

Judge Gives Immigrant in Same-Sex Marriage a Reprieve From Deportation

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Body

An immigration **judge** in Newark on Friday suspended the **deportation** of a Venezuelan man who is married to an American man, responding to an unusual signal this week from the Obama administration that it is exploring legal avenues for recognizing **same-sex marriages** in immigration cases.

The Venezuelan, Henry Velandia, had been awaiting the hearing with dread, since immigration authorities had said it was the last step before his **deportation**. Mr. Velandia, a dancer, was legally married last year in Connecticut to Josh Vandiver, a graduate student at Princeton. Mr. Velandia was denied legal residency as Mr. Vandiver's spouse because under a federal law, the Defense of **Marriage** Act, immigration authorities do not recognize **same-sex marriage**.

On Thursday, Attorney General Eric H. Holder Jr. intervened in a different immigration case involving a **same-sex** couple, suspending the **deportation** of a man from Ireland and sending his case back to the immigration appeals court, asking it to consider several possible grounds on which the Irishman might qualify for legal residency.

Citing the move by the attorney general, **Judge** Alberto J. Riefkohl of immigration court in Newark postponed Mr. Velandia's **deportation** until December at the earliest. The **judge** said he wanted to allow time for the attorney general and the appeals court to work out whether a gay partner might be eligible under some circumstances for residency.

Gay rights advocates said the back-to-back developments were an important sign that the Obama administration was working to bring consistency to its policy on **same-sex marriage**. The administration determined in February that the Defense of **Marriage** Act discriminates unconstitutionally against gay people.

Mr. Holder said then that the administration would no longer defend the act, also known as DOMA, in the courts, but would continue to enforce it until the courts reached a decision on whether it was constitutional.

Rachel B. Tiven, the executive director of Immigration Equality, a legal group that advocates for gay **immigrants**, said the change of course in the two cases had sent "a signal of openness" from the administration.

"Something is shifting and opening, and change is on the horizon," Ms. Tiven said.

Supporters of the Defense of **Marriage** Act, which defines **marriage** for the purposes of federal law as between a man and a woman, reacted strongly to Mr. Holder's action.

Representative Lamar Smith of Texas, the Republican who is chairman of the House Judiciary Committee, said the attorney general had "instructed an immigration court to ignore DOMA in future rulings."

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Mr. Smith said the administration was "coming dangerously close to giving the impression they don't care what the law says."

In Newark, Mr. Velandia and Mr. Vandiver were mainly relieved that they had avoided separation. "We know this is just a reprieve," Mr. Vandiver said. "But every day we can have together is invaluable."

Mr. Velandia, 27, is a salsa dancer who came to the United States in 2002 and failed in his effort to gain an employment visa. He has become a poster case for gay immigrants across the country, as he and Mr. Vandiver, 29, gathered thousands of signatures on an online petition asking Janet Napolitano, the secretary of homeland security, to suspend deportations for all same-sex spouses.

Before the hearing, dozens of gay protesters demonstrated on the sidewalk in front of the federal building in Newark where the immigration court is housed.

Judge Riefkohl noted in the hearing that Mr. Velandia and Mr. Vandiver were a married couple, and he said he wanted to wait for the outcome of the immigration appeals court's reconsideration of the case of the Irish immigrant.

"We won the victory we were looking for," said Lavi Soloway, the lawyer for Mr. Velandia and Mr. Vandiver. "The government acknowledged that Henry's removal was no longer a foregone conclusion."

The Irishman, Paul Wilson Dorman, came to the United States in 1996 and stayed beyond the term of his visa. But in a potentially important wrinkle, Mr. Dorman joined with an American citizen in June 2009 in a civil union -- not a marriage -- in New Jersey. That state does not offer same-sex marriage.

His lawyer, Nicholas J. Mundy, said the courts had denied his partner's petition for a permanent resident visa for Mr. Dorman. But Mr. Holder asked the immigration appeals court to re-examine the case to determine whether Mr. Dorman might qualify for the visa by virtue of his civil union.

Mr. Mundy said he was optimistic about the significance for gay immigrants of Mr. Holder's action. "It is an extraordinary measure," he said, "and it sends a clear message that the Obama administration intends to do away with DOMA in its entirety."

Ms. Tiven, of Immigration Equality, was more cautious. "This is not yet the solution that thousands of families clearly need," she said.

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Graphic

PHOTO: Josh Vandiver, left, and his husband, Henry Velandia, outside the immigration court in Newark on Friday. (PHOTOGRAPH BY FRED R. CONRAD/THE NEW YORK TIMES)

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