

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.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 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

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>.

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; 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