



## CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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### PRESS RELEASE

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### CLASS ACTION CHALLENGES OBAMA FAILURE TO STOP DEPORTATIONS OF IMMIGRANTS IN SAME SEX MARRIAGES

Case Title: *Martin Arenas, et al. v. Janet Napolitano, Secretary of the Department of Homeland Security; et al.* Case No. SACV12-1137-JVS(MLGx) (United States District Court for the Central District of California)

The 25-year old son of an immigrant from the Philippines, with his mother and her U.S. citizen spouse, today filed a class action lawsuit in federal court in Los Angeles challenging the constitutionality of the Defense of Marriage Act (DOMA) as applied to deny immigration family benefits. The DOMA was enacted and signed into law by President Clinton in 1996. For all federal benefits based on marriage, including immigration benefits, DOMA restricts the definition of marriage to unions between “one man and one woman.”

According to the lawsuit Jane DeLeon, an immigrant from the Philippines, has been residing with her US citizen partner in California for twenty years and they were married in 2008. The lawsuit claims that DeLeon has been approved for an immigrant visa based on her employment. However, because she entered the country in 1989 using the name of her then common-law husband, to get lawful resident status she needs a “waiver” from the U.S. Citizenship and Immigration Service (“CIS”). Such waivers are commonly available to immigrants whose deportation would cause extreme hardship to a US citizen spouse. In DeLeon’s case the waiver was denied in September 2011 solely because she is married to another woman.

DeLeon and her son Martin had temporary lawful status for several years while their visa applications were being processed. When the government denied her waiver application, she was advised that her temporary lawful status was revoked and if she did not depart the country within 12 months she would be barred from reentry for a minimum of ten years.

On February 23, 2011, Attorney General Eric Holder notified congressional leadership that the Administration had determined that DOMA is unconstitutional as applied to same-sex couples whose marriages are legally recognized under state law. Holder announced that the Department of Justice would no longer defend DOMA before the federal courts. However he also stated that the Administration would continue to enforce DOMA until a “definitive” federal court ruling—most interpret as a ruling by the Supreme Court--on the law’s constitutionality.

Despite the President’s recently announced public support for gay marriage and the Administration’s determination that DOMA is unconstitutional, the lawsuit alleges that the Administration has refused to implement a nationwide program to place same sex marriage immigration cases on hold while the courts determine DOMA’s constitutionality.

While the Administration has stated that it would review gay marriage cases on a “case-by-case” individual basis, the plaintiffs claim that many immigrants cannot afford to retain lawyers to prepare the materials needed for an individualized discretionary case-by-case determination, and in any event many immigrants are afraid to come forward and expose themselves to detention or deportation. They also point out that DeLeon was not offered a “case-by-case” determination but instead had her temporary status automatically revoked and was told to leave the country.

Statement of Martin R. Aranas (25 years old): “I have been living in this country since I was nine years old. I have attended school here and continue to attend school while working part-time. My legalization depends on my mother’s case. After many years of having temporary legal status, I now face being in ‘illegal’ status only because my mother is in a same sex marriage. I hope and pray that President Obama will allow me and the hundreds or thousands of children of gay married couples to continue living here with some legal protection until the courts decide whether denying our parents immigration benefits is constitutional.”

Statement of Irma Rodriguez: “I am a citizen of the United States and a hardworking, law-abiding, and dedicated member of my community. For over twenty years I have loved and been in a committed relationship with Jane DeLeon, and in 2008 we were lawfully married. We have accepted all of the obligations and responsibilities that come with the blessing of marriage. It deeply saddens me that despite President Obama’s support of the rights of gay married couples, after living here for twenty years, my spouse has been told by immigration authorities that her presence here is unlawful and she must leave the country. If President Obama believes that discrimination against gay married couples is wrong, he should suspend the removal of all immigrants in same sex marriages who are eligible to legalize their status until the courts decide whether this form of discrimination is constitutional.”

Statement of Jane DeLeon: “Throughout the twenty years I have lived here, I have worked hard, paid taxes, and supported my community as much as I could. I helped to raise my son Martin here. Irma and I have committed to each other for the rest of our lives. We now face being forced to move to the Philippines or breaking up our family only because we are legally married women. We would face persecution in the Philippines because we are a same sex couple, not to mention dire poverty, separation from our extended families who live here, and lack of access to medical treatment Irma needs. We pray that the administration will change its mind and grant me and those similarly situated around the country the right to remain here temporarily until the courts decide whether our constitutional lawsuit has merit.”

Statement by plaintiffs’ attorney Peter Schey: “We hope that this lawsuit causes the Administration to reconsider its policy and grant an across-the-board stay of deportation and work permits to immigrants who qualify for visas but for the fact they are in a same sex marriage. All such cases should be automatically put on hold until the Supreme Court rules on the constitutionality of DOMA. To discriminate against this population by requiring that they live underground, work illegally, or worse be deported, while the courts address the constitutionality of DOMA is unconscionable. If President Obama understood that undocumented youth are entitled to temporary protection from deportation while Congress grabbles with their status, he should understand that same sex married couples are entitled to temporary protection from deportation while the courts decide if they agree with his Administration that DOMA is unconstitutional ”

A copy of the filed class action Complaint for Injunctive Relief is available at <http://centerforhumanrights.org/DOMA.html>

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