

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CHARELLE LODER; JACK DOE; JULIE
DOE; and JONATHAN DOE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

REESE MCKINNEY, JR., Probate Judge of
Montgomery County, and GLORIA
SINCLAIR, Probate Judge of
Tallapoosa County, in their official capacities
and on behalf of themselves and all other
Alabama probate judges similarly situated,

Defendants.

Case No. 2:11-cv-979-WKW

**FIRST AMENDED
COMPLAINT**

CLASS ACTION

PRELIMINARY STATEMENT

1. This is a class action brought by two couples: Charelle Loder, a United States citizen, and her fiancé Jack Doe, a Haitian citizen, and Julie Doe, a Mexican citizen, and her fiancé Jonathan Doe, a Mexican citizen, on behalf of themselves and a class of all individuals who are unable to obtain a marriage license in Alabama because they or their intended spouses lack proof of lawful immigration status, including lacking a social security number.

2. Plaintiffs Loder and Jack Doe have been in a committed relationship for over five years and have lived together the past five years. They wish to get a marriage license in Montgomery County, and to marry. Plaintiff Jack Doe provides companionship and financial support to his fiancée, a United States citizen, and his family, including the young daughter that he and his fiancée care for. It is important to their religious faiths that the couple marry.

3. Plaintiffs Julie Doe and Jonathan Doe have known each other since childhood and have been in a committed relationship for over 15 years. They have two children, a thirteen-year-old son and a ten-year-old son. They wish to get a license to marry, and to get married, in Tallapoosa County. It is important to their religious faiths that the couple marry.

4. Both couples desire to express their love for and commitment to one another by getting married and obtaining the economic, emotional, and psychological benefits of marriage, including the satisfaction that would come from obeying their religions' tenets concerning marriage.

5. The right to marry is a fundamental right guaranteed under the United States Constitution to *all* persons regardless of immigration status. The Plaintiffs in this case, along with the other class members they seek to represent, cannot exercise their fundamental right to marry solely because they, or their desired spouse, lack proof of lawful immigration status, including lacking a social security number.

6. At the time of filing Plaintiffs' original complaint in November, 2011, Defendant McKinney, Jr., acting as the Probate Judge of Montgomery County, had adopted, implemented, and enforced a policy and practice that categorically denied a marriage license to any couple where one or both of its members lack proof of lawful immigration status, including lacking a social security number. Defendant McKinney, Jr.'s policy and practice acted to bar all persons who lack proof of lawful immigration status, including Plaintiffs Jack Doe, from obtaining a marriage license in Montgomery County. Moreover, Defendant's policy acted to bar Plaintiff Loder, a United States citizen, and all similarly situated persons, from marrying the person she loves, because her fiancé lacks proof of lawful immigration status.

7. Defendant McKinney now maintains that he has changed his policy. However, since the policy was purportedly changed, his office staff has continued to represent to the public that proof of lawful immigration status is a requirement to obtain a marriage license.

8. Defendant Gloria Sinclair, acting as the Probate Judge of Tallapoosa County, has adopted and implements and enforces a policy and practice that categorically denies a marriage license to any couple where one or both of its members lack proof of lawful immigration status. Defendant Sinclair's policy and practice acts to bar all persons who lack proof of lawful immigration status, including Plaintiffs Julie Doe and Jonathan Doe, from obtaining a marriage license in Tallapoosa County. Moreover, Defendant Sinclair's policy acts to bar United States citizens and all similarly situated persons from marrying the person they love where their fiancé lacks proof of lawful immigration status.

9. Defendants' policies are not required by any federal or state law. Indeed, the recent immigration law adopted by the State Legislature, Act 2011-535 (commonly known by its house bill number, "H.B. 56"), which was subsequently amended by the Legislature through Act 2012-491 (commonly known as (H.B. "658")), specifically exempts marriage licenses from a list of activities which require proof of lawful immigration status.

10. Defendants' policies also conflict with opinions issued by Alabama's Attorney General.

11. Defendants' policies are indicative of the policies and practices of forty other probate judges in Alabama that purposefully or effectively prohibit persons who lack proof of lawful immigration status or persons whose intended spouse lacks proof of immigration status from obtaining a marriage license. Defendants' policies, and similar policies of the class of probate judges which they are sought to represent, directly interferes with Plaintiffs' fundamental

right to marry and right to equal protection under the law, as guaranteed under the United States Constitution.

12. Plaintiffs seek declaratory and injunctive relief, and costs and attorneys' fees and expenses as provided under 42 U.S.C. § 1988.

PARTIES

Named Plaintiffs / Plaintiff Class Representatives

13. Plaintiff **Charelle Loder** ("Ms. Loder") is a citizen of the United States and is currently a resident of Alabama. Ms. Loder is 27 years old, not currently married, and wholly unrelated to her fiancé, Jack Doe, by blood. Ms. Loder has an original Social Security card, an Alabama birth certificate, and an Alabama Non-Driver Identification card. She meets all the lawful requirements under Alabama law to be issued a marriage license, but she may not obtain a marriage license because her intended spouse, Plaintiff Jack Doe, lacks proof of lawful immigration status.

14. Plaintiff **Jack Doe** is a Haitian national who currently lives in Alabama. He is 29 years old, not currently married, and wholly unrelated to his fiancée, Charelle Loder, by blood. Jack Doe and Charelle Loder have lived together since 2006. Jack Doe does not have a Social Security number, nor identification issued by the State of Alabama, and cannot show proof of his lawful immigration status. He has several other forms of identification, including a Haitian birth certificate and other identification issued by the Haitian government. Plaintiff Jack Doe meets all the lawful requirements under Alabama law to be issued a marriage license. However, he is ineligible to receive a marriage license in Montgomery County because he does not have proof of his lawful immigration status.

15. Plaintiff **Julie Doe** is a Mexican national who currently lives in Alabama. She is 32 years old, not currently married, and wholly unrelated to her fiancé, Jonathan Doe, by blood. Julie Doe has lived in Alabama with her fiancé, Jonathan Doe, since 1997. Julie Doe does not have a Social Security number, nor identification issued by the State of Alabama, and cannot show proof of her lawful immigration status. She does have several other forms of identification, including a Mexican passport, Mexican birth certificate, and a Mexican Consulate Identification Card. Plaintiff Julie Doe meets all the lawful requirements under Alabama law to be issued a marriage license. However, she is ineligible to receive a marriage license in Tallapoosa County because she does not have proof of her lawful immigration status.

16. Plaintiff **Jonathan Doe** is a Mexican national who currently lives in Alabama. He is 33 years old, not currently married, and wholly unrelated to his fiancée, Julie Doe, by blood. Jonathan Doe does not have a Social Security number, nor identification issued by the State of Alabama, and cannot show proof of his lawful immigration status. He does have other forms of identification, including a Mexican birth certificate, and a Mexican passport and Consulate Identification Card, which are currently expired, but which he intends to renew this month. Plaintiff Jonathan Doe meets all the lawful requirements under Alabama law to be issued a marriage license. However, he is ineligible to receive a marriage license in Tallapoosa County because he does not have a proof of his legal presence in the United States and does not have a Social Security card due to his immigration status.

17. Plaintiffs Charelle Loder, Jack Doe, Julie Doe, and Jonathon Doe sue on their own behalves and on behalf of those similarly situated.

Named Defendants / Defendant Class Representatives

18. Defendant **Reese McKinney, Jr.**, is the Probate Judge of Montgomery County. In that position, he is responsible for, among other things, the issuance of marriage licenses. Ala. Code §§ 30-1-9, 22-9A-17(b). He maintains an office in Montgomery County, Alabama.

19. Defendant **Gloria Sinclair** is the Probate Judge of Tallapoosa County. In that position, she is responsible for, among other things, the issuance of marriage licenses. Ala. Code §§ 30-1-9, 22-9A-17(b). She maintains an office in Tallapoosa County, Alabama.

20. Defendants McKinney and Sinclair are sued in their official capacities, and as representatives of a class of all probate judges in Alabama with a policy or practice that has the effect of categorically denying marriage licenses to a couple, where one or both of the individuals lack proof of lawful immigration status, including possessing a Social Security card.

21. Prior to initiating this action, a representative for Plaintiffs called probate offices in Alabama to inquire whether a person who does not have a Social Security card or does not have proof of lawful immigration status could obtain a marriage license. Forty-one county probate offices stated that it would be impossible for such a person to obtain a marriage license, either because the office required presentation of a Social Security card, or because the office required other proof of lawful immigration status. One other probate office—the Houston County Probate Office—refused to answer these questions over the telephone. However, the Houston County Probate Office’s website states that both proof of lawful immigration status and a Social Security number are required to obtain a marriage license.

22. The forty-two counties are: (1) Autauga County, (2) Baldwin County, (3) Bibb County, (4) Blount County, (5) Bullock County, (6) Calhoun County, (7) Chambers County, (8) Cherokee County, (9) Choctaw County, (10) Clarke County, (11) Colbert County, (12) Conecuh County, (13) Cullman County, (14) Dale County, (15) DeKalb County, (16) Escambia County,

(17) Fayette County, (18) Franklin County, (19) Geneva County, (20) Greene County, (21) Hale County, (22) Henry County, (23) Houston County, (24) Lamar County, (25) Lauderdale County, (26) Lawrence County, (27) Lee County, (28) Limestone County, (29) Lowndes County, (30) Macon County, (31) Madison County, (32) Marion County, (33) Marshall County, (34) Montgomery County, (35) Morgan County, (36) Pike County, (37) Randolph County, (38) Russell County, (39) Shelby County, (40) Talladega County, (41) Tallapoosa County, and (42) Washington County.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the U.S. Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 because this action seeks to redress the deprivation, under color of state law, of Plaintiffs' civil rights and to secure equitable or other relief for the violation of those rights.

24. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

25. This Court has personal jurisdiction over the Defendants, who are located in the Middle District of Alabama.

26. Venue is proper in the Middle District of Alabama, Northern Division, pursuant to 28 U.S.C. § 1391(b). Defendant McKinney, Jr., resides within the Middle District and Northern Division, and "a substantial part of the events or omissions giving rise to the claim[s] occurred" within this District and Division, including the enforcement of the unlawful policy and practice that are the subject of this lawsuit. Defendant Sinclair also resides within this District.

CLASS ACTION ALLEGATIONS

Plaintiff Class Allegations

27. Plaintiffs Charelle Loder, Jack Doe, Julie Doe, and Jonathan Doe (collectively “Named Plaintiffs”) bring this suit on their own behalf and on behalf of all persons in Alabama that desire to obtain a marriage license, where the person or the person’s intended spouse lacks proof of lawful immigration status, including but not limited to lacking a Social Security number.

28. Numerosity: The proposed class involves more than 40 individuals. The class is also geographically dispersed throughout the state, and involves individuals who would be difficult to identify and who may have a limited ability to exercise their legal rights on their own, such that joinder of all members of this class is impracticable. The class also includes future members whose names are not known.

29. Commonality: There are questions of law and fact common to all plaintiff class members, including whether a policy or practice that has the purpose or effect of categorically denying marriage licenses to couples where one or both of its members lacks proof of lawful immigration status violates the plaintiff class members’ fundamental right to marry as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and violates the plaintiff class members’ rights to Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution.

30. Typicality: The claims asserted by the Named Plaintiffs are typical of the claims of all members of the proposed plaintiff class because the policies and practices challenged in this action apply with the same force to the Named Plaintiffs as they do to all other members of the class. The entire plaintiff class will benefit from the relief sought.

31. Adequacy of Representation: The Named Plaintiffs will fairly and adequately protect the interests of the class. Both couples serving as class representatives possess a strong

personal interest in the subject matter of this lawsuit and the claims raised. They are represented by experienced counsel with expertise in class action litigation and litigation involving the constitutional rights of immigrants. Counsel has the legal knowledge and resources to fairly and adequately represent the interests of all class members in this action.

32. This case may be maintained as a class action under Rule 23(b)(2) because in enforcing policies that have the effect or purpose of categorically denying marriage licenses to couples where one or both of the parties lacks proof of lawful immigration status, the Defendants have acted and refused to act on grounds generally applicable to the class. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole.

Defendant Class Allegations

33. Plaintiffs also bring this action as a defendant class action under Fed. R. Civ. P. 23(b)(2). Plaintiffs seek to certify a defendant class represented by Defendant McKinney, Jr., and Defendant Gloria Sinclair in their official capacities as Probate Judges of Montgomery and Tallapoosa Counties, respectively. The proposed defendant class consists of all Alabama probate judges whose policy or practices have the purpose or effect of categorically denying marriage licenses to couples where one or both of them lack proof of lawful immigration status, including but not limited to lacking a Social Security number.

34. Numerosity: The proposed class involves more than 40 individuals. The class is also geographically dispersed throughout the state.

35. Commonality: This suit poses questions of law and fact that are common to the proposed defendant class representatives, Defendant McKinney, Jr., and Defendant Gloria Sinclair, and the proposed class members that they would represent. These include whether a policy or practice that has the purpose or effect of categorically denying marriage licenses to

couples where one or both of its members lack proof of lawful immigration status violates the plaintiff class members' fundamental right to marry as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and whether such a policy or practice violates the plaintiff class members' rights to Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution.

36. Typicality: The defenses of Defendant McKinney, Jr., and Defendant Sinclair will be typical of the defenses of the proposed defendant class. Defendant McKinney, Jr., Defendant Sinclair, and all of the other members of the proposed class operate under the same state statutory framework. As probate judges in Alabama, Defendant McKinney, Jr., and Defendant Sinclair are responsible for the issuance of marriage licenses. Ala. Code §§ 30-1-9, 22-9A-17(b). In this action challenging whether a policy or practice that has the purpose or effect of categorically denying marriage licenses to couples where one or both of its members lacks proof of lawful immigration status, including lacking a social security number, the defenses asserted by Defendant McKinney, Jr., and Defendant Sinclair will be based on legal and factual theories that are applicable to the entire proposed defendant class.

37. Adequacy of Representation: Defendant McKinney, Jr., and Defendant Sinclair will fairly and adequately protect the interests of the proposed defendant class. Their position as the Probate Judges of Montgomery County and Tallapoosa County places them in the same position with respect to this challenge as all of the other probate judges in the proposed defendant class. Because the policy and practice of Defendant McKinney, Jr., and Defendant Sinclair with respect to the issuance of marriage licenses to persons who lack proof of lawful immigration status are substantially the same as the other defendant class members, Defendant McKinney, Jr., and Defendant Sinclair will be able to adequately represent the proposed class.

38. On information and belief, Defendant McKinney, Jr., and Defendant Sinclair have no interests antagonistic to or in conflict with the interests of other members of the proposed class, and as Probate Judges of Montgomery and Tallapoosa Counties, they are each qualified and competent to represent the proposed defendant class.

FACTS

Issuance of Marriage Licenses in Alabama

39. In Alabama, no person may marry without a license. Ala. Code § 30-1-9.

40. The requirements for marriage licenses are set forth in chapter 1 of title 30 in the Alabama Code. The only restrictions set forth in this chapter are for persons under the age of 16, Ala. Code § 30-1-4, and for persons under the age of 18 whose parents or guardians do not consent. Ala. Code § 30-1-5.

41. Alabama Code § 22-9A-17 requires the probate judge to prepare and forward a completed marriage license form to the Bureau of Vital Statistics. The probate judge shall complete it “upon the basis of information obtained from the parties to be married.” Ala. Code § 22-9A-17(b). There is no requirement that identification be submitted or that the information on the form be verified.

42. A probate judge’s issuance of a marriage license is a ministerial, not judicial, act.

43. Alabama law does not condition issuance of a marriage license upon proof of lawful immigration status. Neither the Code of Alabama nor the Alabama Constitution requires marriage license applicants to provide proof of lawful immigration status in the United States to secure a marriage license, and the Code of Alabama specifically exempts applying for a marriage license from a list of activities which *do* require proof of lawful immigration status. Ala. Code § 31-13-29.

44. The Alabama Attorney General has stated that “a marriage license can be issued to an applicant who is not a United States citizen.” Ala. Att’y Gen. Op. No. 2004-176, 2004 WL 1639475, at *2, 2004 Ala. AG LEXIS 125 (July 13, 2004).

45. Alabama Code § 30-3-194(d) states that “the Social Security number of both parties to the marriage shall be collected by those parties issuing a marriage license and shall appear on the license and certificate sent to the Office of Vital Statistics.”

46. To receive a social security card, an applicant must establish that he or she is a U.S. Citizen, or possesses a lawful immigration status. However, only a subset of those who have a lawful immigration status may obtain a social security card.

47. In 2008, the Alabama Attorney General issued an opinion stating that a “social security number is not a required element for a person to receive a marriage license.” Ala. Att’y Gen. Op. No. 2008-100, 2008 WL 2662000, at *4, 2008 Ala. AG LEXIS 70 (June 25, 2008). The Attorney General’s Office instructed probate offices to allow persons without a Social Security number to submit an affidavit to the probate office attesting to the fact that he or she was never issued a Social Security number. *Id.*

Obtaining a Marriage License in Montgomery County

48. To obtain a marriage license from the Montgomery County Probate Office, an applicant must show proof of lawful immigration status.

49. Plaintiff Charelle Loder is a U.S. citizen, and her fiancé Jack Doe is a non-citizen. Plaintiffs Charelle Loder and Jack Doe cannot satisfy Defendant McKinney Jr.’s requirements to obtain a marriage license in Montgomery County because they do not have proof of Jack’s lawful immigration status.

50. Without a validly issued marriage license, Plaintiffs Charelle Loder and Jack Doe cannot marry.

Obtaining a Marriage License in Tallapoosa County

51. To obtain a marriage license from the Tallapoosa County Probate Office, an applicant must show proof of lawful immigration status.

52. Plaintiffs Julie Doe and Jonathan Doe are non-citizens of the United States and cannot satisfy Defendant Sinclair's requirements to obtain a marriage license in Tallapoosa County because they do not have proof of their lawful immigration status.

53. Without a validly issued marriage license, Plaintiffs Julie Doe and Jonathon Doe cannot marry.

Plaintiffs' Intent to Marry

54. Plaintiffs Loder and Jack Doe have lived together for over five years in a committed relationship. They are raising Loder's daughter together, and would like to marry to solidify their relationship, and to allow Jack Doe to be officially recognized as his daughter. Plaintiffs are also anxious to marry to solemnize their relationship and to obtain the economic, emotional, and psychological benefits for their family that inure from marriage.

55. Although Plaintiffs Loder and Jack Doe understand that their marriage will not entitle Jack Doe to immediate legal status in the United States, Defendant's unlawful policy—and similar policies by probate judges state-wide—effectively acts to bar Plaintiffs Loder and Jack Doe from petitioning for legal status for Jack Doe as a spouse of a United States citizen.

56. But for Defendant McKinney Jr.'s unlawful policy and practice, Plaintiffs Charelle Loder and Jack Doe would obtain a marriage license from Montgomery County and get married.

57. It would be futile for Plaintiffs Charelle Loder and Jack Doe to request a marriage license in Montgomery County, and in the vast majority of counties in Alabama, in person.

58. Plaintiffs Julie Doe and Jonathan Doe have lived together for over fifteen years in a committed relationship. Together, they are raising their two children. Plaintiffs Julie Doe and Jonathan Doe want to express their love for and commitment to their desired spouse by getting married and obtaining official sanction for their family from the State. Plaintiffs are also anxious to marry to solemnize their relationship and to obtain the economic, emotional, and psychological benefits for their family that inure from marriage.

59. But for Defendant Sinclair's unlawful policy and practice, Plaintiffs Julie Doe and Jonathan Doe would obtain a marriage license from Tallapoosa County and get married.

60. Plaintiffs Julie Doe and Jonathon Doe contacted the Tallapoosa County Probate Office through a representative by telephone, and were told that they could not obtain a marriage license without proof of lawful immigration status.

61. It would be futile for Plaintiffs Julie Doe and Jonathon Doe to request a marriage license in Tallapoosa County, and in the vast majority of counties in Alabama, in person.

62. Defendants' policies and practice requiring that Jack Doe, Julie Doe and Jonathan Doe provide proof of their lawful immigration status denies the Named Plaintiffs their fundamental right to marry in violation of the Due Process Clause and their right to Equal Protection under the United States Constitution.

FIRST CAUSE OF ACTION

Fourteenth Amendment Substantive Due Process Clause; **42 U.S.C. § 1983**

(Plaintiffs, and those similarly situated, against Defendants, and those similarly situated)

63. Plaintiffs incorporate by reference the allegations of paragraphs 1-62 as though set forth at length herein.

64. By requiring Plaintiffs Jack Doe, Julie Doe, Jonathan Doe, and other plaintiff class members to present proof of their lawful immigration status, Defendants McKinney, Jr., Defendant Sinclair, and defendant class members, substantially and directly interfere with Named Plaintiffs' and other plaintiff class members' fundamental right to marry.

65. The policies and practice of Defendant McKinney, Jr., Defendant Sinclair, and defendant class members absolutely prevent Named Plaintiffs and plaintiff class members from getting married.

66. The policies and practice of Defendant McKinney, Jr., Defendant Sinclair, and defendant class members is not narrowly tailored to achieve a compelling government interest, and cannot meet any level of scrutiny.

67. The policies and practice adopted by Defendant McKinney, Jr., Defendant Sinclair, and the defendant class members violates Named Plaintiffs' and plaintiff class members' constitutional right to due process under the Fourteenth Amendments to the United States Constitution.

68. Plaintiffs move for relief on this claim under 42 U.S.C. § 1983 as an action seeking to redress the deprivation of statutory and Constitutional rights under the color of law.

69. Plaintiffs, and the class they seek to represent, are entitled to declaratory relief, pursuant to 28 U.S.C. §§ 2201 and 2202, and injunctive relief against Defendant McKinney, Jr., Defendant Sinclair, and the defendant class members.

SECOND CAUSE OF ACTION

Fourteenth Amendment Equal Protection Clause; **42 U.S.C. § 1983**

(Plaintiffs, and those similarly situated, against Defendants, and those similarly situated)

70. Plaintiffs incorporate by reference the allegations of paragraphs 1-62 as though set forth at length herein.

71. The policies and practice adopted, implemented, and enforced by Defendant McKinney, Jr., Defendant Sinclair, and defendant class members require a non-U.S. citizen who applies for a marriage license to produce proof of his/her lawful immigration status as a condition of obtaining a marriage license.

72. These policies and practices of Defendant McKinney, Defendant Sinclair, and other defendant class members deny Named Plaintiffs and other plaintiff class members who lack proof of their lawful immigration status, or whose intended spouses lack proof of their lawful immigration status, of the equal protection of laws in that it deprives them of the fundamental right to marry solely because of their or their intended spouse's proof of immigration status.

73. The policies and practices adopted by Defendant McKinney, Jr., Defendant Sinclair, and the similar policies and practices of the defendant class members are not narrowly tailored to achieve a compelling state-government interest, and cannot meet any level of scrutiny.

74. The policies and practices adopted by Defendant McKinney, Jr., Defendant Sinclair, and the similar policies of the defendant class members violates Named Plaintiffs' and plaintiff class members' constitutional right to equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

75. Plaintiffs move for relief on this claim under 42 U.S.C. § 1983 as an action seeking to redress the deprivation of statutory and Constitutional rights under the color of law.

76. Plaintiffs, and the class they seek to represent, are entitled to declaratory relief, pursuant to 28 U.S.C. §§ 2201 and 2202, and injunctive relief against Defendant McKinney, Jr., Defendant Sinclair, and the defendant class members.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request that the Court:

- (a) Assume jurisdiction over this matter;
- (b) Certify this case as a bilateral class action pursuant to Fed. R. Civ. P. 23; including certifying a Rule 23(b)(2) plaintiff class consisting of all persons in Alabama who desire to obtain a marriage license, where the person or the person's intended spouse lacks proof of lawful immigration status, including but not limited to lacking a Social Security number; and a Rule 23(b)(2) defendant class, to be represented by Defendant McKinney, Jr., and Defendant Sinclair, and consisting of all probate judges in Alabama whose policy or practice has the purpose or effect of categorically denying marriage licenses to couples where one or both of them lacks proof of lawful immigration status, including but not limited to lacking a Social Security number.
- (c) Declare, pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983, that Defendants' policies and practices, and the policies and practices of the defendant class members, requiring non-U.S. citizens to provide proof of their lawful immigration status in order to obtain a marriage license, is void and unenforceable because it violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment;
- (d) Enjoin Defendants, and the defendant class members, from enforcing any regulation, policy, or practice that hinders the ability of individuals to enter into marriage solely because one or both of the persons who desire to marry lacks proof of lawful immigration status;

(e) Grant Plaintiffs' costs of suit, and reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988; and

(f) Grant such other relief as the Court deems just and proper.

Dated: December 7, 2012

Respectfully submitted,

/s/ Samuel Brooke
On behalf of Attorneys for Plaintiffs

Mary Bauer (ASB-1181-R76B)
Samuel Brooke (ASB-1172-L60B)
SOUTHERN POVERTY LAW CENTER
400 Washington Ave.
Montgomery, Alabama 36104
T: (334) 956-8200
F: (334) 956-8481
mary.bauer@splcenter.org
samuel.brooke@splcenter.org

Daniel Werner* (GSB-422070)
James Knoepp* (GSB-366241)
SOUTHERN POVERTY LAW CENTER
233 Peachtree St., NE, Suite 2150
Atlanta, Georgia 30303
T: (404) 521-6700
F: (404) 221-5857
daniel.werner@splcenter.org
jim.knoepp@splcenter.org

Freddy Rubio (ASB-5403-D62R)
Rubio Law Firm, P.C.
438 Carr Avenue, Suite 1
Birmingham, AL 35209
T: (205) 443-7858
F: (205) 443-7853
frubio@rubiofirm.com

* Admitted *pro hac vice*

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification to the following attorneys for Defendant McKinney, Jr.:

H. Lewis Gillis
Tyrone C. Means
THOMAS, MEANS, GILLIS & SEAY, P.C.
3121 Zelda Court
Montgomery, Alabama 36103-5058
Telephone: (334) 270-1033
Facsimile: (334) 260-9396
hlgillis@tmglaw.com
tcmeans@tmglaw.com

Frederic A. Bolling
THOMAS, MEANS, GILLIS & SEAY, P.C.
505 20th Street N., Suite 400
Birmingham, Alabama 35203
Telephone: (205) 328-7915
Facsimile: (205) 214-6160
fabolling@tmglaw.com

Mark Englehart
ENGLEHART LAW OFFICES
9457 Alysbury Place
Montgomery, Alabama 36117
Telephone: (334) 782-5258
Facsimile: (334) 270-8390
jmenglehart@gmail.com

I further certify that the foregoing, and accompanying attachments, will be served on Defendant Sinclair after filing, through a summons.

/s/ Samuel Brooke