

April 6, 2011

Thomas W. Hussey, Director  
Office of Immigration Litigation  
U.S. Dept. of Justice  
Washington, DC

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

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 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.

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