



June 13, 2017

Via ECF

Lyle W. Cayce
Clerk of Court
United States Court of Appeals for the Fifth Circuit
F. Edward Herbert Building
600 S. Maestri Place
New Orleans, LA 70130

Re: *Barber v. Bryant, et al.*, No. 16-60477

Dear Mr. Cayce:

As counsel for the *Barber* Plaintiffs, we write pursuant to Fed. R. App. P. 28(j) and Fifth Circuit Rule 28.4 to bring to the Court's attention *Sessions v. Morales-Santana*, No. 15-1191, 2017 WL 2507339 (U.S. Sup. Ct. June 12, 2017), holding that the equal protection guarantee is violated by the Immigration and Nationality Act's requirement of longer U.S. residency by a U.S.-citizen unwed father than by an unwed mother to transfer citizenship to a foreign-born child.

Respondent's U.S.-citizen father had not met the unwed father's duration requirement. Respondent asserted that the federal government's refusal to recognize his citizenship unconstitutionally discriminated against his father on the basis of sex. The majority agreed, holding that the "disparate criteria . . . cannot withstand inspection under a Constitution that requires the Government to respect the equal dignity and stature of its male and female citizens." *Id.* at *16.

The Court concluded, however, that the appropriate remedy would be withdrawal rather than extension of the exception favoring unwed mothers. Respondent was therefore denied the relief he sought of application of the unwed mother exception to confer citizenship based on the status of his father. The concurrence in the judgment in part argued that, in light of this denial of relief, the Court should not have reached the equal protection question. *Id.* at *20 (Thomas, J.).

Significantly, the majority responded that the concurrence:

sees our equal protection ruling as “unnecessary,” *post*, at 1, given our remedial holding. But, “as we have repeatedly emphasized, discrimination itself . . . perpetuat[es] ‘archaic and stereotypic notions’” incompatible with the equal treatment guaranteed by the Constitution. *Heckler v. Mathews*, 465 U. S. 728, 739 (1984) (quoting *Mississippi Univ. for Women v. Hogan*, 458 U. S. 718, 725 (1982)).

Sessions, 2017 WL 2507339, at *16 n. 21.

Thus, the Court reaffirmed that a law’s discriminatory treatment of a class of people is injury in itself redressable under the guarantee of equal protection. This reinforces the *Barber* Plaintiffs’ equal protection standing and claim for enforcement of their equal protection rights.

Respectfully submitted,

/s/ Susan L. Sommer

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Lambda Legal Defense & Education Fund, Inc.

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cc (via ECF): All counsel of record