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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Martin R. ARANAS, Irma
RODRIGUEZ, and Jane DELEON;
Plaintiffs,

v.

Janet NAPOLITANO, Secretary of the
Department of Homeland Security;
Alejandro MAYORKAS, Director,
United States Citizenship &
Immigration Services;
UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES; and
DEPARTMENT OF HOMELAND SECURITY;
Defendants.

SACV 12-1137 CBM (AJWx)
**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
DISMISS**

Plaintiffs Martin R. Aranas (“Aranas”), Irma Rodriguez (“Rodriguez”), and Jane DeLeon (“DeLeon”) (collectively, “Plaintiffs”) challenge the constitutionality of Section 3 of the Defense of Marriage Act (“DOMA”), 1 U.S.C. § 7, as applied to preclude Plaintiffs from receiving certain immigration benefits that are available to heterosexual spouses. Plaintiffs seek declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202 and Fed. R. Civ. P. 57 as well as review of agency action pursuant to 5 U.S.C. §§ 701–706. [Docket No. 1.]

1 The matters before the Court, the Honorable Consuelo B. Marshall, United
2 States District Judge presiding, are (1) Defendants Janet Napolitano, Alejandro
3 Mayorkas, United States Citizenship & Immigration Services (“USCIS”), and
4 Department of Homeland Security’s (“DHS”) (collectively “Defendants”)
5 Procedural Motion to Dismiss (“Procedural MTD”)¹ and Partial Motion to
6 Dismiss (“Partial MTD”) pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6); and
7 (2) Bipartisan Legal Advisory Group of the United States House of
8 Representatives’ (“Intervenor”) Motion to Dismiss pursuant to FRCP 12(b)(1) and
9 12(b)(6) (“Intervenor MTD”). [Docket Nos. 46, 62.]

10 JURISDICTION

11 The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331.

12 BACKGROUND

13 Plaintiff Jane DeLeon (“DeLeon”) is a citizen of the Philippines. (Compl.
14 at ¶ 19.) From 1984 to 1989, DeLeon lived with non-party Joseph Randolph
15 Aranas in a relationship that is recognized under Philippine law as common-law
16 marriage. (*Id.*) DeLeon has two sons from this relationship, both born in the
17 Philippines: non-party Mikkel R. Aranas and plaintiff Martin R. Aranas
18 (“Aranas”). (*Id.*) DeLeon was admitted to the United States on or about
19 December 19, 1989, on a B-2 visitor’s visa and has resided in the United States
20 continuously since that time. (*Id.* at ¶ 20.) Non-party Joseph Randolph Aranas
21 followed DeLeon to the United States shortly after DeLeon’s arrival, and he and
22 DeLeon lived together until approximately 1991. (*Id.* at ¶ 24.)

23
24 ¹ Defendants’ Procedural MTD is intended to take “the procedural steps necessary to
25 enable [Intervenor] to present arguments in support of the constitutionality of . . . DOMA.”
26 (Partial MTD at 3:3–5.) Defendants take the position that only the “continuing role of the
27 Executive Branch in this litigation ensures the existence of a justiciable case or controversy.”
28 (*Id.* at 3:1–2.) Intervenor argues that Defendants may not “act as a ‘procedural gatekeeper,’”
and that Intervenor is a party to the case with the same rights and obligations as any other party
with no need to rely on Defendants’ “procedural steps.” (Intervenor’s Response to Defendants’
Motion to Dismiss (“Intervenor Resp.”) at 10:2–14, Docket No. 58.) As Intervenor has also
moved to dismiss, Defendants’ Procedural Motion is **DENIED** as moot.

1 In 1992, DeLeon and Plaintiff Irma Rodriguez (“Rodriguez”) met in
2 California. (*Id.* at ¶ 25.) Since then DeLeon and Rodriguez have lived together
3 and were married under California law on August 22, 2008. (*Id.*)

4 Two years earlier, on or around March 2, 2006, DeLeon’s employer applied
5 for permanent resident status on her behalf. (*Id.* at ¶ 26.) Her visa petition was
6 approved on or around May 22, 2006. (*Id.*) DeLeon then filed an application for
7 adjustment of status. (*Id.*) DeLeon also filed an I-485 application for adjustment
8 of status for her son Aranas (as a derivative beneficiary of DeLeon). (*Id.* at ¶ 39.)
9 On April 14, 2011, Defendants notified DeLeon that she (and by extension Aranas
10 as well) was inadmissible because she misrepresented her name and marital status
11 when she first entered the United States in 1989. (*Id.* at ¶ 27.) At the time,
12 DeLeon had entered as a “housewife” with the name Jane L. Aranas. (*Id.*)

13 Defendants provided DeLeon with instructions to apply for a “waiver of
14 inadmissibility,” which requires a showing that DeLeon’s removal from the
15 United States would result in extreme hardship to her U.S. citizen spouse or
16 parent. (*Id.* at ¶ 28.) Initially, DeLeon applied for a waiver of inadmissibility
17 based on the hardship her removal would cause to her elderly father, a U.S.
18 citizen. (*Id.* at ¶ 29.) This application was denied on September 1, 2011. (*Id.* at ¶
19 30.) Subsequently, on advice from counsel, DeLeon then applied for
20 reconsideration of her waiver of inadmissibility based on the hardship her removal
21 would cause her spouse, Rodriguez, also a U.S. citizen. (*Id.* at ¶ 31.) This
22 application was also denied on November 9, 2011, because DeLeon’s same-sex
23 spouse does not qualify as a relative for purposes of establishing hardship pursuant
24 to Section 3 of DOMA. 1 U.S.C. § 7. (*Id.* at ¶ 37.)

25 Defendants move for partial dismissal of Plaintiffs’ Complaint on the
26 grounds that Plaintiffs Aranas and Rodriguez lack standing and Plaintiffs have
27 failed to state a claim for either violation of their substantive due process rights
28 under the Fifth Amendment or for sex discrimination under 8 U.S.C. §

1 1152(a)(1)(A). Intervenor does not oppose Defendants’ motion for partial
2 dismissal but moves for dismissal of the entire Complaint for failure to state a
3 claim.

4 STANDARD OF LAW

5 Federal Rule of Civil Procedure 12(b)(1)

6 A party may bring a motion to dismiss the complaint pursuant to Rule
7 12(b)(1) of the Federal Rules of Civil Procedure if the court lacks “jurisdiction
8 over the subject matter.” Fed. R. Civ. P. 12(b)(1). An attack on jurisdiction may
9 be either facial or factual. *White v. Lee*, 227 F.3d 1214 (9th Cir. 2000). In a facial
10 attack, the court must accept the allegations in the complaint as true and the
11 evidence is viewed in the light most favorable to the non-moving party. *Warren v.*
12 *Fox Family Worldwide, Inc.*, 171 F. Supp. 2d 1057 (C.D. Cal. 2001). In a factual
13 attack, the court may rely on extrinsic evidence and there is no presumption of
14 truth given to the factual allegations in the complaint. *Thornhill Publishing Co.*
15 *Inc., General Telephone & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

16 Federal Rule of Civil Procedure 12(b)(6)

17 Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a
18 complaint for “failure to state a claim upon which relief can be granted.”
19 Dismissal of a complaint can be based on either a “lack of a cognizable legal
20 theory or the absence of sufficient facts alleged under a cognizable legal theory.”
21 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). On a
22 motion to dismiss for failure to state a claim, the court accepts as true all well-
23 pleaded allegations of material fact and construes them in light most favorable to
24 non-moving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,
25 1031 (9th Cir. 2008). To survive a motion to dismiss, the complaint must contain
26 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
27 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S. Ct. 1937,
28 1940, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.

1 544, 570 (2007)). A formulaic recitation of the elements of a cause of action will
2 not suffice. *Twombly*, 550 U.S. at 555 (citations omitted).

3 DISCUSSION

4 When presented with motions to dismiss pursuant to both Fed. R. Civ. P.
5 12(b)(1) and Fed. R. Civ. P. 12(b)(6), the Court must first resolve Defendants' and
6 Intervenor's motions pursuant to Fed. R. Civ. P. 12(b)(1) and satisfy itself that it
7 has subject matter jurisdiction. *See Alliance For Env'tl. Renewal, Inc. v. Pyramid*
8 *Crossgates Co.*, 436 F.3d 82, 85 (2d Cir. 2006) ("A district court must generally
9 resolve material factual disputes and establish that it has federal constitutional
10 jurisdiction, including a determination that the plaintiff has Article III standing,
11 before deciding a case on the merits"). Only after the Court is satisfied as to its
12 subject matter jurisdiction may it reach the substance of Plaintiffs' claims. *See*
13 *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101, 118 S.Ct. 1003,
14 140 L.Ed.2d 210 (1998).

15 I. FED. R. CIV. P. 12(B)(1)

16 A. Standing

17 "[T]o satisfy Article III's standing requirements, a plaintiff must show
18 (1)[he] has suffered an 'injury in fact' that is (a) concrete and particularized and
19 (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly
20 traceable to the challenged action of the defendant; and (3) it is likely, as opposed
21 to merely speculative, that the injury will be redressed by a favorable decision."
22 *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–
23 81, 120 S. Ct. 693, 145 L.Ed.2d 610 (2000). "The general rule applicable to
24 federal court suits with multiple plaintiffs is that once the court determines that
25 one of the plaintiffs has standing, it need not decide the standing of the others."
26 *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1993). Where it appears that each
27 plaintiff's rights or obligations may differ, however, the court may continue the
28 standing inquiry individually. *Id.* (determining standing for each plaintiff in First

1 Amendment case where one plaintiff had waived First Amendment rights by
2 signing agreement); 13A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL
3 PRACTICE AND PROCEEDURE § 3531 (3d ed.) (“a claim as to which one party has
4 standing may lie beyond the standing of another party”).

5 **1. DeLeon**

6 Intervenor argues that Plaintiff DeLeon lacks standing because she
7 challenges only DOMA, 1 U.S.C. § 7, and fails to challenge the Immigration and
8 Naturalization Act (“INA”) § 212(i)(1), 8 U.S.C. § 1182(i)(1), which also restricts
9 marriage to heterosexual couples. Thus even if DeLeon is successful in this
10 litigation, her injury will not be redressed. (Intervenor’s Response to Defendants’
11 Motion to Dismiss (“Intervenor Resp.”) at 12:9–14:2, Docket No. 58.)
12 Redressability is distinct, however, from the ultimate relief sought by Plaintiffs
13 “[Redressability] focuses, as it should, on whether the injury that a plaintiff alleges
14 is likely to be redressed through the litigation—not on what the plaintiff ultimately
15 intends to do [with his recovery.]” *Sprint Commc’ns Co., L.P. v. APCC Servs.,*
16 *Inc.*, 554 U.S. 269, 287, 128 S. Ct. 2531, 2542, 171 L. Ed. 2d 424 (2008); *see also*
17 *Bond v. U.S.*, 131 S. Ct. 2355, 2362, 180 L. Ed. 2d 269 (2011). It is undisputed
18 that DeLeon’s application for an I-601 waiver of inadmissibility was denied solely
19 due to DOMA. (Compl. at ¶ 1; Reply at n.1, Docket No. 64) It is also undisputed
20 that whether DeLeon ultimately receives a waiver is beyond the scope of this
21 litigation. (Compl. at ¶¶ 69-73.) The Court thus finds that Plaintiff DeLeon has
22 standing.

23 **2. Aranas**

24 Defendants argue that Plaintiff Aranas lacks standing to challenge
25 Defendants’ denial of his mother’s I-601 waiver of inadmissibility. A party
26 ordinarily “cannot rest his claim to relief on the legal rights or interests of third
27 parties.” *Sec’y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 955
28 (1984). While the parties have not provided, and the Court has not found, any

1 authority that is wholly congruent with the facts alleged here, this principle
2 appears to extend to the beneficiaries of immigration petitions. “[D]istrict courts
3 have held that an alien lacks Article III standing to challenge the denial of an
4 immigration petition where the alien is not the petitioner but merely the
5 beneficiary.” *Andros, Inc. v. United States*, C10-303Z, 2010 WL 4983566, at n.6
6 (W.D. Wash. Dec. 2, 2010) (collecting cases); *see also George v. Napolitano*, 693
7 F. Supp. 2d 125, 130 (D.D.C. 2010) (employer was sole party with standing to
8 seek review of denial of I-140 work visa, rather than beneficiary employee);
9 *Costelo v. Chertoff*, 258 F.R.D. 600, 609 (C.D. Cal. 2009) (Selna, J.) (stating that
10 the law is unclear whether children of aliens have standing as derivative
11 beneficiaries); *Blacher v. Ridge*, 436 F. Supp. 2d 602, 606 n.3 (S.D.N.Y. 2006)
12 (employer was the only party with standing to seek review of denial of H1-B visa,
13 rather than beneficiary employee).

14 As in the cases cited, Aranas is not a petitioner but merely a derivative
15 beneficiary of the immigration benefits sought by his mother. (*See, e.g.*, Compl.
16 at ¶¶ 26, 38-39.) First, this litigation arises from the denial of an I-601 waiver of
17 inadmissibility to DeLeon, not Aranas. (*Id.* at 1.) Second, Plaintiffs admit in their
18 allegations that “Aranas’ immigration status is wholly dependent on that of his
19 mother. He is a derivative beneficiary of plaintiff DeLeon’s visa petition and
20 application to adjust status.” (*Id.* at ¶ 38.) DeLeon’s visa petition is an I-140
21 immigrant worker petition filed by DeLeon’s employer on her behalf. (*Id.* at ¶¶
22 26, 39.) Aranas’ application to adjust status is an I-485 petition made by his
23 mother on his behalf.² (*Id.*) Aranas is not the petitioner bringing either of these
24 petitions.³ The Court finds that Aranas lacks standing to challenge the

25 ² At the time the I-485 application was filed, Plaintiff Aranas was twenty years old. (*Id.*)

26 ³ Plaintiffs argue in opposition that *Coleman v. United States* held that the plaintiff therein
27 had standing to seek an injunction against his mother’s removal from the United States. 454 F.
28 Supp. 2d 757, 763–65 (N.D. Ill. 2006). *Coleman* is inapposite. The plaintiff in *Coleman* was an
eight year old U.S. citizen arguing that his mother’s deportation would effectively force his self-
deportation as well. (*Id.*)

1 constitutionality of DOMA § 3 as applied to deny a waiver of inadmissibility to
2 his mother. The Court hereby **dismisses** Plaintiff Aranas from this action.

3 **3. Rodriguez**

4 Defendants also argue that Plaintiff Rodriguez lacks standing. U.S. citizens
5 generally have “no constitutional right to have his or her alien spouse enter or
6 remain in the U.S.” *See Singh v. Magee*, 165 F.3d 917 (9th Cir. 1998) (agreeing
7 with cases in other circuits that “broadly reject any challenge to a deportation
8 based upon the rights of affected family members”); *Bright v. Parra*, 919 F.2d 31,
9 33 (5th Cir. 1990) (“the United States citizen spouse has no constitutional right to
10 keep her alien spouse from being deported”); *Almario v. Attorney Gen.*, 872 F.2d
11 147, 151 (6th Cir. 1989) (“[T]he Constitution does not recognize the right of a
12 citizen spouse to have his or her alien spouse remain in this country.”); *Burrafato*
13 *v. U.S. Dept. of State*, 523 F.2d 554, 555 (2d Cir. 1975) (“[N]o constitutional right
14 of a citizen spouse is violated by deportation of his or her alien spouse.”). The
15 sole immigration case cited by Plaintiffs in their opposition is distinguishable
16 because the petitioner in that case was the citizen spouse. *Revelis v. Napolitano*,
17 844 F. Supp. 2d 915, 920–21 (N.D. Ill. 2012). The Court finds that Plaintiff
18 Rodriguez lacks standing to challenge the constitutionality of DOMA § 3 as
19 applied to deny a waiver of inadmissibility to her spouse. The Court hereby
20 **dismisses** Plaintiff Rodriguez from this action.

21 **II. FED. R. CIV. P. 12(B)(6)**

22 **A. First Cause of Action for Violation of Equal Protection**

23 **(1) Whether Precedent Requires Dismissal of Plaintiffs’ Equal 24 Protection Claim**

25 **(a) *Baker v. Nelson***

26 In *Baker v. Nelson*, two men challenged a state law that barred them from
27 marrying, arguing that the statute violated Fourteenth Amendment equal
28 protection. *Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185 (1971). “[T]he

1 Court ‘dismissed for want of a substantial federal question’ an appeal from the
2 Minnesota Supreme Court’s decision to uphold [the] state statute that did not
3 permit marriage between two people of the same sex.” *Perry v. Brown*, 671 F.3d
4 1052, 1082 n.14 (9th Cir. 2012), *cert. granted*, 133 S. Ct. 786, 184 L. Ed. 2d 526
5 (2012) (quoting *Baker*, 409 U.S. 810, 810 (1972)). This dismissal only
6 “prevent[s] lower courts from coming to opposite conclusions on the precise
7 issues presented and necessarily decided by [the summary dismissal].” *Mandel v.*
8 *Bradley*, 432 U.S. 173, 176, 97 S. Ct. 2238, 2240, 53 L. Ed. 2d 199 (1977).

9 The First and Second Circuits “have . . . concluded that *Baker* does not
10 control equal protection review of DOMA.” *Windsor v. United States*, 699 F.3d
11 169, 178 (2d Cir. 2012), *cert. granted*, 133 S. Ct. 786 (2012); *Massachusetts v.*
12 *U.S. Dep’t of HHS*, 682 F.3d 1, 8 (1st Cir. 2012). While the Ninth Circuit has not
13 considered this issue in the context of a challenge to DOMA, district courts in the
14 Ninth Circuit have agreed with the First and Second Circuits that *Baker* does not
15 foreclose equal protection review of DOMA.⁴ The Court finds that “the precise
16 issues presented and necessarily decided” in *Baker* are not presented here and
17 *Baker* does not foreclose consideration of this equal protection challenge to
18 DOMA.

19 **(b) *Adams v. Howerton***

20 In *Adams v. Howerton*, two men challenged the Immigration and
21 Naturalization Service’s (“INS”) determination that their state marriage did not
22 qualify petitioner’s same sex spouse for immigration status as an immediate
23 relative of an American citizen. 673 F.2d 1036, 1041 (9th Cir. 1982). The Ninth
24 Circuit’s decision in *Adams v. Howerton* held the term “spouse” for purposes of
25 INA § 212(i)(1) was limited to heterosexual spouses. (*Id.*) In reaching its
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27 ⁴ See, e.g., *Golinski v. U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, n.5 (N.D. Cal.
28 2012) (White, J.), *initial hearing en banc denied*, 680 F.3d 1104 (9th Cir. 2012); *Dragovich v.*
U.S. Dept. of Treasury, 872 F. Supp. 2d 944, 952 (N.D. Cal. 2012) (Wilken, J.).

1 decision, the Ninth Circuit assumed that the same-sex marriage was valid but
2 found that same-sex spouses did not qualify for immigration benefits for four
3 reasons. First, the Ninth Circuit noted that “we must be mindful that the INS . . .
4 has interpreted the term ‘spouse’ to exclude a person entering a homosexual
5 marriage.” *Id.* at 1040. Second, the Ninth Circuit found nothing in the INA to
6 suggest that “spouse” should be construed to include homosexual spouses and thus
7 used the “ordinary, contemporary, common meaning” of spouse as a heterosexual
8 status only. *Id.* Third, the Ninth Circuit found that the only way to reconcile the
9 then-existing exclusion on homosexual immigrants and the definition of “spouse”
10 in the immigration benefits context was to interpret “spouse” to exclude same-sex
11 spouses. *Id.* at 1040–41. Finally, the Ninth Circuit held that the INA’s exclusion
12 of same-sex spouses satisfied rational basis review because homosexual marriages
13 did not produce offspring, were not recognized in most states, and violated
14 traditional and prevailing social mores.⁵ *Id.* at 1043.

15 Approximately thirty-one years later, these bases for the *Adams* decision are
16 irreconcilable with intervening statutory and policy changes. “A district court
17 bound by circuit authority . . . has no choice but to follow it, even if convinced
18 that such authority was wrongly decided.” *Hart v. Massanari*, 266 F.3d 1155,
19 1175 (9th Cir. 2001). If, however, a new or amended statute “so recast[s] the
20 statutory landscape that the rationale for [the prior circuit authority] has been
21 eliminated,” then that prior authority “is no longer the law of the circuit.”
22 *Zazueta-Carrillo v. Ashcroft*, 322 F.3d 1166, 1170, 1175 (9th Cir. 2003). First,
23 Defendant DHS, successor agency to the INS, concedes that DeLeon would
24 qualify as a spouse under the INA but for DOMA. (Notice to the Court, Exs. 1–3,

25 ⁵ The Ninth Circuit has since disapproved these justifications in *Perry v. Brown*, holding
26 that a California constitutional amendment restricting marriage to opposite-sex couples,
27 following a California Supreme Court decision that permitted such marriages, did not “(1)
28 further[] California’s interest in childrearing and responsible procreation, [or] (2) [California’s
interest in] proceeding with caution before making significant changes to marriage.” *Perry*, 671
F.3d 1052 at 1086.

1 Docket No. 5; *see also* Combined Exhibits in Support of Motions for Preliminary
2 Injunction and Class Certification (“Combined Exhibits”) at Ex. 1 (USCIS denial
3 letter citing only DOMA and not INA), Docket No. 89.) Second, dictionary
4 definitions of the term “spouse,” which the *Adams* decision referenced, now
5 include gender-neutral definitions of “spouse.” *See, e.g.*, Black’s Law Dictionary
6 (9th ed. 2009); Merriam-Webster’s Collegiate Dictionary 1135 (10th ed. 2001).
7 Third, in 1990, eight years after *Adams*, Congress eliminated the bar to
8 homosexual immigration cited by the *Adams* decision. (Pub. L. No. 101-649, §
9 601, 104 Stat. 4978 (1990) (amending 8 U.S.C. § 1182); *Dragovich*, 872 F. Supp.
10 2d at n.6; *see also* Defendants’ Opposition to Intervenor MTD (“Dfdts. Opp’n to
11 Intervenor MTD”) at n.4, Docket No. 51.)

12 The Court finds that INA § 212(i)(1), as interpreted by the *Adams* decision,
13 does not foreclose its consideration of this equal protection challenge to DOMA.⁶

14 (2) Level of Scrutiny

15 The rule in the Ninth Circuit is that homosexuality is not a suspect or quasi-
16 suspect classification requiring heightened scrutiny. *See High Tech Gays v. Def.*
17 *Indus. Sec. Clearance Office*, 895 F.2d 563, 571 (9th Cir. 1990) (“We . . . hold
18 that the district court erred in applying heightened scrutiny . . . and that the proper
19 standard is rational basis review.”) In 2008, the Ninth Circuit clarified that
20 rational basis review applies to equal protection challenges concerning
21 homosexuality. *Witt v. Dep’t of Air Force*, 527 F.3d 806, 821 (9th Cir. 2008) (“[A
22 prior case] clearly held that [the military’s Don’t Ask Don’t Tell policy] does not
23 violate equal protection under rational basis review . . . and that holding was not
24 disturbed by [*Lawrence v. Texas*, 539 U.S. 558 (2003)].”). *See also Diaz v.*

25 ⁶ *Accord Dragovich v. U.S. Dept. of Treasury*, 872 F. Supp. 2d 944, 952 (N.D. Cal. 2012)
26 (Wilken, J.); *Commonwealth of Massachusetts v. U.S. Dep’t of HHS*, 698 F.Supp. 234 (D. Mass
27 2010). *But see Lui v. Holder*, No: 2:11-CV-01267, 2011 U.S. Dist. LEXIS 155909 (C.D. Cal.
28 Sept. 28, 2011) (Wilson, J.) (appeal dismissed by parties); *Barragan v. Holder*, No CV 09-
08564, 2010 U.S. Dist. LEXIS 144791 (C.D. Cal. April 30, 2010) (Klausner, J.) (appeal
dismissed by parties).

1 *Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) (affirming district court’s use of
2 rational basis review to find Nevada’s state employee benefits program
3 unconstitutional as applied to same-sex couples).⁷

4 **(3) Whether DOMA § 3 Survives Rational Basis Review**

5 When a law neither burdens a fundamental right nor targets a suspect class,
6 a court shall uphold the legislative classification “if there is a rational relationship
7 between the disparity of treatment and some legitimate governmental purpose.”
8 *Armour v. City of Indianapolis, Ind.*, 132 S. Ct. 2073, 2080, 182 L. Ed. 2d 998
9 (2012) (citations omitted). “A statute is presumed constitutional . . . and ‘[t]he
10 burden is on the one attacking the legislative arrangement to negative every
11 conceivable basis which might support it.’” *Heller v. Doe by Doe*, 509 U.S. 312,
12 320, 113 S. Ct. 2637, 2643, 125 L. Ed. 2d 257 (1993). Nonetheless, “[t]he State
13 may not rely on a classification whose relationship to an asserted goal is so
14 attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne,*
15 *Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446, 105 S. Ct. 3249, 3258, 87 L. Ed.
16 2d 313 (1985).

17 Intervenor contends that DOMA is supported by six rationales, all of which
18 independently justify the legislation under rational basis review. (Intervenor MTD
19 at 17:21–29:14.) These are (1) maintaining a uniform federal definition of
20 marriage, (2) preserving the public fisc and respecting prior legislative judgments,
21 (3) exercising caution, (4) recognizing opposite-sex couples’ unique ability to

22 ⁷ *But see In re Levenson*, 587 F.3d 925, 931 (9th Cir. 2009) (declining to determine
23 whether rational basis or heightened scrutiny review should be used because even under rational
24 basis review, “the application of DOMA . . . violate[d] the Due Process Clause of the Fifth
25 Amendment,” but noting that heightened scrutiny could be appropriate); *Golinski v. U.S. Office*
26 *of Pers. Mgmt.*, 824 F. Supp. 2d 968, 289 (N.D. Cal. 2012) (White, J), initial hearing in banc
27 denied, 680 F.3d 1104 (9th Cir. 2012) (“[T]he appropriate level of scrutiny to use when
28 reviewing statutory classifications based on sexual orientation is heightened scrutiny.”) None of
the Ninth Circuit authorities cited by Plaintiffs and Defendants are to the contrary because none
were decided after the Ninth Circuit’s 2008 decision in *Witt*. (See, e.g., Pls.’ Opp’n to
Intervenor MTD at 17–24, Docket No. 71; Defs.’ Opp’n to Intervenor MTD at 8–10, Docket
No. 75.)

1 procreate, (5) incentivizing the raising of children by their biological parents, and
2 (6) encouraging childrearing in a setting with both a mother and a father.

3 The Ninth Circuit has recently disapproved or rejected all but the first
4 justification.⁸ See *Perry*, 671 F.3d at 1088 (“There is no rational reason to think
5 that taking away the designation of ‘marriage’ from same-sex couples would
6 advance the goal of encouraging California’s opposite-sex couples to procreate
7 more responsibly”); *Diaz v. Brewer*, 656 F.3d 1008, 1014 (9th Cir. 2011)
8 (“[D]enial of benefits to same-sex domestic partners cannot promote marriage
9 [and] . . . [cost] savings depend upon distinguishing between homosexual and
10 heterosexual employees, similarly situated, and such a distinction cannot survive
11 rational basis review.”) This Court will focus on Intervenor’s remaining argument
12 that DOMA is rationally related to maintaining a uniform federal definition of
13 marriage.

14 Other courts to consider Intervenor’s uniformity argument have expressed
15 doubt that DOMA § 3 is rationally related to ensuring uniformity. State law
16 traditionally governs marriage recognition, and DOMA “disrupted the long-
17 standing practice of the federal government deferring to each state’s decisions as
18 to the requirements for a valid marriage.” *In re Levenson*, 587 F.3d at 933; see
19 also *Golinski*, 824 F. Supp. 2d at 1002 (“DOMA actually undermined
20 administrative consistency by requiring that the federal government . . . discern
21 which state definitions of marriage are entitled to federal recognition.”);
22 *Dragovich*, 872 F. Supp. 2d at 958 (“DOMA undermines uniform recognition of

23
24 ⁸ But the First and Second Circuits have both stated that DOMA likely survives rational
25 basis review. See, e.g., *Windsor v. United States*, 12-2335-CV L, 2012 WL 4937310, at *180
26 (2d Cir. Oct. 18, 2012) (“So a party urging the absence of any rational basis takes up a heavy
27 load. . . . [T]he law was passed by overwhelming bipartisan majorities in both houses of
28 Congress; it has varying impact on more than a thousand federal laws; and the definition of
marriage it affirms has been long-supported and encouraged.”); *Massachusetts v. U.S. Dept. of
Health & Human Servs.*, 682 F.3d 1, 9 (1st Cir. 2012) (“Under such a rational basis standard,
the . . . plaintiffs cannot prevail. . . . Congress could rationally have believed that DOMA would
reduce costs.”).

1 marriage, by requiring federal agencies to discern which state law marriages are
2 acceptable for federal recognition and which are not.”); *Gill v. Office of Pers.*
3 *Mgmt.*, 699 F. Supp. 2d 374, 394 (D. Mass. 2010), *aff’d sub nom. Massachusetts*
4 *v. U.S. Dept. of Health & Human Servs.*, 682 F.3d 1 (1st Cir. 2012) (“DOMA does
5 not provide for nationwide consistency in the distribution of federal benefits
6 among married couples. Rather, it denies to same-sex married couples the federal
7 marriage-based benefits that similarly situated heterosexual couples enjoy.”). *But*
8 *see Windsor v. United States*, 699 F.3d 169, 202 (2d Cir. 2012) (Straub, J.,
9 dissenting) (“That the federal government often defers to state determinations
10 regarding marriage does not obligate it to do so. . . . [W]hen people marry for
11 immigration purposes, the federal government may validly deem the marriage
12 ‘fraudulent,’ even though it remains valid under state law.”).

13 This Court finds that the broad distinction created by DOMA § 3 is not
14 rationally related to Congress’ interest in a uniform federal definition of marriage.
15 *See Romer v. Evans*, 517 U.S. 620, 633, 116 S. Ct. 1620, 1627, 134 L. Ed. 2d 855
16 (1996); *Johnson v. Robison*, 415 U.S. 361, 374–75, 94 S. Ct. 1160, 1169, 39 L.
17 Ed. 2d 389 (1974) (“A classification ‘must be reasonable, not arbitrary, and must
18 rest upon some ground of difference having a fair and substantial relation to the
19 object of the legislation, so that all persons similarly circumstanced shall be
20 treated alike.”). Contrary to Intervenor’s argument, DOMA § 3 does not “ensur[e]
21 that similarly situated couples will be eligible for the same federal marital status
22 regardless of the state in which they live.” (Intervenor MTD at 17:21–22.)
23 Opposite-sex couples may receive federal marriage-based benefits if joined in a
24 valid state marriage. Same-sex couples will not, even if like Plaintiffs, they are
25 joined in a valid state marriage. The Court further finds that Plaintiffs have stated
26 a claim that DOMA § 3 violates their equal protection rights.

27 **B. Second Cause of Action for Denial of Substantive Due Process**

28 To sustain a due process challenge, Plaintiff DeLeon must show that her

1 “right to maintain family relationships and personal choice in matters of marriage
2 and family life free from undue government restrictions” is a qualifying liberty
3 interest of which she was deprived. (Compl. at ¶ 72; *Hernandez-Mezquita v.*
4 *Ashcroft*, 293 F.3d 1161, 1165 (9th Cir. 2002).) There is little question that
5 DeLeon has a liberty interest in “autonomy . . . in [her] personal decisions relating
6 to marriage, procreation, . . . family relationships, [and] child rearing” (Opp’n to
7 Partial MTD at 13:11-23 (citing to *Lawrence v. Texas*, 539 U.S. 558 (2003)).) It is
8 not readily apparent, however, how DOMA infringes on DeLeon’s liberty
9 interests. *Compare Lawrence*, 539 U.S. at 575-579 (criminal penalties for certain
10 sexual conduct are unconstitutional as applied to consenting adults at home); *Witt*
11 *v. Dep’t of Air Force*, 527 F.3d 806, 809 (9th Cir. 2008) (unconstitutional to
12 discharge of members of armed forces for homosexual activity). Unlike the
13 statute at issue in *Lawrence* and the policy at issue in *Witt*, DOMA has not
14 imposed any penalty on DeLeon based on her homosexuality. Plaintiff DeLeon’s
15 substantive due process rights thus are not implicated by DOMA. The Court
16 hereby **dismisses** Plaintiffs’ Second Cause of Action **with prejudice**.

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CONCLUSION

For the reasons stated above, the Court **GRANTS** Defendants’ Partial Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and **DENIES** Intervenor’s Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). The Court hereby **DISMISSES** Plaintiffs Aranas and Rodriguez and Plaintiff’s Second Cause of Action.⁹

IT IS SO ORDERED.



DATED: April 19, 2013

By _____
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

⁹ It is unclear to the Court whether Plaintiffs also seek relief for sex discrimination pursuant to 8 U.S.C. § 1152(a)(2). (Compl. at ¶¶ 3, 42.) Although § 1152(a)(2) is briefly referenced in the Complaint, Plaintiffs did not include this cause of action in their Prayer for Relief and did not oppose Defendants’ Partial Motion to Dismiss this cause of action. (See Partial MTD at 10:3–19.) The Court assumes Plaintiffs did not intend to bring a claim for sex discrimination.