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 11 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

12 Mar in R. ARANAS,
 13 Irma RODRIGUEZ, and
 14 Jane DELEON,

Plain iff ,

SACV12-01137 CBM (AJW)

NOTICE OF MOTION AND MOTION
FOR PROVISIONAL CLASS
CERTIFICATION.

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 18 Jane NAPOLITANO, Secre ar of he
 19 Depar men of Homeland Sec ri ;
 20 Alejandro MAYORKAS, Direc or, Uni ed
 21 S a e Ci i en hip & Immigra ion
 22 Ser ice ;
 23 UNITED STATES CITIZENSHIP &
 24 IMMIGRATION SERVICES; and
 25 DEPARTMENT OF HOMELAND
 26 SECURITY,

Defendan .

Hearing: Sep ember 24, 2012
 Time: 10:00 a.m.
 Hon. Con elo B. Mar hall
 Spring S ., Co r room No. 2

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To defendan and heir a orne of record:

PLEASE TAKE NOTICE ha on Sep ember 24, 2012, a 10:00 a.m., or a oon hereaf er a co n el ma be heard, plain iff ill and do hereb mo e he Co r for an order pro i ionall cer if ing hi ca e a a cla ac ion p r an o R le 23(b)(2) of he Federal R le of Ci il Proced re on behalf of he follo ing cla e of imilarl i a ed per on :

All member of la f l ame- e marriage hom he Depar men of Homeland Sec ri , p r an o 3 of he Defen e of Marriage Ac , 1 U.S.C. 7, ha ref ed or ill ref e o recogni e a po e for p rpo e of conferring la f l a and rela ed benefi nder he Immigra ion and Na ionali Ac , 8 U.S.C. 1101 *et seq.*

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Cer ifica e of Ser ice

SACV12-01137 CBM (AJWX)

I hereb cer if ha on hi 23rd da of A g , 2012, I elec ronicall filed he foregoing NOTICE OF MOTION FOR CLASS CERTIFICATION i h he Clerk of Co r b ing he CM/ECF em, hich pro ided an elec ronic no ice and elec ronic link of he ame o all a orne of record hro gh he Co r CM/ECF em.

Da ed: A g 23, 2012. / / Karena Heredia _____

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

I INTRODUCTION

This is an action for declaratory and injunctive relief challenging discrimination in the conferring of benefits under the Immigration and Nationality Act, 8 U.S.C. 1101, *et seq.* (INA), against member of lawful marriage couples because the policies are of the same type.

Plaintiff contends that member of marriage lawful under the laws of the state of celebration are entitled to recognition as a couple under the INA regardless of their member's sexual orientation. Defendant U.S. Citizenship & Naturalization Service (CIS) declines to recognize these marriages in accordance with 3(a) of the Defense of Marriage Act, Pub. L. 104-199, 3(a), 110 Stat. 2419, *codified at* 1 U.S.C. 7 (DOMA),¹ although the agency concedes the same is unconstitutional.

As applied to plaintiff and those similarly situated, the DOMA takes a narrow class of married couples and denies them the same rights and benefits that are available to married couples who are treated as a married couple and have access to interim and final benefits under the INA, and same-

¹ DOMA 3 provide :

In determining the meaning of an Act of Congress, or of an order, regulation, or interpretation of the various administrative departments and agencies of the United States, the word 'marriage' means only a legal union between

1 e couple whose marriage does not in itself confer in either or permanent
 2 lawful status under the INA. Denied lawful status on account of their and
 3 sexual orientation, immigrant spouse of U.S. citizen and lawful permanent alien
 4 (and their immigrant children, as in the case of plaintiff Arana), unlike their
 5 heterosexual counterparts, are often considered to be undocumented and
 6 here they are subject to deportation and removal, denied the right to work lawfully in
 7 the United States, to marry and support their families, face a range of
 8 employment discrimination, and are treated by the Government as being in a
 9 highly restrictive framework of admission to lawful permanent residence.

12 A motion in plaintiff's concurrent filed motion for preliminary injunction,
 13 which seeks injunctive relief from the enforcement of both the Defense of
 14 Marriage Act and the Immigration and Nationality Act's provisions relating to
 15 equal protection in violation of the Fifth Amendment to the United States
 16 Constitution. DOMA's marriage heightening criteria discriminate
 17 based on sexual orientation, in a manner which lies at the heart of
 18 individual autonomy and liberty, and such, are not proper bases for governmental
 19 classification absent an important reason for making them so. A plaintiff's motion
 20 for preliminary injunction demonstrates, the Government has no important, nor even
 21 rational, basis for discriminating against same-sex couples.

24 There is no dispute that defendant has applied and will continue to apply
 25 DOMA's denial of recognition of same-sex marriage when implementing the INA.

one man and one woman as husband and wife, and the word 'spouse' refer only to a person of the opposite sex who is a husband or a wife.

1 I i eq all clear ha he her heir doing o compor i h he con i ional
 2 g aran ee of d e proce and eq al pro ec ion i a q e ion of la common o all
 3 member of ame- e marriage ref ed immigra ion benefi nder he INA olel
 4 beca e of DOMA 3. Thi i a q e ion of la ha effec immigran and heir
 5 U.S. ci i en and la fl re iden po e hro gho he co n r and ho ld be e led
 6 in a ingle proceeding: if an ch marriage are en i led o recogni ion nder he
 7 INA, all are. F r hermore, and impor an l in hi ca e, ha emporar pro ec ion
 8 plain iff and heir propo ed cla member recei e hile he co r addre
 9 DOMA con i ionali ho ld be niform and i a ailabili kno n o plain iff
 10 and p a i e cla member . Thi ac ion i a paradigma ic candida e for cla
 11 rea men ; i ho ld accordngl be cer ified p r an o R le 23, Fed. R. Ci . Proc.²
 12

15 II PROPOSED CLASS DEFINITION.

16 R le 23 con ain an implici req iremen ha he cla be defined o ha he
 17 cla member hip i a cer ainable. *Thomas & Thomas Rodmakers, Inc. v. Newport*
 18 *Adhesives & Composites, Inc.*, 209 F.R.D. 159, 163 (C.D. Cal. 2002).
 19

20 A R le 23(b)(2) cla , i adeq a el defined o long a he general o line of
 21

22
 23 ² R le 23 pro ide ha cla cer ifica ion ho ld be o gh a oon a prac icable.
 24 Plain iff recogni e hi mo ion i made earl in he e proceeding , b propo ed
 25 cla member are ffering irreparable inj r a a re l of defendan appl ing he
 26 DOMA 3 o den hem la fl a and he righ o ork in he Uni ed S a e .
 27 Cla cer ifica ion, e en if pro i ional, ho ld be gran ed in order o pro ec ab en
 cla member from irreparable inj r . *Zepeda v. United States Immigration &*
Naturalization Service, 753 F.2d 719, 727 (9 h Cir. 1983) (cla - ide preliminar
 inj nc i e relief ma *only* be gran ed if he co r ha cer ified or pro i ionall
 cer ified a cla).

1 he membership of the class are determinable as the case of the litigation, 7A
2 Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE 1760 at 118, and
3 it is administratively feasible for the court to determine whether a particular
4 individual is a member. *Id.* at 121.

5
6 Plaintiff seeks provisional certification under Rule 23(b)(2) of the following
7 class:

8 All members of lawful same-sex marriage whom the Department of
9 Homeland Security, pursuant to 3 of the Defense of Marriage Act, 1 U.S.C.
10 7, has refused or will refuse to recognize as a spouse for purposes of
11 conferring lawful status and related benefits under the Immigration and
12 Nationality Act, 8 U.S.C. 1101 *et seq.*

13
14 A proposed, the class definition comprises a group whose path to lawful
15 status as a defendant in the nationwide block pursuant to DOMA 3. The proposed class
16 member has been offered [] a resolution arrangement some relief. *Adashunas*
17 *v. Negley*, 626 F.2d 600, 604 (7th Cir. 1980). Class member may be readily
18 identified because they have been offered the specified injury. Defendant applied
19 DOMA 3 nationwide to every immigrant who is married to a person of the same
20 sex. Defendant nationwide recognition he would otherwise grant if only the
21 proposed class member were married to someone of a different sex.
22
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25 The proposed class definition accordingly satisfies Rule 23.

26 III THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23(a).

27 To receive class treatment an action must also satisfy the four requirements of

1 Rule 23(a) of the Federal Rules of Civil Procedure. The inclusion does not.

2 **A Numerosity and impracticality of joinder.**

3 Rule 23(a)(1) requires that the class be so numerous that joinder is
4 impractical.

5
6 Courts generally find the numerosity requirements of Rule 23(a)(1) satisfied
7 when related fee class members are included. *See, e.g., Jordan v. County of Los*
8 *Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982); *Carey v. Greyhound Bus Co.*, 500
9 F.2d 1372, 1381 (5th Cir. 1974) (number of class members assumed to be 28);
10 *Arkansas Education Association v. Board of Education*, 446 F.2d 763, 765-66 (8th
11 Cir. 1971) (class membership of 20 persons).

12
13 It is not necessary to determine the efficacy of the class in order to satisfy
14 Rule 23(a)(1), especially where it would do no practical good to identify all
15 individual class members when relying on a certification motion. *In re U.S. Financial*
16 *Securities Litigation*, 69 F.R.D. 24, 34 (S.D. Cal. 1975).

17
18
19 Rather, *the conduct complained of is the benchmark for determining whether*
20 *a subdivision (b)(2) class exists, making it uniquely suited to civil rights actions in*
21 *which the members of the class are often ‘incapable of specific enumeration.’ Yaffe,*
22 *supra*, 454 F.2d at 1366 (emphasis applied). Where the efficacy of the class is
23 unknown based on general knowledge and common sense indications, the
24 numerosity requirements are satisfied. *Orantes-Hernandez v. Smith*, 541 F. Supp. 351,
25 371 (C.D. Cal. 1982).

26
27 The numerosity requirements of Rule 23(a)(1) are satisfied here. Plaintiff

1 challenge a a e ha i niforml applied again a con an l increa ing n mber
2 of la f ll married ame- e co ple and heir immigran children. Thi ac ion
3 accordngl a i fie he n mero i req iremen of R le 23(a)(1).

4 **B Common questions of law or fact.**

5 R le 23(a)(2) req ire ha here be q e ion of la or fac common o he
6 cla .

7
8 E en here here are indi id al aria ion in he fac or legal i e a he
9 rela e o a par ic lar named plain iff or propo ed cla member, he commonali
10 req iremen i a i fied o long a he cla hare ome common q e ion of la or
11 fac . *See, e.g., Eisen v. Carlisle and Jacqueline*, 391 F.2d 555, 562 (2nd Cir. 1968)
12 (cla cer ifica ion gran ed no i h anding ar ing fac pa ern nderl ing each
13 indi id al ... ran ac ion ...); *Senter v. General Motors Corp.*, 532 F.2d 511, 524
14 (6 h Cir. 1976), *cert. denied*, 429 U.S. 870 (1976) (cla cer ifica ion gran ed in
15 emplo men di crimina ion ac ion bro gh on behalf of Black emplo ee e en
16 ho gh i a manife ha e er deci ion o hire, fire or di charge an emplo ee
17 ma in ol e indi id al con idera ion); *Norwalk CORE v. Norwalk Redevelopment*
18 *Agency*, 395 F.2d 920, 937 (2nd Cir. 1968) (cla cer ified in challenge o reloca ion
19 prac ice of rban rene al projec de pi e he differen rea men ffered b each
20 enan d ring he reloca ion proce); *Cullen v. New York State Civil Service*
21 *Commission*, 435 F. S pp. 546, 559 (E.D.N.Y. 1977) (cla cer ifica ion gran ed in
22 la i challenging coerci e prac ice in ob aining poli ical con rib ion from
23
24
25
26
27 p blic emplo ee e en ho gh fac q e ion pecific o each in ance of he alleged

1 coercion will remain).

2 Common question of law presented in his proposed class action include
3 whether defendant applying DOMA 3's denial of recognition of same-sex marriage
4 under the INA denies plaintiff and his proposed class members due process or
5 equal protection under the Fifth Amendment.

7 It is clear that the claim plaintiff presents here raises question of law (due
8 process and equal protection) and fact (same-sex marriage) common to all proposed
9 class members.

11 **C Typicality of claims.**

12 Rule 23(a)(3) requires that the claim of the named plaintiff be typical of the
13 claim ... of the class. Meeting his requirements all follow from the presence
14 of common question of law, and corroboration of his contention (a)(2) and
15 (a)(3) as largely duplicative. *Orantes-Hernandez v. INS, supra*, 541 F. Supp. 2d 371;
16 *American Airlines, Inc. v. Transport Workers Union*, 44 F.R.D. 47, 48 (N.D. Okla.
17 1968) (holding (a)(3) met because representing having common interest in the class and
18 claim or defense in hand); *Mersay v. First Republic Corp.*, 43 F.R.D. 465, 468-69
19 (S.D.N.Y. 1968) (allegation that defendant engaged in scheme common to all
20 members of class held appropriate for finding that claim of representative party typical).
21
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27
As has been seen, the case at bar presents only common question of law. Plaintiff DeLeon
has applied for an immigration benefit under the INA based upon her same-sex
marriage to plaintiff Rodriguez, and her application has been denied solely based
upon DOMA. Her son, plaintiff Arana, is eligible for accompanying relative as

1 b hi eligibili i ric l linked o he eligibili of hi mo her, plain iff DeLeon.

2 Plain iff claim are clearl pical of ho e of he propo ed cla .

3 **D Adequacy of representation.**

4 The final req iremen for cla cer ifica ion e o in R le 23(a)(4), i ha he
5 named plain iff ill fairl and adeq a el pro ec he in ere of he cla . The o
6 principal elemen of hi req iremen are (1) ha he cla repre en a i e in ere
7 are co-e en i e and no an agoni ic o he cla member ; and (2) ha co n el for
8 he named repre en a i e are q alified. *Johnson v. Georgia Highway Express, Inc.*,
9 417 F.2d 1122, 1124-25 (5 h Cir. 1969).

12 Plain iff here ha e no in ere in conflic i h ho e of he propo ed cla
13 member . The named plain iff eek he ame inj nc i e and declara or relief for
14 he cla a he do for hem el e . Plain iff eek o indica e righ ha are iola ed
15 hro gh he niform applica ion of he DOMA. Their goal i o declare defendan
16 appl ing DOMA 3 again member of ame- e co ple nla f l and o enjo in
17 f r her applica ion of DOMA 3 hen defendan adj dica e applica ion for
18 benefi a ailable nder he INA.

21 Plain iff lead co n el are emplo ed b a non-profi organi a ion peciali ing
22 in comple federal li iga ion on behalf of immigran and ref gee . The ha e
23 cce f ll li iga ed n mero cla ac ion and indi id al ca e in he federal
24 co r in ol ing he righ of immigran . *See, e.g., Plyler v. Doe*, 457 U.S. 202
25 (1982); *Ramon Sepulveda v. INS*, 863 F.2d 1458 (9 h Cir. 1988); *Haitian Refugee*
26 *Center v. Smith*, 676 F.2d 1023 (5 h Cir. 1982); *Mendez v. INS*, 563 F.2d 956 (9 h
27

1 Cir. 1977); *Immigrant Assistance Project v. INS*, 709 F. S pp. 998 (W.D.Wa. 1989);
2 *Orantes-Hernandez v. Smith*, 541 F. S pp. 351 (C.D. Cal. 1982); *League of United*
3 *Latin American Citizens v. Wilson*, 131 F.3d 1297 (9 h Cir. 1997); *Reno v. Catholic*
4 *Social Services*, 509 U.S. 43 (1993); *Reno v. Flores*, 507 U.S. 292 (1993); *Perez-*
5 *Olano v. Gonzalez*, 248 F.R.D. 248 (C.D. Cal. 2008).

7 Co n el ill adeq a el repre en he propo ed cla . The req iremen of
8 R le 23(a)(4) are accordngl a i fied.

9
10 IV THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23(b)(2).

11 In addi ion o a i f ing he fo r req iremen of R le 23(a), a cla ac ion
12 m mee one of he req iremen of R le 23(b).

13 Thi ac ion mee he req iremen of R le 23(b)(2): *i.e.*, he par oppo ing
14 he cla ha ac ed or ref ed o ac on gro nd generall applicabl o he cla
15 hereb making appropriat e final inj nc i e relief or corre pondng declara or relief
16 i h re pec o he cla a a hole ...

17
18 In a (b)(2) cla ac ion he par oppo ing he cla doe no ha e o ac
19 direc l again each member of he cla . A long a hi ac ion o ld affec all
20 per on imilarl i a ed, hi ac appl generall o he hole cla . 7A Wri gh &
21 Miller, FEDERAL PRACTICE AND PROCEDURE, 1775, a 19.

22
23 In hi ca e defendan niforml appl DOMA 3 o den la f ll married
24 co ple and heir immigran children immigrat ion benefi . Plain iff allege he do
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1 crea ed b he policie and prac ice a i e.

2 Co r ha e repea edl cer ified cla e con i ing of immigran bjec o
3 challenged a e , reg la ion , prac ice or policie . *See, e.g., Catholic Social*
4 *Services, Inc. v. Reno*, Ci . S-86-1343 LKK (E.D. Cal.); *Newman, et al., v.*
5 *Immigration & Naturalization Service, et al.*, No. CV 87-4757-WDK (C.D. Cal.);
6 *Immigrant Assistance Project v. INS*, Ci il No. C-88-379R (W.D. Wa.); *National*
7 *Center for Immigrants' Rights, Inc. v. INS*, Ci . No. 83-7927-KN (C.D. Cal.) (order
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9 i ed J l 9, 1985, cer if ing a na ion ide cla of all per on bjec ed o an INS
10 reg la ion nder cha0.2al r4 ane

V CONCLUSION

For the foregoing reasons, this action should be certified as a class action pursuant to Rule 23(b), Fed.R.Ci. Proc.

Dated: August 23, 2012.

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CERTIFICATE OF SERVICE

SACV12-01137 CBM (AJWX)

I hereby certify that on this 23rd day of August, 2012, I electronically filed the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS CERTIFICATION with the Clerk of Court through the CM/ECF system, which provided an electronic notice and electronic link of the same to all attorneys of record through the Court's CM/ECF system.

Dated: August 23, 2012.

 // Karena Heredia

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