

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.<sup>1</sup> 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.

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<sup>1</sup> 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](mailto: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

April 6, 2011

Juan Osuna, Acting Director  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2600  
Falls Church, VA 22041

Dear Mr. Osuna:

The undersigned organizations urge the Executive Office for Immigration Review 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.<sup>1</sup> 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 EOIR 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.

- (1) In all pending proceedings where the respondent is
  - the principal or derivative beneficiary of an immigrant visa petition involving a marriage between same-sex spouses;
  - the derivative applicant on an asylum application involving a same-sex spouse ; or
  - seeking relief from removal (including cancellation, waivers or VAWA benefits) where the qualifying relative is a same-sex spouse or is related through a marriage between same-sex spouses

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<sup>1</sup> 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 EOIR to terminate proceedings; in the alternative, we ask EOIR to administratively close or continue proceedings until there is a final judicial or legislative resolution regarding Section 3 of DOMA.

(2) In all completed proceedings where the respondent falls into one of the categories described above, we ask EOIR, upon motion by the respondent, to reopen and terminate proceedings; in the alternative, we ask EOIR, upon motion by the respondent, to reopen and administratively close or continue proceedings until there is a final judicial or legislative resolution regarding Section 3 of DOMA.

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 EOIR to take these interim measures.

We would welcome the opportunity to meet with you to discuss our request and the steps needed for implementation. Please contact Crystal Williams ([cwilliams@aila.org](mailto: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,

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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.  
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Center for Gender & Refugee Studies  
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Friends Committee on National Legislation  
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Immigrant Legal Resource Center  
Immigrant Legal Advocacy Project  
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Unid@s  
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University of Houston Immigration Clinic  
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Women Empowered Against Violence  
World Organization for Human Rights, USA

cc: David Neal, Acting Chair, BIA  
Brian O’Leary, Chief Immigration Judge  
Robin Stutman, General Counsel

April 6, 2011

Thomas W. Hussey, Director  
Office of Immigration Litigation  
U.S. Dept. of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Hussey:

The undersigned organizations urge the Office of Immigration Litigation 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.<sup>1</sup> 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 OIL takes measures to protect those potentially affected by DOMA, spouses of U.S. citizens, lawful permanent residents and other noncitizens 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.

(1) In all pending petitions for review and any petitions for review filed in the future where the petitioner is

the principal or derivative beneficiary of an immigrant visa petition involving a marriage between same-sex spouses;

the derivative applicant on an asylum application involving a same-sex spouse ; or

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<sup>1</sup> 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>.

seeking relief from removal (including cancellation, waivers or VAWA benefits) where the qualifying relative is a same-sex spouse or is related through a marriage between same-sex spouses

we ask OIL to agree to or not oppose a request for a stay of removal until there is a final judicial or legislative resolution regarding Section 3 of DOMA.

(2) In all petitions for review where the petitioner falls into one of the categories described above, we ask OIL to take the following steps:

If briefing has not been completed: request a continuance until there is a final judicial or legislative resolution regarding Section 3 of DOMA.

If briefing is completed, but the court has not issued its decision: submit a 28(j) letter informing the court of the Administration's position on DOMA and asking the court to hold the case in abeyance or direct the case to mediation until there is a final judicial or legislative resolution regarding Section 3 of DOMA.

If the court already has issued a decision: ask the court to stay or recall the mandate until there is a final judicial or legislative resolution regarding Section 3 of DOMA.

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 OIL to take these interim measures.

We would welcome the opportunity to meet with you to discuss our request and the steps needed for implementation. Please contact Crystal Williams ([cwilliams@aila.org](mailto: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.

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cc: Tony West, Assistant Attorney General  
Juan Osuna, Acting Director, EOIR