

**Witness statement of: Ryan Castellucci**

**Made on behalf of the Claimant**

**Statement: 1**

**Exhibits: "RC1-2"**

**Dated: 15 November 2022**

**IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION  
B E T W E E N**

**CO/ /**

**RYAN CASTELLUCCI**

**Appellant**

**- and -**

- (1) SECRETARY OF STATE FOR JUSTICE  
(2) PRESIDENT OF THE GENDER RECOGNITION PANEL**

**Respondents**

**IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
B E T W E E N**

**CO/ /**

**RYAN CASTELLUCCI**

**Claimant**

**- and -**

- (1) SECRETARY OF STATE FOR JUSTICE  
(2) PRESIDENT OF THE GENDER RECOGNITION PANEL**

**Defendants**

**IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
ADMINISTRATIVE COURT  
B E T W E E N**

**CO/ /**

**THE KING**

**(on the application of RYAN CASTELLUCCI)**

**Claimant**

**- and -**

**PRESIDENT OF THE GENDER RECOGNITION PANEL**

**Defendant**

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## WITNESS STATEMENT OF RYAN CASTELLUCCI

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I, Ryan Castellucci, of [REDACTED], will say as follows:

1. I am the Claimant in these proceedings. I make this statement in support of my challenge regarding the Defendant's failure to issue me with a Gender Recognition Certificate ("**GRC**") which certifies my acquired gender.
2. I am a cyber security expert originally from California. I moved from the US to London on a tier 1 visa in December of 2019 to join my partner, who had accepted a job in London. My partner and I purchased a home here in England, where we plan to raise a family.
3. I identify as non-binary. I do not use gendered pronouns such as "he" or "she". My pronouns are "they", "them", "their", "theirs", and "themselves".

### My gender identity

4. I was assigned male at birth. As a young child, I paid little mind to gender stereotypes. As I got older, a theme emerged: people thinking I was a woman, realizing I wasn't, and then panicking, seemingly expecting anger rather than apathy. I knew of transgender people, but that didn't seem like me - while I had no attachment to masculinity, femininity didn't appeal either. I didn't have the words for how I felt. I didn't start thinking seriously about my gender until my mid 20s when I realised that I found being called a "man" wrong and distressing.
5. In 2014 I proposed to the woman I'd been with for three years. I took various steps to pass unambiguously as a man: I cut my hair short and grew a beard. The wedding was, coincidentally, the weekend following the US Supreme Court

ruling requiring nation-wide recognition of same-sex marriage. In 2016 I disclosed my gender status to my then wife. My wife and I divorced in June 2018 and I met my current partner.

6. Year upon year, I increasingly thought about my gender identity and gender presentation. I decided that I wanted to take active steps to ensure that my body aligned with how I understood myself. In January 2020, I began laser hair removal to give myself a more feminine appearance.
7. The lockdowns provided an opportunity for me to experiment with wearing clothing that suited my gender identity. I'd already established that I didn't like dresses or skirts, but jeans and t-shirts in feminine fits worked. I became more open about my gender identity. In April 2020, I posted on social media that I wasn't a man. A number of people I knew started referring to me using the pronoun "they", unprompted. I felt recognised and seen.
8. About two months after that, I happened across a mention of a surgical procedure called "penile preservation vaginoplasty". This surgery involves preserving the penis while also creating a fully functional vagina by using a tissue graft. This surgery would allow my body, and specifically my genitalia, to match how I felt: both male and female. There were, at the time, only three surgeons openly offering it, one of whom was based in San Francisco (where I have many friends). I filled out a form to request a consultation. My mood improved almost immediately. I had a consultation in June 2020 and a date for the surgery was set, 14 months out.
9. I then decided that I wanted to come out at work. At work, a tradition had long since been established for new employees to introduce themselves in the weekly company-wide meeting. I asked to reintroduce myself as my true gender along another non-binary employee. Everyone at work was supportive.

10. I had my GP refer me to the Gender Identity Clinic ("**GIC**"), though I knew that due to current waitlists it would be a significant amount of time before I would get an appointment. I made appointments with a couple of private doctors for a gender dysphoria diagnosis and a referral for hormone replacement therapy (HRT). The wait, even for a private doctor, was over a month. The first doctor (Dr Vickie Pasterski) I saw diagnosed me with gender dysphoria. The next doctor provided a prescription for HRT.
11. I got estradiol (estrogen) and a drug called finasteride which is commonly used to prevent balding. I chose to forgo any active testosterone suppression, though the estradiol reduced it somewhat over time. Estrogen made my emotional responses more acute, softened my facial features, and I grew breasts. I liked the changes. Dr Pasterski gave me a surgery referral letter and soon it was time to fly to San Francisco for my surgery.
12. Before my surgery my family, friends, and co-workers attended a party to mark what an important occasion this was for me. Since I have had surgery, I've added a low dose of testosterone to my HRT to keep my levels between the typical female and male ranges. I also take progesterone now, along with a big increase to my estradiol dose. It has been very important to me to change my physiology to reflect my gender identity.
13. After a number of assessments, on 13 September 2022, Dr Pasterski wrote a letter confirming that my gender identity is non-binary, that I have been living openly as non-binary full time since June 2020, that I have received appropriate medical care to transition from my birth gender to non-binary, and that these changes are likely to be permanent ('Exhibit RC1'). I am due to undergo the second, and final, stage of my surgery in January 2023.

### My US documents

14. I have applied to have my official documents reflect my nonbinary gender.
15. For a number of reasons, I've chosen not to change my name. The most important one, for me, is that I've always found comfort in the fact that "Ryan" is considered a unisex name in the US. Another major consideration was that I already had my name on a few patents, academic publications, a popular lecture at one of my field's biggest conferences, and several news articles.
16. The first document I changed my gender marker on was my Washington State driver's license. I became aware that "X" was being considered as an option the summer of 2019. I sent in my completed "Change of Gender Designation" form the same day that Washington State updated their forms to enable persons to use an "X" gender marker.
17. I then sought to change my gender on my birth certificate in California. In March 2021, I filled out a short "affidavit to amend a record" form, provided a sworn statement "to conform my legal gender to my gender identity" and "the request is not made for any fraudulent purposes", and got both notarized. I paid small administrative fee. I received two copies of my revised birth certificate that June. Had I changed my name, it would have been necessary to get an order of a Californian court.
18. In January 2022, I met an employee of US Department of State, and they informed me that people were being allowed to apply unofficially for an "X" passport, and that I could do so by filling out a "DS-11" form, writing in "X" for gender rather than ticking "M" or "F". I set about getting new passport photos, filling out the form, and booked an appointment with the US embassy in London for 3 February 2022. Everything seemed to be going fine, but at the very end of the process I was told that such applications could, at that time, only be made within the US. I contacted my congressional representative's constituent services

staff. Following a phone conversation with them explaining the issue, I sent over a detailed letter and the paperwork needed for them to make inquiries on my behalf. They got back to me the next business day to let me know that the US Department of State had been contacted about my issue. The next morning I received an email from the embassy stating they could offer me an immediate appointment to complete my application.

19. On 31 March 2022, the US Department of State put out a press release that the “X” gender marker would be available from 11 April 2022. I received an update that my passport had been shipped on 13 April 2022. My passport was the US embassy in London's first with an “X” gender marker, on 22 April 2022.

### *The International Context*

20. I understand that the UK government asserts it does not recognise nonbinary as a legal gender category, but there needs to be a clear approach for how the UK deals with people who are recognised as nonbinary or intersex in another country.
21. The UK has agreed to recognise genders acquired in a select group of countries which appear on the list of Approved Countries and Territories. This includes California, but California is not the only territory on that list to legally recognise gender identities which are not simply male or female. I understand from my research that nonbinary people are recognised in the following Approved Countries and Territories:
  - a. The countries of Iceland, Malta, the Netherlands, New Zealand, South Africa, and Uruguay.

- b. The American states of Colorado, Connecticut, Illinois, Kansas, Maine, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Washington, and the District of Columbia.
- c. The Australian territories of the Australian Capital Territory and the Northern Territory, and the states of New South Wales, South Australia, Tasmania, and Victoria.

22. Austria and Germany, which also appear on the list of Approved Countries and Territories, legally recognise "*intersex*" as a gender category.

### Current Problems with Non-Recognition

23. I am a highly organised person and I always seek to follow the law. The current UK approach to how my nonbinary identity is treated means that I am unable to regularise my administrative and legal affairs and ensure that I comply with the law. I can give two recent examples of how that has happened.

24. The first issue I had was in 2021, after I received my updated birth certificate in California. I had previously been recognised as a man, on the basis of my US birth certificate, and the gender on that birth certificate had subsequently changed. I looked into whether I needed to record this change of gender to remain compliant with UK immigration law. The UK Government website on the biometric residence permit ("**BRP**") states that:

*"You must apply for a new BRP straight away if any of these things change:*

- *name, for example if you've got married*
- *nationality*
- *facial appearance*
- *date of birth, for example if it was wrong*

- *gender*

**You must apply for a new BRP within 3 months. You can be fined up to £1,000 or have your stay shortened if you do not”<sup>1</sup>**

25. Accordingly, I filed “*change of circumstance*” paperwork to request a new Biometric Residence Permit (“**BRP**”). The paperwork itself wasn’t an issue: it asks what gender appears on my travel document; what gender I am separately, with “*Unspecified*” being an option in both cases. I received a message that my application had been successful, and that I would receive my new BRP “*within 7 working days*”. The BRP never arrived. When I finally received an update, I was told that no new BRP could be made on the basis of my birth certificate, and I was offered the opportunity to withdraw my application and receive a refund of my fees.

26. At this point, I expected to receive my updated US passport by the end of April, so I asked UK Visas & Immigration (“**UKVI**”) to wait for my new passport. They agreed. Once I finally had my passport, I let UKVI know. A protracted email conversation ensued, which at several points I had to get legal advice on. They insisted I elect “*female*” or “*male*”, which made me deeply uncomfortable. In the end, because I needed to have some legal gender, I asked them to accept “*anything other than ‘M/male’*” as my election. The BRP lists “*F*”, which is incorrect. This correspondence is exhibited at ‘RC2’.

27. My application for a provisional driving license was similarly an ordeal, though at least that document only lists gender obscured as part of the number on the license and I could have “*Mx*” listed as my title. The guidance available did not cover my situation, so I again needed to negotiate and get legal advice. Utterly

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<sup>1</sup> <https://www.gov.uk/change-circumstances-visa-brp>



exhausting. I provided a cover letter explaining my circumstances, along with copies of my US passport, driver's license, and birth certificate.

28. This approach leaves me in the anomalous position where even though I am not a woman, and have never been recognised as a woman by any physician or by any country on the Approved Countries and Territories list, I have identity documents which incorrectly record my gender as "F".

29. The second example of legal and administrative difficulties arose when just this past month, as part of my new job, I had to undergo a background check. I work in cyber security and am due to start a new position at a major tech company next month, where I will have influence over the work of hundreds of engineers. In the type of work that I do, because I have worked with international law enforcement, the background check is very important.

30. The background check form for my job provided two options for gender, and a warning that providing false information was a criminal offence. I called Disclosure Scotland, who I understood to be conducting the background check to ask them what I should put as my gender. They were very polite, but didn't know, and gave me an email address to contact. This is the reason I want to have a GRC: I want to be able to clearly and definitively state that my legal gender in the UK is the same as it is in the US, on my passport and other US identity documents, and that gender is nonbinary. Ultimately, I manually entered "X" where the form asked to specify gender. They (the background check company) elected "female" for me without asking and the check was completed successfully. However, this cost me days of anxiety that I would not pass the security check and my professional life would be negatively affected by a legal and administrative failure to allow me to have a specified gender in the UK.

31. In April 2022 I contacted the UK's Equality and Human Rights Commission, hoping they could provide some insight as to the status of my legal gender in the UK. They referred me to the Equality Advisory Support Service, who told me they could not "*advise [me] what [my] legal sex is*".

32. Third, I anticipate this issue causing problems in the long term. I have bought a house in the UK, have a successful job here, and plan to start a family with my partner here. I plan on applying for UK citizenship. The Home Office Guidance on this issue states that:

*"Transgender people who hold non-British passports and identity cards in their former name and gender will normally be expected to align with their other passports or identity cards to reflect their acquired name and gender, so that they are using one name for all purposes, unless they are from a country that does not recognise their acquired gender and are unable to obtain a foreign passport in their new details."*<sup>2</sup>

33. In the current state of affairs, I don't even know as a matter of law what my legal gender is in the UK. Without a GRC, the only documents which determine my gender are my US documents, which clearly and consistently certify me as nonbinary. It is striking and profoundly upsetting that I do not know how my gender would be recorded on my death certificate.

34. The failure to provide a nonbinary option causes potentially serious problems. The UK agencies don't seem to care which gender I elect, so it is not about the accuracy of my recorded gender. I am regularly told "*you can be any gender you like, as long as it's female or male*". Even the GRP's first response to my

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<sup>2</sup> Home Office Nationality policy: identity (29 November 2021)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1036678/Nationality\\_policy\\_-\\_identity.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036678/Nationality_policy_-_identity.pdf)

application for a GRC was to arbitrarily offer me the opposite of my birth gender even though I plainly did not meet the criteria under the GRA 2004.

35. I feel that I am being treated less favourably than if I were a transgender woman in two ways. First, my true (and legally acquired) gender is not recognised in this country, and so I am forced to opt for an incorrect binary gender identifier. If I were a transgender woman and my acquired gender was recognised in California, I would be able to obtain a GRC with ease. Second, the uncertain status of my nonbinary identity in the UK means that I don't know what gender the UK thinks that I am.

Redaction

36. The Court will be aware that there is a significant amount of hostility to trans and gender issues in society and the media at present. While I am not seeking anonymity, I am asking that my address, and other personal details, be redacted on the Court documents that are available for public inspection to protect myself and my partner.

37. I believe that the facts stated in this statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

A handwritten signature in black ink, appearing to be 'A. J. Smith', written over a horizontal line.

Dated: 15 November 2022