



Written by [Joe Wolverton, II, J.D.](#) on May 9, 2011

Federal Immigration Judge Halts Deportation of Immigrant in Homosexual “Marriage”

An immigration judge Friday suspended the deportation of a homosexual man, citing in his ruling the similar action taken by U.S. Attorney General Eric Holder in a case involving another same-sex couple.



Judge Alberto Riefkohl, presiding over the immigration court located on the 11th floor of the Peter W. Rodino Federal Building in Newark, New Jersey, issued a temporary stay of the deportation order in the case of Henry Velandia, 27, a salsa dancer from Venezuela. Velandia and 29-year-old Princeton graduate student Josh Vandiver (both pictured at left), were “married” under the laws permitting such in the state of Connecticut.

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So-called “same-sex marriage” is legal in five states and the District of Columbia. New Jersey is one of seven other states that afford some degree of traditional spousal rights to homosexual couples under the the title “civil union” or “domestic partnership.” A bill that would have legalized marriages between homosexuals was defeated in the New Jersey state Senate in January 2010.

A core issue in the case is the Defense of Marriage Act (DOMA). Under the applicable provisions of the law, Velandia was scheduled for deportation, an action he claims would have “broken up their marriage.”

“The attorney general’s decision yesterday is an extraordinary development, it’s historic, it’s the first time any attorney general has intervened in an immigration case involving a bi-national same-sex couple,” said Lavi Soloway, founder of Immigration Equality, who is an attorney representing Velandia. “The specific instruction he’s given indicates he’s interested in finding a possible solution so gay and lesbian partners of American citizens can be afforded the same rights,” he continued.

The hearing on these matters could not have come at a better time policy-wise for the couples involved. Just weeks ago, Democrats in the House of Representatives reintroduced a measure that would dramatically change current immigration law and provide immigration rights to same-sex couples that are equal to those currently given to traditional couples.

According to figures supplied by The Human Rights Campaign, approximately 36,000 homosexual Americans are involved in bi-national relationships.

Speaking in favor of the [Uniting American Families Act](#) (UAFA), Representative Jerry Nadler (D-N.Y.) said:

Today thousands of committed same-sex couples are needlessly suffering because of unequal



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treatment under our immigration laws, and this is an outrage. Our Constitution guarantees that no class of people will be singled out for differential treatment — and LGBT [Lesbian, Gay, Bisexual, Transgender] Americans should not and must not be excluded from that guarantee.

As presently written, the immigration statutes permit American citizens to sponsor their non-citizen spouses for permanent residency (the misnamed “green card”) and eventual citizenship. Those involved in homosexual relationships are not permitted participation in the program.

This latest attack on traditional marriage comes just months after the Obama administration announced that it would no longer defend legal challenges to the Defense of Marriage Act (DOMA).

In a statement announcing the President’s decision to disregard laws legally enacted by the legislative branch, Attorney General Eric Holder declared, “Much of the legal landscape has changed in the 15 years since Congress passed DOMA. The Supreme Court has ruled that laws criminalizing homosexual conduct are unconstitutional. Congress has repealed the military’s Don’t Ask, Don’t Tell policy. Several lower courts have ruled DOMA itself to be unconstitutional.”

In his ruling, Judge Riefkohl issued a continuance in the Velandia deportation hearing until December 16 so that the Attorney General and the appeals court would have ample opportunity to reach a settlement similar to the one sought in the Dorman matter (also involving a same-sex couple, in which the deportation of a man from Ireland was suspended). The hearing lasted approximately one hour and the state raised no opposition to the decision.

Riefkohl, appointed to the Immigration Court on March 1995, [ranks](#) 183 out of 208 immigration judges in number of asylum petitions approved (between fiscal years 2000 and 2005).

The chairman of the House Judiciary Committee, Lamar Smith (R-Texas), blasted the Attorney General for intervening and having “instructed an immigration court to ignore DOMA in future rulings,” according to a [story](#) published in the *New York Times*.

While the Justice Department may choose to obey President Obama’s edict and not defend the constitutionality of DOMA in court, it must obey the law until it is repealed.

In fact, unless and until DOMA is repealed by an act of Congress or struck down as unconstitutional by the judicial branch, it remains in force and must therefore be heeded.

In defiance of that legal stricture, however, the U.S. Citizenship and Immigration Services issued a temporary suspension on deportation cases of homosexual immigrants involved in same-sex relationships with American citizens.

“USCIS has issued guidance to the field, asking that related cases be held in abeyance, while awaiting final guidance related to distinct legal issues,” announced Christopher S. Bentley, the Department of Homeland Security’s spokesman, in a statement.

But Mathew Staver, founder and chairman of Liberty Counsel, denounced the USCIS’s decision.

“[DOMA] governs the definition of marriage from a federal standpoint under the federal laws for every federal agency including the immigration services. They must abide by that federal law,” he insisted. “No federal agency can act contrary to that law.”

After leaving the courtroom following the decision in their case, Vandiver commented to reporters that, “Our marriage certificate looks like everybody else’s marriage certificate. We just want to be treated like every other married couple.”



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Unfortunately, Vandiver is unaware that “marriage” is a word with a definition, and neither a wish nor an executive fiat has the authority to change the traditional concept of marriage: one man united to one woman.



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