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Halt to Deportation of Citizen's Same-Sex Partner Draws Fire

By Joshua Rhett Miller

Published July 01, 2011 | FoxNews.com

The federal decision to stop deportation proceedings against a Venezuela-born New Jersey man who legally married his same-sex partner in the United States -- effectively recognizing gay marriage -- is an "abuse of executive authority" by the Obama administration, immigration experts told FoxNews.com.

Henry Velandia, a 27-year-old professional salsa dancer from Caracas now living in New Jersey, legally married U.S. citizen Josh Vandiver, 30, in Connecticut last year, but due to the Defense of Marriage Act -- a 1996 federal law that defines marriage as between a man and a woman -- Vandiver was not allowed to sponsor Velandia for a green card in the same way a heterosexual person could for his or her spouse. The Department of Homeland Security nevertheless decided to drop deportation efforts against him Wednesday.

Velandia told FoxNews.com that Wednesday's ruling was a "big, uplifting moment" and the product of a year's worth of hard work on behalf of the couple's attorney, Lavi Soloway.

"I can now be with Josh, my husband, in this country without fear of being torn apart," he said on Friday. "It's like our first day building up our life together. But we know the fight is not over. We're going to keep fighting for marriage equality for all the couple who are in the same situation."

But Jessica Vaughan, director of policy studies at the Washington-based Center for Immigration Studies, said the decision is misguided prosecutorial discretion that could "destroy the credibility" of immigration law in the United States.

"This is another instance of the Obama administration's abuse of executive authority on behalf of select groups of removable aliens that it thinks are sympathetic to make a run around Congress and provide amnesty to as many illegal aliens as possible," Vaughan said. "These people are props for the administration, which is uncomfortable in its mission to enforce immigration laws. What they're really doing here with this policy of discretion is giving a free pass to huge numbers of people who have been living here illegally."

President Obama reiterated during a news conference on Wednesday that he had instructed the Justice Department to stop defending the Defense of Marriage Act in court. He said he supported gay equality, but repeated his position in support of civil unions instead of marriage. At the same time, Immigration and Customs Enforcement is urging its agents to consider a lengthy list of factors in determining whether to move ahead with deportation proceedings -- in a move to crack down on illegal immigrant criminals, but give agents leeway to dismiss cases against those who haven't committed non-immigration crimes.

But by stopping the deportation proceedings against Velandia, the federal government is effectively giving same-sex couples a "status that is not recognized in federal law or in many states," Vaughan said.

"The administration doesn't care about the larger effects," she said. "It's aiming to score political points. And what people don't realize is that they are offering the same thing to lots of other people who are a lot less sympathetic. In reality, it's going to prevent the removal of a lot of many other more troubling individuals, including criminals and repeat immigration violators. It just destroys the credibility of immigration laws."

David Boaz, an executive vice president at Cato Institute, a Washington-based libertarian think tank, said the Obama administration is now in an "awkward position" since announcing it will not continue defending the marriage act in court while promising to enforce existing federal law.

"It becomes difficult to see how you really enforce a law if defendants know that you won't defend its constitutionality if they challenge it in court," he said. "They're probably thinking we can always reopen the deportation case if, ultimately, the courts make it clear that this is the law and it should be enforced."

Boaz said he doesn't expect an imminent decision either way. "I think we're going to get judicial resolution on this, but it could take a couple of years," he said.

More than 10,000 people have voiced their support for stopping the deportation hearings on a **Facebook page** featuring several photos of the couple now living in Princeton, N.J.

White House officials referred inquiries to the Department of Homeland Security, which, in a statement to FoxNews.com, said there



has been no change in policy regarding deportation cases affected by the Defense of Marriage Act.

"Pursuant to the Attorney General's guidance, the Defense of Marriage Act remains in effect and the Executive Branch, including DHS, will continue to enforce it unless and until Congress repeals it or there a final judicial determination that it is unconstitutional," the statement read.

Attempts to reach Soloway on Friday were unsuccessful, but he told the Associated Press that although the decision did not set a legal precedent, it was the first case involving the spouse of a lesbian or gay American in which the Department of Homeland Security showed it has the discretion to evaluate the merits of each case.

In a statement to FoxNews.com, Evan Wolfson, founder and president of Freedom to Marry, hailed the government's decision.

"Freedom to Marry applauds the U.S. government for bringing an end to this deportation process, which threatened to cruelly separate a couple who, like so many others, fell in love, made a lifetime commitment to one another, and got married -- but because they are gay, were denied the normal family immigration protections afforded other married couples," Wolfson said, while calling for the repeal of DOMA.

Steve Ralls, a spokesman for Immigration Equality, said federal immigration officials have seemingly indicated that separating immigrant spouses of lesbian and gay Americans should not be a priority.

"That's good news, and we will watch to make sure it is repeated in other cases, but there must also be explicit guidance from the White House declaring a moratorium on those deportations," Ralls said in a statement to FoxNews.com. "The Justice Department is correct that DOMA is unconstitutional. Now it should stop using an unconstitutional law to rip families apart."

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