



Transition Policy Recommendations

Immigration Equality

October 2008

Legislative, regulatory, and appointment recommendations for advancing equal immigration rights for the lesbian, gay, bisexual, transgender, and HIV-positive community.

Legislative Recommendations:

1. Pass the Uniting American Families Act (in the 110th Congress, H.R. 2221 and S. 1328) to end immigration discrimination against same-sex binational couples.

Regulatory Recommendations:

1. ***End Discrimination against travelers and immigrants living with HIV/AIDS.*** The U.S. Department of Health and Human Services (HHS) should remove HIV from the list of "communicable diseases of public health significance" that is used by the United States Citizenship and Immigration Services (USCIS) and the United States Department of State (DOS) to prevent foreign nationals from obtaining non-immigrant visas and legal permanent residence.
2. ***Update instructions to immigration personnel to reflect current law on transgender marriages.*** Although the Board of Immigration Appeals (BIA) issued the *Lovo-Lara* decision in 2005 [23 I&N Dec. 746 (BIA 2005)], holding that opposite-sex marriages in which a spouse is transgender should be recognized for immigration purposes so long as the marriage is valid in the state where entered into or state of intended domicile, Department of Homeland Security (DHS) personnel continue to disregard this ruling. DHS should issue a new memo instructing its personnel to follow the *Lovo-Lara* holding, superseding the *April 16, 2004, Interoffice Memorandum from William R. Yates, Associate Director for Operations of the United States Citizenship and Immigration Services ("CIS"), respecting the "Adjudication of Petitions and Applications Filed by or on Behalf of, or Document Requests by, Transsexual Individuals."*
3. ***Update instructions for issuing accurate immigration identity documents to transgender individuals.*** A new Department of Homeland Security (DHS) memo should update criteria for issuing accurate identity documents to transgender individuals. Although the *April 16, 2004, Interoffice Memorandum from William R. Yates, Associate Director for Operations of the United States Citizenship and Immigration Services ("CIS"), respecting the "Adjudication of Petitions and Applications Filed by or on Behalf of, or Document Requests by, Transsexual Individuals"* states that identity documents should "reflect the outward, claimed and otherwise documented sex of the applicant" DHS has generally required transgender individuals to have completed sex reassignment surgery (SRS) in order to correct



- gender on their identity documents. Instead DHS should look to the gender identity of the individual and any other evidence that the individual's gender transition is complete.
4. ***Reduce discriminatory burdens on same-sex partners of long-term nonimmigrants who are B-2 visa holders.*** The Department of State (DOS) should change the B-2 Classification for Cohabiting Partners (DOS memo to Diplomatic and Consular Posts R 091817Z July 2001) so that cohabiting partners including same-sex partners of long-term nonimmigrants can obtain a B-2 Visa for the duration of the partner's non-immigrant visa, removing the requirement to extend the B-2 Visa every six months.
 5. ***Change detention standards for transgender immigration detainees to house them according to their self-identified gender.*** Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS) should change detention standards for transgender detainees to house them according to their self-identified gender rather than genital anatomy, except in cases where the detainee requests an exception based on concerns for personal safety.
 6. ***Provide needed health care services to transgender immigration detainees.*** Current Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) policy only permits administering of hormones to detained transgender individuals who have completed sex reassignment surgery (SRS). Transgender detainees should be given access to hormone therapy and other transgender-related health care and medication based on medical need, without regard to SRS. Treatment should follow accepted guidelines regarding medically necessary transition-related care and continuity of care for those conditions both within the detention facility and upon transfer.
 7. ***Follow accepted guidelines for management and treatment of HIV in immigration detention facilities.*** The Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) should ensure that policies regarding all detainees (whether in DHS custody or in contracted facilities) with HIV/AIDS guarantee the four core provisions of nationally and internationally accepted guidelines for management of HIV in a correctional setting:
 - a. Voluntary Counseling and Testing
 - b. Treatment according to nationally accepted clinical guidelines such as those promulgated by the US Department of Health and Human Services (HHS)
 - c. Continuity of Care both within the facility and upon transfer
 - d. Protection of confidentiality of HIV status.
 8. ***Implement training to counter discrimination based on sexual orientation or gender identity or expression in all areas of the immigration system.*** The Department of Homeland Security (DHS) should implement training to counter discrimination based on sexual orientation or gender identity or expression in all areas of the immigration system. This should be provided to employees of all ranks and be



given at regular intervals, not merely at the start of employment. External instructors and community organizations should be engaged for training.

9. ***Prevent discrimination against lesbian, gay, bisexual and transgender immigration detainees and immigration detainees with HIV/AIDS.*** The Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) should revise detention standards to include a non-discrimination policy with education, training, grievance and enforcement provisions for the protection of lesbian, gay, bisexual and transgender detainees and detainees with HIV/AIDS.

Appointments Recommendations:

Appoint qualified individuals supportive of equality for lesbian, gay, bisexual, transgender and HIV-positive people to the following key Department of Homeland Security (DHS) and Department of Justice (DOJ) positions:

- Department of Homeland Security:
 - Secretary of Homeland Security
 - Director, U.S. Citizenship & Immigration Services
 - Ombudsman, U.S. Citizenship & Immigration Services
 - Assistant Secretary for Immigration and Customs Enforcement
 - Inspector General
 - Officer for Civil Rights and Civil Liberties
- Department of Justice:
 - Attorney General
 - Assistant Attorney General, Civil Rights Division
 - Director, Office of Immigration Litigation
 - Director, Executive Office for Immigration Review
 - Special Counsel, Office of Special Counsel for Immigration-Related Unfair Employment Practices