause and the Equal  
7 Protection Clause of the Fourteenth Amendment to the United States Constitution and 48  
8 U.S.C. Sections 1421b(e), and (n);

9 B. Preliminarily and permanently enjoining enforcement by Defendants of 10  
10 G.C.A. Section 3207(h) and any other sources of Guam law or regulation that exclude same-  
11 sex couples from marriage or bar recognition of valid marriages of same-sex couples entered  
12 into in another jurisdiction violate Plaintiffs' rights under the Due Process Clause and the Equal  
13 Protection Clause of the Fourteenth Amendment to the United States Constitution and 48  
14 U.S.C. Sections 1421b(e) and(n);

15 C. Requiring Defendants, in the their official capacities, to allow same-sex couples  
16 to marry on the same terms as different-sex couples, and to recognize the valid marriages of  
17 same-sex couples from other jurisdictions on the same terms as the valid marriages of different-  
18 sex couples from other jurisdictions;

19 D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees  
20 pursuant to, *inter alia*, 42 U.S.C. Section 1988 and other applicable laws; and

21 E. Granting such other and further relief as the Court deems just and proper.  
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1 F. The relief requested in this action is sought against each Defendant; each  
2 Defendant's officers, employees, and agents; and against all persons acting in cooperation with  
3 any Defendant, or under a Defendant's supervision, direction, or control.

4 Respectfully submitted this 13<sup>th</sup> day of April, 2015.

5 **THOMPSON GUTIERREZ & ALCANTARA, P.C.**  
6 Attorneys for Plaintiffs Kathleen M. Aguero and  
Loretta M. Pangelinan

7  
8 By

  
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10 **MITCHELL F. THOMPSON**

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