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PRESS RELEASE
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FEDERAL COURT IN CLASS ACTION CASE: DOMA UNCONSTITUTIONAL AS APPLIED TO IMMIGRANTS

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Case Title: *Arenas/DeLeon, 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)

Los Angeles: -- On Friday July 12, 2012, Jane DeLeon 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, she needs a “waiver” from the U.S. Citizenship and Immigration Service (“CIS”) to qualify for a visa. Such waivers are commonly available to immigrants whose deportation would cause hardship to a US citizen spouse. In DeLeon’s case the waiver was denied by USCIS in September 2011 solely because she is married to another woman. Her lawsuit seeks equal treatment for immigrants seeking visas who are in lawful same sex marriages with U.S. citizens as the treatment afford heterosexual married couples.

On Friday Federal Judge Consuelo Marshall in Los Angeles, CA., issued a long-awaited decision ruling that Jane DeLeon has standing to challenge DOMA in the courts and that DOMA violates the Fifth Amendment’s guarantee of equal protection as applied to immigrants because it is irrational: “This Court finds that the broad distinction created by DOMA § 3 is not rationally related to Congress’ interest in a uniform federal definition of marriage.” The court decided that “State law traditionally governs marriage recognition,” and DOMA had disrupted the “long-standing practice of the federal government deferring to each state’s decisions as to the

requirements for a valid marriage.” The court also found that a 1982 precedent case issued by the U.S. Court of Appeals in the Ninth Circuit, *Adams v. Howerton*, which decided that barring same-sex couples from immigration benefits did not violate equal protection, has been superseded by "intervening statutory and policy changes," and is therefore no longer binding precedent.

Judge Marshall also ordered that the case proceed as nationwide class action for the benefit of a class of immigrants it defined as follows: “All members of lawful same-sex marriages who have been denied or will be denied lawful status or related benefits under the Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq. by the Department of Homeland Security solely due to § 3 of the Defense of Marriage Act, 1 U.S.C. § 7.” The court decided that the class is so numerous and its members’ legal claims so similar as to justifying certifying the case as a class action.

Ms. DeLeon had also applied for a preliminary injunction giving her and class members immediate work permits before the Supreme Court rules on the constitutionality of DOMA, a decision expected in the Windsor case in June 2013. The Los Angeles court declined to issue a preliminary injunction at this time, believing that interim protection already provided by DHS of deferring the deportation of immigrants in same sex marriages with U.S. citizens will sufficiently protect the class until the Supreme Court issues its decision in the Windsor case.

Statement by plaintiffs’ attorney Peter Schey, President of the Center for Human Rights and Constitutional Law: “We welcome the court’s decision that DOMA violates the constitutional rights of immigrants in bi-national same sex marriages. This will afford maximum protection to class members, particularly those who are low-income and without the means to hire attorneys, and those whose visa applications have already been unconstitutionally denied. We suspect there will be no further denials of visa applications based on DOMA after this decision is reviewed by DHS headquarters. We will continue to dedicate our resources to insure that immigrants in same sex marriages with US citizens are not detained or deported and are treated humanely pending a final decision by the Supreme Court on the constitutionality of DOMA.”

A copy of the court decisions issued today may be read or downloaded by clicking [here](#).