

April 6, 2011

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

The undersigned organizations urge the Department of Homeland Security to adopt the interim measures outlined below until there is a final judicial or legislative resolution regarding Section 3 of the Defense of Marriage Act (“DOMA”).

Family unity has long been the guiding principle of U.S. immigration law, and for too long the lesbian and gay spouses of Americans have been treated as legal strangers. The Administration took a historic step forward in announcing its conclusion that Section 3 of DOMA is unconstitutional and indefensible.¹ A Massachusetts federal court also has ruled that DOMA cannot withstand even rational basis review. *See Gill v. Office of Personnel Management*, 699 F. Supp. 2d 374 (D. Mass. 2010). Yet unless the Department offers specific guidance in the area of immigration, spouses of U.S. citizens and lawful permanent residents will continue to be removed from the U.S. for no reason other than that they are lesbian or gay. The following interim measures would preserve the status quo and prevent immediate and irreparable harm to American families. We ask the Department to:

- (1) hold in abeyance immigrant visa petitions and refugee/asylum relative petitions involving a marriage between same-sex spouses as either a principal or a derivative beneficiary, as well as those involving qualifying relatives for waivers or VAWA benefits;
- (2) accept and hold in abeyance concurrently filed applications for adjustment of status (I-485s) related to any of the visa petitions described in (1);
- (3) decline to initiate removal proceedings against noncitizens who are listed as the principal or derivative beneficiary on a petition filed by or on behalf of a same-sex spouse. If proceedings have been initiated already, move to administratively close or terminate proceedings; and if an order of removal has been entered, stay removal. Alternatively, grant deferred action at any point in the process.

¹ Letter from Eric H. Holder, Jr., Attorney General, to John H. Boehner, Speaker, U.S. House of Representative, Re: Defense of Marriage Act (Feb. 23, 2011) *available at* <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.

We ask that the Department ensure coordination among USCIS, ICE and CBP.

We are grateful and encouraged by the Administration's monumental step toward equality for lesbian and gay families. Consistent with the Administration's action, we urge the Department to take these interim measures until there is a final judicial or legislative resolution regarding DOMA.

We would welcome the opportunity to meet with your staff to discuss our request and the steps needed for implementation. Please contact Crystal Williams (cwilliams@aila.org; 202-507-7651) at the American Immigration Lawyers Association to schedule a meeting or answer any questions. We look forward to your reply.

Sincerely,

Advocates for Youth
American Civil Liberties Union
American Humanist Association
American Immigration Council
American Immigration Lawyers Association
America's Voice
API Equality-LA
Asian American Justice Center
Asian Law Caucus
Asian Pacific American Legal Center
ASISTA Immigration Assistance
Association of Mexicans in North America, Inc.
Ayuda
Basic Rights Oregon
Bay Area Lawyers for Individual Freedom
Campaign for Community Change
Capitol Area Asian American Democrats
Capitol Area Immigrants' Rights Coalition
Casa Esperanza
Catholics for Equality
Center for American Progress Action Fund
Center for Constitutional Rights
Center for Gender & Refugee Studies
CenterLink: The Community of LGBT Centers
Church World Service, Immigration and Refugee Program
Cleveland Stonewall Democrats
Council for Global Equality
Equality California
Equality Hawaii
Equality Illinois
Family Equality Council
Florida Together Federation

Freedom to Marry
Friends Committee on National Legislation
Gay & Lesbian Advocates & Defenders
Hebrew Immigrant Aid Society
HIV & AIDS Legal Services Alliance
HIV Law Project, Inc.
Human Rights First
Immigrant Law Center of Minnesota
Immigrant Legal Resource Center
Immigrant Legal Advocacy Project
Immigration Equality
Immigration Law Clinic, University of Arizona, James E. Rogers College of Law
Lambda Legal
Lesbian and Gay Democratic Club of Queens
Loyola University New Orleans College of Law
Mass Equality
Massachusetts Immigrant and Refugee Advocacy Coalition
National Asian Pacific American Women's Forum
National Center for Lesbian Rights
National Center for Transgender Equality
National Immigrant Justice Center
National Immigration Project of the National Lawyer's Guild
National Stonewall Democrats
National Youth Advocacy Coalition
New Hampshire Freedom to Marry
Northwest Immigrant Rights Project
Parents, Families & Friends of Lesbians and Gays
Political Asylum/Immigration Representation Project
Refugio del Rio Grande, Inc.
Rocky Mountain Immigrant Advocacy Network
Safe Horizon Immigration Law Project
San Diego Democratic Club
San Diego Volunteer Lawyer Program
Southern Arizona Stonewall Democrats
Southern Poverty Law Center
Southerners On New Ground
Stonewall Democrats of Central Maryland
Stonewall Democrats of Central Ohio
Stonewall Democrats of Northern Nevada
Stonewall Democrats of Southern Nevada
Stonewall Democrats of Western New York
The DOMA Project – Stop the Deportations
The Episcopal Church
The Florence Project
Unid@s
Unitarian Universalist Association

University of Houston Immigration Clinic
Whitman-Walker Clinic
Women Empowered Against Violence
World Organization for Human Rights, USA

cc: Ivan Fong, General Counsel, DHS
John Morton, Assistant Secretary, ICE
Alejandro Mayorkas, Director, USCIS
Alan D. Bersin, Commissioner, CBP
John Sandweg, Counsel, DHS
Esther Olavarria, Counsel, DHS
Seth Grossman, Acting Chief of Staff, Office of the General Counsel, DHS
Kelly Ryan, Acting Deputy Assistant Secretary, Office of Policy, DHS
Felicia Escobar, Senior Policy Advisor, Domestic Policy Council, The White House
Stephanie Valencia, Associate Director, Office of Public Engagement, The White House
Cecilia Muñoz, Deputy Assistant to the President and Director
of Intergovernmental Affairs, The White House
Beth Gibson, Assistant Deputy Director, ICE
Lauren Kielsmeier, Acting Deputy Director, USCIS
Dea Carpenter, Acting Chief Counsel, USCIS
Denise Vanison, Director of Policy, USCIS