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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LENORA SANTOS, JUNELL FAITH
ALIVIADO, JAMIQUIA GLASS, and
MARGARET AMINA,

Plaintiffs,

vs.

SHARI KIMOTO, Mainland Branch
Coordinator, Department of Public
Safety, State of Hawaii, in her
individual and official capacities;
JEANETTE BALTERO, Contract
Monitor, Department of Public Safety,
State of Hawaii, in her individual and
official capacities; JODIE MAESAKA-
HIRATA, Director, Department of
Public Safety, State of Hawaii, in her
official capacity; and DOES 1-30,

Defendants.

CIVIL NO. **C V12 00259 SOM BMK**

[CIVIL RIGHTS ACTION]

COMPLAINT FOR DAMAGES
AND DECLARATORY AND
INJUNCTIVE RELIEF; SUMMONS
IN A CIVIL CASE

COMPLAINT

Plaintiffs LENORA SANTOS, JUNELL FAITH ALIVIADO, JAMIQUIA GLASS, and MARGARET AMINA (collectively, “Plaintiffs”), by and through their attorneys, for this complaint, allege and aver as follows:

INTRODUCTION

1. Plaintiffs challenge Defendants’ repeated interference with their fundamental right to marry, as guaranteed by the United States Constitution.
2. This action challenges Defendants’ customs, practices, and policies of denying the rights of Plaintiffs under the Fourteenth Amendment to the United States Constitution. Specifically, this action seeks declaratory and preliminary and permanent injunctive relief and damages, which includes an order (a) declaring that Defendants are in violation of the Fourteenth Amendment to the United States Constitution by prohibiting Plaintiffs from marrying their fiancés, who are incarcerated under the custody of the State of Hawaii, (b) requiring Defendants to comply promptly with the law and to do so on an ongoing basis, (c) requiring that Defendants SHARI KIMOTO and JEANETTE BALTERO, in their individual capacities, pay damages to Plaintiffs for wrongfully prohibiting them from marrying and causing emotional distress, psychological harm, pain, suffering, and humiliation; and (d) ordering such other relief as the Court deems proper, including but not limited to attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

3. The United States Supreme Court has repeatedly held that the right to marry is fundamental, *see Zablocki v. Redhail*, 434 U.S. 374 (1978), and *Loving v. Virginia*, 388 U.S. 1 (1967), and that there is “a constitutionally protected marital relationship in the prison context.” *Turner v. Safley*, 482 U.S. 78, 96 (1987) (holding that a complete ban on prisoners’ right to marry, except in compelling circumstances, was facially unconstitutional). In *Turner*, the Supreme Court went even further by holding that – as in the instant case – “where the inmate wishes to marry a civilian, the decision to marry (apart from the logistics of the wedding ceremony) *is a completely private one.*” *Id.* at 98 (emphasis added). In other words, the law has been clear for at least twenty-five years that prison officials may not interfere with the rights of prisoners – or their civilian fiancées – to marry.

4. Defendant SHARI KIMOTO, however, routinely violates the fundamental rights of both prisoners and their fiancées. When Hawaii prisoners submit applications to marry, she routinely rejects those applications with a letter containing the following language:

As a Ward of the State incarcerated in a correctional facility, you are incapable of providing the necessary emotional, financial and physical support that every marriage needs in order to succeed. . . .

We believe that a healthy relationship effort (marriage) established at this time while you are in prison and unable to work and communicate effectively face-to-face with your fiancée will be detrimental to any future re-integrative efforts. Both husband/wife must work

uniformly [sic] on individual and marital issues that come up throughout any successful marriage. This union may be successful overall for both individuals when you are reunited outside of the facility's walls allowing the proper opportunity to work together, develop and establish appropriate relations as necessary.

5. Each of the named Plaintiffs has been barred from marrying based on the fact that her fiancé is a prisoner. Some of the Plaintiffs have been given additional, baseless excuses when they tried to appeal these decisions.

6. The ACLU of Hawaii attempted to resolve this issue informally in 2010. On or about November 3, 2010, Defendant KIMOTO denied the marriage application of a prisoner under the custody of the State of Hawaii, who was (and remains) housed at the Saguaro Correctional Center in Eloy, Arizona. The denial letter contained the language quoted in paragraph 4, *supra*. On December 1, 2010, the ACLU of Hawaii sent a letter to Defendant KIMOTO explaining that the denial was unconstitutional. On or about December 7, 2010, an official with the Department of Public Safety ("DPS") sent this prisoner a letter explaining that DPS had "reconsidered" the prisoner's application and had conditionally granted the application; this official also promised a change in policies that would, in theory, prevent future unconstitutional actions by Defendant KIMOTO. The prisoner and his fiancée were married in 2011.

7. Undaunted, Defendant KIMOTO continued – and continues – to violate the fundamental constitutional rights of Hawaii's prisoners and their

fiancées. On or about May 17, 2011 – less than six months *after* the ACLU of Hawaii had explained to Defendant KIMOTO that her actions were unconstitutional – Defendant KIMOTO denied the application of Plaintiff GLASS and her fiancé (a Hawaii prisoner incarcerated at the Saguaro Correctional Center) *using the identical language* quoted in paragraph 4, *supra*. To be clear, her rationale was that the prisoner and Plaintiff GLASS were unable to marry based on the prisoner’s status as a prisoner – a rationale that was ruled unconstitutional twenty-five years ago. Plaintiff GLASS seeks – and continues to seek – to marry her fiancé.

8. On June 8, 2011, DPS promulgated a new policy, COR.14.13, on prisoner marriages. This policy purports to restrict prisoners’ right to marry when “the proposed marriage presents a threat to the security or the good government of the institution or to the protection of the public.” A similar federal policy, set forth in 28 CFR § 551.10, was referenced, somewhat favorably, by the *Turner* Court.

9. Nevertheless, even a new policy could not contain Defendant KIMOTO’s unlawful actions. Despite a policy that purported to restrict Defendant KIMOTO from denying marriage applications unless some threat to the security of the facility or the protection of the public existed, she *continued* to deny applications on the basis that prisoners should not marry because they lacked “the necessary emotional, financial and physical support that every marriage needs in

order to succeed.” On or about August 9, 2011 – two months *after* COR.14.13 went into effect, and nine months *after* the ACLU sent a letter to Defendant KIMOTO, Defendant KIMOTO denied the marriage application of Plaintiff ALIVIADO and her fiancé, who is also incarcerated at the Saguaro Correctional Center under the custody of the State of Hawaii, using the *identical language* quoted in paragraph 4, *supra*. Plaintiff ALIVIADO continues to seek to marry her fiancé.

10. When would-be spouses would appeal to other government officials, Defendant KIMOTO would find new – and equally offensive and unlawful – reasons for denying the applications. When Plaintiff ALIVIADO sought the assistance of the State of Hawaii Ombudsman’s Office, she was advised by the Ombudsman’s Office to submit another application to the Department of Public Safety. Plaintiff ALIVIADO did so, and Defendant KIMOTO denied the renewed application. This time, Defendant KIMOTO wrote that the application was denied because Plaintiff ALIVIADO’s fiancé was convicted of sexual assault of a minor; that Plaintiff ALIVIADO has a minor child; and that the union would “present[] a threat to the protection of the public.” Defendant KIMOTO neglected to mention, however, that Plaintiff ALIVIADO’s minor child was sixteen years old; that her fiancé had approximately *ten years* left on his sentence; and that it was therefore impossible for this purported threat to public safety to materialize. (Furthermore,

regardless of the minor child's age, such a rationale would violate the Supreme Court's holding in *Turner*.)

11. Similarly, Plaintiff GLASS's fiancé appealed Defendant KIMOTO's decision within the Department of Public Safety by writing to Defendant MAESAKA-HIRATA. On or about October 8, 2011, a Department of Public Safety official wrote a letter to Plaintiff GLASS's fiancé on behalf of Defendant MAESAKA-HIRATA, encouraging Plaintiff GLASS's fiancé to re-apply; this letter stated that, "at this time it does not appear there are any reasons for a denial." Plaintiff GLASS's fiancé followed this advice and submitted yet another application, but the application was denied. This time, in a letter dated January 11, 2012, Defendant KIMOTO wrote that the application was denied because Plaintiff GLASS has three felony convictions from fourteen years ago (such that the marriage would "present[] a threat to the security and good government of the facility").

12. Plaintiff GLASS speaks with her fiancé on a daily basis. She visits him several times a year. They write to each other frequently. Defendant KIMOTO has failed to identify how a change in Plaintiff GLASS's legal status (from single to married) would present a security threat, insofar as there is no evidence to suggest that their legal union would change the day-to-day interactions between the prisoner, the Saguaro Correctional Center, and/or the public at large.

The change in legal status (from single to married) would, however, provide enormous emotional, legal, and psychic benefits to Plaintiff GLASS and her fiancé.

13. Plaintiff GLASS attempted to resolve this issue informally with Defendant BALTERO. In a phone conversation on or about February 9, 2012, Defendant BALTERO informed Plaintiff GLASS that felons were not permitted to marry one another; that marriage is a privilege, rather than a right; and that Plaintiff GLASS's fiancé, as a prisoner, had no rights. As such, Defendant BALTERO, like Defendant KIMOTO, has interfered – and continues to interfere – with the fundamental rights of Plaintiffs.

14. Meanwhile, around the end of January, Plaintiff GLASS's fiancé wrote to Defendant KIMOTO to inquire as to why Plaintiff GLASS's criminal record would prevent the two from marrying. In a letter dated February 27, 2012, Defendant BALTERO responded on behalf of Defendant KIMOTO and wrote:

The Department of Public Safety denied your marriage to Ms. Glass based on information provided in both your applications and institutional file. Ms. Glass had a criminal history and although her convictions was [sic] years ago, the Department determined that based on policy associating or being in the company of a convicted felon presents a threat to the security and good government of the facility and does not recommend marriage at this time.

15. Insofar as the named Plaintiffs and the ACLU of Hawaii have tried to resolve these issues informally, to no avail, Plaintiffs have no choice but to seek an order from the Court requiring Defendants to comply with the law. Furthermore, given that the law in this area has been clearly established for at least twenty-five years, Plaintiffs seek damages for the wrongful denial of their fundamental right to marry.

JURISDICTION AND VENUE

16. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of law, of rights secured by the United States Constitution.

17. This Court has jurisdiction in this case pursuant to 28 U.S.C. §§ 1331 and 1343.

18. This Court is authorized to order declaratory and injunctive relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

19. Venue is properly in this district pursuant to 28 U.S.C. § 1391(b) because all of the Defendants reside in this district, and the events giving rise to these claims occurred in this district.

THE PARTIES

Plaintiffs

20. LENORA SANTOS is a resident of Honolulu, Hawaii, and a citizen of the United States. She is engaged to be married to a man who is incarcerated by the State of Hawaii (currently housed in the Saguaro Correctional Center in Eloy, Arizona).

21. JUNELL FAITH ALIVIADO is a resident of Waipahu, Hawaii, and a citizen of the United States. She is engaged to be married to a man who is incarcerated by the State of Hawaii (currently housed in the Saguaro Correctional Center in Eloy, Arizona).

22. JAMIQUIA GLASS is a resident of Mobile, Alabama, and a citizen of the United States. She is engaged to be married to a man who is incarcerated by the State of Hawaii (currently housed in the Saguaro Correctional Center in Eloy, Arizona).

23. MARGARET AMINA is a resident of Honolulu, Hawaii, and a citizen of the United States. She is engaged to be married to a man who is incarcerated by the State of Hawaii (currently housed in the Saguaro Correctional Center in Eloy, Arizona).

24. None of the Plaintiffs is incarcerated.

Defendants

25. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the conditions, policies and practices (or lack thereof)

complained of herein are the result of and pursuant to specific decisions, official policies, or customs (or lack thereof) of Defendants. Each of the Defendants knows of and is responsible for the conditions, policies, and practices (or lack thereof) set forth herein.

26. SHARI KIMOTO is the Mainland Branch Coordinator for the Department of Public Safety (hereinafter, "DPS"), State of Hawaii. As Mainland Branch Coordinator, SHARI KIMOTO is charged with overseeing the operations of mainland facilities holding Hawaii prisoners. SHARI KIMOTO denied the marriage application of Plaintiff ALIVIADO and her fiancé at least twice. SHARI KIMOTO denied the marriage application of JAMIQUIA GLASS and her fiancé at least three times. Upon information and belief, Defendant KIMOTO is a citizen of the United States and a resident of the State of Hawaii. For purposes of the damages claims brought by Plaintiffs, Defendant KIMOTO is sued in her individual capacity for actions under color of state law. For purposes of the claims for injunctive relief brought by Plaintiffs, Defendant KIMOTO is sued in her official capacity.

27. JEANETTE BALTERO is a Contract Monitor with the Department of Public Safety, State of Hawaii. Upon information and belief, Defendant BALTERO is a citizen of the United States and a resident of the State of Hawaii. For purposes of the damages claims brought by Plaintiffs, Defendant BALTERO is

sued in her individual capacity for actions under color of state law. For purposes of the claims for injunctive relief brought by Plaintiffs, Defendant BALTERO is sued in her official capacity.

28. JODIE MAESAKA-HIRATA is the Director of the Department of Public Safety, State of Hawaii. In this capacity, Defendant MAESAKA-HIRATA exercises administrative authority and control over DPS, including its policies, practices, procedures, facilities, maintenance, programs, activities, services and staff. Defendant MAESAKA-HIRATA is responsible for ensuring that DPS personnel comply with constitutional requirements regarding the treatment of Hawaii's prisoners and their relationships with their families. Upon information and belief, Defendant MAESAKA-HIRATA is a citizen of the United States and a resident of the State of Hawaii. Defendant MAESAKA-HIRATA is sued in her official capacity, for injunctive relief (and attorneys' fees/costs) only.

29. Plaintiffs are unaware of the true names and capacities of Defendants DOES 1 THROUGH 30 and therefore sue said Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities and thereon allege that each of the fictitiously named Defendants is responsible in his/her official and/or individual capacity for the occurrences herein alleged, and that Plaintiffs' damages, as herein alleged, were legally caused by their conduct. Plaintiffs have made good faith and diligent efforts to identify said

Defendants, including interviewing individuals with knowledge of the claims herein.

FACTUAL ALLEGATIONS

Plaintiff SANTOS

30. Plaintiff SANTOS is engaged to be married to a Hawaii prisoner incarcerated at the Saguaro prison in Arizona. Plaintiff SANTOS' fiancé has been in prison for approximately six years, and is due to be released in approximately two years.

31. Plaintiff SANTOS describes her fiancé as being her "first love" from when she was thirteen years old. The two parted ways for a long time, but reunited after approximately thirty years. They have been together as a couple for approximately eight years. Plaintiff SANTOS and her fiancé have a daughter together who is now thirty-seven years old; Plaintiff SANTOS also has a thirty-five year old son and a thirty-three year old daughter.

32. Plaintiff SANTOS and her fiancé talk over the phone almost every evening. They "visit" one another via videoconference approximately once a month.

33. Plaintiff SANTOS grew up in Honolulu, and still lives here. She has been unable to visit her fiancé because she has bone cancer, and her medical condition prevents her from being able to travel. She is also on a fixed income, so

travel is prohibitively expensive. When her fiancé was housed at Halawa Correctional Facility, however, Plaintiff SANTOS visited as often as she could.

34. HRS § 353H-7 provides in relevant part that “The director of public safety shall return Hawaii inmates held in out-of-state prisons at least one year prior to the inmate’s parole or release date in order for these inmates to participate in programs preparing them for reentry on the island where they have the most support; provided that inmates participating in reentry programs at the mainland facility in which they are incarcerated consent to the return.” Therefore, even if Plaintiff SANTOS is unable to travel to Arizona to marry her fiancé, she will still have an opportunity to marry him before he is released from prison (*i.e.*, when he returns from Arizona pursuant to HRS § 353H-7).

35. Plaintiff SANTOS’ bone cancer is in remission, but she has been through five rounds of chemotherapy and radiation. She declares that she is living on “God’s time” now. As such, time is of the essence with respect to her desire to marry her fiancé.

36. Plaintiff SANTOS and her fiancé have submitted multiple applications to get married over the last six years. They applied in 2006, and that application was denied. In a memorandum dated October 2, 2006, a Department of Public Safety official denied the application with the following explanation: “Please be advised that your marriage application has been denied. A domestic

union at this juncture of your incarceration does not appear to be conducive nor beneficial towards your adjustment.”

37. Plaintiff SANTOS and her fiancé applied approximately three or four times when Plaintiff SANTOS’ fiancé was at Halawa, prior to May 2010.

38. Plaintiff SANTOS and her fiancé applied to be married at least once since he was sent to the Saguaro Correctional Center in May 2010, including once in the fall of 2010. Plaintiff SANTOS’ fiancé received a letter denying the application around the end of 2010 or the beginning of 2011.

39. Based on the correspondence between Plaintiff SANTOS, her fiancé, and various DPS officials, Plaintiff SANTOS believed that it would be impossible to get married until after her fiancé was released from prison. Plaintiff SANTOS and her fiancé have been trying to get married for so many years that Plaintiff SANTOS felt like giving up.

40. Defendants’ denials of the marriage applications were very painful for Plaintiff SANTOS. By denying the applications, Defendants made Plaintiff SANTOS feel like a criminal, even though she had not done anything wrong. She just wanted – and still wants – to be husband and wife with her fiancé.

41. Defendants’ actions in preventing Plaintiff SANTOS from marrying have caused her emotional distress, psychological harm, humiliation, pain, and suffering.

42. Plaintiff SANTOS and her fiancé meet the legal requirements for marriage in both Hawaii and Arizona: both are over eighteen years old; neither is married; the two are not related to one another by blood; and Plaintiff SANTOS can afford the small application fee for a marriage license in either state.

43. Plaintiff SANTOS has not been arrested since she turned eighteen years old, and does not have any kind of criminal record as an adult.

Plaintiff ALIVIADO

44. Plaintiff ALIVIADO is engaged to be married to a Hawaii prisoner incarcerated at the Saguaro prison in Arizona.

45. Plaintiff ALIVIADO and her fiancé have been in a romantic relationship for approximately seven years, beginning approximately one year before Plaintiff ALIVIADO's fiancé went to prison.

46. Although Plaintiff ALIVIADO and her fiancé are separated by thousands of miles, they continue to maintain a strong, healthy relationship. They talk over the phone regularly, and Plaintiff ALIVIADO visits her fiancé two or three times a year. The two are able to "visit" one another via video-conference approximately every other month. They also write to each other frequently.

47. Plaintiff ALIVIADO and her fiancé have been trying to get married for approximately five years. Her fiancé first submitted an application about five years ago, and it was denied.

48. Plaintiff ALIVIADO and her fiancé submitted a second application on or about July 5, 2011 – nearly a month *after* DPS implemented its new policy, COR.14.13. Plaintiff ALIVIADO walked the application to the Department of Public Safety office on Ala Moana Boulevard herself.

49. Defendant KIMOTO denied the request in a letter dated August 9, 2011. That letter stated, in relevant part:

As a Ward of the State incarcerated in a correctional facility, you are incapable of providing the necessary emotional, financial and physical support that every marriage needs in order to succeed. . . .

We believe that a healthy relationship effort (marriage) established at this time while you are in prison and unable to work and communicate effectively face-to-face with your fiancée will be detrimental to any future re-integrative efforts. Both husband/wife must work uniformly [sic] on individual and marital issues that come up throughout any successful marriage. This union may be successful overall for both individuals when you are reunited outside of the facility's walls allowing the proper opportunity to work together, develop and establish appropriate relations as necessary.

50. Plaintiff ALIVIADO contacted the Office of the Ombudsman for the State of Hawaii shortly after the application was denied. In a telephone call on or about November 22, 2011, Mr. Herbert Almeida, an official with the Office of the Ombudsman, suggested that Plaintiff ALIVIADO and her fiancé submit an additional application.

51. Based on Mr. Almeida's advice, Plaintiff ALIVIADO and her fiancé submitted another application on or about November 28, 2011. Again, Plaintiff ALIVIADO walked the application to the Department of Public Safety office on Ala Moana Boulevard herself.

52. That application was denied. In a letter to Plaintiff Aliviado's fiancé dated December 20, 2011, Defendant KIMOTO stated in relevant part:

Records indicate that you were convicted of sexually assaulting your biological child from the age of 8 to 17. Ms. Aliviado currently has a minor in her care and custody.

In accordance with PSD Policy COR.14.13, your conviction of sexually assaulting your own biological child who was a minor at the time of the assaults and knowing that your fiancé, Ms. Aliviado has a minor child in her care and custody, presents a threat to the protection of the public.

53. Plaintiff ALIVIADO has four children. Their ages are 31, 29, 25, and 16.

54. Plaintiff ALIVIADO's fiancé will be incarcerated for approximately ten more years. In other words, by the time her fiancé is released, Plaintiff ALIVIADO will not have any minor children in her care or custody. Consequently, the purported rationale for denying the marriage application is baseless.

55. Even if Plaintiff ALIVIADO did have minor children in her custody, however, Defendants lack the authority to interfere with Plaintiff ALIVIADO's and her fiancé's fundamental right to marry on that basis.

56. Plaintiff ALIVIADO wishes to marry her fiancé because she feels close to him. She believes that it is her right, and her choice, to marry her fiancé. She was heartbroken each time an application was denied, and would become sad for months with every denial.

57. Plaintiff ALIVIADO has a box at home with two wedding rings in it. The box has been sitting at her home for five years.

58. Plaintiff ALIVIADO is planning to visit her fiancé in Arizona in October, but would travel there sooner if she and her fiancé were able to get married earlier.

59. Defendants' actions in preventing Plaintiff ALIVIADO from marrying have caused her emotional distress, psychological harm, humiliation, pain, and suffering.

60. Plaintiff ALIVIADO and her fiancé meet the legal requirements for marriage in both Hawaii and Arizona: both are over eighteen years old; neither is married; the two are not related to one another by blood; and Plaintiff ALIVIADO can afford the small application fee for a marriage license in either state.

61. Plaintiff ALIVIADO has never been arrested and has no criminal record of any kind.

Plaintiff GLASS

62. Plaintiff GLASS is engaged to be married to a Hawaii prisoner incarcerated at the Saguaro prison in Arizona.

63. Plaintiff GLASS and her fiancé met in 2000 and began dating in 2007. They were together as a couple for approximately two and a half years before he was incarcerated. They have been trying to get married for approximately two years.

64. Plaintiff GLASS lives in Mobile, Alabama, and visits her fiancé in Arizona approximately once a month. They talk on the phone nearly every day, and spend approximately \$100 a week on telephone charges to maintain the strength of their relationship. Because Plaintiff GLASS lives in Alabama, rather than Hawaii, she is unable to conduct videoconference “visits” with her fiancé, but Plaintiff GLASS and her fiancé write each other frequently.

65. Plaintiff GLASS has a strong religious background and wants to marry her fiancé for religious reasons. She believes that God made her fiancé for her, and that when two people are in love, they come before God “in one yoke.” Plaintiff GLASS loves her fiancé unconditionally, and declares that he is the biggest part of her life. Plaintiff GLASS and her fiancé are best friends, and they

share the same dreams and beliefs. Plaintiff GLASS believes that her fiancé completes her as a person and brings out the best in her.

66. Plaintiff GLASS and her fiancé began the process to get married in July 2010 by submitting an application. In September 2010, Defendant BALTERO informed Plaintiff GLASS that there was some monetary fine that was a barrier to the application; Plaintiff GLASS ensured that the fine was paid right away.

67. Defendant KIMOTO denied the application. In a letter dated October 4, 2010, Defendant KIMOTO wrote:

As a Ward of the State incarcerated in a correctional facility, you are incapable of providing the necessary emotional, financial and physical support that every marriage needs in order to succeed. . . .

We believe that a healthy relationship effort (marriage) established at this time while you are in prison and unable to work and communicate effectively face-to-face with your fiancée will be detrimental to any future re-integrative efforts. Both husband/wife must work uniformly [sic] on individual and marital issues that come up throughout any successful marriage. This union may be successful overall for both individuals when you are reunited outside of the facility's walls allowing the proper opportunity to work together, develop and establish appropriate relations as necessary.

68. In December 2010, Plaintiff GLASS and her fiancé re-applied to be married. Defendant KIMOTO denied this application as well. In a letter dated May 17, 2011, Defendant KIMOTO again wrote:

As a Ward of the State incarcerated in a correctional facility, you are incapable of providing the necessary emotional, financial and physical support that every marriage needs in order to succeed. . . .

We believe that a healthy relationship effort (marriage) established at this time while you are in prison and unable to work and communicate effectively face-to-face with your fiancée will be detrimental to any future re-integrative efforts. Both husband/wife must work uniformly [sic] on individual and marital issues that come up throughout any successful marriage. This union may be successful overall for both individuals when you are reunited outside of the facility's walls allowing the proper opportunity to work together, develop and establish appropriate relations as necessary.

69. In late June, Plaintiff GLASS's fiancé sent a letter to the Director of the Department of Public Safety, Defendant MAESAKA-HIRATA, to appeal the denial of the marriage application. Michael Hoffman, the Institutions Division Administrator for the Corrections Division of the Department of Public Safety, sent Plaintiff GLASS's fiancé a letter dated October 8, 2011. In that letter, Mr. Hoffman wrote:

After review of the matter, I believe you should initiate another request. Once I receive your request from the Mainland Branch, I will take your appeal into consideration and render a decision *since at this time it does not appear there are any reasons for a denial*. This letter should not be construed as an approval for marriage as the second request needs to be initiated and the approval/disapproval will be made at that time.

(Emphasis added.)

70. After receiving Mr. Hoffman's letter, Plaintiff GLASS and her fiancé submitted another application. Defendant KIMOTO denied this application as well. In a letter dated January 11, 2012, Defendant KIMOTO wrote:

Records indicate that Ms. Glass has been convicted of Conspiracy to Rob 5 Banks, Bank Robbery, and Conspiracy to Commit Bank Robbery and served probation/prison time under the Bureau of Prisons and the U.S. Probation Office. In addition, she was convicted of Theft of Property and was held under the care and custody of the Alabama Department of Corrections.

In accordance with PSD Policy COR.14.13, associating or being in the company of a convicted felon (state/federal) presents a threat to the security and good government of the facility.

71. Plaintiff GLASS was convicted of three felonies in the late 1990s, for acts committed when she was twenty years old. She served approximately two and a half years in prison, and has turned her life around. She was released from prison in 2000 and has had no legal trouble since then. She declares that her past convictions do not represent the thirty-five-year-old woman she is today.

72. Plaintiff GLASS's past convictions have not presented any security or "good government" concerns to date: Plaintiff GLASS and her fiancé speak on a near daily basis, and they visit in person approximately once a month.

73. Indeed, the Department of Public Safety's visitation policy uses nearly identical language regarding safety and "good government," yet Plaintiff GLASS has been permitted to visit without incident. According to PSD Policy COR.15.01,

“[v]isitation may be denied if it is determined that a visitor is detrimental to the rehabilitation and/or reintegration of an inmate *or there is a threat to the security and/or good government of the facility concerned.*” (Emphasis added.) The policy expressly prohibits the denial of visitation on the basis that the proposed visitor has a criminal background.

74. Such discrimination against individuals with criminal backgrounds is also counter to the State of Hawaii’s public policy. For example, Hawaii Revised Statutes (“HRS”) § 378-2 prohibits employment discrimination on the basis of “arrest and court record.” *See also* HRS § 378-2.5 (providing that an employer may not make employment decisions based on an employee’s past criminal convictions unless such a decision has a “rational relationship” to the employee’s job duties).

75. Defendants have proffered no reason as to why a change in Plaintiff GLASS’s and her fiancé’s legal status would present a security threat to the Saguaro Correctional Center, when in-person visits and daily phone calls do not.

76. On or about February 9, 2012, Plaintiff GLASS telephoned Defendant BALTERO to discuss the denial of the marriage application. Defendant BALTERO told Plaintiff GLASS something to the effect of “marriage is a privilege, not a right”; that Plaintiff GLASS’s fiancé did not have any rights because he was incarcerated; and that two felons are prohibited from getting

married. Defendant BALTERO stated that the answer to the marriage application was “no” and that the answer would not change. Defendant BALTERO further stated that Plaintiff GLASS was a security risk.

77. Plaintiff GLASS also spoke about these issues over the telephone with Defendant KIMOTO. Defendant KIMOTO, like Defendant BALTERO, told Plaintiff GLASS that felons are prohibited from marrying one another.

78. Around the end of January 2012, Plaintiff GLASS’s fiancé sent a letter to Defendant KIMOTO asking for an explanation as to why his fiancé’s criminal record would preclude them from marrying. Defendant BALTERO responded in a letter dated February 27, 2012, in which she wrote:

The Department of Public Safety denied your marriage to Ms. Glass based on information provided in both your applications and institutional file. Ms. Glass had a criminal history and although her convictions was [sic] years ago, the Department determined that based on policy associating or being in the company of a convicted felon presents a threat to the security and good government of the facility and does not recommend marriage at this time.

79. Notwithstanding Defendant BALTERO’s and Defendant KIMOTO’s claims that Plaintiff GLASS was a security risk, Plaintiff GLASS and her fiancé continue to speak over the phone daily and have continued to visit one another in person approximately once per month.

80. Plaintiff GLASS does not anticipate that being married to her fiancé would change anything vis-à-vis the Saguaro Correctional Center or the State of Hawaii. The change in legal status would, however, provide both Plaintiff GLASS and her fiancé with immeasurable emotional benefits.

81. Defendant KIMOTO's and Defendant BALTERO's actions caused Plaintiff GLASS emotional distress. She became very upset every time the application was denied and every time she had to endure telephone conversations with Defendant BALTERO. Plaintiff GLASS would get her hopes up that she and her fiancé could get married, only to have those hopes destroyed by Defendant BALTERO and Defendant KIMOTO. Plaintiff GLASS was also hurt by Defendant BALTERO and Defendant KIMOTO using Plaintiff GLASS's criminal background from well over a decade ago as a rationale for the marriage application.

82. Defendants' actions in preventing Plaintiff GLASS from marrying have caused her emotional distress, psychological harm, humiliation, pain, and suffering.

83. Plaintiff GLASS and her fiancé meet the legal requirements for marriage in both Hawaii and Arizona: both are over eighteen years old; neither is married; the two are not related to one another by blood; and Plaintiff GLASS can afford the small application fee for a marriage license in either state.

Margaret Amina

84. Plaintiff AMINA is engaged to be married to a Hawaii prisoner incarcerated at the Saguaro prison in Arizona.

85. Plaintiff AMINA and her fiancé dated while both were students at Kaimuki High School in the early 1980s. They went their separate ways, but started communicating after Plaintiff AMINA learned from her brother – who is also incarcerated at Saguaro – that her former boyfriend was also at Saguaro.

86. Plaintiff AMINA and her former boyfriend started writing to one another in 2008, and over the course of the next few years their relationship grew. Plaintiff AMINA's Bible study group at the Word of Life Christian Center suggested to her that she should not be alone, and that God must want her to have this relationship in her life. Plaintiff AMINA began to see that her former boyfriend loved her, and that their relationship had become even stronger.

87. The couple had their first video visit in 2009 or 2010, and Plaintiff AMINA visited him in person once in 2010 and twice in 2011. They began talking about getting married in 2010.

88. Plaintiff AMINA wishes to marry her fiancé because she loves him. She believes that he completes her in every way. For example, she remembers that when they first started writing letters to each other, she would think of questions she wanted to ask him and would think about writing them in a letter to him.

When she got home that day, she would find a letter from him, answering the questions she had not yet even asked him. For Plaintiff AMINA, it was like this man knew what she was thinking before she did herself.

89. In early 2011, Plaintiff AMINA's fiancé submitted an application for the couple to get married. Neither Plaintiff AMINA nor her fiancé ever received a response.

90. Plaintiff AMINA believes that her relationship with her fiancé is helping to keep her fiancé out of trouble within Saguaro. In 2010, Plaintiff AMINA's fiancé was disciplined for approximately 60 days as a result of some kind of altercation. Consequently, he was unable to write to or speak with Plaintiff AMINA for that period of time. When he finished his disciplinary term, Plaintiff AMINA told him that their relationship was hard enough as it is: the two are separated by thousands of miles, they are unable to see one other, and all they have to keep their relationship going are phone calls and letters. Plaintiff AMINA told her fiancé that their relationship could not last if they were unable to communicate, and that he needed to try harder to avoid getting into trouble. Plaintiff AMINA's fiancé promised to do better and, since 2010, has not had disciplinary problems at the Saguaro facility.

91. Defendants' actions in preventing Plaintiff AMINA from marrying have caused her emotional distress, psychological harm, humiliation, pain, and suffering.

92. Plaintiff AMINA and her fiancé meet the legal requirements for marriage in both Hawaii and Arizona: both are over eighteen years old; neither is married; the two are not related to one another by blood; and Plaintiff AMINA can afford the small application fee for a marriage license in either state.

93. Plaintiff AMINA has not been arrested since she turned 18 years old, and does not have any kind of criminal record as an adult.

Previous ACLU Intervention

94. In 2010, a Saguaro prisoner and his fiancé on Oahu (who was not, and is not, incarcerated) submitted an application to be married. That application was denied. In a letter to the prisoner dated November 3, 2010, Defendant KIMOTO wrote:

As a Ward of the State incarcerated in a correctional facility, you are incapable of providing the necessary emotional, financial and physical support that every marriage needs in order to succeed. . . .

We believe that a healthy relationship effort (marriage) established at this time while you are in prison and unable to work and communicate effectively face-to-face with your fiancée will be detrimental to any future re-integrative efforts. Both husband/wife must work uniformly [sic] on individual and marital issues that come up throughout any successful marriage. This union

may be successful overall for both individuals when you are reunited outside of the facility's walls allowing the proper opportunity to work together, develop and establish appropriate relations as necessary.

95. On December 1, 2010, Plaintiffs' counsel sent a letter to Defendant KIMOTO on behalf of the woman on Oahu, demanding that Defendant KIMOTO cease interfering with the fundamental rights of the couple to marry, and further demanding that the Department of Public Safety review and revise all necessary policies.

96. On December 6, 2010, counsel for Plaintiffs had a telephone conversation with Thomas Read, then the Offender Management Administrator within the Department of Public Safety. During that conversation, Mr. Read stated that the Department of Public Safety would amend its then-current marriage policy and would re-evaluate the marriage request. Mr. Read also indicated that prisoners' requests to get married were not unusual.

97. In a letter dated December 7, 2010, Mr. Read stated that the prisoner's request to marry had been "reconsidered" and was conditionally granted. The prisoner and his fiancée were married in March 2011 in Arizona.

Plaintiffs' Ongoing Injuries

98. Plaintiffs wish to marry individuals who are incarcerated under the custody and control of the Department of Public Safety (which, in turn, is under the control of Defendant MAESAKA-HIRATA, *see* paragraph 28, *supra*).

99. Marriage is a unique status; nothing else conveys to the world, in so universal a way, that a couple is legally, emotionally, financially, and (for many) spiritually tied to one another. Additionally, for many individuals, being married provides financial benefits (for example, tax benefits and/or survivorship benefits) unavailable through other means.

100. Plaintiffs are suffering – and unless Defendants are enjoined, will continue to suffer – irreparable harm from the prohibition on exercising their fundamental right to marry under the Fourteenth Amendment to the United States Constitution.

101. As such, Plaintiffs seek a declaration that Defendants' denials of their applications to marry were and are unlawful, pursuant to the Fourteenth Amendment to the United States Constitution.

Scope of Defendants' Unlawful Actions

102. Plaintiffs are informed and believe, and thereupon allege, that Defendants have denied marriage applications of dozens, if not hundreds, of other couples' applications to marry. Plaintiffs are informed and believe, and thereupon

allege, that Wardens of small jails/prisons in Hawaii (such as the Maui Community Correctional Center) receive approximately one marriage application per month from prisoners and/or their fiancés, such that the total number of marriage applications denied over the previous two years is in the dozens, if not hundreds.

103. Plaintiffs are informed and believe, and thereupon allege, that Defendants have thereby interfered with the fundamental rights of dozens, if not hundreds, to marry.

DECLARATORY AND INJUNCTIVE RELIEF

104. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have failed and continue to fail to comply with the United States and Hawaii Constitutions for at least the reasons set forth herein. Plaintiffs are, thus, entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such a declaratory judgment.

105. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendants will continue to infringe Plaintiffs' constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires preliminary and permanent injunctive relief.

FIRST CLAIM FOR RELIEF

**Violation of the Fourteenth Amendment to the United States Constitution
(Actionable Pursuant to 42 U.S.C. § 1983)
(Denial of Fundamental Right to Marry)
(By All Plaintiffs Against All Defendants)**

106. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 105, above.

107. By their policies, practices, and customs of denying civilians the fundamental right to marry individuals who are incarcerated by the State of Hawaii, by their failure to adopt adequate policies and procedures, and by their failure to supervise and to train their employees and agents, Defendants have, without adequate justification, intentionally interfered with Plaintiffs' fundamental rights to marry in violation of the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- A. Assume jurisdiction over this action;
- B. Issue a declaratory judgment stating that Defendants have violated the Fourteenth Amendment to the United States Constitution;
- C. Issue a preliminary and permanent injunction enjoining Defendants (and their divisions, officers, servants, employees, attorneys, agents

and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with Defendants or pursuant to Defendants' authority) from subjecting Plaintiffs to the customs, policies, practices, rules, regulations, acts and omissions set forth in this Complaint;

- D. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful customs, policies, practices, rules, regulations, acts and omissions complained of herein no longer exist and will not recur;
- E. Award reasonable attorneys' fees, costs and other expenditures incurred as a result of bringing this action, pursuant to 42 U.S.C. § 1988 and other applicable laws;
- F. Award damages to Plaintiffs (against those Defendants named in their individual capacities) for the violations of clearly established law set forth herein; and
- G. Order such other relief as this Court deems just and proper.

Dated: Honolulu, Hawaii, May 15, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. M. Gluck', written in a cursive style.

DANIEL M. GLUCK

LOIS K. PERRIN
DANIEL M. GLUCK
LAURIE A. TEMPLE

ACLU OF HAWAII FOUNDATION

Attorneys for Plaintiffs