

Congress of the United States
Washington, DC 20515

April 14, 2011

The Honorable Eric Holder
Attorney General
Department of Justice
Washington, DC 20520

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Washington, DC 20393

Dear Mr. Attorney General and Madam Secretary:

We applaud the President's decision of February 23, 2011, to no longer defend the Defense of Marriage Act (DOMA) in federal court. The law discriminates against a class of Americans, and we agree with the Administration that Section 3 is unconstitutional as applied to legally-married, same-sex couples. Although the Administration has announced its intention to continue enforcing DOMA, we believe this can be accomplished in ways that will limit the unconstitutional discrimination against such couples.

The issue of DOMA's constitutionality and continued validity will be decided by the federal courts and the U.S. Congress. But in the interim, many families across the country continue to face tremendous uncertainty. In order to preserve the status quo and keep families together during this national debate about equality and discrimination, we ask that U.S. Citizenship and Immigration Services (USCIS) hold in abeyance immigration petitions based on lawful marriages by same-sex couples pending a legislative repeal or a final determination in the ongoing DOMA litigation.

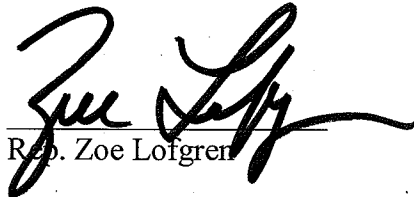
We further ask that Immigration and Customs Enforcement (ICE) exercise its existing prosecutorial discretion in removal proceedings with respect to lawfully-married foreign nationals who would be eligible for immigration relief but for DOMA. ICE already exercises prosecutorial discretion and promotes efficient use of government resources by dismissing without prejudice certain cases in which a foreign national appears to be eligible for relief from removal on the basis of a pending petition or application. Similarly exercising prosecutorial discretion for foreign nationals in removal proceedings who would be eligible for relief from removal on the basis of a lawfully-recognized marriage to a U.S. citizen but for an admittedly unconstitutional law would not grant any form of relief that is prohibited under DOMA. Rather, it would simply maintain the status quo, avoid further acts of discrimination, and temporarily prevent the separation of a U.S. citizen from his or her spouse until a final decision is made with respect to that law.

Finally, we call upon the Board of Immigration Appeals and the Executive Office of Immigration Review to issue a moratorium on orders of removal to married foreign nationals who would be eligible to adjust their status to lawful permanent residence but for DOMA.

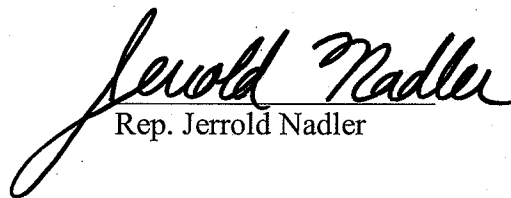
Taking these steps would not flout or disrespect existing law, as it would not provide permanent immigration relief to married couples of the same sex, currently prohibited by Section 3 of DOMA. Rather, it would prevent the potentially irreparable harm that would be caused by application of a law that is currently under review by the courts and the U.S. Congress. The Department of Homeland Security (DHS) has previously responded to similar uncertainty in the law by taking simple administrative actions to preserve the status quo until a resolution has been achieved administratively or legislatively. On July 9, 2009, for example, DHS granted certain widows of U.S. citizens and their minor children deferred action despite the fact that it took subsequent legislative action to provide these persons with a path to lawful permanent resident status. Significantly, DHS granted deferred action against the backdrop of ongoing federal litigation in which the department continued to argue in court that such persons were statutorily prohibited from obtaining permanent relief. By way of contrast, the President has already announced that he will no longer defend Section 3 of DOMA in ongoing litigation. As another example, on September 15, 2009, prior to the final removal of HIV from the CDC list of communicable diseases of public health significance, USCIS issued a memo instructing officers to hold in abeyance all adjustment of status applications that were approvable but for the HIV ban on immigration.

The Administration's announcement in February represented an historic step toward equal treatment for all persons. As the country grapples with the question of whether DOMA is constitutional and should be the law of the land, we ask that you take steps to temporarily preserve the status quo and protect American citizens and their spouses from avoidable harm. We appreciate your consideration of this request and look forward to working with you to address the issue.

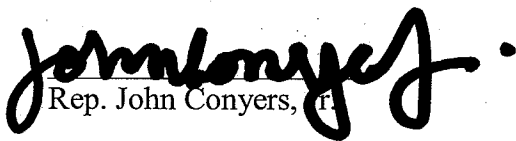
Sincerely,



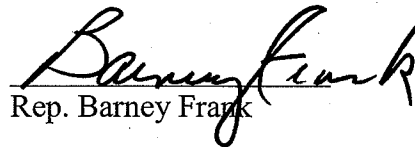
Rep. Zoe Lofgren



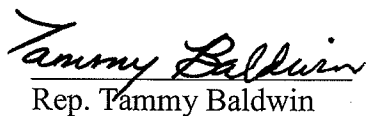
Rep. Jerrold Nadler



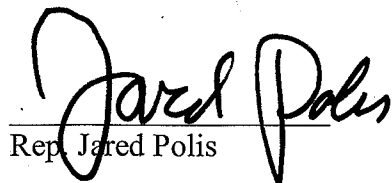
Rep. John Conyers, Jr.



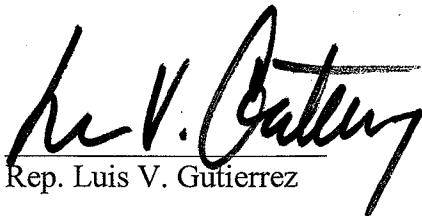
Rep. Barney Frank

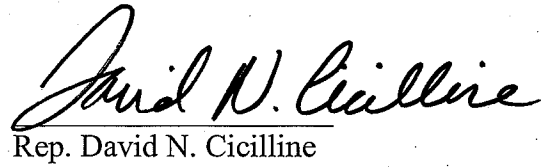


Rep. Tammy Baldwin

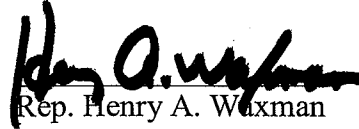


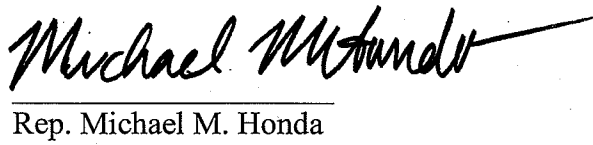
Rep. Jared Polis

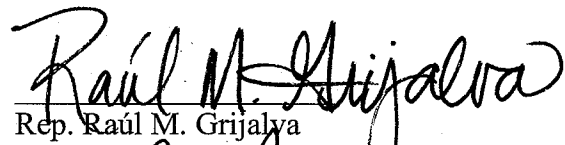

Rep. Luis V. Gutierrez

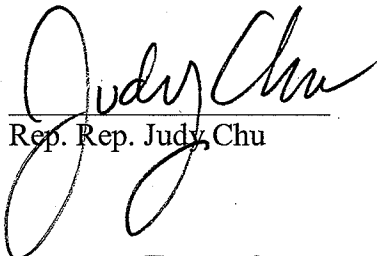

Rep. David N. Cicilline

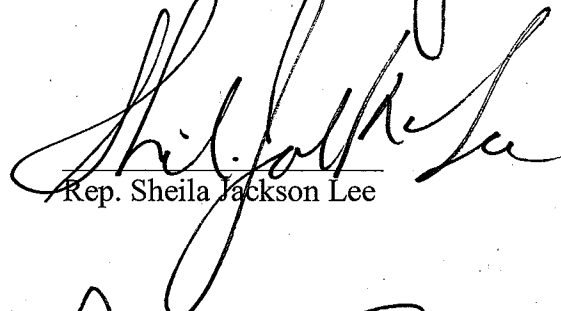

Rep. Howard L. Berman



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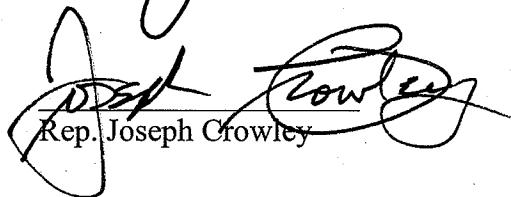

Rep. Michael M. Honda


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Rep. Rep. Judy Chu

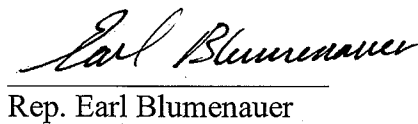

Rep. Sheila Jackson Lee

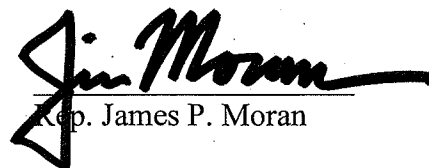

Rep. Yvette D. Clarke


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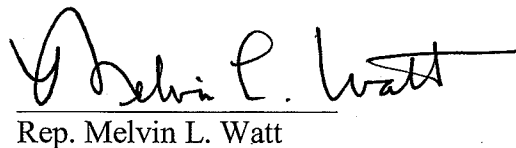

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Rep. Jesse L. Jackson, Jr.

Loretta Sanchez

Rep. Loretta Sanchez

Nydia M. Velázquez

Rep. Nydia M. Velázquez

Grace F. Napolitano

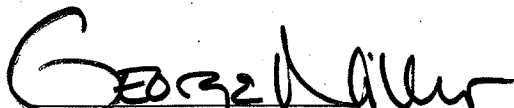
Rep. Grace F. Napolitano

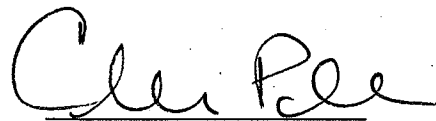
Maurice D. Hinchey

Rep. Maurice D. Hinchey

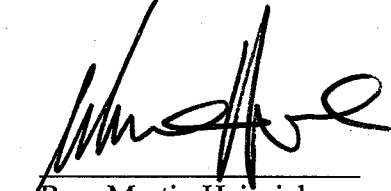
David Wu

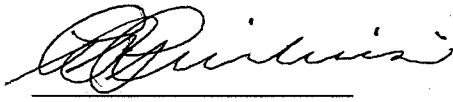
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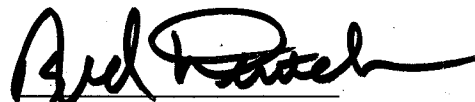

Rep. George Miller

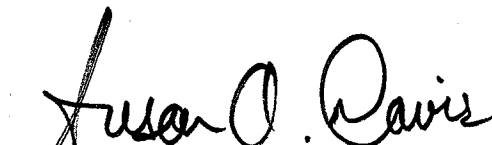

Rep. Chellie Pingree


Rep. Bob Filner


Rep. Martin Heinrich

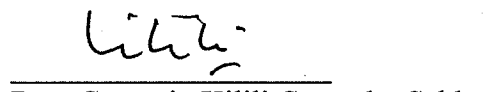

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Rep. Susan A. Davis


Rep. Sam Farr


Rep. Diana DeGette


Rep. Gregorio Kilili Camacho Sablan