UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HEATHER BUCK and **JOSE GUADELUPE ARIAS-MARAVILLA**, Plaintiffs,	CIVIL ACTION No. 03:07-cv-717 ARC
v.	
DOROTHY STANKOVIC, Register Of Wills for Luzerne County, (in her individual and official capacities) Defendant.	**ELECTRONICALLY FILED**

PLAINTIFFS' PETITON FOR ATTORNEYS' FEES AND COSTS PURSUANT TO 42 U.S.C. § 1988

Plaintiffs, by and through their undersigned attorneys, submit this petition for attorneys' fees and costs pursuant to 42 U.S.C. § 1988. In support of their petition, Plaintiffs aver as follows:

Introduction

1. Over the course of three weeks in April 2007, Plaintiffs' counsel investigated, prepared, filed and presented evidenced at a preliminary injunction hearing on Plaintiffs' claims that Defendant's policy of refusing a marriage license to foreign nationals who could not prove their lawful

presence in the United States violated their right to marry and was preempted by the federal immigration laws. On May 1, 2007, this Court issued a preliminary injunction compelling Defendant to issue the Plaintiffs a marriage license without regard to Mr. Arias-Maravilla's immigration status, finding that Plaintiffs were likely to succeed on their claim under 42 U.S.C. § 1983 that Defendant's policy violated their constitutional right to marry and that Plaintiffs would be irreparably harmed if the injunction did not issue. *Buck v. Stankovic*, 485 F. Supp. 2d 576 (M.D. Pa. 2007). The Court concluded that Defendant's policy impermissibly "denie[d] the fundamental rights of an undocumented alien and his citizen fiancé to marry." *Id.* at 584. Because of the Court's decision, the Plaintiffs were able to marry on May 7, before Mr. Arias-Maravilla was required to return to Mexico.

2. Following that decision, the parties pursued settlement and ultimately negotiated a Consent Order that was entered by this Court on February 11, 2008. That Consent Order gives Plaintiffs full relief on their claims and, in fact, provides additional relief that Plaintiffs could not have obtained by pursuing the case through trial. In particular, the Consent Order requires Defendant to amend her policy for all marriage applicants, not just Plaintiffs – relief that Plaintiffs had no standing to pursue once they obtained

their own marriage license in accordance with the Court's preliminary injunction.

3. Plaintiffs thus are "prevailing parties" within the meaning of 42 U.S.C. § 1988 and now seek a "reasonable attorney's fee" pursuant to that statute.

4. This case was of unusual public importance. The case resolved an open constitutional question, *i.e.,* whether an undocumented alien has a constitutional right to marry. The Court's published decision has been widely reported in the relevant literature and, despite being less than a year old, has already been the subject of academic commentary. *See* Rachel F. Mora, Loving and the Legacy of Unintended Consequences, 2001 *Wisconsin Law Review* 239 (2007) and Christopher D. Nelson, Comment, Protecting the Immigrant Family: The Misguided Policies, Practices and Proposed Legislation Regarding Marriage License Issuance, 4 *Univ. St. Thomas Law Review* 643 (2007).

5. The case was also the subject of considerable media attention, arising as it did against the back drop of the efforts of certain local officials to impose a broad scheme of regulation on the immigrant community in the City of Hazelton, which had been extensively covered in the local and national press. *See, e.g.,* Julia Preston, Illegal Immigrants Right to Wed,

New York Times, (May 2, 2007); Shannon P. Duffy, No Wedding Bell Blues, *Legal Intelligencer* (May 4, 2007).

6. Most importantly, of course, the case had profound significance for the Plaintiffs themselves. As a direct result of Defendant's policy, Plaintiffs Heather Marie Buck and Jose Arias-Maravilla were barred from marrying despite the fact that they had otherwise satisfied all of the statutory requirements for a marriage license, had a child together, had lived together for nearly 18 months and strongly desired to formalize and solemnize their relationship in their home community and among their friends and family before Mr. Arias was required to return to Mexico pursuant to an order of voluntary departure issued by a United States Immigration Judge. Because of the Court's Order, they were able to obtain a marriage license the day after the Order issued. A few days later, they were able to unite their family by formal bonds of marriage *before* Mr. Arias was forced to leave the United States for Mexico.

7. The Court's Order preliminarily enjoining Defendant's policy capped an intensely concentrated period of preparation and litigation. Plaintiffs' strategy and efforts were dictated by the knowledge that the preliminary injunction proceeding would be of dispositive importance in this litigation because Plaintiff Jose Arias-Maravilla was under an ironclad order

to depart from the United States and report to a United States consulate in Mexico by May 12, 2007. Plaintiffs' counsel knew that if they failed to secure relief at the preliminary injunction stage, little else would matter as Mr. Arias would have to leave the country long before any trial on the merits could be obtained.

8. Accordingly, Plaintiffs' counsel – a team of private attorneys, attorneys for the American Civil Liberties Union of Pennsylvania ("ACLU"), the national ACLU's Immigration Right's Project, and a law professor from the University of Pennsylvania – were compelled to expend a large amount of professional time in the space of a few weeks. Some members of the team had virtually to halt work on any other matter to ensure that this case was properly presented to the Court.

9. Plaintiffs' counsel's task was all the more challenging because the case raised highly complex issues at the intersection of constitutional and immigration law. Substantively, in addition to the core constitutional issues, the case also raised issues of abstention, federal preemption and constitutional remedies. All of these issues were framed against a complex background of immigration law and the state law regarding marriage. Procedurally, Plaintiffs' counsel faced a number of critical strategic decisions such as whether the case should be brought as a class action and

whether, given likely abstention arguments (which were, in fact, raised by Defendant), the case should be brought in state or federal court. All of those issues and strategic decisions had to be identified, analyzed and resolved within the short time frame imposed by Mr. Arias' obligation to leave the United States by May 12, 2007.

10. In spite of those challenges, Plaintiffs prevailed decisively.

11. The clarity and force of the Court's May 1, 2007 ruling effectively ended the active portion of the case and set the stage for negotiations between the parties that resulted in a consent decree entered on February 11, 2008.[1]

12. Plaintiffs are indisputably prevailing parties and are entitled to a fully compensatory attorneys' fee award. Accordingly, the Plaintiffs respectfully request that the Court issue an award for fees of $ 124,579.00 and $1815.59 in costs.

13. The fee award sought by the Plaintiffs is reasonable in every respect. As evidenced by the history of the case as set forth herein and the

[1] As is reflected in Plaintiffs counsel's billing records submitted with this Petition, Plaintiffs' counsel expended very little time in this matter after the preliminary injunction hearing on April 26, 2007 and the immediate post-hearing briefing. Aside from one settlement conference in October before the Hon. Thomas M. Blewitt, which both Ms. Roper and Mr. Grogan attended, Ms. Roper alone billed for time associated with negotiating the terms of the Consent Order.

Declarations appended hereto, both the rates charged and the time expended were reasonable. In addition, Plaintiffs have exercised billing judgment in eliminating $13,125.00 in fees. Moreover, despite, the important contributions made to Plaintiffs team by the Director of the ACLU of PA, Witold "Vic" Walczak, a nationally respected civil liberties attorney, Plaintiffs are not seeking compensation for his work, which was largely consultative in nature. As indicated in the attached declarations from attorneys working in the Philadelphia legal market and from recent cases applying Philadelphia market rates, counsel's rates are well within, indeed on the low end of, the prevailing market rates in the legal community in which those attorneys practice.

14. The Petition is further supported by contemporaneous billing records that detail the scope of the work performed by these attorneys and which amply demonstrate that that work was conducted with great efficiency under difficult conditions.

Factual Background

15. The difficulties inherent in this litigation were three-fold: (1) the speed at which it had to be brought and successfully resolved; (2) the unusual complexity of the legal and procedural issues involved; and (3) the marked intransigence of the Defendants. Those three factors dictated the

course of Plaintiffs' legal strategy and in large measure determined the composition of the legal team assembled and the manner in which that team worked.

16. Plaintiffs, Heather Buck, a United States citizen and a resident of Luzerne County, and Jose Arias-Maravilla, a citizen of Mexico and the father of Ms. Buck's child, then living without legal authorization in Luzerne County, first attempted to obtain a marriage license in March 2007. *Verified Complaint* at ¶ 26. There was considerable urgency to their application. Mr. Arias was under an irrevocable order from Immigration Judge Walter A. Durling to voluntarily depart from the United States before May 12, 2007. 485 F. Supp. 2d at 579.

17. Plaintiffs first learned of Defendant's policy regarding proof of lawful residence through persons working at a local district justice's office where they had gone to seek a marriage license. *Verified Complaint* at ¶ 35. Plaintiffs consulted with their immigration counsel at that time, who in turn confirmed the existence of the policy with an attorney for Defendant's office. *Verified Complaint* at ¶ 39. In discussion with Defendant's attorney, Plaintiffs' immigration counsel expressed his view that Defendant's policy was unconstitutional and asked Defendant to issue a marriage license to the

Plaintiffs. Those overtures were rebuffed. *Verified* Complaint at ¶40. At that point, Plaintiffs contacted the ACLU of Pennsylvania.

18. Defendant had an opportunity to this stage to resolve the matter without the cost of litigation. She spurned that opportunity.

19. Convinced that the Defendant's policy was unconstitutional and concerned that a similar policy was in place in counties other than Luzerne, the ACLU assembled a litigation team capable of and willing to bring litigation against the Defendant. The case required attorneys capable of handling the complex legal and procedural issues in play and willing to bring the case in the shortest possible time frame. *See* Walczak Dec. ¶ 8 and *infra*.

20. Once the legal team was assembled, it determined that an overture should be made to the Defendant to try to work out a change in her policy without litigation. To that end, Ms. Roper and Mr. Grogan contacted the attorney for the Defendant, Mr. Michael Hudacek, Jr. That conversation ended abruptly with Mr. Hudacek again refusing to discuss resolution of the Plaintiffs' case.

21. Defendant thus has a second opportunity to resolve this matter without the cost of litigation. She again spurned that opportunity.

22. At that point, Plaintiffs had not yet formally presented their application directly to the Defendant's office in Wilkes Barre. As noted in the Court's opinion, on April 17, 2007, the Plaintiffs, accompanied by Mr. Diver and Mr. Grogan, presented themselves to Mr. Donald Williamson an employee of Defendant at the Defendant's office in Wilkes Barre and applied for a marriage license. 485 F. Supp. 2d at 579. They offered documentation including Mr. Arias' passport and the order of voluntary departure compelling him to leave the United States by May 12, 2007. Mr. Williamson refused to look at any of the documentation except for Mr. Arias' passport, which he skimmed looking for a visa stamp that would indicate that Mr. Arias' was present in the United States lawfully. Not finding that stamp, Mr. Williamson denied the Plaintiffs' application although he would later testify that he had no doubts that Mr. Arias was the man pictured in the passport photo. 485 F. Supp. 2d at 579.

23. Defendant thus rejected a third opportunity to resolve the case without litigation.

24. On April 17, 2007, Plaintiffs filed suit. The next day, April 18, 2007, they filed a motion seeking a preliminary injunction barring Defendant from enforcing her policy.

25. Promptly after the filing of the complaint, the Court set a hearing date of April 26, 2007. Throughout the intervening week, Plaintiffs' counsel, primarily Mr. Grogan and Mr. Diver, prepared the Plaintiffs for their testimony, prepared witness examinations and other aspects of the hearing presentation, and responded to discovery requests made by counsel for the Defendant.

26. The hearing was conducted in Scranton on April 26, 2007. Just prior to the hearing, Defendant filed opposition papers arguing that the Court should abstain from exercising its jurisdiction. Plaintiffs requested and were granted the opportunity to respond and after the hearing drafted a responsive brief on the abstention issue and other issues raised at the hearing. That brief was filed with the Court on April 27, 2007.

27. At the conclusion of the hearing, this Court invited the Defendant to reconsider her position in light of the testimony adduced at the hearing in which Defendant's employee, Mr. Williamson, conceded that he had no doubts as to the identity of Mr. Arias. *see* 485 F. Supp. 2d at 579 and *Transcript of Proceedings* pp. 87-91.[2] Defendant again – now for the fourth time - refused to alter her policy thereby requiring additional briefing by Plaintiffs and subjecting the Court to the expenditure of resources necessary

[2] The Transcript of the Hearing is appended hereto as Exhibit 1.

to craft a thorough opinion in a very short time frame. Plaintiffs also suffered the continued anxiety that relief would not be obtained before Mr. Arias had to leave for Mexico.

28. The Court issued its opinion granting the preliminary injunction on May 1, 2007. Because of the time pressures due to Mr. Arias' voluntary departure order, plans were made to obtain a marriage license the very next day, including seeking judicial relief from the three-day waiting period under the Marriage Law. Mr. Grogan and Mr. Diver traveled to Wilkes Barre to accompany the Plaintiffs through this process, with the assistance of Defendant's counsel.

29. On May 7, 2007, Plaintiffs were married.

30. Within days, Mr. Arias left for Mexico where he remains today.

31. The Court's Order of May 1, 2007 effectively ended active litigation in this matter. Shortly thereafter, Ms. Roper reached out to Defendant's counsel to explore the possibility of settlement without further litigation. Ms. Roper and Mr. Grogan joined with Mr. Mahoney and Mr. Hudacek at a settlement conference in September. That conference was not successful, but shortly thereafter the parties reached a settlement in principle that would not include the resolution of the issue of attorney fees and asked the Court for additional time in which to finalize a consent decree. The final

Consent Order was submitted to this Court on January 28, 2008. This Court entered that Order on February 11, 2008.

Legal Argument

A. Plaintiffs are "Prevailing Parties" Who Have Achieved Complete Success and Should Be Awarded a Fully Compensable Fee.

32. This is precisely the type of case for which the fee shifting provision of 42 U.S.C. § 1988 was enacted. The purpose of Section 1988 is to "ensure 'effective access to the judicial process' for persons with civil rights grievances" *Hensley v. Eckerhart,* 461 U.S. 424, 429 (1983) (quoting H.R.Rep. No. 94-1558, p. 1 (1976) and S.Rep. No. 94-1011, p. 4 (1976)). Accordingly, " a prevailing plaintiff' should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Id. See also Truesdell v. Philadelphia Housing Auth.*, 290 F.3d 159, 163 (3d Cir. 2002).

33. As the Third Circuit confirmed just last week, relief on the merits achieved in the form of a preliminary injunction can confer "prevailing party" status. *People Against Police Violence v. City of Pittsburgh*, No. 06-4457, 2008 WL 696894, at *4 (3d Cir. March 17, 2008). This is true where "plaintiffs achieved precisely what they sought on an enduring basis-the

permanent demise of the challenged [government action] and in its place a system that satisfied plaintiffs' goals." *Id.* at *6.

34. A prevailing party is "one who has been awarded some relief by the court" through a court-ordered "material alteration of the legal relationship of the parties." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001) (citations and quotations omitted.) *See also, Jama Corp. v. Gupta*, Civ. No. 99-1574, 2008 WL 10867 at *2 (M.D. Pa. Jan. 4, 2008) (prevailing party is one who "succeed[s] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit").

35. The fact that Plaintiffs did not prevail on every claim is irrelevant to assessing fees. "Civil rights actions will often raise many claims arising from 'a common core of facts' or 'related legal theories,' requiring the District Court to 'focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.'" *Eichenlaub v. Township of Indiana*, 214 Fed. Appx. 218, 222 (3d Cir. 2007) (quoting *Hensley*, 461 U.S. at 435). *See also*, *Tenafly Eruv Association, Inc. v. Tenafly,* 195 Fed. Appx. 93, 96 (3d Cir. 2006) (when litigation consists of related claims, plaintiff's fees should not reduced when some claims were unsuccessful, yet desired outcome is achieved); *West*

Virginia University Hospital v. Casey, 898 F.2d 357, 361 (3d Cir. 1990). The Supreme Court in *Hensley* expressly rejected a "mathematical" approach to fees, in which fee awards would be proportional to the number of successful claims. *Id.*

36. Plaintiffs have achieved complete success in this litigation. That success is measured not only in terms of the ultimate result, *i.e.,* the change in Defendant's unconstitutional policy and the substantial damage award to the Plaintiff, but in terms of the speed with which the result was obtained enabling the Plaintiffs to exercise their fundamental right to marry in the United States *before* Mr. Arias had to leave the country.

37. "Where a Plaintiff has excellent results, his attorney should recover a fully compensable fee." *Hensley*, 461 U.S. at 435. "Indeed, 'the most critical factor' in determining the reasonableness of a fee award 'is the degree of the success obtained." *Farrar v. Hobby,* 506 U.S. 103, 114 (1992) (citations omitted). Here the success obtained by Plaintiffs was complete and their entitlement to a fully compensable fee award is plain.

B. Plaintiffs Should Be Awarded Their Full Request, Which Is Based On Reasonable Hourly Rates and a Reasonable Number of Hours Expended.

38. The "lodestar" method is used to determine the reasonableness

of an attorneys' fee under 42 U.S.C. § 1988. *Planned Parenthood of Cent. N.J. v. Attorney Gen. of N.J.*, 297 F.3d 253, 265 n.5 (3d Cir. 2002). The lodestar is the "number of hours reasonably expended on the litigation multiplied by the reasonable hourly rate." *Hensley*, 461 U.S. at 433. the lodestar is "strongly presumed to yield a reasonable fee." *Washington v. Phila. Ct. of C.P.* ., 89 F.3d 1031, 1035 (3d Cir. 1996).

1. The Hourly Rates Charged Are Reasonable

a. Philadelphia is the Relevant Legal Community

44. The reasonableness of an attorney's hourly rate is determined by the prevailing market rates charged by attorneys "of reasonably comparable skill, experience and reputation" in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11 (1984); *Maldonado v. Houston*, 256 F.3d 181, 184 (3d Cir. 2001).

45. The first step in determining the prevailing market rate is determining the "relevant community". *Blum*, 466 U.S. at 895. Where local counsel are unwilling to handle a case or where a case requires the "special expertise of counsel from a distant district," the "relevant community" for determining a prevailing market rate is the forum in which the attorneys regularly practice, not the forum of the litigation. *Interfaith*

Comm. Org. Honeywell Int'l. Inc., 426 F.3d 694, 705 (3d Cir. 2005). Both situations apply here.

46. This case arose against the background of existing litigation involving the constitutional rights of immigrants, including undocumented immigrants, filed against the City of Hazelton. *See Lozano v. City of Hazelton*, 496 F. Supp. 2d 477 (M.D. Pa. 2007). In *Lozano,* a team of lawyers led by the ACLU of PA challenged a series of anti-immigrant ordinances passed by the city of Hazleton, Pennsylvania. Walczak Dec. at ¶¶ 6-7.[3] The *Lozano* case was filed in late 2006 and soon obtained preliminary injunctive relief. At the time that this case was filed in April 2007, *Lozano* had been tried before the Honorable James M. Munley of this Court, but no opinion had yet issued. *See Lozano v. City of Hazleton,* 496 F.Supp.2d 477 (M.D. Pa. 2007) (decision after bench trial, issued in July 2007). Walczak Dec. at ¶ 6.

47. This case and the *Lozano* case shared several significant similarities. Both cases involved complex constitutional issues interwoven with federal immigration law. Both cases raised issues of first impression. Both were filed and litigated under extreme time pressure. And in both

[3] The Declaration of Witold J. Walczak, Legal Director for the ACLU of PA, is appended hereto as Exhibit 2.

cases, the ACLU turned to Philadelphia lawyers, rather than Scranton area lawyers, as lead counsel on the case. Walczak Dec. at ¶ 7.

48. The first three factors dictated the last. In both cases, it was necessary for counsel to work intensely under tight deadlines before filing suit to identify and brief the legal theories. Because these were issues of first impression, it was absolutely essential that the work be performed by highly experienced and sophisticated counsel who could work essentially full-time on the case during its development. Walczak Dec. at ¶ 8.

49. In *Lozano,* the ACLU did use local practitioners for depositions, communications with clients and the examination of some witnesses at trial. (Because this case required success at the preliminary injunction stage or not at all, there was little such work available, unlike in *Lozano.*) But the bulk of Plaintiffs' legal research, brief drafting and trial work, which constituted the vast majority of the work in *Lozano* – as in this case – was handled by non-forum lawyers (which was also how the City of Hazleton managed its side of the litigation).[4] Walczak Dec. at ¶ 9.

50. In *Lozano*, the ACLU found that the intense research and writing required to develop the claims and case theories required more time and expertise than the Scranton-area practitioners could provide. There are

[4] As it happens, Mr. Mahoney also represented the Hazleton defendants.

excellent civil rights lawyers who practice in the Middle District. But the issues in the *Lozano* case, and in this case, were novel and the relevant law esoteric, particularly the application of the Supremacy Clause and the highly specialized morass that is federal-immigration law. Prosecuting the case required attorneys with diverse expertise, including litigators experienced with complex trial practice before federal courts, civil rights practitioners, immigration-, constitutional- and municipal-law experts. The ACLU was unable to identify any lawyers in the Scranton area with expertise in Supremacy Clause litigation and the intersection of immigration and constitutional law. Walczak Dec. at ¶ 10.

51. Because of its experience in *Lozano*, when it came time to find cooperating counsel in this case, the ACLU looked to Philadelphia lawyers, John Grogan and Ned Diver of Langer & Grogan (now Langer, Grogan & Diver) as well as ACLU staff attorney Mary Catherine Roper.[5] Walczak Dec. at ¶ 12, 13.

52. But these cases required more than top-shelf litigators – while Mr. Grogan and Mr. Diver had some experience with immigration law, they did not have all the expertise necessary for this case. Therefore, as it had

[5] The Declarations of John Grogan, Edward Diver and Mary Catherine Roper, with *curriculum vitae* attached, are appended hereto as Exhibits 3, 4 and 5.

done in the *Lozano* litigation, the ACLU of PA invited the participation of lawyers from the national ACLU's Immigrants Rights Project (IRP).[6] Those lawyers were essential in developing the Plaintiffs' Supremacy Clause arguments. Walczak Dec. at ¶ 11.

53. Finally, the ACLU was fortunate to be able to consult with Seth Kreimer, the Kenneth W. Gemmill Professor of Law at the University of Pennsylvania, a nationally recognized expert in constitutional litigation, and frequent co-counsel with the ACLU in Pennsylvania.[7] Mr. Walczak also consulted on the case. Walczak Dec. at ¶¶ 2, 12.

54. This case did not, like the *Lozano* case, require the resources of a large firm because the time constraints dictated that the case would focus on the petition for preliminary injunctive relief. But it did require lawyers with expertise in constitutional litigation who could immediately commit themselves to an intensive effort to prepare and pursue a complex case involving novel issues at the intersection of constitutional law, federal immigration regulation and preemption. John Grogan and Ned Diver brought those qualities and, as importantly, a willingness to devote

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[6] The Declarations of Omar Jadwat and Jennifer Chang of the ACLU Immigrant Rights Project, with *curriculum vitae* attached, are appended hereto as Exhibits 6 and 7.

[7] Professor Kreimer's Declaration, with curriculum vita attached, is appended hereto as Ex.8.

themselves to this case to the exclusion of virtually all other work through the preliminary injunction proceedings. A review of the Plaintiffs' lawyers' time sheets shows just how indispensable Grogan and Diver were to this litigation. Grogan and Diver led the team in drafting, editing, finalizing and filing nearly all pleadings and motion papers both before and after the preliminary injunction hearing. No Scranton area constitutional law practitioner could have done that. Walczak Dec. at ¶¶ 13-15.

55. The efforts of cooperating counsel are especially notable given the intense controversy that surrounded the topic of immigration at the time. "Illegal immigrants" have been made pariahs in this country, not only by Hazleton Mayor Louis Barletta, but by such high-profile television personalities as CNN's Lou Dobbs. In the *Lozano* litigation, several established firms declined to work on the case because of the controversial nature of the issues before the ACLU made contact with Cozen O'Connor. Walczak Dec. at ¶ 16.

56. The esoteric legal issues involved in this unprecedented case, combined with the unpopularity of the clients, transformed this litigation into one where out-of-forum lawyers were essential, thereby justifying the payment of home-town rates. But for the efforts of the private lawyers and public-interest-law groups involved in prosecuting this matter, Plaintiffs

would not have been able to challenge Defendants' unconstitutional policy of restricting marriage licenses to persons she deemed to have appropriate immigration status and Plaintiffs would have been unable to marry. Walczak Dec. at ¶ 17.[8]

51. Numerous courts have recognized the reasonableness of retaining lawyers from distant locations to litigate cases where local counsel are either not willing to do so or lack the necessary expertise and have consequently ordered those attorneys compensated in accordance with the prevailing market rates in their own legal communities. *See, e.g., Interfaith*, *supra.* (Recognizing reasonableness of using counsel from District of Columbia where forum counsel were not likely to take on the matter); *Jama,* supra at * 5 (use of New York rates for case litigated in Scranton). *Church of the Am. Knights of the Ku Klux Klan v. City of Erie,* No. Civ. A. 98-337, 2000 WL 33201872, at *6-7 (W.D. Pa. Nov. 24, 1998) (recognizing need to utilize Pittsburgh counsel to represent highly controversial party in a matter litigated in Erie); *Charles Q. v. Houstoun,* No.1: CV-95-280, 1997 WL

[8] It bears noting that in order to defend this case, Defendant herself looked outside the forum and retained a Philadelphia law firm, Deasey, Mahoney & Bender to represent her.

827546, at *3 (M.D. Pa. Sept. 30, 1997) (recognizing reasonableness of using Philadelphia counsel in matter litigated in Harrisburg.).

57. As it was, the team that was brought together included lawyers based in Philadelphia (Roper, Grogan, Diver and Kreimer), Pittsburgh (Walczak), New York (Jadwat) and San Francisco (Chang). Mr. Jadwat and Ms. Chang could reasonably seek compensation for their time at the rates customary in their areas – which are far higher than Philadelphia rates – but have reduced their rates to conform to Philadelphia area rates for the purposes of this petition. Jadwat Dec. at ¶¶ 6-7; Chang Dec. at ¶¶ 8-9.

b. The Hourly Rates Charged Are Well Within the Prevailing Market Rates in the Philadelphia Legal Community.

58. The hours expended and rates charged by Plaintiffs' counsel are as follows:[9]

Lawyer	Time	Rate	Total
Kreimer	4.00	385	1540.00
Grogan	162.40	350	56840.00
Diver	155.30	300	46590.00
Roper	75.60	350	26460.00
Jadwat	17.10	300	5130.00
Chang	4.40	260	1144.00
TOTAL	**418.8**		**137,704.00**

[9] These are not the amounts for which Plaintiffs seek reimbursement. As discussed below, Plaintiffs have reduced their fee request by almost 10% through the exercise of billing judgment.

59. These rates are well within the prevailing market rates for Philadelphia – indeed, in many instances they are lower than market rates.

60. As demonstrated below, the reasonableness of these fees is established by the declarations of Edward Posner and Francis Patrick Newell, as well as prior cases regarding the current prevailing rates in the Philadelphia legal community.[10] *See Washington v. Philadelphia County Ct. of Comm. Pl.,* 89 F.3d 1031, 1036 (3d Cir.1996). ("If the party seeking fees makes a prima facie case for the reasonableness of the requested rate, the burden shifts to the opposing party to produce evidence to the contrary.")

61. All of Plaintiffs' counsel are highly qualified and distinguished lawyers, with significant expertise in their respective areas of practice. *See Curriculum Vitae* attached to Exs. 3-8 and Posner Dec. Their rates charged by Plaintiffs' counsel are reasonable and are well within the prevailing market rates in the Philadelphia legal community.

62. For the private attorneys on the Plaintiffs' legal team, – Mr. Grogan and Mr. Diver – the rates reflect the actual billing rates of their firm at the time the work was performed.[11] *See* Grogan Dec. at ¶ 8; Diver Dec. at

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[10] The Declarations of Edward Posner and Francis Patrick Newell are appended hereto as Exhibits 9 and 10.

[11] The actual billing rates for both Mr. Langer and Mr. Grogan have increased since the bulk of the work in this matter was accomplished. Plaintiffs are entitled to seek an attorneys fee award based on the actual

¶ 6. These actual billing rates are the best evidence of a prevailing market rate. *See Keenan v. City of Phila.*, 983 F.2d 459, 475 (3d. Cir. 1992).

63. Ms. Roper is an employee of the ACLU of Pennsylvania and does not charge her clients in the manner that a private attorney would. Her rate, however, is the standard rate at which she charges for her time in connection with attorneys fees under 42 U.S.C. § 1988, *see* Roper Dec. at ¶ 7, and she is entitled to base the reasonableness of that rate on the prevailing market rates for attorneys with her level of skill, experience and reputation practicing in the private legal services market. *See Blum*, 465 U.S. at 895-96, *see also Student Pub. Interest Research Group v. AT&T Bell Labs.,* 842 F.2d 1436, 1450 (3d. Cir. 1988) (holding that public interest firms that typically charge clients below-market fees, or no fees at all, are nonetheless entitled to compensation based on prevailing marker rates in the relevant community).

64. The rates sought by the Plaintiffs are fully commensurate with prevailing market rates for attorneys with similar skill, experience and reputation. As noted, the rate for Professor Kreimer is substantially below

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market rates of their attorney *at the time the petition is filed*. *See Lanni v. New Jersey,* 259 F.3d 146, 149 (3d Cir.2001) ("When attorney's fees are awarded, the current market rate, defined as 'the rate at the time of the fee petition,' must be used.) (internal citation omitted). Plaintiffs' petition, however, seeks only the rate at the time the work was done.

market. The rate of $350 per hour for Ms. Roper and Mr. Grogan is well within the reasonable range for partners of their experience and expertise at Philadelphia law firms. Mr. Diver's rate of $300 is also well-within the range of senior associates at Philadelphia firms. Posner Dec. at ¶¶ 7-15; Newell Dec. at ¶¶ 3-5.

65. The reasonableness of Plaintiffs' rates are further established by the range of rates for the Philadelphia area legal market awarded in other recent litigation. *See, e.g., Jefferson v. City of Camden,* 2006 WL 1843178, * 16 (D.N.J.2006) (awarding $375 an hour); *Butler v. Frett,* 2006 WL 1806412, *7 (D.N.J.2006) (finding $375 an hour reasonable); *Barrett v. West Chester University of Pennsylvania of State System of Higher Education,* 2006 WL 859714, *4 (E.D.Pa.2006) (finding $400 an hour reasonable for senior litigator). They are also consistent with other markets in Pennsylvania. *See, e.g., Choike v. Slippery Rock Univer.*, Civ. No. 06-622, 2007 WL 3120097, at *4 (W.D. Pa. Oct. 22, 2007) (finding requested rate of $385 per hour and $350 per hour reasonable and indicative of prevailing rates in Western District of Pennsylvania); *Ferczak v. Woodruff Family* Services, Civ. No. 01-1898, 2007 WL 951439, at * 2 (W.D. Pa. Mar. 26, 2007) (finding $350 hourly rate reasonable for Pittsburgh market).

66. The rates requested by Plaintiffs attorneys are more than

reasonable given the prevailing market rates in Philadelphia and the skill, experience and reputation of those attorneys.

2. The Time For Which Plaintiffs Seek Compensation Is Reasonable.

67. Plaintiffs are entitled to recover fees and costs for all of the hours that their lawyers reasonably spent. *Hensley*, 461 U.S. at 433. Compensation should be awarded for work that is "useful and of a type ordinarily necessary to secure the final result obtained from the litigation." *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 560-61 (1986).

68. Plaintiffs' counsel have prepared declarations, attaching time sheets and curriculum vitae, all of which are attached as Exhibits and are incorporated in this Petition by reference. *See* Exhibits 3-8.

69. The hours devoted to this case by each lawyer are detailed in the lawyer's declarations and attached time sheets. All of the lawyers engaged on Plaintiffs' behalf maintained contemporaneous time records. As a general rule, all Plaintiffs' counsel applied the same billing principles and discretion that they normally apply to fee paying clients.

a. The Hours Expended Were Reasonable and Necessary

70. The hours expended by Plaintiffs' counsel indicate that they prosecuted this case in an efficient and cost effective manner. They

undertook only the work that was necessary to obtain their clients' objective within the time frame under which they were working.

71. The time pressures under which Plaintiffs' counsel were working demanded that they worked efficiently. There was simply no time for redundant or unnecessary work.

72. The only time for which counsel seek compensation for work not directly related to the prosecution of the case is for travel time to and from the Scranton area. Travel time is fully compensable at full hourly rates. *See Planned Parenthood*, 297 F.3d 267-68 (3d Cir. 2002).

73. As explained above and confirmed by the declarations of Mr. Walczak and Mr. Posner, this case required an intensive effort prior to and immediately following the preliminary injunction hearing. That time was well, and reasonably spent. Posner Dec. at ¶ 16.

b. Plaintiffs' Counsel's Exercise of Billing Discretion

74. As explained above and confirmed by the declarations of Mr. Plaintiffs' requested lodestar amount represents only about 90% of the actual attorneys' fees expended in this litigation.

75. In addition to the decision not to seek payment for the time spent on the case by Mr. Walczak, Plaintiffs have eliminated over $13,000 from their fee request. The composite chart of fees appended hereto as

Exhibit 11 shows, with strike-throughs and notations, the adjustments that Plaintiffs have made.

76. In particular, Plaintiffs reduced the time spent by Mr. Grogan drafting the complaint because a portion of that time was spent developing the potential alternative of a class complaint.[12]

77. In addition, Plaintiffs have deducted the time spent (and expenses incurred) by Mr. Diver in three separate trips to Luzerne County with Mr. Grogan to interview Plaintiffs, prepare them for the preliminary injunction hearing and accompany them to the Register of Wills (and eventually to the court for a waiver of the waiting period) to obtain their marriage license.

78. Finally, Plaintiffs are not requesting reimbursement for the time and costs of Mr. Jadwat's attendance at the preliminary injunction hearing, despite the importance of his role as consultant on immigration issues, because Plaintiffs are seeking compensation for the three lead lawyers, each of whom had an important role at the hearing. Grogan Dec. at ¶ 7.

79. The total fees and costs sought by Plaintiffs are reasonable and fully justified.[13]

[12] In fact, Plaintiffs achieved the same results they would have achieved through a class action, but by way of settlement.

CONCLUSION

Plaintiffs are indisputably prevailing parties and are entitled to a fully compensatory attorneys' fee award. Accordingly, the Plaintiffs respectfully request that the Court issue an award for fees of $ 124,579.00 and $1815.59 in costs.

Respectfully submitted,

Dated: March 27, 2008.

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[13] The costs for which Plaintiffs seek reimbursement are detailed in Mr. Grogan's declaration and attachments.

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CERTIFICATE OF SERVICE

I, Mary Catherine Roper, hereby certify that on this 27th day of March 2008, I delivered a copy of the foregoing to counsel for defendant by email, as well as through electronic filing.

/s/ Mary Catherine Roper
Mary Catherine Roper