



## **Democrats Abroad Report on Immigration for America's LGBT Families: Addressing the legacy of immigration policy discrimination**

### **Executive Summary:**

#### **Problem 1:**

Despite the U.S. Supreme Court's landmark June 2013 decision in "U.S. vs. Windsor", LGBT U.S. citizens still face discriminatory obstacles to living legally in America together with their families.

Because of continuing legal discrimination, many of their lawful spouses and children still cannot get green cards. Thousands of LGBT families are still threatened with (continued) exile, separation or deportation because of the unknowing mistakes or sometimes desperate steps that they took years ago in vain attempts to hold their families together.

That unfair discrimination began decades ago. The government should acknowledge the discriminatory conditions that forced LGBT families to take these actions during that period, and adopt waiver provisions in those cases accordingly.

Now is the time to redress the history of anti-LGBT discrimination.

#### **Solution:**

For people who now enjoy bona fide same-sex marriages, address the legacy of discrimination by adopting special waivers of the grounds of ineligibility for immigration that apply to aliens who overstayed temporary visas, aliens who were subject to a deportation order, and aliens who entered into questionable marriages in desperate attempts to hold their families together.

Like "The Dreamers", these LGBT families are innocent victims of problems not of their own making. Like "The Dreamers", LGBT families should be relieved of their history of discrimination.

#### **Problem 2:**

Unlike heterosexual spouses, same-sex families do not have national protection. If a lawfully married same-sex couple moves to a U.S. state where their marriage is not recognized, discrimination under both state and possibly Federal law spring back into play.

"U.S. vs. Windsor" only did half the job when it struck down Section 3 of the Defense of Marriage Act (the Act). By declining to rule on Section 2 of the Act, the Court left standing a patchwork of confusing and conflicting rights for LGBT families across the nation that continues the discriminatory treatment of same-sex spouses and their families.

#### **Solution:**

Repeal the remainder of the so-called "Defense of Marriage Act" and pass the Respect for Marriage Act (S 1236 and HR 2523) to remove the remaining obstacles to Federal policy recognition of LGBT family relationships.

## **Background: Immigration policy equality for LGBT Americans at last**

This year, the LGBT community has celebrated a tremendous victory in the fight for equality and justice for LGBT families.

After decades of discrimination and exclusion the Department Of Justice, in response to the June 26, 2013 U.S. Supreme Court decision in *U.S. V Windsor*, declared that the Federal government would recognize certain LGBT family ties for immigration and other purposes, allowing LGBT Americans abroad to sponsor our spouses for green cards and return home after years or even decades as "love exiles".

But this victory for justice is still incomplete. Many thousands of American voters who live in the U.S. or abroad and who are married to same-sex partners still suffer from the legacy of discrimination. Humane immigration reform is still needed to ensure no LGBT immigrant – or any immigrant – is left behind. Our broken immigration system causes great harm and suffering to hundreds of thousands of LGBT and HIV-positive immigrants and aspiring citizens, including spouses, fiancés and family members of Americans abroad.

### **The Lingering Consequences of Decades of Immigration Policy Discrimination**

Before the Supreme Court's landmark decision, thousands of Americans had to choose between living with their families and living in America. Rather than living with an illegal alien in the U.S., many elected to move abroad to friendlier shores where they could live with their same-sex partners without fear of harassment by the immigration authorities.

These "love exiles" want to come home to America, together with their families. But that still is not possible for many of us. Why? Because under current immigration law the history of discrimination haunts us to this day.

In desperate attempts to stay in America, many same-sex couples received bad legal advice, some alien partners overstayed their visas while attempting to regularize their status, some were subjected to often violent deportation proceedings that would separate them from their families, some were unknowingly "deported", and other foolishly entered into questionable heterosexual marriages in order to stay in America with their families.

As a result, too many LGBT spouses received 3-year or 10-year or sometimes permanent bans from entering the USA -- often for unclear reasons or visa issues of which they were not aware.

The effects of decades of discrimination do not evaporate when the legal discrimination ends.

### **Legislative and Regulatory Remedies**

We urgently need full recognition of LGBT family relationships, by full repeal of the Defense of Marriage Act (DOMA).

We also need humane guidance to enable US citizens and their foreign spouses who would be banned from entering the U.S. due to the injustice of pre-existing law to reunite in the U.S. without delay.

**Democrats Abroad urges Congress to:**

- 1) Pass the Respect for Marriage Act, to remove all sections of the discriminatory Defense of Marriage Act.
- 2) Ameliorate certain grounds of excludability with respect to overstays, persons who were deported and persons who entered into questionable heterosexual marriages if these people did so in order to hold their LGBT families together. This is needed to enable many lawful spouses and fiancés to enter the U.S. to unite with their U.S. spouses and children.
- 3) Pass humane immigration reform that includes a meaningful pathway to citizenship, family reunification, a strong DREAM act for undocumented youth, new protections for workers, asylum-seekers, and detainees, and a commitment to the integration, health, and success of aspiring citizens.
- 4) Oppose the SAFE Act, HR 2278, a punitive enforcement bill that would criminalize undocumented immigrants, lead to dramatic levels of incarceration of immigrants and eliminate vital protections, including the current policy that provides discretionary relief to prevent deportation of same-sex partners, and the policy that allows young undocumented LGBT DREAMers to receive temporary authorization to live and work in the U.S.