

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

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TRACEY CORDES, CLERK  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

JUANA DOE, JUAN DOE,  
on behalf of themselves and others  
similarly situated,

**1:10-cv-452**

Plaintiffs,

Case No. \_\_\_\_

v.

**CLASS ACTION COMPLAINT  
AND JURY DEMAND**

DANIEL C. KRUEGER, Clerk for the  
County of Ottawa, in his official  
capacity, and OTTAWA COUNTY, a  
Michigan Municipal Corporation,

Defendants.

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**Mexican American Legal Defense  
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**INTRODUCTION**

1. This action is brought on behalf of JUANA and JUAN DOE<sup>1</sup> and other similarly situated individuals who are being denied their fundamental right to marry under color of state

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<sup>1</sup> JUANA and JUAN DOE are not Plaintiffs' true names, rather, for the reasons set forth in Plaintiffs' Motion to Proceed Under Fictitious Names and supporting Memorandum, JUANA and JUAN DOE seek to proceed anonymously.

law based upon the fact that one or more of them do not possess a valid social security number. Specifically, Defendant DANIEL C. KRUEGER, the County Clerk for Ottawa County has publicly stated that “without a Social Security number or a reason for an exemption, [his office] [[was] not going to grant a [marriage] license.” Nate Reens, *Michigan County Clerks’ Policies on Marriage Licenses for Illegal Immigrants Vary*, THE GRAND RAPIDS PRESS, Apr. 1, 2010.<sup>2</sup>

2. Defendant KRUEGER also stated, “[s]how me where in the Constitution it says that there is a right to marriage. We are following the federal law.” *Id.*

3. Defendant KRUEGER further stated that he supports Kent County Clerk Mary Hollinrake, who was recently sued<sup>3</sup> for refusing to issue marriage licenses to those without Social Security numbers or the proper exemptions. *Id.*

4. The policies and actions of Defendants KRUEGER and OTTAWA COUNTY violate Plaintiffs’ and all other similarly situated individuals’ constitutionally protected right of due process and their right to equal protection under the Fourteenth Amendment of the United States Constitution.

5. The policies and actions of Defendants KRUEGER and OTTAWA COUNTY violate the Supremacy Clause of the U.S. Constitution by impermissibly regulating the federal government’s power over immigration and foreign affairs and by interfering with an individual’s right to marry an alien and petition for their adjustment of status under the immigration laws.

6. The policies and actions of Defendants KRUEGER and OTTAWA COUNTY also violate Michigan Elliot-Larsen’s Civil Rights Act, M.C.L.A. § 37.2101 *et seq.* (2010) in that

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<sup>2</sup> Also available at: [http://www.mlive.com/news/grand-rapids/index.ssf/2010/04/michigan\\_county\\_clerks\\_vary\\_on.html](http://www.mlive.com/news/grand-rapids/index.ssf/2010/04/michigan_county_clerks_vary_on.html).

<sup>3</sup> The suit pending against Clerk Mary Hollinrake is entitled: *Juan Doe et. al. v. Mary Hollinrake, Clerk for the County of Kent, et. al.*, 1:10-cv-305 (W.D. Mich.).

their policy and practice unlawfully discriminates against Plaintiffs and all other similarly situated individuals based upon their race and national origin, specifically Latinos.

7. Plaintiffs seek declaratory and injunctive relief as well as compensatory damages and attorney fees as provided under 42 U.S.C. §1983 and §1988.

### **PARTIES**

8. Plaintiff JUANA DOE is a resident of the city of Holland in Ottawa County in the State of Michigan and seeks to obtain a marriage license in order to marry Plaintiff JUAN DOE.

9. Plaintiff JUAN DOE is a resident of the city of Holland in Ottawa County in the State of Michigan and seeks to obtain a marriage license in order to marry Plaintiff JUANA DOE.

10. Defendant DANIEL C. KRUEGER is the County Clerk for the County of Ottawa and in that position has responsibility for, among other things, the issuance of marriage licenses. Defendant DANIEL C. KRUEGER maintains an office located in West Olive, Michigan. Defendant DANIEL C. KRUEGER is named herein in his official capacity.

11. Defendant OTTAWA COUNTY 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).

13. This Court has supplemental jurisdiction over the state constitutional and statutory claim pursuant to 28 U.S.C. §1367(a).

14. Declaratory relief is authorized by 28 U.S.C. §2201 and Federal Rule of Civil Procedure 57.

15. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.

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

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

## **BACKGROUND**

### **A. U.S. Dep't of Health and Human Services Interpretation of 42 U.S.C. §666(A)**

18. 42 U.S.C. §666(a)(13)(A)(2000) requires states to establish procedures for requiring that the social security number of “any applicant for...marriage license be recorded on the application”. *Id.*.

19. In 1999 the U.S. Department of Health and Human Services, Office of Child Support Enforcement (“OCES”) issued an interpretation of the statutory language of Section 466(a)(13) of the Social Security Act (“Social Security Act”), now codified as 42 U.S.C. §666(a)(13)(A). Inclusion of Social Security Numbers on License Applications and Other Documents, Policy Interpretation Question PIQ-99-05, (U.S. Dep’t. of Health and Human Services, Office of Child Support Enforcement July 14, 1999) *available at*: <http://www.acf.hhs.gov/programs/cse/pol/PIQ/1999/piq-9905.htm>. (hereinafter “OCES Letter”).

20. According to the OCES interpretation letter, the Social Security Act “*does not require that an individual have a social security number as a condition of receiving a license.*” OCES Letter (emphasis added).

## **B. Issuance Of Marriage Licenses In Michigan**

21. Michigan prohibits individuals from marrying without a license. M.C.L.A. §551.101.

22. All persons in Michigan who seek to marry must obtain a marriage license from the county clerk of the county in which the man or woman resides. M.C.L.A. §551.101.

23. Michigan law states, “[t]he state registrar shall furnish to each county clerk of this state blank application forms of an affidavit containing the requisite allegations, under the laws of this state, of the competency of the parties to unite in the bonds of matrimony, and as required to comply with federal law, containing a space requiring each applicant's social security number.” M.C.L.A. § 551.102.

24. Michigan law also commands that, “[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.A. § 551.102.

25. Under Michigan law, a marriage license may be issued if either applicant does not have a social security number under the following conditions: “an applicant who demonstrates he or she is exempt under law from obtaining a social security number or to an applicant who for religious convictions is exempt under law from disclosure of his or her social security number under these circumstances.” M.C.L.A. §551.102(3).

26. Michigan amended its marriage license requirements to include an individual's social security to conform to with of Section 466(a)(13) of the Social Security Act (codified as 42 U.S.C. §666(a)(13)(A)), which governs the process by which grants are made to the states for the Child Support Enforcement Program. Michigan Attorney General, Opinion No. 7212, at 1-2 (March 19, 2008) (hereinafter “Attorney General Opinion”).

**C. Michigan Attorney General Opinion Of M.C.L.A. §551.101**

27. In 2008, the Michigan Attorney General determined that “federal law does not require the collection of a social security number from a person who has never been issued one in order for the State to comply with 42 USC 666(a)(13)(A).” Attorney General Opinion, at 2.

28. Further, the Michigan Attorney General added that: “under [M.C.L.A. 551.102(1)], a county clerk may issue a marriage license to an applicant who fails to provide his or her social security number on the application if the person has never been issued a social security number *and so states on the affidavit for license to marry or in a separate sworn statement made a part of the application.*” Attorney General Opinion, at 3 (emphasis added).

**DEFENDANTS’ PROCEDURES FOR ISSUING MARRIAGE LICENSES**

29. Defendant DANIEL C. KRUEGER is the county clerk for Defendant OTTAWA COUNTY.

30. In Ottawa County, marriage licenses are issued by Defendant KRUEGER and by his agents and employees operating under his authority and control. M.C.L.A. §§ 551.101-102.

31. As the County Clerk, Defendant KRUEGER is the final policymaking authority for Defendant OTTAWA COUNTY with respect to the documentation required to obtain a marriage license.

32. Because Defendant KRUEGER is the final policymaking authority for Defendant OTTAWA COUNTY with respect to the documentation required to obtain a marriage license, Defendant KRUEGER’s policies are the policies of Defendant OTTAWA COUNTY.

33. Accordingly, Defendant OTTAWA COUNTY is liable for any constitutional injuries that may result from Defendant KRUEGER’s policies.

34. Despite the OCES interpretation letter and the Attorney General Opinion, it is the policy of Defendant KRUEGER and the Ottawa County clerk's office not to issue a marriage license unless both applicants provide social security numbers or, if they do not supply social security numbers, submit an affidavit stating the reason for not having a social security number.

35. Defendants require 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."

36. This affidavit requires an individual who does not have a social security number to certify that she does not possess a social security number; and to provide the reason why she does not possess a social security number.

37. According to Defendants' interpretation of M.C.L.A. §551.102, the only valid reasons for not providing a social security number are either a "religious exemption" or "other legal exemption."

38. The affidavit 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 . . ."

39. It is the policy of Defendant KRUEGER and the Ottawa County Clerk's Office not to issue a marriage license for individuals who do not have a valid social security number unless it falls within the aforementioned exemptions.

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

40. Plaintiffs JUANA and JUAN DOE have one child together.

41. Plaintiffs JUANA and JUAN DOE intend to get married.

42. In April 2010, Plaintiff JUANA DOE visited the Ottawa County Clerk's Office for the purpose of obtaining the necessary information and paperwork to obtain a marriage license.

43. Plaintiff JUANA DOE was informed by the Clerk's Office that in order to obtain a marriage license, she and her husband would need to provide their birth certificates, identifications cards such as a state issued driver's license or state issued identification card and social security number.

44. In light of Defendants' marriage license requirements, Plaintiffs JUANA and JUAN DOE are unable to obtain a marriage license because JUAN DOE cannot meet either Defendants' "religious exemption" or "other legal exemption" requirement.

45. Plaintiffs JUANA and JUAN DOE wish to marry soon in Michigan before family and friends but have been so prevented by Defendants and their unlawful policies.

#### **DEFENDANTS' POLICY OF DENYING A MARRIAGE LICENSE**

46. 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 Plaintiffs' Constitutional rights and Michigan law.

47. Further, Defendants' policy by its operation and effect discriminates against individuals residing in Ottawa County based upon their national origin, specifically Latinos, a large number of whom do not have social security numbers.

48. The effect of Defendants' policy is to discriminate against Latinos and to deny them their fundamental right to marry.

49. Defendants' policy restricting the right to marry has been in place since at least 2006 if not longer and many individuals have been similarly denied a license to marry.

50. As a direct result of Defendants' policy and application of M.C.L.A. § 551.102, Plaintiffs have been unable to marry in Ottawa County.

51. Plaintiffs have suffered and continue to suffer irreparable harm by having their fundamental right to marry denied by Defendants. Specifically, Plaintiffs have suffered economic losses as well as mental and emotional distress.

### **CLASS ACTION ALLEGATIONS**

52. Plaintiff JUANA and JUAN DOE bring this lawsuit pursuant to Fed. R. of Civ. P. 23, on behalf of themselves and all persons unable to obtain a marriage license because (1) at least one individual does not have a social security number and (2) does not fall within one of the allowable exemptions for not providing a social security number as a condition of obtaining a marriage license in accordance with Defendants policy, which require persons applying for a marriage license to prove their lawful presence in the United States and/or 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.

53. The class defined above satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Fed. R. Civ. P. 23(a)(1) and (a)(3).

54. The class is so numerous that joinder of its members is impracticable.

55. Common questions of law and fact predominate over individual issues that may exist as to the class.

56. These common questions of law and fact include, *inter alia*, the following:

- 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 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.

57. The named Plaintiffs' claims are typical of Class members' claims.

58. 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.

59. The named Plaintiffs' status as being without a social security numbers, were typical of those of other Class members.

60. The named Plaintiffs will fairly and adequately represent and protect the interests of the Class.

61. The named Plaintiffs have retained counsel competent and experienced in complex class actions and civil rights litigation.

62. Class certification of Plaintiffs' claims is 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.

63. The named Plaintiffs and the Class are entitled to injunctive relief to end Defendants' common and uniform practice of 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.

#### **COUNT I - VIOLATION OF DUE PROCESS RIGHTS**

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

65. Defendants, acting under color of state law pursuant to M.C.L. § 550.102, require that all persons either (1) provide a social security number or (2) demonstrate that they are exempt under one of two acceptable exemptions in order to secure a marriage license.

66. The policy adopted by Defendants that all persons either provide a social security number or demonstrate that they are exempt under one of two acceptable exemptions in order to secure a marriage license effectively requires foreign citizens to prove lawful presence in the United States before their application for a marriage license will be accepted.

67. The policy adopted by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States and/or 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 substantially and directly interferes with Plaintiffs' fundamental right to marry.

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

69. Accordingly, 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**

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

71. The policy adopted by Defendants that all persons either (1) provide a social security number or (2) demonstrate that they are exempt under one of two acceptable exemptions in order to secure a marriage license effectively requires foreign citizens to prove lawful presence in the United States before their application for a marriage license will be accepted.

72. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States and/or 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 denies persons who cannot so prove or who are unable to prove their lawful presence to the satisfaction of Defendants and their agents or employees or both of the equal protection of the laws in that it deprives Plaintiffs 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.

73. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States and/or 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 denies Plaintiffs JUANA and JUAN

DOE and others similarly situated 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 Plaintiff JUANA DOE and others similarly situated choose to marry an individual who is not or cannot prove that he is lawfully present in the United States.

74. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States and/or 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 serves no compelling state-governmental interest.

75. Accordingly, the policy adopted by Defendants violates Plaintiffs and others similarly situated of their constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

### **COUNT III - VIOLATION OF THE SUPREMACY CLAUSE**

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

77. 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.

78. 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

79. The powers to regulate immigration and the foreign affairs of the United States are exclusive powers of the federal government.

80. 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.

81. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States and/or 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 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.

82. 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.

83. 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.

84. Accordingly, the policy violates the Supremacy Clause of the United States Constitution.

#### **COUNT IV - VIOLATION ELLIOT-LARSEN CIVIL RIGHTS ACT**

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

86. The Elliot-Larsen Civil Rights Act, M.C.L.A. §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.

87. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States and/or 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 denies persons who cannot provide such reasons or sufficient supporting documentation to the satisfaction of Defendants and/or their 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.

88. The policy adopted, implemented and enforced by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States and/or 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 denies persons who cannot provide such reasons or sufficient supporting documentation to the satisfaction of Defendants and/or their agents and employees has a disparate and discriminatory impact based upon the race and national origin of Plaintiffs and others similarly situated.

89. Accordingly, 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. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2) for injunctive and declaratory relief and designate Plaintiff JUANA and JUAN DOE as representatives of the class and her counsel of record as class counsel;

B. An injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting

Defendants or their agents and employees from further implementing or enforcing the policy requiring persons applying for a marriage license to prove their lawful presence in the United States or 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;

C. A declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 and 42 U.S.C. §1983 declaring that the policy adopted and enforced by Defendants requiring persons applying for a marriage license to prove their lawful presence in the United States or 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;

D. If the Court finds that M.C.L.A. §550.102 requires Defendants to adopt and enforce a policy requiring persons applying for a marriage license to prove their lawful presence in the United States or to provide a reason as to why they do not have a social security number as well provide supporting documentation, a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 and 42 U.S.C. §1983 declaring that M.C.L.A. §550.102 is 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;

E. Damages against Defendants for violating Plaintiffs' rights under the United States Constitution;

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

G. 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.A. § 37.2801; and

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

Respectfully Submitted,

**AVANTI LAW GROUP, PLLC**

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**THE MEXICAN AMERICAN LEGAL DEFENSE AND  
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Dated: May 11, 2010

**DEMAND FOR JURY TRIAL**

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

Respectfully Submitted,

**AVANTI LAW GROUP, PLLC**

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**THE MEXICAN AMERICAN LEGAL DEFENSE  
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Dated: May 11, 2010