

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STEPHANIE STUM,)

Plaintiff,)

v.)

Civil Action No.

BRIAN THOMPSON, Superintendent of SCI)

Mercer, and MICHELLE WAGNER,)

Corrections Classification and Program)

Manager of SCI Mercer,)

Defendants.)

VERIFIED COMPLAINT

The right to marry is a fundamental right protected by the U.S. Constitution that cannot be denied because of the incarceration of one partner to the marriage. Plaintiff Stephanie Stum wants to marry her fiancé, Wayne Black-Rhoden, who is incarcerated at the State Correctional Institution at Mercer (“SCI Mercer”). Defendants have refused to allow the couple to be married, however, because of a Pennsylvania Department of Corrections policy that prisoners complete any mandatory sex-offender treatment programs before they may be married. Although Mr. Black-Rhoden is currently enrolled in a sex-offender treatment program at SCI Mercer, and voluntarily attending all the sessions, he will not be able to complete the program until June. Ms. Stum wishes to marry Mr. Black-Rhoden now, however, to improve the chances that once they are married they will be able to live together in the United States. If the couple has to wait until after June for their marriage, Mr. Black-Rhoden, a lawful permanent resident, may not be able to remain in the United States, where he has lived since he was a teenager, and

the couple may have to live overseas once Mr. Black-Rhoden is released. Defendants have no institutional justification for preventing them from exercising this fundamental right.

JURISDICTION AND VENUE

1. Plaintiff brings this action pursuant to 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution.

2. This court has jurisdiction under 28 U.S.C. §1331 over the constitutional claims as well as those arising under 42 U.S.C. §1983.

3. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because the events giving rise to this action occurred in Mercer County within the Western District of Pennsylvania.

PARTIES

4. Plaintiff Stephanie Stum is an adult resident of Pennsylvania and a United States citizen.

5. Defendant Brian Thompson is the superintendent of SCI Mercer. He is responsible for the overall oversight, operation, and administration of policies at SCI Mercer. He is sued in his official capacity. Defendant Thompson has acted, and continues to act, under color of state law at all times relevant to this Complaint.

6. Defendant Michelle Wagner is the Corrections Classification and Program Manager (“CCPM”) for SCI Mercer. She is responsible for managing and implementing treatment and support programming for inmates at SCI Mercer. She is sued in her official capacity. Defendant Wagner has acted, and continues to act, under color of state law at all times relevant to this Complaint.

FACTS

7. Plaintiff Stephanie Stum is an unmarried woman over the age of eighteen years.

8. Ms. Stum is engaged to marry Wayne Black-Rhoden, whom she has known for approximately four years.

9. The couple met when they were both working for an airline at the Harrisburg International Airport.

10. The couple began dating about three years ago.

11. They became engaged on November 2, 2016.

12. Mr. Black-Rhoden is an unmarried man over the age of eighteen years.

13. Ms. Stum and Mr. Black-Rhoden are not related to each other.

14. Ms. Stum wants to marry Mr. Black-Rhoden because they love each other and want to share a future together.

15. Mr. Black-Rhoden is currently an inmate in the custody of the Pennsylvania Department of Corrections (“DOC”), incarcerated at the State Correctional Institution at Mercer (“SCI Mercer”).

16. Mr. Black-Rhoden has been housed at SCI Mercer since May 2016.

17. Ms. Stum, who lives in Cumberland County, drives four hours each way to SCI Mercer to visit Mr. Black-Rhoden every other Sunday. Since June 3, 2016, when his visitation privileges at SCI Mercer began, she has only missed three visitation days.

18. Ms. Stum speaks with Mr. Black-Rhoden on the telephone every day and sends him about one letter each week.

19. Mr. Black-Rhoden immigrated to the United States from Costa Rica when he was a teenager. He became a legal permanent resident of the United States in 2008.

20. Mr. Black-Rhoden pleaded *nolo contendere* to charges of statutory sexual assault and corruption of a minor in February 2016. He was accused of having consensual sexual

relations with a teenager when he was in his twenties. He was sentenced to one to two years imprisonment.

21. Because of his conviction, Mr. Black-Rhoden is required to complete a sex offender treatment program while in prison.

22. In accordance with DOC policy, Mr. Black-Rhoden submitted a written marriage request to his counselor, Mr. Diaz, on or about December 7, 2016.

23. Mr. Diaz told Mr. Black-Rhoden on or about December 21, 2016, that he would not be allowed to be married because he had not completed the sex-offender treatment program.

24. Mr. Black-Rhoden has been enrolled in a sex-offender treatment program at SCI Mercer since November 2016, and has been attending all the required sessions.

25. Due to the requirements and schedule of the program, however, he will not complete the program until June 18, 2017, at the earliest.

26. Pennsylvania Department of Corrections Policy DC-ADM 821 (“DOC Policy”), attached hereto as Exhibit 1, permits inmates to wed while incarcerated if:

- a. the inmate is able to be interviewed in person or by video by a representative from a local county office responsible for issuing marriage licenses;
 - b. the inmate and/or his fiancée will pay all costs associated with security, the marriage license, and arranging for someone to officiate the wedding;
 - c. and there are no legitimate penological interests that would be adversely affected if an inmate and his fiancée were to be married.
27. In addition, the facility manager will deny a marriage if:
- a. the process to obtain a marriage license requires transporting an inmate out of the facility;

- b. the inmate has not completed any mandatory sexual treatment program;
- c. it is determined ... that the inmate's fiancée was the victim of the inmate's crime;
- d. the fiancée is expected to testify for/against the inmate;
- e. or there are other significant situations that would warrant the denial of a marriage for a period of time.

28. Finally, inmates placed on the restricted release list are not eligible to be married unless they have been removed from the list for at least 60 days.

29. Ms. Stum and Mr. Black-Rhoden are able to meet all of these requirements except for the completion of the mandatory sex-offender treatment program.

30. As a result of his criminal conviction, Mr. Black-Rhoden was placed in removal proceedings in immigration court to determine whether he should be removed from the United States.

31. Mr. Black-Rhoden will likely be ordered deported unless he and Ms. Stum get married prior to his next immigration hearing on May 10, 2017.

32. If the couple marries, Ms. Stum will be able to file a petition for an immigrant visa on behalf of Mr. Black-Rhoden.

33. If that petition is granted, Mr. Black-Rhoden will then be able to apply for an adjustment of status that would allow him to remain in the United States if granted by an immigration judge.

34. If Mr. Black-Rhoden is ordered deported, he will be permanently barred from ever returning to the United States. *See* 8 U.S.C. § 1182(a)(9)(A).

35. Accordingly, Ms. Stum wishes to marry Mr. Black-Rhoden now, rather than waiting until after June 18, 2017, so that they will have a better chance of being able to live together as husband and wife in the United States once he is released.

36. Ms. Stum sent a letter on January 9, 2017, to Defendant Thompson explaining the immigration issues and asking him to allow her to marry Mr. Black-Rhoden prior to his completion of the sex-offender treatment program.

37. Defendant Wagner replied to that letter on January 19, 2017, stating that Mr. Black-Rhoden “will not be approved to be married until he has completed his mandatory Sex Offender Programming” pursuant to DOC Policy. Defendant Wagner’s January 19, 2017, letter is attached hereto as Exhibit 2.

38. Defendant Wagner stated in the letter that Mr. Black-Rhoden may notify his counselor that he wants to pursue the marriage after he has completed the program.

39. Plaintiff’s counsel contacted counsel for the Pennsylvania Department of Corrections on March 20, 2017, to explain Mr. Black-Rhoden’s immigration status and request that the DOC waive the requirement that Mr. Black-Rhoden complete sex-offender treatment before getting married.

40. DOC counsel notified plaintiff’s counsel on March 27, 2017, that SCI Mercer was not inclined to grant this accommodation and will not approve their marriage request.

41. There are no alternative avenues for Ms. Stum to exercise her right to marry Mr. Black-Rhoden prior to his completion of the sex offender treatment program because he is in the continued custody of the Pennsylvania Department of Corrections and must obtain permission from the DOC to apply for a marriage license and be married.

42. In addition to being deprived of the right to marry, the inability of Ms. Stum to marry deprives her of benefits of federal and state law accorded to persons who are married, including her right to file a spousal-based petition for an immigrant visa on behalf of Mr. Black-Rhoden for the purpose of seeking an adjustment of status that, if granted, would allow them to live together in the United States.

43. She is also deprived of other benefits of federal and state law accorded to persons who are married, including, by way of example only, the right to make funeral arrangements for one's spouse and the ability to make decisions regarding the care of an incapacitated spouse (20 Pa. Cons. Stat. Ann. §5461(d)(1)(i)).

CAUSES OF ACTION

Count I – Violation of the Fourteenth Amendment Right to Marry

44. Plaintiff Stephanie Stum incorporates Paragraphs 1 through 43 of this Complaint as if fully set forth herein.

45. The DOC Policy violates the Fourteenth Amendment to the U.S. Constitution both on its face and as applied to plaintiff.

46. The DOC Policy interferes with the fundamental right of prisoners and their non-incarcerated partners to marry and is not rationally related to any legitimate penological interest.

47. The DOC Policy and defendants' application of the policy to prevent Ms. Stum from marrying her inmate fiancé violate her fundamental right to marry because they are not rationally related to any legitimate penological interest.

RELIEF DEMANDED

WHEREFORE, Plaintiff Stephanie Stum respectfully requests the following relief:

1. Declaratory judgment that Defendants violated Ms. Stum's constitutional and civil rights;
2. Preliminary and permanent injunctive relief ordering Defendants and their officers, agents, and employees to allow Ms. Stum to marry Mr. Black-Rhoden.
3. Reasonable attorneys' fees and costs; and
4. Such other relief the Court deems just and equitable.

Respectfully submitted,

/s/ Alexandra Morgan-Kurtz

Alexandra Morgan-Kurtz
Attorney I.D. No. 312631
Pennsylvania Institutional Law Project
429 Forbes Ave, Suite 800
Pittsburgh, Pa 15219
T: (412) 434-6175
amorgan-kurtz@pailp.org

/s/ Sara J. Rose

Sara J. Rose
Attorney ID: PA 204936
ACLU of Pennsylvania
247 Fort Pitt Blvd.
Pittsburgh, Pa 15222
T: (412) 681-7864
srose@aclupa.org

/s/ Stephanie Reiss

Stephanie Reiss
Attorney ID: PA 88316

/s/ John K. Gisleson

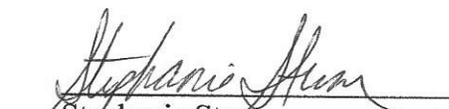
John K. Gisleson
Attorney ID: PA 62511

Morgan, Lewis & Bockius LLP
One Oxford Centre, 301 Grant St
Pittsburgh, PA 14219
T: (412) 560-3300
stephanie.reiss@morganlewis.com
john.gisleson@morganlewis.com

VERIFICATION

I, Stephanie Stum, have read the foregoing Verified Complaint and, pursuant to 28 U.S.C. § 1746, verify under penalty of perjury that the facts stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on 03/31/17


Stephanie Stum