



## CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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### **Background to DOMA:**

Numerous provisions of the Immigration and Nationality Act (INA) confer benefits upon the spouses of U.S. citizens and lawful permanent residents. *E.g.*, 8 U.S.C. § 1151(b)(2)(A)(i) (granting spouses of U.S. citizens right to reside lawfully and permanently in the United States); 8 U.S.C. § 1182(i) (providing for waiver of inadmissibility where removal of immigrant would “result in extreme hardship to [her] citizen ... spouse or parent ...”). These provisions reflect a deep-rooted tradition that U.S. immigration law should serve to foster family unity. *See* H.R. Rep. No. 1365, 82d Cong., 2d Sess. 2780 (1952), *reprinted in* 1952 U.S. Code Cong. & Ad. News 1653, 1680.

The INA itself posits no general definition of “spouse.” Instead, whether a foreign-born spouse is entitled to lawful immigration status generally turns on whether he or she is validly married under the law of the state in which the marriage was celebrated. *Matter of Lovo-Lara*, 23 I. & N. Dec. 746, 748 (BIA 2005); *see also* 8 U.S.C. § 1186a(d)(1)(A)(i)(I) (defining “qualifying marriage” for conditional residence as one which “was entered into in accordance with the laws of the place where the marriage took place.”). In effect, state law typically controls whether an applicant is a “spouse” for immigration purposes. *See, e.g., Purganan v. Schweiker*, 665 F.2d 269, 271 (9th Cir. 1982) (construing California law on marital status to determine eligibility for child’s insurance benefits under Social Security Act).

Section 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”), however, creates a special rule that bars federal agencies from recognizing marriages between spouses of the same sex, regardless of whether those marriages are valid under state law:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between 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.

*Id.*

The lawsuit argues that the federal government lacks a constitutionally sufficient basis for denying lawful immigration status to members of bona fide marriages merely because the spouses happen to be of the same sex.

The lawsuit notes that at the same time as the DOMA denies lawful status to immigrant members of wholly lawful, bona fide, and long-enduring same-sex marriages, the INA is generous in conferring benefits upon immigrant members of different-sex marriages, including spouses of visiting foreign students, newlyweds, “mail order” spouses of permanent resident aliens, different-sex spouses convicted of crimes, and fiancés of U.S. citizens who have yet to marry.

The plaintiffs seek a preliminary injunction barring the federal government from arresting or deporting the immigrant spouses of U.S. citizens and lawful permanent residents who would be allowed to remain in the United States but for their sex and sexual orientation.