



EXECUTIVE SUMMARY

UNITED STATES

Family, Unvalued

Discrimination, Denial, and the Fate of Binational
Same-Sex Couples under U.S. Law

HUMAN
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Family, Unvalued

Relationships Unrecognized, Rights Denied

There are nearly 40,000 lesbian and gay binational families living in the U.S. without recognition and rights under federal law. (2000 U.S. Census)

When two people fall in love and plan to live their lives together, they may need the state to safeguard their union—this is never more true than if they have different nationalities. United States policy is crafted to help foreign spouses and fiancés immigrate and live with their American partners. But not if that partner is of the same sex.

Binational same-sex partnerships are comprised of lesbian and gay couples where one partner is a U.S. citizen or permanent resident, and the other is a foreign national. The 2000 U.S. Census estimated that almost 40,000 such couples, or over 70,000 people, lived together in the United States. These families dwell in every state, make their way at every income level, and represent a mosaic of American diversity.

Their relationships have no recognition in federal law.

Their exclusion is not accidental. Federal policy deliberately shuts these families out of the right to be together. This is the latest in a long line of discriminatory, arbitrary exclusions written into U.S. immigration law over the last two hundred years. A bill now before Congress would give these couples the right to reunite. Passing it is an important part of reforming the immigration system.

The estimated 40,000 binational same-sex couples captured in the 2000 U.S. Census do not include couples who avoid the census out of fear. They do not count couples who are forced to live apart, in different countries. They do not count couples where the American partner has chosen exile, so that their family can lead common lives in another, friendlier country than this one. To date, nineteen countries recognize lesbian and gay relationships in immigration law and policy, including some of the U.S.'s top trading partners, such as the United Kingdom. Yet, the U.S. still refuses.

The more than 70,000 members of such binational families, last counted in 2000, are only a part, perhaps a very small one, of a whole population of persons and families living without even the most basic of protections.

Uncertainty: “A ‘Don’t-Ask, Don’t-Tell’ World”



Mark Himes holds his son, John, with Claire Marie in tote. © 2006 Private.



Barbara, Susan, and their children, Shayne, and Jami. © 2006 Private.

Mark Himes and Fabien (an alias), his French partner, live in Pennsylvania with their children John and Claire Marie. Unfortunately, the family’s future stands on shaky ground; Fabien’s visa is set to expire. Mark says:

We live year by year with no plans for the future. We live in a ‘don’t-ask, don’t-tell’ world.

Barbara, a U.S. citizen, is legally disabled. She has a severely disabled, seventeen-year-old son, as well as a thirteen-year-old daughter. She relies on her British partner, Susan, to help around the house and care for her and the children.

It kills me that [Susan] has no legal rights to the kids. The family would be destroyed if something happened to me. . . . She wouldn’t even have the right to take them out of the country if she couldn’t stay here. We just want to be able to have a normal life as a family.

A woman living in Iowa with her New Zealand partner explains:

[Immigration laws] do not allow my partner to live a free life, she is in constant fear of being deported and removed from this country and her family... Together we are raising a twelve-year-old son. My partner is my son’s mother also, and losing her would destroy that little boy’s life ... She keeps this family together and whole. I am also a veteran of the United States Navy and have done my time and service to my country. It breaks my heart that for all I’ve done with this country it will not see the person I love who has strength to hold me up when life is bad—she cannot remain even after the commitment we have put into each other and our son’s life. I cannot imagine life without her. How could anyone live without their heart.

“I am also a veteran of the United States Navy and have done my time and service to my country. It breaks my heart that for all I’ve done with this country it will not see the person I love...”

—Anonymous

A Policy of Family Unity

Immigration discrimination denies lesbian and gay couples the promise of family reunification.

Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law, a joint report by Human Rights Watch and Immigration Equality, documents the crippling barriers such families confront in the pursuit of happiness.

In practice, the U.S. immigration system is filled with obstacles for many who seek to enter. Any binational family, straight or gay, may encounter injustices and bureaucratic barriers along the road to reunification.

But with only rare exceptions, a heterosexual couple where one partner is foreign, one a U.S. citizen, can lay claim to the right to enter the U.S. with a few strokes of a pen. They need not even marry: they need only show that they intend to do so and have met at least once in their lives.

A lesbian or gay couple cannot even claim that right. Their relationship—even if they have lived together for decades, even if their commitment is incontrovertible and public—is irrelevant for purposes of entering the United States. Instead, they face a long limbo of legal indifference, harassment, and fear.

Same-sex couples face abuse by immigration officials, and even deportation. Immigration inequality has a devastating impact not only on their partnerships, but on their careers, homes, children, livelihoods, and lives. Solely because of their sexual orientation or gender identity, they find their families shadowed by separation and dislocation. Often, their relationships are driven underground or even destroyed.

Family reunification has been a stated goal of U.S. immigration policy for more than fifty years. Immigration law puts priority on allowing citizens and permanent residents to sponsor their spouses and relatives for entry into the U.S. This policy was best explicated by a Congressional commission:

Psychologically and socially, the reunion of family members ... promotes the health and welfare of the United States (U.S. Select Committee on Immigration and Refugee Policy, “U.S. Immigration Policy and the National Interest” [1981] 112).

However, lesbian and gay people’s families do not factor into this equation. Their partners are excluded from the definition of “spouse.”

Separation: “I Feel Let Down By the U.S.”

Emmanuel (an alias) is twenty-three years old, and although he lived in Uganda for several years, he is Rwandan by birth.

When the genocide started I was in secondary school in Kigali. Most of my family was killed in Kigali—my father, my mother, most of my brothers and sisters. I fled to Butare and I survived. They found the person who killed my mother, and took him to jail. They wanted five people to come and testify against him, but most of the people who could testify had been killed in the genocide. They let him out. I was scared, my brother and I were scared. I went to Uganda to be safe, and I started to study English. It was there I met Charles.

Charles is thirty-six and a U.S. citizen. They met while he was working in Uganda for a relief agency. The couple is physically separated—Charles in Washington, D.C. and Emmanuel in Rwanda. Charles lost his job in Uganda because he was gay, and had to return to the United States. He says:

Emmanuel and I did not go to the U.S. embassy to apply for a visa. I knew it would be all but impossible, because Emmanuel was an African male, single, unemployed, no job, no ties to the land—that he would basically be throwing money away in applying for the visa.

As the two struggle to reunite, Emmanuel confesses:

I am so scared because of my security—what happened to me here. I just pray to God that if something happens sometime I can be somewhere where I can have security, where I can be happy with my partner.

As a representative abroad and messenger of American democratic values, Charles reflects on the contradictory nature of his professional and private life, but remains hopeful.

I was a Peace Corps volunteer, I served my country; I am trying to work where I could paint a better picture of the U.S. But I feel let down by the lack of understanding about what Emmanuel and I face ... We've been through so much together that I can't give up now. I just hope what we're going through can help change the way other people view these things.

I feel let down by the U.S., by our elected representatives, by the people who were supposed to help me. But it has brought Emmanuel and I closer together. Not literally—but in our hearts.

“I just pray to God ... that I can be somewhere where I can have security, where I can be happy with my partner.”

—Emmanuel

Panic Over Partnerships

Ending the discrimination that excludes lesbian and gay families from family reunification policies must be part of urgently needed comprehensive immigration reform.

Amid furious debate about whether to recognize lesbian and gay people's partnerships at any level, some distort the demand for simple fairness into a claim for "special rights," and falsely portray the principle of non-discrimination as a bid for privilege.

Some opponents of "gay marriage" openly define lesbian, gay, bisexual, and transgender people as second-class citizens. One conservative opponent clearly holds that homosexuals are not only unequal but "unqualified" to participate in society's basic benefits:

Homosexual marriage will devalue your marriage. A license to marry is a legal document by which government will treat same-sex marriage as if it were equal to the real thing. A license speaks for the government and will tell society that government says the marriages are equal. Any time a lesser thing is made equal to a greater, the greater is devalued ... Granting a marriage license to homosexuals because they engage in sex is as illogical as granting a medical license to a barber because he wears a white coat or a law license to a salesman because he carries a briefcase. Real doctors, lawyers, and the public would suffer as a result of licensing the unqualified and granting them rights, benefits, and responsibilities (Jan LaRue, "Talking Points: Why Homosexual 'Marriage' is Wrong," [Concerned Women for America, 2003]).

The fear of acknowledging lesbian and gay people's partnerships has had devastating results for many. One overriding obstacle is the so-called Defense of Marriage Act passed in 1996 under the Clinton Administration.

While local recognition of same-sex partnerships, such as domestic partnership, already had no effect on federal immigration policy, the Defense of Marriage Act declared that for all purposes of the federal government "marriage" would mean "only a legal union between one man and one woman as husband and wife."

Thus, exclusion of lesbian and gay couples from U.S. family-reunification policy was written into law.

In addition, since 1993 U.S. law has banned all HIV-positive foreign nationals from entering the United States, or from being granted permanent residence once here. While a waiver of the ban is available for green card applicants, only a U.S. citizen spouse, parent, or child may petition for the waiver on behalf of someone living with HIV/AIDS. As with all other aspects of immigration law, same-sex partners are not recognized as family and cannot request the waiver. HIV-positive foreign nationals without a recognized family relationship may have no way to obtain legal permanent residence in the U.S. other than winning asylum.

Instability: “You Can Never Just Be”



Stephanie and Callie. © 2006 Private

Many couples face crippling financial burdens trying to sustain one life with two passports. Callie, a U.S. citizen who has a chronic illness and is legally blind, already lived frugally before falling in love with her British girlfriend, Stephanie (an alias). Now the challenges of their situation overwhelm her. When they met, Callie's primary support was Social Security Disability Insurance, which paid her \$252 a month. They could find no way for Stephanie to relocate legally to the U.S., so Callie is now on a student visa in England. Callie explains that their falling in love has devastated their finances:

Talking on the phone was horribly expensive. Stephanie's phone bill was more than two hundred dollars a month! At the time, my income ranged between five hundred and sixty dollars and six hundred dollars a month. In October 2002, I started doing minimum wage work, which helped. At that time, I was going into debt. Social Security doesn't ever pay enough, so when the phone bills increased, it all went on the credit card. I probably incurred at least four thousand dollars of debt, and of course, I had no money to pay that. I had enough money to just pay my bills.

The stress of life in a same-sex binational couple is taking its toll on Callie.

We live hand-to-mouth ... Honestly, I feel homeless. I've moved three times in the last two years. I have no home left in America because it's gone now; the remaining things are boxed up at my mom's or were sold, all wrapped up and taken away ...

Stephanie adds:

You feel like you're constantly in limbo. You have no ability to make plans. You're not quite sure even about the next year ... You're always waiting for something, you can never just be.

“We live hand-to-mouth... Honesty, I feel homeless. I've moved three times in the last two years. I have no home left in America because it's gone now...”
—Callie

Panic Over Immigration

For almost forty years during the Cold War, the United States banned lesbians and gays from entering its borders.

Same-sex binational couples are trapped between two panics gripping much of the United States. One is the national discussion surrounding immigration reform; the debate is over equality in civil marriage.

Binational couples, along with tens of thousands of other non-citizens, face a rising chorus of alarm over immigration in the U.S. In fact, modern anti-immigrant movements borrow fears and rhetoric from a long history of exclusion.

From 1860 to 1920, almost thirty million immigrants entered the country, invigorating every part of the nation's life, infusing its culture with their own, increasing its population, wealth, and power. Yet mounting hostility greeted them. Conservatives in the nineteenth century warned that restricting immigrants—whether Italian, Irish, Jewish, or Chinese, to name only a few of the most prominent targets—was needed “to preserve the human blood and manhood of the American character by the exclusion of depraved human beings” (Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1866-1917* [Chicago: University of Chicago Press, 1996] 200).

And restrictions on sexuality moved hand-in-hand with restrictions on immigration. Racist and sexist marriage laws were used to keep out people deemed undesirable. One federal law dictated that any U.S. woman marrying a foreigner who was ineligible for immigration be stripped of her own citizenship without trial. From 1952 until 1990, United States law barred admitting homosexuals to the country on “security” grounds. One Senator said, “You can’t hardly separate homosexuals from subversives ... They are all tied up together” (Max Lerner, “The Senator and the Purge,” *New York Post*, July 17, 1950, quoted in Jonathan Katz, *Gay American History: Lesbians and Gay Men in the U.S.A.* [New York: Harper Colophon, 1976] 95).

Today, this history of interlocked fears has new relevance. After the September 11, 2001 attacks, passionate opposition to immigration reached new heights. Foreign visitors and immigrants were suddenly called “the single greatest threat to the lives of America’s 280 million people” (John Perazzo, “Illegal Immigration and Terrorism,” *Front Page Magazine* [2002]).

Lesbian, gay, bisexual, and transgender foreigners share the spreading stigma and, like other non-nationals, encounter closed doors and even incarceration. In 2005, the House of Representatives passed legislation that would criminalize undocumented immigrants and those who help them.

Such proposals reflect a new intensity in anti-immigrant feeling. The 2005 bill, for example, would turn immigrants into criminals a single day after their visas expired. Anyone who knowingly tries to help a foreigner in this predicament could be considered a felon. A U.S. citizen whose same-sex partner fell out of status could be convicted of “harboring” their partner and be imprisoned and stripped of their home and property.

Remedying Injustice, Reforming the System

Freedom from discrimination is a human right. The hardship, harassment, and pain that same-sex binational couples endure in confronting and attempting to navigate the U.S. immigration law show the discriminatory consequences of denying a class of people the recognition their relationships need and deserve.

Equally important, the resulting losses and separations also reflect a broken immigration system: inconsistent standards, processes ridden with arbitrariness and delay, and conflicting rules that encourage discrimination and abuse. Innumerable families navigating the U.S.'s reunification system find obstacles to their ability to live together in this country. The problems of lesbian and gay couples are only part of the system's failures.

Once again, though, while heterosexual families can elicit a measure of public and political sympathy, discrimination against lesbian and gay families is written into law. Even their claim to family status is foreclosed from the start.

The United States urgently needs to enact comprehensive immigration reform—ensuring adequate and fair avenues for immigrants to enter the United States both temporarily and permanently, and offering reasonable roads to legal status for undocumented immigrants already living and working in the country. Ending the discrimination that excludes lesbian and gay families from reunification policies must be included.

Human Rights Watch and Immigration Equality both strongly support full equality in civil marriage, allowing same-sex couples the same recognition under law that heterosexual couples enjoy.

Yet repairing the inequity in the immigration system that tears same-sex binational families apart is an issue distinct from the debate over inequality in marriage. A bill now before Congress would remedy this discrimination. The Uniting American Families Act (UAFA) would add the category “permanent partner” to the classes of family members entitled to sponsor a foreign national for U.S. immigration.

The bill would address a terrible inequality. It would protect dedicated families and their children. It would prevent the drain of talented people to other countries. Its passage is urgent.

The “Defense of Marriage Act” (DOMA) effectively prohibits the federal government from recognizing lesbian and gay people’s relationships for any purpose—including immigration.

Key Recommendations

The UAFA would fulfill the promise of family reunification in the U.S. immigration system by letting citizens and lawful permanent residents in binational same-sex relationships sponsor their partners for immigration to the United States.

The U.S. Congress should:

- Pass the Uniting American Families Act so that binational same-sex couples' relationships receive the same recognition and treatment as binational opposite-sex couples within the U.S. immigration system.
- Repeal the Federal Defense of Marriage Act (DOMA) which mandates discriminatory treatment of lesbian and gay relationships by the U.S. federal government.
- Declassify HIV as a "communicable disease of public health significance"—a provision which bars HIV-positive non-citizens from entry without a waiver. It does not protect the public health of the United States, and only adds to the stigma faced by lesbian, gay, bisexual, and transgender people applying for entry to the U.S.

The U.S. Department of Homeland Security should:

- Allow same-sex partnerships that are legally recognized in foreign or domestic jurisdictions to be legally valid for U.S. immigration purposes.
- Implement training to counter discrimination based on sexual orientation or gender identity/expression in all areas of the immigration system.
- Take measures to end discrimination in immigration detention facilities against lesbian, gay, bisexual, and transgender people, and people living with HIV/AIDS.
- Ensure that all non-citizens facing removal from the United States have access to judicial review and appeal to a higher authority, as required by international human rights law.

The Uniting American Families Act

The Uniting American Families Act (UAFA) would, if passed, allow U.S. citizens and lawful permanent residents in binational same-sex relationships to sponsor their foreign-born partners for immigration to the United States.

The bill was first introduced in February 2000 by Congressman Jerrold Nadler (D-NY). The UAFA would fulfill the promise of family unification in the U.S. immigration system by adding the term “permanent partner” to sections of the Immigration and Nationality Act (INA) where “spouse” now appears. Thus, a U.S. citizen or permanent resident could sponsor a permanent partner for immigration to the U.S., just as one can now sponsor a sibling, child, husband or wife. To qualify as the permanent partner of a U.S. citizen or lawful permanent resident one would have to be:

- At least eighteen years of age;
- In an intimate relationship with the sponsoring adult U.S. citizen or legal permanent resident, in which both parties intend a lifelong commitment;
- Financially interdependent with that person;
- Not married or in a permanent partnership with anyone other than that person; and
- Unable to engage with that person in a marriage that is recognized under the INA.

A permanent partnership is not marriage. A successful application would confer no benefits other than immigration status.

The UAFA would not open the gates to waves of newcomers. People claiming permanent partnership would have to prove the fact, and undergo the same rigorous investigations that authorities already impose on binational married couples—meaning the bill would not open new possibilities for “marriage fraud.”

The UAFA would discourage unlawful presence, and let people live open, honest lives. For otherwise law-abiding LGBT people running out of legal options, their relationships would no longer lead to choices no one should have to make.

Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law is the product of three years of research and documentation. Throughout 2003 and 2004, Immigration Equality surveyed approximately 900 binational same-sex couples via questionnaire. In 2004, Human Rights Watch and Immigration Equality began formally collaborating on the project, and conducted in-depth interviews with 33 gay, lesbian, and transgender couples. We are deeply grateful to all of the families and individuals who told their stories and made this report possible.

HUMAN RIGHTS WATCH

Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

www.hrw.org

IMMIGRATION EQUALITY

Immigration Equality is a national organization fighting to end discrimination in U.S. immigration law against lesbian, gay, bisexual, transgender and HIV-positive people. We help win asylum for people fleeing persecution based on their sexual orientation, transgender identity or HIV-status. We educate and inform immigrants, attorneys, and policymakers about the discriminatory impact of the law.

www.immigrationequality.org



All photos: © 2006 Private

Family, Unvalued

Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law

“Recognizing Our Relationships Would Only Strengthen Our Nation”

The United States, a nation of immigrants, likes to see itself as a symbol of freedom. Its immigration system is built around family reunification. Yet some families have no recognition—and no rights.

Binational same-sex couples are gay and lesbian couples where one partner is a U.S. citizen, the other a foreign national. In 2000, the U.S. Census estimated nearly 40,000 such couples living together in the United States. They dwell in every state, make their way at every income level, represent a mosaic of American diversity.

This report documents the crippling barriers such families face in pursuing a goal enshrined in America’s founding document—happiness. A heterosexual

couple where one partner is foreign, one a U.S. citizen, can claim the right to enter the U.S. with a few strokes of a pen. But a gay or lesbian couple’s relationship—even if they have lived together for decades, even if their commitment is incontrovertible—is irrelevant for purposes of entering the United States.

In this report, couples tell stories of abuse by immigration officials, and even deportation. They describe the devastating impact not only on their partnerships but on their careers, homes, children, livelihoods, and lives.

Delays, bureaucracy, inconsistency and injustice make the U.S. immigration system a nightmare for millions. *Family, Unvalued* shows how the broken system affects, and sometimes destroys, relationships which prejudice has deprived of legal protection. As one woman told us, reflecting on her six-year relationship with her Jamaican partner:

We are in love. This country needs more love. Why my country fights so hard to interfere with my right to pursue happiness and live in peace and harmony with all is beyond me. It saddens me deeply. Recognizing our relationships would only strengthen our nation.

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