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CIVIL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
FILED

<p>EDWIN BLESCH, TIMOTHY SMULIAN, FRANCES HERBERT, TAKAKO UEDA, SANTIAGO ORTIZ, PABLO GARCÍA, KELLI RYAN, LUCY TRUMAN, HEATHER MORGAN and MARIA DEL MAR VERDUGO,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ERIC H. HOLDER, JR., United States Attorney General; JANET NAPOLITANO, Secretary of the Department of Homeland Security; ALEJANDRO MAYORKAS, Director, United States Citizenship and Immigration Services; ROBERT M. COWAN, Center Director, National Benefits Center, United States Citizenship and Immigration Services, and DANIEL M. RENAUD, Director, Vermont Service Center, United States Citizenship and Immigration Services,</p> <p>Defendants.</p>
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CIVIL ACTION DOCKET NO.

COMPLAINT

CV 12 - 1578
AMON, CH.J.

RENSTEIN

PRELIMINARY STATEMENT

This is a constitutional challenge to the so-called Defense of Marriage Act (“DOMA”), 1 U.S.C. § 7, as it applies to the immigration rights of lesbian and gay bi-national couples.

1. Plaintiffs are five committed, loving couples, lawfully married by the government of South Africa and the States of Vermont, Connecticut, and New York. In each couple, one spouse is an American citizen and the other spouse a foreign national. If they were different-sex couples, the federal government would recognize the foreign spouse as an “immediate relative” of a United States citizen, thereby allowing the

American spouse to petition for an immigrant visa for the foreign spouse and place the foreign spouse on the path to lawful permanent residence and citizenship. Solely because of DOMA and its unconstitutional discrimination against same-sex couples, however, these Plaintiffs are being denied the immigration rights afforded to other similarly situated bi-national couples. This is an action to remedy that hateful, harmful, and unlawful discrimination.

2. Each of the Plaintiff couples were legally married, and there is no question that each couple's marriage is recognized in the jurisdiction in which the American spouse resides. For example, Frances Herbert and Takako Ueda were lawfully married in 2011 in Vermont. Thus, if Takako were a man instead of a woman, she would have already been recognized as an "immediate relative," allowing her to attain lawful permanent residence and to remain in the United States.

3. Section 3 of DOMA, however, upends that normal operation of the law. DOMA creates, for the first time in our nation's history, a federal definition of marriage that excludes same-sex couples. While DOMA is not an immigration statute, its restrictive definition of marriage affects over 1,000 federal laws, including laws relating to immigration. Thus, although federal immigration laws apply on their face to all lawfully married couples, same-sex couples, such as Frances and Takako, are denied their rights by operation of DOMA.

4. The discriminatory impact of DOMA is particularly acute in the immigration context. For immigration purposes, whether the federal government recognizes a couple's marriage can determine whether a family may remain in the United States and live together, or may be torn apart.

5. The ability to maintain their families together is, of course, of the highest concern for the Plaintiff couples and for thousands of other bi-national couples in this country. But the federal government also has set the preservation of families as a national priority. That is why the Immigration and Nationality Act (“INA”) allows a United States citizen to file a petition with United States Citizenship and Immigration Services (“USCIS”) on behalf of a foreign national spouse for classification as an immediate relative and allows immediate relatives to apply for lawful permanent resident status and to remain lawfully in the United States. There is no annual limit on the number of visas available to foreign national spouses of American citizens. As a nation, we want to keep families together, not rip them apart.

6. Those values have been reaffirmed repeatedly in federal laws and policies and in statements by members of Congress (Democrats and Republicans alike):

Family unification is the cornerstone of immigration to the United States. Prolonging the separation of spouses from each other, and from their children, is inconsistent with the principles on which this nation was founded. . . . The family structure is one of our great Nation’s strongest assets.

136 Cong. Rec. H8631 (daily ed. Oct. 2, 1990) (statement of Rep. McGrath (R)).

The reunification of families serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well-being of the nation. Psychologically and socially, the reunion of family members with their close relatives promotes the health and welfare of the United States.

U.S. Select Comm’n on Immigr. and Refugee Pol’y, U.S. Immigration Policy and the National Interest 112–13 (1981).

7. Ironically, it is the federal government that threatens to tear bi-national families apart. Because of DOMA, the federal government does not recognize the

marriages of same-sex couples and, therefore, denies them the immigration rights afforded to other married couples. As a result, these couples live their lives at constant risk of separation.

8. As described below, the five Plaintiff couples are like other married couples. They met, fell in love, and chose to build a life together. They too committed themselves to one another in good times and in bad, in sickness and in health. They have honored and kept that commitment to one another. They have chosen to be together and to make the United States their family's home. However, because they are married to someone of the same sex, they are denied the federal immigration benefits to which different-sex married couples are entitled. They are at constant risk of being forced apart or forced to leave the United States to stay together.

9. Section 3 of DOMA, as applied to immigration laws, is unconstitutional.

JURISDICTION

10. This action arises under the Constitution of the United States and the laws of the United States. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and to grant mandamus relief pursuant to 28 U.S.C. § 1361.

VENUE

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(e) because the defendants are officers and employees of the United States of America, and because Plaintiffs Edwin Blesch, Timothy Smulian, Santiago Ortiz and Pablo García reside in this judicial district. There is no real property involved in the action.

PARTIES

12. Plaintiff Edwin Blesch is a United States citizen. He is married to Plaintiff Timothy Smulian, a native of South Africa. They live together in Orient, New York.

13. Plaintiff Frances Herbert is a United States citizen. She is married to Plaintiff Takako Ueda, a native of Japan. They live together in Dummerston, Vermont.

14. Plaintiff Heather Morgan is a United States citizen. She is married to Plaintiff Maria del Mar Verdugo, a native of Spain. They live together in New York, New York.

15. Plaintiff Santiago Ortiz is a United States citizen. He is married to Plaintiff Pablo García, a native of Venezuela. They live together in Elmhurst, New York.

16. Plaintiff Kelli Ryan is a United States citizen. She is married to Plaintiff Lucy Truman, a native of the United Kingdom. They live together in Sandy Hook, Connecticut.

17. Defendant Eric H. Holder, Jr. is currently the Attorney General of the United States. The Attorney General is the chief federal officer responsible for the enforcement of all federal statutes in accordance with the Constitution of the United States. He is sued in his official capacity.

18. Defendant Janet Napolitano is currently the Secretary of Homeland Security. The Secretary of Homeland Security is charged with the administration and enforcement of the Immigration and Nationality Act. She is sued in her official capacity.

19. Defendant Alejandro Mayorkas is currently the Director of the United States Citizenship and Immigration Services. The Director of the United States Citizenship and Immigration Services is charged with operating the immigration system

and is ultimately responsible for granting immigration and citizenship benefits. He is sued in his official capacity.

20. Defendant Robert M. Cowan is currently the Center Director of the United States Citizenship and Immigration Services National Benefits Center. Defendant Cowan denied Plaintiff Frances Herbert's I-130 Petition for Alien Relative and Plaintiff Takako Ueda's I-485 Application to Register Permanent Residence or Adjust Status. He is sued in his official capacity.

21. Defendant Daniel M. Renaud is currently the Director of the United States Citizenship and Immigration Services Vermont Service Center. Defendant Renaud denied Plaintiff Edwin Blesch's I-130 Petition for Alien Relative and Plaintiff Kelli Ryan's I-130 Petition for Alien Relative. He is sued in his official capacity.

FACTS PARTICULAR TO INDIVIDUAL PLAINTIFFS

22. Plaintiffs are all U.S. citizens or the legal spouses of U.S. citizens, residing in New York, Connecticut, or Vermont. Each of the Plaintiff couples is made up of one spouse who is a United States citizen and one spouse who is a foreign national. All of the Plaintiff couples were legally married and are recognized as lawfully married spouses under the laws of the state in which they live.

23. For each of the Plaintiff couples, the citizen spouse has petitioned for an immigrant visa so that the foreign national spouse might become a lawful permanent resident of the United States. These petitions would be considered on the merits if the spouses were of a different sex. However, all of Plaintiffs' petitions have been or will be denied solely by operation of Section 3 of DOMA because they are the same sex as their spouse.

Plaintiffs Edwin Blesch and Timothy Smulian

24. Edwin and Tim are a dedicated and loving couple. They have been together for nearly thirteen years. They live together in Orient, New York.

25. Edwin, who was born in 1940 in New York, worked as a professor of English at Nassau Community College in Garden City, New York for more than thirty years until he retired. Tim, a citizen of South Africa and Great Britain, born in 1946, also is retired after working as an architectural designer, a film and television make-up artist and an environmental education officer.

26. Edwin and Tim met in Cape Town, South Africa on August 13, 1999. Edwin, who was 58 at the time, had been traveling in South Africa with friends. When Edwin's friends had to leave unexpectedly, he decided to stay in South Africa and explore Cape Town. He met Tim when he walked into a British tea and coffee emporium where Tim was working. They felt an immediate connection; after talking for hours, they made plans to meet the following day. They spent the remainder of Edwin's stay together.

27. Edwin learned that he was HIV-positive in 1987 and discussed his status with Tim the first time they met. Tim, himself HIV-negative, had been working as an AIDS counselor for a number of years before he met Edwin. Edwin's HIV status did not change the way Tim felt for Edwin.

28. Before he met Tim, Edwin had never had a relationship where he lived with anyone, though he had longed for a committed relationship all of his life. When he retired, he resigned himself to being single. But when Edwin met Tim, he knew that his life had changed. Tim had also believed he would not meet anyone with whom he would want to share his life. He was in the process of buying a house in the country in South

Africa and planned to live out his retirement there alone. When he met Edwin, he knew his life had changed as well.

29. Unfortunately, Edwin had to leave South Africa soon after he and Tim met. When Edwin returned to the United States, he contacted Tim immediately and invited him to visit. Having shared briefly in Tim's life in South Africa, Edwin wanted to share his own life in the United States with Tim. Tim came for a visit and stayed for ten days.

30. After Tim's visit, Edwin knew that he had to find a way to be with Tim, but they did not want to violate any of the United States' immigration laws. Therefore, for each of the next eleven years, Tim and Edwin spent six months in the United States and then six months abroad.

31. After successfully petitioning their town on Long Island to recognize domestic partnerships, Edwin and Tim proudly became one of the first couples in the town to register as domestic partners on June 13, 2005. Then when Suffolk County began registering domestic partnerships two years later, Edwin and Tim were, again, one of the first couples in line. They married in South Africa on August 13, 2007, shortly after marriage equality passed in that country and on the eighth anniversary of the day they met. Their South African marriage is legally recognized in their home state of New York, and would be recognized by the United States but for DOMA.

32. A few years ago, multiple health conditions including HIV/AIDS, complications of HIV therapies, cardiac conditions and degenerative spine disease began to take a toll on Edwin's health. He was no longer able to spend six months in South Africa because it was too far from his doctors. To continue to comply with United States

immigration law, Edwin and Tim began to spend much of each year in Canada. Because Edwin's Medicare does not cover him in Canada, however, he was twice forced to return to the United States for necessary medical care. Tim, heartbroken, could not accompany Edwin to his doctors (as he always does), fearful he would be denied entry to the United States during those six-month periods.

33. On March 29, 2011, Edwin filed an I-130 Petition for Alien Relative with USCIS on behalf of Tim, his legal spouse. On March 14, 2012, USCIS notified Edwin that his petition was denied, stating: "DOMA applies as a matter of federal law whether or not your marriage is recognized under state law. Your spouse is not a person of the opposite sex. Therefore, under the DOMA, your petition must be denied."

Plaintiffs Frances Herbert and Takako Ueda

34. Frances and Takako are a loving and committed married couple who live together in the Dummerston, Vermont home that they have shared for eleven years.

35. Frances was born in Michigan in 1960 and has been living in Vermont for the past twenty-two years. She works as an in-home elder-care provider.

36. Takako was born in Japan in 1955. In 1979, Takako left Japan to come to the United States to study at Aquinas College in Grand Rapids, Michigan. It was during her first Fall semester at Aquinas College that Takako met Frances, and their lives changed forever.

37. Frances and Takako shared a strong bond from the moment they met. Since Takako was far from home, Frances welcomed Takako into her own family, inviting her to family events and holidays. Their relationship grew stronger as time passed.

38. Sadly, when Takako graduated from college in 1983, she was forced to return to Japan and leave Frances. Although they were far apart, Frances and Takako did not forget about each other. Upon Takako's departure, Frances began writing Takako letters. She would continue to write until she and Takako were reunited in the United States years later.

39. Upon returning to Japan, Takako, bound to family and societal pressure, married a man. But she never stopped thinking of Frances; she never stopped loving her.

40. Frances, too, could not stop thinking of Takako. In 1996, when Frances was about to undergo open heart surgery, Frances realized that she longed to have Takako in her life and started writing to Takako more fervently. In 1999, Frances went to Japan to visit Takako, needing to see the woman she loved.

41. During the three weeks Frances was in Japan, the connection that the two women felt toward one another was rekindled. Those three weeks changed how they would live the next twelve years.

42. Takako divorced her husband to be with Frances. In 2000, twenty years after they first met, Takako left her family, friends, country and culture behind and came to the United States on a B1/B2 visitor visa.

43. In 2001, Takako was granted F1 student status, and she began nine years of college study. She graduated with an associate's degree with honors in 2004 and graduated magna cum laude with a bachelor's degree from Keene State College in May 2010. She then entered a twelve-month period of Optional Practical Training ("OPT").

44. The couple held a commitment ceremony on September 30, 2000, surrounded by family and friends. Among those participating were Frances's parents and

sister, who traveled from Michigan. The ceremony was filled with joy and love. On April 26, 2011, Frances and Takako legally married each other in their home in Dummerston, Vermont. This simple ceremony, too, was deeply meaningful, celebrating Frances and Takako's eleven years together as a family.

45. On September 2, 2011, Frances filed an I-130 Petition for Alien Relative with USCIS on behalf of Takako. That same day, Takako filed an I-485 Application to Register Permanent Residence or Adjust Status. The Petition and Application were both filed within the grace period following the expiration of Takako's OPT status.

46. On December 1, 2011, USCIS notified Frances that her petition was denied, stating: "DOMA applies as a matter of federal law whether or not your marriage is recognized under state law. Your spouse is not a person of the opposite sex. Therefore, under the DOMA your petition must be denied." Because it was predicated upon approval of the I-130 Petition, Takako's I-485 Application was also denied.

Plaintiffs Heather Morgan and Maria del Mar Verdguo

47. Heather and Maria del Mar ("Mar") are a devoted and loving couple. They are newlyweds, but have known each other for fourteen years.

48. Heather was born in 1976 and raised in New Jersey. She holds a bachelor's degree in psychology from Cornell University, graduating in 1998. She is a marketing director for a global non-profit organization in New York.

49. Mar is a native of Madrid, Spain, where she was born in 1969. In Madrid, she worked for a Spanish newspaper company for sixteen years, then for Spain's leading business school and for the American company, General Electric. Mar currently works in marketing for a Spanish-language newspaper in New York.

50. Heather and Mar met in 1998, when Heather moved to Madrid to teach English after college. They met through a mutual friend who asked Mar to look after Heather. Mar and her friends immediately accepted Heather and treated her like an old friend. Mar in particular took a special interest in Heather. Mar would often invite Heather to stay with her and her family for weekends.

51. After Heather left Spain and moved back to New Jersey, she and Mar stayed in touch and remained close. That following summer, in 1999, Mar came to visit Heather and her family in New Jersey for three weeks. Heather's family immediately welcomed Mar, just as Mar's family had welcomed Heather. During the ensuing years, Heather always took her vacations with Mar and their friends. Although separated by distance and circumstance, the two remained incredibly close.

52. In January 2007, Mar came to the United States to study English. For the first time, she and Heather were able to spend time together on a day-to-day basis while Heather worked and Mar studied. Although at this time they were still just friends, it was clear that their relationship was far more intimate than just friendship. Heather and Mar spent all of their significant moments together, talked regularly, and took care of each other. Simply, they loved each other.

53. In May 2007, Mar returned to Spain to start a new job. The following summer—as she always did when she had time for vacation—Heather returned to Spain to see Mar. The two shared a wonderful few weeks together.

54. After Heather returned to the United States, though, she felt differently than she usually did after visiting Spain. While she usually was energized and upbeat,

this time she felt a profound longing to go back. In October 2008, Heather returned to Madrid and to Mar. It was on this trip that Heather and Mar realized they were in love.

55. In November 2008, anxious to see Heather, Mar came to New York and the two were able to spend time together as a couple for the first time. In February 2009, Mar returned to the United States on a tourist visa and then decided to stay and go to school. In February 2011, Mar was fortunate to find an employer to sponsor her for a temporary H1-B skilled worker visa, which she currently holds.

56. With Mar in New York, their relationship blossomed. All of their friends and family observed how they lit up when they were together. Everyone immediately knew what had taken Heather and Mar ten years to discover—that they are soul-mates.

57. Heather could not wait to propose to Mar, which she did in November 2009. On August 19, 2011, in front of forty of their closest friends and family, Heather and Mar were married in New York City by a Rabbi. It was one of the best days of their lives.

58. For Mar, Heather is her dream come true. She is “home” to her. Heather considers herself the luckiest person in the world to have Mar in her life. Now married, they are longing to grow their family. As Heather says, “Mar is magical with children and it would be an injustice for Mar not to have kids.” Unfortunately, Heather and Mar have been forced to put those plans on hold because they are not sure whether they will be able to raise their children together in the United States.

59. On March 28, 2012, Heather filed an I-130 Petition for Alien Relative with USCIS on behalf of Mar, her legal spouse. Because of DOMA, this Petition is certain to be denied.

Plaintiffs Santiago Ortiz and Pablo García

60. Santiago and Pablo have maintained a loving and committed relationship for over twenty years.

61. Santiago is a Puerto Rican American who was born in New York City in 1955. He worked as a school psychologist with the Rochester City School District, the New York City School District and for a time at Island Academy at Rikers Island. He holds a bachelor's degree from the University of Puerto Rico and a master's degree in school psychology from Alfred University. Santiago retired in 1995.

62. Pablo was born in 1960 in Venezuela. In Caracas, he worked as a copywriter in an advertising agency and as a playwright. In New York, he writes Spanish-language plays for local theaters. He has an associate's degree, a bachelor's degree and a master's degree and is currently in his second year at the Graduate Center of the City University of New York working toward his Ph.D. He volunteers teaching a Spanish GED class at Columbia University and volunteers with a number of arts programs targeting youth.

63. Pablo and Santiago met in 1991 in Caracas. They became enamored with each other immediately.

64. Soon after meeting, Pablo accompanied Santiago to Puerto Rico to meet Santiago's family. Santiago then returned to Caracas with his mother to meet Pablo's family. Although they were both afraid of how their families would react to their relationship, all agreed that the two men were made for each other and accepted them immediately.

65. Santiago learned that he was living with HIV in 1987. Pablo is HIV-negative. At the time they met, no effective treatments were available for HIV.

Santiago, therefore, knew that he could die, and he wanted more than anything for Pablo to be with him during the rest of his life. Santiago asked Pablo to come to New York, promising Pablo's mother that he would take care of him. To be with the man he loved, Pablo left his family, friends and culture behind.

66. Living together as a couple, their romance blossomed, and Pablo extended his lawful stay in the United States. After that time expired, the couple made the difficult decision to have Pablo remain in the United States without an authorized immigration status. That means, for Pablo, that he cannot go to Venezuela and visit his mother or the rest of his family. He could not attend his father's funeral, or visit his grave. He has given that up out of love for his spouse. Santiago, in return, has made the trip to Venezuela on Pablo's behalf, bringing Pablo's love and respect to his family from whom he is separated because of DOMA.

67. In 1993, they registered as domestic partners in New York City. They were legally married in Stamford, Connecticut on May 2, 2011.

68. On March 29, 2012, Santiago filed an I-130 Petition for Alien Relative with USCIS on behalf of Pablo, his legal spouse. That same day, Pablo filed an I-485 Application to Register Permanent Residence or Adjust Status. Because of DOMA, the Petition and Application are certain to be denied.

Plaintiffs Kelli Ryan and Lucy Truman

69. Kelli and Lucy have been a couple for over eleven years. They are both highly educated, talented and respected immunologists.

70. Kelli was born in Milwaukee, Wisconsin in 1972. She holds a bachelor of science from Marquette University and a doctorate in immunology from the Department of Microbiology and Immunology at Emory University. After obtaining her doctorate,

Kelli relocated to the United Kingdom for postdoctoral training at the University of Edinburgh and later for further training at the University of Newcastle Upon Tyne, United Kingdom. She is currently a Senior Scientist at Boehringer Ingelheim Pharmaceuticals in Ridgefield, Connecticut.

71. Lucy was born in the United Kingdom in 1968. She holds a bachelor of science in biochemistry and physiology from the University of London, a bachelor of medicine from the University of Southampton (UK), and a doctorate in philosophy in immunology from the University of Edinburgh. Currently, Lucy is a Postdoctoral Fellow in Human Translational Immunology at Yale University, where she is the recipient of an International Fellowship from the UK charity, Leukaemia and Lymphoma Research.

72. Kelli and Lucy first met in Edinburgh, Scotland in 2000 when Kelli was completing her postdoctoral training and Lucy was training as an ear, nose and throat surgeon. As fate would have it, they started working in the same lab on the same day, where they shared a very small office with two other researchers. They quickly developed a friendship, which over time evolved into a romantic relationship. By 2001, they were a couple.

73. In 2004, Kelli and Lucy moved to Newcastle, United Kingdom. Eager to formalize their already strong commitment to each other, they entered into a civil partnership on July 20, 2006. For Kelli, Lucy and their friends and family, this was a celebration filled with happiness and love. It was held in an old maritime building in Tynemouth, England. Lucy's nephews were the ring bearers and Lucy's sister helped organize the flowers. They continued their celebration into the weekend at Alnmouth, a

small town on the Northumberland coast, where they danced and enjoyed the company of their loved ones.

74. In 2007, Kelli was offered a job in Connecticut. Lucy decided to remain in the United Kingdom to finish her studies and training. Samson, their brown-spotted cat, went with Kelli to Connecticut, but not before Kelli and Lucy obtained a European Union pet passport for him, listing both of them as his owners.

75. During their time apart, Lucy visited Kelli often. With Lucy's frequent travels to the United States, she feared each time that she would not be allowed entry to be with her partner.

76. In May 2009, Lucy came to the United States with a B1/B2 visitor visa. She then received a post-doctoral fellowship at Yale and was granted a temporary H1B skilled worker visa in July 2009.

77. On March 18, 2010, Lucy and Kelli were legally married in Newtown, Connecticut.

78. Throughout their friendship, courtship, civil union and marriage, Kelli and Lucy have lived their lives as any other loving, committed couple. They have enjoyed each other in good times—vacations in Belgium, Switzerland and Spain—and supported each other in bad times—the loss of Kelli's mother following a long fight with cancer. They have become a part of each other's families and have been embraced by each other's friends.

79. Lucy's buoyant exuberance perfectly complements Kelli's calm, gentle nature. Their friends say that they are perfect for each other. Now, they seek only to remain together, legally, in the United States.

80. On November 14, 2011, Kelli filed an I-130 Petition for Alien Relative with USCIS on Lucy's behalf. On March 27, 2012, USCIS notified Kelli that her petition was denied, stating: "DOMA applies as a matter of federal law whether or not your marriage is recognized under state law. Your spouse is not a person of the opposite sex. Therefore, under the DOMA your petition must be denied."

* * *

81. As couples, Kelli and Lucy, Edwin and Tim, Frances and Takako, Santiago and Pablo, and Heather and Mar are as different from each other as are any couples. And they are as similar to each other as are all couples. They love each other, with all the joy and pain that love encompasses. They are married, with all of the promise that marriage brings. Unlike married, different-sex couples, however, they face a risk of being torn apart by the United States government, perhaps forced to live separately or to leave the country. DOMA threatens their marriages while purporting to "defend" marriage. It does violence not only to these five couples, not only to the institution of marriage, but to the Constitution of the United States.

STATUTORY FRAMEWORK

The Relevant Immigration Framework

82. Under the INA, United States citizens may petition for their "children, spouses, and parents" to be classified as "immediate relatives," who are therefore eligible for an immigrant visa and lawful permanent residence in the United States. 8 U.S.C. §§ 1151(b)(2)(A)(i), 1154.

83. To petition for an immigrant visa on behalf of his or her spouse, the United States citizen must file an I-130 Petition for Alien Relative with USCIS. 8 C.F.R. § 204.1(a)(1) (2009). If the adjudicator "determines that the facts stated in the petition

are true and that the alien in behalf of whom the petition is made is an immediate relative,” then the adjudicator “shall . . . approve the petition.” 8 U.S.C. §1154(b). Therefore, an I-130 is approved where the foreign national is a bona fide “spouse” of an American citizen under the INA. 8 U.S.C. §§ 1151(b), 1154(b), (c).

84. The INA does not define the term “spouse.” Rather, an individual’s marital status typically is governed by the law where the marriage was celebrated. *See Matter of Dela Cruz*, 14 I. & N. Dec. 686 (BIA 1974) (“the law is clear . . . [t]he validity of a marriage is generally governed by the law of the place of celebration”).

85. At the same time or after the citizen spouse files the Form I-130 Petition, the foreign national spouse may file a Form I-485 Application to Register Permanent Residence or Adjust Status in order to gain status as a lawful permanent resident of the United States. *See* 8 C.F.R. § 245.2. The foreign national’s status may be adjusted if: “(1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.” 8 U.S.C. § 1255(a); *see also* 8 C.F.R. § 245.1.

86. Lawful permanent residency allows a foreign national to reside in the United States, to work here, and to travel in and out of the country with limited restrictions. 8 U.S.C. § 1101(a)(20); 8 C.F.R. §§ 274a.12(a)(1), 316.5(c)(1). As the name implies, that status is permanent—a lawful permanent resident may remain in the United States indefinitely, so long as the person abides by the nation’s immigration laws. 8 U.S.C. § 1101(a)(20). Three years after obtaining lawful permanent residence, the spouse of a United States citizen may apply to naturalize to become a United States

citizen. 8 U.S.C. § 1430(a). The naturalization statute again recognizes the primacy of the marital relationship by reducing the time to apply from five years to three for spouses of United States citizens. 8 U.S.C. § 1427(a); 8 U.S.C. § 1430(a).

The Defense of Marriage Act

87. The federal government defers to the states' determinations of whether a couple is validly married, because marriage is within the states' core powers. *See Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12 (2004); *Ankenbrandt v. Richards*, 504 U.S. 689, 716 (1992) (Blackmun, J., concurring).

88. When DOMA was enacted in 1996, it changed that longstanding practice, but only for same-sex couples. Specifically, Section 3 of DOMA provides that “[i]n 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.” 1 U.S.C. § 7.

89. When DOMA was enacted, six justifications were given for this unequal treatment of gay men and lesbians: (1) defending and nurturing the institution of heterosexual marriage; (2) promoting and encouraging heterosexuality; (3) protecting “democratic self-governance”; (4) preserving government resources; (5) promoting moral disapproval of homosexuality; and (6) encouraging “responsible procreation” and child-rearing. H.R. Rep. No. 104-664 (1996). None of these purported justifications provides even a rational basis for DOMA, nor is there any other rational basis for the law.

90. Congress's proffered interests in defending heterosexual marriage and promoting heterosexuality are both invalid and illogical. Tradition alone cannot provide

a legitimate basis for a discriminatory law. *See Heller v. Doe*, 509 U.S. 312, 326 (1993). Even if it could, DOMA does not promote heterosexuality or “heterosexual marriage,” as DOMA confers no rights on different-sex couples. It gives them nothing. It just denies rights to same-sex couples.

91. DOMA likewise cannot be justified by claims that it protects state sovereignty or preserves scarce resources. DOMA does just the opposite. It eliminates states’ longstanding sovereign power to define marriage, and creates inconsistency between the federal and state definitions of marriage. The Congressional Budget Office also has recognized that DOMA does not save the federal government even one penny. Instead, DOMA costs the federal government billions of dollars. Cong. Budget Office, U.S. Cong., *The Potential Budgetary Impact of Recognizing Same-Sex Marriages* 1 (June 21, 2004), <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/55xx/doc5559/06-21-samesexmarriage.pdf>.

92. Moral disapproval of homosexuality—though surely the real motive behind DOMA—cannot serve as a legitimate basis for a discriminatory law. *See Lawrence v. Texas*, 539 U.S. 558, 577-78 (2003); *Romer v. Evans*, 517 U.S. 620, 631-35 (1996). As the Supreme Court explained in *Romer*, “if the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” 517 U.S. at 634-35 (quoting *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)).

93. Finally, DOMA does nothing to promote either “responsible procreation” or responsible child-rearing. To the contrary, DOMA injures children by denying them

the safety and security of having the marriages of their parents federally recognized, and, for bi-national couples, possibly forcing their parents apart.

CLAIM FOR RELIEF

94. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

95. As a direct result of DOMA, USCIS treats legally married same-sex couples differently than legally married different-sex couples. Solely because theirs are marriages between two people of the same sex, the United States citizen Plaintiffs were or will be denied the I-130 Petition for Alien Relative they filed on behalf of their same-sex, foreign-national spouses. In addition, solely because theirs are marriages between two people of the same sex, the foreign-national Plaintiffs were or will be denied a Form I-485 Application to Register Permanent Residence or Adjust Status. Had they been different-sex couples, Plaintiffs' I-130 Petitions and I-485 Applications would have been considered on the merits and would have been granted. Accordingly, DOMA discriminates on the basis of sexual orientation.

96. Because DOMA, as applied by USCIS, requires this disparity of treatment with regard to the adjudication of Plaintiffs' Petitions for Alien Relative and, ultimately, Applications for Lawful Permanent Residence Status for the foreign-national Plaintiffs, it creates a classification that singles out one class of valid marriages—those of same-sex couples—and subjects persons in those marriages to differential treatment compared to other similarly situated couples. This disparate treatment is without justification and in violation of the right of equal protection secured by the Fifth Amendment to the Constitution of the United States.

97. Additionally, DOMA violates the right of equal protection secured by the Fifth Amendment to the Constitution because it discriminates on the basis of sex. DOMA recognizes marriages where one spouse is a man and the other spouse is a woman. But where both spouses are women, or both spouses are men, DOMA prevents federal recognition of these valid marriages. For example, if Edwin were female instead of male, he would have had his I-130 petition for his spouse Tim granted. Because the only difference between different-sex and same-sex bi-national spouses is the sex of the spouses, DOMA unlawfully discriminates on the basis of an individual's sex.

PRAYERS FOR RELIEF

WHEREFORE, the plaintiffs pray that this Court:

1. Declare DOMA, 1 U.S.C. § 7, unconstitutional as applied to Plaintiffs.
2. Enjoin the Defendants from continuing to discriminate against Plaintiffs by treating them differently based on their sexual orientation and sex.
3. Compel USCIS to adjudicate the I-130 petition of Santiago Ortiz on behalf of his spouse, Pablo García, on the merits, without regard to sex or sexual orientation.
4. Compel USCIS to adjudicate the I-130 petition of Heather Morgan on behalf of her spouse, Maria del Mar Verdugo, on the merits, without regard to sex or sexual orientation.
5. Compel USCIS to reopen and re-adjudicate the I-130 petition of Edwin Blesch on behalf of his spouse, Timothy Smulian, on the merits, without regard to sex or sexual orientation.

6. Compel USCIS to reopen and re-adjudicate the I-130 petition of Frances Herbert on behalf of her spouse, Takako Ueda, on the merits, without regard to sex or sexual orientation.

7. Compel USCIS to reopen and re-adjudicate the I-130 petition of Kelli Ryan on behalf of her spouse, Lucy Truman, on the merits, without regard to sex or sexual orientation.

8. Grant such other and further relief as the Court deems equitable and proper.

9. Award Plaintiffs reasonable costs and attorneys' fees pursuant to 28 U.S.C. § 2412.

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