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THE DETENTION AND TREATMENT OF HAITIAN ASYLUM SEEKERS

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BEFORE THE

SUBCOMMITTEE ON IMMIGRATION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

Page

Brownback, Hon. Sam, a U.S. Senator from the State of Kansas 2
Conyers, Hon. John, Jr., a Representative in Congress from the State of Michigan [ex officio] 7
prepared statement 27
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts ... 1

WITNESSES

Johnson, Stephen C., Policy Analyst for Latin America, Heritage Foundation, Washington, D.C. 12
Little, Cheryl, Executive Director, Florida Immigrant Advocacy Center, Miami, Florida 10
Ocean, Marie Jocely, Haitian asylee and former detainee, Miami, Florida 8
Parks, Dina Paul, Executive Director, National Coalition for Haitian Rights, New York, New York 13
Wenski, Thomas G., Auxiliary Bishop of Miami, Florida, and Chairman, U.S. Conference of Catholic Bishops' Committee on Migration, Miami, Florida 5

SUBMISSIONS FOR THE RECORD

American Civil Liberties Union, Lida Rodriguez-Taseff, President, Miami-Dade County Chapter, Miami, Florida, statement 22
American Federation of Labor and Congress of Industrial Oganizations, Washington, D.C., statement 24
Carey-Shuler, Barbara M., County Commissioner, Miami-Dade County Board of County Commissioners, Miami, Florida, statement 25
Department of Justice, Daniel J. Bryant, Assistant Attorney General, Office of Legislative Affairs, Washington, D.C. 30
Glover, Danny, Miami, Florida, statement 33
Graham, Hon. Bob., a U.S. Senator from the State of Florida, statement 35
Johnson, Stephen C., Policy Analyst for Latin America, Heritage Foundation, Washington, D.C., prepared statement 38
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts, and Hon. Sam Brownback, a U.S. Senator from the State of Kansas, joint letter 45
Lawyers Committee for Human Rights, Anwen Hughes, Staff Attorney, Washington, D.C., statement 47
Little, Cheryl, Executive Director, Florida Immigrant Advocacy Center, Miami, Florida, prepared statement 59
Miami-Dade County Community Relations Board, Adora Obi Nweze, Chair, Community Relations Board, position statement 73
National Association for the Advancement of Colored People, Brad Brown, President, Miami-Dade Branch of the NAACP, Miami, Florida 74
Nelson, Hon. Bill, a U.S. Senator from the State of Florida, statement 82
Ocean, Marie Jocelyn, Haitian asylee and former INS detainee, prepared statement 83
O'Laughlin, Sister Jeanne, OP, President, Barry University, Broward County, Florida, statement 86
Parks, Dina Paul, Executive Director, National Coalition for Haitian Rights, New York, New York, prepared statement 87
Ros-Lehtinen, Hon. Ileana, a Representative in Congress from the State of Florida, statement 99

Page

Russo, Monica, President, SEIU 1199 Florida, AFL–CIO, International Executive Board, Service Employees Interational Union, Florida, statement 101
United Caribbean African Alliance, Inc., Bernier Lauredan, M.D., Chairman, Washington, D.C., statement 103
United Nations High Commissioner for Refugees, Guenet Guebre-Christos, Regional Representative, Washington, D.C., statement 105
United States District Court for the Southern District of Florida, Miami Division 112
Wenski, Thomas G., Auxiliary Bishop of Miami, Florida, and Chairman, U.S. Conference of Catholic Bishops' Committee on Migration, Miami, Florida, prepared statement 118
Women's Commission for Refugee Women and Children, Wendy A. Young, Director of Government Relations, New York, New York, statement 127

THE DETENTION AND TREATMENT OF HAITIAN ASYLUM SEEKERS

TUESDAY, OCTOBER 1, 2002

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:46 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Edward M. Kennedy, Chairman of the Subcommittee, presiding.

Present: Senators Kennedy, Brownback, and Representative Conyers [ex officio.]

OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Chairman KENNEDY. Thank you for your patience. We look forward to our hearing today.

Senator Brownback and I had our consultation with the State Department on the number of immigrants and we are disappointed with the administration's decisions in terms of the total numbers, but we are going to work with them to try and see if we can't persuade the administration to respond to the great human tragedy that is being experienced by refugees all over the world and for many who meet the criteria which both the United States and the international community have defined as being the criteria under which they would be welcomed here into the United States.

I want to welcome some special guests who are longstanding advocates for Haitian rights. We have representatives here from Massachusetts, Florida, New York, and Connecticut. I thank all of you for your leadership and commitment and your support for the fair treatment of Haitian refugees.

Many of us are troubled by the detention policy of the Department of Justice. On December 3, 2001, a refugee boat carrying 187 Haitians ran aground off the coast of Florida. The Coast Guard rescued 167 persons and they were detained and placed in removal proceedings by the Department of Justice.

The INS Deputy Commissioner instructed the INS field officers to implement a new parole policy in cases of all Haitians arriving by boat in Florida after December 2001. The instructions stated that no Haitian should be paroled from detention without approval from Washington.

One of the express purposes of this new policy is the deterrence of future Haitian arrivals by sea. Last week, in a letter from the Justice Department, they confirmed their change in policy and ex-

plained their reasons for the change, that detention was needed to "prevent against a potential mass migration to the United States."

A major concern is that such a policy violates well-established international refugee standards which are the basis of U.S. law. As an advisory opinion of the United Nations High Commissioner for Refugees states, "[t]he detention of asylum seekers...to deter future arrivals does not fall within any of the exceptional grounds for detention and is contrary to the principle underlying the international refugee protection regime."

Another major concern is whether this detention policy is discriminatory. It appears to be a policy based on the national origin of the detainee, with no regard for the person's individual record or circumstances. The policy applies only to Haitian asylum seekers. Similarly situated asylum seekers of other nationalities are routinely released.

Most of the Haitians in question have demonstrated a credible fear of persecution, have family or community contacts willing to sponsor them, do not pose a flight risk, and would not pose a danger to the community. These factors would normally have resulted in grants or parole from detention and are the same factors currently used to parole other nationals from detention. Yet, the Haitians have been singled out for more restrictive treatment. Such a policy appears to violate U.S. law, which according to a 1995 Supreme Court decision, must be based on individualized parole determinations without regard to race or national origin.

Prolonged detention has also interfered with the ability of Haitians to present their asylum claims. Few of the Haitians can afford to retain private counsel, and few legal service providers have the staff and resources to represent all of the detainees.

As a result, many Haitians have been forced to appear in immigration courts unrepresented. In some cases, they have relied on INS officers to assist them in completing their asylum applications, a clear conflict of interest. Despite these problems, requests from local legal service organizations for adequate time and access to Haitian detainees has at times been denied.

As of last week, only 16 of the 167 detainees from the December 2001 boat have been granted asylum, despite a majority having initially passed the credible fear interview. Fifty of the detainees have been deported and another 54 are awaiting removal. Given the current escalation of violence in Haiti, the life and death implications of improper detention practices and inadequate access to representation are very troubling.

The committee invited the Justice Department to testify today. Unfortunately, the Department did not send a representative to participate in this hearing to defend or explain the policy they initiated, implemented, and stand behind. I regret the Department's absence and I look forward to the testimony of our witnesses.

Senator Brownback?

STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator BROWNBACK. Thank you, Mr. Chairman, and thank you for calling the hearing. I too am disappointed in the numbers that are coming out, the refugee resettlement numbers in the United

States, and we are going to continue to work together to try to get those numbers up and to get a larger number of refugees into the United States. We need to; it is the right thing for us to do.

There are a number of people sitting in very difficult, extraordinarily hostile circumstances in refugee camps around the world and we really need to help these people out. I know we have had difficulties after last September 11. Those are well-known and documented, but it doesn't remove our need to be able to help people that are in the most dire of circumstances.

I think it ennobles us as a country, and it also speaks volumes to the rest of the world, when we open our country up to help those in the worst of circumstances. So I am hopeful that we can continue to put some pressure forward to get that refugee population number up. I am eager to hear the testimony by the witnesses here today.

It needn't be repeated, but it is always worth repeating that our Nation has a long and noble tradition of being a country or refuge. We are the world's leader in the protection of refugees and asylum seekers, and I am pleased that we are and I want us to continue to be that.

No other nation has made the political, financial, or spiritual commitment that this Nation has made to sheltering the persecuted from harm. It is the Book of Jeremiah for guidance that we can read. This is what the Lord says: "Do what is just and right. Rescue from the hand of the oppressor the one who has been robbed. Do no wrong or violence to the alien." Then you can even look in the Book of Matthew: "For I was hungry and he gave me something to eat. I was thirsty and he gave me something to drink. I was a stranger and you invited me in."

Our Nation's commitment extends to all refugees, irrespective of their race, nationality, religion, political opinion, or social group. Our obligation is to rescue from the hand of the oppressor, to treat the stranger with kindness and respect, no matter where that person comes from.

I appreciate that with respect to Haiti, there are political and administrative considerations that guide the administration's detention policies and have done so with prior administrations. However, the detention of Haitian asylum seekers is neither a new topic nor an unfamiliar controversy. To the contrary, it appears to be a chronic concern that crosses administrations.

Mr. Chairman, I look forward to the testimony of our witnesses and welcome their insights. I appreciate the passion and compassion that they will bring to the issue. I hope that with their help, we can bring the NGO community and the administration together to work out a meaningful and lasting solution to the problems that will be detailed before us today, and that there will not be a prejudice based upon one certain group or another or other considerations. We need to consider and treat everybody as equal and the same in regard to refugee policy and asylum seekers seeking asylum or refuge in the United States.

Mr. Chairman, as the administration is not here to testify today, I would like to submit for the record a document that represents the administration's position. The correspondence is from the Assistant Attorney General, Daniel Bryant. It is dated September 25

and it is chronicling the development of the current policy toward Haitian asylum seekers.

With that, Mr. Chairman, I look forward to the testimony we are going to hear today, and I do hope we can start to move forward toward some resolution of this chronic problem.

Chairman KENNEDY. Thank you very much. We will include in the record.

I would like to have our panel come up.

Bishop Thomas Wenski is the Auxiliary Bishop of Miami, Florida, and Chairman of the U.S. Conference of Catholic Bishops' Committee on Migration. He is also Director of Catholic Charities for the Archdiocese of Miami. For more than 20 years, Bishop Wenski has been an eloquent and powerful voice for refugees fleeing persecution.

Bishop Wenski speaks Creole and is especially well-known both in the United States and Haiti as a defender of the rights of Haitians, and I am honored to welcome him and look forward to his testimony.

I would also like to welcome Marie Ocean, who is a Haitian asylee and a former INS detainee at the Turner Guilford Knight Correctional Center. Marie Ocean fled her native Haiti after he father and brother were already assassinated by political opponents and she feared for her life. She is one of the original December 2001 boat refugees.

Ms. Ocean, I would like to thank you very much for being here. I know it took a lot of courage to share your story with us. I also want to thank Gepsie Metellus, who will be translating for you.

Cheryl Little is the Executive Director of the Florida Immigrant Advocacy Center in Miami. Ms. Little co-founded the Florida Immigrant Advocacy Center that provides free legal help to immigrants of all nationalities. FIAC serves the most vulnerable immigrants, including asylum seekers, the homeless, and victims of domestic violence. Ms. Little is a nationally recognized, tireless advocate deeply committed to safeguarding the rights of asylum seekers and refugees. I look forward to her testimony.

I would like to welcome Stephen Johnson, a former State Department officer who has worked in the Bureau of Inter-American Affairs and Public Affairs. He is a currently the Latin American policy analyst at the Kathryn and Shelby Cullom Davis Institute for International Studies at the Heritage Foundation.

During his time at the State Department, Mr. Johnson was a writer and researcher, serving as the Director of the Central American Staff Working Group, and later as the Chief of the Editorial Division in the Public Affairs Bureau. We welcome him and thank him for testifying. I look forward to your views.

Dina Paul Parks is the Executive Director of the National Coalition for Haitian Rights, in New York City. She helps to develop policy and recommendations on immigration, human rights, and Haitian American community development. NCHR was established in 1982 in response to the waves of refugees fleeing the oppressive Duvalier regime. For over 20 years, the NCHR has promoted human rights and democracy in Haiti, while advocating for fair treatment and policies for Haitian refugees. I am pleased that she will be testifying today.

We will hear from Bishop Wenski.

STATEMENT OF THOMAS G. WENSKI, AUXILIARY BISHOP OF MIAMI, FLORIDA, AND CHAIRMAN, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS' COMMITTEE ON MIGRATION, MIAMI, FLORIDA

Bishop WENSKI. Thank you, Mr. Chairman, for inviting me to testify today. First, I would like to thank you and your subcommittee for holding this hearing today. I thank you for your longstanding commitment to immigrants and refugees in this Nation.

I would also like to thank Senator Brownback for his support of fair access for asylum seekers seeking protection in the United States. Senator Brownback also took time out of his busy schedule to visit with the United States Catholic Conference of Bishops' Committee on Migration several weeks ago. At that time, Senator Brownback spoke of his concern at the treatment accorded Korean asylum seekers in China. I think today's proceedings might point out some unfortunate parallels between the way China treats North Korean asylum seekers and our own policy toward asylum seekers from Haiti.

Before being ordained a bishop, I worked as a parish priest among the Haitian population in South Florida for almost 20 years. During that time, my pastoral duties included visiting Haitians detained at the INS Krome processing center.

The present policy, which holds a group of 160 Haitian nationals in indefinite detention since December of last year, recalls the ill-fated detention policies of the early 1980's when thousands of Haitians were held in detention at Krome and in other places for more than a year, until the Federal courts forced the INS to release them.

At that time, USCCB's Migration and Refugees Services assisted the Government in helping these detainees reunite with family members in the United States, seek legal advice and counsel, and to comply with periodic reporting to INS while their applications for asylum were being processed.

In my work with Haitians in South Florida, I have found them to be hard-working, honest, and God-fearing members of our communities. They have been a positive influence in South Florida and elsewhere. In recent years, Haitian Americans have distinguished themselves in all areas of our community's life, and indeed today several are elected public officials. In other words, whatever fears there might have been that led to the early policies of the 1980's have not been realized. They were unfounded. So one must ask why do we return now to a policy that is unfair and unjust?

The present policy is unfair because it singles out Haitians for disparate treatment. Other groups of asylum seekers similarly situated who arrive on the shores of South Florida are not subjected to indefinite detention. Except for a few cases, nearly all Haitians arriving by sea to Miami have been detained, while more than 90 percent of other nationalities arriving the same way during the same period have been released while their claims are adjudicated.

The present policy is unjust, for the indefinite detention of asylum seekers erodes refugee rights provided for under international law. In my written statement I submitted to the committee, the appropriate references to international laws are cited.

As we have done since the mid-1970's, the United States Bishops call for an end to a policy that unfairly and unjustly discriminates against Haitian asylum seekers. Once again, we call for a reexamination of current interdiction policies. Haitians stopped on the high seas or in airports must not be denied the opportunity to request asylum and to be heard fairly.

Once again, we call for the reversal of the current policy of indefinite detention of Haitian asylum seekers. Those already found to have met credible fear criteria should be immediately released and afforded a reasonable time to secure counsel and to petition for asylum.

Once again, we offer our assistance to INS in helping to resettle asylum seekers from Haiti while their cases go forward. In the early 1980's when we collaborated with INS in facilitating the release of Haitians, we helped them to report their whereabouts to INS and to appear at their hearings. They did not abscond, they did not pose a flight risk.

USCCB's MRS has long collaborated with INS and ORR in helping Haitian and Cuban entrants process through Krome for over 20 years. This offers a way that builds upon the successes of the past, that serves the interests of justice, and provides a cost-effective alternative to indefinite detention.

I remember how 1 day in the early 1980's officials from INS in Miami contacted me at my church. They requested that I accompany them to the home of a woman in Fort Lauderdale. Her son was detained in Krome for several months after arriving from Haiti after a harrowing voyage in a rickety boat. Fearing for his life if forcibly deported to Haiti and despairing of ever leaving the monotony of a then seriously overcrowded facility, he committed suicide in Krome. The INS officials asked me to interpret for them as they presented their condolences to his mother.

Today, whether in Krome where the men are held or the TGK correctional facilities, the county jail where the women are held, the present revival of the old and cruel policy of indefinite detention has recreated those same conditions that breed fear and despair, and portend further tragedy. Mr. Chairman, this is not worthy of the United States of America.

[The prepared statement of Bishop Wenski appears as a submission for the record.]

Chairman KENNEDY. Thank you very much, Bishop.

We are joined by Congressman Conyers, who has been a great leader nationally on this issue. Certainly, if he had a word to say, we would welcome it, and we would invite him, as well, if he had the time, to listen to the rest of our witnesses as someone who cares very deeply about this issue. We always welcome our colleagues from the other side, and more particularly welcome a friend.

STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Representative CONYERS. Mr. Chairman, I am honored, first of all, to sit with you anywhere, but in the U.S. Senate it is even better, and at a committee that you are chairing is even better yet. So please know that I am happy to be with you.

I would be happy wherever I was sitting, especially with the witnesses that you have on this panel. Cheryl Little and Marie Ocean and, our friend, Ms. Parks have all done incredible work on this subject. It is a labor of love, and I am very privileged to join with you, Bishop Wenski, in merely discussing this subject for a couple of minutes.

I am going to put my statement in the record, and so what I would like to do now is just lift up the main problem here, which is that Haitian arrivals into this country, particularly through Florida, seeking asylum are treated differently from everybody else that comes to the United States—everybody.

There is a policy of, number one, turning them away right on the spot, no questions asked. They turn the boats around. You may say, do they need food or nourishment, or are they sick, or is their little raft capable of going back? They turn it around. That is it, no questions asked. That is in violation, of course, of our immigration laws, but it more seriously contravenes any spirit of the treatment that human beings should be afforded anywhere in the world, much less coming to the shores of the United States.

The other point is about Krome itself, which is a nightmare. I was talking to the acting superintendent there. Here are some of the problems encountered during this visit.

[The information referred to appears as a submission for the record.]

Representative CONYERS. The discriminatory process of the Immigration and Naturalization Service has to end, and I sure hope that they are scheduled to come before you today or sometime soon. I would sure like to hear their statements under oath about some of the things that are going on there. The separation of mothers from their children is disgraceful.

Then the final point that occurs to me is the way the lawyers representing Haitian asylum seekers are treated in the INS courts. It is shabby, it is disrespectful, and it is not in keeping with any sense of fairness that we try to operate our system of laws with.

So I am delighted and congratulate you, Mr. Chairman, for holding these hearings and I am very pleased to see all of these witnesses with us. Thank you.

[The prepared statement of Mr. Conyers appears as a submission for the record.]

Chairman KENNEDY. Thank you very much. We might join and ask the American Bar Association to do a study about how the attorneys are treated and give a report back to us.

Representative CONYERS. I would like to join you in such a request.

Chairman KENNEDY. We might join with Senator Brownback and others and see if it might make some sense.

Marie Ocean, we thank you for being here. We thank you for coming and we know it is not easy to talk about the struggles in

one's life as you have had, and so we are very grateful to you for telling us your story. By telling us your story, we will try and make sure it doesn't happen to other people.

STATEMENT OF MARIE JOCELYN OCEAN, HAITIAN ASYLEE AND FORMER DETAINEE, MIAMI, FLORIDA

Ms. OCEAN. [speaking through an interpreter.] Good afternoon, ladies and gentlemen. Good afternoon, Mr. Chair. My name is Marie Jocelyn Ocean. I am from Haiti and I am here because of my difficulties, my problems, with Lavalas.

I suffered quite a few shocks, I suffered several shocks as a result of Lavalas. They killed a brother of mine. They beat up one of my brother's children. Fifteen days after my brother's funeral, my father was killed. Subsequent to that, another brother of mine was beaten and abused and suffered a stab wound right above his eyebrow.

They came after me subsequently, but I ran. Because they did not find me, they beat up on my 9-year-old girl. This year, she is 10 years old. And these are the reasons that I fled the country by boat—I along with the many other women who are still detained for the same reasons.

I am not alone to have suffered this problem. My problem is also the problem of the other women who are still detained. We were detained by the Immigration and Nationalization Service on December 3. I was taken to jail, I along with the other women detainees. I was held in a motel that served like a jail along with other women and we were not treated well at all.

We were in a room. Essentially, it had no windows and we were not able to see the outside at all. We could not breathe. The only opportunity to enjoy the outdoors was on our trips to the court. And there was also a 7-year-old youngster also locked up with us. A 7-year-old should not be detained in such circumstances.

I was summoned by an official at the jail, supposedly because I was going to court, and I found myself being transferred to another facility, a jail, TGK. Upon my arrival at TGK, I was strip-searched. I along with the other women were equally strip-searched, and this process of being strip-searched was absolutely humiliating and we were handcuffed and escorted into the jail.

At the jail, one of the experiences was the evening check-ups when the guards would come around to check the cells and to make sure that all the detainees were in place. The locking of the doors, the banging on the jail doors, and the flashlights was absolutely traumatizing. The flashlights interrupting our sleep that way was traumatizing and that made us even more fearful, and that contributed to taking us back to the experience we had in Haiti.

And certainly we were taken before a judge, but not being able to speak English, not understanding the process, the procedures, we were helpless. Among the other women detainees, I was the only fortunate one to have been benefited from the legal assistance of a FIAC attorney, and this attorney accompanied me and represented me before the immigration judge at TGK.

On May 31, 2002, I went before the judge and I was granted asylum in the United States. I was very happy to receive asylum, but I was still troubled. I was troubled for the other women detainees

because we were in the same boat together, so to speak, because when we were all captured we did not know where we would end up.

They were moved from one detention facility to another, and I think that these women should not have been detained in that manner. And all of the other nationals who subsequently requested asylum were released, while the Haitians were kept and were denied every time. All of us have the same blood flowing through our veins and we are all God's children; we are children of the same God.

We thought that coming before Americans, coming before America with the problems we endured, with the troubles we had to experience, and that if we came with our troubles before America, America would consider this treatment we experienced, as well as the torture we experienced. Unfortunately, this was not the outcome that we anticipated or expected.

We were treated worse than common criminals because the facility in which these women are detained is a jail facility for criminals. They will have been there 10 months now. They should not have been there for such a long time because they are not criminals. They did not kill anyone.

I acknowledge that we arrived illegally, but we are not to be blamed because conditions in our country forced us to flee. According to the laws of this country, while it is true that we arrived illegally and we could have been detained to be punished for breaking those laws, we should not been punished or detained for such a long time.

We were absolutely humiliated. We were devaluated as human beings. Certainly, the authorities do not view it that way, but we detainees certainly feel and experience it that way because when an adult cries, certainly there are problems, and he cries because he has problems.

Since my arrival in the United States, since my and the other detainees' arrivals, we have not experienced the same difficulties as in Haiti, because the conditions under which I fled Haiti are certainly different from the conditions I live in today. I am no longer afraid for my life.

I appear before you today to testify and to appeal to you to help these women detainees because we are all one and the same, because we must hang in there together, put our heads together so that they too can be freed.

Thank you very much for the opportunity to appear before you to testify on my behalf as well as on behalf of the other women detainees.

[The prepared statement of Ms. Ocean appears as a submission for the record.]

Chairman KENNEDY. Thank you for that extraordinary story of incredible pain, anguish and misery. No one should have to undergo that kind of treatment here in the United States. It is an absolutely despicable kind of treatment, and we certainly find it as shocking an injustice as you do and we will see what we can do to try to bring that kind of treatment to a halt. It is very powerful testimony and we appreciate very much your willingness to share it with us.

Ms. Little?

STATEMENT OF CHERYL LITTLE, EXECUTIVE DIRECTOR, FLORIDA IMMIGRANT ADVOCACY CENTER, MIAMI, FLORIDA

Ms. LITTLE. On behalf of the Florida Immigrant Advocacy Center, I want to thank you, Mr. Chairman, and Senator Brownback for inviting me to testify today.

And it is always good to see Congressman Conyers. I saw him, recently in Miami when he was visiting the detention centers there and meeting with many of the Haitians. I want to thank each of you for your leadership in defending immigrants' basic rights.

My testimony today is supported by the Women's Commission for Refugee Women and Children.

In December 2001, following the December 3 arrival of 167 Haitians who fled Haiti by boat, the Acting Deputy INS Commissioner adopted a secret policy directed solely at Haitians which resulted in the detention of virtually all Haitian asylum seekers in South Florida, regardless of how they arrived in the United States and whether they had demonstrated a credible fear of persecution, which all but two did.

While adopting the Haitian policy, the INS continued to routinely release those asylum seekers of other nationalities who had passed their INS credible fear interviews. The INS policy expressly applied to Haitian asylum seekers arriving both by plane and by boat.

The effect of the December policy was dramatic and immediate. The released rate for Haitians who had passed their credible fear interviews dropped from 96 percent in November 2001 to 6 percent between December 14, 2001, and March 18, 2002. Even Haitians who had been granted asylum and could no longer be legally detained by INS were not immediately released.

As a result of the Haitian policy, the INS refused to release over 240 Haitian asylum seekers, while it continued to release asylum seekers of all other nationalities in the Miami District at an extremely high rate. The Haitian policy represents a radical departure from INS' prior policy, which did not make distinctions based on nationality or race and which expressly permitted the release of asylum seekers of all nationalities who pass their credible fear interviews in the Miami District.

For months after the Haitian policy was adopted, INS officials denied the existence of the policy to advocates and community leaders. Only in March 2002 did INS officials finally acknowledge that they had indeed adopted a policy of detaining Haitians.

According to Acting INS Commissioner Becraft, the INS adopted the policy because of concerns that there was going to be a mass migration of people arriving by boat from Haiti rivaling that of the Cuban Mariel exodus and the significant number of refugees held at Guantanamo in 1994.

Yet the overall number of Haitian interdictions in 2001 simply do not indicate a mass migration, nor do Coast Guard interdiction statistics for 2002. Indeed, only 1,956 Haitians were interdicted at sea by the Coast Guard in 2001. This number is significantly smaller than the 1980 Mariel boatlift, during which 125,000 Cubans arrived in the United States, as well as in 1994, when over 25,000 Haitians and over 37,000 Cubans were detained there.

On March 15, 2002, a class action lawsuit was filed on behalf of all the detained Haitians in the Southern District of Florida who arrived on or after December 3 and had passed their credible fear interviews. The district court summarily dismissed the case without an evidentiary hearing, saying it was up to politicians, not the courts, to determine the Haitians' fate. An appeal to the Eleventh Circuit Court of Appeals is pending.

After the lawsuit was filed, INS changed its detention policy to permit the release of certain Haitian asylum seekers who arrived at the Miami Airport or other ports of entry. However, the vast majority of Haitians who arrived by boat on December 3 continue to languish in INS detention and suffer irreparable harm as a result.

Unlike released asylum seekers of other nationalities, they are forced to prepare for their asylum cases in an expedited, Haitian-only docket and have limited access to counsel. Few agencies are able to provide free legal help to the Haitians and most are unrepresented. Without attorneys, the Haitians are far less likely to win asylum than those with attorneys.

A study conducted by Georgetown University in 2000 indicated that asylum seekers in detention are more than twice as likely as those who aren't detained to be without legal representation, and persons with attorneys are four to six times more likely to be granted asylum.

Most of the Haitians speak no English and are forced to complete asylum applications in English. Their cases are expedited and those attorneys who have agreed to represent them face multiple barriers in gaining access to their clients. INS itself admitted that it lacks adequate visitation space to meet the needs of attorneys assisting the Haitians.

The conditions in the facilities in which Haitians have been detained further compromise their ability to seek asylum. These facilities have been terribly overcrowded, unsanitary, and traumatizing for many. Families have been separated into different detention centers, sometimes thousands of miles apart.

From December 2001 through August 2002, the Haitian women were held in a maximum-security county jail and subject to frequent strip-searches, lock-downs, and hourly interruptions of sleep during the night. In June of this year, a Haitian asylum seeker at Krome attempted suicide.

In conclusion, FIAC is gravely concerned about the safety of those Haitians already deported and about the likely deportation of 107 of the Haitian asylum seekers who remain in INS custody after 10 months in the United States. Virtually all of the Haitians on board the December 3 boat are from Raboteau, a section of Gonaives which has been the epicenter of recent political violence and unrest in Haiti.

Our responsibility to protect persons among us who have fled political persecution should not depend on politics. Haitian asylum seekers come to the United States seeking refuge from persecution. They expect to be treated fairly and equally by the world's leading democracy and defender of human rights.

While we certainly understand the need after September 11 to protect our borders, to indefinitely detain Haitian asylum seekers in the Miami District who have committed no crime and treat them

differently than any other group is a perplexing waste of precious resources and a waste of U.S. taxpayers' money.

To flee from persecution is not a crime; it is a basic human right. It is the Government's responsibility now to treat the Haitian asylum seekers as they treat asylum seekers from other countries. Haitians deserve no less.

[The prepared statement of Ms. Little appears as a submission for the record.]

Chairman KENNEDY. We will include all the statements in the record.

Mr. Johnson?

STATEMENT OF STEPHEN C. JOHNSON, POLICY ANALYST FOR LATIN AMERICA, HERITAGE FOUNDATION, WASHINGTON, D.C.

Mr. JOHNSON. Mr. Chairman and distinguished members of the subcommittee, I feel honored today by your invitation to allow me to speak to you on the political and economic conditions in Haiti.

I do not study immigration or refugee policy, and therefore cannot provide expertise on the immediate issue that you are considering, but welcome the opportunity to address some of the conditions that encourage Haitians to leave their home. I am also keenly aware that many of you have experience on this issue that far predates my own.

One could conclude that Haiti has had a history of political turbulence since independence almost 200 years ago, and that has left little space for the development of durable institutions and the idea that government is supposed to serve the people as opposed to the people serving it.

Such rule has periodically triggered waves of immigrants and migrants that impact Haiti's close neighbors, the Dominican Republic particularly, which shares the same island, Cuba, the Bahamas, and the United States. These migrations continue today and are likely to continue into the near future as long as Haitians and their leaders fail to agree on a social contract and develop a society that honors the dignity of each individual, the concept of cooperation, and free choice.

Haiti is not alone in its problems. In the 1980's, Central Americans fled wars and civil conflicts impacting the United States. Today, families are leaving Colombia, Venezuela, Ecuador, and Argentina to flee violence or economic disaster.

My view is that asylum decisions can only be made fairly when heavy migratory pressures are alleviated, and migration numbers can only be reduced by helping to resolve the problems that trigger flight to begin with in the country of origin.

Haiti is a country that has an abundance of democratic thinkers and a wealth of people with entrepreneurial skills who understand the virtues of consensus and compromise. The problem seems to be that the playing field has always been arranged by those who wish to act with an iron fist. Their preoccupation with control has produced a legacy of impunity, corruption, and criminality that belies the inherent goodness of the Haitian people.

Political leaders have traditionally fought each other using partisan mobs. Papa Doc Duvalier created an entire army of them called the Tontons Macoutes. Supporters of President Jean

Bertrand Aristide's Lavalas Party now carry out attacks in a similar manner against political opponents and journalists using rocks, guns, and machetes, whether he wants them to or not.

Human Rights Watch and the U.S. State Department report that the judicial system and police, into which the United States poured nearly $100 million after President Aristide was restored to power in 1994, are essentially dysfunctional. Of the 6,000 police trained when the new Haitian National Police was organized, only about 3,000 remain, and many of them are sympathizers of the Lavalas Party.

Haiti has a population of about 7.8 million people. By way of comparison, El Salvador has 6 million people and a civilian police force of 19,000, and that is barely adequate to deal with common crime and drug trafficking.

On economic terms, Haiti's gross domestic product fell, on average, 2.5 percent during the last 10 years. That is 2.5 percent every year. Gross domestic product per capita is about $370, according to the Heritage Foundation's *Index of Economic Freedom*. Eighty percent of the water is contaminated. Half of the adult population is illiterate, 60 percent are out of work. Aside from the millions who eke out a living in subsistence agriculture on environmentally degraded land, only about 30,000 have jobs in industry. As you can see, thousands, if not millions more, are needed.

A commitment to good governance would solve a number of Haiti's problems and unlock direct assistance from international donors. But without progress on governance, such aid would be wasted. To help current efforts gain traction, Haiti must look to some kind of international oversight to help establish a safe environment for fair elections to help develop good citizenship and government from the grass roots up and to check authoritarian impulses of any leader who would unfairly interpret his wishes as being those of the people.

This is not something that is going to be solved overnight. It is not going to be solved in a matter of weeks, months, years. Most likely, it will be solved in a matter of decades, and U.S. policymakers and lawmakers, I think, need to be prepared for that long challenge.

Haiti does deserve our help. We should help Haiti resolve its problems. We need to look at the long term and be realistic about what it will take, but we must also think about the fact that, along with Haiti, there are other countries experiencing conflict in Latin America that present U.S. lawmakers and policymakers with an extremely daunting task, and I respect your initiative and your willingness to take this on.

[The prepared statement of Mr. Johnson appears as a submission for the record.]

Chairman KENNEDY. Thank you very much.

Dina Paul Parks?

STATEMENT OF DINA PAUL PARKS, EXECUTIVE DIRECTOR, NATIONAL COALITION FOR HAITIAN RIGHTS, NEW YORK, NEW YORK

Ms. PARKS. Thank you, Mr. Chairman. Thank you for the opportunity to be here, and I am particularly honored to address the

committee under your leadership, which has been so instrumental in establishing and fighting to uphold this Nation's refugee protection laws.

I would also like to acknowledge Senator Brownback for his demonstrated commitment to the plight of the most vulnerable immigrants and refugees, and the Haitian asylum seekers who are the subject of this hearing today, I think, would certainly belong in that category.

You have heard from several of our guests here about the basic and most salient facts of this latest INS policy. As you have learned by now, it is the just the latest in a very long history of double-standard treatment for Haitians by the U.S. Government.

Unfortunately, the corollary element to this dynamic is the very long, painful tradition of political violence and repression of human rights in Haiti, and it is that that over the next few minutes I will focus on.

The latest bout of political violence and gridlock harkens back to the flawed elections of May 2000. Since then, the government and opposition have been locked in a political stalemate in which neither side recognizes the legitimacy of the other, and both sides have also rebuffed serious negotiations, despite the intervention of the OAS in over 20 trips to settle the dispute.

Additionally, in June of 2001 President Aristide instituted what was called a zero-tolerance policy. This basically legitimizes the lynching of delinquents or those accused as such and has been used as a pretext for these groups to threaten or harass anyone perceived as a menace to Lavalas.

This was taken to the extreme on December 17, 2001, the day of the attack on the national palace, branded as an alleged coup attempt by the Aristide government. Less than 2 hours after this attack, around of Port-au-Prince and in various locations around the country, bands of armed Lavalas supporters, known commonly as popular organizations, occasionally accompanied by elected Lavalas officials, attacked and burned down the homes and offices of opposition party members and supporters, attacked journalists, and began to force the censure of the reporting of these incidents by the independent Haitian media.

Beginning in November and throughout December, journalists and human rights defenders were threatened and attacked on a daily basis. One journalist sympathetic to the opposition named Brignol Lindor was lynched and assassinated on December 2 by a crowd who claimed to be getting revenge for an anonymous attack on a Lavalas supporter a few days earlier.

Shortly afterward, approximately 30 journalists, particularly those from radio stations who did not auto-censure their broadcasts after the attacks, fled Haiti. In addition, in early 2002 a small number of high-profile judges and social and political activists have continued to flee Haiti as pressure, harassment, and attacks against person, family, and property have continued.

A report on the investigation of the December 17 attack by the Inter-American Commission for Human Rights of the OAS issued on July 1 of this year concluded that the attack was not a coup attempt and that the violent mobs had to have had fore-knowledge

of what was expected of them in order to retaliate in such a manner.

However, as more recent incidents have shown, these armed gangs are loyal to members of various factions of the Lavalas government and not exclusively to one central figure. They are disparate and operate chaotically, vying for power, and some are beginning to lose their privileges. This is seen as a betrayal by the gangs, resulting in increasing verbal and other backlash against the Lavalas movement, which, although fomented this violence, has to some degree lost control of it as it has taken on a life of its own.

The U.S. Department of State, Human Rights Watch, Amnesty International, and NCHR have considered Aristide's human rights record in this second term as poor for a democracy. The biggest problems identified include impunity for those claiming to act on behalf or in support of the government, a politicized police force, the lack of independence of the judiciary, and the harassment and persecution of members of the opposition, those journalists who do not self-censure, human rights defenders, and other outspoken critics of the government, its policies, and the armed popular organizations.

To run down a few of the recent developments and violations in the past few months, in July a journalist, Israel Jacky Cantave, and his cousin disappeared on the way home from work. They were found beaten and injured several days later by neighbors of the building where they were being held.

July through September: student protests against the government for attacking the foundation of the Independent Haitian University and retaliation against those student protestors. The government unilaterally and without warning decided to dismiss the vice chancellor of the university and suspend all student and faculty elections and appoint its own directors.

August 2: the jailbreak of Amiot "Cubain" Metayer out of a prison in Raboteau, Gonaives, which is a word that you have heard before and we will hear again. Cubain is a former Aristide ally who was arrested for his role in the December 17, 2001, attacks on the opposition. The jailbreak also freed close to 160 other prisoners and these armed gangs continue to roam the streets in Raboteau.

September: a week-long gang war in the Cite Soleil slum over a cache of arms resulted in at least 20 dead and 100 wounded. September 19: Haitian National Police shut down the concert of a popular band for playing a song deemed critical of Aristide. "Revolution" lists some of the country's ills and says "Mr. President, I am talking to you..." Although government officials declared it had not ordered the shut-down, no action has been taken to offer an apology to the band or its organizers, or to sanction the police officers responsible.

September 20: The disappearance of a popular pro-Aristide community leader and two associates after being arrested by the police over a traffic dispute with government officials sparked tire-burning and violent protests in the streets of Carrefour Feuilles for several days.

Heavily armed gang members demanded the release of Felix Bien-Aime, and heavily armed members of the police retaliated by firing tear gas and bullets into the popular neighborhood. At least

one journalist reported being assaulted by the police, while other casualties included one death and several injuries. A week later, there had been several attempts to burn down the police station.

September 26: Three popular independent radio stations—Radio Kiskeya, Radio Caraibes, and Radio Ibo—shut down after receiving serious and credible threats by armed men. Just days later, President Aristide is cited to have said that if the Haitian press continued to repeat what the international press is saying, it is a clear continuation of the damage of the 1991 coup. This type of statement is just what has incited people to act within the guidelines of the zero-tolerance policy.

In spite of these recent and ongoing developments, there are a lot of differences between what is happening in Haiti now and what has been behind the mass exodus of the 1970's and 1980's, and it is very important to outline those differences.

First, refugees from the 1980's and during the coup d'etat of the early 1990's show that the numbers of refugees identified and interdicted are beyond comparison. From some 24,000 throughout the 1980's to 60,000 in just 3 years in the early 1990's, these figures have dropped to a scant 1,400 since October 2001.

During this period, according to its own website, the U.S.

Coast Guard reports only one or zero interdictions in the months of October, January, February, June, and August, meaning that even in the months before the INS policy on Haitian refugees was known as such, the Coast Guard picked up no boat people in January or February of 2002, despite the intense turbulence the country experienced in December 2001 following the attack on the national palace and the reprisal attacks on members of the opposition.

Again, I would like to remind the committee that these are the Coast Guard's own numbers and they do not support the notion of a mass exodus. The interdictions from 1984 to 1989, and then from 1991 to 1995, far exceed these statistics.

However, the reasons for the lack of a larger wave of refugees are not merely to be found in the statistics. With regard to Haiti, there are great distinctions to be made between the political and human rights situations under the Duvaliers, for example, the de facto Cedras regime that overthrew Aristide, and the current administration.

Under the previous regimes, the forces of government and repression were strictly regimented and part of a clear, organized, and well-known hierarchy. Under the Duvaliers, they were the military and the macouts, used to balance out each other's power. Under Cedras, the military's power is complemented by both the military group FRAPH and an elaborate system of rural "chefs de section" and "attaches."

However, under the current administration no such organization or consolidated, centralized power exists. In fact, many human rights organizations, activists, and political observers diagnose chaos and disorder instead. Haiti's 7-year-old police force is politicized and corrupt, with staffing far below the original 5,000 recruits, primarily due to attrition.

The country's many armed gangs, the popular organizations, are primarily loyal to the Aristide government, but not necessarily to Aristide himself. They are loyal to other popular or local leaders

within Lavalas, such as Senator Dany Toussaint, a former military officer, and Senator Medard Joseph of Gonaives, whose loyal gangs include the Cannibal Army, responsible for August's spectacular jailbreak.

Chairman KENNEDY. This is a fascinating story because it tells with great authenticity what was happening in the country by relating it to the flow of immigrants. It is very, very powerful because generally the dialogue lacks that kind of sophistication and understanding of these forces. I think it is enormously compelling.

We will put it all in the record and I think it is going to be helpful to us as we are trying to get some justice for the Haitian detainees. I think it is going to be very helpful to us in making that case.

I would like you maybe just to summarize and I will put it all in the record. You have done a lot of background and study of this. It is an incredible work product. I am very impressed with all of it, but if you could summarize, I want to get some questions in.

Ms. PARKS. Absolutely. I will summarize by just saying a few words, if I could, about the contributions of Haitian Americans to this country.

Despite the treatment that sometimes we receive in this country, our community has produced individuals such as Pierre-Richard Prosper, the U.S. Ambassador-at-Large for War Crimes Issues; Dr. Rose-Marie Toussaint, the first African American woman to head a liver transplant service in the world; Mr. Dumas Simeus, Chairman and CEO of Simeus Food International, the largest black-owned business in Texas and one of the top in the country; Mario Elie, the power guard that helped the Houston Rockets to back-to-back NBA championships in the mid-1990's.

We are doctors, taxi drivers, lawyers, home health aides, journalists, entertainers. And we are elected officials—Marie Ceflau in Massachusetts, Philip Brutus in Florida, Jose Listan, mayor of North Miami. We are even executives, like our own Board Chair, Eddy Bayardelle, First Vice President for Global Philanthropy at Merrill Lynch.

We are a people who love our country, but when forced to leave it, we make an extraordinary impact where we land and the community is enriched for it. There is simply no reason that year after year, decade after decade, we always, always, always are treated like second-class citizens.

Again, I thank you for the opportunity to address this committee, and I am confident that you and your colleagues will exercise due diligence in addressing our concerns that these Haitian asylum seekers be treated in a fair and humane manner, consistent with U.S. and international law.

Thank you.

[The prepared statement of Ms. Parks appears as a submission for the record.]

Chairman KENNEDY. Thank you very much for an excellent history.

I was just asking my staff to both listen to you and read your testimony and remember the various fact. We certainly saw in July 2001, the student protests against the government and the suspension of student election; in August, the jailbreaks of an Aristide ally and 160 other prisoners; the September gang wars, 20 dead,

100 wounded; the resignation of two ministers. Then, in December, the boat leaves.

You don't have to be a rocket scientist to understand what is happening at this time. And then to try and force people to go through these hoops is mind-boggling. I think it is fair to go on through these points that you raise and ask whether these were motivating factors or not. I am sure there are other considerations, but it certainly describes a horrific situation. I think putting those numbers from the past about the ebb and flow of the numbers, too, is important for us to understand. That is incredibly important. So I am grateful to you for this.

I was interested in the legality of the detention policy. What was your sense about the legality of these detention policies? Would you comment on that?

Ms. LITTLE. Yes. We filed a lawsuit on the basis that the detention policy is illegal.

Chairman KENNEDY. We will include the lawsuit in the file, not the record.

Ms. LITTLE. We believe that the policy is illegal for a number of reasons. First of all, the parole provisions of the Immigration and Nationality Act call for facially neutral parole decisions to be made. In fact, the U.S. Supreme Court in *Jean* v. *Nelson* held that parole decisions must be made without regard to race or national origin, and that decision still stands.

Also, U.S. law is based on the 1951 Refugee Convention, and fundamental to that Convention is the principle of refoulement, or non-return, the idea that asylum seekers are not to be persecuted for irregular entry. Certainly, the Haitians that we are speaking of are being punished and penalized by virtue of their indefinite detention because they attempted to come here and pursue asylum claims.

We also believe that international law is being violated as a result of this policy. I believe, Senator Kennedy, you referenced the UNHCR advisory opinion. The UNHCR recently said that to detain asylum seekers in order to deter them is a violation of international law. They also said that to detain certain nationalities while releasing other nationalities is a violation of international norms of refugee law. So for a whole lot of reasons, including equal protection provisions of the U.S. Constitution, we believe that this policy is illegal.

Senator BROWNBACK. Mr. Chairman, I am going to have to go on, unfortunately, to another meeting, but thank you for holding this hearing. I appreciate the statements of the people on the panel.

If you don't mind me making a brief statement here, I think it is very clear what the situation is. This isn't new information. The bishop, I think, articulated it probably best when he said "this time, and again and again." I really hope that maybe we can move past this mistreatment of one group and let's start to get this policy right.

I appreciate the articulate statements that each of you put forward. Marie, thank you very much for coming here, in particular, with the difficulty that your family has been through. Hopefully, maybe we can join in a letter or some advocacy together so that we can try to press to get this policy changed so that everybody is

treated the same, because this is well-known and well-documented, and it is time to move past it. So I would certainly give my help to do that.

Chairman KENNEDY. Well, I want to thank Senator Brownback because he certainly will be a very powerful ally in helping us deal with this.

I want to thank you very much, Sam, for being here today and for all your support.

Finally, a few points. Ms. Little, tell us about the problems that your organization has in getting legal representation. How difficult is it to find pro bono attorneys?

Ms. LITTLE. Well, to their credit, the Executive Office of Immigration Review—Steve Lang, who heads their pro bono department, put out a press release trying to get pro bono lawyers to take on some of these cases, but unfortunately it was not successful. As a result, most of these Haitians have no attorneys. Because their cases are being expedited, access to them is paramount. Yet, we have faced numerous problems in trying to help the Haitians. Let me just give you an example of what I mean when I say expedited.

Additional immigration judges were detailed from the Miami courtrooms to Krome in order to hear these cases. Some of these cases are scheduled for only an hour, others for half an hour—that is with translation—versus typically 3 hours in other cases.

Judges are holding up to five merits hearings a day with the Haitian cases. Some judges have told us that they simply cannot grant continuances beyond 4 weeks. With other nationalities, that is not a problem. In one week, we had over 165 requests for assistance from the Haitians. Yet, at a time when we need more access than ever, access has been more restricted.

For example, at the Krome detention center, we used to have access to our clients virtually any time during the weekends. Not long ago, INS officials told us that we could only visit our clients there between 7 and 11 a.m. This is a serious problem not only for us, but for private attorneys wanting to take on some of these cases.

Also, we typically wait for hours at Krome to see our clients because head counts can take hours. After the counts finish, oftentimes we're told they don't have enough escorts to bring the Haitians meet with us. And there is not enough confidential visitation space for attorneys to meet with their clients.

At the Turner Guilford Knight Correctional Center, where Ms. Ocean was detained for several months, we typically wait up to an hour for an escort. There are constantly changing requirements for attorneys to get permission to go to the TGK unit where the women are being held. We have no access at all to the hotel where Ms. Ocean was originally detained. In fact, the only time I have been there was when Congressman Conyers was in Miami and he visited the facility and brought some of us along.

The problems for us are exacerbated by the fact that our clients are in four different facilities. The men are at Krome. The women have been moved from TGK to the Broward County Work Release Center. Women with children are at a local motel, and we also have clients at a facility in Berks County, Pennsylvania.

I don't think it is surprising that a number of our Haitian clients are extremely depressed and demoralized. As a result, they are having great difficulty articulating their claims. Many of their asylum applications, which have to be completed in English, consist of one or two sentences. The Haitians have no idea how to go about dealing with the asylum process, which is very complicated even for immigration attorneys.

Chairman KENNEDY. Bishop Wenski, let me ask you about what is your own experience in providing pastoral guidance to these refugees. What amount are economic refugees and what amount are those that fear asylum? Let's take the ones that you have been working with, I imagine, in different locations. We are interested obviously in the ones that you might have provided counselor services to.

Bishop WENSKI. I think it is kind of a trick question because usually in this country when the economy goes bad, we hang the politicians. So the economic and political factors are very much interconnected, and I don't know that we can distill somebody that is purely economic and somebody that is purely political without having a mixture of both groups.

Chairman KENNEDY. Well, I am not sure I agree with you. I think we heard today from Ms. Ocean and that is an extremely powerful case that you will hear for asylum, epecially all that has happened to that family. It didn't have anything to do with economics. Given what we have heard in terms of the political anarchy that has existed, I am not sure I accept that.

Bishop WENSKI. Well, I would agree with you on the issue of political anarchy.

Chairman KENNEDY. That is what we are talking about. The point is you are a counselor, to people like Marie, and they are parishioners. People are talking to you in ways that they wouldn't talk to us. I was asking about whether these are real-life stories or whether this is what we will hear from opponents, saying anyone can get six witnesses to go up there and say anything.

I listened in the Armed Services Committee about the danger of the Iraqis of dropping weapons of mass destruction, and one my colleagues said, well, Senator Kennedy, you can get six generals to say anything. Well, they just happened to be some of the most important generals that have led American forces.

So we are trying to find out what the facts are here, and this is a serious problem and these are serious cases. This isn't the first time I have heard them, but I was giving you an opportunity to say——

Bishop WENSKI. Well, in fact, I would say that Marie's case is certainly based on fact. But even INS would say her case is based on fact because almost all of her companions in detention have been found to have a credible fear of persecution. So there is no one that is questioning the credibility of their basis for asylum, which is based on political reasons.

The political classes of Haiti have failed their people and that is one of the sad realities that we have here. There is great Haitian proverb that describes it well [Creole saying.] You know, what does the flea care about if the dog is hungry? Basically, we have a failure of the political classes that the people had much hope in much

expectation of. And, of course, they are paying for this in increasing misery and violence, and therefore are leaving their country looking for new hope.

Chairman KENNEDY. I am going to include in the record a number of statements, one from my colleague, Senator Graham, and a number of other leaders in the community, leaders in various organizations. We will include those in the record.

[The prepared statement of Senator Graham appears as a submission for the record.]

Chairman KENNEDY. I want to thank all of our panelists very, very much for coming. It might be said, we have known this for some time. We are going to try and keep after this until we get something done, at least I am, and so we will work with others that feel the same way. I believe that we can and we commit that we will.

We thank our colleagues.

The subcommittee stands in recess.

[Whereupon, at 4 p.m., the subcommittee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Testimony before the
Senate Committee on the Judiciary Subcommittee on Immigration
On the Detention and Treatment of Haitian Asylum Seekers

October 1, 2002

Lida Rodriguez-Taseff
American Civil Liberties Union

I am Lida Rodriguez-Taseff, the President of the American Civil Liberties Union Miami-Dade County Chapter ("ACLU"). On behalf of the ACLU and this diverse Community, I want to thank each of you for the opportunity to submit written testimony regarding the discriminatory detention and treatment of Haitian Asylum Seekers in South Florida.

The ACLU is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members, approximately 12,000 in the State of Florida, dedicated to defending the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. Because the ACLU takes to heart the self-evident truth that we are a nation built and bettered by the labors and struggles of immigrants, our organization has long fought for immigrant access to the courts; against unconstitutional detention and deportation; and against arbitrary government decision-making and unconscionable INS procedures that violate due process. The ACLU has repeatedly assisted in legal efforts to challenge the discriminatory treatment of Haitian asylum seekers. For their part, federal judges have criticized the INS for its wholesale violations of the Haitians' fundamental legal rights. A reading of their decisions amply demonstrates that no other group of refugees has been so victimized by blatant and cruel government policies during the past two decades.

For example, Haitian Refugee Center v. Civiletti was filed in July 1980 on behalf of over 4,000 Haitians requesting asylum. The INS, through procedures in effect at that time, had denied all 4,000 applications. The trial court held that United States government agencies had set up a "Haitian Program" designed specifically to adjudicate and to deny as quickly as possible, in wholesale fashion, the asylum claims of Haitians. The trial court also concluded that the discriminatory treatment of Haitians was nothing new, but rather that it was part of a pattern of discrimination which began in the 1960's. Moreover, the trial court found that the INS was engaging in scare tactics, noting that the INS Deputy Commissioner encouraged government attorneys to point out "the dimensions of the Haitian threat," calling Haitians a threat to the community's social and economic well-being.

Jean v. Nelson, the second case, was filed on behalf of the Haitians indefinitely detained at Krome who were improperly denied access to their attorneys, faced overcrowded conditions and illegal transfers, and were deported in a manner INS itself admitted was faulty. Again the trial court noted the INS' callous disregard for the rights of Haitian refugees and ruled that the Haitians were "impacted to a greater degree by the new detention policy than aliens of any other

nationality...." The detention policy was found to be invalid and Miami District Court Judge Eugene Spellman ordered the release of over 1,000 Haitians. The Government's claim -- that there was a massive influx of Haitians coming to the United States -- was rejected by the Appeals Court, which noted that Haitians represented no more than 2% of the illegal immigration flow into the U.S. The Appeals Court also found that statistical evidence disclosed that the Federal Government had engaged in a "stark pattern" of discrimination against the Haitian asylum seekers.

The Government's justification for its current discriminatory Haitian-only detention policy is bitterly reminiscent of the anti-Haitian policies of the past; policies that were rejected by the courts and repudiated by right-minded Americans. Once more, the excuse is that without these policies, we can anticipate a mass exodus of Haitians. Long-time residents of this community vividly remember the year 1991, when following the coup d'etat in Haiti, lawyers for Haitians on board Coast Guard cutters were forced to file a class action lawsuit to stop the Government from forcibly repatriating them. The U.S. Government, whose lead attorney in this case was Solicitor General Kenneth Starr, filed an emergency petition with the Supreme Court of the United States, alleging that 20,000 Haitians "were massed" on the Haitian beaches and ready to head to Guantanamo. They alleged, moreover, that Guantanamo could not accommodate such numbers. We believe that Government lawyers deliberately misled the courts in 1991 with false claims of national emergency. For example, under sworn deposition, Undersecretary Bernard Aronson admitted that the term "massing" was ambiguous and admitted he was quite unsure of the number of Haitians preparing to leave. And independent observers, including the Coast Guard attache in Port-au-Prince who frequently flew over the point of departure for Haitians, concluded there was no threat of mass migration. But the Government's efforts to mislead did not end there. In its brief to the United States Supreme Court, the Government relied on the declaration of Robert K. Wolthuis, whom they presented as the Assistant Secretary of Defense. Mr. Wolthuis had assumed that position for one day only - the day he signed the declaration. He readily admitted that most of the facts he swore to in his declaration were what the lawyers who had drafted it told him. The declaration was so defective that attorneys for the Haitians filed a separate memorandum concerning it. Having pushed the panic button, however, the Government was not going to be stopped. On May 24, 1992 President Bush issued an Executive order, ordering INS to repatriate Haitians interdicted at sea without any investigation into the likelihood of their persecution in Haiti ("Kennebunkport Order").

The current Haitian-only detention policy is a surreal repetition of the past racist and discriminatory policies that have been repudiated time and again by our courts. It is bitter irony that the panic button has again been pushed. For the sake of this Nation's proud immigrant history, we need to be able to put an end to a system that specifically targets only asylum seekers from Haiti and summarily denies them release even after an Asylum Officer has found them to have a credible fear of persecution in Haiti.

We hope that you will seriously consider our concerns regarding this discriminatory policy directed at Haitian asylum seekers on the basis of their national origin and race.

Thank you.

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For Immediate Release

AFL-CIO Statement on Haitian Refugees
June 20, 2002

The working families of the AFL-CIO stand in support of Haitian asylum seekers and their families, who continue to face discrimination and detention as a result of the Bush Administration policy of detaining Haitian asylum seekers even after they have established a "credible fear of persecution." As a result, Haitians who risked a perilous journey to the U.S. in search of a safe harbor from the persecution and oppression they faced in their homeland now face unjust and unfair treatment in the U.S. While those seeking asylum from other countries are released to the community, Haitian asylum seekers are not only detained, but their cases are "fast tracked." With so little time to prepare their asylum cases and an inability to move freely about the community to assist their legal representatives, Haitians have suffered a very high denial rate of their asylum claims.

The union movement joins with members of the Haitian, civil rights, faith-based, and immigrant and refugee communities in opposing this discriminatory treatment by the Administration. It is simple justice to treat all asylum seekers, whatever nationality, in the same fair and even-handed manner. It is the American way to allow all asylum seekers adequate time and freedom to prepare their asylum cases so that they truly receive a fair hearing. To do so is not a matter of special treatment for Haitians seeking asylum, but one of fair and equal treatment.

All Americans suffer when one group of people is singled out for unjust and discriminatory treatment. We call on the Administration to immediately end the discriminatory treatment of Haitians asylum-seekers and to extend to them the same rights and opportunities accorded to individuals seeking asylum from other nations.

###

DR. BARBARA M. CAREY-SHULER

Board of County Commissioners
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September 30, 2002

Honorable Edward M. Kennedy
Chairman
U.S. Senate Committee on the Judiciary
Subcommittee on Immigration
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to express my strong support for the hearing of the Subcommittee on Immigration of the U.S. Senate Committee on the Judiciary scheduled on Tuesday, October 1, 2002 on "The Detention and Treatment of Haitian Asylum Seekers." I also wish to commend you for your leadership and continuous defense of the cause of Haitians in the United States.

Even prior to that horrible day of December 3rd, 2001, when a boatload of 187 Haitian immigrants grounded off Miami, the treatment and illegal detention of Haitian asylum seekers has been and regrettably continues to be a cause for concern for me in particular, and for the Miami-Dade County Board of Commissioners, in general. As a County Commissioner representing a district, which includes Little Haiti -- an area populated mostly by Haitian immigrants, I have been involved for most of my public life in issues directly affecting Haitians in Miami. Whether immigration, employment status, availability of information in Creole, unimpeded access to the voting process, etc., I have sponsored many pieces of local legislation in favor of the Haitian community. However, the matter of the Haitian detainees, while a federal issue, negatively impacts Miami-Dade County's government and community.

This injustice even prevents the harmonization of all of our residents since only one ethnic group of our social fabric is seeing its kinship continuously being discriminated against by the U.S. Government.

Honorable Edward M. Kennedy
September 30, 2002
Page 2

It is a well-documented fact that Haitian refugees have always been subject to a different treatment under Immigration and Naturalization Service (INS) regulations. A decade ago, Haitians, fleeing oppressive persecution derived from a military dictatorship, were taken to camps at the U.S. military base at Guantanamo, Cuba, instead of being allowed to set foot in the United States. Now, ten tears later, U.S. administration officials are again treating Haitians differently. A few months ago, the Bush administration secretly changed its detention policy on Haitian refugees. Instead of routinely releasing newly arrived Haitians without approval from INS headquarters in Washington, D.C., the administration puts asylum seekers in jail, and in the case of Haitians, in maximum security facility.

This is a disgraceful conduct on the part of our government and, personally, I find this behavior discriminatory because only Haitian asylum seekers and refugees fall under this policy. The notion of fairness, due process and justice that our government is supposed to protect is being violated by the administration. This country has and even today continues to fight for these principles, and yet we are denying those same rights to a group of people solely because of the color of their skin.

It is for these reasons that I fully support your initiative to hold these hearings and hope that the administration will redress the wrongs being done to the Haitian asylum seekers by giving them temporary freedom.

Sincerely,

Barbara Carey-Shuler, Ed.D.
County Commissioner, District 3

Statement of Congressman John Conyers Jr.

Offered for the Record of the Senate Judiciary Subcommittee on Immigration Hearing on "The Detention and Treatment of Haitian Asylum-Seekers"

October 1, 2002

I remain completely outraged by the policy of indefinite detention that the Department of Justice initiated against Haitians asylum-seekers last December in Miami, Florida.

In March when I visited the Krome Detention Facility where many of these asylum-seekers are held, an INS official told me that the new detention policy was intended to protect Haitians from danger on the high seas and that the U.S. did not want to trigger a wave of immigration by maintaining an open door.

This policy is abusive, discriminatory, and in many cases has confined Haitians here on U.S. soil to conditions quite similar to those they fled in Haiti. Moreover, the INS directive went far beyond its stated intent – until my visit, the INS was singling out and detaining Haitians arriving with false documents at the airport, as well as Haitian resident aliens in south Florida who were found with technical immigration law violations.

Rather than following usual policy, the INS is abusing authority granted in the wake of September 11th to combat terrorism by keeping people who have no possible links to terrorist activity in detention, even after they have demonstrated a well founded fear of persecution and been grated political asylum.

U.S. immigration authorities grant parole to approximately 91 percent of asylum seekers from other countries. However, Haitians who have been deemed to have plausible claims for asylum have been singled out and then left to languish in detention centers for as long as nine months. During my

March visit to facilities in southern Florida I encountered a father with two minor children who had been granted political asylum, but was still being held pending appeal by the INS.

Since August, the INS has been removing the Haitians who arrived last December from the country. Unlike other nationalities, Haitians are returned to Port-au-Prince in chains and leg-irons like prisoners and they are turned over to Haitian police upon their arrival. A number of detainees, including women, have been imprisoned upon their return to Haiti because of their political convictions or simply the fact that they fled the island in the first place.

I have witnessed first hand the unacceptable conditions in which many detainees are held. Facilities are operating far above maximum capacity. Women who committed no crime but fled persecution and political turmoil, were being housed like criminals in a maximum security jail with violent perpetrators until August when they were moved due to the complaints of advocates and members of Congress. Children are still being detained indefinitely without access to educational services or playtime outdoors. In Krome, detainees have been issued only two changes of clothing and limited access to laundry services for an indefinite stay, and they are denied access to Creole speaking staff. In one case a woman who was coughing blood had been denied medical attention because translators were unavailable to inform authorities that she was in need of medical care.

Valid human rights concerns persist in Haiti and meritless detention remains an indefensible option for responding to those who are fleeing persecution. In fact, the greater the incidence of political persecution and human rights violations in Haiti, the more Haitian citizens ought to qualify for asylum under our law. Once again, the Bush Administration seems inclined to unilaterally bend the law to serve its political goals.

We have a duty to ensure the application of due process and equal protection under the law for all of those who come to this country fleeing persecution and seeking protection. We have failed to live up to our responsibility to the Haitians who have arrived on our shores.

I call on the INS to end this discriminatory policy immediately; ensure adequate access to representation and translation; provide programs, activities and outdoor recreation to children detained with a parent; end the overcrowding and ensure that each asylum-seeker has an opportunity to raise their claim for asylum.

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 25 2002

The Honorable Edward M. Kennedy
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

Thank you for your letter of June 19, 2002, to Attorney General John Ashcroft, co-signed by Senator Sam Brownback, expressing concern about the recent changes in the Immigration and Naturalization Service (INS) policy towards Haitian asylum seekers. A separate response will be forwarded to Senator Brownback.

In your letter, you propose a reinstatement of INS' previous policy with regard to Haitian asylum seekers. While we do not support reverting to our previous policy at this time, you should be aware that the following events have lead the INS to adopt alternative criteria in regard to the parole of certain Haitian asylum seekers.

On December 3, 2001, 167 Haitian migrants were rescued by the United States Coast Guard (USCG) from a boat that was foundering off the coast of Florida. Eighteen other migrants from the same vessel successfully swam to shore, while two others were reported drowned. The migrants rescued at sea were brought into the United States in the Miami area and placed into expedited removal proceedings. As such, these migrants were subject to mandatory detention. The 18 migrants who swam to shore were not subject to expedited removal or mandatory detention, and they were paroled from custody shortly after their apprehension and placed into ordinary removal proceedings. Unaccompanied males from the boatload were placed in the Krome Detention Facility in Miami (Krome houses only males). Unaccompanied females were housed in the Turner Gilford Knight facility. These females have since been transferred to a new facility in Broward County Florida. This facility is staff secure and does not have the security hardware associated with prisons and jails. Family units and juveniles were housed in other appropriate facilities.

The vessel that arrived on December 3, 2001, was one of several that departed Haiti and was interdicted by the USCG since November 2001, marking a sharp increase in irregular maritime departures from Haiti. During Fiscal Year (FY) 2001, the USCG interdicted vessels carrying 1,391 Haitians at sea. In contrast, by March of FY 2002, the USCG had already interdicted 1,354 Haitians.

This increase in risky sea travel from Haiti raised concerns of the United States Government. If the Government continued to parole Haitian nationals arriving by sea, this might cause others to attempt to leave Haiti by boat. By doing so, they not only place themselves at risk, but they could also potentially trigger a mass migration from Haiti to the United States. The United States Government concluded that adjusting the INS' parole criteria with respect to Haitians arriving by boat in South Florida would be a

reasonable step to take in order to protect lives and prevent against a potential mass migration to the United States.

Based on these concerns, the INS Deputy Commissioner instructed the INS Office of Field Operations to adjust its parole criteria with respect to all inadmissible Haitians arriving in South Florida after December 3, 2001, and that none of them should be paroled without the approval of INS Headquarters. The decision of whether to detain or parole those individuals takes a number of factors into account including potential for flight risk and ties to the community.

Following the issuance of instructions from the INS Deputy Commissioner and the Executive Associate Commissioner for Field Operations, the Miami District conducted a case-by-case review of Haitians detained since December 3, 2001, and made recommendations to INS Headquarters regarding cases that should be considered for parole. These recommendations were considered and approval was given to parole those cases with demonstrated extreme hardship, such as pregnant females, juveniles, and family units.

On April 5, 2002, the Office of Field Operations and the Eastern Regional Director issued field instructions permitting the Miami District to parole Haitians arriving by regular means at designated ports in South Florida pursuant to enhanced procedures for scrutinizing the individual's likelihood to appear. These procedures were designed to verify that each individual considered for parole would appear for proceedings and included requirements that sponsors be identified, interviewed and provide an affidavit of support, that all addresses be verified, the alien be subject to reporting requirements and the criminal history of any alien being considered for parole be checked. Any alien who does not comply with parole conditions will be taken back into custody. These procedures were made discretionary for such Haitians in July. Haitian nationals who arrive by irregular means, such as by boat, continue to be processed as before (i.e. case-by-case review, recommendation for release based on unusual hardship conditions, etc.).

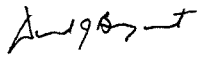
On May 17, 2002, the District Court dismissed a class action lawsuit, in which Haitian plaintiffs claimed that the INS policy with regard to the detention of Haitians in South Florida was illegal. In dismissing the case, the court upheld the legality of the INS policy. The plaintiffs have since appealed the District Court's decision. We are enclosing copies of the INS Deputy Commissioner's declarations to the District Court as well as their decision dismissing the lawsuit.

As of September 20, 2002, of the 167 individuals initially placed in detention upon arrival, only 7 have not completed their proceedings before an immigration judge. 40 individuals are awaiting the completion of their appeals to the Board of Immigration Appeals. The remaining 120 have either been granted asylum (16), been removed after

receiving final orders of removal (50), or have received final orders and are awaiting removal (54).

We trust the information provided is useful. If we may be of assistance in the future, please contact this office.

Sincerely,



Daniel J. Bryant
Assistant Attorney General

Enclosures

Testimony of Danny Glover

Immigration Subcommittee of the Committee of the Senate Judiciary

Detention and Treatment of Haitian Asylum Seekers

October 1, 2001

Nowhere is the double standard of our immigration policy starker than in Miami, where nearly one hundred Haitians have been locked up for almost ten months. Following orders from Washington, local INS officials have discriminatorily denied Haitians who have proven their "credible fear" of persecution from being released. This, while all other similarly situated asylum seekers from other countries are routinely released to prepare their asylum cases.

Why? Officially, it's a preventative measure designed to ensure that more Haitians don't board unseaworthy vessels in a desperate attempt to reach the United States. The real desperation, however, may stem from our president's not wanting to deal with the problem of Haitian boatpeople in a gubernatorial election year.

Last December, the U.S. Coast Guard intercepted 167 Haitians off Miami's shores. When the asylum seekers were interviewed by U.S. Asylum Officers, all but two were found to have a credible fear of persecution should they be returned to Haiti.

Routinely, once this interview has taken place, the asylum seekers are released and given up to a year to prepare their cases. Not only have nearly one hundred Haitian asylum seekers remained in detention, their cases have been expedited. Additional judges were brought to the detention site to hear their cases even more quickly. Despite their needing attorney access more than ever, INS has imposed more restrictive barriers in effect denying them their right to see the few pro bono lawyers available to them. Many have had to represent themselves in immigration court. Not surprisingly, scores of Haitian asylum seekers have already been deported.

This summer, I visited the Haitian women detained under this new discriminatory policy. At that time, the women were held at the Turner Guilford Knight Correctional Center (TGK), a maximum-security county jail, where life was far more restrictive than it was for the men. Two days after my visit, three of the women I spoke with were shackled and handcuffed and deported to Haiti. Advocates were able to contact one of the asylum seekers, Rigmane Ovilma, after her deportation. She described horrific conditions in the Haitian jail, and their families had to pay hundreds of dollars to help them get released. Ms. Ovilma said, "We were living in a nightmare in Haiti before we left, then we lived a nightmare in the United States of America and we are living a nightmare again in Haiti. I still have the scars of the shackles on my ankles they put on us when they deported us because they were so tight.... Why are we being treated this way? Doesn't anybody care about our lives?"

These are the same questions asked by the immigration attorneys and Haitian rights advocates who filed a class action lawsuit on March 15, 2002, on behalf of the detained Haitian asylum seekers. They charge a discriminatory detention policy that singles out the Haitians based on their race and/or national origin. Only as a result of this lawsuit did the INS finally admit, after months of denial, that a new policy has been implemented against the Haitians. Despite the government's alleged panic of an ensuing mass exodus of Haitian refugees, no such thing has happened.

It's no surprise that the indefinite nature of their detention and disturbing conditions of their confinement have caused the Haitians to become incredibly anxious, despondent and depressed. One young woman at the jail I visited told me the women felt pressured to withdraw their asylum claims. A number of asylum seekers have become so disillusioned with the American judicial process that they have succumbed to these pressures. Imagine the desperation when deportation is a preferable choice than living as a criminal with an indefinite sentence. Already, about 50 of the asylum seekers have been deported.

While the government has necessarily buckled down on illegal immigration since 9-11, it seems misdirected, if not downright racist, to treat Haitian asylum seekers differently than those from other countries. Let's focus our attention on the real criminals of the world, not on those seeking a legitimate safe haven in the United States.

Thank you for this opportunity to submit my testimony for your consideration.

October 1, 2002

Senator Bob Graham

Testimony before the Senate Judiciary Committee, Immigration Subcommittee

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I commend Senator Kennedy for holding this hearing on the issue of Haitian detainees — an issue that has caused much confusion and frustration in many South Florida communities, and an issue that I have had a deep personal concern about since last year.

I appreciate the Florida witnesses Bishop Thomas Wenski, Cheryl Little and Marie Ocean traveling here and sharing their personal experiences, and the many Floridians who have come up to offer support and who are in the audience this afternoon.

The lengthy, seemingly indefinite, detention of Haitian nationals who have come to the United States since last autumn has caused each and every one of the detainees to spend an exorbitant amount of time in uncertain limbo. This is not just misguided. This is not just egregious. This is inhumane.

Surely, if we must have a national policy of detaining any specific group of people, we have to do a much better job in providing information and status updates to those individuals, and to the people who advocate for them and care about them.

This lengthy detention has deepened the feeling in South Florida that different nationalities receive different treatment. We can't allow this sentiment to continue. All who come to the United States fleeing persecution deserve at least a level playing field to make their case. There are times when national immigration policy must be strict, and times when it can allow more flexibility — but at all times, all people, deserve the same fair chance to seek refuge from persecution they face in their home country.

With fairness and equal treatment in mind, my experience in working on behalf of the detainees in Krome and TGK has been disturbing to say the least.

The first task I undertook was to try and determine who established this nation-specific detention policy. Was it the INS? The White House? The State Department? The National Security Council? The Justice Department? (I would like to submit correspondence about this issue.) At each agency, my staff or I could find someone willing to discuss the situation, but not able to say how the policy was developed and who would have final authority for revising it.

I personally contacted Secretary of State Colin Powell, Condeleeza Rice of the NSC, and Jim Ziglar of the INS about the growing concerns in South Florida. Senator Bill Nelson and I invited

Commissioner Ziglar to come to meet some of the detainees held in the maximum security TGK facility and he is to be commended for making that trip.
While this trip was needed to understand what is happening at TGK, it is the stories of these women that bring a horrific reality to the situation. The story of Jesiclaire Clairmont, who came to the US with her family aboard a boat last December, is the reality of our Haiti policy. Stuck in detention since December of last year, Clairmont is an evangelical Christian and her only crime was fleeing her town in Haiti, Si M'ap Viv where violence has become an everyday part of life. Two of her children are also in custody. The other two are free, living in Little Haiti with their father, waiting for their mother and siblings to join them.

Liz Balmaseda, a columnist for the *Miami Herald* wrote about Jesiclaire and her family. I would like to have the column submitted for the record.

It is these human faces and stories that have strengthened my resolve to find out who is the final decision-maker on this policy. Although technically, it seems as if the final call rests solely with the INS, my sense is that this agency was receiving advice and encouragement to hold fast to the detention policy from other federal agencies.

What could generate such a nation-specific detention policy? Since I could not find a specific answer from any federal agency, I can only surmise that one factor may be a desire not to create any incentives for potential immigrants or refugees to travel here — heading off a possible mass migration emergency.

In order to secure the best information about the current situation in Haiti, I have contacted the United States Embassy in Haiti and asked several questions related to the current climate in the country. There are always indicators of a potential mass migration event: a surge of boat-building activities, or gatherings of citizens by the shoreline or ports. I wanted to know, has this actually occurred in Haiti during the time that Haitian nationals have been detained in South Florida?

The Embassy's response stated that while there do not appear to be indicators of a mass migration emergency at the moment, the potential always exists for a future crisis. Given the first part of this statement, I would urge that our current detention policy be re-examined. If an imminent threat of mass migration does not presently exist, our nation should have much more flexibility in our detention policy. Of course, over the next months and years, if the situation changes and there is more of a threat, we can amend our policy accordingly.

The various interpretations that our office has heard about the exact climate in Haiti, and the changing nature of that climate, highlight the fact that we need an open exchange of ideas and information in this issue.

Because the decision-making process has been shrouded in such secrecy, with no person or

agency seemingly accountable, the feelings of unfairness, of discrimination, of disparate treatment have deepened in South Florida.

The human impact is real. Legal advocates in Florida communities have dedicated many, many hours to try and improve the day to day lives of the detainees, and to try and bring resolution to their cases. They have taken time away from their families to help those in need through a lengthy and complicated legal process.

Senator Kennedy and my other colleagues on this Committee deserve our thanks for bringing attention to this issue and I appreciate being given a chance to share my thoughts. I would like to conclude with three main goals – my wish list – for resolution of these concerns.

A) Timely, accurate and clear information needs to be made available about the development and enforcement of this nation-specific detention policy. Once we understand why the policy was established, a review of the policy should occur on a frequent basis to determine if the policy is still needed.

B) Advocates who are working on behalf of these detainees need more information and access to those they are trying to help. More advocates are needed to ensure that all who arrive here have a fair opportunity to understand our law and make their case.

C) If for some reason, a case can be made that closer supervision of any group of individuals is needed, mandatory detention should only be used when absolutely no other alternative is available. In those, hopefully rare, instances, all efforts must be made to resolve the situation of the detainee in an expeditious manner. Young Haitian women in South Florida spent far too many weeks and months in a maximum security prison environment. This is unacceptable, unfair, and we must do something to change this policy.

Again, I thank the Committee and look forward to working with you on this issue.

Political and Economic Conditions in Haiti

Testimony of

Stephen C. Johnson

Policy Analyst for Latin America

The Kathryn and Shelby Cullom Davis
Institute for International Studies

The Heritage Foundation

Before the

Subcommittee on Immigration of the

Judiciary Committee

U.S. Senate

Washington, D.C.

October 1, 2002

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Mr. Chairman and distinguished members of the Subcommittee, thank you for inviting me to address Haiti's political and economic conditions. You are holding hearings today on a much more specific issue, that of U.S. immigration policies toward Haitians fleeing harsh conditions in their homeland to find a new life on U.S. shores. In my work as a regional analyst, I do not normally study immigration or refugee policy and therefore cannot provide expertise on those topics other than to express my belief that the solution to reducing migratory pressures is to help improve conditions in the country of origin. Moreover, Haiti is one of 35 countries that I research in Latin America. But it is a country that demands attention because of its proximity to the United States, because it has responsibilities as a member of the community of American states, and by virtue of the seemingly intractable problems of poor governance and deteroriating economic conditions that inspire out-migrations not just to the United States, but to other close neighbors as well. Given my research focus, I will try to provide an overview of the political and economic conditions in Haiti and an assessment of whether they are likely to improve over time.

Between Predation and Opportunism

Haiti is the oldest independent black republic in the world and the second oldest republic in the Americas after the United States. A French plantation society in western Hispaniola, it gained independence in 1804 after slaves overthrew the local government and defeated Napoleon's army. Despite this heroic beginning, Haitian leaders had few governing models to guide them beyond colonial rule. Haiti's first leader declared himself emperor and was killed by a mob on his way to put down a rebellion. Over the next 100 years, most other leaders were either deposed or killed, although one served out his full term of office.

Following an uprising in 1915, President Woodrow Wilson sent in U.S. Marines and the United States ran Haiti for 19 years. Extended U.S. control improved public health, expanded national infrastructure, and imposed fiscal discipline. But because local officials only served as figureheads, U.S.-imposed reforms failed to improve governance beyond training more professional security forces.

Even that disappeared when Francois Duvalier declared himself president-for-life in 1957. He replaced U.S.-trained troops with young followers less likely to challenge his authority and organized bands of rural vigilantes nicknamed the *tonton macouts* who soon surpassed the institutional army in strength. When "Papa Doc," as he was known, tried to obtain U.S. assistance to train them, the Kennedy Administration cut off aid.

Papa Doc's son Jean Claude succeeded him in 1971 at the age of 19. Uninterested in government, he left most of the administration to his mother. During the 1980s, hunger and diseases like AIDs spread while government officials looted the treasury. By 1986, mounting unrest spurred the Reagan Administration into asking the younger Duvalier to go into exile. Riots triggered a military coup and the army finally sent him packing. A series of interim governments followed and a new democratic constitution—still in force today—was approved in 1987.

In 1990, charismatic former Catholic priest Jean Bertrand-Aristide was elected president with 67 percent of the vote in what foreign observers judged to be a free and fair election. Barely eight months later, he too was overthrown by a military coup that resulted in another corrupt and repressive order. As a result some 41,000 Haitians left the island by sea, four times the number of rafters seeking asylum than in the previous 10 years.

Short-Lived Intervention and a Reversion to Old Patterns

On the heels of failed Organization of American States (OAS) and United Nations (UN) efforts to restore Haiti's elected government, the UN Security Council adopted a resolution empowering member states to use any means to restore Haiti's constitutional order. Acting with the best of intentions, the United States led a multinational military mission to Haiti in September 1994 to pressure the ruling generals to step aside. A month later, President Aristide was back in the presidency.

But, the U.S.-led Operation Restore Democracy was not the foreign policy slam-dunk many thought it would be. The Clinton Administration's objective was limited: to return Aristide to office, slow the exodus of Haitian rafters, and turn over peacekeeping duties to the United Nations by February 1996. Yet even as President Clinton praised Aristide's "commitment to reconciliation and the rule of law," the former priest betrayed that trust by surrounding himself with mobs and by harassing political opponents, some of whom reportedly turned up murdered. U.S. officials even had to persuade Aristide to step down at the end of his term to allow his hand-picked successor, René Préval take office.

Aid programs totaling some $100 million from the United States followed to support a succession of new elections, build a new police force, revitalize the judiciary, and rebuild other neglected institutions. None of the money spent on elections—at $6 million to $8 million apiece—left behind any lasting electoral infrastructure. A professional police force of 6,000 trained by U.S. and Canadian instructors dwindled to about 3,000—most of whom are now loyalists to the president and do little to protect the public. After a new Coast Guard was set up to help apprehend drug traffickers, transhipments through the island actually increased from 10 to 14 percent according to a GAO study.[1] In 2000, some 80 percent of those in prison were simply awaiting trial.

After Aristide left office, he heavily influenced his successor. Following flawed parliamentary elections in 1997, President Préval blocked a new vote until most assembly seats expired, leaving the government with just himself and a handful of unconfirmed cabinet officials in charge. When parliamentary elections were finally held in May 2000, authorities excluded nearly a quarter of the votes cast using a formula that violated two articles of Haiti's constitution.[2] Aristide himself was returned to office in November in a questionable vote that the OAS observer mission boycotted and in which the estimated turnout was only 10 to 15 percent. Since then, Aristide's government has been locked in a tug-of-war with the opposition known as the Democratic Convergence over how to remedy the flawed May 2000 vote.

The dispute over the parliamentary elections prompted the Clinton Administration to suspend direct U.S. assistance to Haiti's government, a policy the Bush Administration has continued. The European community and multilateral institutions did likewise resulting in some $500 million in aid being withheld until Aristide and the political opposition come to an agreement over the elections and when Haiti's government adopts minimal standards of accountability. But instead of implementing such reforms, President Aristide has engaged in a costly lobbying effort to restore foreign funding, calling conditioned assistance "economic terrorism."

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[1] U.S. General Accounting Office, Foreign Assistance: "Any Further Aid to Haitian Justice System Should Be Linked to Performance-related Conditions," GAO-01-24, October 2000, p. 12.

[2] Shaheen Mozaffar, "The Dilemma of Building a Multiparty Democracy in Haiti," Georgetown University, *Haiti Papers*, July 2001, p. 2.

Over the last two years, the OAS has tirelessly attempted to broker an agreement with both Aristide and the opposition, discussing formulas that ranged from removing a few senators in contested seats to holding entirely new elections. So far, intransigence on both sides has blocked success. Last month, in an effort to breath new life into the dialogue, the OAS adopted Resolution 822 recommending the resumption of direct aid to the government, if it would only account for it and make a concerted effort to protect human rights—dropping the requirement for a comprehensive electoral accord with the opposition. Most observers doubt if Aristide will accept even these more lenient conditions. On September 20, 2002, Aristide's minister in charge of electoral negotiations, Marc Bazin resigned, faulting the government on human rights and economic policy. And on September 29, Aristide's Justice Minister Jean Baptiste Brown stepped down complaining that he found himself "unable to substantively address serious issues such as professionalization of the Haitian police and fighting against impunity."

Eroded Economy

If Haiti's economy was pillaged by the Duvalier family, it has been battered by continuous political instability ever since. According to the World Bank, real per capita gross domestic product (GDP) declined about two percent per year during the 1980s. During the 1990s, it fell 2.5 percent per year. Part of the blame goes to the military coup in 1991 and embargoes on trade and financial transactions. But since Aristide's return, the continuing political crisis has blocked needed economic reforms. The World Bank's 1998 Poverty report put it more bluntly: "Haiti has never had a tradition of governance aimed at providing services to the population or creating an environment conducive to sustainable growth."

From a practical standpoint, few outside investors would want to launch a business in a country where electricity is available for only a few hours a day. Few would want the headache of shepherding equipment and merchandise through a non-functioning customs bureaucracy. Fewer still are interested in conducting business where there is no rule of law and where partisan mobs can threaten employees or destroy assets. This, despite the fact that Haitian workers are known for their work ethic and entrepreneurial spirit.

Last year according to The Heritage Foundation's *Index of Economic Freedom*, Haiti, with nearly 8 million people, generated little more than a $2.9 billion gross domestic product.[3] That amounts to $371 per capita, one of the lowest figures in the hemisphere. In 1999, it imported $800 million worth of goods and services (half of it from the United States) while its exports only totaled $359 million. Adult literacy is now estimated at 48 percent while unemployment stands at about 60 percent. Millions of adult Haitians eke out a living in subsistence agriculture in one of the most environmentally degraded places in the world, while only about 30,000 reportedly have jobs in manufacturing or assembly industries.

Aid to Haiti has generally failed to help. As noted above, the Aristide government is about as accountable for what it receives as the Duvalier regime before it. Although funds channeled solely to non-governmental organizations there have been effective in providing humanitarian relief and building infrastructure, they are at best "short-term solutions" that leave political institutions largely untouched according to the World Bank Country Assistance Evaluation dated February 2002. Last year, the United States provided $77 million in such aid and this year $55 million.[4]

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[3] Gerald P. O'Driscoll, Jr., Kim R. Holmes, and Mary Anastasia O'Grady, *2002 Index of Economic Freedom* (Washington, D.C.: The Heritage Foundation and Dow Jones & Company, Inc., 2002), p. 217.
[4] Senator Mike DeWine, "Haiti: Devastation, destitution, desperation," *The Miami Herald*, March 17, 2002.

Big dollar projects by the United States and the World Bank in the absence of transparent governance have left no lasting footprint. As a result, the Clinton and Bush administrations, as well as the International Monetary Fund, the World Bank, and the Inter-American Development Bank have withheld some $500 million in direct assistance since 2001. Although OAS Resolution 822 calls for unfreezing these accounts when Haiti fulfills new, less stringent requirements, much of that aid has already been redirected and may require new negotiations with donor organizations and countries.

In November 2000, U.N. Secretary-General Kofi Annan recommended curtailing the United Nations International Civilian Support Mission in Haiti (MICAH). In 2001, he stressed that any resumption of aid could not take place without a resolution to Haiti's political crisis. For its part, the European Union has terminated consultations intended to provide assistance through its Cotonou Agreement process linking African, Caribbean, and Pacific developing countries, finding that respect for democratic principles in Haiti has not been restored.

Human Rights Woes

Reports by Human Rights Watch and the U.S. Department of State charge that the governing Fanmi Lavalas party has promoted a climate of violence and polarization. Aristide supporters and leaders of allied popular organizations have repeatedly threatened dissidents with violent attacks and driven opponents into exile. Instead of healing divisions, Aristide seems to create and exploit them like autocrats before him although the mobs that support him may, in fact, be beyond his control.

As an example, on May 21, 2001 a pro-government mob surrounded a house where the opposition Democratic Convergence was meeting in Les Cayes. They threw rocks and fired weapons. Nearby police took more than an hour to respond. And when they came, they arrested the Convergence leader Gabriel Fortune inside. The government supposedly established the Haitian National Police (HNP) in 1995 as the sole institutional security force in the country after disbanding the military. But in his second term of office, President Aristide politicized it by filling key positions with Lavalas party loyalists.[5]

Moreover, Aristide has turned to mob rule to solve the problem of rising crime. His "zero tolerance" crime policy announced in June 2001 made it unnecessary to bring criminals to court if citizens or police caught them in the act. According to Human Rights Watch in its *2002 World Report*, "his words were widely interpreted by Haitians as an invitation to vigilante justice and police violence. Human rights groups reported that in the months following the speech, dozens of suspected thieves were killed by mobs."

Sadly, "zero tolerance" has claimed the lives of others as well. Last December, Brignol Lindor, news director of Radio Echo 2000 in Petit-Goâve, was hacked to death by a partisan mob. A few days before, the town's deputy mayor Duby Bony reportedly called for "zero tolerance" to be enforced against a list of members of the political opposition that included Lindor. An inquiry carried out by the Association of Haitian Journalists found that members from the popular organization, "Domi Nan Bois," close to Lavalas, admitted committing the murder. According to the French-based Reporters Without Frontiers, 40 journalists were attacked or threatened and a dozen forced into exile in 2001 alone.

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[5] See U.S. Dept of State, *Country Reports on Human Rights Practices - 2001*, Bureau of Democracy, Human Rights, and Labor, March 4, 2002.

Outlook

In summary, the politics of winner-take-all, mob rule, and the exercise of power from the top down have hobbled Haiti's progress since independence and will probably continue to do so for some time in the future. Hope exists among Haitians who understand the give and take of democracy and among the working poor whose diligence and entrepreneurial talents help them succeed outside of Haiti. But promoting a level playing field to enable their influence to flower will not be easy and it could take decades to accomplish if the experience of the American occupation can be considered as an example. Blind aid to the regime will not solve any problems, as previous experience has shown it to be wasted. Assistance through NGOs buys time, but leaves no lasting solution. Perhaps only sustained commitments on the part of the international community will help establish the necessary security umbrella and a check on authoritarian impulses so that the practices of compromise and consensus can take hold. In the interim, disaffected leaders from the current government, dissidents, and the unemployed poor will continue to migrate to the United States, the Dominican Republic, Cuba, and the Bahamas, wherever they think their chances of survival and earning a living are better. But they will be competing with hundreds of thousands of migrants from the conflict in Colombia, civil unrest in Venezuela, economic meltdown in Argentina, and other states in the Americas with troubled economies or simmering disaffection. Helping all of these societies remedy these problems and dealing fairly with migrants and refugees from them will be a daunting task.

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 19, 2002

The Honorable John Ashcroft
U.S. Attorney General
U.S. Department of Justice
Washington, D.C.

Re: Detained Haitian Asylum Seekers

Dear Attorney General Ashcroft:

We would like to express our concern about a recent change in policy regarding the detention of Haitian asylum seekers in Miami. It is our understanding that since December 2001 the Immigration and Naturalization Service (INS) has denied parole to virtually all Haitian boat arrivals despite compelling equities which normally would permit their release.

Most of these men and women have demonstrated a credible fear of persecution and have family or community contacts willing to sponsor them. Under past practices in the INS Miami District, these factors would normally have resulted in grants of parole from detention. Indeed, legal service providers report that other nationalities continue to be released after establishing a credible fear of persecution. It therefore appears that the Haitians have been singled out for more restrictive treatment. This new policy was confirmed by a high-level INS official who stated that detention is being used to deter future boat arrivals, a clear violation of both U.S. asylum law and our international obligations.

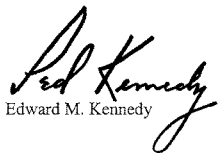
Prolonged detention is also interfering with the ability of Haitians to adequately present their asylum claims. Few of the Haitians can afford to retain private counsel and the few legal service providers lack the staff and resources to represent all of the detainees. As a result, many Haitians have been forced to appear in immigration court unrepresented. It is our understanding that in some cases, Haitians have relied on INS officers to assist them in completing their asylum applications, a clear conflict of interest. Despite these problems, requests from local legal service organizations for adequate time and access to Haitian detainees has at times been denied. We understand that only a handful of claims of asylum have been approved. Given the current escalation of violence in Haiti, the life and death implications of improper detention practices and inadequate access to representation are unsettling.

The Honorable John Ashcroft
June 19, 2002
Page 2

History has shown that Haitians who are desperate to flee violence in their homeland will not be deterred from coming to the United States by the threat of detention. It is our understanding that asylum seekers who establish a credible fear of persecution and that do not pose a security threat or flight risk should be eligible for parole. We urge you to reinstate the prior policy that treated Haitians consistently with other asylum seekers and to promptly release this vulnerable group of asylum seekers. It is both unfair and violative of our own principles of refugee protection to discriminate against one nationality.

Thank you for your attention to this important matter.

Sincerely,



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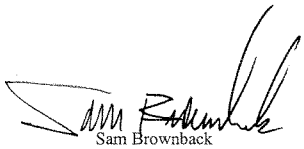

Sam Brownback

cc: James Ziglar, INS Commissioner

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Statement of the Lawyers Committee for Human Rights

Delivered by Anwen Hughes, Staff Attorney

Before the U.S. Commission on Civil Rights

June 21, 2002

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Introduction

I want to begin by thanking the Commission for giving us the opportunity to raise our concerns about the discriminatory and unfair parole policy that has been initiated by the U.S. Immigration and Naturalization Service with respect to Haitian asylum seekers.

The Lawyers Committee for Human Rights, with the assistance of about a thousand volunteer attorneys, provides legal representation, without charge, to hundreds of indigent refugees each year. The Lawyers Committee has long advocated for the rights of asylum seekers detained by the INS, and for the fair and non-discriminatory treatment of asylum seekers regardless of their race or national origin. We have issued several reports addressing the deficiencies in the INS's parole procedures for asylum seekers, urged effective and consistent implementation of parole guidelines for asylum seekers, and advocated for independent review of INS decisions to detain asylum seekers. Especially in light of the 1996 changes to United States immigration law, the availability of parole -- and of a fair and individualized process to obtain it -- is of central importance to refugees who seek asylum in the United States.

The INS Haitian parole policy violates both international refugee law and international human rights law.[1] International instruments to which the United States is a signatory, including the 1967 United Nations Protocol Relating to the Status of Refugees (the "1967 Protocol") and the International Covenant on Civil and Political Rights (the "ICCPR"), and the norms of international law they embody, permit detention of asylum seekers only when such detention is in accordance with procedures established by law, is "necessary" under the circumstances of an

[1] The Supreme Court has consistently held that international law must be considered part of United States federal common law: "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana*, 175 U.S. 677, 700 (1900). *See also The Nereide*, 13 U.S. 388, 423 (1815) (holding that U.S. courts are "bound by the law of nations which is part of the law of the land"); *Kadic v. Karadzic*,

individual asylum seeker's case, and is applied in a non-discriminatory manner. The detention of asylum seekers for purposes of deterrence is impermissible under international law.

It is also inhumane to detain torture survivors and other asylum seekers who have fled from persecution and are seeking refuge in this country. Detention can and does undermine the health of torture survivors and other traumatized asylum seekers. It also undermines the ability of refugees to find legal representation and to prove their asylum cases.

Factual Background

As other experts have explained today, following the arrival of a boatload of Haitian asylum seekers off the coast of Florida in December 2001, the INS instituted a new parole policy for Haitian asylum seekers. The stated purpose of the new parole policy, as various INS officials have confirmed, is deterrence. The INS has in fact conceded, in its federal court submissions, that it initiated the new Haitian parole policy "to try to deter a mass exodus from Haiti to the United States." (See Opp. Mem. at 8 (citing Lee Decl. ¶ 11)).

Such a policy calls for parole determinations to be made, not on the basis of the necessity of detention in the case of each individual asylum seeker -- an analysis focused on the circumstances of the asylum seekers themselves -- but instead on the race and national origin of these asylum seekers. A policy like this, which is based on deterrence, precludes the fair and individualized review of the necessity for detention called for by the Refugee Convention and the International Covenant on Civil and Political Rights.

The Refugee Convention and the ICCPR prohibit Discriminatory Detention or Detention for the Purposes of Deterrence

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70 F.3d 232, 246 (2d Cir. 1995) (it is a "settled proposition that federal common law incorporates international law"); *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1388 (10th Cir. 1981).

International refugee law developed in the aftermath of World War II.[2] International recognition of the obligations owed by countries to refugees was then greatly strengthened with the 1967 Protocol, which the United States signed in 1968.[3] Article 31, a key provision of the Refugee Convention and the 1967 Protocol, exempts refugees from being punished because of their illegal entry or presence and also provides that states shall not restrict the movements of entering refugees more than is necessary. The Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), of which the United States is a member, has concluded that detention of asylum seekers "should normally be avoided" and may only be resorted to "if necessary" and on "grounds prescribed by law" for certain specified reasons relating to the individual asylum seeker.[4] A roundtable of experts, convened by the United Nations High Commissioner for Refugees in November 2001, in their formal conclusions, confirmed that a determination of whether detention is "necessary" within the meaning of the Refugee Convention can only be made by considering the individual case of an asylum seeker.[5]

Article 9(1) of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by the United States in 1992, provides that: "No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance

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[2] *See* United Nations Convention Relating to the Status of Refugees, *adopted* July 28, 1951, *entered into force* Apr. 22, 1954, 19 U.S.T. 6259, 189 U.N.T.S. 137 (hereinafter "Refugee Convention")

[3] United Nations Protocol Relating to the Status of Refugees, *adopted* Jan. 31, 1967, *entered into force* Oct. 4, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. The 1967 Protocol incorporated by reference and bound the United States to the obligations set forth in Articles 2 through 34 of the 1951 Refugee Convention

[4] UNHCR Executive Committee Conclusion on Detention of Refugees and Asylum Seekers No. 44 (1986).

[5] *Summary Conclusions on Article 31 of the 1951 Convention Relating to the Status of Refugees*, Geneva Expert Roundtable: Organized by the UNHCR and Graduate Institute of International Studies (Geneva: Nov. 8-9, 2001), available at http//:www.UNHCR.ch (emphasis added) (hereinafter "Summary Conclusions").

with such procedures as are established by law."[6] The ICCPR, like the Refugee Convention, calls for a fair review of the circumstances of the situation of the individual asylum seeker to determine the necessity of detention. The United Nations Human Rights Committee, in ruling on the four-year detention of a Cambodian refugee in Australia in a case called A vs. Australia, confirmed that detention should be considered arbitrary when it was "not necessary in all the circumstances" of the individual asylum seeker's case.[7]

On the specific question of deterrence, the UNHCR and experts[8] in international refugee law have repeatedly emphasized that detention of asylum seekers for the purpose of deterrence is contrary to the norms of international refugee law. The UNHCR Detention Guidelines, as revised in February 1999, specifically state that: "Detention of asylum seekers which is applied … as part of a policy to deter future asylum seekers is contrary to the principles of international protection." (UNHCR Detention Guidelines ¶ 3.) Most recently, in its April 15, 2002 advisory opinion on the INS's detention of asylum seekers in South Florida, the UNHCR emphasized that "[t]he detention of asylum seekers in furtherance of a policy to deter future arrivals does not fall within any of the exceptional grounds for detention and is contrary to the principle underlying

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[6] ICCPR, *adopted* Dec. 19, 1966, *entered into force* March 23, 1976, G.A. res. 2200A (XXI), U.N. Doc. A/6316, 999 U.N.T.S. 171.

[7] *UN Human Rights Committee, A. v. Australia*, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (Apr. 30, 1997), available at http://www.unhchr.ch.

[8] The November 2001 expert roundtable convened by the UNHCR to examine issues relating to Article 31, specifically determined that "[r]efugees and asylum seekers should not be detained . . . for the purposes of deterrence." Summary Conclusions ¶ 11 (c).Refugee law experts have repeatedly concluded that detention for deterrent purposes is inconsistent with international law. *See* Guy S. Goodwin-Gill, *International Law and the Detention of Refugees and Asylum Seekers*, International Migration Review, Vol. 20, No. 2 (1986) ; Arthur C. Helton, *The Legality of Detaining Refugees in the United States*, 14 N.Y.U. Rev. Law & Soc. Change 353, 372-80 (1986); Arthur C. Helton, *Detention of Refugees and Asylum Seekers: A Misguided Threat to Refugee Protection*. in Gil Loescher, *Refugees and International Relations* (Oxford Univ. Press, Oxford; 1989).

the international refugee protection regime" and that "detention for the purpose of discouraging further arrivals cannot be justified."

The INS's plainly discriminatory policy of detaining Haitians en masse is contrary to international law. The principle of non-discrimination is central to both the Refugee Convention and the ICCPR. Article 3 of the Refugee Convention requires signatory nations to "apply the provisions of [the] Convention to refugees without discrimination as to race, religion or country of origin." In accordance with this central tenet, the UNHCR Detention Guidelines recommend that any decision to detain an asylum seeker should "only be imposed in a non-discriminatory manner."[9] The November 2001 expert roundtable convened by UNHCR agreed, concluding that "[r]efugees and asylum seekers should not be detained on the grounds of their national, ethnic, racial or religious origins . . . ").[10]

The ICCPR obliges all contracting states to ensure to "all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind . . ." (ICCPR, Art. 2(2)). The ICCPR also specifies that this principle of non-discrimination includes national or social origin, birth or other status.[11] Signatory states are thus required to prohibit racial and national origin discrimination in all areas subject to their jurisdiction, including in their detention policies.

Underlying Problems in the Asylum Detention System

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[9] UNHCR Detention Guidelines ¶ 3.

[10] Summary Conclusions ¶ 11(c).

[11] Specifically, the Convention provides that: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."(ICCPR, Art. 26.)

The U.S. asylum detention system is plagued with problems, and is fundamentally flawed in several significant ways. First, the 1996 immigration law calls for "mandatory detention" of arriving asylum seekers who arrive without valid travel documents – meaning that even asylum seekers who arrive on valid passports are jailed upon their arrival in this country. Second, the decision to detain or parole an arriving asylum seeker is entrusted to the INS, and that decision cannot be appealed to an independent authority – or even to an immigration judge. International law, and the ICCPR specifically, call for independent review of decisions to detain asylum seekers. Many European countries provide for this important safeguard against arbitrary detention. In the U.S. however, the INS has been given the power to act, in effect, as both judge and jailor with respect to parole decisions for arriving asylum seekers.

Third, the decision to detain asylum seekers is often entrusted to local district directors who interpret INS's parole guidelines in different ways. The decision to detain an asylum seeker is, as a result, based often on the local INS district director's parole policies, and the availability of bed space – instead of a meaningful assessment of the circumstances of the individual asylum seeker's case.

Because of these and other fundamental flaws in the asylum detention system, refugees who seek asylum in this country can face lengthy and arbitrary detention – without any meaningful opportunity to challenge their individual detentions before an independent authority. And the INS, as a result, apparently feels free to issue a blatantly discriminatory parole policy, like the one at issue here today -- confident that there will be no meaningful checks on its decisions.

Reform is essential. Congress, the Administration and other U.S. government officials should take steps to ensure that parole decisions for asylum seekers are made in a fair and non-

discriminatory manner. The INS should be directed to immediately abandon its discriminatory Haitian parole policy. Immigration judge review of INS detention decisions and other essential reforms, including the reforms included in the Refugee Protection Act, a bill that has been introduced with bi-partisan support in both the Senate and House of Representatives, should be enacted.

The Effects of Detention on Asylum Seekers

In recent years, the press, human rights groups, medical practitioners and faith-based organizations have documented the harsh impact of detention on individual detainees. The Florida press and advocacy organizations, including FIAC, have documented the impact of detention on asylum seekers and other immigration detainees who are held in this area.

Detention can be particularly difficult for the many asylum seekers who are survivors of rape, torture and other traumatic experiences. As one medical professional has noted: "Most refugees have been exposed to high levels of violence and other types of traumatic events in their country of origin and during their journey to their host country."[12] Medical experts have documented the fact that many refugees suffer from post-traumatic stress disorder (PTSD), major depression, or other illnesses.[13]

For refugees who are suffering from PTSD and depression, detention is re-traumatizing and can exacerbate their suffering. As another medical expert has explained: "For someone who's been tortured and locked up in a cell as a political prisoner in their native countries . . . the

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[12] Catherine J. Locke, Ph.D., *et al.*, *The Psychological and Medical Sequelae of War in Central American Refugee Mothers and Children*, 150 Archive of Pediatrics & Adolescent Med. 822, 823 (1996).

[13] Michele R. Pistone & Philip G. Schrag, *The New Asylum Rule: Improved but Still Unfair*, 16 Geo. Immigr. L. J. 1, 49 nn.272-73 (Fall 2001) (citing numerous medical reports, including, Neal R. Holtan, *Survivors of Torture*, 114 Pub. Health Rep. 489 (1999); Derrick Silove, *et al.*, *Anxiety, Depression and PTSD in Asylum-Seekers: Associations With Pre-Migration Trauma and Post-Migration Stressors*, 170 British J. Psychiatry 351, 351-57 (1997); Hans Thulesium and Anders Hakansson, *Brief Report: Screening for Posttraumatic Stress Disorder Symptoms Among Bosnian Refugees*, 12 J. Traumatic Stress 167, 171-73 (1999)).

experience of being locked up here again can trigger panic attacks, flashbacks."[14] The continued incarceration of such asylum seekers severely impairs their ability to overcome PTSD and in many cases exacerbates their condition. Dr. Allen Keller, Director of the Bellevue/NYU Program for Survivors of Torture and member of the Executive Committee of the National Consortium of Torture Treatment Programs, explained in recent Congressional testimony that:

> Imprisonment and treating asylum seekers like criminals is retraumatizing and can have harmful effects on their physical and emotional well being . . . Imprisonment and such deprivation can result in exacerbating disturbing memories and nightmares of abuse the asylum seekers had suffered previously. Depression can be caused by detention and feelings of isolation, hopelessness and helplessness. Asylum seekers may experience worsening of physical symptoms, including musculoskeletal pain, because of their restricted activity. Somatic symptoms, such as headaches, stomach aches and palpitations can also result from detention.[15]

Detention can thus lead to grave harm as "the anxiety, fear, and frustration provoked by detention may prolong and exacerbate underlying traumatic stress reactions and thereby create long-term psychosocial disability."[16]

The impact of detention on children has been the subject of increasing scrutiny over the last two years.[17] About 5,000 children have been reported to be in INS custody; many are held in

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[14] Elizabeth Llorente, *Dreams Turn to Despair*, The Bergen County Record, May 24, 1999 (quoting Dr. Beverly Pincus, Director of Cross-Cultural Counseling Center at the International Institute of New Jersey).

[15] Statement of Allen S. Keller, M.D. before the Senate Judiciary Subcommittee on Immigration, Hearing on Asylum Policy (May 3, 2001), available at www.phrusa.org/research /refugees/testimony.html.

[16] Derrick Silove, *et al.*, *Detention of Asylum Seekers: Assault on Health, Human Rights, and Social Development*, The Lancet, Vol. 357, May 5, 2001.

[17] Eliza Amon, *Access Denied, Children in INS Custody Have no Right to a Lawyer*, The National Law Journal, Apr. 12, 2001; Alan Elsner, *Congressmen Protest INS Treatment of Retarded Boy*, Reuters, Mar. 27, 2002; Eric Herman, *Immigration: No Kid Gloves*, The Daily News, Apr. 30, 2000.

juvenile jails and shelters.[18] Children have also been detained in adult jails and detention facilities when the INS has mistakenly concluded that they are adults based on dental examinations -- a procedure that has been widely criticized by medical experts and is no longer relied upon even by the U.S. State Department.[19] The Women's Commission for Refugee Women and Children has, in recent testimony before the Senate, explained that:

> Children are subject to handcuffing and shackling, even at times during their immigration hearings. Translation assistance is rare. In some facilities, access to the outdoors is extremely limited. Education programs are often conducted in English. Children are sometimes cut off from religious services in their chosen faith. Children are frequently transferred from facility to facility, even when represented, and then without prior notice to counsel . . . [C]onsideration of the best interests of the child, the cornerstone of child welfare, is a concept that continues to allude the policies and practices of the INS.[20]

Detention undermines the ability of an asylum seeker to obtain legal representation and, as a result, his ability to prepare and effectively argue his claim. Finding legal representation can be extraordinarily difficult for a detainee, who usually is also dealing with serious linguistic, fiscal and cultural barriers. As the UNHCR has noted: "Detention creates numerous obstacles for asylum seekers. Detained asylum seekers are often unable to secure counsel, have difficulty communicating with family members, and have limited access to legal materials and interpreters to assist them in preparing their claims."[21]

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[18] *See* Amon and Elsner.

[19] Alan Elsner, *New York Dentists Can Settle Fate of Migrants*, Reuters, Jan. 11, 2002; Chris Hedges, *Crucial INS Gatekeeper: The Airport Dentist*, New York Times, July 22, 2001.

[20] *Id.*

[21] Lawyers Committee for Human Rights, *Refugees Behind Bars*, *supra* note 9 at 34 (citing Letter from UNHCR Regional Representative, dated Sept. 15, 1998, to Senator Spencer Abraham, Senate Sub-Committee on Immigration in connection with INS oversight hearings on detention).

Statistics on detention analyzed by Georgetown University's Institute for the Study of International Migration indicated that asylum seekers are four to six times more likely to be granted asylum when they are represented. The Georgetown analysis also revealed that in immigration court, more than 33% of asylum seekers lack representation. For detained asylum seekers, the situation is even worse -- more than twice as many detained asylum seekers lack representation when compared with non-detained asylum seekers in defensive proceedings.[22]

Even when a refugee is able to locate a lawyer, detention is a huge burden on the lawyer and client seeking to prepare a case. The ability of the attorney and client to meet to prepare the asylum case is necessarily limited by the need for the attorney to travel to meet with the client. And some immigration judges refuse to adjourn cases sufficiently to allow attorneys adequate time to gather evidence and prepare their clients' cases.

In many instances, the asylum seeker is likely to face further persecution and even death if returned to his or her home country. In this light, the importance of not compromising the conditions under which an asylum seeker can prepare and present her case cannot be overstated. Yet detention ultimately poses a significant obstacle to the just resolution of an asylum seeker's claims. As Professor Pistone, Director of Villanova University School of Law's Clinic for Asylum, Refugee and Immigrant Services, has written:

> Detention adversely impacts an asylum seeker's ability to find and hire counsel, to prepare and present an asylum claim, and to provide credible and detailed testimony. The cumulative effect is to undermine the ability to achieve the ultimate goal of the process--to distinguish between deserving and undeserving asylum applicants, and to grant protection to deserving applicants.

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[22] *Asylum Representation. Summary Statistics*, prepared by Dr. Andrew I. Schoenholtz, Director of Law and Policy Studies, Institute for the Study of International Migration, Georgetown University (May 2000).

> This state of affairs is particularly lamentable given that the stakes are so high.[23]

We urge the Commission to conduct a full investigation of the INS's parole practices with respect to asylum seekers, and to recommend significant reforms to the asylum detention system and the end of the discriminatory Haitian parole policy.

[23] Michele Pistone, *Justice Delayed is Justice Denied: A Proposal for Ending the Unnecessary Detention of Asylum Seekers*, 12 Harvard Human Rights Journal 197, 215 (Spring 1999).

Testimony before the

Senate Committee on the Judiciary Subcommittee on Immigration

On the Detention and Treatment of Haitian Asylum Seekers

Delivered by Cheryl Little, Executive Director

Florida Immigrant Advocacy Center

October 1, 2002

My name is Cheryl Little. I am the Executive Director of the Florida Immigrant Advocacy Center (FIAC), a non-profit agency that provides free legal assistance to detained as well as non-detained immigrants including many Haitian asylum seekers. Thank you, Mr. Chairman, for the opportunity to address this Committee regarding our concerns about the treatment of Haitian asylum seekers. Permit me to thank both you Senator Brownback and the other members of the Subcommittee as well for your leadership in defending immigrants' basic rights'.

My testimony is also supported by the Women's Commission for Refugee Women and Children, which recently conducted an assessment of the treatment of Haitian asylum seekers in the United States and the Dominican Republic. I participated in that delegation at the invitation of the Women's Commission.

I. Overview

On December 3, 2001, a boatload of 187 Haitians ran aground off the Miami coast. Twenty of the Haitians jumped overboard, 18 of them swimming to shore. Two reportedly drowned. The remaining 167 Haitians were rescued by the US Coast Guard and placed in INS custody. Pursuant to immigration laws passed in 1996, they were placed in the expedited removal process and interviewed individually by INS Asylum Officers while in detention in Miami. The Asylum Officers determined that all but two of the Haitians had a "credible fear"of persecution upon return to their home country, which means that they had a substantial likelihood of proving their eligibility for asylum.

After passing their credible fear interviews, asylum seekers are eligible for release from detention pending final adjudication of their asylum claims. Indeed, following their interviews, many of the Haitians were told by Asylum Officers that they would be quickly released, as virtually all Haitian asylum seekers in the Miami District had been prior to December 3 and as most similarly situated asylum seekers of other nationalities and races are today.[1]

INS adopted a policy of detaining Haitians, and only Haitians, in mid-December of last year.[2] INS Headquarters issued a directive to Miami INS not to release any Haitian asylum seekers in expedited removal without explicit INS approval. INS later claimed this was done because they feared a mass migration and sought to deter Haitian boat persons from making the dangerous voyage. However, the initial detention directive expressly included all Haitians, regardless of whether they arrived by air or by boat. By including airport arrivals, INS showed that its policy was not to protect Haitians on the high seas from loss of life - because those arriving by plane arrive safely. Instead, it revealed a deeper discriminatory purpose.

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[1]Statistics derived from INS's own records reveal a stark pattern of discriminatory detention. In November 2001, immediately prior to its change in detention policy, the INS released 96% of all Haitians who had passed their credible fear interviews. INS released similarly situated non-Haitians during the same period at a comparably high rate. After INS adopted a no-release policy for Haitians in December 2001, the release rate for Haitians dropped to virtually zero. Only unaccompanied minors and pregnant women were released. At the same time, INS continued to release non-Haitian asylum seekers at the very high rate. For example, for the period December 1, 2001 to February 15, 2002, the INS released non-Haitian asylum seekers at a rate of 91%.

[2]In documents submitted to the court in March, 2002, INS acknowledged that on March 18, 2002, Peter Michael Becraft, Acting Deputy Commissioner of the Immigration and Naturalization Service (INS), had issued this directive.

The INS has also claimed that it considered Haitians more of a flight risk than other nationalities because the Haitians had demonstrated their desperation by leaving Haiti by boat. While this "desperation" may shed light on the reason the Haitians seek asylum, it neither explains nor justifies a policy of discriminatory treatment.

Haitians released in the past, pending final decisions on their asylum cases, have not absconded. For example, Sr. Jeanne O'Laughlin, President of Barry University, helped sponsor over 300 Haitians following their release from detention in 1982. All but a handful appeared for their hearings. Sister Jeanne's offer to help sponsor all of the female Haitian asylum seekers currently detained has not been accepted by INS.[3] Moreover, the very nature of asylum is such that all those genuinely seeking this protection are truly desperate.

On March 15, 2002, FIAC, along with pro-bono attorneys, filed a class action lawsuit in federal court on behalf of detained Haitian asylum seekers in South Florida who had passed their credible fear interviews.[4] The lawsuit challenges the government's policy of discriminating against Haitian asylum seekers by detaining them on account of their nationality and/or race. Although the Court made the important finding that the INS detention policy differentiated between Haitians and non-Haitians, on May 17, 2002 the case was dismissed without a hearing, even though the facts of the case were in dispute. It was dismissed on the basis that the INS has virtually unfettered statutory and constitutional authority to discriminate and that it is up to politicians in Washington, not the courts, to determine the Haitians' fate. In her ruling, the judge wrote, "Petitioners' cry for freedom needs to be directed to those representatives of the political branches responsible for enacting immigration laws and policies." An appeal is currently pending with the Court of Appeals for the Eleventh Circuit.

INS has not provided any valid, nondiscriminatory justification for its Haitian policy. The INS stated that it adopted the policy in order to save Haitian lives and to prevent a mass migration from Haiti. Yet the *only* evidence INS has put forth to support its claim of a mass migration are Coast Guard statistics which show that 350 Haitians were interdicted in November, 2001, compared to a total of 96 in the preceding three months. However, Coast Guard statistics also show that they were routinely interdicting more than 350 Haitians a month at various times during the last five years (for example, 395 in January 2000, 477 in October 1998, 428 in September 1998, and 421 in November 1997). Each of these monthly interdictions represented substantial increases over total interdictions from the preceding three months, yet no mass migration occurred following any of these months of increased interdictions. The INS has provided no explanation as to why the 350 interdictions in November 2001 are proof of a threatened mass migration while the higher interdiction numbers in other months were not.

The overall number of Haitian interdictions in 2001 simply do not indicate a mass migration nor do Coast Guard interdiction statistics for 2002. In fact, statistics show quite the opposite. There were fewer interdictions in the first half of 2002 than there were in the first half of 2001.[5]
The drop in numbers in the first half of 2002, although relatively minor, cannot be attributed to the Haitian detention policy because the INS denied it had such a policy. Indeed, no Haitians were

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[3]INS officials claimed on August 2002 that Sister Jeanne withdrew the offer that she had made in April, 2002, to help sponsor the Haitians. That was not the case and Sister Jeanne so informed the INS Commissioner. She has received no response.

[4]*Jeanty v. Bulger*, Case No. 02-20822-Civ-Lenard (S.D.Fla 2002).

[5]Even when interdictions rose to 200 (Feb. 2001; June 2001), migrations decreased in subsequent months.

interdicted in January or February of 2002, even though this was during the period of time when INS's detention policy was still a secret. From early December 2001 until March 2002, INS officials gave false and misleading information to the advocacy community in an apparent attempt to cover-up their policy of detaining Haitians.[6] The policy only became public in March, 2002. A secret policy clearly could have no deterrent effect in Haiti when no one knew about it here or in Haiti. Moreover, 628 Haitians were interdicted between March and July, the months immediately *after* the INS's detention policy became public.

Most importantly, INS' claim that absent the current Haitian detention policy we are likely to see a Haitian exodus rivaling the Mariel Boatlift or the number of Haitians and Cubans who were detained in Guantanamo in the mid-90's is absurd. Only 1,956 Haitians were interdicted at sea by the Coast Guard in 2001. This number is significantly smaller than the Mariel Boatlift in the spring of 1980, during which 125,000 Cubans arrived in the United States, as well as the relatively large flow of refugees in 1994 consisting of 25,069 Haitians and 37,191 Cubans.

Haitians who flee by boat know full well the risks they undertake when they take to the high seas in flimsy boats.[7] The vast majority are interdicted by the US Coast Guard and forcibly returned. Others, even less fortunate, lose their lives at sea. History proves that Haitians who are desperate to flee political violence in their country will not be deterred from coming to the United States by threat of detention.

Based on a recent assessment by the Women's Commission for Refugee Women and Children, in which I participated, we are also concerned that countries in the Caribbean region, including the Dominican Republic and the Bahamas, are closing their doors to Haitian refugees. The Haitians are subject to detention, harassment by local authorities and forced return.

Haitians in fear of their lives have nowhere to go for protection. They are not welcomed in the United States, and as mentioned above, they are not welcome in the Caribbean. Further, there is no in-country refugee processing in Haiti and no systemic effort to assess whether interdicted Haitians have viable asylum claims or reasons to fear return.

Lack of Attorney Access

Asylum applicants in the Miami District generally are released after passing their credible fear interviews and then have about a year to find lawyers and prepare their cases. The Haitians, by contrast, faced expedited hearings because they are in detention. Additional immigration judges were detailed from their downtown Miami courtrooms to Krome Service Processing Center (Krome) to hear the Haitian cases. Many hearings were scheduled for only one hour -- and some for only a half hour -- including time for translation, whereas non-Haitian cases are routinely set for three hour hearings. Judges held up

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[6]Local INS officials publicly denied the existence of the policy and issued large numbers of boilerplate decisions denying release to Haitians which contained false reasons for denial. Only when Congressman Conyers met with these officials in Miami early in March, 2002 did they admit that, with few exceptions (e.g. pregnant women), the Haitians weren't being released. Similarly, only after a lawsuit challenging the detention policy was filed in mid-March, did INS officials in Washington acknowledge that they had instructed Miami INS not to release the Haitians. Attorneys wasted precious time preparing release requests for the Haitians rather than assisting them with their asylum applications.

[7]The Haitians who arrived on December 3rd named their boat the "Si M'ap Viv Se Jezi" which means "If I'm still alive it's because of Jesus." They clearly knew the risk they were undertaking in making the sea voyage, yet were determined to do so given their grave fear of remaining in Haiti.

to five merits hearings a day and some have said they could not grant continuances of more than four (4) weeks in the Haitian cases. No such restriction applies to non-Haitian cases.

The Haitians have had precious little time to attempt to find lawyers and prepare their cases. Despite efforts by Steven Lang, Coordinator of the Pro Bono Program of the Executive Office of Immigration Review (EOIR), to secure attorneys to assist the Haitians, very few have done so. For example, Mary Kramer, President of the South Florida Chapter of the American Immigration Lawyers Association (AILA), expressed concern that the Haitian detention policy was discriminatory and she was therefore reluctant to participate in any effort that would somehow lend it credence. She also pointed out that AILA's pro-bono resources were already stretched thin.[8]

Most of the Haitians are therefore without attorneys and have no idea how to effectively present their case. Many Haitians have already been ordered removed by immigration judges, often times because they couldn't complete their asylum applications, which are in English and which call for detailed answers in English. Asylum applications submitted by the Haitians frequently consist of only one or two sentences. Detention officers with no training in asylum law -- likely well-intentioned -- have attempted to help some of the Haitians with their applications. In January alone, FIAC received 162 requests for help from the Haitians. FIAC has attempted to assist dozens of Haitians in filing appeals with the Board of Immigration Appeals (BIA), most of whom went before the immigration judge without legal representation. The BIA is now streamlining decisions, and a number of the Haitian asylum seekers have received one or two sentence denials of their appeals, summarily affirming the decisions of the immigration judges without explanation. FIAC even received a BIA denial for a Haitian client whose appeal brief was not yet due.

On April 15, 2002, the United Nations High Commission for Refugees (UNHCR) issued an Advisory Opinion, concluding not only that the policy of using detention in order to deter future refugees flows— as is being done with the Haitians— violates basic principals of international law, but that detaining asylum seekers of a particular nationality while releasing asylum seekers of other nationalities is in violation of international norms of refugee law.

Both the UNHCR and the Lawyers Committee for Human Rights (LCHR) have emphasized that detention severely hinders an asylum seeker's ability to access legal services and effectively present an asylum claim.[9] Indeed, a study conducted by Georgetown University's Institute for the Study of International Migration indicated that asylum seekers in detention are more than twice as likely as those who aren't detained to be without legal representation and that persons with attorneys are four to six

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[8] "At a glance, this new [detention] policy certainly appears to be discriminatory and unconstitutional. Although these people deserve representation, I am hesitant to lend countenance to EOIR's and INS' highly objectionable treatment of these people. I note further that our Chapter's pro bono resources are stretched to the limit... If the INS were to continue to parole Haitian nationals who establish a credible fear of persecution, these individuals could join their families in the community, seek work authorization, and retain qualified private counsel. They would also have time to prepare their court cases in a meaningful fashion." Letter from Mary Kramer to Steve Lang, February 19, 2002.

[9] The UNHCR wrote this advisory opinion at FIAC's request. On May 9, 2002 the Lawyer's Committee submitted an amicus brief to the District Court in Miami (*Jeanty v. Bulger*, Case No. 02-20822-Civ-Lenard (S.D.Fla 2002).

times more likely to be granted asylum.[10] It is therefore ironic that at a time when FIAC and other pro-bono attorneys need better access than ever in order to assist the Haitian detainees, attorney access has become even more restrictive.

Attorneys in South Florida attempting to help the Haitians face innumerable obstacles, including waiting hours just to meet with clients, and a serious lack of adequate visitation space. For example, headcounts at Krome have often lasted all morning and sometimes into the afternoon, during which there is no attorney access at all. Lengthy delays once headcounts are over also occur because escorts are not available to bring the detainees to meet with their attorneys. FIAC and Catholic Legal Immigration Network, Inc. (CLINIC) share one small attorney booth at Krome, which is clearly inadequate given the large number of Krome detainees in need of pro bono help. Additional space that has sometimes been provided FIAC and CLINIC attorneys is even more problematic, as Krome Officers and other detainees regularly walk through the area or sit within earshot of the attorney interviews.

In February, 2002, INS officials even restricted weekend and holiday visitation hours at Krome to between 7:00-11:00 a.m. Previously, attorneys could meet with their clients almost anytime on weekends. The new policy has prevented many attorneys who wish to provide pro bono help to the Haitians from doing so.

At the Turner Guilford Knight Correctional Center (TGK), where most of the Haitian women were held until late August 2002, unreasonable delays just in getting permission to enter the facility were a frequent problem. At best, FIAC staff typically wait up to an hour just for an escort to take them to the women's unit.[11] Frequent policy changes without prior notice regarding identification required to enter TGK also cause considerable delays.

While all female asylum seekers at TGK, including the Haitians, were recently moved to the Broward County Work Release Center (Broward Center), FIAC staff have experienced unreasonable delays in meeting with clients there and even have been denied access to them by INS officials. INS has also made it much more difficult for FIAC to conduct Know Your Rights presentations for the women at the Broward Center. These presentations are being subject to far harsher requirements than the same presentations at TGK and Krome.

The problems facing FIAC staff in gaining access to their Haitian clients are exacerbated by the fact that they are being held in four different facilities: Krome, Broward Center, a local Miami Hotel, and a detention facility in Berks County, Pennsylvania, each far removed from the other. The Broward Center in Pompano, Florida, is 73 miles roundtrip north of FIAC's Miami office and Krome is 44 miles roundtrip to the south. The Pennsylvania facility is over 1200 miles away.

The Haitians are extremely depressed and demoralized, not only because of the conditions of their confinement but because they see asylum seekers from other countries being quickly released. This is adversely affecting their ability to articulate their asylum claims. Many Haitians say they feel they're

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[10] *Asylum Representation*, Summary Statistics, prepared by Dr. Andrew I. Schoenholtz, Director of Law and policy Studies, Institute for the Study of International Migration, Georgetown University, May 2000.

[11] Female INS detainees who are not asylum seekers continue to be held at TGK.

being pressured to abandon their asylum claims and a number of them have done so recently. The Haitians have engaged in a number of hunger strikes in order to call attention to their plight.[12]

III Conditions of Detention

Conditions at facilities housing the Haitians have largely been deplorable. For example, Krome -- which houses the male detainees -- has been terribly overcrowded. In May 2002, for example the population at Krome, was over 800 even though INS officials have said the maximum capacity should be 538. The overcrowding presents a serious health and safety hazard and adversely affects virtually all aspects of detainees' lives, including meaningful access to attorneys and to medical care. While the Krome population has decreased recently, advocates in New York and New Jersey report that 20 to 30 asylum seekers are being transferred from Miami every week to detention facilities in the Northeast.

Conditions of detention for the women have been even harsher. In mid-December, 2000 all of the women housed at Krome, an "open" INS Service Processing Center housing no one serving a criminal sentence, were moved to TGK, a maximum-security county jail in Miami, Florida housing inmates who have been arrested or are already serving sentences. Most of the women transferred were asylum seekers. They were moved following allegations by female detainees at Krome of sexual abuse by guards there, including sexual molestation, harassment, and even rape. These allegations began to publically surface in late May, 2000 and an investigation was initiated by the Office of Public Integrity, the Office of Inspector General, the FBI and the U.S. Attorney's Office. It is uncertain, however, whether this investigation will prove fruitful since some of the victims and witnesses of the abuse have been deported while a number of the officers implicated in the abuse remain at Krome.

In March, 2001 Amnesty International claimed that the women's move from Krome to TGK effectively resulted in "punishing" them for the U.S. government's failure to protect them and they called on INS to take immediate steps to ensure their safety and well-being. Amnesty reported that the women at TGK were suffering especially harsh treatment, including verbal abuse and insults by guards; frequent cell "lockdowns" for hours at a time; and inadequate provision of food, medical care and exercise facilities.[13]

The Women's Commission for Refugee Women and Children (Women's Commission) twice assessed conditions at TGK and found it to be totally inadequate for the housing of asylum seekers, who typically represent the majority of women detainees in the custody of the Miami District.[14] They also found that the women were living in deplorable conditions and that incarcerating them at TGK seriously interfered

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[12]Many of the detained Haitian asylum seekers at Krome began a peaceful hunger strike on Saturday, July 6, 2002, after one of the Haitians learned that his child had died in Haiti. On Monday, July 8, 2002, a Creole-speaking FIAC paralegal who works at FIAC's Krome office was escorted off the facility because he was under investigation for initiating the hunger strike, even though he had not been present at Krome for nearly a week before the hunger strike and had consistently advised detainees not to engage in behavior, such as a hunger strike, that could result in their punishment or transfer. While the paralegal was allowed to return to Krome after INS' accusations were proven to be baseless, FIAC's access to the Haitians was curtailed during this critical time in which two of the Haitians were reportedly beaten by guards after the hunger strike began.

[13]Amnesty International, "USA: 'I'm not an inmate. Why should I be treated as one?' Women asylum-seekers punished for state's failure to protect them," March 2001.

[14]"Freedom Denied: Middle Eastern Asylum Seekers Caught Up in U.S. Immigration Sweep," Women's Commission for Refugee Women & Children, December 2001; "Innocents in Jail: INS Moves Refugee Women from Krome to Turner Guilford Knight Correctional Center, Miami," Women's Commission for Refugee Women & Children, June 2001.

with their access to legal assistance and thus jeopardized their ability to successfully pursue their asylum claims.[15] The Women's Commission concluded that the women in INS custody "have paid the price for inflicted abuses by INS officers and other officials at the Krome Service Processing Center."[16]

FIAC issued it's own report about conditions at TKG in December, 2002 and a supplemental report in April, 2002.[17] The reports focus on the dehumanizing nature of the women's detention, including invasive strip searches and the lack of translation services which routinely led to some officers misunderstanding, berating, and humiliating them. The reports also focus on INS' failure to comply with its own detention standards, which were supposed to be fully implemented at TKG on March 1, 2001.

Ironically, the women reported incidents of sexual harassment and molestation by male trustees in TGK shortly after their transfer from Krome, again calling into question the safety of the women and the INS' failure to pursue a solution that recognizes the unique needs of women detainees and offer them the protection they deserve.

On March 26, 2002, Miami-Dade County Commissioners recognized that TGK was "not designed to meet the detention needs of immigration detainees" and that conditions at TGK are more severe than those imposed upon male detainees held at the Krome Service Processing Center. The County Commission passed a resolution directing the County Manager to work with INS to investigate alternative sites within Miami-Dade County for the female detainees and to submit a report regarding such alternatives within 45 days of the resolution.[18] On August 26, 2002, INS began moving female asylum seekers at TGK to the Broward Center, a Wackenhut-run facility. While this is a far more appropriate setting for the women and the Broward Center's staff have been extremely cooperative and helpful, FIAC is concerned that in 1999 a number of women there complained they were being sexually abused and harassed.[19] Additionally, Wackenhut-run facilities have been subject to a great deal of criticism and have even been sued by the Department of Justice (DOJ).[20] FIAC is hopeful that conditions at the Broward facility will remain adequate and we plan to monitor the situation to ensure the women there are safe and provided appropriate services.

Women are also detained at the local Comfort Suites Hotel ("Hotel") in Miami when there is no space for them elsewhere and where families with minor children are often housed. While it would seem that detainees would be far better off in the Hotel, those confined there are in effect in a gilded cage. INS guards monitor the hallways outside their rooms and conditions at the Hotel are particularly troubling.

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[15]Ibid.

[16]Ibid.

[17]Cheryl Little and Charu Newhouse al-Sahli, "INS Detainees in Florida: A Double Standard of Treatment," Florida Immigrant Advocacy Center, December 2001, and supplement thereto, January - April 2002.

[18]Miami Dade Legislative Item File Number 021139, "Alternative Facilities to House Female INS Detainees at TGK," Adopted Resolution, Introduced April 18, 2002.

[19]Charles, Jacqueline. "Inmates Say They Had Sex with Guards: Work Release Center Plagued with Problems," *The Miami Herald*, August 10, 1999; Charles, Jacqueline. "Broward Jail Gets Surprise Review: Jenne identifies Lapses in Security," *The Miami Herald*, August 21, 1999.

[20]For example, in 2000, the Department of Justice sued Wackenhut for the abuse and neglect of juveniles at a facility in Louisiana, where they claimed conditions were "dangerous and life-threatening."

Attorney visitation is not accommodated at all at the Hotel itself. FIAC must request detainees from the Hotel be brought to Krome for attorney visitation at least 24 hours in advance. The policy for making such a request has changed numerous times over the past several months, with attorneys and advocates periodically given new fax numbers or contact persons to ensure their request is received and carried out. Even given prior notice, detainees are often not brought on time, they sometimes miss meals in order to meet with their attorneys, and they often spend hours waiting in processing to be transported back to the hotel after legal visits.

Detainees' families also have no access to the Hotel and must meet with their loved ones at Krome. Although many women have requested contact visits with family, they claim they are not brought to Krome, as requested. Indeed, one Haitian woman reported that her parents had traveled to Krome from their home in West Palm Beach, FL on four occasions and she was never brought to Krome to visit with them.

Detainees at the Hotel, including children, have absolutely no access to recreational activities, or even fresh air, as they are confined to their rooms the entire day. Detainees also have no access to educational activities. Some women say they have gone weeks without a change in uniform and many have not even been given a change of underwear.

In March, 2002 FIAC staff accompanying Congressman Conyers on a tour of the Hotel observed a family of five in one room, which included a seventy-nine year old Haitian woman and a nineteen month old baby. Frequently those in the same room are not related. Although we've been told by INS officials that the Hotel is for temporary detention only, a number of detainees have been held at the Hotel for months.

On April 29, 2002, FIAC learned that there were 113 INS detainees at the Hotel. Although FIAC was aware that the INS detainee population at the Hotel had steadily increased since implementation of the Haitian detention policy, the detainee population there on April 29 was almost double the number in March 2002. Most of the detainees at that time were single female asylum seekers, over half of whom were Haitian. While the number of detainees at the hotel has decreased recently, it is in large part because INS has been transferring large numbers of detainees to New Jersey and Pennsylvania, as previously mentioned. .

On March 9, 2002, Congressman John Conyers visited the Haitians at Krome, TGK, and the hotel and found "serious deficiencies" in all three facilities.

Most of the Haitians who arrived on the December 3 boat remain in INS detention. On September 25, 2002, there were approximately 107 such Haitians in Miami, including about 25 women at the Broward Center and about 80 men at Krome. Another approximately 33 Haitian asylum seekers who arrived by plane were in detention in Miami on September 25th.[21] Five of the December 3rd boat persons are in Berks, Pennsylvania.[22]

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[21]While the INS is now releasing many of the Haitian asylum seekers who arrived by air, this was only done after a lawsuit was filed in federal court. Moreover, for months after the INS' decision to consider these Haitians for release, those arriving by plane faced "enhanced scrutiny" in obtaining release and their sponsors were required to submit countless documents, such as payroll stubs, bank statements, and notarized affidavits of support. This documentation was not being required for the release of non-Haitian asylum seekers in South Florida.

[22]The five include a mother and her son (father at Krome), a father and his son and an 18 year old.

IV Forcible Separation of Families

A number of Haitian families have been forcibly separated by INS. I focus the Committee's attention on just one of those cases, the case of Ernst Moise and his family, as representative of the indignities suffered by Haitian asylum seekers in their quest for justice and safety.[23]

Mr. Moise, along with his two children, his common law wife and her two adult children from a prior relationship, fled Haiti by boat, arriving off the coast of Florida on December 3, 2001. They made a drastic decision to face the uncertainties of the voyage at sea and life in a new land because of the certainties of their circumstance - escalating violence perpetrated by an increasingly oppressive regime which they had openly and vocally opposed. They joined a band of others from their local community, all similarly targeted by the Aristide regime, on a week-long boat trip.

On December 5, 2001, INS interviewed Mr. Moise and set him for a "credible fear" interview, a procedure by which the US government ensures that it does not deport individuals who may face persecution at home. On December 6, 2001, INS conducted that interview, and based upon the facts Mr. Moise provided to the officer, INS found that he and all the family members traveling with him faced a credible fear of persecution upon return to Haiti. Had Mr. Moise not been Haitian, he and his family would then have been paroled from INS custody and allowed to pursue their claim for political asylum free from detention. As a parolee, he would have been entitled to work in the USA and support his family pending that claim.

Because of INS policy which targeted Haitian asylum seekers for continued detention, Mr. Moise faced an accelerated hearing date without representation from an attorney. Within six weeks of his arrival, the Immigration Judge forced him to submit an asylum application and scheduled him for a full hearing on the merits of his asylum claim. Mr. Moise does not speak English. His is not even fully literate in his native Creole. A "friend" helped him fill the asylum application which consisted of four brief sections of prose text: "Because of insecurity, I am afraid for my life;" "Because of insecurity of my country I am coming here for safety;" "Applicant was threatened by supporters of Lavalas which led him to leave the country and seek asylum in the United State;" and, ominously, "They can kill me."

In the meantime, INS split the family, detaining them in three separate places. Initially, INS placed the father and the two teenage sons in a secured hotel room, while placing the mother in a separate hotel room at the same facility before moving her to the Turner Guilford Knight Jail (TGK). The adult daughter and the adult son were placed respectively in TGK and Krome.

In response to FIAC's efforts to obtain pro-bono help for the Haitians, Catholic Charities Legal Services (CCLS) sent four lawyers to Krome in order to assist individuals in preparing asylum applications. CCLS interviewed Mr. Moise and his family on the holiday weekend of Saturday, February 16. They agreed to take the case, only to discover that Mr. Moise had been scheduled for a full hearing the next Tuesday. With only three days to prepare for a lengthy and legally complex hearing, CCLS attorney Randy McGrorty personally explained to Mr. Moise that he might have to ask for more time from the Immigration Judge. At this news, Mr. Moise began to quietly cry. As much as he feared for his life in Haiti, the seemingly unattainable promise of freedom in the U.S. and the prospect of continued detention here had taken a tremendous psychological toll.

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[23]This section of my testimony is based on a statement given by Randy McGrorty, Executive Director, Catholic Charities Legal Services, to the U.S. Commission on Civil Rights, June 21, 2002. Mr. Moise was a named plaintiff in the lawsuit filed on March 15, 2001.

The Immigration Judge fortunately granted a brief 3-day continuance to allow for adequate preparation. While the office worked hard in preparing a more thorough asylum application, fully detailing the political difficulties of Mr. Moise, the clear, honest and humble voice of the Haitian fisherman, testifying on his own behalf, helped convince the Immigration Judge that he had a well-founded fear of future persecution upon return to Haiti and resulted in the Judge's granting him and his two sons political asylum.

Even after an immigration officer had found that he had a credible fear of persecution, even after an Immigration Judge determined that he deserved political asylum, INS continued to detain Mr. Moise and his family. The INS trial attorney reserved the right to appeal the case before the BIA, which precluded release pending that appeal. McGrorty strongly believes that had Mr. Moise not been Haitian, INS would not have reserved the right to appeal and he would have been released immediately.

Mr. Moise was therefore forced to return to the locked hotel with his two sons. The teenage boys had no access to schooling, recreation, or their mother who was still detained at TGK.

Not until Representative Conyers toured the Miami detention facilities and met with the Moise family, and not until FIAC filed a lawsuit did INS finally make the decision that they would not, after all, appeal the case. INS therefore had to release Mr. Moise and his two sons.

However, because Mr. Moise and the boys' mother were never legally married, she could not benefit from his asylum status. While the law of asylum allows children to benefit form their parents asylum status, the reverse is not true. Parents cannot benefit from their children's status. Because Mr. Moise and the boys' mother were not legally married another Immigration Judge heard her claim and that of her two adult children. He denied that case, refusing to take into account the asylum status of her children. The mother and her daughter are currently detained at the Broward Center.[24]

Mr. Moise and his sons have overcome political oppression in Haiti, the vagaries of U.S. immigration law, the trauma of detention, and the myriad of unique barriers faced by Haitian asylum seekers, yet still face the prospect of fractured family. Separation from their mother eclipses the otherwise bright future of safety in the United States the boys could enjoy. The cherished bond between a mother and her children which underlies our notion of family values seems to matter little for Haitians.[25]

V. Fate of Returnees

FIAC is gravely concerned about the safety of those Haitians already deported and about the likely deportation of 107 of the Haitian asylum seekers who remain in INS custody after ten months in the United States. Virtually all of the Haitians on board the December 3rd boat are from Rabateau, a section of Gonaïves which has been the epicenter of recent political violence and unrest in Haiti. The US State Department, Amnesty International and the National Coalition for Haitian Rights have all issued

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[24]While the mother was initially detained at the hotel, after several months she was eventually transferred to TGK, where her daughter was. Her daughter had not been able to communicate with her family in detention and did not know where anyone else was until her mother was brought to TGK.

[25]FIAC represents another Haitian family which has been forcibly separated. In this case, a mother and her son were transferred to Pennsylvania and separated from the father who is detained at Krome. Their asylum case is consolidated.

statements in recent weeks expressing grave concern regarding the escalating political violence there and the Haitian government's inability to control it.[26]

On July 29, 2002, three Haitian women detained in Miami were awoken around 2:00 a.m., shackled, handcuffed and taken to the airport.[27] They remained shackled and handcuffed on the plane trip to Haiti, where they were immediately jailed. According to Rigmane Ovilma, who spoke with FIAC by phone, conditions in the Haitian jail were horrific: several women were cramped in a cell, they had no water, no toilet and one tiny cot was shared by three. The women's families were told they had to pay $2000 ($400 US) each to get the women released. Ms. Ovilma told FIAC, "We were living in a nightmare in Haiti before we left, then we lived a nightmare in the United States of America and we are living a nightmare again in Haiti. I still have the scars of the shackles on my ankles they put on us when they deported us because they were so tight.... Why are we being treated this way? Doesn't anybody care about our lives?"

The women's lives remain at great risk in Haiti. Ms. Ovilma's mother's restaurant was riddled with bullets following the jail break of Amiot "Cubain" Metayer and the escape of 150 other prisoners, and Rigmane and her brother beaten so severely that they had to be hospitalized for several days. FIAC has been unable to maintain consistent contact with the women because they have been forced into hiding.

According to Merrie Archer, Senior Policy Associate at the National Coalition for Human Rights, the Haitian women's fears are well-founded. Archer told FIAC on August 9, 2002, "Should these refugees [December 3 boatpersons] be returned to Haiti, they would be unable to return to their homes at this time because returning to Raboteau would mean putting them in the hands of their aggressors with no hope of intervention on their behalf by the Haitian government. Unable to return home, they would join the ranks of the hundreds of internally displaced persons fleeing the terror and the impunity that the government continues to allow this gang to enjoy."

Following the most recent outbreak in Gonaïves, the Haitian women currently detained at the Broward Center told FIAC: "None of us can sleep at night. We toss and turn and think about what may have happened to our families and our children who are in Haiti. And we think about what will happen to us when we are deported. We feel that we will surely die when we are sent back. No one will be able to protect us, not even our families. There is no democracy in Haiti, only violence."

VI Conclusion

Using the threat of detention to deter the arrival of asylum seekers is neither legally nor morally acceptable. Indeed, it appears that the INS policy is not about saving Haitian lives, but rather about keeping Haitians out, at the expense of their legal rights. If our Government is truly concerned about saving Haitian lives then they should attempt to ensure that those Haitians already in the United States

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[26]U.S. Department of State, "Haiti: Violence in Gonaives," Press Statement, August 5, 2002. Amnesty International, "Haiti: Human rights and rule of law must be upheld," Press Release, August 7, 2002. National Coalition for Haitian Rights, "Haitian Coalition Express Grave Concern Over Growing Violence in Haiti," Press Release, August 7, 2002.

[27]These women were part of a group of 22 Haitian asylum seekers deported on July 29. It is FIAC's understanding that the government of Haiti may not have issued travel documents for the 22 Haitian asylum seekers deported on July 29.

have a fair opportunity to make their case for asylum and are afforded the same treatment and protection as other similarly situated groups.

Our responsibility to protect persons among us who have fled political persecution should not depend on politics. Haitian asylum seekers come to the United States seeking refuge from persecution. They expect to be treated fairly and equally by the world's leading democracy and defender of human rights. While we certainly understand the need after September 11th to protect our borders, to indefinitely detain Haitian asylum seekers in the Miami District who have committed no crime and treat them differently than any other group is a perplexing waste of precious resources and a colossal waste of U.S. taxpayers money. In mid-June, taxpayers had already spent more than 2 million to detain the Haitians.[28]

The longer the Haitians are detained, the more desperate their situation becomes. Earlier this month, a Haitian asylum seeker at Krome attempted to hang himself. He told advocates, "I thought I wanted to die rather than stay here in Krome being humiliated everyday . . . . It looks like they are just going to send us all back anyway. We always feel pressure to just give up. So what am I to do?"

His statement is eerily reminiscent of a letter written by detained Haitian asylum seekers at Krome more than ten years ago. In September 1991, Haitians there wrote, "We wish to emphasize . . . that right now we are living in the most difficult and painful times of human life . . . . We prefer to die than to live in the uncertainty that drowns our thoughts."

The Haitian asylum seekers are not criminals. They are not asking for special treatment, only fair and equal treatment. To flee from persecution is not a crime; it is a basic human right. It is the Government's responsibility now to treat the Haitian asylum seekers as they treat asylum seekers from other countries. Asylum seekers from countries other than Haiti in the Miami District who pass their credible fear interviews are quickly released. Haitians deserve no less.

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[28] Barciela, Susana. "Free the Haitian Asylum Seekers," *The Miami Herald*, June 20, 2002, p. 6B.

VII Recommendations

Haitians in the Miami District who demonstrate a "credible fear" of persecution upon return to Haiti should be released from detention, as are all other similarly situated persons.

Haitians should be provided a full and fair opportunity to prepare their asylum claims and to obtain legal counsel. If paroled, their ability to obtain counsel is greatly increased. If the Haitians remain in detention their cases should proceed according to the regular Immigration Court schedule, rather than be expedited, so they have a fair opportunity to obtain counsel and prepare their cases.

The INS must improve conditions of detention in facilities such as Krome and TGK. At a minimum, such conditions should comply with the INS Detention Standards adopted in September 2000.

In the past, the United States implemented in-country refugee processing in Haiti and conducted on board Coast Guard screenings. While imperfect, these measures at least provided some check to assess potential claims from Haitian asylum seekers. At a minimum, such measures should be implemented again.

Thank you for listening to our concerns.

MIAMI-DADE COUNTY, FLORIDA

MIAMI-DADE

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MIAMI-DADE COUNTY COMMUNITY RELATIONS BOARD

Larry D. Capp, Ph.D.
Executive Director

Xiomara Casado
Assistant Director

POSITION STATEMENT

A boat containing 185 Haitian refugees arrived in the United States on December 3, 2001, in addition to others that arrived by plane. The refugees were taken to the Krome Detention Center and other detention facilities in Florida and other states. Two of those who arrived by boat drowned in an attempt to reach land, while being chased by the Coast Guard. Under the "dry foot, wet foot" policy adopted by INS, if a refugee sets foot on dry land, he is given special consideration. Eighteen were released based on that inhumane policy.

Approximately 200 Haitian refugees remain under INS custody, out of which 26 women are kept at a high security jail – Turner Guilford Knight (TGK), and 12 children are detained at Boystown (including a one-year-old toddler and a 3-year-old boy).

These Haitian refugees passed their "credible fear interviews". Under the law and INS policies, once an INS asylum officer declares a refugee to have a credible fear of returning to their homeland, the refugee is normally paroled within 72 hours, and given the opportunity to retain a lawyer for fair representation and to apply for asylum.

WHEREAS other refugees of different nationalities, under the same circumstances are being released and some are detained indefinitely for no apparent reasons, now be it resolved that the US Immigration and Naturalization Service be fair and equitable in the application and enforcement of their own policy by releasing all persons who have proven their credible fear of persecution.

This was approved by the Board on this 17th day, of April, 2002.

Respectfully,

Adora Obi Nweze, Chair
Community Relations Board

Testimony before the
Senate Committee on the Judiciary Subcommittee on Immigration
On the Detention and Treatment of Haitian Asylum Seekers

October 1, 2002

Dr. Brad Brown, President
Miami-Dade Branch of the National Association for the Advancement of Colored People (NAACP)

My name is Dr. Brad Brown and I am the President of the Miami-Dade Branch of the NAACP. I am grateful for the opportunity to submit written testimony to you today regarding the treatment of Haitian asylum seekers in South Florida. From the beginning, the NAACP has been very disturbed that Haitian asylum seekers in South Florida are not afforded the same treatment as other similarly situated groups. While asylum seekers in Miami from all other parts of the world are quickly released after proving that they have a credible fear of persecution to an Asylum Officer, Haitians who have also been found to have a credible fear of persecution are indefinitely detained and their asylum cases put on a fast track. The unfair treatment of both their release requests and their efforts to pursue asylum serves once again as a cruel reminder of the double standard in our immigration policies. For years now, the Haitians have been discriminated against and their asylum claims wrongfully denied.

We have marched and we have prayed. We have spoken at meetings and met with officials. We have participated in press conferences and written our elected officials. On April 16, 2002, the Miami-Dade NAACP sent a letter to Attorney General decrying this new discriminatory detention policy, which was also signed by dozens of other organizations.

The personal testimony by Haitians coming to Miami, that those fleeing today may well face persecution if returned is back up by independent observers. Countless human rights organizations have reported on recent political violence in Haiti. In its 2002 Annual Report, Amnesty International said, "[T]here were repeated indications that the police and justice systems were becoming more politicized . . . [There was] an increase in killings by police in disputed circumstances; in "popular justice" killings of suspected criminals; and in attacks by increasingly intolerant partisans of the ruling party Fanmi Lavalas (FL) on perceived opponents, including human rights defenders and journalists."

Our own State Department has documented extensive human rights violations in Haiti. In March of this year, the US State Department wrote, "The [Haitian] Government continued to commit serious abuses during the year, and its generally poor human rights record worsened . . . local officials committed increasing numbers of serious human rights abuses. . . [and] frequently beat and arbitrarily arrested human rights activists, former military, labor activists, and opposition members . . . Political violence continued . . . There were credible reports of extrajudicial killings . . . Police officers used excessive--and sometimes deadly--force in making arrests or controlling demonstrations and rarely were punished for such acts . . ."

Recent political violence in Gonaives, Haiti, where most of the Haitians from the December 3rd boat are from, further supports the validity of the Haitians' asylum claims and the extreme urgency of their situation. In a statement on August 5, 2002, the U.S. State Department said, "The violent actions of 'popular organizations' and street gangs are deplorable. We call upon the Government of Haiti to take all necessary steps to restore order and the rule of law in the city of Gonaives. In order to protect the people of Haiti and prevent further lawlessness, Haitian authorities should pursue and re-arrest all prison escapees, including "Cubain" Metayer, who is charged for perpetrating serious acts of violence in Gonaives. A recent Organization of American States report also cited Metayer as responsible for leading a deadly assault in 2001 on members of the political opposition." Amnesty International also issued a press release on August 7, 2002 and said, "The political violence and instability which have followed the prison escape of political activist Amio Méétayer are seriously undermining the rule of law and may jeopardize human rights in the Haitian town of Gonaïves... Armed gangs supporting political activists or locally elected officials have been allowed to consolidate their presence and now constitute a serious challenge to the rule of law in the country." The deteriorating political situation in Gonaives confirms the worst fears of the detained Haitians, who fled because they believed the government could not protect them from such violence.

Many Haitians feel they have no other choice but to flee by boat, and as one Haitian asylum seeker declared, therefore, "The sea is our embassy." Boat persons, including Cubans and Haitians, generally must make it to "dry land" in order to prevent their forced return. As a result of this policy, Haitians and Cubans, desperate to make it to shore, frequently jump overboard at the sight of land. Many have lost their lives as a result and this questionable policy only serves to put refugees' lives at greater risk.

Cubans and Haitians alike have faced political tyranny at home, albeit tyranny of a different kind. The Cubans have had favored status under US Law and have become highly successful. In spite of the discrimination they continue to face, Haitians, too, have proven to be successful and have made many valuable contributions to our community.

The Nicaraguan Adjustment and Central American Relief Act (NACARA), an immigration law which passed in 1997, gave a few immigrant groups in the U.S. before December 1995 the opportunity to obtain legal residency and gave the Haitians and many other groups nothing. Haitian legislation which subsequently passed gave legal residence to some Haitians but was not as generous as NACARA. Actions such as these are divisive and pit one group in our community against another and further destabilizes our communities. As usual, in the United States the greater burdens falls on those who are Black.

As Americans, we at the NAACP find such radically different treatment of individuals on the basis of their race and/or national origin to be not only morally offensive, but also in direct contravention of the values of equality and justice that this country was founded on. The Miami-Dade Branch of the NAACP introduced a resolution to this effect at the 2002 Annual National NAACP Convention, which was passed unanimously.

Our responsibility to protect persons arriving to our shores who have fled persecution should not depend on their race or national origin. Indeed, for us to do so is not only morally wrong, it is a

violation of our obligations under international law. After all, the Haitian asylum seekers are not asking for special or favored treatment. The Haitians are simply asking for equal treatment under the law. They deserve nothing less.

Thank you for your consideration of our views.

MI-DADE

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April 16,20 2002

The Honorable John Ashcroft
US Attorney General
US Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

RE: Detained Haitian Asylum Seekers in Miami

Dear Honorable John Ashcroft:

We write to express our grave concern about Haitian asylum seekers who have been singled out for special discriminatory treatment. Since December 3, 2001, when a boatload of 167 Haitians was rescued by the Coast Guard and permitted to apply for asylum in the United States, the Immigration and Naturalization Service (INS) has refused to release the vast majority of Haitians in the Miami District who arrived by boat or plane, while routinely releasing similarly situated asylum seekers of other nationalities. All of these Haitians have already convinced Asylum Officers that they have a substantial likelihood of proving their eligibility for asylum.

Before December, 2001, Haitians and most others in Miami who passed their interviews were quickly released. Once released, they generally have about a year to find lawyers and prepare their cases. However, the cases of detained Haitians are accelerated and processed within weeks. This means that most of them go without legal representation. It is our understanding that at least three additional judges have been brought to the Krome Detention Center to handle the Haitian cases. Many hearings are scheduled for only one hour, including time for interpretation, with as many as five merits hearings scheduled in a single day. At least 50 Haitians have already been ordered removed by immigration judges, in many cases because they did not know how to complete their asylum applications.

For those few detained Haitians able to obtain counsel, their representatives report tremendous problems in attempting to prepare the Haitians' asylum cases, including waiting for hours at detention facilities just to meet with their clients and a serious lack of adequate space to conduct confidential interviews. This is especially problematic given the accelerated nature of these cases and the large number of

Haitians who are being required to go forward with their asylum cases while in detention.

It is also our understanding that for weeks attorneys wishing to help the Haitians in Miami were deliberately misled by Miami INS officials and told to submit release requests on the Haitians' behalf, despite the fact that there was a clear intent to adopt a virtual blanket detention policy. These advocates, therefore, wasted precious time doing so when they could have instead been assisting the Haitians in completing their asylum applications.

There are currently more than 270 detained Haitian asylum seekers in Miami. About 200 Haitian men are being held at the Krome Service Processing Center (Krome), and about 45 women are in INS custody at the Turner Guilford Knight Correctional Center (TGK), a maximum security county jail in Miami which has housed the female detainees since December, 2000, following allegations that Krome guards were sexually abusing the women. Approximately 30 other Haitians (generally mothers with young children) are detained at a local hotel where they have no access whatsoever to educational or recreational activities. Since the Haitians aren't being released, these facilities are terribly overcrowded. On March 9, 2002, Congressman John Conyers visited the Haitians at Krome, TGK and the hotel and found "serious deficiencies" in all three facilities. The Haitians themselves feel discriminated against and have raised serious concerns regarding their treatment while in INS detention. Attorneys say that their Haitian clients are so traumatized by the conditions of their confinement that they are often unable to focus on preparation of their asylum claims.

Despite efforts by the Executive Office of Immigration Review (EOIR) to secure pro bono attorneys for the Haitians, most are unrepresented. Unless released from detention, they will in effect be denied their day in court. Given the current deteriorating political situation and escalation of violence in Haiti, as reported by State Department and human rights groups such as Amnesty International, we are especially alarmed that decisions in these cases could be a matter of life or death.

On February 15, 2002 a class action lawsuit was filed in Miami District Court on behalf of the Haitians. In responding to the lawsuit, Acting Deputy INS Commissioner Michael Becraft claims that he authorized a change in the parole criteria for Haitians in December, 2001 in order to deter Haitians from risking their lives on the high seas.

Using the threat of detention to deter the arrival of asylum seekers is neither legally nor morally acceptable. Indeed, it appears that the INS policy is not about saving Haitian lives, but rather about keeping Haitians out, at the expense of their legal rights.

Moreover, history proves that Haitians who are desperate to flee political violence in their country will not be deterred from coming to the United States by threat of detention. These Haitians know full well the risks they undertake when they take to the high seas in flimsy boats, yet do so because their fear of remaining in Haiti is so grave.

In addition, we are aware that the U.S. interdiction policy implemented by the Coast Guard has

largely resulted in the prevention of most Haitian boats from arriving in the United States. While we support rescue at sea, we object to interdiction as a policy of deterrence and question why the arrival of one boatload of Haitians has triggered such an extreme response. If our Government is truly concerned about saving Haitian lives then they should attempt to ensure that those Haitians already in the United States have a fair opportunity to make their case for asylum and are afforded the same treatment and protection as other similarly situated groups.

In this era of imminent threats to U.S. national security, we believe that the INS is misusing vital resources by focusing on the deterrence of legitimate asylum seekers rather than the apprehension of those who wish us harm. Given that the INS is an agency beleaguered by multiple and conflicting mandates, now more than ever is the time for the agency to devote its attention and energy to the legitimate and urgent goal of combating terrorism.

Haitian asylum seekers come to the United States seeking refuge from persecution. They expect to be treated fairly and equally by the world's leading democracy and defender of human rights. We believe that the denial of release to Haitians is discriminatory.

We urge you to treat the Haitians as you treat other groups of asylum seekers in Miami and to release them after they pass their Asylum Office interviews so that they have a fair opportunity to find lawyers and properly prepare their immigration court cases. Failure to do so will only serve to further the perception that our Government continues to implement discriminatory immigration policies, targeting the most vulnerable among us.

Sincerely,

Brad Brown, President, Miami-Dade Branch of the NAACP on behalf of:

American Guatemalan Association
Florida Chapter
Miami, FL

American Immigration Lawyers Association
Washington, DC

Asia America Law Group

Brennan Center for Justice at NYU School of Law
New York, NY

Catholic Charities Legal Services
Miami, FL

Catholic Legal Immigrant Network, Inc.
Washington, DC

Center for Human Rights & International Justice
U.C. Hastings College of the Law
San Francisco, CA

Church World Service, Immigration & Refugee Program
Miami, FL

Citizens & Immigrants For Equal Justice (CIEJ)
Mesquite, TX

Coalition of Immokalee
Immokalee, FL

Colombian American Service Association
Miami, FL

Detention Resource Project
Philadelphia PA

Episcopal Migration Ministries
New York, NY

The Florence Immigrant & Refugee Rights Project, Inc.
Florence, AZ

FLORIDA ACORN

Florida Immigrant Advocacy Center, Inc.
Miami, FL

Guatemalan Immigration Coalition, National
Miami, FL

Haitian American Community Association of Dade County
Miami, FL

Haitian Grassroots Coalition
Miami, FL

Haitian Women of Miami
Miami, FL

Hebrew Immigrant Aid Society
New York, NY

Hispanic Coalition
Miami, FL

Hispanic Development Corporation
Newark, NY

Honduran Unity
Miami, FL

Human Services Coalition
Miami, FL

Illinois Coalition for Immigrant and Refugee Rights
Chicago, IL

Immigrant Legal Resource Center
San Francisco, CA

Immigrant and Refugee Appellate Center, LLC
Alexandria, Virginia

Immigrant and Refugee Rights Project
Washington, DC

Immigration and Refugee Services of America
Washington, DC

Immigration Counseling Services
Portland, OR

Immigration Law Clinic
University of Arizona
Tucson, AZ

Institute for New Americans
Minneapolis, MN

International Gay and Lesbian Human Rights Commission
San Francisco, CA

Justice, Peace and Ecology Commission,
Capuchin Province of St. Joseph
Milwaukee, WI

Lawyers Committee for Civil Rights Under Law of Texas
San Antonio, TX

Lawyers Committee for Human Rights
New York, New York

Loren Warboys Fellow
Youth Law Center
San Francisco, CA

Lutheran Immigration & Refugee Service
Baltimore, MD

Massachusetts Immigrant and Refugee Advocacy Coalition
Boston, MA

National Asian Pacific American Legal Consortium
Washington, DC

National Coalition for Haitian Rights
New York, NY

National Immigration Forum
Washington, DC

New York Association For New Americans
New York

Northwest Immigrant Rights Project
Granger, WA

Northwest Immigrant Rights Project (NWIRP)
Seattle, WA

Physicians for Human Rights
Asylum Network
Boston, MA

Presbyterian Church (U.S.A.)
Washington Office

PRIME - Ecumenical Commitment to Refugees
Clifton Hts., PA

Salvadoran American National Network
Los Angeles, CA

SanKofa
Miami, FL

Sant La (Haitian
Neighborhood Center)
Miami, FL

St. Matthew's Immigration
Outreach Service Center
Baltimore, MD

Together In America
New York

Unite for Dignity/SEIU 1199
FLA

United Methodist Committee
on Relief (UMCOR)

U.S. Committee for Refugees
Washington, DC

Washington Lawyers'
Committee for
Civil Rights and Urban
Affairs
Washington DC

Washington Defenders
Immigration Project
Seattle, WA

Whitman-Walker Clinic
Legal Services
Washington, DC

Women's Alliance of Miami-
Dade & Broward, Inc.
Miami, FL

Women's Commission for
Refugee Women and
Children
New York, NY

cc: Senator Bob Graham
Senator Bill Nelson
Congresswoman Carrie P. Meek
Congresswoman Ileana Ros-Lehtinen
Congressman Lincoln Diaz-Balart
Congressman Alcee Hastings
Al Cardenas, Esq., Chair, Republican Party of Florida

Submitted Statement of Senator Bill Nelson before the Senate Judiciary Committee, Subcommittee on Immigration

The Detention and Treatment of Haitian Asylum Seekers, October 1, 2002

I appreciate this opportunity to discuss the government's reprehensible treatment of Haitian refugees in my state.

It goes without saying, that the INS blanket policy to detain Haitian asylum seekers is unfair and discriminatory -- and must be changed.

Under a new policy announced in March, Haitian asylum seekers who are caught trying to enter the United States by boat are detained while seeking asylum in the United States - from their first interview until their case has been decided in court.

Other refugees in similar situations are released as soon as they pass the initial interview process.

INS argues that if they don't detain the refugees, there will be a mass exodus of Haitians to the United States. The State Department claims the change in policy resulted from a spike in Haitians trying to get to the United States in December 2001. These arguments simply don't stand up to the facts.

While a boat of about 300 or so asylum seekers was interdicted on December 3rd, the numbers in October, November, January and February do not indicate a trend in increased boats leaving Haiti for the US. In fact, in January and February, before the detention policy for Haitians was made public as a "deterring factor for boats coming to the US," zero Haitians were interdicted in boats at sea.

To make matters worse, they're not getting a fair shake in the judicial system.

Because Haitians are detained while seeking asylum, their cases are expedited in the courts. This gives them less time to prepare for their case - making access to their attorneys critical. But access to attorneys has been limited at best, causing many cases to fall through the cracks.

First and foremost we must end this discriminatory policy. These people suffered incredible hardship and it's a shame that when they come to the United States they are treated so unfairly.

I believe we should also consider reinstating in-country refugee processing in Haiti. This service does not guarantee a person will be placed in the United States - because they also can be repatriated to another country - but it guarantees them the opportunity to leave Haiti, if the "well - founded fear" criteria is met.

Testimony before the U.S. Senate Subcommittee on Immigration
On the Detention and Treatment of Haitian Asylum Seekers

October 1, 2002

Marie Jocelyn Ocean
Haitian Asylee and Former INS Detainee

Good afternoon. My name is Marie Jocelyn Ocean and I am from Haiti. On behalf of all of the asylum seekers still in detention, I would like to thank you for honoring me with the opportunity to speak to you today about our experience and the treatment we have received here in the United States.

I was forced to flee Haiti because I was being persecuted by members of Lavalas, a gang that supported the government. My family was politically active and we all spoke out against Lavalas. Because he spoke out, my father was killed. My brother was very active in politics, and he was also killed. My other brother was stabbed by Lavalas and he almost died. They even hurt our children. My brother's son was beaten. They found my daughter who was nine years old then, and they kicked her in the mouth. When my life was in danger because they were threatening me and came after me, I had no other choice but to flee because there was no one to protect me in Haiti. So I got on that boat with all the other people to flee Haiti and find freedom somewhere else. We did not know where we would land, only that we had to flee Haiti to save our lives. The US Coast Guard and INS picked us up at sea on December 3, 2001.

I came to the United States for peace, freedom and protection. And because I am speaking to you here today, you know that I have found freedom here, and for that I am grateful. On May 31, 2002, the Immigration Judge granted me asylum here in the United States because of the persecution I suffered in Haiti. I am the lucky one though. I am the only Haitian woman from TGK that I know of who has been granted asylum so far, although I know that many of the other women I was detained with also suffered terribly in Haiti. Yet they continue to suffer because they are still detained.

Like me, all the other Haitian women came here seeking freedom from oppression. We did not leave our homes because of hunger or lack of food, we left because of the political violence in Haiti. So when we first arrived we thought the Americans would treat us with dignity and that they would protect us after what we had suffered. We knew there to be laws in this country to protect victims of abuse and torture.

So I was shocked by how they treated us. Instead of finding freedom, we were thrown in jail. We were treated worse than nothing, we were treated as criminals. There was almost no one to help us when we were in detention. Even though the laws were too complicated for us to understand alone, our detention made it very difficult for us to get access to lawyers and we had to go to court very quickly.

Being detained made it so much harder for us to even have a chance in court. At first I was taken to a local hotel in Miami with many of the other women. There were four women, including me, and a little seven year old girl in my room, who I was not related to. We were locked in that room together all day. We were not allowed out of our rooms, and we had nothing to do, there were no activities and we had no exercise. No one could come to see us there and we felt terribly isolated and alone, also because we could not communicate with most of the guards because they did not speak Creole. I was at the hotel for more than two months and in all that time I was only able to breathe fresh air on four days— three times when I went to court and once when I was taken to Krome for visitation. Sometimes I felt as if I was suffocating and my heart would begin to race because we were locked in that small space together for so long. It was impossible to know what was happening or what we should do because there was no one to explain anything to us because the lawyers can't come to the hotel. So I went to court alone without understanding what I was supposed to do or anything that was happening, which was terrifying. One day the officer yelled, "Ocean, court!" and I left thinking I had a hearing. But they did not take me to court. They took me to jail, to TGK. They took my picture and they strip-searched me. I was so afraid I was about to be deported. I was completely humiliated, and it seemed so unnecessary to treat us like that. But they do this to all the women, not just me.

I never understood what was happening until I got an attorney. At night when I would try to sleep at the jail they would flash lights in our eyes and bang on our doors, and it would startle me terribly. Sometimes it made me remember bad things that happened in Haiti. Many of the officers yelled at us a lot and we didn't understand why. They scared me a lot. Whenever I tried to tell my lawyer about my experience in Haiti, it was difficult to concentrate because we were in a place that was only adding to our misery.

It was at the jail though that I met staff from FIAC and they were able to help me and represent me in court. If I didn't have a lawyer I would never have been able to tell the judge my story because the laws are very difficult to understand here. We were supposed to fill out our asylum applications in English, but none of us speak English and many of us cannot read or write. There were very few organizations like FIAC that understood the laws and could help us when we were in detention. Many of the other women were not as lucky as me though and did not find anyone to help them. If it had not been for FIAC, no one would have helped us at all. Most of the women had to go to court and speak to the judge by themselves. I am very lucky because FIAC represented me and I won my case in court and now I am free. But my heart cries for the women that are still there and who did not have a lawyer to help them speak to the judge.

Now some of the Haitian women have been deported and forced to return to the place of our nightmares. The problems we fled in Haiti have only gotten worse since we left. There has been even more violence recently in the streets, and there was even a prison close to the neighborhood where we come from, Raboteau, that was broken into and the prisoners freed. There is no rule of law in Haiti, only chaos. How can they return people to a place like that, people who did not have lawyers in court and who did not have a chance to tell the judge what happened to them?

My heart breaks for the Haitians from my boat who are still in detention, it has been almost ten months for them now. They came here because they were afraid for their lives. The women I

was in the jail with have been transferred to a different place now, but they still have not been released. I cannot understand this because everyone else from every other country was quickly released while the Haitians have stayed in detention. This has made it even more difficult for us, to watch so many other women from other countries come in and quickly get released. I didn't think the United States would treat people differently just because of the place they were born, I thought everyone was equal here. But we were not treated like everyone else, even though we are all human and we all have the same blood. It became clear to us that the only reason we were in jail indefinitely is because we are Haitian. But I still cannot understand why the Haitians are kept in detention and all the others are released.

I pray that my words today will somehow help the Haitians that are still imprisoned. Thank you for listening to me today.

Testimony before the
Senate Committee on the Judiciary Subcommittee on Immigration
On the Detention and Treatment of Haitian Asylum Seekers

October 1, 2002

Sister Jeanne O'Laughlin, OP, Ph.D.
President, Barry University

I write in support of the 24 Haitian women currently detained in Broward County, Florida. Their incarceration exemplifies the U.S. government's wrongful treatment of Haitian asylum-seekers.

I write, not only as an American who deplores this immigration injustice, but as a citizen who has real experience in a number of similar situations and one who has offered to help this group of Haitian women find sponsors and to monitor them.

While they've been detained and rushed through the asylum-seeking process, these women have had no real access to legal assistance. It's deplorable that they have been denied due process. They are not terrorists. They are not criminals. They are women with intense fear of persecution should they be returned to Haiti. They have already met the government's "credible fear" criteria and should be released.

I personally met with these women when I visited them at the Turner Guilford Knight Correctional Center (TGK) in June 2002. I saw first hand the fear and despair in their eyes. Their tears brought those of us visiting to tears.

In 1982, Barry University helped oversee placing over 300 detainees with sponsors in the community, following their release from detention. They were released after a class action lawsuit was filed on their behalf because they were being wrongfully detained. We were successful in monitoring them and their sponsors. Overwhelmingly, they appeared for their hearings.

It seems that history is repeating itself and that our Haitian brothers and sisters are once more wrongly jailed. In April I offered help to place those who can and should be released, particularly women and children. Then the INS told Congress that we had withdrawn our offer. That is NOT true. In August I wrote to then-Commissioner Ziegler telling him we had NOT reneged. To date, I have not received a response.

The most heart-breaking aspect I have observed is that the women have become depressed and despondent in detention. I am dismayed by the injustice of their situation. The rules of the INS should be equal and uniform as applied to *all* asylum seekers. I mourn this wrongful detention.

May God bless you as you consider this case.

TESTIMONY OF THE NATIONAL COALITION FOR HAITIAN RIGHTS

BEFORE THE

SENATE JUDICIARY COMMITTEE SUBCOMMITTEE ON IMMIGRATION

Dina Paul Parks
Executive Director

October 1, 2002

Good afternoon, ladies and gentlemen. My name is Dina Paul Parks, and I am the Executive Director of the National Coalition for Haitian Rights (NCHR). I would like to thank you for the opportunity to testify here today before you, members of the Senate Subcommittee on Immigration, in this matter of the detention and treatment of Haitian Asylum Seekers. I am particularly honored, Mr. Chairman, to address this committee under your leadership, which has been so instrumental in establishing and fighting to protect this nation's refugee protection laws. I would also like, Mr. Chairman, to acknowledge Senator Brownback for his demonstrated commitment to the plight of the most vulnerable immigrants and refugees. The Haitian asylum-seekers who are the subject of this hearing most certainly belong in this category.

Mr. Chairman and members of the Subcommittee, you have heard from several of our distinguished guests about the basic and most salient facts of the latest INS policy of detaining Haitian asylum seekers based solely on their nationality. As you have by now learned, this policy is just the latest in a very long history of double-standard treatment for Haitians by the US government. Unfortunately, the corollary element to this dynamic is the long, painful tradition of political violence and repression of human rights in Haiti. Over the next few minutes, I will attempt to provide some context about Haiti's current political situation as it relates to these asylum seekers. First, however, a little bit of history about NCHR and its work in this field.

Introduction and Overview of NCHR

Twenty years ago, the *National Emergency Coalition for Haitian Refugees* was formed as a coalition of 42 U.S. and Haitian religious, labor and human rights organizations in order to ensure that the thousands of Haitian refugees and asylum applicants fleeing the increasingly repressive Duvalier regime received fair hearings and treatment in the United States. Once that initial crisis was addressed, NCHR dropped the "Emergency" from its name and began to educate the American and international public about the political and economic causes of Haitians' flight from their homeland. We continued our advocacy to help guarantee fair and equal treatment for Haitian refugees and immigrants.

Throughout its history, NCHR has spearheaded national litigation, education and advocacy efforts designed to halt the deportation and secure the legal status of Haitian boat people. The Coalition's efforts over several years were instrumental in gaining passage of reforms in U.S. immigration law in 1986 enabling more than 40,000 Haitians to attain legal residency. As a plaintiff in a landmark case against the Department of Justice, NCHR helped secure parole into the U.S. for nearly three hundred Haitian asylum-seekers who had been quarantined for as long as twenty months at the U.S. naval station at Guantánamo Bay, Cuba. This legal effort led ultimately to the closing of what was probably the world's first camp for HIV-positive refugees.

NCHR has also assumed international leadership in organizing support for human rights in Haiti. NCHR staff members have conducted numerous investigative missions to Haiti and published more than 40 reports on the status of human rights there. Together with

Americas Watch, NCHR set up an Elections Observation Watch in 1987 to monitor what were meant to be Haiti's first free elections and which instead ended in a military-sponsored massacre. We followed with a parallel month-long monitoring of the successful democratic elections in December 1990. In 1992, we established a permanent NCHR office in Port-au-Prince for promoting human rights and democratic reform. This office has grown in stature and impact over the past 10 years, with its Director, Pierre Esperance, receiving the Human Rights Award from the US Ambassador, Brian Dean Curran, last month.

The Coalition, which changed its name in 1996 to the National Coalition for Haitian Rights, has become internationally recognized for its in-depth knowledge of the human rights situation in Haiti and has been a primary source of information and testimony for inquiries of the United Nations Commission for Human Rights, the Inter-American Commission on Human Rights of the Organization of American States, the US Congress and other influential bodies. Our staff provided intensive training on the context for promoting human rights in Haiti for observers in the country as part of the UN/OAS Civilian Mission. In addition, we are often consulted by the information bureau of the US INS for expertise on the political and human rights situation in Haiti, as well as by regional INS asylum offices to provide in depth staff training on specific topics.

Overview of Concerns and Recommendations

Background of Haiti's Human Rights and Political Situation

Beginning in 1957, the 14-year rule of Dr. Francois Duvalier was often characterized as bloody, insidious, and tyrannical, although exceedingly well organized and kept under rigid control. Papa Doc strategically made the army a very close political ally by conceding certain powers and fostering a strictly regimented corruption among its leadership that trickled down to the lowest soldiers to maintain their loyalty. In order to ensure, however, that the army did not get so powerful that it might eventually become a threat to him, he created the "Tontons Macoutes", an equally well-organized hierarchy of para-military henchmen who also took their power directly from the executive branch. Together, they worked to suppress opposition to the presidency and throughout the 1960s either killed, exiled or forced into hiding between 10,000 and 20,000 primarily middle- and upper-class Haitians. These Haitian immigrants easily found refuge in the US, Canada and France.

Succeeded by his young son Jean-Claude Duvalier in 1971, the Duvalier regime quickly faced significant challenges with infighting and jockeying for position and power. Seen as weaker than his father and less concerned with consolidating power than with economic gain and amusement, Baby Doc allowed a certain cosmetic "liberalization" which resulted in a reduction in torture and arbitrary arrest in exchange for a widening of the lines of international aid that would help make up for the vast deficits occasioned by the increased greed of the kleptocracy. By 1980 however, the situation worsened again to the point where, through the 1980's, thousands of Haitians were fleeing persecution and other disasters. This time, however, faced with numbers of largely poor and

uneducated Haitians, the US responded with interdiction and forced repatriation. Of the 24,000 Haitians intercepted in international waters by the US Coast Guard from 1981 until Aristide came to office, only eleven out of 24,000 -- less than a mere 1% -- were granted asylum; the rest were shipped back. By comparison, 75,000 Cuban refugees were picked up in that same period. All 75,000 -- including convicted criminals -- were granted immediate asylum.

Four years after the ousting of Baby Doc, Jean-Bertrand Aristide's Lavalas movement swept Haiti's first democratic elections in 1990. The movement was initially a broad-based coalition of progressive political parties and grassroots organizations from around the country, most of whom had banded together in the anti-Duvalier movement in the mid 1980s. Much hope was placed on this administration to permanently change the repressive and anti-democratic traditions practiced by successive Haitian governments. Importantly, during the first seven months of this regime, the flow of those trying to flee to the United States or elsewhere trickled to almost zero.

Aristide was deposed on September 30, 1991 in a military-led coup. A reign of terror was quickly resumed and, with the help of the well-organized paramilitary organization FRAPH, the repression of Aristide supporters lasted through October 1994. During this time, over 4,000 Haitians were killed, 300,000 became internal refugees, thousands more fled across the border to the Dominican Republic, and more than 60,000 took to the high seas in search of protection from the rampant human rights abuses that were characterized by the UN and OAS as gross and systematic violations.

US-led efforts returned President Aristide to power in October 1994 to complete his term in office. He quickly abolished the military, replacing it with a civilian police force, and hopes ran high, but the loose Lavalas coalition soon began to fragment. When Aristide's successor, Rene Preval, was elected in the 1995 elections, a divisive element had taken hold within the party. One year later, Aristide visibly withdrew his support from Preval, and broke off from his own Lavalas party (called OPL - Organisation Politique Lavalas) to create a new party with a closer faction of supporters, called Lafanmi Lavalas, or the Lavalas Family.

Political violence turmoil began in earnest early the following year when 1997 legislative elections were hotly contested by Lafanmi candidates who accused their former OPL colleagues of fraud. Problems in which unfilled seats in parliament and the inability to come to a negotiated settlement resulted in Preval's January 1999 decision to rule -- unconstitutionally -- by decree. This action was severely criticized both in Haiti and without as highlighted in the US State Department Country Report on Human Rights Practices in 1999. In addition, armed groups that began calling themselves "popular organizations" (OP) loyal to Aristide began to stage violent in protests of the Preval government and forced the resignation of the Prime Minister, leaving the post unfilled for nearly 18 months.

In early 1999, an opposition coalition to both OPL and Lafanmi was formed to seek a consensus among the executive branch, certain opposition parties and members of civil

society about setting up elections, although there was still no functioning legislative branch. It was called the Espace de Concertation pour la Sauvegarde de la Democratie (Space for Concord for the Safekeeping of Democracy) and represented a range of political views, including former Aristide protégés.

These elections -- deemed critical to unblocking a three-year old stand off -- were postponed 5 times due to violence, sabotage and allegations of tampering and were finally held on May 21, 2000. The tension rose with each successive postponement, raising the stakes each time. The incidence of electoral violence rose at an alarming rate, and most sources recognize at least 15 politically motivating assassinations during this time. This statistic does not include the numerous other abuses that took place such as disappearances, non-fatal shootings, lynchings and the burning down of houses, businesses and party offices. Many of the victims were outspoken critics of the Lavalas government and on several occasions, this abuse took place under the eyes of the police. Although it was rare that any group would claim responsibility for these actions, it was widely attributed to the so-called popular organizations, or OPs, in the name of Lavalas.

By the time the OAS declared the elections free but not fair because the method of tabulation was not done according to regulation, a larger and more eclectic political opposition calling itself the Convergence Démocratique (CD) had formed. Its members included a wide range of parties across the political spectrum, all in opposition to the tally of the vote in the May elections, and they boycotted the presidential elections held in November 2000, which brought President Aristide to power for a second time. Their criticism of the Lavalas party and its leaders intensified during this period as did the backlash from sectors close to the government.

On February 7, 2001, when President Aristide was sworn into office, the Convergence made a public declaration that they would not accept the election of Aristide since the previous elections had not been resolved, and declared that they were naming a parallel president to a parallel government. Since then, government and opposition have been locked in a political stale-mate in which neither side recognizes the legitimacy of the other. Both sides have also rebuffed serious negotiations despite the intervention of the OAS in over 20 trips to settle the dispute.

The policy of "zero tolerance" introduced by Aristide in June 2001, which legitimizes the lynching of delinquents or those accused as such, has been used as a pretext for these groups to threaten and harass anyone perceived as a menace to Lavalas. This was taken to the extreme on December 17, 2002, the day of the attack on the National Palace, branded as an alleged coup attempt by the Aristide government. Less than two hours after the attack, around Port-au-Prince and in various locations around the country, bands of armed Lavalas supporters, occasionally accompanied by elected Lavalas officials, attacked and burned down the homes and offices of Convergence party members and supporters, attacked journalists and began to force the censure the reporting of these incidents by the independent Haitian media.

Beginning in November and throughout December 2001, journalists and human rights defenders were threatened and attacked on a daily basis. One journalist sympathetic to the Convergence named Brignol Lindor was lynched and assassinated on December 2nd by a crowd who claimed to be getting revenge for an anonymous attack on a Lavalas supporter a few days earlier. Shortly afterward, approximately 30 journalists, particularly those from radio stations who did not auto-censure their broadcasts after the attacks, fled Haiti. In addition, early in 2002, a small number of high profile judges, social and political activists have continued to flee Haiti as pressure, harassment and attacks against person, family and property have continued.

A report on an investigation of the December 17th attack by the Inter-American Commission for Human Rights of the OAS, issued on July 1, 2002, concluded that the attack was not a coup attempt and that the violent mobs had to have had foreknowledge of what was expected of them in order to retaliate in such a manner. However, as more recent incidents have shown, these armed gangs are loyal to members of various factions of the Lavalas government and not exclusively to one central figure. They are disparate and operate chaotically, vying for power, and some are beginning to lose their "privileges". This is seen as a betrayal by the gangs, resulting in increasing verbal and other backlash against the Lavalas movement, which has both fomented this violence and to some degree lost control of it, as it has taken a life of its own.

Recent Events

The US Department of State, Human Rights Watch, Amnesty International and NCHR have considered Aristide's human rights record in his second term as poor for a democracy. The biggest problems identified include:

- impunity for those claiming to act on behalf or in support of the government;
- a politicized police force;
- the lack of independence of the judiciary; and
- harassment and persecution of members of the opposition, those journalists who do not self-censure, human rights defenders, and other outspoken critics of the government, its policies and the armed OPs.

These obstacles have continued over the last three months.

<u>July</u>

- Journalist Israel Jacky Cantave and his cousin disappeared on the way home from work. They were found beaten and injured several days later by neighbors of the building where they were being held.
- July - September: Student protests against the government for attacking the foundation of the Independent Haitian University and retaliation against student protestors. The government unilaterally and without warning decided to dismiss the vice chancellor of the university and suspend all student and faculty elections and appoint its own directors.

August

- Jailbreak of Amiot "Cubain" Metayer out of a prison in Raboteau, Gonaives on August 2. Cubain is a former Aristide ally who was arrested for his role in the December 17th attacks after international pressure on Aristide to address the concerns raised by the OAS report. The jailbreak freed close to 160 other prisoners. These armed street gangs continue to roam the streets with total impunity.

September

- A week-long gang war in the Cite Soleil slum over a cache of arms resulted in at least 20 dead and 100 wounded
- 19th -- Haitian National Police (HNP) shut down the concert of a popular band for playing song deemed critical of Aristide. "Revolution" lists some of the country's ills and says "Mr. President, I am talking to you ..." Although government officials declared it had not ordered the shut down, no action has been taken to offer an apology to the band or its organizers or to sanction the police officers responsible.
- 20th -- The disappearance of a popular pro-Aristide community leader and two associates after being arrested by the police over a traffic dispute with government officials sparked tire burning and violent protest in the streets of Carrefour Feuilles for several days. Heavily armed gang members demanded the release of Felix Bien-Aime, and heavily armed members of the HNP retaliated by firing teargas and bullets into the popular neighborhood. At least one journalist reported being assaulted by the police while other casualties included one death and several injuries. A week later, there had been several attempts to burn down the local police station.
- 20th -- The resignation of two ministers in less than 10 days - Minister without portfolio, in charge of negotiations with the opposition Marc Bazin, announced his resignation due to frustration with governmental policy while Jean-Baptiste Brown, Minister of justice and national security, follows his predecessor by 3 short months just days after the release of his report on the events of December 17, 2001.
- 26th - Three popular independent radio stations, Radio Kiskeya and Radio Caraibes and Radio Ibo shut down after receiving serious and credible threats by armed men. Just days later, President Aristide is cited to have said that if the Haitian press continued to repeat what the international press is saying, it is a clear continuation of the damage of the 1991 coup d'etat. This type of statement is what has incited people to act within the guidelines of the zero tolerance policy.

Ongoing have been the accusations, consistently leveled but yet to be investigated, at police and government officials, including former top police officer Mario Andresol, Senator Dany Toussaint and others of involvement in drug trade, kidnappings and corruption.

No Mass Exodus Imminent

In spite of these recent and ongoing developments, the historical information outlined earlier provides us with many reasons why there is now little fear to be had about a mass exodus of Haitian refugees at this time. First, the figures from the 1980s and during the coup d'etat of the early 90s show that the numbers of refugees identified and interdicted are beyond comparison. From some 24,000 throughout the 1980s to 60,000 in just three years in the early 1990s, these figures have dropped to a scant 1,483 since October 2001. During this period, according to its website, the USCG reports only 1 or 0 interdictions in the months of October, January, February, June and August, meaning that even in the months before the INS policy on Haitian refugees was known as such, the Coast Guard picked up no boat people in January or February 2002, despite the intense turbulence the country experienced in December 2001 following the attack on the National Palace and reprisal attacks on members of the opposition. Again, I would like to remind the Committee that these are the Coast Guard's own numbers, and they do not support the notion of a mass exodus. The interdictions from 1984 to 1989 and then from 1991 to 1995 far exceed these statistics.

However, the reasons for a lack of a larger wave of refugees are not merely to be found in the statistics. With regards to Haiti, there are great distinctions to be made between the political and human rights situations under the Duvaliers, the de facto Cedras regime that overthrew Aristide and the current administration. Under the previous regimes, the forces of government and repression were strictly regimented and part of a clear, recognized and well-known hierarchy. Under the Duvaliers, there were the military and the Macoutes - used to balance out each others' power. Under Cedras, the military's power was complemented by both the paramilitary group FRAPH and an elaborate system of rural "chefs de section" and "attaches".

However, under the current administration, no such organization or consolidated center of power exists. In fact, many human rights activists and political observers diagnose chaos and disorder instead. Haiti's seven-year old police force is politicized and corrupt with staffing far below the original 5,000 recruits - primarily due to attrition. The country's many armed gangs, the popular organizations, are primarily loyal to the Aristide government, but not necessarily to Aristide. They are loyal to other popular or local leaders within Lavalas such as Senator Dany Toussaint, former military officer, and Senator Medard Joseph of Gonaïves, whose loyal gangs include the Cannibal Army, responsible for August's spectacular jailbreak, and others. In fact, with the arrests this year of Cannibal Army leader Amiot "Cubain" Metayer and Ronald Camille, known as Ronald Cadavre, leader of one of the most powerful Cite Soleil gangs, there is a sense that the Lavalas government has begun to betray their "loyal supporters". As William Joseph, a Cannibal Army leader warned shortly after the jailbreak, "We are letting Lavalas know who we are. We helped them get up the mountain. Now we are telling them to pull us up, too."

This is not to say that the situation in Haiti is not grave and in great need of attention. It is, rather, to point out that:

1), the repression has not reached the levels found under past oppressive, highly-organized governments; and 2) there is a much stronger network of human rights defenders, independent journalists and others in place today.

This network makes it much harder for official, state-sponsored abuse to go unchallenged. Linkages between the Haitian press and European human rights organization Reporters Without Borders, as well as the vast movement to seek justice for slain journalist and political commentator, Jean Dominique, are characteristic of this movement.

The US State Department's December 2001 travel advisory and its August 2002 response to the violence in Gonaïves surrounding the jailbreak also clearly acknowledge and highlight the volatility of the situation. In particular, the August statement calls "upon the Government of Haiti to take all necessary steps to restore order" as well as "to protect the people of Haiti and prevent further lawlessness," underscoring the lack of control the Haitian Government has been able to exert over these "popular organizations". The government's inability or unwillingness to re-arrest Metayer or the authors of the attack two months after the jailbreak while it is known precisely where they can be found sends a clear signal of the danger faced by local residents who have evacuated their homes and become internally displaced.

It is into this context that recent deportees from the December 3, 2001 boat have been returned -- into the hands of those who were directly responsible for much of the violence against the opposition party MOCHRENA with which they have been associated because of their religious affiliation. There is increasing evidence that these deported Haitians are subject to further human rights abuses upon their return.

Of the 167 Haitians who have been subjected to prolonged detention, almost 50 have been deported. Detainees are deported in groups by the INS and are subjected to handcuffing and shackling during transport. Once returned, they are transferred to the custody of Haitian authorities at the airport in Port-au-Prince. The deportees were then transferred to Delmas 33, a prison known for its extremely hazardous living conditions.

The story of one woman underscores the plight of the deportees. Upon her return, she reported to us that while in Delmas she was held in one cell with more than 60 women, some of whom had committed violent crimes. Others were very sick or pregnant. One woman was there with a newborn infant. The women had only one cot for every three women. They were provided no food or water. There were no toilet facilities, forcing the detainees to urinate and defecate on the floor.

The woman was held at Delmas 33 for two days until her family was able to locate her. They then were forced to pay a large fine (approximately U.S. $400) to obtain her release. The woman reported that there were two other women in a similar situation who were deported at the same time as she, who were also jailed and fined.

Upon her release, the woman returned to Gonaives, where she and her family resided. She reported that she experienced significant abuse and harassment from CIMO, a government security force supported by the Aristide government. Her mother's restaurant was sprayed with gunfire. She and her brother-in-law were later stopped by the same group, which hit her on the back and chest with their rifles. She was hospitalized after she began to spit up blood. She reported that her brother-in-law suffered more injuries, including a blow to his head.

The woman has since gone into hiding, as have other deportees whom we were able to reach upon their return but have since lost contact with. She told us that she will likely try to flee Haiti again, as she fears for her life.

Other returnees have reported similar experiences. It is disturbing that the INS continues to deport Haitians from the December boat arrival in the face of the deteriorating human right situation and political instability now going on all over Haiti, but especially in Gonaives.

Role of OAS

As referenced earlier, the OAS has been attempting to mediate the two-year old conflict between President Aristide and the Convergence. The passage of Resolution 822 last month speaks to the need to "normalize the functioning of democratic institutions in Haiti and to strengthen them" and points out the role the international community must play in order to ensure that this change will take place. These include elections, dialogue and consensus building, but the Resolution also recognized the need for a restoration of aid to Haiti in order for reinforce the failing institutions such as the police, and the judiciary, as well as to ensure that reparations are made for victims of the December 17, 2001 reprisals.

While Haiti has begun to take some steps toward the implementation of some of the points of the resolution, its prospects for success are extremely limited. For example, while Haiti has already published its report on the December 17th attack and claims to have begun to make reparations, the report is considered unbalanced and unsatisfactory and the reparation process has been less than transparent. The formation of the new Provisional Electoral Council (CEP), scheduled to be completed in one month, has not yet begun. Haiti has neither begun to translate the perpetrators of the December 17 reprisals into justice nor to begin a more elaborate disarmament program. While some politically motivated crimes are being more actively pursued, such as the Jean Dominique case, the investigation of the kidnapping of journalist Israel Jacky Cantave is not being pursued by the government, despite the evidence.

The ultimate success of the resolution may be limited because of the:

- lack of political will to deal with certain politically motivated crimes,
- impunity that members of the police and most "popular organizations" continue to enjoy,

- inevitable controversy that will surround the creation of the new CEP and the level of transparency with which it will ultimately operate; and
- weakness of those institutions which are necessary to ensure a secure and stable climate for these democratic institutions to operate.

In brief, while the current levels of international intervention and Haiti's willingness to cooperate remain the same, it is unlikely that the human rights situation in Haiti will either improve or deteriorate drastically - in brief, the status quo.

Conclusion

In conclusion, Mr. Chairman, I would respectfully submit the following recommendations for the Subcommittee's consideration to address the plight of these Haitian asylum seekers.

A Halt to Deportations: At a minimum, the INS should not be deporting any asylum seekers back to a place that even the US government acknowledges has become more dangerous than when they fled it 10 months ago.

Release Current Detainees: Those still being held at the facilities in Miami should be released in order to have ample opportunity, as other nationalities, to secure attorneys and prepare their asylum cases, instead of being subject to a system that stacks the odds against them and skews their chances of a fair hearing.

Detention Standards: For those that are detained, especially over an extended period of time, the INS must apply its own standards and provide for meaningful access to counsel and medical care.

Alternatives to Detention: The INS has a number of options for dealing with asylum seekers, including releasing them either to community sponsors or under the auspices of a supervisory system, which is actually cheaper than detention. Under no circumstances should these asylum-seekers be treated like criminals, subject to lock-downs, invasiveness searches and the like.

Interdiction: The US government should not be interdicting asylum seekers as a means of deterrent, which is in clear violation of international law and undermines the very premise of refugee protection. At a minimum, all Coast Guard cutters should have a properly-trained Creole speaker on board to conduct a credible initial screening, instead of returning those fleeing Haiti en masse, no questions asked.

Finally, I would like to say just a little about the Haitian-American community and its contributions to this nation. Our community has produced individuals such as Pierre-Richard Prosper, the US Ambassador-at-Large for War Crimes Issues; Dr. Rose-Marie Toussaint, the first African-American woman to head a liver transplant service in the world; Dumas Siméus, chairman and CEO of the Siméus Foods International, the largest black-owned business in Texas and one of the top in the country; Mario Elie, the

power guard that helped lead the Houston Rockets to back-to-back NBA championships in the 1990s. We are doctors, taxi cab drivers, lawyers, home health aides, journalists, entertainers, even executives, like NCHR's own Board Chair, Mr. Eddy Bayardelle, First Vice President for Global Philanthropy at Merrill Lynch. We are a people who love our country but when forced to leave it, we make an extraordinary impact where we land, and the community is enriched for it. There is simply no reason that we should always, always, always be treated like second-class citizens by the United States government.

Again, I thank you for this opportunity to address the Subcommitte today. We are confident, Mr. Chairman, that you and your colleagues will exercise due diligence in addressing our concerns that these asylum seekers be treated in a fair and humane matter, consistent with both US and international law.

10/03/2002 10:38 FAX 002

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Opening Remarks by Hon. Ileana Ros-Lehtinen, Chair
Subcommittee on International Operations and Human Rights for
Briefing on U.S. Policy Toward Haitian Refugees
Tuesday, October 1, 2002 at 10:00 a.m. in 2200 Rayburn
Washington, D.C.

"Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!"

These are the words engraved on the tablet within the pedestal of the Statue of Liberty.

They encapsulate the very essence and definition of this country – a nation built on refugees searching for a place where they could practice their religion and beliefs without fear or intimidation; a nation who owes its growth and prosperity to the hard-working immigrants who flocked to its shores; a nation whose diversity has made it the embodiment of an open, pluralistic society.

Within this context, the words on the Statue of Liberty also reflect a commitment from the United States and its government. It is this commitment, as it relates to Haitian refugees, which will be the focus of today's discussion.

Upon the restoration of Haiti's elected government in 1994, the focus of U.S. policy toward this Caribbean neighbor turned to fostering and strengthening democracy; promoting respect for human rights; combating illegal narcotics trafficking; and alleviating poverty and illiteracy.

It was believed that the realization of these goals would help curb the flow of Haitian immigration into the United States.

The goal was to help bring about peace and stability to Haiti. This is still our hope.

However, the reality today is that Haiti continues to be plagued with unparalleled politically-motivated violence that, few, if any, can escape.

Our own State Department Country Report on Human Rights Practices in Haiti underscored that "the government continued to commit serious abuses and its generally poor human rights record worsened."

The report goes on to say that there were credible reports of extrajudicial killings by members of the HNP; that eyewitnesses accused specialized CIMO police units of beating and otherwise terrorizing men, women, and children in numerous incidents; and that torture and other forms of abuse are pervasive.

Given this scenario, some would question U.S. refugee policy of differentiating between those specifically targeted for persecution, and those who flee such political unrest because they fear for their lives and that of their children.

Others would question, within the aforementioned context, if most Haitians don't meet, at least, one of the five criteria of persecution – that is, race, religion, nationality, membership in a particular social group, or political opinion – and thus, would fall into the category of refugees, and should be subject to an expedited review process.

These issues relating to U.S. policy will be addressed during this briefing, along with questions about U.S. efforts to provide assistance and protection to Haitian refugees overseas, given the increasingly disturbing reports about the conditions and treatment of Haitian refugees in third countries.

However, in order to demand that other countries adhere to international standards concerning the treatment of refugees, we must ensure that we are proceeding in accordance with those same covenants and with our own federal laws.

Incarcerating minor children without providing them with basic education and teaching; placing Haitian women in maximum security facilities so that they do not continue to be raped by INS guards; and lengthy detentions without adequate time or access to legal counsel to prepare for a proper asylum hearing, are all issues of grave concern which require immediate attention.

Following the deplorable attacks of September 11, 2001, the issue of Haitian immigration, as so many others, became a matter of national security.

We understand and wholeheartedly support the efforts to keep our homeland safe and secure. However, in doing so, we must be careful not to afford a victory to the terrorists by wavering on our commitment to the tired, the poor; the huddled masses yearning to breathe free; the homeless; the tempest-tost, which our Statue of Liberty calls out to.

We must strike a delicate balance to ensure that we remain true to the promise of our country.

Testimony before the
Senate Committee on the Judiciary Subcommittee on Immigration
On the Detention and Treatment of Haitian Asylum Seekers

October 1, 2002

Monica Russo
President, SEIU 1199 Florida, AFL-CIO
International Executive Board, Service Employees International Union

My name is Monica Russo and I am President of SEIU 1199 Florida, AFL-CIO and International Executive Board member of the Service Employees International Union -- the largest union of immigrants in America. I thank you for the privilege of submitting written testimony for your consideration about the treatment of Haitian asylum seekers by our government.

While the directive which targets Haitian asylum seekers in South Florida for a discriminatory detention policy on the basis of their nationality was implemented in mid-December 2001, INS officials did not acknowledge the policy to community leaders and advocates until several months later. In fact, it was not until March 9, 2002, when advocates met with INS officials and Congressman John Conyers at Krome that Acting District Director John Bulger admitted that there is a policy of not releasing Haitians to deter additional Haitians from coming to the United States. Until then, the INS deliberately misled advocates and community leaders about whether Haitians were being considered for release from detention and repeatedly insisted that there was no change in policy vis-a-vis the Haitians. We were outraged that we had been so blatantly misinformed by Government officials. During those months of misinformation, the Haitian asylum seekers' asylum cases had been effectively expedited by virtue of their detention, and the vast majority of the Haitians were forced to represent themselves in their complex asylum hearings. The deliberate actions to deceive the community frustrated our efforts to assist the Haitian detainees.

In response to the class action lawsuit filed on behalf of the Haitian asylum seekers, Government officials clarified their release policy regarding Haitians who arrived at "designated ports of entry," such as the Miami airport, in April 2002 and they finally released Haitians who had already been granted asylum by immigration judges. However, for months the INS subjected the Haitians who arrive by plane to requirements not imposed on asylum seekers of other nationalities and is requiring the Haitians to submit notarized affidavits of support and letters from banks and employers. The INS also went to the asylum seekers' relatives homes to interview them and conducted home studies. This policy is also discriminatory because no other nationality faced such stringent requirements for release except the Haitians. Most of the remaining Haitian asylum seekers who have arrived by boat, including those who arrived on the December 3rd boat, are still in detention today – eleven months later.

The discriminatory detention directive has also been decried by countless organizations nationwide, including the AFL-CIO, Amnesty International, Catholic Legal Immigrant Network, Church World Service, Hebrew Immigrant Aid Society, Hispanic Coalition, National

Immigration Forum, U.S. Committee for Refugees, Lawyers Committee for Human Rights, NAACP, National Asian Pacific American Legal Consortium, National Coalition for Haitian Rights, Physicians for Human Rights, Presbyterian Church (USA), Salvadorian American National Network, Sankofa, United Methodist Committee on Relief, and the Women's Commission for Refugee Women and Children, to name a few. The AFL-CIO, for example, issued a statement strongly denouncing the policy on June 20, 2002 (see attached).

It is simple justice to treat all asylum seekers, whatever nationality, in the same fair and even-handed manner. It is the American way to allow all asylum seekers adequate time and freedom to prepare their asylum cases so that they truly receive a fair hearing. To do so is not a matter of special treatment for Haitians seeking asylum, but one of fair and equal treatment.

All Americans suffer when one group of people is singled out for unjust and discriminatory treatment. We call on the Administration to immediately end the discriminatory treatment of Haitian asylum-seekers and to extend to them the same rights and opportunities accorded to individuals seeking asylum from other nations.

Thank you again for listening to our concerns.

THE UNITED CARIBBEAN AFRICAN ALLIANCE, INC.

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Testimony before the senate committee on Immigration
Presented by:
Bernier Lauredan, MD
Chairman,
United Caribbean African Alliance,
On October 2, 2002 in Washington, DC

Honorable Chairman
Members of the Committee
Ladies and gentlemen:

On behalf of the United Caribbean African Alliance, the 3 millions Haitian living in the US, including the 500,000 Haitian American Voters, I bring you greetings from the great State of New Jersey.
I thank you for the opportunity afforded us to present the plea of Haitian Refugees in jail, therefore unable to speak for themselves.

Mr. Chairman:

The problem has already been stated:
The Haitians are refugees,
The Haitians are Boat People,
The Haitians do not deserve a Fair hearing.

The Haitian Community has a long history of contribution and active support of the United States, beginning with the Revolutionary War:

- In the 1779 Siege of Savannah, Georgia, more than 1,500 Free Haitian Soldiers, known as "Chasseurs Volontaires de Saint Domingue," alongside their American counterparts, fought the British for the Independence of the United States of America. Scores of Haitian soldiers were killed and buried in Savannah without recognition, even today.
-

Headquarters:
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- After the war, some of the survivors remained in the surrounding Savannah and New Orleans areas. The rest returned home and exported the American Revolution to Haiti. That led to Haiti Independence in 1804.
-
- In the May 4, 2002's Edition of the Miami Sun Sentinel, Madeline Baro Diaz reported that Haitian descent Jean Baptiste Point du Sable was the founder of Chicago.
- Pope John Paul named Haitian Pierre Toussaint as the first United States' Saint of African Descent
- North Miami Mayor, Joe Celestin, is Haitian American.

Countless number of professionals, Businesspersons and others are working productively to further the prosperity of this great land.

- Haitian American Wyclef Jean recently won a Grammy Award for his Excellence in the music industry. His band, The Fugees, (The Refugees?) pleads the cause of the Haitian Refugees.

Mr. Chairman, Members of this Committee:

The United States of America is a country of Immigrants. Even those who fought against our Independence are enjoying free passage. I understand that we have to be concerned today more than ever, giving the threats to our security, but Haitians have never been reported as being suspects.
To the contrary:
Haitians have shed their blood for our Independence.
Haitians are contributing to health of the U.S Economy
Haitians are peaceful. Law abiding Citizen.
Therefore, we are not asking for a handout, we are not asking for reparation, we are just asking for fair and just treatment, afforded to others.

Again I thank you, Mr. Chairman and Members of this committee.

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

Regional Office
for the United States of America &
the Caribbean

1775 K Street, NW
Suite 300
Washington DC 20006

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15 April 2002

BY FACSIMILE (305-576-6273) & FIRST CLASS MAIL

Rebecca Sharpless, Esq.
Florida Immigrant Advocacy Center
3000 Biscayne Boulevard, Suite 400
Miami, FL 33137

Re: Request for Advisory Opinion on Detention of Asylum Seekers

Dear Ms. Sharpless:

I am writing in response to your request for an advisory opinion from the Office of the United Nations High Commissioner for Refugees ("UNHCR") on certain aspects of the current practice of detention of asylum seekers by the Immigration and Naturalization Service ("INS"). Specifically, you requested that UNHCR address the following issues: 1) whether international standards permit a State to use detention of asylum seekers as a means of deterring future refugee flows or as a response to their manner of entry, and 2) whether a policy of detaining asylum seekers of a particular nationality while releasing asylum seekers of other nationalities violates international standards.

UNHCR has been formally mandated by the United Nations General Assembly to ensure international protection to refugees and other persons of concern and to assist governments in identifying and implementing durable solutions on their behalf.[1] The detention issues presented affect the treatment of asylum seekers in the United States and their access to the US asylum process and, therefore, relate directly to UNHCR's mandate.

[1] The General Assembly established the Office of UNHCR as of 1 January 1951. *See* Statute of the Office of the United Nations High Commissioner for Refugees, U.N.G.A. Res. 428(V), 14 Dec. 1950; Executive Committee Conclusion No. 46 (1987) (reiterating UNHCR's leading role in refugee protection, including detention issues).

The United States is a State party to the 1967 Protocol relating to the Status of Refugees (the "1967 Protocol").[2] As such, the United States is bound by the 1967 Protocol and the substantive provisions of the 1951 Convention relating to the Status of Refugees ("1951 Convention").[3] The United States has agreed to uphold international refugee protection standards and to cooperate with UNHCR in the exercise of its functions and its duty of supervising the application of the provisions of the 1951 Convention and its 1967 Protocol.[4]

UNHCR's governing body is the Executive Committee of the High Commissioner's Programme. The Executive Committee is comprised of 57 members, including the United States. In the exercise of its terms of reference, the Committee adopts Conclusions on International Protection addressing particular aspects of international protection. While the Conclusions are not formally binding, they represent elements relevant to the interpretation and application of the international refugee protection regime. Conclusions of the Committee constitute expressions of opinion which are broadly representative of the views of the international community. The specialized knowledge of the Committee and the fact that its conclusions are reached by consensus adds further weight.

UNHCR appreciates the opportunity to comment on the questions you have raised. The detention of asylum seekers and access to the asylum process are issues of significant concern to UNHCR. In this regard, we present below international refugee law standards relating to the detention of asylum seekers, the use of detention as a deterrent, as well as the use of detention based on national origin.

I. *Asylum Seekers Should Not be Detained*

Detention of asylum seekers is inherently undesirable as it can have a significant impact on their ability to access the asylum process and can be a traumatizing experience. Detention may make it more difficult for asylum seekers and refugees to secure legal counsel, communicate with family members and access legal materials and interpreters to assist in preparing their claims. These obstacles particularly affect vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Many asylum seekers may have endured torture or trauma in their home countries and detention could easily cause further mental suffering.

Under international refugee law, asylum seekers should not be detained except when it is absolutely necessary. Article 31(1) of the 1951 Convention provides:

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[2] The 1967 Protocol relating to the Status of Refugees, *adopted* 31 Jan. 1967, *entered into force* 4 Oct. 1967, 606 U.N.T.S. 267 (1967). The United States acceded to the Protocol in 1968.

[3] The 1951 Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 Apr. 1954, 189 U.N.T.S. 137 (1951). Article I(1) of the 1967 Protocol incorporates by reference Articles 2 through 34 of the 1951 Convention.

[4] 1967 Protocol, Article II.

> The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in the territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

As Contracting States (including the United States) and UNHCR's Executive Committee have long recognized, it is likely that refugees may need to resort to illegal means to flee from persecution, which should not result in them being subject to penalties by the country of asylum.[5] Further to Article 31 of the 1951 Convention, UNHCR's Executive Committee has concluded that asylum seekers who have been admitted to a country for a refugee status determination must "not be penalized or exposed to any unfavourable treatment solely on the ground that their presence in the country is considered unlawful."[6] Article 31(2) also provides, *inter alia*, that States shall not apply restrictions to the movements of refugees "other than those which are necessary." Thus, international standards preclude the detention of asylum seekers due to their unlawful entry into the country.

In view of the hardship of detention and its inherent undesirability, the Executive Committee has identified only four instances when detention may be "necessary," as follows:[7]

(i) to verify identity;
(ii) to determine the elements on which the claim for refugee status or asylum is based;
(iii) to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or
(iv) to protect national security or public order.[8]

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[5] Executive Committee Conclusion No. 58(XL) (1989) ("[C]ircumstances may compel a refugee or asylum seeker to have recourse to fraudulent documentation when leaving a country in which his physical safety or freedom are endangered."); UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (1992) ("*Handbook*"), ¶ 196 ("In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents."); UNHCR, "Detention of Asylum Seekers and Refugees: the Framework, the Problem and Recommended Practice," a Conference Room Paper for the Standing Committee, EC/49/SC/CRP.13, 4 June 1999 ("UNHCR Note on Detention"), ¶ 15 ("[T]he very circumstances which prompt the flight may compel an asylum-seeker to leave without documents or to have recourse to fraudulent documentation when leaving a country where his/her safety or freedom is endangered.").
[6] UNHCR Executive Committee Conclusion No. 22. (II)(B)(2)(a)(1981).
[7] UNHCR Executive Committee Conclusion No. 44 (1986). *See also, UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers* (10 February 1999) ("*UNHCR's Detention Guidelines*"), ¶ 1, 3 (stating that as a general rule, asylum seekers should not be detained.).
[8] *Id.*

The Executive Committee has reiterated, in subsequent Conclusions, the need to resort to the detention of asylum seekers only in exceptional circumstances, as well as the need to prevent arbitrary detention.[9]

UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers ("*UNHCR's Detention Guidelines*") provide additional guidance regarding the application of these limited exceptions. The exception regarding verifying identity should be used only in cases in which identity may be undetermined or in dispute. In determining the elements of the claim, States should detain asylum seekers only for purposes of undertaking a preliminary interview and not for the entire time it may take to make a determination on the merits.[10]

In cases in which asylum seekers arrive with false or no documents, detention is justified only when there is an intention to mislead or a refusal to cooperate with the authorities. Asylum seekers who arrive without documentation, because they are unable to obtain any in their country of origin, should not be detained solely for that reason. The final exception should be used only if there is evidence that an individual asylum seeker has criminal antecedents and/or affiliations and is likely to pose a risk to public order or national security.[11]

If it is determined that one of the limited exceptions applies to a particular case, detention should be used only for a minimal period of time.[12] Alternatives to detention, such as reporting obligations or guarantor requirements, should be used *first*, unless it is determined that they would not be effective for that individual.[13]

II. *Detention Used as a Deterrent is Contrary to International Standards and Would Amount to Arbitrary Detention*

Pursuant to Article 14 of the Universal Declaration of Human Rights, everyone has the right to seek and to enjoy asylum. This is a fundamental human right.[14] The right to seek asylum has been repeatedly acknowledged in various international fora, including through Conclusions of UNHCR's Executive Committee and resolutions of the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, and the General Assembly.[15]

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[9] *See* Executive Committee Conclusions Nos. 46(f) (1987); 47(e) (1987); 50 (i) (1989), 55(g) (1989), 65(c), (j) (1991); 71(f) (1993); 85(cc), (dd), (ee) (1998); and 89 (2000).
[10] *UNHCR's Detention Guidelines*, Guideline 3.
[11] *Id.*
[12] *Id.*
[13] *Id.* (emphasis in original).
[14] Universal Declaration of Human Rights, U.N.G.A. Res. 217A(III), *adopted* 10 Dec. 1948 ("UDHR"), Article 14 ("Everyone has the right to seek and to enjoy in other countries asylum from persecution."); UN Declaration on Territorial Asylum, U.N.G.A. Res. 2312(xxii), *adopted* 14 Dec. 1967, Preamble and Article 1; Vienna Declaration and Programme of Action, World Conference on Human Rights, A/Conf. 157/23, *adopted* on 25 June 1993, Article 23; Charter of Fundamental Rights of the European Union 2000/C 364/01, Article 18.
[15] *See, e.g.*, Executive Committee Conclusion No. 82(XLVIII) (1997); Committee for Human Rights Resolution (Human Rights and Mass Exodus), E/CN.4/RES/1998/49; Sub-Commission on the Promotion

The right to seek asylum is predicated on the ability to leave one's country, or to remain outside it, in order to avoid the risk of persecution. A State's practice of deterring further arrivals of asylum seekers through the use of detention frustrates the ability of individuals to escape harm and seek safety elsewhere. UNHCR has repeatedly stated that asylum seekers should not be detained for purposes of deterrence.[16] The detention of asylum seekers in furtherance of a policy to deter future arrivals does not fall within any of the exceptional grounds for detention and is contrary to the principles underlying the international refugee protection regime.[17] As discussed above, while in some limited instances, detention may be justified for national security or public order reasons, detention for the purpose of discouraging further arrivals cannot be justified.[18]

Moreover, the right to liberty is a fundamental human right set out in universal human rights instruments. The Universal Declaration of Human Rights[19] and the International Covenant on Civil and Political Rights ("ICCPR")[20] specify that no one should be arbitrarily deprived of his or her liberty. According to the Human Rights Committee ("HRC"), the term "arbitrary" is to be given a broad application which is not to be equated with "against the law."[21] In a landmark decision concerning a Cambodian asylum-seeker in Australia, the HRC determined that:

> ... detention should not continue beyond the period for which the State can provide appropriate justification. For example, the fact of illegal entry may indicate a need for investigation and there may be other factors

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and Protection of Human Rights (Freedom of Movement and Population Transfer), E/CN.4/SUB.2/Res/1997/29; and U.N.G.A. Res. A/RES/51/75, 12 Feb. 1997.

[16] *UNHCR's Detention Guidelines*, Guideline 3 ("Detention of asylum-seekers...as part of a policy to deter future asylum-seekers, ... is contrary to the norms of refugee law"); UNHCR Executive Committee, Note on International Protection (A/AC.96/643), 9 Aug. 1984, ¶ 29 (while detention may be justified both with regard to individual asylum seekers or a large-scale influx, this is not the case where asylum seekers are detained with the sole object of discouraging further arrivals). *See also*, Global Consultations on International Protection, Geneva Expert Round Table, 8-9 November 2001, Summary Conclusions on Article 31 of the 1951 Convention relating to the Status of Refugees -- Revised, ¶ 11(c) ("Refugees and asylum seekers should not be detained ... for purposes of deterrence.").

[17] UNHCR Executive Committee, Note on International Protection (A/AC.96/643), 9 Aug. 1984, ¶ 29 (while detention may be justified both with regard to individual asylum seekers or a large-scale influx, this is not the case where asylum seekers are detained with the sole object of discouraging further arrivals); *UNHCR's Detention Guidelines*, Guideline 3 ("Detention of asylum-seekers . . . applied for purposes other than those listed above, for example, as part of a policy to deter future asylum-seekers, . . . , is contrary to the norms of refugee law.").

[18] *Id.*

[19] UDHR, Article 9 ("No one shall be subjected to arbitrary arrest, detention or exile.").

[20] International Covenant on Civil and Political Rights, *adopted* 19 Dec. 1966, *entered into force* 23 Mar. 1976, U.N.G.A. Res. 2200A (XXI), UN Doc. A/6316 (1966) ("ICCPR"), Article 9 ("Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.") The United States ratified the ICCPR on 8 June 1992.

[21] In addition, the United Nations Working Group on Arbitrary Detention issued a set of ten principles which bring together the main criteria for determining whether or not the deprivation of liberty of asylum-seekers and immigrants may be arbitrary. "Report of the Working Group on Arbitrary Detention," E/CN.4/2000/4, 28 Dec. 1999.

> particular to the individual such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal...[22]

UNHCR has also provided guidance on when the detention of asylum seekers becomes arbitrary:

> Detention of asylum-seekers may be considered to be arbitrary if: it is not in accordance with the law; if the law itself allows for arbitrary practices, or is enforced in an arbitrary way; when it is random or capricious or not accompanied by fair and efficient procedures for its review . . . if it is disproportionate, or indefinite . . . For detention not to be arbitrary it should be prescribed by a law that is sufficiently accessible and precise, and it should not include elements of inappropriateness or injustice.[23]

UNHCR has further articulated that detention of asylum seekers and refugees is arbitrary when:

> ... they are detained for insufficient reasons, without an adequate analysis of their individual circumstances, without a meaningful opportunity to have their cases reviewed by an independent body, in the absence of an adequate legal framework, or for disproportionate or indefinite periods.[24]

In accordance with international human rights law, as well as international refugee protection standards, a relationship is required between the use of detention and the ends to be achieved. Therefore, in each case, there must be an individualized analysis of the need to detain a particular individual.[25] As UNHCR has noted, States should not detain an entire group of asylum seekers on the formal basis that they are likely to abscond prior to a determination of their asylum claims.[26] Even if the State's national law allows for detention when an individual is likely to abscond, "international standards dictate that there must be some substantive basis for such a conclusion in the individual case."[27] There should be a compelling need to detain that is based on the personal history of each individual asylum seeker.[28] Therefore, when detention is used as a deterrent to other asylum seekers, such detention is arbitrary, as deterrence is an inappropriate goal and insufficient reason for detention.

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[22] *See A. v. Australia*, Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993, 30 Apr. 1997.
[23] UNHCR Note on Detention, ¶ 25.
[24] *Id.*
[25] UNHCR Note on Detention, ¶ 14 ("International standards dictate that there must be some substantive basis" in each individual case for a conclusion that an individual will not appear for his or her hearings.).
[26] *Id.*
[27] *Id.*
[28] *Id.* at ¶ 26.

III. *The Detention of Asylum Seekers based on their National Origin is Discriminatory and Constitutes Arbitrary Detention*

Under Article 2(1) of the ICCPR, State Parties must ensure to all within their territories the rights recognized in the ICCPR "without distinction of any kind, such as race, colour, . . . national or social origin . . ." This includes the aforementioned Article 9 of the ICCPR, that is, the right to liberty. Subjecting individuals to detention based on their national origin is also contrary to Article 3 of the 1951 Convention, which obligates Contracting States to apply the provisions of the Convention to refugees "without discrimination as to race, religion or country of origin." [29]

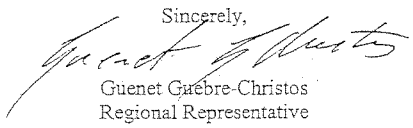
The detention of asylum seekers based on their national origin is therefore discriminatory and would constitute arbitrary detention.

IV. *Conclusion*

The practice or policy of using detention as a means of deterring asylum seekers from seeking protection in any given country or to penalize asylum seekers for their unlawful entry is contrary to the norms and principles of international refugee law. Detention is arbitrary when asylum seekers of a particular national origin are subject to more restrictive criteria for release from detention than those of other nationalities. Detention is also arbitrary if the decision to detain lacks an individualized analysis of the reasons for detention.

We hope this opinion provides helpful guidance to the US court considering these issues.

Sincerely,



Guenet Guebre-Christos
Regional Representative

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[29] *See also*, 1966 International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, *entered into force* 3 Jan. 1976. U.N.G.A. Res. 2200A (XXI) (1966), Article 2(2); International Convention on the Elimination of All Forms of Racial Discrimination, *adopted* 21 Dec. 1965, *entered into force* 4 Jan. 1969. U.N.G.A. Res. 2106 (XX) (1965); Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, *entered into force* 3 Sept. 1981. U.N.G.A. Res. 34/180; and Convention on the Rights of the Child, *adopted* 20 Nov. 1989, *entered into force* 20 Sept. 1990. U.N.G.A. Res. 44/25. U.N. Doc. CRC/C/97 (1989), Article 2.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. CIV-02-20822 (Lenard/Turnoff)

ERNEST MOISE, HEDWICHE JEANTY, BRUNOT COLAS, JUNIOR PROSPERE, PETERSON BELIZAIRE, and LUURENCE ST. PIERRE, on behalf of themselves and all others similarly situated,

Petitioners/Plaintiffs,

v.

JOHN M. BULGER, Acting Director for District 6, Immigration and Naturalization Service, JAMES W. ZIGLAR, Commissioner, Immigration and Naturalization Service, JOHN ASHCROFT, Attorney General of the United States, IMMIGRATION AND NATURALIZATION SERVICE, and UNITED STATES DEPARTMENT OF JUSTICE,

Respondents/ Defendants.

DECLARATION OF PETER MICHAEL BECRAFT

I, Peter Michael Becraft, declare that:

1. I am the Acting Deputy Commissioner of the Immigration and Naturalization Service (INS). I have acted in that capacity from September 11, 2001 until the present.

2. As the Acting Deputy Commissioner, I have authority pursuant to 8 CFR 212.5(a) to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Immigration and Nationality Act (INA).

3. The matters contained in this declaration are based on my personal knowledge of the matters addressed, as well as information available to me in my capacity as Acting Deputy Commissioner.

4. I am aware of litigation involving the plaintiffs, which has been filed in the United States District Court, Southern District of Florida. I am also aware that the litigation involves the plaintiffs' challenge to parole decisions made by the INS concerning Haitian nationals arriving in South Florida since December 3, 2001. I submit this Declaration for the purpose of describing the practice of the INS since that date regarding parole applications of inadmissible arriving aliens from Haiti who have been found to have a credible fear.

5. On December 3, 2001, 167 Haitian migrants were rescued by the Coast Guard from a boat that was foundering off the coast of Florida. Eighteen other migrants from the same vessel successfully swam to shore, while two others were reported drowned. The 18 migrants who swam to shore were not subject to mandatory detention as expedited removal cases, unlike those rescued at sea by the Coast Guard, and they were paroled from custody shortly after their apprehension.

6. The vessel that arrived on December 3, 2001, was one of several that departed Haiti and was interdicted by the Coast Guard since November, 2001, marking a sharp increase in irregular

maritime departures from Haiti. In the month of November, 2001, the Coast Guard reported interdicting vessels carrying a total of 350 Haitian nationals. By contrast, in the three months prior to November 2001, the Coast Guard interdicted a total of 96 Haitian nationals.

7. On December 4, 2001, the INS issued a statement to the media advising Haitians of the dangers they face by boarding unseaworthy boats and heading out to sea in an attempt to reach the United States.

8. In the wake of this sharp increase in dangerous maritime departures from Haiti, consultations occurred among officials from several executive agencies and INS officials, including myself. In these consultations, the following concerns were discussed: (1) the possibility that the numbers of Haitians embarking in U.S.-bound boats would continue to increase and turn into a mass migration; (2) that the U.S. should take steps to discourage Haitians from contemplating dangerous voyages to the United States; (3) that paroling the migrants from the December 3 vessel might cause others to attempt dangerous maritime departures, placing themselves at risk, or trigger a mass migration from Haiti to the United States; (4) that adjusting the INS' parole criteria with respect to Haitians arriving by boat in South Florida, so that the parole criteria would be applied in a more restrictive manner, would be a reasonable step to take in

order to address concerns (1) to (3) above; and (5) that the Haitians from the December 3 vessel, and other Haitians who might arrive in a similar fashion in South Florida, are less likely to appear for their immigration proceedings or for removal, if they ultimately received final orders of removal, given their demonstrated desperation to depart Haiti. Based on these consultations and concerns, I exercised my authority under section 212(d)(5) of the INA and section 212.5 of title 8 of Code of Federal Regulations, and instructed the INS Office of Field Operations to adjust its parole criteria with respect to inadmissible Haitians arriving in South Florida. I instructed that office that no Haitian should be paroled without the approval of INS Headquarters. The Miami District continued its case-by-case review of Haitians detained since December 3, and made recommendations to INS Headquarters regarding cases that should be considered for parole. In response to these recommendations, and after further consultation with Department of Justice officials, I instructed the District to parole specific Haitians whose cases demonstrated extreme hardship. In no way did the race of these detainees influence any of these decisions.

9. Since December 3, 2001, the INS has granted parole to 32 arriving aliens from Haiti for reasons of extreme hardship including 4 from the December 3 vessel. Based on individualized,

case-by-case reviews, the INS granted parole to five women who were pregnant and ten juveniles who had family members in the community who were willing to take them in. In addition to the procedures described in paragraph 9 above, the INS will consider paroling any other migrant whose continued detention would cause unusual hardship.

10. More recently, however, but prior to the filing of this lawsuit, the INS determined that it will consider, pursuant to enhanced procedures for scrutinizing each alien's likelihood to appear, the parole of inadmissible Haitian nationals who arrive by regular means at designated ports of entry in South Florida and establish a credible fear of persecution or torture. These enhanced procedures will include steps such as interviewing potential sponsors, physically verifying residences and addresses, and requiring sworn affidavits of support from sponsors. Additionally, the INS will impose conditions on parole designed to ensure aliens' appearance at their immigration proceedings, such as reporting requirements. The INS intends to apprehend and detain those who fail to appear for a hearing date or violate a condition of parole.

11. INS officials are paying close attention to the detention of Haitians in Florida, the arrival of undocumented Haitians, and the danger of mass migration. As the situation changes, INS will appropriately adjust the INS's parole criteria.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of March, 2002.

Testimony

of

Bishop Thomas G. Wenski, Chairman

**United States Conference of Catholic Bishops'
Committee on Migration**

before

The Senate Subcommittee on Immigration

October 1, 2002

I am Bishop Thomas G. Wenski, Auxiliary Bishop of Miami, Florida and chairman of the United States Conference of Catholic Bishops' (USCCB) Committee on Migration. Thank you for the opportunity to submit this testimony on the United States government's treatment of Haitian asylum-seekers, including a group of over 160 Haitian asylum-seekers who were brought into Florida by the United States Coast Guard in December 2001.

Mr. Chairman, I first would like to thank you for calling this hearing and for your leadership on asylum protection and other issues affecting immigrants and refugees. Indeed, Senator Kennedy, our country can trace the very establishment of our refugee protection laws to your vision and determination. Your leadership is sorely needed and welcomed at a time when the United States' commitment to protecting the persecuted too often inappropriately depends on national origin. Discriminatory policies based on national origin are all the more inappropriate when no legitimate national security concerns are involved, which is the case for the Haitian asylum-seekers who are the subject of this hearing.

I also want, Mr. Chairman, to acknowledge the presence of Senator Brownback on this Subcommittee and at this hearing. Senator Brownback was kind enough to take time out of his busy schedule to visit with the USCCB Committee on Migration several weeks ago. My brother bishops and I were most impressed, both with the dedication to protecting refugees and asylum-seekers that has been a hallmark of his tenure in Congress and by the passion that he brought to those issues, during his visit with us. We were particularly moved by his expression of concern about the manner in which the People's Republic of China treats North Korean asylum-seekers. We would point out to the Subcommittee the unfortunate parallels between the way China treats North Korean asylum-seekers and the manner in which the United States treats asylum-seekers from Haiti. USCCB looks forward to working with both of your offices to ensure that the human rights and dignity of all asylum-seekers are upheld.

I. Introduction

Mr. Chairman, the United States Catholic bishops have long been committed to improving the plight of refugees and asylum-seekers. Indeed, we harken back to the plight of the Holy Family, including the infant Jesus, who fled into Egypt to escape the tyranny of King Herod. Jesus teaches us that in the face of the refugee and asylum-seeker we see the face of Christ. "For I was hungry and you gave me food, thirsty and you gave me drink, a stranger and you welcomed me" (Matthew 25:35). In response to our Lord's call, the Catholic Church in the United States, through the work of Migration and Refugee Services of USCCB, the Catholic Legal Immigration Network, Inc. (CLINIC), our Catholic Charities agencies, and Catholic Relief Services, provides basic needs and resettlement assistance to refugees and asylum-seekers throughout the world.

Since 1986, MRS of USCCB has operated the Cuban/Haitian Primary/Secondary Program, providing processing and resettlement services to newly arriving Cuban and Haitian "entrants" who are resettled in and outside the State of Florida. Currently, most of those served by the program are Cubans. Approximately 43% of the incoming Cuban and Haitians served by MRS are reunited with relatives in South Florida. For the approximately 36% of those "entrants" who have no relatives in the United States, resettlement programs with established Cuban and Haitian communities outside of Florida have been set up to provide structured resettlement services in Austin, TX, Albuquerque, NM, Houston, TX, Lafayette, LA, Las Vegas, NV, Louisville, KY, Lansing, MI, Phoenix, AZ and Rochester, NY. Almost all Haitians released from INS detention are placed with relatives in South and Central Florida, Boston, Brooklyn, New York City and Newark, NJ.

The Catholic Church, through its various organizations, has years of experience in addressing the needs of Haitians needing asylum or resettlement. My oral testimony will focus on what my over

twenty years personal experience informs me should be the fair treatment of Haitian asylum-seekers. My hope is that my oral and written testimony will make clear that it is in the interest of the United States to treat fairly all asylum-seekers, including Haitian asylum-seekers. Haitian refugees and immigrants have contributed and continue to contribute to our country because conditions there force them to flee for the United States. For example, during the seven-month administration in 1991 of the first democratically-elected president of Haiti, the number of Haitians fleeing by boat dropped to nearly zero. Conversely, the exodus dramatically rose during the military coup which ousted him. Interdiction and detention will not deter desperate people from fleeing Haiti and thus must be reformed as only properly addressing the root causes of flight will stop further outflows.

II. Summary of Recommendations

The United States Catholic bishops are deeply concerned about the latest manifestation of a United States policy of limiting Haitian asylum-seekers' access to its asylum procedures. This policy, established in December 2001 and applied mostly to asylum-seekers fleeing Haiti by boat, consisted of bringing Haitians to Florida where their asylum applications were put on a fast-track for decision-making and detaining them in INS facilities and county jails, resulting in inadequate access to counsel and asylum procedures. In short, individuals who may have been found to meet the United States and international law definition of a refugee were denied asylum and returned to where they feared persecution because the normal procedures applicable to asylum-seekers were not applied to them.

It has been reported that some Haitian asylum-seekers who have encountered the United States Coast Guard on the high seas since December 2001 have been taken to the naval base at Guantanamo Bay, Cuba where individuals suspected of terrorism are also being held. These Haitian asylum-seekers are not suspected of terrorism, but are being detained on the same naval base as suspected terrorists because the United States government wants to deter other Haitians from fleeing persecution in Haiti.

Unfortunately, the United States policy of limiting Haitian asylum-seekers' access to its asylum procedures has a decades-long history.[1] This hearing cannot begin to address the plight of the current population of Haitian asylum-seeker detainees who are mostly in Florida without addressing the problematic aspects of this history and how that history reverberates to this day. The policy has included interdiction or preventing Haitian asylum-seekers from entering the United States to make an asylum claim by forcibly returning them to Haiti; detention in INS facilities and jails with United States citizens who have committed crimes; and inadequate assessment of claims without considering credible reports from a variety of sources on country conditions in Haiti.[2] This testimony will highlight our concerns and offer our recommendations regarding the United States policy of interdicting and detaining Haitian asylum-seekers.

In summary, we recommend the following:

1. Reform of the current interdiction policy, allowing for:

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[1] See Office of the United Nations High Commissioner for Refugees, State of the World's Refugees (Geneva: 2000) at 176 and 177.

[2] During President Aristide's exile and the military coup from 1992 to 1995, the United States Catholic Bishops, the Congressional Black Caucus, the United Nations, the Organization of American States, governments, United States federal judges, private attorneys and NGOs, including Amnesty International, Human Rights Watch, Lawyers Committee for Human Rights and the National Coalition for Haitian Rights voiced strongly their opposition to the United States policy on Haitian asylum-seekers, including through lawsuits, and confirmed reports that a significant number of Haitian asylum-seekers forcibly returned to Haiti faced harassment, imprisonment and in some cases death.

a. Haitian asylum-seekers' access to legal counsel, non-governmental organizations (NGOs) and an Immigration Judge;
b. provisions for rest and food before presenting a claim;
c. space for privacy when developing and presenting a claim; and
d. arrangements for identifying and assisting unaccompanied minors and other vulnerable groups.

2. Reform of the current detention policy for asylum-seekers, particularly the Haitian asylum-seekers picked up by the United States Coast Guard in December 2001, allowing for:
   a. exceptional detention of asylum-seekers for limited purposes and in facilities that at least meet the Immigration and Naturalization Service's (INS) own detention standards;
   b. the systematic release of asylum-seekers found to have a credible fear of persecution; and
   c. the development of alternatives to detention, especially for unaccompanied children, women, families and sufferers of post-traumatic stress disorder.

III. Overview of Concerns and Recommendations

1. The United States Interdiction Policy

Mr. Chairman, the United States Catholic bishops believe that our nation's asylum system should afford those who request asylum an opportunity for more direct access to trained Asylum Officers, Immigration Judges, the Board of Immigration Appeals (BIA) and the federal courts. In our 1995 statement, *One Family Under God*, the United States Catholic bishops outline a position in this regard. "Political asylum must remain a real option. Appropriate due process protections, a user-friendly system, and access to legal representation are important variables in maintaining a healthy system."[3]

Past Interdiction Policies

The United States Catholic bishops find that various manifestations of the United States policy of interdicting Haitian asylum-seekers arriving by boat should be abandoned as they do not reflect an asylum policy which respects basic human rights and international law. The United States interdiction program has taken many forms in the past two decades and for some periods has been very effective in preventing Haitians from applying for asylum. For example, United States government statistics show that between 1981 and 1991, over 22,000 Haitians were interdicted at sea and only 28 of them were allowed into the United States to apply for asylum.[4] Under the Reagan Administration, the interdiction program was targeted only at vessels carrying Haitians and there was minimal screening on board Coast Guard vessels to identify potential refugees.

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[3]United States Catholic Bishops' Committee on Migration, *One Family Under God*, September 1995, p. 6. The bishops considered international human rights principles when establishing their position on asylum. By preserving the institution of asylum, the United States upholds Article 14 of the Universal Declaration of Human Rights which provides that everyone has the right to seek and enjoy asylum. The Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR), of which the United States and the Holy See are members, stated in 1999 that given the growing concern among States about trafficking and the resulting limitations on access to asylum, the institution of asylum is of crucial importance to the international protection of refugees. See Executive Committee Conclusion No. 87.

[4] See State of the World's Refugees at 176.

The screening, usually taking place without legal counsel and under challenging physical conditions, would usually result in the return to Haiti of those interdicted. During the Bush administration, the screening process ended and all Haitians were returned to Haiti and in-country processing centers were established for consideration of their refugee claims. United States policy changed once again under the Clinton Administration, resulting in the establishment of camps on Guantanamo, where the refugee claims of those interdicted would be considered. We note that while most of the Haitians in Guantanamo at the time were eventually repatriated to Haiti, some were paroled and benefited from the Haitian Refugee Immigration Fairness Act, passed by Congress in October 1998. The law provides that certain Haitian asylum-seekers who had arrived in the United States before December 31, 1995 can apply for legal permanent resident status.

Current Interdiction Policy

United States interdiction activities now encompass the gamut of foreign nationals seeking entry to the United States. A fundamental concern with regard to these procedures is their adequacy with regard to refugee protection and their consistency as applied to different nationalities. INS asserts that any interdicted person of any nationality who indicates a need for protection will have that need evaluated consistent with international standards. It appears, however, that Cuban and Chinese nationals generally receive more, and better defined, asylum processing than other nationals. Note, however, that better access to asylum for some Chinese does not necessarily mean that they are categorically released from detention. The exact screening procedures applied to other nationalities, including Haitians, are unclear, but appear to be minimal or non-existent.

In addition to concerns about the quality and consistency of refugee screening among different nationalities, we have concerns about the differences between the standards that apply at sea and those that apply on United States land. While Chinese nationals may receive more asylum processing than other nationalities, some have argued that the "credible fear" standard that is applied to those interdicted at sea is stricter than that applied to those who reach land. For Cuban asylum-seekers, the United States applies the "wet-foot/dry-foot" policy. Under this policy, Cubans interdicted at sea who can demonstrate a credible fear of persecution are taken to Guantanamo for a refugee status determination. If recognized as refugees, they are resettled to a third country, but not to the United States. If the Cubans are interdicted in Bahamian or Dominican waters, they are taken to those countries and their cases are not considered by the United States authorities. Cubans who make it to United States soil, however, are "paroled" into the United States and are essentially eligible to adjust their status to lawful permanent resident after one year.

Regional Significance

Our concerns regarding interdiction, which is one response of the United States to the irregular movement of migrants and asylum-seekers, is best understood when considered in the broader context of our region's concern with responding effectively to traffickers and smugglers. We are concerned that the efforts of the United States and other governments in the Western Hemisphere to respond aggressively to individuals who resort to desperate measures to leave desperate situations will result in asylum-seekers continuing to face persecution. Thus, we urge that the enforcement of migration law and policy at frontiers, within territorial borders or on the high seas be humane and not act as a deterrent to asylum-seekers or preclude access to the asylum process.

2. Detention of Asylum-Seekers

United States law provides for mandatory detention of individuals arriving with false or no documents and awaiting determinations of whether they have a credible fear of persecution. As a

consequence of this and other mandatory detention laws enacted in 1996, the INS's need for detention space increased dramatically, forcing it to use jails where criminals are detained to detain asylum-seekers when INS facilities are not available. Some asylum-seekers have shared the same cell with individuals serving time for violent crimes. We believe that this mandatory detention policy should be reformed.

Detention has become a poor substitute for a policy of effective removal.[5] Under United States law, the INS may release detained individuals found to have a credible fear of persecution. In practice, release policies vary from one INS district to another, resulting in individuals found to have a credible fear of persecution remaining in detention for months or years while their asylum applications are pending.

The Continued Detention of Haitian Asylum Seekers Based on their National Origin

Access to adequate legal representation for Haitians is severely hampered by the INS's discriminatory detention policy toward Haitian asylum-seekers. Whereas most asylum-seekers from other parts of the world are released from detention in the Miami, FL area after passing a credible fear interview, Haitians continue to be detained, sometimes even after having won asylum.

The new detention policy was instituted in December 2001 immediately after a wooden sailboat carrying over 160 Haitian asylum-seekers ran aground in Biscayne National Park near Miami. Since that time the INS in Miami has released 91 percent of asylum-seekers from other countries, while most Haitian asylum-seekers remain detained.

While the INS initially denied it had a policy of discriminating against Haitians, it admitted on March 19, 2002 that it has a policy of detaining Haitian asylum-seekers in order to deter Haitians from coming to the United States. This is an alarming policy both because it discriminates on the basis of national origin and because it is a misuse of administrative detention. The sole purpose of INS detention, which is civil, non-criminal detention, is to facilitate the hearing and removal process, ensuring that individuals appear for their hearings and can be removed when necessary. Administrative detention used as a deterrence mechanism places a criminal justice sanction on a process that does not have the accompanying procedural protections. Moreover, people seeking asylum and fleeing persecution should never be sent the message of deterrence through detention.

At this time, most of the Haitian asylum-seekers who have arrived since December 2001continue to languish in detention or have already been deported to Haiti – often without a meaningful hearing due to their claims being put on a fast-track for decision-making and their inability to access adequate legal representation while in detention. Those who remain in detention often face depression and feelings of hopelessness. They are separated from family and friends and often do not believe that they will have access to a fair hearing. It is of paramount importance

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[5]*One Family Under God* at 15. The United States practice of detaining asylum-seekers erodes refugee rights provided for under international law. Article 31 of the 1951 Convention relating to the Status of Refugees which is incorporated in Article II of the 1967 Protocol relating to the Status of Refugees provides that the "Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened..., enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." The United States practice of detaining asylum-seekers also does not conform with Executive Committee Conclusion No. 44 on the detention of asylum-seekers and refugees.

that they have the opportunity to make their asylum claims fully and reliably with the assistance of legal counsel.

While asylum-seekers remain in detention, they face serious obstacles to securing legal counsel and communicating with an attorney once one has been found. The phones to which detainees have access are prohibitively expensive for most of the Haitian asylum-seekers, who have few or no resources. A phone card worth $20 to $25 will pay for 10 minutes worth of phone calls from a detention center. Even those who are fortunate enough to have a family member who can send them such a card must use it very judiciously. For most, phone calls to Haiti, necessary to secure documentation of their asylum claims, are out of the question because of the expense of making such calls from detention centers.

When their clients are in detention, attorneys are undermined in their attempts to fully develop their clients' claims in a variety of ways. Attorneys representing Haitians have had difficulty gaining access to their clients in detention and often have no privacy in discussing their clients' claims with them. Detainees are sometimes moved to other detention centers far from their attorneys. Expert witnesses needed to help develop a case are sometimes prevented from accompanying the attorney into the detention center. A detention attorney with the Catholic Legal Immigration Network, Inc. (CLINIC) faced severe opposition from the INS when he tried to bring a mental health expert into the detention facility to interview his client who had been gang raped by Haitian security forces. While the request was finally granted, after repeated denials, the INS's uncooperative approach caused an unnecessary delay in developing the case.

For all of these reasons, we urge the INS to end its discriminatory treatment of Haitians and to apply the same policy to all asylum-seekers regardless of nationality. The INS should parole any asylum-seeker who is not a flight risk or a danger to the community to family members or local NGOs during the pendency of immigration proceedings.

Alternatives to Detention

While the human toll exacted by the INS policy toward Haitian asylum-seekers is immeasurable, the financial toll is not. In response to a request from INS, the Vera Institute of Justice conducted an evaluation of supervised release programs for persons who would otherwise be detained by the INS. The study concluded that supervision costs only $12 per day, as compared to the $61 cost per day for INS detention.[6] According to the evaluation report of the pilot project, it costs the INS $3,300 to provide supervised release to each asylum-seeker compared to $7,300 to detain an asylum-seeker.[7]

In addition to its other flaws, the INS policy toward Haitian asylum-seekers is not cost-effective, including because INS in Miami has not responded to members of the community who have offered to provide housing and other assistance to the Haitian asylum-seekers. We recommend that, consistent with our broader position regarding the release from detention of asylum-seekers and our support for alternatives to detention, INS release the asylum-seekers to organizations and members of the community, allowing for access to counsel and a fair asylum hearing.

The provisions on alternatives to detention of asylum-seekers in the "Homeland Security Act of 2002," H.R. 5005, currently being considered by the Senate provide for the release of certain

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[6]Immigration and Naturalization Service, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program*, August 1, 2000.

[7] Ibid.

asylum-seekers from detention, access to legal and social services and improved conditions for detained or otherwise supervised asylum-seekers. If enacted, these provisions would greatly reform the United States' current detention policy for asylum-seekers.

The Needs of Special Populations

The detention policy applied to asylum-seekers should take into account the special needs of certain asylum-seekers, including families, unaccompanied children, pregnant women, victims of sexual violence, and sufferers of post-traumatic stress disorder. As with the Haitian asylum-seeker population with whom this hearing is concerned, it has been shown that detention has a profound and disturbing effect on particularly traumatized asylum-seekers or those with special needs. Detention facilities can rarely meet these populations' special needs, including psycho-social counseling and prenatal care. While it is a challenge for any asylum-seeker to access special services during the pendency of a claim, detention often greatly exacerbates the effects of persecution and should be avoided whenever possible.

INS Detention Standards

Finally, in response to the rising immigration detainee population and in consultation with refugee experts, the INS developed detention standards that cover the range of issues related to detention conditions, including access to counsel and medical care. These standards are intended to apply to both INS and non-INS detention facilities that house detainees for more than 72 hours, but, as in the case of the Haitian asylum-seekers, facilities too often do not even meet INS standards. We ask Congress to urge the INS to place these standards in regulation. At a minimum, it is important that Congress monitor the implementation of the standards, which INS has stated will take place in two phases over a 24-month period. INS had previously reported that implementation of these standards was scheduled to be completed by December 31, 2002. We do not know the current schedule for the implementation of the detention standards, but such implementation should be monitored by the United States government, UNHCR and non-governmental groups. If these standards had been in place at the facilities where the Haitian asylum-seekers were being detained such issues as access to counsel, psycho-social counseling and medical care could have been addressed and prevented such high rates of depression and denials of asylum.

Generally, then, asylum-seekers should not be detained and, if necessary, only for the briefest possible period for the limited purposes of, for example, establishing identity or to establish the very basic elements of the asylum claim. If an asylum-seeker is detained in a detention facility, we recommend that every effort be made not to detain that asylum-seeker in the same facility and certainly not the same cell as criminal offenders. Law enforcement procedures at a jail which may be appropriate for individuals serving criminal sentences undermine the rights of asylum-seekers. If an asylum-seeker must be exceptionally detained, the asylum-seeker must be in a facility that at a minimum meets INS detention standards.

IV. Conclusion

In conclusion, Mr. Chairman, we support a policy which allows Haitian asylum-seekers to have access to appropriate due process protections and to not be unnecessarily detained. In summary, we recommend the following:

1. Reform of the current interdiction policy, allowing for:
    a. Haitian asylum-seekers' access to legal counsel, NGOs and an Immigration Judge;

b. provisions for rest and food before presenting a claim;
c. space for privacy when developing and presenting a claim; and
d. arrangements for identifying and assisting unaccompanied minors and other vulnerable groups.

2. Reform of the current detention policy for asylum-seekers, particularly the Haitian asylum-seekers picked up by the United States Coast Guard in December 2001, allowing for:

a. exceptional detention of asylum-seekers for limited purposes and in facilities that at least meet the INS's own detention standards;
b. the systematic release of asylum-seekers found to have a credible fear of persecution; and
c. the development of alternatives to detention, especially for unaccompanied children, women, families and sufferers of post-traumatic stress disorder.

Again, Mr. Chairman, we urge that the enforcement of migration law and policy at the frontiers, within territorial borders or on the high seas be humane and not act as a deterrent to asylum-seekers or preclude access to the asylum process. We know that you and your colleagues are sensitive to these important issues and will give them due attention. Thank you for your consideration of our views.

Women's Commission for
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An independent organization formed with the assistance of the International Rescue Committee to advocate for the solution of problems affecting refugee women and children.

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Sandra Krause
Director, Reproductive Health Program
Jane Lowicki
Senior Coordinator, Children and Adolescent Project
Diana Quick
Director of Communications
Wendy Young
Director of Government Relations and U.S. Programs

WRITTEN TESTIMONY
SUBMITTED BY

WENDY A. YOUNG
DIRECTOR OF GOVERNMENT RELATIONS

Before the

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION

U.S. SENATE

Concerning

THE TREATMENT OF HAITIAN ASYLUM SEEKERS

October 1, 2002
226 Dirksen Senate Office Building
Washington, DC

Commissioners of the Women's Commission for Refugee Women and Children
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Introduction

On behalf of the Women's Commission for Refugee Women and Children, I would like to thank Senator Kennedy and members of the Subcommittee for holding this hearing on the treatment of Haitian refugees.

The Women's Commission is the first organization in the United States dedicated solely to speaking out on behalf of women and children uprooted by armed conflict or persecution. It seeks to improve the lives of refugee women, children, and youth through a vigorous program of research and advocacy and by acting as a technical resource. In 1995, the Women's Commission launched a project to assess the treatment of women and children asylum seekers in the United States, including their treatment while held in detention by the Immigration and Naturalization Service (INS) and their ability to access the U.S. asylum system.

In August 2002, the Women's Commission sponsored a delegation of refugee and Haiti experts to evaluate the treatment of Haitian asylum seekers in the United States and the Dominican Republic. The delegation included representatives from the National Coalition for Haitian Rights, the Florida Immigrant Advocacy Center, the media, as well as the Women's Commission itself. It interviewed Haitian asylum seekers and their families, as well as nongovernmental organizations and government officials working with the refugees, in both countries.

The Women's Commission is gravely concerned about the lack of access that Haitian asylum seekers have to the asylum systems of both the United States and the Dominican Republic. In both countries, asylum seekers with potentially strong refugee claims are frequently unable to obtain the assistance they need to present their asylum claims and suffer difficult conditions that threaten their safety and well-being while waiting for decisions on their refugee claims. Haitians are also at risk of forced return to their home country; this is particularly troubling in light of the deteriorating human rights situation in Haiti.

Following is a brief summary of the findings of the delegation.

Treatment of Haitian Asylum Seekers in the United States

Prolonged Detention

In December 2001, a boatload of almost 200 Haitians ran aground off the coast of Florida. Included in the group were approximately 26 women and 14 children. Most of the Haitians were rescued by the U.S. Coast Guard and taken into custody by the INS. Pursuant to the expedited removal system, they were interviewed by INS asylum officers, who found that all but two of the Haitians had a "credible fear" of persecution in Haiti.

The past practice of the INS Miami District has been to release asylum seekers who establish that they have a credible fear of persecution. In fact, that continues to be the case for all other nationalities other than Haitians, who have been subjected to disparate treatment that includes prolonged detention and expedited processing of their asylum cases.

Shortly after the December 2001 boatload of Haitians arrived, INS Headquarters in Washington, DC issued a directive to its Miami District not to release Haitian asylum seekers without its explicit approval. INS' stated rationale for the directive was to deter Haitians from making the dangerous voyage by boat. However, this rationale was undermined by the INS' initial decision to also detain Haitians who arrived by plane.[1]

After issuance of this policy, male Haitians were detained in the Krome Service Processing Center, families and some unaccompanied children in a local Miami hotel, other unaccompanied children in the Boystown Children's Shelter, and the women in two county facilities. Only unaccompanied children and pregnant women were deemed eligible for release.

The Haitian women were initially detained for eight months in the Turner Guilford Knight (TGK) Correctional Center, a maximum security Miami-Dade county prison. The Women's Commission has documented numerous problems with conditions of detention in TGK.[2] Such problems include inadequate medical care to address even critical conditions such as diabetes, a lack of accessible translation services, inedible food, extremely limited access to the outdoors, and separation of families. Attorneys representing the women often wait hours to visit their clients and are not provided private interview rooms to conduct confidential interviews.

Finally, responding in part to pressure from the Miami community and refugee advocates, the INS Miami District transferred detained women asylum seekers, including Haitians, to the Broward County Work Release Center on August 26, 2002.

Four days after this transfer, the Women's Commission was provided a thorough tour of the Broward County facility and interviewed Haitian women detainees. The facility generally provides a more open living environment. Women are allowed to wear street clothing rather than prison uniforms. They are provided with multiple activities, including English, acculturation, and life skill classes. The outdoor exercise area is

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[1] When the illogic of this policy was pointed out in a federal lawsuit, the INS reversed the policy for plane arrivals, but continued to place onerous requirements on their parole that are not required of asylum seekers of other nationalities.

[2] See Innocents in Jail: INS Moves Women from Krome to Turner Guilford Knight Correctional Enter, Miami, Women's Commission for Refugee Women and Children (June2001). The INS transferred women from the Krome Service Processing Center, a large immigration detention center in Miami, to TFK after reports of widespread sexual abuse at the hands of approximately 15 INS officers surfaced. See Behind Locked Doors: Abuse of Refugee Women ant the Krome Service Processing Center, Women's Commission for Refugee Women and Children (October 2001). While it was critical to remove women from the immediate danger they faced in Krome, TGK proved incapable of providing the protection and services that women seeking asylum require.

spacious and equipped with sports equipment. The women themselves described Broward County as a significant improvement over the TGK facility. In short, while the women are not allowed to leave the premises and are monitored by staff, the facility is sufficient for the short-term detention of asylum seekers pending a finding that they have a credible fear of persecution.

However, several concerns remain outstanding. First is the continued detention of Haitian women from the December boat arrival even after they have established a credible fear of persecution. Regardless of the improvements in the conditions of their detention that the transfer to Broward County might represent, it is disturbing that the Haitians have been singled out and subjected to prolonged detention.

It is also disturbing that the Broward facility—like Krome—has a history of sexual harassment problems. While the facility administrator outlined steps that the facility has taken to ensure that such abuses do not reoccur, it is critical that the facility be closely monitored by NGOs, the UNHCR, and most importantly, the INS itself to confirm that such abuses are not repeated.

While the Broward facility staff has expressed an openness to facilitating the ability of attorneys to visit their clients and to speak with new arrivals, the Florida Immigrant Advocacy Center has reported that this flexibility is not shared by the INS Miami District. Attorneys have raised concerns that the INS is inhibiting them from visiting their detained clients by placing onerous paperwork requirements on them before every visit.

Finally, the Women's Commission is concerned by the INS' ongoing policy of splitting family members while in detention. For example, we interviewed a Haitian father whose wife and child had been transferred thousands of miles away to a family detention center in Pennsylvania. They had not seen or spoken to each other for almost three months.

Fast-Tracked Asylum Adjudications

In addition to being subjected to prolonged detention, the Haitian asylum seekers who arrived in the United States in December 2001 were subjected to accelerated scheduling and processing of their removal proceedings. Additional immigration judges were posted to the Krome Service Processing Center to hear Haitian cases. As a result, Haitians were subject to very quick calendaring of their cases, and most were forced to appear before a judge without representation. Many prepared their English-language asylum forms without legal or translation assistance.

According to attorneys based in Miami, immigration judges then conducted cursory hearings that lasted only 30 minutes to one hour. This included time for translation. As a result, the overwhelming majority of the claimants were denied asylum; by June 2002, the Florida Immigrant Advocacy Center had reported that it had filed almost 100 appeals

with the Board of Immigration Appeals, most for claimants who had appeared before an immigration judge unrepresented.[3]

Legal representation is critical to the ability of asylum seekers to successfully gain refugee protection in the United States. Georgetown University has found that asylum seekers are four to six times more likely to win their asylum cases when they are represented by counsel.[4]

Returned Haitians Subjected to Further Human Rights Abuses

Of the 167 Haitians who have been subjected to prolonged detention, almost 50 have since been deported. Detainees are deported in groups by the INS and are subjected to handcuffing and shackling during transport. Once returned, they are transferred to the custody of Haitian authorities. There is increasing evidence that returned Haitians are subject to further human rights abuses upon their return.

Haitians who have been deported by the INS have reported that Haitian authorities met them at the airport in Port-au-Prince. The returnees were then transferred to Delmas 33, a prison known for its extremely hazardous living conditions.

A woman whom the Women's Commission interviewed has reported that while in Delmas she was held in one cell with more than 60 women, some of whom had committed violent crimes. Others were very sick or pregnant. One woman was there with a newborn infant. The women had only one cot for every three women. They were provided no food or water. There were no toilet facilities, forcing the detainees to urinate and defecate on the floor.

The woman was held at Delmas 33 for two days until her family was able to locate her. They then were forced to pay a large fine (approximately U.S. $400) to obtain her release. The woman reported that there were two other women in a similar situation who were deported at the same time as she who were also jailed and fined.

Upon her release, the woman returned to Gonaives, where she and her family resided. She reported that she experienced significant abuse and harassment from CIMO, a government security force supported by the Aristide government. Her mother's restaurant was sprayed with gun fire. She and her brother-in-law were later stopped by the same group, which hit her on the back and chest with their rifles. She was hospitalized after she began to spit up blood. She reported that her brother-in-law suffered more injuries, including a blow to his head.

The woman has since been in hiding. She told the Women's Commission that she will likely try to flee Haiti again, as she fears for her life.

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[3] Testimony of Cheryl Little, Florida Immigrant Advocacy Center, before the U.S. Commission for Civil Rights (June 21, 2002).
[4] "Asylum Representation Summary Statistics," prepared by Andrew Schoenholtz, Institute for the Study of International Migration, Georgetown University (May 2000).

Other returnees have reported similar experiences. It is disturbing that the INS continues to deport Haitians from the December boat arrival in the face of the deteriorating human right situation and political instability now going on in Gonaives, from where the vast majority of the asylum seekers originate.

U.S. Policy Based on Goal of Deterrence

The INS has admitted in the context of a federal lawsuit that the decision not to parole Haitian asylum seekers who arrived on the December boat was an attempt to deter a mass exodus from Haiti to the United States.[5] Detention as a means to deter the arrival of asylum seekers is in clear violation of international law and undermines U.S. asylum policy as a tool of protection.

The UN High Commissioner for Refugees, the international body with the primary mandate to protect refugees, has clearly stated that when detention is used as a deterrent, it is contrary to international standards. It has noted in an advisory opinion requested by the Florida Immigrant Advocacy Center that "the detention of asylum seekers in furtherance of a policy to deter future arrivals does not fall within any of the exceptional grounds for detention and is contrary to the principles underlying the international protection regime." It further concluded that detention of asylum seekers based on their national origin is discriminatory and constitutes arbitrary detention under both the International Covenant on Civil and Political Rights and the 1951 Convention Relating to the Status of Refugees.[6]

Further evidence supporting the conclusion that the primary goal of the U.S. government is to deter and prevent an influx of Haitian refugees is supported by the ongoing practice of interdicting Haitian asylum seekers on the high seas. When the U.S. Coast Guard interdicts Haitians onboard vessels , it immediately returns them to Haiti, unless the individual affirmatively steps forward and expresses a fear of return. In those limited cases, an INS asylum officer is flown to the Coast Guard cutter to conduct a credible fear interview.

Those who establish a credible fear, however, are still prevented from coming to U.S. shores. Instead, they are transferred to Guatanamo Bay, Cuba where they are provided an interview with another INS asylum officer without benefit of counsel. Those few individuals who have been found to qualify for refugee status are again prevented from coming to the United States. Instead, they are resettled in Central American countries such as Guatemala and Nicaragua.[7]

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[5] Declaration of Peter Michael Becraft, Acting Deputy Commissioner, Immigration and Naturalization Service, before the U.S. District Court, Southern District of Florida (Case No. CIV-02-20822).
[6] "Request for Advisory Opinion on Detention of Asylum Seekers," United Nations High Commissioner for Refugees (April 15, 2002).
[7] See "Proposed Refugee Admissions for Fiscal Year 2003," Submitted on Behalf of the President of the United States to the Committees on the Judiciary (September 2002).

Treatment of Haitian Asylum Seekers in the Dominican Republic

The United States is not alone in the implementation of policies that undermine the ability of Haitian asylum seekers to obtain the protection they require. The Women's Commission has also assessed the treatment of Haitians who seek refuge in the Dominican Republic and found serious violations of their rights and a fundamental absence of meaningful protection.

The Women's Commission interviewed more than a dozen Haitians who have applied for asylum in the Dominican Republic. Included in this number were former journalists, political documentary film makers, social service advocates, and political candidates who had run against the ruling party. All reported having experienced serious political persecution in Haiti. Many were residing in the Dominican Republic with their families.

Despite having entered the Dominican Republic in 2001, none had yet to receive a decision on their asylum applications. Service providers working with the Haitians reported that the board charged with adjudicating asylum claims rarely meets, resulting in a backlog of several hundred pending claims.

Haitians who have applied for asylum are not provided authorization to work in the Dominican Republic. As a result, the asylum seekers reported that they and their families are barely able to subsist. In addition, their children are generally not able to attend school, because they cannot afford the school fees. One child who was attending school reported that the Dominican children frequently beat him up.

Several asylum seekers also noted that they are subject to repeated harassment and abuse both from the general Dominican population as well as from government authorities. When they report such abuses, they indicated that the Dominican police do not follow up on their reports.

One father who was accompanied by his wife and three young children concluded, "I don't want asylum in the D.R. anymore. It's no different here than in Haiti."

Haitians living in the Dominican Republican are in effect living in limbo, unwelcome in their host country but unable to return home.

Conclusion and Recommendations

Given the escalating political instability and human rights abuses in Haiti, it is critical that the United States and countries in the Caribbean region allow full access to Haitian asylum seekers and offer protection to those found to have a well-founded fear of persecution.

The Women's Commission offers the following recommendations:

- The United States must discontinue its prolonged and arbitrary detention of Haitian asylum seekers and facilitate their release in keeping with the parole policy in place for asylum seekers of other nationalities who are held in the custody of the Miami INS District.

- The United States must discontinue its interdiction policy for Haitian asylum seekers under which asylum seekers are generally denied a meaningful opportunity to present their asylum claims.

- At a minimum, Haitians who are interdicted on the high seas should be provided a credible fear screening before they are repatriated. Such screenings should ideally occur on land after the asylum seeker has been provided an opportunity to rest and prepare for the interview.

- In light of the danger posed by boat travel to the United States, the State Department should consider implementing in-country refugee processing in Haiti. This is especially important if the political unrest in Haiti continues.

- No asylum interview or proceeding that involves a Haitian asylum seeker before either an INS asylum officer or an immigration judge should be expedited or summarily conducted in any fashion.

- Families should not be divided while in detention. They should either be released or housed together.

- The United States government and the UN High Commissioner for Refugees should encourage the government of the Dominican Republic to implement a meaningful asylum process.

- The United States should consider offering resettlement to Haitian refugees residing in the Dominican Republic.

Thank you for the opportunity to share the views of the Women's Commission with you today. I look forward to answering any questions you may have.

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