

## Comprehensive Review of Immigration Reform

Our immigration system is in a state of disrepair but hope for meaningful reform has been kindled this year with the unveiling of three major proposals all aimed at fixing a broken system. The U.S. government struggles to effectively process or prevent undocumented immigrant workers from entering, and in many cases remaining, in the U.S. without a valid visa status. This inability creates a large class of people who remain elusive to government authorities, and ultimately outside U.S. civil society, which is problematic for the U.S. economy and to any effective national

**The central aim of current immigration reforms is to deal with the growing number of undocumented immigrants but some of the more liberal proposals tackle additional problems of current U.S. immigration policy.**

security strategy. President Bush proposed the first of the three immigration reform proposals discussed herein. The second is a bipartisan Senate bill proposed by Senators Chuck Hagel (R-NE) and Tom Daschle (D-SD), while the third is the House of Representative Democratic immigration reform package. The central aim of

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Janet Reno and Barney Frank join Immigration Equality to celebrate the 10th anniversary of sexual-orientation based asylum claims in U.S.

## A Tenth Anniversary Celebration

On February 8, 2004, Immigration Equality simultaneously celebrated our tenth anniversary along with the tenth anniversary of asylum eligibility in the U.S. on the basis of sexual orientation by honoring former Attorney General Janet Reno with our "Defender of Freedom Award." Over 400 activists, members and friends attended this year's annual Valentine's Day benefit to celebrate a decade of advocacy on behalf of lesbian, gay, bisexual, transgender and HIV-positive immigrants.

Immigration Equality has, in our ten years, been at the center of the introduction of the Permanent Partners Immigration Act (PPIA) in both houses of Congress, conducted numerous sensitivity trainings for Immigration Judges and officials concerning LGBT and HIV-positive immigrants, brought both the immigrant and LGBT/HIV communities together to fight for the rights of sexual minorities under immigration law, established a pro bono asylum program for low-income LGBT/HIV-positive asylum seekers, as well as assisted hundreds of LGBT and HIV-positive immigrants to obtain asylum based on sexual orientation.

Immigration Equality honored Janet Reno for her recognition of the worldwide persecution of lesbian and gay individuals and for designating as precedent, a decision known as *Toboso-Alfonso*, thereby establishing sexual orientation as a basis upon which to seek asylum. We recognized Congressman Barney Frank (D-MA) for his longstanding commitment to the LGBT community, and specifically for leading the call within Congress for establishing sexual orientation as a basis upon which to seek asylum. Additionally, we also honored Cleary, Gottlieb, Steen & Hamilton for

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# IMMIGRATION EQUALITY

Dedicated to equal immigration rights for the  
Lesbian, Gay, Bisexual, Transgender  
and HIV-Positive Community

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## LETTER FROM THE CO-CHAIRS

Immigration Equality is the foremost provider of legal services in the United States for LGBT and HIV-positive immigrants. Our national presence has allowed us to build a strong and dedicated movement, which demands immigration equality in the U.S. and works to continue to ensure the dignity and respect of immigrants to the U.S. regardless of sexual orientation, gender identity, or HIV-status. With the help of our friends and allies we have celebrated the introduction of the Permanent Partners Immigration Act (PPIA) in both houses of the U.S. Congress and celebrated asylum victories that provide LGBT and HIV-positive immigrants the ability to begin new lives in the U.S. Also during this year, our tenth anniversary, we introduced our new name that better captures the essence of our mission.

What an exciting time to introduce ourselves as the new Co-Chairs of the Board of Directors. We are John Nechman, an immigration attorney from Houston, Texas and Mark Gasparini, Chief Financial Officer of Lambda Legal from New York City. We thank our amazing former Board Chair Suzanne Goldberg for her decade of leadership and hope to match her passion, courage, and wisdom.

Recently there have been significant changes within our community, some extraordinarily good, others challenging. We have witnessed historic gains in the LGBT community with the Lawrence v. Texas ruling and recent victories allowing gay and lesbian partners to marry. We have also seen orchestrated attacks on LGBT people and families as being characterized outside society's normative values. At the same time our rights as LGBT people have come under attack, immigrants have been subject to increasingly stringent penalties for even minor violations of the law. The Department of Homeland Security has detained a record number of foreign nationals. The results of this detention policy are particularly harsh for LGBT and HIV-positive immigrants, who often face discrimination and lack of medical treatment while detained.

We stand ready to meet the challenges that LGBT and HIV-positive immigrants face. As you will read in this edition of the Status Report, we have recently been awarded a prestigious New Voices Fellowship to survey the treatment of HIV-positive immigrants in U.S. immigration detention centers. Our San Francisco chapter was presented with the Bay Area Lawyers for Individual Freedom's (BALIF) 2004 community service award. Our San Francisco chapter was also named the organization grand pride marshal for the San Francisco Pride Parade. Our Los Angeles chapter has worked tirelessly to have their City Council pass a resolution supporting the PPIA. Recently, California became the first state to pass a resolution supporting the PPIA. Currently, we are in a hiring process for our first Executive Director who will steer Immigration Equality through the next chapter of our history.

In this amazing year of change, we have a perfect new name and logo, an intensified commitment to the passage of the PPIA, and the achievement of increased national exposure to our cause, and soon, we will have a new Executive Director to help guide us toward victory in our goal of achieving Immigration Equality. That victory will not come without a fight, and we need and thank you for your continued support that will help make that victory a reality. Join us in combating the laws and policies that restrict the rights of LGBT and HIV-positive immigrants, their families, and loved ones. Please make a generous donation in the enclosed envelope and be an active part of this movement.

*John Nechman, Houston Texas*  
*Mark Gasparini, New York City* ■

## Mexican National Receives Interim Relief

Esperanza Ramos (not her real name) is a 35 year old transgender woman who also identifies as a gay man. Esperanza fled Mexico to escape the violence and discrimination she experienced there as a result of her sexual orientation and gender identity.

After arriving in the United States in 1998, Esperanza was assaulted by a group of Latino men in a bar because they believed that she was gay. In a separate incident, she was again attacked because of her perceived sexual orientation by a man who struck her with a car. Despite the emotional difficulties she suffered as a result of these violent attacks, Esperanza reported the crimes and testified against the men at trial.

After the crimes, Esperanza learned from a representative of Catholic Charities in Portland, Oregon that she might be able to legalize her status in the United States through asylum or U visa interim relief. While her claims were being processed, Esperanza spent over nine months in detention. Unfortunately, she applied for asylum well beyond the one year filing deadline and her application was denied on that basis. Facing removal to Mexico, where she desperately feared returning, Esperanza's only hope seemed to hinge on receiving U visa interim relief, called deferred action.

Earlier this summer, Esperanza was granted deferred action status and released from detention. The deferred action allows Esperanza to reside and work in the United States for one year. At the end of the year, she can apply to extend her deferred action status as she waits for the Department of Homeland Security to issue U visa regulations which may lead to a permanent immigration status. Ironically, although the United States would not grant Esperanza protection from the harm she suffered in Mexico, she now has legal status, albeit temporary, based on the bias crimes she suffered in the United States.

Esperanza is very thankful to Catholic Charities for their legal assistance, and encourages other foreign nationals who have been victims of crime to consider U visa interim relief as an option for legalizing their status. "[My life] has changed a lot because now I feel a little safer. I feel like I can be out in the street and that immigration won't pick me up. I feel that I do have a real chance to stay here and have a good life," Esperanza said after receiving deferred action. ■

## U Visas: A Potential Humanitarian Remedy for LGBT and HIV-Positive Crime Victims

On October 28, 2000, Congress created a new visa, called the "U visa" as a part of the Victims of Trafficking and Violence Protection Act. Congress articulated two purposes for the U visa: to assist law enforcement officials by allowing crime victims to remain in the United States to aid investigations or prosecutions and to offer temporary (but possibly long-term) immigration relief to the foreign national crime victim.

### The LGBT Community Is Disproportionately Affected by Crime

Candice Brown-Elliott of the TransHistory Project estimates that transgender people in the United States are 15 times more likely to experience violent crime than the general population. Additionally, the Human Rights Campaign reports that violence based on sexual orientation ranked third behind religion and race in the FBI's hate crimes report of 2002. Such statistics are a distressing reality for the lesbian, gay, bisexual, and transgender (LGBT) community. At least, however, there may be some hope for foreign nationals who are victims of serious crimes to legalize their status.

### The U Visa Process Is Still Uncertain

Although Congress passed the U visa law almost four years ago, the Department of Homeland Security (DHS) has not yet issued regulations implementing the U visa. This lack of direction has left advocates uncertain about how to proceed with U visa applications. Congress authorized DHS to

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Photo by Callie Lipkin, © 2000  
Suburban Chicago Newspapers

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issue 10,000 temporary U visas per year. Additionally, according to the statute, once a foreign national has resided continuously in the United States in U visa status for three years, he or she is eligible to apply for legal permanent residence if he or she can show either that there are humanitarian grounds or that the application will promote family unity, or the public interest. Congress also authorized the Attorney General to waive most grounds of inadmissibility including public charge and medical

### Who Can Apply for a U Visa?

Foreign nationals who have endured mental or physical suffering as the victim of a qualifying crime which took place in the United States can apply for U visas. Crimes that may lead to U visa relief include but are not necessarily limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extor-

being helpful, or is likely to be helpful in the future to law enforcement officials in investigating or prosecuting the crime. The applicant must therefore obtain a written certification from a law enforcement official (judge, police, prosecutor, etc.) stating his or her importance to a case.

### The Future of U Visas

Advocates hope that in the future DHS will issue regulations which will clarify much of the confusion surrounding U visas. For example, it is unclear what will happen to the foreign nationals who have been granted deferred action status through interim U visa applications once U visa regulations are actually promulgated by DHS. It is possible that such persons will be issued actual U visas immediately, but they may need to submit more evidence before DHS rules on the U visa application.

Congress took an important step towards protecting the rights of crime victims, as well as, giving them incentives to aid law enforcement in bringing criminals to justice when it passed the U visa law. It is now up to DHS to issue regulations which will carry out Congress's humanitarian intent. As violence against members of our community continues to rise, it is important to be aware of this form of relief which may help LGBT and HIV-positive crime victims to remain permanently in the United States. ■

grounds which means HIV-positive crime victims may some day be able to obtain legal permanent residence through U visas.

Until regulations are issued, foreign nationals who appear to be eligible for U visas can apply for interim relief. Applications for interim U visa relief are supposed to be submitted to the Vermont Service Center. Until DHS issues regulations, however, the Vermont Service Center is not authorized to grant U visas. As a temporary measure, the Vermont Service Center has been granting "deferred action" status to foreign nationals who appear to be eligible for U visas. Deferred action is a quasi-legal status in which a foreign national is given permission to remain in the United States for humanitarian reasons and is eligible to apply for employment authorization. Deferred action is issued for only one year, but it may be renewed on a continual basis at the discretion of DHS.

tion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

In addition to being the victim of a qualifying crime, a U visa applicant must demonstrate that he or she possesses information concerning the criminal activity and must show that he or she has been helpful in the past, is currently

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their pro bono representation and commitment to the immigrant community.

We would like to thank Attorney General Janet Reno, Congressman Barney Frank and Immigration Equality member "Jose Rojas" a courageous Ecuadorian asylee who spoke about his own experience, for making our program so memorable. We would also like to thank Masliah and Soloway, LLC for generously sponsoring the attendance of low-income asylees who all had the opportunity to personally thank Attorney General Reno. Finally and most importantly, we would like to thank each and every person who attended, donated, or, in their own special way, supported our 2004 Valentine's Day benefit. We look forward to seeing you all next year! ■

### France Announces Tough New Anti-Discrimination Law

Following a vicious attack in January of a gay French national who was sprayed with gasoline and set on fire, the French government announced last month new legislation which would make "incitement [of] discrimination, hatred, or violence against a person on the basis of gender or sexual orientation" punishable by a year in prison and a \$54,000 fine.

### Zanzibar Criminalizes Homosexuality

In April, the government of Zanzibar passed legislation which would impose prison sentences of 25 years for men and 7 years for women who are convicted of sodomy. The bill was unanimously enacted by Zanzibar's parliament and has been sent to President Amani Abeid Karume for signature.

### U.S. Leaders Decry Egypt's Anti-Gay Abuses

In May, U.S. Rep. Steve Rothman (D-NJ) and 43 other members of Congress sent a letter urging Egyptian President Hosni Mubarak to stop abuses against gay men. The lawmakers cited a Human Rights Watch report which related the testimony of gay men who claimed to have been bound, suspended in painful positions, burned with cigarettes, submerged in ice-cold water, and subjected to electrical shocks on their limbs and genitals. The letter urged President Mubarak to "...abide by the requirements of the treaties signed and laws in place, and...work to prevent any future incidents of torture, including the torture of homosexual men."

To read Human Rights Watch's full report, please visit: <http://hrw.org/reports/2004/egypt0304/>

### Singapore Bans Gay Activists

In April, the Singaporean government ordered the nation's only gay rights organization, People Like Us, to

**"We sincerely hope Egypt will abide by the requirements of the treaties signed and laws in place, and that you personally will speak out against and work to prevent any future incidents of torture, including the torture of homosexual men."**

disband. The government's Registrar of Societies issued an official statement that the organization was "likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare, or good order."

### Botswana Launches New AIDS Initiative

In January, Botswana's president, Festus Mogae, ordered routine HIV tests to everyone who came into a hospital or clinic, unless the patient objected. The country, where only 1 in 12 people have ever taken an HIV test has the world's highest rate of HIV infection. The measures have nearly quadrupled the rate of testing in the country. Although only twenty percent of the HIV-positive population is receiving antiretroviral treatment, the government predicts universal therapy by 2009.

### UK Civil Unions Bill Defeated

In June, the House of Lords rejected a bill that would recognize same-sex couples. The legislation, which passed the House of Commons, would have granted full legal recognition for the purposes of life insurance, tenancy rights, pension benefits, and parental rights and responsibilities. The Conservative Party killed the bill by adding an amendment that would extend the law to include other relationships such as long term caregivers.

### Lesbian Rape Increasingly a Problem in South Africa

In June, activists and researchers reported an increase in rape targeting lesbians in South Africa, particularly in

black communities. While many white gays and lesbians can live a comfortable and open life, most black gays and lesbians continue to live on the fringes of society, surrounded by both prejudice and poverty says South African President Thabo Mbeki.

### Australia's World Precedent on Gay Asylum

In December 2003, the Australian High Court ruled that homosexuals who would have to live "discreetly" to avoid persecution in their home country could be entitled to refugee status. The court ruled 4-3 to grant an appeal to a gay couple who claimed they would face persecution if they were sent back to Bangladesh. The Refugee Review Tribunal and the Federal Court had previously ruled that the men would most likely not be persecuted in Bangladesh if they assumed a "discreet" gay lifestyle. However, the High Court rejected the distinction between "discreet" and "non-discreet" homosexuals.

### Marriage Ban for Same-Sex Couples Advances in Australia

In June, a plan was approved by parliament's lower house to prevent same-sex couples from marrying and adopting children from abroad. The bill now moves to the Senate. The Labor party approved of defining marriage as between a man and a woman only, but opposed the restrictions on same-sex couples adopting children. Australian Attorney-General Philip Ruddock said the measure helps to protect marriage.

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