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. 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.

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

Denise Vanison, Director of Policy, USCIS

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