

**UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF PENNSYLVANIA**

**HEATHER BUCK and
JOSE GUADELUPE
ARIAS-MARAVILLA,**

Plaintiffs,

v.

DOROTHY STANKOVIC, Register:
Of Wills for Luzerne County,
(in her individual and official
capacities)

Defendant.

CIVIL ACTION

No. _____

**ELECTRONICALLY
FILED**

VERIFIED COMPLAINT

INTRODUCTION

This action is brought on behalf of a United States citizen and a citizen of Mexico who wish to marry. The Register of Wills of the County of Luzerne has adopted, implemented and enforced a policy that requires persons seeking to obtain a marriage license to prove their lawful presence in the United States before their application for a marriage license will be

accepted. This policy directly interferes with plaintiffs' fundamental right to marry and accordingly violates the United States Constitution. This litigation is brought pursuant to 42 U.S.C. § 1983. Plaintiffs seek declaratory and injunctive relief as well as compensatory damages and attorneys fees as provided under 42 U.S.C. § 1988.

PARTIES

1. Plaintiff Heather Buck ("Ms. Buck") is a citizen of the United States and is currently a resident of the town of West Hazelton in Luzerne County in the Commonwealth of Pennsylvania.

2. Plaintiff Jose Guadalupe Arias-Maravilla ("Mr. Arias") is a citizen of Mexico and is currently a resident of the town of West Hazelton in Luzerne County in the Commonwealth of Pennsylvania.

3. Defendant Dorothy Stankovic is the Register of Wills of Luzerne County and in that position has responsibility for, among other things, the issuance of marriage licenses. Defendant Stankovic maintains an office at Luzerne County Court House, Penn Place Annex, 20 N. Pennsylvania Street in Wilkes-Barre, Pennsylvania. Defendant Stankovic is named herein in both her personal and official capacities.

4. Defendant Stankovic is a “person” as that term is defined in 42 U.S.C. § 1983 and at all relevant times has been acting under color of state law.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4). This Court has supplemental jurisdiction over the state constitutional and statutory claims pursuant to 28 U.S.C. § 1367. 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.

6. This Court has personal jurisdiction over the defendant who is located in the Middle District of Pennsylvania.

7. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) in that the defendant is subject to personal jurisdiction within the Middle District of Pennsylvania and the events that give rise to this action occurred within the Middle District of Pennsylvania.

ISSUANCE OF MARRIAGE LICENSES IN PENNSYLVANIA

8. In Pennsylvania, no person may marry without a license. 23 PA. C. S.A. §§ 1103 and 1301(a).

9. In Luzerne County, marriage licenses are issued by defendant Stankovic and by agents and employees operating under her authority and control.

10. Pennsylvania law sets forth the requirements for a properly completed application for a marriage license. 23 PA. C. S. A. § 1302(b) provides in relevant part:

(b) Contents.--The application shall contain the following:

- (1) The full name of the applicants.
- (2) The occupation, birthplace, residence and age of the applicants. . .
- (3) Whether the marriage contemplated is the first, second or other marriage of an applicant.
- (4) A statement that neither of the applicants is afflicted with transmissible disease.
- (5) The full name, residence, occupation and birthplace of the parents of each applicant, including the maiden name of the mother of each applicant.

11. 23 PA. C.S.A. § 1304 specifies certain restrictions on the issuance of a marriage license applicable to minors, incompetent persons, persons under the influence of drugs or alcohol, and persons who propose to marry a relative within certain degrees of consanguinity.

12. Pennsylvania law also requires persons wishing to obtain a marriage license to present themselves in person for an oral examination under oath with respect to four issues:

- (1) The legality of the contemplated marriage.
- (2) Any prior marriage or marriages and its or their dissolution.
- (3) The restrictions set forth in section 1304 (relating to restrictions on issuance of license).
- (4) All the information required to be furnished on the application for license as prepared and approved by the department.

23 PA. C.S.A. § 1306.

13. Pennsylvania law further states that the person issuing the license “must be satisfied as to the identity of both of the applicants.” 23 PA. C.S.A. § 1301(A).

14. Both federal and Pennsylvania law recognize various forms of identification to establish identity, including valid passports issued by foreign countries.

15. Pennsylvania law commands, in relevant part, that “[t]he marriage license *shall* issue” if the application is properly completed and there is no legal objection to the marriage. 23 PA. C.S.A. § 1307. (emphasis added).

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

17. Defendant Stankovic's office provides a worksheet for male and female marriage license applicants. Those worksheets reflect the requirements for a marriage licenses contained in the Pennsylvania Marriage Act. Copies of those work sheets are attached as Exhibit A.

PLAINTIFFS' INTENT TO MARRY

18. Plaintiffs have resided together in West Hazelton Pennsylvania since October, 2005.

19. In December 2006, plaintiffs had a baby boy. That child lives with the plaintiffs in West Hazelton where both plaintiffs are responsible for his care and nurturing.

20. Plaintiffs had intended to marry in preparation for the birth of their child. The child was born prematurely however, and their plans to marry had to be postponed.

21. Before being able to marry, however, in January 2007, Mr. Arias was taken into custody by local police officers when his car broke down. When the officers saw Mr. Arias walking along the road to a pay

phone to call a tow truck, they stopped him and asked for identification. Mr. Arias presented his Mexican driver's license. The police officers immediately inquired as to whether he was lawfully present in the United States. Mr. Arias refused to answer their questions on the ground that local police officers in Luzerne County are not authorized to enforce the immigration laws of the United States. The police officers took him into custody and turned him over to immigration officials. At no time was Mr. Arias charged with a crime.

22. Mr. Arias was then held for one week in a detention facility in Reading, Pennsylvania, thereafter he was transferred to an immigration detention facility in York County, Pennsylvania. He remained at the York facility for more than one month.

23. On March 6, 2007, Mr. Arias was brought before a United States Immigration Judge. Mr. Arias conceded that he had entered the United States without permission. Mr. Arias agreed to depart voluntarily from the United States. After Mr. Arias agreed to post a bond to which the government consented, the immigration judge granted Mr. Arias 60 days to arrange his personal affairs and ordered him to report to the United States embassy or to a United States consulate in Mexico on or before May 12, 2007.

24. With only 60 days to order his affairs, Mr. Arias and Ms. Buck determined to marry before Mr. Arias had to leave the United States.

25. Although plaintiffs understand that their marriage will not entitle Mr. Arias to remain in the United States after May 12, 2007, they nonetheless are anxious to marry to regularize their relationship and to ensure that their child has all the legal protections afforded to the child of lawfully wed parents.

**PLAINTIFFS' ATTEMPTS TO OBTAIN A MARRIAGE
LICENSE**

26. On March 23, 2007, plaintiffs went to the office of District Justice Joseph Zola to inquire about the requirements for obtaining a marriage license.

27. Upon information and belief, District Justices' office in Luzerne County are empowered to accept marriage license applications. With respect to this function, they operate as agents of and under the control of the defendant Stankovic.

28. Now and at all times relevant hereto, plaintiffs have been eligible to marry under Pennsylvania law because:

- (a) Both plaintiffs are of full age;
- (b) Neither plaintiff is currently married;

- (c) Neither plaintiff has a transmissible disease;
- (d) Neither plaintiff has ever been adjudged incompetent;
- (e) Neither plaintiff was or is under the influence of alcohol or drugs;
- (f) Plaintiffs are wholly unrelated by blood;
- (g) Plaintiffs have sufficient documentation to establish their identities.

29. When plaintiffs arrived at the District Justice's office and asked for the requirements for obtaining a marriage license, they were told by a woman working at the office that they would need birth certificates in English or translated into English, photo identification and social security numbers.

30. Ms. Buck explained that Mr. Arias was a citizen of Mexico and that he did not have a social security number.

31. The woman immediately asked about his immigration status.

32. Ms. Buck explained Mr. Arias' situation, including that he was currently under order from a United States immigration judge to depart from the United States by May 12, 2007.

33. The woman at the desk advised plaintiffs to come back with a translated copy of Mr. Arias' birth certificate and his Mexican passport. She also advised them to bring Mr. Arias' immigration papers with him.

34. Thinking that they would be able to make a full and complete application once they had Mr. Arias' birth certificate translated from Spanish to English, Ms. Buck and Mr. Arias left the office intending to return after the weekend.

35. On Monday, March 26, 2007, Mr. Arias and Ms. Buck returned to the District Justice office with the translated birth certificate and other documents. This time, a different woman was working behind the desk.

36. When Mr. Arias and Ms. Buck attempted to file their application, the woman expressed her doubt that the application could be accepted. She stated that she had to call the office of defendant Stankovic in Wilkes Barre. She made the call, purportedly to that office. She spoke on the phone for a number of minutes.

37. When she hung up the phone, the woman told Ms. Buck that she would not accept the application because Mr. Arias could not prove his lawful presence in the United States. She stated that Ms. Buck and Mr.

Arias would have to go to Wilkes Barre to the office of defendant Stankovic if they wished to pursue the matter.

38. Concerned that they would not be able to marry, Ms. Buck and Mr. Arias contacted their immigration attorney, Mr. Philippe Weisz.

39. On March 28, 2007, Mr. Weisz contacted defendant Stankovic's office and asked for a description of the requirements for a marriage license. He was told both parties would need a birth certificate, a second form of identification, and proof of the dissolution of any prior marriage. Mr. Weisz then asked if foreign language birth certificates had to be translated. Upon hearing this, the woman on the phone then told him that any person not born in the United States would have to prove that he was lawfully present. When Mr. Weisz asked the woman what statute or regulation contained this requirement, she told him that he should speak to the attorney for the office.

40. Mr. Weisz was then transferred to Mr. Michael Hudacek, Jr. Mr. Hudacek clearly stated that it was the policy of defendant Stankovic to refuse applications for marriage licenses unless both parties could prove their lawful presence in the United States. When Mr. Weisz asked to be referred to the statutory or regulatory basis for such a requirement, Mr.

Hudacek confirmed the policy and told Mr. Weisz that if he was not satisfied with it, he should “sue us.”

41. In a subsequent conversation on April 11, 2007 with plaintiffs’ attorneys, Mary Catherine Roper and John Grogan, Mr. Hudacek stated that defendant’s policy to refuse applications for marriage licenses unless both parties could prove their lawful presence in the United States was not in writing. Mr. Hudacek stated that the policy does not impose a requirement that particular identifying documents be produced. Rather, Mr. Hudacek stated that the policy was to ascertain whether applicants for marriage licenses were “illegally” present the United States in the view of defendant’s office regardless of reliability of identification documents produced.

42. Convinced that the policy adopted by defendant Stankovic was contrary to Pennsylvania law and violated both the United States and Pennsylvania constitutions, plaintiffs determined to apply one last time before seeking legal redress.

43. On April 17, 2007, plaintiffs went directly to the office of defendant Stankovic in Wilkes-Barre to make another attempt to obtain a marriage license. They brought with them their birth certificates, photo

identification for Ms. Buck and Mr. Arias' current Mexican passport in addition to Mr. Arias' immigration papers and the requisite fee.

44. They were met by Mr. Don Williams, who identified himself as the Deputy Register of Wills for Luzerne County. Mr. Williams leafed through Mr. Arias' passport, then stated that he would not accept their application for a marriage licenses because there was no visa in the passport, which Mr. Williams took to mean that Mr. Arias was "illegally in the country." He refused to review the immigration judge's order showing that Mr. Arias had to leave the country by May 12, 2007. Mr. Williams stated that his instructions from defendant Stankovic were to deny plaintiffs' application if they reapplied.

45. When he was asked if there was a written policy, Mr. Williams produced a photocopy of an index card, which he gave to plaintiffs, and which reads as follows:

I had a question from George Warden that I responded to with a written email opinion. I think it would be good to circulate that opinion to other Clerks now. George had two foreign nationals request a Marriage License. To identify themselves, they presented their foreign Passports and their Visas. Their Passports were valid, but their Visas had expired. Since the Visas had expired they were in the country illegally.

I advised George NOT to issue a marriage license to these foreign nationals. I rendered a written opinion via email that the Clerk should not issue a marriage license to foreign nationals

who were in the country illegally. I further advised that INS should be informed that these people had requested a marriage license and that their Visas had expired.

It is perfectly proper to issue a marriage license to foreign nationals as long as they are in the country legally. Evidence of being in the country legally would be the production of a valid Passport and a valid Visa or a Green Card.

The document given to the plaintiffs is attached hereto as Exhibit B.

46. As a direct result of the policy adopted, implemented and enforced by defendant Stankovic, plaintiffs have been unable to marry.

47. Mr. Arias must report to a United States embassy or consulate in Mexico on or before May 12, 2007, in order to abide by the immigration judge's order to which he is subject.

48. If Ms. Buck and Mr. Arias are not permitted to marry before he is forced to depart for Mexico, they will either have to forgo their right to marry or seek to marry in Mexico, in which case they will not be able to marry in their Church as they desire. Nor would they be able to marry in the community in which they live, but would be required to marry 3000 miles from Ms. Buck's family and friends and from the grandparents of her child.

49. If he is unable to marry Ms. Buck before he is compelled to leave for Mexico, Mr. Arias will depart the country leaving his child

without the legal, social, spiritual and psychological benefits of the lawful marriage of his parents.

50. Plaintiffs will suffer irreparable harm by having their fundamental right to marry denied by the defendant's policy.

51. Upon information and belief, plaintiffs cannot easily obtain a marriage license in another county because policies similar to that of defendant Stankovic are in effect in most of the other counties in the Commonwealth of Pennsylvania. The same requirements have been reported to be in effect in Lackawanna, Wyoming and Monroe Counties. In addition, foreign nationals without proof of legal residence in the United States have reportedly been denied licenses to marry in Lackawanna, Carbon, Allegheny, Delaware and Philadelphia Counties.

52. Injunctive relief is necessary to ensure that Ms. Buck and Mr. Arias are able to marry before Mr. Arias is compelled to leave for Mexico and to avoid the irreparable harm that will be visited on them if they are not able to marry before his departure.

**FIRST CAUSE OF ACTION
(SUBSTANTIVE DUE PROCESS)**

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

54. The policy adopted by defendant Stankovic requiring foreign citizens to prove lawful presence in the United States before their application for a marriage license will be accepted substantially and directly interferes with the plaintiffs' fundamental right to marry.

55. The policy adopted by defendant Stankovic is unjustified by any legitimate state governmental purpose.

56. The policy adopted by defendant Stankovic violates the plaintiffs' constitutional right to due process of law under the Fourteenth Amendment to the United States Constitution.

SECOND CAUSE OF ACTION (EQUAL PROTECTION)

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

58. The policy adopted, implemented and enforced by defendant Stankovic to require persons applying for a marriage license to prove their lawful presence in the United States as a condition of obtaining such a license denies persons who cannot so prove or who are unable to prove their lawful presence to the satisfaction of defendant Stankovic and/or her agents and employees of the equal protection of the laws in that it deprives them of a fundamental legal right, the right to marry, by subjecting them to a legal requirement not imposed on other persons including United States citizens

as well as aliens who are and who can prove that they are lawfully present in the United States.

59. The policy adopted, implemented and enforced by defendant Stankovic to require persons applying for a marriage license to prove their lawful presence in the United States as a condition of obtaining such a license denies Ms. Buck her right to the equal protection of the laws in that it treats her differently than other United States citizens who wish to marry merely because she wishes to marry an individual who is not or cannot prove that he is lawfully present in the United States.

60. The policy adopted, implemented and enforced by defendant Stankovic to require persons applying for a marriage license to prove their lawful presence in the United States as a condition of obtaining such a license denies Mr. Arias his right to the equal protection of the laws in that it treats him differently with respect to the fundamental right to marry than other aliens who are or who can prove that they are lawfully present in the United States.

61. The policy adopted, implemented and enforced by defendant Stankovic to require persons applying for a marriage license to prove their lawful presence in the United States as a condition of obtaining such a license serves no compelling state-governmental interest.

62. The policy adopted by defendant Stankovic violates the plaintiffs' constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION (SUPREMACY CLAUSE)

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

64. 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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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

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

lawfully present in the United States from marrying. In fact, in certain situations, the immigration laws of the United States explicitly provide for it.

67. The policy adopted and enforced by defendant Stankovic to require persons applying for a marriage license to prove their lawful presence in the United States impermissibly regulates immigration and the incidents thereof.

68. 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.

69. 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.

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

PRAYER FOR RELIEF

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

- (a) a temporary restraining order and/or a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting

defendant Stankovic from further implementing or enforcing the policy to require persons applying for a marriage license to prove their lawful presence in the United States 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 the policy adopted and enforced by defendant Stankovic to require proof of lawful presence in the United States as a condition for the acceptance of an application for a marriage license to be void because it violates Due Process Clause and the Equal Protection Clauses of the Fourteenth Amendment, and the Supremacy Clause of the United States Constitution;
- (c) damages against defendant Stankovic for violating plaintiffs' rights under the United States Constitution, the Pennsylvania Constitution, and the law of Pennsylvania;
- (d) an order awarding the Plaintiffs the costs incurred in this litigation including attorney's fees pursuant to 42 U.S.C. § 1988; and
- (e) such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ John J. Grogan

JOHN J. GROGAN*
PA ID No. 72443
EDWARD DIVER*
PA ID No. 85011
Langer & Grogan, P.C.
The Bell Atlantic Tower
1717 Arch Street
Suite 4130
Philadelphia, Pa. 19103
215.320-5662 Tel.
215.320.5703 Fax.
jgrogan@langergrogan.com

/s/ Mary Catherine Roper

MARY CATHERINE ROPER
PA ID No. 71107
American Civil Liberties
Union Of Pennsylvania
P.O. Box 40008
Philadelphia, PA 19106
Tel.: (215) 592-1513 ext. 116
Fax: (215) 592-1343
mroper@aclupa.org

WITOLD J. WALCZAK

PA ID No. 62976
American Civil Liberties
Union Of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213
Tel.: (412) 681-7864
Fax: (412) 681-8707
vwalczak@aclupgh.org

OMAR C. JADWAT*
American Civil Liberties Union
Foundation
Immigrants' Rights Project
125 Broad St., 18th Fl.
New York, NY 10004
(212) 549-2620
(212) 549-2654 facsimile
ojadwat@aclu.org

LUCAS GUTTENTAG*
JENNIFER C. CHANG*
American Civil Liberties Union
Foundation
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
(415) 343-0770
(415) 395-0950 facsimile
jchang@aclu.org
lguttentag@aclu.org

*Admission *pro hac vice* anticipated