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July 15, 2013

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United States Department of Justice, Civil Division
Office of Immigration Litigation, District Court Section
P.O. Box 868 Ben Franklin Station
Washington, DC 20044

Via e-mail and first class mail.

Re: *Arana, v. Napolitano*, No. SACV12-01137 CBM (AJWx).

Dear Counsel:

During the telephonic hearing of July 12, 2006, on defendants' ex parte application to suspend briefing the Court ordered or strongly encouraged the parties to seek to reach agreement regarding a remedy for class members now that the Supreme Court's decision in *United States v. Windsor*, U.S. 2013 U.S. LEXIS 4921, 2013 WL 3196928 (June 26, 2013), has resolved the substance of this action in plaintiff's favor. Plaintiff accordingly seeks defendants' cooperation in reaching an agreement that will save the parties and the Court the time and expense of continuing to litigate an appropriate remedy for aggrieved class members.

We, of course, welcome defendants' pledge to adjudicate newly filed petitions and applications for immigration benefits in accordance with *Windsor*. Since the enactment of DOMA § 3 in 1996, however, numerous same-sex bi-national couples have been denied immigration benefits to which they are unquestionably entitled, and it is only fair that such couples be made whole without undue delay and without having to submit new applications or fees.

Defendants have yet to state a date certain by which they will have in place proposed comprehensive procedures for unwinding the adverse effects of CIS's having applied DOMA § 3 against same-sex couples, nor have they provided anything more than the barest outline of what such procedures may be.

Although defendants may prefer to decide unilaterally when and what to do for class members, this is a certified class action, and defendants should understand the benefits of conferring with representatives of the class and seeking Court approval for remedial steps now that the Supreme Court has spoken. Should the parties succeed in agreeing upon interim and later permanent remedies, they would avoid further litigation over the sufficiency of any proposed remedies, thus speeding both the resolution of class members' immigration status and of this litigation as a whole.

As we have emphasized, plaintiff class members have a clear right and an immediate need for interim relief until such time as a permanent remedy may be implemented. The Court appears to agree with plaintiff when it declined to stay further briefing on the pending motions to intervene, for a preliminary injunction for the proposed intervening plaintiffs, and for a class-wide preliminary injunction, and only granted defendants a short extension to file opposition briefs. Plaintiff accordingly proposes the parties address both interim and permanent relief for class members. We offer the attached draft regarding interim relief for defendants' consideration and for discussion.

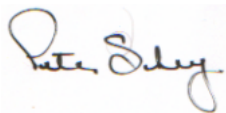
Regarding permanent relief, we have not yet prepared a draft stipulation but preliminarily and tentatively believe that USCIS should, within 60 days, reopen underlying petitions and applications *sua sponte* and without additional fees. USCIS should adjudicate such petitions and applications in accordance with *Windsor* on a priority basis as though previously unadjudicated since the date of initial filing. In determining admissibility or eligibility for waivers or adjustment, defendants should not use as an adverse factor accrual of unauthorized presence or employment following denial of class members' petitions and applications pursuant to DOMA § 3.

We plan to file a motion for the entry of judgment promptly. In the event the parties are engaged in good faith discussions regarding interim and permanent relief, plaintiff is prepared to take all motions off calendar as long as the parties are making reasonable progress toward fashioning appropriate relief.

Plaintiff is also prepared to proceed pursuant to one of the alternative dispute resolution procedures set out in Local Rule 16-15.4.

Please advise us at your earliest convenience whether defendants are willing to join plaintiff in an effort to resolve this matter without further litigation.

Thank you,



Peter A. Schey, Esq.
Executive Director



Carlos Holguín, Esq.
General Counsel

attachment