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COMPREHENSIVE & INCLUSIVE IMMIGRATION REFORM NINE PROBLEMS DESERVING SOLUTIONS

Fixing our broken immigration system and achieving equality for the lesbian, gay, bisexual and transgender (LGBT) community are urgent civil rights issues currently facing our nation. Undocumented LGBT people live at the intersection of the civil rights battle facing both of these movements, making them some of the most vulnerable individuals in our country. According to a study by the Williams Institute, there are close to 1 million LGBT adult immigrants, of which about two-thirds are documented and one-third are undocumented, and 32,300 LGBT binational couples living in the U.S. today. Clearly, comprehensive and inclusive immigration reform is a critical issue for the LGBT community.

The Human Rights Campaign (HRC) has long worked on legislation to protect LGBT individuals in the immigration system by supporting bills like the Uniting American Families Act (UAFAs). We have also worked with the Obama Administration to improve how our nation's immigration system treats LGBT individuals and families. As our elected representatives chart a course toward immigration reform, LGBT immigrants must not be left behind.

This document is organized by four guiding principles: (1) Keep LGBT Families Together, (2) Create a Pathway to Citizenship, (3) Improve the U.S. Asylum System for LGBT Applicants and (4) Protect the Health and Safety of LGBT Immigrants. Under each principle we have highlighted what we believe are nine key problems – among many – that urgently need a solution.

Keep LGBT Families Together

1. ALLOW U.S. CITIZENS AND PERMANENT RESIDENTS TO SPONSOR THEIR SAME-SEX SPOUSES OR PARTNERS FOR FAMILY-BASED IMMIGRATION.

Problem: U.S. citizens or legal permanent residents may sponsor their spouse or immediate family member for immigration purposes. But, under current law, the same-sex spouse or partner of a U.S. citizen or permanent resident is not considered a “spouse,” barring their partner from sponsoring them for family-based immigration. An estimated 32,300 same-sex, binational couples are living in the U.S., raising more than 11,000 children. Under current immigration law, these families are eventually split up or forced to live in exile.

Solution: Include UAFAs in immigration reform. UAFAs would amend Sections 203 and 204 of the Immigration and Nationality Act (INA) so that lesbian and gay individuals will have the same opportunity as different-sex, married couples to sponsor their partners for family-based immigration.

2. PREVENT REMOVAL OF THE SAME-SEX SPOUSE OR PARTNER OF A U.S. CITIZEN OR PERMANENT RESIDENT WHERE REMOVAL WOULD CAUSE EXTREME HARDSHIP TO THE U.S. CITIZEN OR LEGAL PERMANENT RESIDENT.

Problem: Binational couples may avoid separation by showing that a U.S. citizen or permanent resident will suffer “exceptional and extremely unusual hardship” if his or her spouse is deported. But same-sex couples are not considered qualifying relatives under the statute. Consequently, an undocumented woman who is caring for her terminally ill wife could be deported even though her departure would cause extreme hardship to her spouse.

Solution: Include UAFAs in immigration reform. UAFAs would prevent families from being torn apart by amending Section 240A(b) of the INA so that same-sex couples would have the same opportunity as different-sex, married couples to prevent the removal of a spouse or partner on the basis of extreme hardship.

3. INCREASE THE NUMBER OF VISAS AVAILABLE TO THOSE SEEKING TO SPONSOR A RELATIVE UNDER THE CURRENT FAMILY PREFERENCE SYSTEM.

Problem: Over 4 million people are currently waiting for a family visa. Some applicants, like siblings of Filipino immigrants, would have had to apply before 1989 to receive a green card in 2013. Backlogs like these keep all families, including LGBT families, from being together. Current per-country limits, which require that no country receive more than 7% of the total number of visas issued each year, contribute to these backlogs. Such caps fail to recognize that countries such as China send far more immigrants to the U.S. than countries like Iceland.

Solution: Include the Reuniting Families Act in immigration reform. The Reuniting Families Act would reduce current immigration backlogs in order to ensure that families navigating our immigration system are reunited more quickly. Among other reforms, the Act would reduce wait times: (1) by amending Section 201(b)(2) of the INA so that lawful permanent resident spouses, children, and same-sex partners are classified as “immediate relatives” and exempted from numerical caps on family immigration, (2) by recapturing visas that have gone unused or unclaimed and (3) by increasing per-country visa limits from 7% to 10%.

Create a Pathway to Citizenship for Undocumented Adults and Young People

4. CREATE A PATHWAY TO CITIZENSHIP TO ENSURE THAT UNDOCUMENTED INDIVIDUALS CURRENTLY LIVING IN THE U.S. HAVE AN OPPORTUNITY TO COME OUT OF THE SHADOWS.

Problem: Conservative estimates suggest that there are over a quarter of a million undocumented LGBT adults living in the U.S. Despite their hard work to improve their lives and our economy, undocumented adults are forced to live in the shadows of society where lack of access to employment opportunities, healthcare, and education weakens our communities overall. Nearly half (49%) of these undocumented LGBT adults are estimated to be between ages 18 and 29. In addition, an estimated 65,000 undocumented youth, many who are LGBT, graduate from U.S. high schools each year. These hardworking young people have lived in the U.S. for all or most of their lives and want nothing more than to be recognized for what they are – Americans.

Solution: Include a pathway to citizenship and the DREAM Act in immigration reform. A pathway to citizenship would ensure that all undocumented individuals currently living in the U.S. are able to come out of the shadows and contribute fully to our communities and our economy. The DREAM Act would provide undocumented youth with an expedited path to citizenship if they attend college or serve in our military for at least two years.

Improve the U.S. Asylum System for LGBT Applicants

5. ALLOW SAME-SEX SPOUSES OR PARTNERS OF INDIVIDUALS WHO ARE REFUGEES OR GRANTED ASYLEE STATUS TO RECEIVE DERIVATIVE REFUGEE OR ASYLEE STATUS.

Problem: Refugees or asylees in the U.S. are able to avoid separation from the person they love by seeking derivative status for their spouse. But same-sex spouses or partners of refugees or asylees are not considered “spouses” for purposes of derivative asylum. Therefore, LGBT individuals are often forced to remain separated from the person they love in order to escape persecution.

Solution: Include UAFA in immigration reform. UAFA would amend Sections 207(c), 208(b)(3), and 209(b)(3) of the INA to ensure that same-sex permanent partners or spouses would have the same opportunity as different-sex, married couples to seek derivative refugee or asylum status.

6. ELIMINATE THE ONE-YEAR FILING DEADLINE THAT HAS HAD A DISPROPORTIONATELY NEGATIVE IMPACT ON LGBT ASYLUM APPLICANTS.

Problem: Individuals escaping persecution in their country of origin must apply for asylum within one year of their arrival to the U.S. The one-year filing deadline disproportionately impacts LGBT applicants who are often unaware that they may be eligible for asylum based on persecution related to their sexual orientation or gender identity. While such applicants

may be able to avoid or delay deportation, these alternatives do not lead to lawful permanent status. Therefore, refugees with otherwise viable asylum claims are often forced to live in permanent limbo subject to deportation.

Solution: Include the Refugee Protection Act (RPA) in immigration reform legislation. Among other things, the RPA would eliminate the arbitrary one-year filing deadline required under Section 208(a)(2) of the INA and ensure that LGBT asylum applicants with well-founded fears of persecution are given the chance to escape persecution in their country of origin.

Protect the Health and Safety of LGBT Immigrants

7. PROVIDE ACCESS TO HEALTHCARE FOR INDIVIDUALS IN THE PROCESS OF LEGALIZING THEIR STATUS, INCLUDING THOSE LIVING WITH HIV/AIDS.

Problem: LGBT undocumented people are uniquely impacted by laws limiting access to healthcare for undocumented individuals in the U.S. The Patient Protection and Affordable Care Act (ACA) bars undocumented individuals from purchasing insurance through state exchanges, even at full cost, and excludes them from access to Medicare, non-emergency Medicaid, and CHIP. This lack of access to healthcare disproportionately impacts those living with HIV, who face severe health risks without ongoing medical care. Additionally, without access to healthcare, undocumented transgender individuals are unable to obtain medically necessary care related to gender transition.

Solution: Provide immigrants in the process of legalizing their status access to treatment for HIV/AIDS and other medically necessary healthcare.

8. ENSURE THAT DETAINEES HAVE ACCESS TO MEDICAL CARE AND THAT HUMANE FORMS OF IMMIGRATION DETENTION ARE USED FOR INDIVIDUALS IN VULNERABLE POPULATIONS.

Problem: Studies report that current detention policies expose LGBT detainees to extraordinary levels of abuse and harassment. As such, many LGBT detainees are removed from these safety risks only to be placed in solitary confinement, where they find themselves facing extreme psychological hardships resulting from extended periods of isolation. Moreover, in detention facilities, many LGBT detainees have reported difficulty accessing healthcare services, including treatment for HIV/AIDS and medically necessary hormone treatments.

Solution: Include the Immigration Oversight and Fairness Act in immigration reform. The Act would better protect the health and safety of LGBT individuals navigating the U.S. immigration system by promoting secure alternatives to detention for vulnerable individuals and requiring that all detainees be treated fairly and humanely. It would also ensure that detention facilities provide prompt, high-quality medical care, including medical care addressing the needs of LGBT detainees.

9. PREVENT EMPLOYMENT VERIFICATION SYSTEMS FROM INCLUDING PERSONAL INFORMATION THAT IS UNNECESSARY TO VERIFY AN INDIVIDUAL'S IMMIGRATION STATUS, SUCH AS GENDER MARKERS OR PREVIOUS GENDER OR NAME CHANGES.

Problem: White House and Senate immigration reform proposals include language suggesting that employers may be required to look at new information when verifying an employee's identity and legal status. While it is unclear exactly what new information would be required by these reforms, legislation that would cause an employee's gender or previous name or gender changes to be disclosed to an employer would disproportionately impact transgender individuals. Such disclosures are unnecessary and could result in job loss or on-the-job discrimination for transgender individuals, who are not explicitly protected from workplace discrimination either by federal statute or the laws of 34 states.

Solution: Ensure that any employment verification system included in comprehensive reform legislation is narrowly tailored and asks for or discloses only information which is absolutely necessary for employment verification.