

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JUAN DOE, MARIA DOE,
ANDREA DOE, NOE DOE,
on behalf of themselves and others,

Plaintiffs,

v.

MARY HOLLINRAKE, Clerk for the
County of Kent, in her official
capacity, and KENT COUNTY, a
Michigan Municipal corporation.

Defendants.

1:10-cv-305
Robert J. Jonker
U.S. District Judge

Case No.
Hon.

**CLASS ACTION COMPLAINT
AND JURY DEMAND**

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INTRODUCTION

1. This action is brought on behalf of two United States citizens, two citizens of Mexico and all others similarly situated, who have been denied their fundamental right to marry under color of state law (hereinafter "Plaintiffs"). This denial constitutes a violation of Plaintiffs'

rights under the Fourteenth Amendment of the U.S. Constitution, specifically the Equal Protection and Due Process Clauses as well as Michigan Elliot Larsen's Civil Rights Act, M.C.L. 37.2101 et seq.

2. The County of Kent and the Kent County Clerk have adopted, implemented and enforced a policy that requires persons seeking to obtain a marriage a license to either provide a social security number or documentary evidence of the reason why an applicant does not have a social security number. If one or both individuals seeking a marriage license does not have a social security number and if they do not provide one of two arbitrarily preselected reasons, along with supporting documentation, as to why they do not possess a social security number, then they will denied a marriage license and therefore, are prohibited from becoming married in Kent County.

3. This litigation is brought pursuant to 42 U.S.C. §1983. Plaintiffs seek declaratory and injunctive relief as well as compensatory damages and attorney fees as provided under 42 U.S.C. §1983.

Further, this policy and procedure illegally discriminates against individual based upon their race and national origin, specifically Hispanics, many of whom reside in Kent County and do not have social security numbers which constitutes a violation of their rights under Michigan's Elliott Larsen Civil Rights Act.

PARTIES

4. Plaintiff Juan Doe is a citizen of the United States and is currently a resident of the city of Grand Rapids in the county of Kent in the state of Michigan. Plaintiff Juan Doe was issued a social security number by the Social Security Administration.

5. Plaintiff Maria Doe is a citizen of Mexico and is currently a resident of the city of Grand Rapids in the county of Kent in the state of Michigan. Plaintiff Maria Doe is of Hispanic origin and does not possess a social security number and is ineligible to receive one at this time.

6. Plaintiff Andrea Doe is a citizen of the United States and is currently a resident of the city of Wyoming, Michigan in the county of Kent in the state of Michigan. Plaintiff Andrea Doe was issued a social security number by the Social Security Administration.

7. Plaintiff Noe Doe is a citizen of Mexico and is currently a resident of the city of Grand Rapids in the county of Kent in the state of Michigan. Plaintiff Noe Doe is of Hispanic origin and does not possess a social security number and is ineligible to receive one at this time.

8. Pursuant to the principals set forth in Doe v. Bodwin, 119 Mich. App. 264, 326 N.W. 2d 472 (Mich. App. 1982). Plaintiffs file this action under fictitious names and proceed anonymously because: 1) they wish to preserve their right to privacy; 2) there is a significant social stigma attached to the lack of legal status of Noe and Maria Doe; 3) there is an inherent amount of risk associated with disclosure of their names given their lack of legal status and they fear that disclosure of their legal names and addresses would subject them to prosecution and/or deportation proceedings; 4) given the nature of this dispute and the issues involved, it is almost certain that there will be a great amount of publicity surrounding this litigation thereby exposing Plaintiffs to further scrutiny and harassment by those in the community hostile to undocumented immigrants; and 5) because of these fears and risks, they would be hesitant to this action enforcing their fundamental right to marry if they were required to disclose their legal names.

9. There is no prejudice to Defendants if Plaintiffs filed this action under fictitious names and proceed anonymously. Defendants will be made aware of Plaintiffs' identities in a confidential manner so as to satisfy any due process concerns.

10. Defendant Mary Hollinrake is the County Clerk for the County of Kent and in that position has responsibility for, among other things, the issuance of marriage licenses. Defendant

Hollinrake maintains an office at the County Administration Building, 300 Ottawa Ave. N.W. in Grand Rapids, Michigan. Defendant Hollinrake is named herein in her official capacity.

11. The County of Kent is a municipal public corporation created and established under the Constitution, laws and statutes of the State of Michigan.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343(3)(4). This Court has supplemental jurisdiction over the state constitutional and statutory claims pursuant to 28 U.S.C. §1367(a). Declaratory relief is authorized by 28 U.S.C. §2201 and Federal Rule of Civil Procedure 57. Injunctive relief is authorized by Federal Rule of Civil Procedure 65. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332(d) because this is a class action where the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; because the total number of members of all proposed plaintiff classes is well in excess of over 100, given the numbers of individuals in Kent County lacking a social security number; and because at least one member of the proposed class is likely a citizen of a country different from the Defendant.

13. This Court has personal jurisdiction over Defendants who are located in the Western District of Michigan.

14. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391(a) in that the Defendant is subject to personal jurisdiction within the Western District of Michigan and the events that give rise to this action occurred within this district.

ISSUANCE OF MARRIAGE LICENSES IN MICHIGAN

15. In Michigan, no person may marry without a license. M.C.L. § 550.101.

16. In Kent County, marriage licenses are issued by Defendant Hollinrake and by her agents and employees operating under her authority and control.

17. Michigan law requires the completion of an affidavit which requires identifying information of both applicants, contains the requisite allegations of the applicants' competency to marry as well as an additional space for the applicants' social security number which is to be collected as required under federal law. M.C.L. § 550.102.

18. Michigan law commands that, in relevant part, "[a]party applying for a license to marry shall make and file the application in the form of an affidavit with the county clerk as a basis for issuing the license." M.C.L. § 550.102.

19. Michigan law also commands that in lieu of a social security number, the County Clerk must accept an affidavit from applicants for a marriage license, under penalty of perjury, which states that they have never received a social security number.

20. Michigan law does not condition issuance of a marriage license upon proof of legal residency or any other proof of immigration status.

21. Defendants require, in addition to the application for a marriage license, for individuals who do not have a social security number to complete and sign an "Affidavit For Not Providing Social Security Number on Affidavit for License to Marry". (See Exhibit A.)

22. This additional affidavit requires the individual who does not have a social security number to:

- a. certify that they do not possess a social security number; and
- b. to provide the reason why they do not possess a social security number.

23. The affidavit provides only two acceptable reasons for not possessing a social security number:

- a. "Religious exemption";

b. "Other legal exemption".

24. The affidavit then provides examples of what would be considered acceptable legal exemptions under the second option and lists them as "citizen of another country with student or fiancé visa, or other visa, etc. or in process of becoming a U.S. Citizen, for example".

25. Defendants' policy which requires specific reasons for not having a social security number as a condition for issuing a marriage license constitutes a violation of Michigan law.

26. Further, Defendants' policy is intended to and/or does by its operation and effect, discriminate against individuals residing in Kent County based upon their national origin, specifically Hispanics, a large number of whom do not have social security numbers. The effect of this discrimination is to deny such persons their fundamental right to marry.

27. 6.9% of the residents of Kent County are of Hispanic origin. Further, 26.2% of those Hispanic residents are not US citizens. Finally, of all persons residing in Kent County who are not US citizens, Hispanics constitute 64.2 %. Accordingly, the effect of Defendants' policy is to discriminate against Hispanics and to deny them their fundamental right to marry.

PLAINTIFF'S INTENT TO MARRY

28. Plaintiffs Juan and Maria Doe have resided together since December 2005 and have two children in common.

29. Plaintiffs Juan and Maria Doe had made plans to marry this spring before their family and friends.

30. Plaintiffs Andrea and Noe Doe have been together since 2000 and had made plans to marry here in Kent County with family and friends at a local church.

31. After having been denied a marriage license, Plaintiffs Andrea and Noe Doe had to cancel their plans.

32. Plaintiffs also intend to marry so as to begin the long and arduous process of adjusting the legal status of Maria and Noe Doe through the United States Citizenship and Immigration Service.

PLAINTIFFS' ATTEMPTS TO OBTAIN A MARRIAGE LICENSE

33. On February 18, 2010, Plaintiff Juan Doe went to the Defendants' offices and asked for an application for a marriage license.

34. Plaintiff Juan Doe was told by Defendants' agent and representative that he would need to complete the marriage license application.

35. Plaintiff Juan Doe informed Defendants' agent and representative that his fiancé did not have a social security number and he was told that his fiancé would then have to come to the office to complete and sign a second form. This second form was the additional affidavit required by Defendants and attached as Exhibit A.

36. The next day, on February 19, 2010, Plaintiff Juan Doe returned with his fiancée Plaintiff Maria Doe.

37. Plaintiff Maria Doe has never been issued a social security number by the Social Security Administration.

38. Plaintiffs Juan and Maria Doe, completed the marriage application and in the space provided for the social security number of Maria Doe, they wrote "unavailable" and she explained that she has never been issued a social security number.

39. Defendants' agent and representative then explained to Plaintiff Maria Doe that she was nonetheless required to complete and sign the second affidavit **and** to provide documentation to Defendants' satisfaction that she was indeed exempt under one of the two acceptable exemptions for not possessing a social security number.

40. Plaintiffs Juan and Maria Doe, unable to provide such documentation as required or deemed acceptable to Defendants, were denied a marriage license.

41. Plaintiff Andrea Doe called the Kent County clerk's office on or about February 23, 2010 and requested information on how to obtain a marriage license.

42. Plaintiff Andrea Doe spoke to Defendants' agent and representative and she explained that her fiancé, Plaintiff Noe Doe did not have a social security number as he was never issued one due to his lack of legal status in this country.

43. Defendants' agent and representative employee then told Plaintiff Andrea Doe that she had to provide a "legal reason" why her fiancé did not have a social security number and that it was unacceptable to simply state that he was undocumented and was never issued a social security number.

44. Plaintiff Andrea Doe asked to speak directly with Defendant Hollinrake and was transferred to her directly.

45. Defendant Hollinrake explained to Plaintiff Andrea Doe that she would need to provide a "legal reason" and that the fact that he was undocumented and had never been provided with a social security number was not a sufficient "legal reason" to qualify for an exemption and that therefore a marriage license could not be issued.

46. All four Plaintiffs reside in the county of Kent and pursuant to Michigan law, they must "obtain a marriage license from the county clerk in which the man or woman resides...."

47. Plaintiffs cannot easily obtain a marriage license because the Plaintiffs would have to move their residence out of Kent County in order to obtain a marriage license from another county.

48. Defendants' policy restricting the right to marry has been in place for at least four years if not more and many individuals have been similarly denied a license to marry.

49. As a direct result of Defendants' policy and application of M.C.L. § 550.102, Plaintiffs have been unable to marry in Kent County or the state of Michigan. Plaintiffs have suffered and continue to suffer irreparable harm by having their fundamental right to marry denied by Defendants.

50. As a direct result of the policy adopted, implemented and enforced by Defendants, Plaintiffs have been unable to marry in Kent County and the state of Michigan and continue to suffer irreparable harm by having their fundamental right to marry denied by Defendants. As a direct result of the policy adopted, implemented and enforced by Defendants, Plaintiffs have been unable to marry and have suffered economic losses as well as mental and emotional distress.

CLASS ALLEGATIONS

51. The named Plaintiffs bring their claims as a class action pursuant to Fed. R. Civ. P.23 on behalf of all Class members. The Class is so numerous that joinder of all members is impracticable. Plaintiffs believe that during the Class Period, Defendants' unlawful policies and procedures have affected at least one hundred persons who satisfy the definition of the Class.

52. There are questions of fact common to the class. The common questions of fact include, but are not limited to:

- a. Whether the policy and procedures created, implemented and enforced by the Defendants with regard to the denial of marriage licenses to individuals without a social security number violates MCL § 550.102;
- b. Whether the policy and procedures created, implemented and enforced by the Defendants with regard to the denial of marriage licenses to individuals without a social security number violates the due process rights of the named Plaintiffs and the potential class;

- c. Whether the policy and procedures created, implemented and enforced by the Defendants with regard to the denial of marriage licenses to individuals without a social security violates the equal protection rights of the named Plaintiffs and the potential class;
- d. Whether the policy and procedures created, implemented and enforced by the Defendants with regard to the denial of marriage licenses to individuals without a social security violates the named Plaintiffs' and the potential class members' fundamental right to marry;
- e. Whether the policy and procedures created, implemented and enforced by the Defendants with regard to the denial of marriage licenses to individuals without a social security should be enjoined; and
- f. Whether the Court should issue a declaratory judgment in favor of Plaintiffs.

53. The named Plaintiffs' claims are typical of Class members' claims. The named Plaintiffs, like other Class members, were subjected to Defendants' policy and practice of denying a marriage license to those individuals who do not have a social security number. The named Plaintiffs' status as being without a social security numbers, were typical of those of other Class members.

54. The named Plaintiffs will fairly and adequately represent and protect the interests of the Class. The named Plaintiffs have retained counsel competent and experienced in complex class actions and civil rights litigation.

55. Class certification of Plaintiffs' claims is also appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to the named Plaintiffs and the Class as a whole. The named Plaintiffs and the Class are entitled to injunctive relief to end Defendants' common and uniform practice denying a marriage license to those individuals who do not possess a social security number and who do not fall within one of only two arbitrarily acceptable exemptions.

56. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because, inter alia:

- a. The common issues of law and fact, as well as the relatively small size of the individual class members' claims, substantially diminish the interest of members of the class in individually controlling the prosecution of separate actions;
- b. Many members of the class are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;
- c. There has been no litigation already commenced against the Defendants by the class members to determine the questions presented;
- d. Defendants' common and uniform policies and practices unlawfully deny a marriage license to members of the Class;
- e. This will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices;
- f. A class action can be managed without undue difficulty because the Defendants have regularly committed the violations complained of herein, and existence, implementation and enforcement of the policy and procedure is not in dispute.

COUNT I - VIOLATION OF DUE PROCESS RIGHTS

57. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs as though set forth at length herein.

58. By requiring that all persons either provide a social security number or to demonstrate that they are exempt under one of two arbitrarily acceptable exemptions in order to secure a marriage license, Defendants, acting under color of state law pursuant to M.C.L. § 550.102, substantially and directly interferes with Plaintiffs' fundamental right to marry.

59. The policy adopted by Defendants requiring individuals to provide a reason and supporting documentation, which is limited to two possible exemptions as outlined in Exhibit A, for why an applicant for a marriage license does not have a social security number before a

marriage license application will be accepted, substantially and directly interferes with the Plaintiffs' fundamental right to marry.

60. The policy adopted by Defendants is unjustified by any legitimate state governmental purpose.

61. The policy adopted by Defendants violates the Plaintiffs' constitutional right to due process of law under the Fourteenth Amendment to the United States Constitution.

COUNT II - VIOLATION OF THE EQUAL PROTECTION CLAUSE

62. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs as though set forth at length herein.

63. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to provide a reason and supporting documentation for their lack of a social security number as a condition of obtaining such a license denies persons who cannot provide such reasons or sufficient supporting documentation to the satisfaction of the Defendants and/or her agents and employees of the equal protection of the laws in that it deprives them of a fundamental right, the right to marry, by subjecting them to a legal requirement not imposed on other persons. Specifically, this policy has a disparate and discriminatory impact based upon the national origin, specifically upon Hispanics.

64. The policy adopted, implemented and enforced by Defendants to require persons applying for a marriage license to provide one of only two acceptable reasons for not having a social security number along with supporting documentation as a condition of obtaining such a license denies Plaintiffs Juan and Andrea Doe their right to the equal protection of the laws in that it treats them differently than other United States citizens who wish to marry merely because they choose to marry an individual who was never issued a social security number.

65. The policy adopted, implemented and enforced by Defendants to require persons applying for a marriage license to provide one of only two acceptable reasons for not having a social security number along with supporting documentation as a condition of obtaining such a license denies Plaintiffs Maria and Noe Doe their right to the equal protection of the laws in that it treats them differently than other aliens who have been issued a social security number.

66. The policy adopted, implemented and enforced by Defendants to require persons applying for a marriage license to provide one of only two acceptable reasons for not having a social security number along with supporting documentation as a condition of obtaining such a license serves no compelling state-governmental interest.

67. The policy adopted by Defendants violates the Plaintiffs' constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States.

COUNT III - VIOLATION OF THE SUPREMACY CLAUSE

68. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs as though set forth at length herein.

69. Article VI, Section 2 of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, and Thing in the Constitution of Laws of any State to the Contrary notwithstanding.

70. The Supremacy Clause mandates that Federal law preempts any state regulation of any area in which Congress has expressly or impliedly exercised exclusive authority or which is constitutionally reserved to the Federal government

71. The powers to regulate immigration and the foreign affairs of the United States are exclusive powers of the Federal government. The immigration laws do not bar persons who

are not lawfully present in the United States or who have not been issued a social security number from marrying.

72. The policy adopted, implemented and enforced by Defendants to require persons applying for a marriage license to provide one of only two acceptable reasons for not having a social security number along with supporting documentation as a condition of obtaining such a license impermissibly regulates immigration by interfering with an individual's right to marry an alien and petition for their adjustment of status under the immigration laws.

73. The policy usurps the Federal government's exclusive power over immigration and naturalization and its power to regulate the foreign affairs of the United States.

74. The policy both empowers and imposes the obligation to assess an individual's immigration status on persons who have no particular knowledge or training to do so.

75. The policy violates the Supremacy Clause of the United States Constitution.

COUNT IV—VIOLATION ELLIOT-LARSEN CIVIL RIGHTS ACT

76. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs as though set forth at length herein.

77. The Elliot-Larsen Civil Rights Act, MCL 37.2302(a) states that:

Except where permitted by law, a person shall not: (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

78. "Person" means "an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, the

state or a political subdivision of the state or an agency of the state, or any other legal or commercial entity.” MCL §37.2302(g).

79. “Public service” means “a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the state, a political subdivision, or an agency thereof or a tax exempt private agency established to provide service to the public, except that public service does not include a state or county correctional facility with respect to actions and decisions regarding an individual serving a sentence of imprisonment.” MCL § 37.2301(b).

80. “Place of public accommodation” means “a business, or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.” MCL § 37.2301(a)

81. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to provide a reason and supporting documentation for their lack of a social security number as a condition of obtaining such a license denies persons who cannot provide such reasons or sufficient supporting documentation to the satisfaction of the Defendants and/or her agents and employees deprives Plaintiffs of a fundamental right, the right to marry, by subjecting them to a legal requirement not imposed on other persons. Specifically, this policy has a disparate and discriminatory impact based upon the race and national origin of Plaintiffs Maria and Noe Doe as well as the class members, specifically upon Hispanics.

82. The policy adopted by Defendants violates the Plaintiffs’ rights under the Elliot-Larsen Civil Rights Act to be free from discrimination based upon their race and national origin.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request the following:

A. An injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting Defendants from further implementing or enforcing the policy to require persons applying for a marriage license to provide a reason as to why they do not have a social security number as well provide supporting documentation as a condition of obtaining such a license or requiring her agents and employees from doing so;

B. A declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 and 42 U.S.C. §1983 declaring that M.C.L. 550.102 as well as the policy adopted and enforced by Defendants to require persons applying for a marriage license to provide a reason as to why they do not have a social security number as well provide supporting documentation as a condition of obtaining such a license to be void and unconstitutional because it violates the Due Process Clause and the Equal Protection Clauses of the Fourteenth Amendment, and the Supremacy Clause of the United States Constitution;

C. Damages against Defendants for violating Plaintiff's rights under the United States Constitution;

D. Damages against Defendants for violating Plaintiff's rights under the Michigan Elliot Larsen's Civil Rights Act, M.C.L. § 37.2101 et seq.;

E. An order awarding the Plaintiffs the costs incurred in this litigation including attorney fees pursuant to 42 U.S.C. §1988 and M.C.L. § 37.2801; and

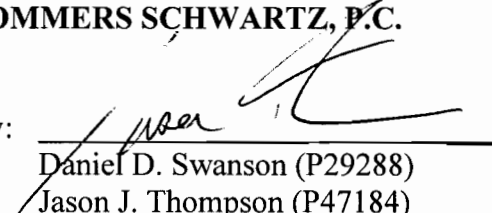
F. Such other relief as the Court deems just and proper.

Respectfully Submitted,

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Date: March 31, 2010

DEMAND FOR JURY TRIAL

The undersigned hereby demands a trial by jury as to all claims so triable.

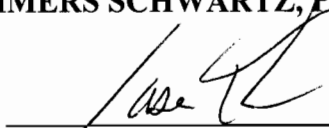
Respectfully Submitted,

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Dated: March 31, 2010