

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

Pola Aviles Vasquez
Plaintiff/Aunt,

File No. 24CV015789-590

vs.

**COMPLAINT FOR CHILD CUSTODY
and
MOTION for
EX-PARTE EMERGENCY CHILD
CUSTODY**

Arcadia Aviles and Leónidas García
Defendants/ Mother and Father.

N.C. Gen. Stat. §50-13.1, §50-13.5
Local Rule 11

NOW COMES Plaintiff, by and through counsel, who alleges as follows:

1. Plaintiff (“Aunt”) has resided in North Carolina for at least six (6) months preceding the filing of this action.
2. Defendants (“Father and Mother”) are a foreign nationals and residents of Honduras.
3. This action is to determine custody of the minor child: Gabriel Antonio Garcia Aviles, born April 14, 2006.
4. The minor child is a citizen of Honduras.
5. The minor child is unmarried.
6. Pursuant to the information required in NC Gen. Stat. §50A-209, during the past, five years, the minor child has lived with:

PERIOD	ADDRESS	PERSON LIVED WITH	PRESENT ADDRESS
March 2024 – Present	North Carolina	Plaintiff/Aunt	North Carolina
February 2024 – March 2024	United States	USDHHS Youth Shelter	
Birth – February 2024	Honduras	Father and Mother	Honduras

7. The minor child was raised in Honduras by his Mother and Father.
8. The minor child entered the United States in or around February 2024, unaccompanied. He fled Honduras to escape the violence and unsafe living conditions. He made the difficult and dangerous journey without his parents.

9. Upon entering the United States, the child was housed in a Youth Shelter run by the U.S. Department of Health and Human Services. He was later released to the care of his Aunt, the plaintiff in this action. Aunt resides in North Carolina.
10. Aunt is providing: love, care, security, food, shelter, and medical care for the minor child. She has agreed to act in the best interest of the child. It is in the best interest of the minor child to remain in the United States with the Aunt.
11. The Mother and Father are not providing her with any funds to help support the child. Additionally, they have not demanded that the child be returned to their care.
12. Aunt is concerned that if the minor child were returned to Honduras, there would not be anyone to care for him.
13. In addition, the concern for the safety, security and overall good health and life is a major concern for the minor child if the child was to return to Honduras, given the level of violence and instability of government.
14. As the Aunt, Plaintiff has legal standing to bring this action for child custody.
15. This Court has jurisdiction to make judicial determinations about the custody and care of the minor child pursuant to N.C. Gen. Stat. Chapter §50A-204, and §50-13.5(c) (1) and (2).
16. The minor child is dependent upon this Court to make a child custody determination.

I. CUSTODY CLAIM

17. The Mother and Father neglected and abandoned the minor child. They allowed him to make the dangerous journey from Honduras to the United States, unaccompanied.
18. The Mother and Father have failed to support the minor child emotionally and financially.
19. Reunification with the Mother and Father is not viable due to abuse, abandonment, neglect, or a similar basis under North Carolina law.
20. As the person who has cared and provided for the minor child since he entered North Carolina, Aunt has established a parent-child relationship with the minor. Additionally, Mother and Father have not requested that the child be returned to their care, thereby ceding their parental authority to Aunt. Accordingly, she has legal standing to bring this action for child custody.
21. As a result of abandonment and/or neglect by Mother and Father, the child is eligible for long-term foster care under North Carolina law.

22. It is in the best interest of the child for custody to be awarded to the Aunt. The Aunt is fit and proper person to have exclusive care and control of the minor child. The Aunt has a safe and suitable home and has the time, ability, dedication, and financial resources to care for the minor child. The Aunt is committed to the safety, education, and well-being of the minor child.
23. Aunt has no information of any custody order pending or in effect concerning the child in a court of this or any other state.
24. Aunt knows of no person, not a party to these proceedings, who has physical custody of the minor child, or claims to have custody or visitation rights with respect to the minor child.
25. Specifically, Aunt respectfully request that this Court determine that: (1) it has jurisdiction over the minor child and that the minor child is dependent upon this Court; (2) the minor child is eligible for long-term foster care due to abandonment by the Father; (3) it is not in the best interest of the minor child to return to Honduras and (4) it is the best interest of the minor child for temporary and permanent custody to be awarded to Aunt.

II. MOTION FOR *EX PARTE* EMERGENCY CHILD CUSTODY

NOW COMES Plaintiff, by and through counsel, who in support of this Motion, states as follows:

26. The Plaintiff repeats and re-alleges paragraphs 1 – 25 as if fully set forth herein.
27. The minor child arrived in the United States in or about February 2024 and came to North Carolina in March 2024 to live with Aunt.
28. The child's birthdate is April 14, 2006 and the child will soon turn 18 years old.
29. The Aunt will attempt to serve Mother and Father by publication, since their residences are not accessible to a courier service like Federal Express.
30. The Aunt is the fit and proper person to care for the child. Aunt has provided financial and emotional support since the minor started living in North Carolina.
31. Honduras is a dangerous country from which children are fleeing in record numbers.
32. If Aunt can obtain a child custody order prior to the child's 18th birthday, the child will be able to apply for relief through our country's immigration system, which will allow him to remain legally in the United States. Without a child custody order, the minor child may be forced to return to Honduras to face the same conditions that caused him to flee in the first place.

33. As of July 2023, the U.S. Department of State has issued a Level 3 advisory (meaning individuals should reconsider travel) and generally warns against traveling to Honduras because “violent crime, such as homicide, armed robbery, and kidnapping, is common. Violent gang activity, such as extortion, violent street crime, rape, and narcotics and human trafficking, is widespread.” *Exhibit A* is a copy of the U.S. Department of State travel advisory.
34. Gangs are widespread, and they control many areas throughout the country. The United States government believes that the president of Honduras has ties to drug traffickers, which is contributing to the country’s high rate of violence. *Exhibit B* is a 2021 report from the Council on Foreign Relations.
35. The child will be at imminent risk of harm if he has to return to Honduras. The criminal justice system in Honduras will not protect him from harm and will not offer any meaningful recourse if he becomes a crime victim. Moreover, the child would be at risk of neglect in Honduras, since his parents could not protect him from the pervasive violence from which he fled.

WHEREFORE, Aunt prays the following from the Court:

1. That this verified Complaint and Motion be taken by the Court as an Affidavit for all purposes.
2. That the Court schedule an *ex-parte* Emergency Child Custody hearing so she can obtain an Order granting her sole temporary and permanent legal and physical custody of the minor child.
3. In the alternative, that the court enter an *ex-parte* temporary emergency order granting Mother the exclusive care, custody, and control of the minor child.
4. That the court grant such other and further relief as many be just and proper.

This the 8th day of April, 2024.



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STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

VERIFICATION

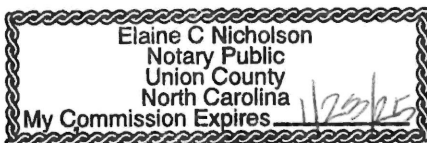
I, Pola Aviles Vasquez, the undersigned, being first duly sworn, say that I have read the foregoing document; that the matters and things alleged therein are true except as to those things alleged upon information and belief and as to those, I believe them to be true and accurate.

x Pola Aviles Vasquez
Pola Aviles Vasquez

Sworn to and subscribed before me,

This the 8th day of April, 2024.


A Notary of Mecklenburg County
My Commission Expires:



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