

FOR IMMEDIATE RELEASE: 8/1/2012

CONTACT:

Drew Hammill (Pelosi), 202-226-7616

Ilan Kayatsky (Nadler), 212-367-7350

AJ Bhadelia (Honda), 202-225-2631

WASHINGTON, D.C. – Today, Democratic Leader Nancy Pelosi (D-CA), Congressman Jerrold Nadler (D-NY), the ranking Democrat on the Judiciary Subcommittee on the Constitution and lead sponsor of the *United American Families Act*, and Congressman Mike Honda (D-CA), Chair Emeritus of the Congressional Asian Pacific American Caucus and lead sponsor of the *Reuniting Families Act*,

were joined by 81 additional Members of Congress in pushing to protect lesbian, gay, bisexual, and transgender (LGBT) families from continued and tragic separations in the immigration system. The 84 Members sent a letter again to Department of Homeland Security Secretary Napolitano to recognize, explicitly and in writing, the ties of a same-sex partner or spouse as a positive factor for discretionary relief in immigration enforcement deportation cases.

On August 2011, the Obama Administration and DHS announced a new effort to focus immigration enforcement on the priorities established in the June 2011 memo from United States Immigration and Customs Enforcement (ICE) Director John Morton. During the August announcement, high-ranking DHS and White House officials stated, for purposes of exercising prosecutorial discretion, ICE would include LGBT relationships—specifically the relationships of immigrants in same-sex marriages and partnerships with U.S. citizens—in the definition of “family relationships.” On September 27, 2011, 69 Members of the Congress signed a letter to Secretary Napolitano asking for LGBT immigration policy to be put in writing. To date, this

language has never been written.

“Keeping loving families together, particularly in cases in which one partner or spouse is a U.S. citizen, should be a priority for immigration enforcement,” Democratic Leader Nancy Pelosi said. “The Department of Homeland Security has stated that their policy will positively factor in family ties, including those of LGBT couples, but we have now asked them to put this in writing to provide a measure of clarity to those enforcing our laws and confidence to families facing separation.”

“Our public policy should have as a clear goal to keep all American families – LGBT or straight – together,” said Rep. Nadler. “It serves absolutely no one and is gratuitously cruel to separate committed families. These LGBT families are critical parts of their communities, neighborhoods, and workforces. To keep them intact, it is critical that the Administration put in writing its policy of providing prosecutorial discretion with deference to family ties among LGBT persons, and we again urge it to do so as quickly as possible.”

“Our current immigration system has not been updated in over 20 years—keeping spouses, siblings, children, and their parents separated for years, even up to 23 years. Such laws are literally tearing families apart and separating American citizens from their loved ones. We need an immigration system that is comprehensive, humane, and inclusive—one that protects families—*all* families,” said Rep. Honda. “No one should have to choose between their loved ones and their country. No family should be left out of the immigration system. Together with the 36,000 same-sex bi-national couples that seek to sponsor their spouses to come to the U.S., and alongside the 83 colleagues of Congress, I emphatically urge DHS to issue an explicit and unequivocal written policy to protect LGBT families from unnecessary and inhumane separations.”

The letter is included below:

July 31, 2011

The Honorable Janet Napolitano
Secretary
United States Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

We write to follow up on a letter we sent to you on September 27, 2011 about a critical group of immigrants in the United States who need your verbal Department of Homeland Security (DHS) policy of prosecutorial discretion to be put into writing in order to prevent deportation and separation from their lesbian, gay, bisexual, and transgender (LGBT) U.S. citizen partners and spouses. Since our last letter to you, there have been several key developments which show that the verbal policy you articulated to protect LGBT families in and of itself remains

inadequate, and with the lifting of the injunction on Arizona's SB1070 and other state copycat laws, families face a greater threat of separation. As such, a written policy is needed now more than ever.

As written in the June 2011 memo from United States Immigration and Customs Enforcement (ICE) Director John Morton ("Morton Memo"), a key positive factor in exercising prosecutorial discretion is a "person's ties and contributions to the community, including family relationships." On August 18, 2011, the Obama Administration and DHS announced a new effort to focus immigration enforcement on the priorities established in the Morton Memo. At that time, high-ranking DHS and White House officials participating in several community forums and phone calls, as well as press calls, stated, for purposes of exercising prosecutorial discretion, ICE would include LGBT relationships—specifically the relationships of immigrants in same-sex marriages and partnerships with U.S. citizens—in the definition of "family relationships."

President Obama reiterated this year that it is the policy of his Administration, with respect to immigration enforcement, that family ties include LGBT families. In a statement to the *Advocate* on March

7, 2012, President Obama said that DHS has put "a lower priority on the cases of undocumented immigrants with family members, including same-sex partners, in the United States." Unfortunately, this recognition that family ties include LGBT relationships has never been put in writing.

On September 27, 2011, a month after your prosecutorial discretion announcement, sixty-nine members of the U.S. House of Representatives signed a letter to you asking you to put this critical policy in writing. Concerns were expressed that, without specific, written guidance, there

remains the very real risk agency officers, agents, and attorneys making decisions about individual cases would overlook LGBT family ties, particularly the ties of immigrants to their U.S. citizen same-sex partners or spouses, and thereby, decline to exercise prosecutorial discretion.

In DHS's response to the letter on October 25, we were extremely disappointed to read the following: "Director Morton's June 17, 2011 memorandum makes clear that one factor relevant to determining whether a case is a low priority is the individual's ties and contributions to the community. In assessing these factors, LGBT individuals' ties and contributions to the community are taken into account. These same principles apply to the interagency working group's efforts to design a method for reviewing cases to ensure that the Administration immigration enforcement resources are best focused on our highest priorities." As previously expressed, this statement appears to be a major retreat from your announced policy that the family ties of immigrants to their U.S. citizen same-sex spouses and partners would be a factor for prosecutorial discretion.

In November 2011, DHS again missed an opportunity to unambiguously include LGBT relationships in its prosecutorial discretion guidance. Instead, DHS's guidance simply noted that a person who has a "very long-term presence in the United States has an immediate family member who is a United States citizen, and has established compelling ties and made compelling contributions to the United States" is not generally an enforcement priority for DHS.

Until the policy regarding LGBT persons is put into writing, ICE enforcement officials and attorneys who are responsible for actually implementing DHS policy, plus other key stakeholders, may remain unaware of its existence. This may lead to continued and tragic separations of foreign nationals from their U.S. citizen same-sex spouses and partners. Having

this policy in writing will increase awareness of DHS's position on this issue among DHS staff, adjudicators, the immigration bar, and affected individuals. By issuing written guidance, DHS can keep LGBT families from being separated and thus prevent the irreparable, permanent harm to families that is caused by the so-called Defense of Marriage Act—discrimination the Department of Justice has determined to be unconstitutional. It would be beyond senseless to see LGBT persons with family ties here in the United States deported simply because the affected persons, their attorneys, and/or ICE officials were unaware of DHS's verbal policy. Yet sadly, we are aware of several instances since August 18, 2011 where ICE attorneys did not offer prosecutorial discretion to foreign nationals with LGBT family ties, until members of Congress, advocacy organizations, or the media weighed in to convince ICE to reverse its position.

Additionally, the Supreme Court's decision to tentatively uphold Section 2(B) of Arizona's SB1070 will increase the danger that an LGBT person will be detained and deported without obtaining the full benefit of DHS's prosecutorial discretion policy. Many more immigrants in Arizona and other states with similar laws may be referred to ICE for possible removal. Administration officials have clarified following the Supreme Court decision that DHS "will not be issuing detainers on individuals unless they clearly meet our defined priorities." While we appreciate your clarification that prosecutorial discretion will continue to be implemented, the raised stakes with the Supreme Court's decision make it all the more critical that DHS staff in Arizona and beyond recognize that the ties of a foreign national to a U.S. citizen same-sex partner or spouse are a positive factor for prosecutorial discretion.

We therefore again ask that you issue a written field guidance or a memorandum to explicitly state the policy of your August 18, 2011 announcement which would direct DHS personnel to consider LGBT family ties as a positive factor for the exercise of prosecutorial discretion. A written policy is the best way to ensure that the decision by President Obama and DHS to recognize LGBT family ties for immigration purposes will be implemented so that families will remain together.

Thank you for your time and attention to this matter. We look forward to your prompt response.

Sincerely,

Nancy Pelosi, Jerrold Nadler, Mike M. Honda, Barney Frank, Jared Polis, David Cicilline, Gary L. Ackerman, Xavier Becerra, Tim Bishop, Suzanne Bonamici, Robert Brady, Lois Capps, Michael E. Capuano, Judy Chu, Hansen Clarke, Yvette D. Clarke, Gerald E. Connolly, John Conyers, Joseph Crowley, Susan A. Davis, Diana L. DeGette, Ted Deutch, Donna F. Edwards, Keith Ellison, Eliot L. Engel, Sam Farr, Chaka Fattah, Bob Filner, Charles A. Gonzalez, Raul M. Grijalva, Luis V. Gutierrez, Janice Hahn, Alcee L. Hastings, Maurice D. Hinchey, Rubén E. Hinojosa, Rush D. Holt, Steve Israel, Eddie Bernice Johnson, Hank C. Johnson, Dennis J. Kucinich, Rick Larsen, Barbara J. Lee, Sandy M. Levin, John Lewis, Zoe Lofgren, Carolyn B. Maloney, Jim McDermott, Jim P. McGovern, Michael H. Michaud, George Miller, Gwen Moore, Jim P. Moran, Chris S. Murphy, Grace F. Napolitano, Eleanor Holmes Norton, John W. Olver, Bill Pascrell, Jr., Edward Lopez Pastor, Gary C. Peters, Chellie Pingree, Mike Quigley, Charles B. Rangel, Silvestre Reyes, Laura Richardson, Steve R. Rothman, Lucille Roybal-Allard, Linda T. Sanchez, Loretta Sanchez, Jan D. Schakowsky, Adam B. Schiff, Allyson Y. Schwartz, José E. Serrano, Albio Sires, Adam Smith, Jackie Speier, Pete Stark, Paul D. Tonko, Edolphus Towns, Niki S. Tsongas, Nydia M. Velázquez, Henry A. Waxman, Peter F. Welch, Frederica S. Wilson, Lynn C. Woolsey

BACKGROUND

Information on *Uniting American Families Act (UAFA)*:

- UAFA would add the term “permanent partner” to sections of the *Immigration and Naturalization Act* that apply to married heterosexual couples.
- “Permanent partner” is described as an adult who is in a committed, intimate relationship with another adult in “which both parties intend a lifelong commitment.”
- This legislation would afford equal immigration benefits to permanent partners as exist for married heterosexuals, and it would impose the same restrictions, enforcement standards and penalties as are currently in immigration law.
- Because the U.S. does not legally recognize gay and lesbian couples and their children as families, many same-sex bi-national couples are torn apart.
- Senator Patrick Leahy (D-VT) also introduced UAFA in the Senate.
- At least 25 countries currently allow residents to sponsor gay and lesbian permanent partners for legal immigration, including Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland and the United Kingdom.

Information on *Reuniting Families Act (RFA)*:

- Current family-based immigration system has not been updated in over 20 years—keeping spouses, children, parents, and siblings separated for years—even up to 23 years.
- RFA would reduce the long backlog for families trying to reunite with their loved ones by classifying lawful permanent resident spouses and children as “immediate relatives” and exempting them from numerical caps on family immigration.
- This legislation would recapture family and work visas that have gone unused and unclaimed due to bureaucratic delay.
- It would increase per-country limits from 7% to 10% so that nations with a higher demand for workers can better equip the American economy with talent.
- RFA would allow families to reunite in the face of numerous hardships, including family separation and death of a petitioner.
- It would also provide equal treatment for all stepchildren and biological children under

immigration laws.

- RFA would recognize the sacrifices of our military by exempting children of World War II Filipino veterans from numerical caps; and
- It would also allow family members to reunite despite bars to reentry.