

1 CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW  
 2 Peter A. Schey (Cal. Bar No. 58232)  
 3 Carlos R. Holguín (Cal. Bar No. 90754)  
 4 256 S. Occidental Blvd.  
 5 Los Angeles, CA 90057  
 6 Telephone: (213) 388-8693 (Schey Ext. 304, Holguín ext. 309)  
 7 Facsimile: (213) 386-9484  
 8 pschey@centerforhumanrights.org  
 9 crholguin@centerforhumanrights.org

10 *Additional counsel listed next page*  
 11 *Attorneys for plaintiffs*

12 UNITED STATES DISTRICT COURT FOR THE  
 13 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

14 Jane DELEON,

15 Plaintiff,

16 v.

17 Janet NAPOLITANO, Secretary of the  
 18 Department of Homeland Security;  
 19 Alejandro MAYORKAS, Director, United  
 20 States Citizenship & Immigration  
 21 Services;  
 22 UNITED STATES CITIZENSHIP &  
 23 IMMIGRATION SERVICES; and  
 24 DEPARTMENT OF HOMELAND  
 25 SECURITY,

26 Defendants.

27 ALEXANDER BUSTOS GARCIA, RICHARD  
 28 L. FITCH, HOLGA MARTINEZ, MARTHA  
 REYES,

Proposed Plaintiffs-in-intervention

SACV12-01137 CBM (AJWx)

NOTICE OF MOTION AND MOTION  
 FOR SUMMARY JUDGMENT

Hearing: August 19, 2013  
 Time: 10:00 a.m.  
 Hon. Consuelo B. Marshall  
 Spring St., Courtroom No. 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Additional counsel for plaintiff Aranas:*

PUBLIC LAW CENTER  
A. Christian Abasto (Cal. Bar No. 190603)  
601 Civic Center Drive West  
Santa Ana, CA 92701  
Telephone: (714) 541-1010 (Ext. 277)  
Facsimile: (714) 541-5157  
cabasto@publiclawcenter.org

*Additional counsel for plaintiff Aranas and for intervening plaintiffs Bustos Garcia and Fitch:*

ASIAN LAW ALLIANCE  
Beatrice Ann M. Pangilinan (Cal. Bar No. 271064)  
184 Jackson Street, San Jose, CA 95112  
Telephone: (408) 287-9710  
Facsimile: (408) 287-0864  
Email: bpangilinan@asianlawalliance.org

*Additional counsel for plaintiffs DeLeon and for intervening plaintiffs Martinez and Reyes:*

LAW OFFICES OF MANULKIN & BENNETT  
Gary H. Manulkin (Cal. Bar No. 41469)  
Reyna M. Tanner (Cal. Bar No. 197931)  
10175 Slater Avenue, Suite 111  
Fountain Valley, CA 92708  
Telephone: 714-963-8951  
Facsimile: 714-968-4948  
gmanulkin@mgblaw.com  
reynatanner@yahoo.com

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

To defendants and their attorneys of record:

PLEASE TAKE NOTICE that on August 19, 2013, at 10:00 a.m., or as soon thereafter as counsel may be heard, pursuant to Rule 56(a), Federal Rules of Civil Procedure, plaintiff and proposed plaintiff intervenors will and do hereby move the Court for the entry of final judgment that the Defense of Marriage Act § 3, as applied by defendants to plaintiff, the proposed plaintiff intervenors, and members of the certified class violated the due process and equal protection guarantees of the Fifth Amendment of the United States Constitution.

This motion is made following conferences of counsel pursuant to Local Rule 7-3 which took place on July 2, 2013.

This motion is based upon the accompanying memorandum of law and upon all other matters of record herein. Proposed findings of fact and conclusions of law are lodged concurrently herewith.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: July 19, 2013.

CENTER FOR HUMAN RIGHTS AND  
CONSTITUTIONAL LAW  
Peter A. Schey  
Carlos R. Holguín

PUBLIC LAW CENTER  
A. Christian Abasto

ASIAN LAW ALLIANCE  
Beatrice Ann M. Pangilinan

GARY H. MANULKIN  
REYNA M. TANNER  
Law Offices of Manulkin, Glaser  
& Bennett

/s/ Peter A. Schey\_\_\_\_\_

/s/ Carlos R. Holguín\_\_\_\_\_

*Attorneys for Plaintiffs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Certificate of Service

SACV12-01137 CBM (AJWX)

I hereby certify that on this day I electronically filed the foregoing NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT with the Clerk of Court by using 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: July 19, 2013.

/s/ Peter Schey

///

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

Peter A. Schey (Cal. Bar No. 58232)

Carlos R. Holguín (Cal. Bar No. 90754)

256 S. Occidental Blvd.

Los Angeles, CA 90057

Telephone: (213) 388-8693 (Schey Ext. 304, Holguín ext. 309)

Facsimile: (213) 386-9484

pschey@centerforhumanrights.org

crholguin@centerforhumanrights.org

*Additional counsel listed next page*

*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Jane DELEON,

Plaintiff,

v.

Janet NAPOLITANO, Secretary of the  
Department of Homeland Security;  
Alejandro MAYORKAS, Director, United  
States Citizenship & Immigration  
Services;  
UNITED STATES CITIZENSHIP &  
IMMIGRATION SERVICES; and  
DEPARTMENT OF HOMELAND  
SECURITY,

Defendants.

ALEXANDER BUSTOS GARCIA, RICHARD  
L. FITCH, HOLGA MARTINEZ, MARTHA  
REYES,

Proposed Plaintiffs-in-intervention

SACV12-01137 CBM (AJWx)

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT.

Hearing: August 19, 2013  
Time: 10:00 a.m.  
Hon. Consuelo B. Marshall  
Spring St., Courtroom No. 2

1 *Additional counsel for plaintiff Aranas:*

2  
3 PUBLIC LAW CENTER  
4 A. Christian Abasto (Cal. Bar No. 190603)  
5 601 Civic Center Drive West  
6 Santa Ana, CA 92701  
7 Telephone: (714) 541-1010 (Ext. 277)  
8 Facsimile: (714) 541-5157  
9 cabasto@publiclawcenter.org

10 *Additional counsel for plaintiff Aranas and for intervening plaintiffs Bustos Garcia*  
11 *and Fitch:*

12 ASIAN LAW ALLIANCE  
13 Beatrice Ann M. Pangilinan (Cal. Bar No. 271064)  
14 184 Jackson Street, San Jose, CA 95112  
15 Telephone: (408) 287-9710  
16 Facsimile: (408) 287-0864  
17 Email: bpangilinan@asianlawalliance.org

18 *Additional counsel for plaintiffs DeLeon and for intervening plaintiffs Martinez*  
19 *and Reyes:*

20 LAW OFFICES OF MANULKIN & BENNETT  
21 Gary H. Manulkin (Cal. Bar No. 41469)  
22 Reyna M. Tanner (Cal. Bar No. 197931)  
23 10175 Slater Avenue, Suite 111  
24 Fountain Valley, CA 92708  
25 Telephone: 714-963-8951  
26 Facsimile: 714-968-4948  
27 gmanulkin@mgblaw.com  
28 reynatanner@yahoo.com

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF CONTENTS

I Introduction ..... 1

II *Windsor* makes clear that Plaintiff and the proposed Plaintiff  
Intervenors are entitled to Summary Judgment..... 4

VI Conclusion..... 9

TABLE OF AUTHORITIES

Cases

*Bolling v. Sharpe*, 347 U. S. 497 (1954) ..... 9

*Louisville Gas & Elec. Co. v. Coleman*, 277 U. S. 32, 37–38 (1928) ..... 7

*Romer v. Evans*, 517 U. S. 620, 633 (1996) ..... 7

*United States v. Windsor*, \_\_ U.S. \_\_; 2013 U.S. LEXIS 4921, 2013 WL 3196928  
(June 26, 2013) ..... 4

*Williams v. North Carolina*, 317 U. S. 287, 298 (1942)..... 5

Other Authorities

1 U.S.C. §7..... passim

8 U.S.C. §§ 1101, *et seq* ..... 1

28 U. S. C. §530D..... 5

U.S. Const., Fifth Amendment ..... passim

Rule 23(b)(2), Fed.R.Civ.Proc..... 1

GAO, D. Shah, Defense of Marriage Act: Update to Prior Report 1 (GAO–04–353R,  
2004) ..... 5



1  
2  
3  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

4 I INTRODUCTION

5 Plaintiff Jane DeLeon (“Plaintiff” or “DeLeon”) challenges the  
6 constitutionality of Section 3 of the Defense of Marriage Act (“DOMA”), 1 U.S.C. §  
7 7, as applied to preclude her from receiving certain immigration benefits that are  
8 available to immigrants in heterosexual marriages. DeLeon seeks declaratory and  
9 injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. R. 57 as well  
10 as review of agency action pursuant to 5 U.S.C. §§ 701-706. (CT 0.00291 (U) .76a-1 (cy7u)

1 federal marital status regardless of the state in which they live’ ... and that Plaintiffs  
2 have stated a claim that DOMA § 3 violates their equal protection rights.” *Id.* at 14.

3  
4 The Court certified this action pursuant to Rule 23(b)(2), Fed.R.Civ.Proc., on  
5 behalf of the following class:

6 All members of lawful same-sex marriages who have been denied or will be  
7 denied lawful status or related benefits under the Immigration and Nationality  
8 Act, 8 U.S.C. §§ 1101 *et seq.*, by the Department of Homeland Security solely  
9 due to § 3 by the Defense of Marriage Act, 1 U.S.C. § 7.

10  
11 Order Granting Provisional Class Certification, Dkt. 127, at 12.

12  
13 On April 24, 2013, the Court stayed further proceedings in this action pending  
14 the ruling of the United States Supreme Court in *United States v. Windsor*, No. 12-  
15 307, on the ground that the Supreme Court’s ruling “will simplify the issues before  
16 this Court.” Dkt. 129 at 2.

17  
18 The Court denied a class wide preliminary injunction. The Court mistakenly  
19 found that:

20 *[s]ince [defendants issued their] October 5, 2012 amendment to the Morton*  
21 *memoranda], immigrants in same-sex marriages may qualify for deferred*  
22 *action status*, which includes the temporary work authorization and tolling of  
23 unlawful presence accrual that Plaintiff DeLeon seeks by this Motion. *Indeed,*  
24 *none of the adverse immigration decisions provided by DeLeon post-date the*

25  
26  
27  
28  

---

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

1            *October 5, 2012 amendment to the Morton Memo.*

2 Dkt. 128, Order Denying Preliminary Injunction, *supra*, at 8 (docket references  
3 omitted) (emphasis added). As the Court is now aware, the Morton Memorandum  
4 and its October 5, 2012 supplement address only the exercise of prosecutorial  
5 discretion to stay removal proceedings or execution of orders of removal of certain  
6 immigrants, and *have nothing to do with eligibility for deferred action or*  
7 *employment authorization.*  
8  
9

10            On April 26, 2013, defendants filed a notice correcting the factual findings  
11 underlying the Court’s having denied preliminary injunctive relief. Therein,  
12 defendants made clear that—  
13

- 14 1) “USCIS has, in fact, denied I-130 Petitions for Alien Relative since October 5,  
15 2012, based on” DOMA § 3, Dkt. 131 at 2;
- 16 2) CIS “will continue to [issue such denials] until there is a definitive ruling”  
17 striking down DOMA § 3, *id* at 3; and
- 18 3) defendants grant class members “deferred action” and employment  
19 authorization “only in *extraordinary circumstances...*”  
20  
21

22 Dkt. 131 at 4 (emphasis added).<sup>2</sup>  
23  
24

---

25 <sup>2</sup> Defendants further clarified that their prosecutorial discretion memos address *only*  
26 whether DHS immigration enforcement agencies, typically ICE, will proceed against  
27 a class member in removal or deportation proceedings. *See* Dkt. 131 at 3-4 and n.3  
28 (“USCIS [the agency that denied petitions based on DOMA] therefore does *not*  
exercise prosecutorial discretion pursuant to the Morton memo.” (Emphasis  
supplied)).

1 Defendants now admit having made numerous “adverse immigration decisions  
2 affecting those in the plaintiff class [before and] after October 5, 2012.” *See* Dkt.  
3 131; *see also* Dkt. 135, Plaintiffs’ Exhibits 37-41 (post-October 5, 2012, denials of  
4 multiple class members’ immigration applications). Defendants also now admit that  
5 neither their prosecutorial discretion memos nor the unlikely possibility of getting  
6 deferred action afforded class members whose applications for pre-adjudication  
7 employment authorization and for adjustment of status CIS unconstitutionally denied  
8 any real protection from joblessness or inadmissibility.  
9  
10

11 On June 26, 2013, the Supreme Court held that DOMA § denies due process  
12 and equal protection in violation of the Fifth Amendment to the U.S. Constitution.  
13 *United States v. Windsor*, U.S. ; 2013 U.S. LEXIS 4921, 2013 WL 3196928 (June  
14 26, 2013).  
15

16 Plaintiff class representative DeLeon and the proposed intervening plaintiffs  
17 accordingly now move the Court to enter summary judgment in this case.  
18

19 II *WINDSOR* MAKES CLEAR THAT PLAINTIFF AND THE PROPOSED PLAINTIFF  
20 INTERVENORS ARE ENTITLED TO SUMMARY JUDGMENT.  
21

22 Section 3 of DOMA provides as follows:

23 In determining the meaning of any Act of Congress, or of any ruling,  
24 regulation, or interpretation of the various administrative bureaus and agencies  
25 of the United States, the word ‘marriage’ means only a legal union between  
26  
27

---

1 one man and one woman as husband and wife, and the word ‘spouse’ refers  
2 only to a person of the opposite sex who is a husband or a wife.

3  
4 1 U.S.C. §7.

5 The definitional provision does not by its terms forbid States from enacting  
6 laws permitting same-sex marriages or civil unions or providing state benefits to  
7 residents in that status. The enactment’s comprehensive definition of marriage for  
8 purposes of all federal statutes and other regulations or directives covered by its  
9 terms, however, does control over 1,000 federal laws in which marital or spousal  
10 status is addressed as a matter of federal law, including the Immigration and  
11 Nationality Act. *See* GAO, D. Shah, Defense of Marriage Act: Update to Prior  
12 Report 1 (GAO–04–353R, 2004).

15 On February 23, 2011, the Attorney General of the United States notified the  
16 Speaker of the House of Representatives, pursuant to 28 U. S. C. §530D, that the  
17 Department of Justice would no longer defend the constitutionality of DOMA’s §3.  
18 Noting that “the Department has previously defended DOMA against . . . challenges  
19 involving legally married same-sex couples,” the Attorney General informed  
20 Congress that “the President has concluded that given a number of factors, including  
21 a documented history of discrimination, classifications based on sexual orientation  
22 should be subject to a heightened standard of scrutiny.” *See Windsor*, Slip Op. at 3-4.  
23  
24

25 Although “the President . . . instructed the Department not to defend the  
26 statute in *Windsor*,” he also decided “that Section 3 will continue to be enforced by  
27 the Executive Branch . . .” *Id.* at 4.  
28

1 In response to the notice from the Attorney General, the Bipartisan Legal  
2 Advisory Group (BLAG) of the House of Representatives voted to intervene in  
3 litigation challenging DOMA to defend its constitutionality. *Id.* The Department of  
4 Justice did not oppose limited intervention by BLAG in *Windsor* or in this case.  
5

6 The recognition of civil marriages is central to state domestic relations law  
7 applicable to its residents and citizens. *Windsor*, Slip Op. at 17, citing *Williams v.*  
8 *North Carolina*, 317 U. S. 287, 298 (1942) (“Each state as a sovereign has a rightful  
9 and legitimate concern in the marital status of persons domiciled within its borders”).  
10 The definition of marriage is the foundation of the State’s broader authority to  
11 regulate the subject of domestic relations with respect to the “[p]rotection of  
12 offspring, property interests, and the enforcement of marital responsibilities.” *Id.*  
13 quoting *Williams v. North Carolina*, 317 U. S. at 298.  
14  
15

16 Consistent with this allocation of authority, “the Federal Government, through  
17 our history, has deferred to state-law policy decisions with respect to domestic  
18 relations.” *Id.*  
19

20 DOMA “rejects the long-established precept that the incidents, benefits, and  
21 obligations of marriage are uniform for all married couples within each State, though  
22 they may vary, subject to constitutional guarantees, from one State to the next.” *Id.* at  
23 18.  
24

25 Despite these considerations, the Supreme Court held in *Windsor* that it was  
26 unnecessary to decide whether this federal intrusion on state power was a violation  
27 of the Constitution because the State’s power in defining the marital relation is of  
28

1 central relevance in this case quite apart from principles of federalism. *Id.*

2       The State’s decision to give this class of persons the right to marry “conferred  
3 upon them a dignity and status of immense import.” *Id.* When the State used its  
4 historic and essential authority to define the marital relation in this way, its role and  
5 its power in making the decision enhanced the recognition, dignity, and protection of  
6 the class in their own community. *Id.*

7  
8       DOMA, because of its reach and extent, departs from this history and tradition  
9 of reliance on state law to define marriage. *Id.* at 18-19. “[D]iscriminations of an  
10 unusual character especially suggest careful consideration to determine whether they  
11 are obnoxious to the constitutional provision.” *Id.* at 19, quoting *Romer v. Evans*,  
12 517 U. S. 620, 633 (1996) (quoting *Louisville Gas & Elec. Co. v. Coleman*, 277 U.  
13 S. 32, 37–38 (1928)).

14  
15       DOMA § 3 uses this state-defined class for the opposite purpose—“to impose  
16 restrictions and disabilities.” *Id.* at 19. That result required the Supreme Court to  
17 address whether the resulting injury and indignity is a deprivation of an essential part  
18 of the liberty protected by the Fifth Amendment. *Id.*

19  
20       DOMA “seeks to injure” the very classes certain states sought to protect when  
21 they legalized same sex marriages. *Id.* at 20. The Constitution’s guarantee of equality  
22 “must at the very least mean that a bare congressional desire to harm a politically  
23 unpopular group cannot” justify disparate treatment of that group. *Id.* quoting  
24 *Department of Agriculture v. Moreno*, 413 U. S. 528, 534–535 (1973). The history of  
25 DOMA’s enactment and its own text demonstrate that interference with the equal  
26  
27  
28

1 dignity of same-sex marriages, a dignity conferred by the States in the exercise of  
2 their sovereign power, was more than an incidental effect of the federal statute. *Id.* at  
3  
4 21. "It was its essence." *Id.*<sup>3</sup>

5 The principal effect of Defendants' implementation of DOMA, even after  
6 defendants decided it was unconstitutional and were told so by numerous courts, was  
7 "to identify a subset of state-sanctioned marriages and make them unequal" for  
8 purposes of benefits otherwise available under the Immigration and Nationality Act.  
9  
10 *Id.* at 22.

11 By creating two contradictory marriage regimes within the same States,  
12 DOMA forced same-sex couples to live as married for the purpose of state law "but  
13 unmarried for the purpose of federal law, thus diminishing the stability and  
14 predictability of basic personal relations [certain] State[s] [have] found it proper to  
15 acknowledge and protect." *Id.*

16  
17  
18 As the record in this case makes clear, defendants' application of DOMA and  
19 refusal to hold these cases in abeyance has, as it did in *Windsor*, "place[d] same-sex  
20 couples in an unstable position of being in a second-tier marriage." *Id.* at 23.  
21

22 The declarations on file in this case fully confirm the Supreme Court's  
23 observation that "[u]nder DOMA, same-sex married couples have their lives  
24 burdened, by reason of government decree, in visible and public ways." *Id.* at 23.  
25

26 \_\_\_\_\_  
27 <sup>3</sup> For a detailed discussion of DOMA's legislative history, see Plaintiffs' Opposition  
28 to Defendant-Intervenor's Motion to Dismiss, Dkt. 71, at pp. 18-24.



1 The power the Constitution grants it also restrains. “[T]hough Congress has  
2 great authority to design laws to fit its own conception of sound national policy, it  
3 cannot deny the liberty protected by the Due Process Clause of the Fifth  
4 Amendment.” *Id.* at 25.

6 DOMA is invalid “for no legitimate purpose overcomes the purpose and effect  
7 to disparage and to injure those whom the State, by its marriage laws, sought to  
8 protect in personhood and dignity.” *Id.* 25-26.

10 By seeking to displace this protection and treating those persons as living in  
11 marriages less respected than others, “[DOMA] violates basic due process and equal  
12 protection principles applicable to the Federal Government.” *Id.* at 20 (emphasis  
13 added), *citing* U.S. Const., Fifth Amendment; *Bolling v. Sharpe*, 347 U. S. 497  
14 (1954) (emphasis added),  
15

16 VI CONCLUSION

18 For the foregoing reasons, plaintiff and proposed plaintiff intervenors  
19 respectfully move for the entry of summary judgment.

20 Dated: July 19, 2013.

CENTER FOR HUMAN RIGHTS AND  
CONSTITUTIONAL LAW

Peter A. Schey  
Carlos R. Holguín

PUBLIC LAW CENTER  
A. Christian Abasto

ASIAN LAW ALLIANCE  
Beatrice Ann M. Pangilinan

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LAW OFFICES OF MANULKIN &  
BENNETT  
Gary H. Manulkin  
Reyna M. Tanner

/s/ Peter A. Schey

/s/ Carlos R. Holguín

*Attorneys for plaintiffs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

SACV12-01137 CBM (AJWX)

I hereby certify that on this day I electronically filed the foregoing  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT with the Clerk of Court by using 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: July 19, 2013.

/s/ Peter Schey

///