

U.S. Department of Homeland Security
500 12th St SW, Stop 5009
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

April 27, 2015

WILLIAM MARSHALL
JUDICIAL WATCH
425 THIRD STREET, SW, SUITE 800
WASHINGTON, DC 20024

RE: ICE FOIA Case Number 2015-ICFO-02383

Dear Mr. Marshall:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated June 09, 2014. You have requested copies of the following records:

any and all records of communications between DHS personnel and non-US third parties regarding, concerning or related to "humanitarian parole" and/or the U.S. policy of permitting & undocumented women and children to cross into the United States on the southwest border

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

After review of those documents, I have determined that 151 pages will be released in their entirety. Portions of 50 pages will be withheld pursuant to Exemptions of the FOIA as described below.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of DHS employees contained within the documents.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them

revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency case numbers contained within the document.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

You have the right to appeal ICE's determination and should you wish to do so, please send your appeal following the procedures outlined in the DHS regulations at 6 Code of Federal Regulations § 5.9 and a copy of this letter to:

U.S. Immigration and Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.¹

If you need to contact the FOIA office about this matter, please call (866) 633-1182 and refer to FOIA case number **2015-ICFO-02383**.

¹ 6 CFR § 5.11(d)(4).

Sincerely,

R.gowins,for

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 201 page(s)

Questions and Answers
IACHR Meeting on Removals
March 26, 2011
DRAFT as of March 22, 2011

Background:

- ICE has a legal obligation to remove foreign nationals who are not lawfully present in the United States. DHS and the Department of State (DOS) works with countries around the world, including Haiti, to ensure an organized, safe and humane repatriation process for individuals not authorized to remain in the United States and who have been ordered removed from the United States.
- On January 13, 2010, the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) temporarily halted ICE's removals to Haiti of aliens with final orders of removal in the wake of the earthquake and the resulting humanitarian crisis.
- Pursuant to a U.S. Supreme Court decision (*Zadvydas v. Davis*, 533 U.S. 678 (2001)), ICE has the presumptive authority to detain aliens with final orders of removal for up to 180 days. After six months, with limited exceptions, continued detention is presumptively no longer lawful and ICE may extend the detention of aliens with final orders of removal only when their removal is significantly likely in the reasonably foreseeable future. The moratorium on removals to Haiti therefore meant that ICE was legally required in most cases to release detained Haitian nationals into U.S. communities because their removal was not likely to occur in the near future. Following the decision to halt the removal of Haitians, ICE evaluated the circumstances of each Haitian in detention to see if parole (with or without conditions) was appropriate.
- Unfortunately, a significant number of the detained Haitian nationals had committed serious crimes and their release posed significant threats to the American public. In fact, data shows that some of the released criminal Haitians continue to commit crimes after release, including sex offense against a child, multiple possession and/or sale of marijuana and cocaine, criminal trespass, larceny, DUI, and assault. As a result, after a year of suspended removals, the U.S. government made the difficult decision to restart removals of a limited group of Haitian nationals to ensure the safety of our local communities. It is also important to note that, because these individuals have a criminal history, they are not entitled to discretionary relief, or even the limited status allowed under the Temporary Protected Status laws. In this regard, these individuals have no legal remedy that will allow them to continue to remain in the United States.
- Beginning on January 20, 2011, ICE resumed the removals of certain Haitians who have serious criminal convictions or pose a danger to the U.S. national security and are the subject of a final order of removal. In light of conditions in Haiti, ICE reviewed its removal policy and gave the public an opportunity to comment on the policy. The removals will continue to focus on Haitians who have committed crimes. The precise contours of the removal policy will not be finalized until the comments of stakeholders including non-governmental organizations (NGOs) are considered.
- The removals will be coordinated with the Department of State and the Government of Haiti (GOH). They will be conducted in a measured manner and with great scrutiny.

Q1. (IF ASKED) Why have removals restarted?

- The Supreme Court has ruled that, in most circumstances, ICE is obligated to release a detained alien with a final order of removal if, after a 180 day period, removal is not reasonably foreseeable. ICE's authority to detain aliens with final orders of removal – including those whose serious criminal histories mean they would pose a significant threat to local communities if released – is therefore limited by its ability to remove those aliens.
- As long as the moratorium on all removals to Haiti was in effect, ICE could not claim that the removal of any detained Haitian was reasonably foreseeable. Accordingly, until the moratorium was lifted, ICE was legally required to release after six months all detained Haitians with final orders of removal even if they had been convicted of very serious crimes.
- The release or potential release of Haitians convicted of serious criminal offenses posed a clear risk to the safety of local communities in the United States. As a result, the U.S. government made the tough decision to restart the removals, with a focus on serious offenders who have committed crimes such as homicide, rape, sexual assault, robbery, sex offense against children, aggravated assault, assault, kidnapping, false imprisonment, sale of cocaine, smuggling cocaine, sale of marijuana, and larceny.

Q2. (IF ASKED) What population will be removed under this program?

- The removal of Haitian nationals will be conducted in a manner that is consistent with ICE's enforcement priorities, which emphasize the removal of aliens whose criminal histories demonstrate they pose a significant threat to public safety. In line with that focus, ICE will prioritize the removal of Haitians with final orders who have committed serious crimes and therefore pose the greatest risk to our local communities if released.
- At this time, ICE is not removing non-criminal aliens who have committed minor crimes, aliens with a pending temporary protected status (TPS) application, aliens who have been granted TPS, or aliens who are otherwise present in the United States in a lawful status.

Q3. (IF ASKED) How frequently will removals take place?

- The resumption of removals to Haiti will take place in a measured manner with no more than 100 Haitian nationals repatriated every month (no more than 50 per flight).

Q4. (IF ASKED) Has the public been given an opportunity to comment on the removal policy?

- Yes. ICE posted a draft of the removal policy on its website from March 7 – 18, 2011 during which period concerned individuals and organizations could submit comments on the policy. DHS, working with the Department of State and other partners in the Federal government, is reviewing and processing those comments. Based on that review, ICE will generate a final version of the removal policy, which will then be posted on its website.

Q5. (IF ASKED) Why remove criminal aliens to a non-functional Haitian Justice System where they will target vulnerable populations?

- The aliens removed under this program have served their criminal sentences in the United States. They are being removed to Haiti because they have no legal immigration status in the United States and would pose a threat to U.S. communities if released or allowed to remain released.

Q6. (IF ASKED) Is the United States government in violation of any of its human rights obligations or standards in resuming these removals given the conditions on the ground?

- The United States takes seriously its international human rights obligations and is committed to the protection and promotion of human rights both at home and abroad. These removals are being undertaken pursuant to U.S. law and consistent with our international obligations.
- Accordingly, while (as addressed in our Response to the Petition) we do not believe that the Commission has the authority to request precautionary measures from the United States, there is also no substantive basis on which such measures could be requested.

Q7. (IF ASKED) Did the USG consider alternatives to deportations?

- Because DHS suspended removals of Haitians following the January 12, 2010 earthquake, the U.S. Supreme Court precedent which prevents the continued detention of aliens whose removal is not reasonably foreseeable applied, resulted in DHS facing the difficult dilemma of releasing convicted criminals within the United States or resuming removals to Haiti. Since the earthquake, hundreds of detained Haitians were released from ICE custody; however, consistent with our domestic immigration enforcement priorities, DHS resumed removals on January 20, 2011, and repatriated 27 Haitian nationals. Only convicted criminals or serious national security threats currently face removal. The Haitian nationals removed under this program have served their criminal sentences in the United States and are being removed to Haiti because they have no legal immigration status in the United States.

Q8. (IF ASKED) What is the USG doing to assist the GOH to receive this population?

- The USG is sensitive to the difficulties that Haitians face in Haiti, including high unemployment (75-80%), a cholera epidemic, a lack of health and sanitation infrastructure, a fragile security environment, largely dysfunctional justice system, and a disruption to community services and networks that may have existed prior to the January 2010 earthquake.
- In light of these many and varied challenges, the USG is working to develop a program to support the GOH in reintegrating removed Haitians into Haitian communities.
- The program will be similar to other successful reintegration programs and will encompass various service offerings, including basic medical assistance for returnees. In addition, a doctor and nurse will be on call to deal with any urgent medical needs by returnees.

- The USG will work to conduct the removals in as a responsible of a manner as possible, but individuals removed to Haiti will face significant challenges due to the particularly difficult conditions in Haiti.
- Protection of human rights and vulnerable populations is a top priority within the USG. We will continue to work with the GOH and our international partners on a broad array of efforts to meet both the immediate needs of vulnerable populations and to reduce vulnerabilities over the long term. Since January 2010, the USG has provided \$1.1 billion in humanitarian relief assistance and \$406 million in recovery assistance. The United States has pledged an additional \$1.15 billion in future reconstruction funds.

Q9. (IF ASKED) When will the reintegration program start?

- We are currently working through the procurement on the reintegration program and hope to have it in place as soon as possible.

Q10. (IF ASKED) How will returnees know about the program and how to access the services? When will services be available to them?

- The USG will work with relevant NGO partners to ensure that returnees are aware of the services available to them immediately upon arrival in Haiti.
- The reintegration program is 100% voluntary. Returnees will be eligible to take advantage of the program as soon as their processing is complete. In many cases, this will be immediately upon arrival in Haiti.

Q11. (IF ASKED) Will returnees be jailed when they arrive in Haiti?

- This is a question for Haitian authorities.
- It is our understanding that the GOH may hold certain individuals for administrative processing, including for background checks and family reunification purposes.
- We cannot guarantee that removed individuals will not be redetained, but do understand from the GOH that this will not be a standard practice.

Q12. (IF ASKED) What is the U.S. government doing to ensure that the GOH does not redetain returnees?

- The U.S. government is working with the GOH to ensure that removals are conducted in the most humane manner possible. It is our understanding that the GOH may hold certain individuals for administrative processing, including for background checks and family reunification purposes.
- As you know, these are Haitian citizens and therefore fall under the jurisdiction of the GOH as soon as they arrive back in country.
- Just like we have an obligation to protect our citizens, the GOH has an obligation to perform their own due diligence to safeguard their citizens and has asserted its position that conducting such due diligence may be necessary in the cases of some returnees. Understanding this, we are working to provide the GOH with as much information as

possible to facilitate rapid processing of these individuals. These efforts include: providing information on returnees well in advance of flights, consulting with GOH officials as to which individuals will be returned, and continually thinking through ways to improve upon this process.

- Strengthening justice sector institutions and the rule of law overall are clear priorities for USG assistance to Haiti. The United States is only one of many international donors working to strengthen Haiti's justice sector – an endeavor that will require sustained engagement over the long-term.

Q13. (IF ASKED) Detainees are at risk of contracting cholera because of poor conditions in Haiti's detention centers. It appears that one has already died. What is the USG doing about this? Is it true that that gentleman died of cholera contracted in detention?

- Unfortunately, the USG cannot guarantee that removed individuals will not encounter the challenges that face many Haitians on a daily basis.
- We are aware that one gentleman passed away at the home of a family member after having spent several days in a Haitian detention center. We have received reports, although we have not been able to confirm them with certainty, that he contracted and died of cholera.
- We are saddened by Mr. Guerrier's death. Our decision to return detainees is informed, in part, by their medical conditions.
- This individual's death also reminds us that the USG and international community must remain engaged in addressing public health and reconstruction challenges generally in Haiti; not just in certain areas, but throughout the country. The USG has, as of February 2011, provided expertise and more than \$44 million dollars to support cholera prevention and response activities. These efforts include support for cholera treatment facilities, improvements to water and sanitation infrastructure, medical supplies and services, and information campaigns that teach the public about cholera prevention and treatment. The USG remains committed to support the GOH and international partners to confront Haiti's daunting public health challenges.

Petition-specific questions

Q14. (IF ASKED) What is the status of the deportation proceedings with respect to [redacted] (b)(7)(C),(b)(6)

(b)(6),(b)(7)(C) [redacted]?

- (b)(6),(b)(7)(C) [redacted] is the subject of a final order of removal. He is currently detained. [redacted] (b)(6),(b)(7)(C)
- (b)(6),(b)(7)(C) [redacted] is the subject of a final order of removal. He was released from detention on
- (b)(6),(b)(7)(C) January 21, 2011. [redacted] is the subject of a final order of removal. He was removed to Haiti on January 20, 2011 on a charter flight. [redacted] is the subject of (b)(6),(b)(7)(C)
- (b)(6),(b)(7)(C) a final order of removal. He is currently detained. [redacted] is the subject of a final (b)(6),(b)(7)(C)
- (b)(6),(b)(7)(C) order of removal. He is currently detained.

Q15. (IF ASKED) Has the United States received any assurances from the Haitian government on the possibility that the proposed beneficiaries would be able to obtain proper medical care, food and clean drinking water in the place of detention to which they could be sent?

- The United States has not received any assurances from the Haitian government regarding the medical care or provisions that the proposed beneficiaries will be able to obtain upon their return.

Q16. (IF ASKED) Is there a final resolution and a date set for the deportation of the proposed beneficiaries?

- DHS does not provide information regarding the existence of scheduled dates of removal for individual aliens. Providing such information in an individual case could compromise the law enforcement objectives of DHS ICE.
- Related to the inquiry regarding the cases of the proposed beneficiaries, the United States would note that it is working to develop a program to assist with the reintegration of returnees to Haiti. The program will be similar in nature to other reintegration programs in the region.

Approved: Office of the Haiti Special Coordinator [redacted] (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) Drafted: S/HSC [redacted]

(b)(6),(b)(7)(C) Cleared: S/HSC: [redacted]
USOAS
USAID/
L/HRR:
L/HRR:
PRM/PI
DHS/OC



Homeland
Security

May 2011

Public Affairs Strategy

To: DHS Exec Sec/Front Office

From: Assistant Secretary, Public Affairs

Re: Extension/Re-Designation of Temporary Protected Status (TPS) for Haitians in the U.S.

Executive Summary

On Jan. 12, 2010, the island nation of Haiti was struck by a magnitude 7.0 earthquake that caused widespread destruction and death and effectively crippled the country. On Jan. 15, 2010, Secretary Napolitano announced the designation of Temporary Protected Status (TPS) for Haitian nationals who were in the United States as of Jan. 12, 2010.

As part of DHS' ongoing efforts to assist Haiti, Secretary Napolitano is extending TPS for Haitian TPS beneficiaries for 18 months to allow these TPS beneficiaries to remain in the United States through Jan. 22, 2013. The Secretary is also re-designating Haiti for TPS effective July 23, 2011—meaning that Haitian nationals who have continuously resided in the United States since Jan. 12, 2011, will also be eligible for TPS through Jan. 22, 2013..

DHS estimates that approximately 10,000 more individuals may become eligible for TPS under the re-designation of Haiti due to the Secretary's re-establishment of the continuous residence date as Jan. 12, 2011.

In anticipation of the announcement of extension and re-designation, DHS OPA, in coordination with components and the Department of State, plans to produce materials to communicate the announcement to employees, stakeholders, Haitians in the U.S., and domestic and international media. These communication efforts are centered on three major U.S. government objectives:

- Deter and dissuade Haitian citizens from taking to the sea in attempts to illegally migrate to the United States.
- Clearly explain that TPS designation will only be considered for those meet the eligibility requirements to either renew their registration or file a registration for the first time.
- Clearly explain U.S. Government policy as it relates to the repatriation of Haitian migrants interdicted at sea.
- Clearly articulate that Haitians should not attempt to enter the U.S. illegally with the hope of obtaining TPS.

Haitians who are currently living in the Bahamas who are interdicted at sea before they reach U.S. soil will be returned back to the Bahamas pursuant to current protocol with the Bahamas. This is contingent

upon evidence that these individuals originated from the Bahamas. As appropriate, credible fear procedures will also be followed.

Press Release

WASHINGTON—Secretary of Homeland Security Janet Napolitano today announced the extension of Temporary Protected Status (TPS) effective July 23, 2011, for Haiti TPS beneficiaries for an additional 18 months to allow these TPS beneficiaries to remain in the United States through Jan. 22, 2013, in the extended aftermath of the devastating earthquake in Haiti on Jan. 12, 2010. The designation of TPS for Haitian nationals who were in the United States as of Jan. 12, 2010, was originally announced by Secretary Napolitano on Jan. 15, 2010. Currently, approximately 48,000 Haitian nationals with TPS reside in our country.

“In the extended aftermath of the devastating earthquakes in Haiti, the United States has remained fully committed to upholding our responsibility to assist individuals affected by this tragedy by using tools available under the law,” said Secretary Napolitano. “Providing a temporary refuge for Haitian nationals who are currently in the United States and whose personal safety would be endangered by returning to Haiti is part of this administration’s continuing efforts to support Haiti’s recovery.”

Secretary Napolitano is extending TPS for Haitian beneficiaries for 18 months to allow these TPS beneficiaries to remain in the United States through Jan. 22, 2013.

In addition, Secretary Napolitano is re-designating Haiti for Temporary Protected Status (TPS)—meaning that eligible Haitian nationals who have continuously resided in the United States since Jan. 12, 2011, will also be able to obtain TPS through Jan. 22, 2013. Under the original designation, TPS applicants needed to show that they had continuously resided in the United States since Jan. 12, 2010, but the re-designation now permits eligible individuals who arrived up to one year after the earthquake in Haiti to receive the protection of TPS. Many of these individuals were authorized to enter the United States immediately after the earthquake on temporary visas, humanitarian parole and through other immigration measures.

This re-designation of TPS applies only to those Haitians currently in the United States who had arrived before Jan. 12, 2011. Haitians who are not currently in the U.S. should not attempt to enter the United States—legally or otherwise—to try to take advantage of this benefit. Both the extension and re-designation are effective July 23, 2011. No individual who arrived in the United States after Jan. 12, 2011, will be eligible for TPS.

A person who has been convicted of a felony or two or more misdemeanors in the United States, or is subject to one of the asylum, criminal, or security-related bars to admissibility under immigration law, is not eligible for TPS. DHS has also announced the continued suspension of work authorization regulations for Haitian F-1 nonimmigrant students.

Haitians who attempt to enter the United States now or in the future will not be granted TPS. DHS has been repatriating Haitians seeking to illegally enter the United States since the earthquake in 2010. The U.S. Coast Guard (USCG) has been intercepting Haitians at sea and returning Haitians who have attempted to enter the United States illegally; U.S. Customs and Border Protection has been removing inadmissible Haitians who have arrived at U.S. ports of entry; and—since January 2011—U.S. Immigration and Customs Enforcement (ICE) has removed Haitians who have been convicted of a criminal offense (or who pose a threat to U.S. national security) and have been issued a final order of removal.

Finally, ICE is prepared to aggressively investigate and present for prosecution those who seek to defraud the U.S. government in attempt to gain Temporary Protective Status (TPS) or engage in immigration benefit fraud as the result of the expansion of this program. ICE will also pursue human smugglers whose only goals are to profit at the expense of others.

Haitians in the United States who are eligible to apply for TPS should go to www.uscis.gov/tps or call USCIS toll-free at 1-800-375-5283.

Key Messages

- In the extended aftermath of the devastating earthquakes in Haiti on Jan. 12, 2010, DHS has remained fully committed to upholding our humanitarian responsibility to assist individuals affected by this tragedy by using immigration benefits available under the law.
- Today, Secretary of Homeland Security Janet Napolitano extended TPS for Haitian nationals by 18 months to allow Haitians who have already been granted TPS to re-register and to remain in the United States through Jan. 22, 2013.
- In addition, Secretary Napolitano re-designated Haiti for TPS—meaning that Haitian nationals who have continuously resided in the United States since Jan. 12, 2011, may also be eligible for TPS through Jan. 22, 2013.
- Under the prior designation, TPS applicants needed to show that they had continuously resided in the United States since Jan. 12, 2010. The re-designation now permits eligible Haitians who arrived up to one year after the earthquake in Haiti to receive the protection of TPS. Many of these individuals were authorized to enter the United States immediately after the earthquake on temporary visas, humanitarian parole and through other immigration measures.
- Both the extension and re-designation are effective July 23, 2011. No Haitian who arrived in the United States after Jan. 12, 2011, will be eligible for TPS. A person who has been convicted of a felony or two or more misdemeanors in the United States, or is subject to one of the asylum, criminal, or security-related bars to admissibility under the immigration laws, is not eligible for TPS.
- TPS re-designation has been employed sparingly in recent years, including for Liberia, Sudan, and Somalia.
- In addition to granting TPS, U.S. Citizenship and Immigration Services (USCIS) has also made some temporary measures available to nationals of Haiti as they relate to change or extension of nonimmigrant status, advance parole, employment authorization for F-1 students, processing of immigrant petitions for children of U.S. citizens and lawful permanent residents, among others. As part of these efforts, USCIS has granted more than 90 percent of all fee waiver requests for Haitians seeking these and other immigration benefits. We continue to consider any application for discretionary benefits on a case-by-case basis.
- TPS only applies to those Haitians who were present in the United States as of Jan. 12, 2011. Haitians interdicted at sea will be repatriated, so we urge people not to put their lives at risk by embarking on a dangerous sea voyage.

- This re-designation of TPS applies only to those Haitians currently in the United States who had arrived by Jan. 12, 2011. Haitians who are not currently in the United States should not attempt to enter the United States—legally or otherwise—to try to take advantage of this benefit.
- Individuals who attempt to enter the United States from Haiti now or in the future will not be granted TPS. The U.S. government will continue to interdict and repatriate persons unlawfully seeking to come to the U.S. by sea. Since the earthquake, USCG has been intercepting and returning Haitians who have attempted to travel by sea to the United States; U.S. Customs and Border Protection (CBP) has been removing inadmissible Haitians who have arrived at U.S. ports of entry; and U.S. Immigration and Customs and Enforcement has removed Haitians who have been convicted of a criminal offense and have been issued a final order of removal.
- Homeland Security Task Force Southeast is a standing task force formed in 2003 pursuant to Homeland Security Presidential Directive Five that facilitates the roles of participating agencies in the event of a mass migration from a Caribbean nation. HSTF-SE is not making preparations for an imminent or anticipated mass migration; rather, the task force is taking prudent measures to ensure readiness to rescue Haitian citizens in peril at sea. We have not encountered any signs of increased illegal maritime migration, but we continue to monitor conditions closely. Haitians interdicted at sea will be repatriated so we urge people not to put their lives at risk by embarking on a dangerous sea voyage.
- We encourage Haitian-American communities throughout the United States to join us in discouraging the people of Haiti from taking to the sea. The best way to ensure your safety and the safety of your loved ones is not to attempt to take to the sea in hopes of reaching the United States illegally.
- USCG works hand in hand with other DHS components, as CBP and Immigration and Customs Enforcement (ICE), to secure our borders.
- USCG will repatriate Haitian migrants interdicted at sea.
- Alien Migrant Interdiction Operations are as much humanitarian missions as they are border security missions. Too many times, lives are lost needlessly during attempts to reach the United States illegally. The Coast Guard will continue to rescue Haitian migrants from their peril at sea and will always do so in a professional manner that preserves the dignity of all people.
- ICE will aggressively investigate and present for prosecution those who seek to defraud the U.S. government in attempt to gain TPS or engage in immigration benefit fraud. ICE will also pursue human smugglers whose only goal is to profit at the expense of others.
- ICE will actively investigate fraud by immigration service providers or unscrupulous attorneys or others who would supply false documents to support TPS applications.

Questions & Answers

- Q1. Why did the United States extend and re-designate Haiti for TPS? For how long will it be in effect?**
- The United States remains concerned about the welfare of Haitians following the devastating Jan. 12, 2010, earthquake in Haiti.

- Both the extension and re-designation are effective July 23, 2011. Therefore, as of [date of FRN publication], Haitians who are not currently TPS beneficiaries, who are currently in the United States, and who have continuously resided in the United States since Jan. 12, 2011, and who do not have TPS or a pending TPS application, may apply for TPS immediately, and if found eligible, they will be permitted to stay in the United States through Jan. 22, 2013.
- Haitians who received TPS under the previous designation may file for re-registration with USCIS between [DATE], and [DATE], in order to remain in the United States for the same period– through Jan. 22, 2013. Current TPS beneficiaries must not send an application to re-register until the beginning of the re-registration period (which will open once the re-registration information is published in the Federal Register on XXXXX). Any TPS re-registration application received before this date will be rejected.

Q2. What is TPS?

- TPS, signed into law in 1990, affords temporary immigration protection to nationals of foreign countries who cannot return home safely due to ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions that prevent nationals of that state from returning home in safety.
- The DHS and the Department of State continuously monitor country conditions as they relate to the statutory requirements of TPS, and the departments consult on a regular basis.

Q3. Can Haitians who are in Haiti now come to the United States and receive TPS?

- No. TPS is only available for Haitians who were already in the United States as of Jan. 12, 2011. Haitians who have not resided continuously in the United States since that date or those who attempt to enter the United States now or in the future will not be eligible for TPS.

Q4. Who exactly is eligible for TPS Haiti under the re-designation?

- To qualify, you must:
 - Be a national of Haiti, or a person without nationality who last habitually resided in Haiti;
 - Have continuously resided in the United States since Jan. 12, 2011;
 - Be continuously physically present in the United States since July 23, 2011, the effective date of the re-designation of Haiti;
 - Meet certain immigrant admissibility requirements, and other TPS eligibility requirements (See INA § 244(c), 8 U.S.C. § 1254a(c) and 8 C.F.R. §§ 244.2-244.4.); and satisfactorily complete all TPS application procedures.

Q5. Are you worried about a mass migration from Haiti?

- We don't have any reason to believe that a mass migration is forthcoming. As we constantly monitor the situation, we would be ready to respond.

Q6. What will the USG do with individual Haitian migrants who may be interdicted at sea?

- Haitians should not attempt to embark on a dangerous sea voyage to the United States.
- They will be intercepted and will not be allowed entry to the United States.
- The vast majority of Haitian migrants who are interdicted at sea will be repatriated to their homeland in accordance with U.S. policy.

Q7. What about interdicted Haitians with refugee claims?

- DHS has well-established procedures in place for processing migrants with potential refugee claims.

- Q8. How do Haitians who are currently in the United States register for TPS?**
- Only Haitians currently in the United States can register for TPS by filing both an Application for Temporary Protected Status (Form I-821) and an Application for Employment Authorization (Form I-765) with the appropriate fees or fee waiver requests. (Both of these forms are necessary for data collection purposes, even if the applicant is not seeking employment authorization.) These forms are available at www.uscis.gov or by calling the toll-free USCIS Forms Hotline 1-800-870-3676.
- Q9. Can TPS be used as a basis for obtaining permanent resident status?**
- No. TPS is a temporary benefit that does not lead to lawful permanent resident status or any other immigration status.
- Q10. What is the status for Haitians currently in local detention centers? Does the extension of TPS impact Haitians in ICE custody?**
- Haitians in ICE custody are either waiting to be deported or waiting on the adjudication of their cases.
 - Individuals in ICE custody are not eligible for TPS. Those Haitians who are eligible for TPS would be released and their case is postponed.
- Q11. What happens to migrants who are found not to have a valid claim for protection?**
- Migrants who are found not to have a valid claim for protection are repatriated to their country of origin.
 - Migrants who are found to have a valid claim for protection are resettled in a third-country with the assistance from the U.S. Department of State.
- Q12. Which countries are they resettled in?**
- The countries that migrants are resettled in vary case by case. However, the resettlement process is carefully coordinated to ensure that migrants in need of protection are resettled in countries that can provide a safe and stable environment.
- Q13. How do Coast Guard migrant interdiction efforts help save lives?**
- Safety of life at sea is paramount. Every effort is made to rescue persons embarked in unseaworthy craft or otherwise in peril from the sea, regardless of the nationality or other circumstances of the migrants.
 - Migrants attempting to illegally enter the United States by boat often travel aboard leaking, dangerously overloaded and ill-equipped vessels. Illegal migrants riding aboard these vessels are putting their lives at extreme risk. Migrants who travel aboard smuggler go-fast boats are also putting their lives in the hands of criminals; the smugglers' primary consideration is often greed, not safety or compassion.
 - Additionally, timely and visible repatriations have proven to be one of the strongest deterrents of additional migrant voyages.
- Q14. What is the Coast Guard's role in conducting alien migration interdiction (AMIO) operations?**
- USCG acts as an instrument of U.S. policy in conducting alien migration interdiction operations. USCG protects our national security by patrolling the high seas and U.S. waterways and interdicting vessels suspected of having migrants aboard attempting to illegally enter the U.S.

- Alien Migrant Interdiction Operations are as much humanitarian missions as they are border security missions. Too many times, lives are lost needlessly during attempts to reach the United States illegally. The Coast Guard will continue to rescue Haitian migrants from their peril at sea and will always do so in a professional manner that preserves the dignity of all people.
- USCG carries out the AMIO mission by direction of the President. USCG's unique combination of legal authority, law enforcement expertise, search and rescue skills and humanitarian character make it the most appropriate federal agency to execute this mission.

Q15. What happens to Haitians who are interdicted at sea?

- The vast majority of those Haitian citizens will be repatriated. Once aboard USCG cutters, Haitian citizens rescued from the sea are provided food, water and receive any necessary medical care.

Q16. With which U.S. agencies and organizations does the Coast Guard coordinate to complete the interdiction and disposition process?

- When Coast Guard crews have migrants aboard their cutter they provide food, shelter and medical care if necessary. The USCG determines the disposition of the migrants through a process coordinated by Homeland Security immigration officials.
- Once the USCG makes a determination, the Coast Guard transports the migrants to the destination selected. If this involves a third country, the Department of State makes the necessary arrangements with the host country.

Tactics

The following tactics can be used to publicize our messages:

1. **Stakeholder Outreach** - DHS/ICE/USCIS/USCG OPA and DHS OLA will communicate with stakeholders, with USCIS taking the lead to make appropriate Hill notifications and to contact non-governmental organizations, prior to the official public announcement of the extension/re-designation of TPS for Haitians in the United States. USCG/ICE will provide support as needed. (SEE ATTACHED LIST OF STAKEHOLDERS/COMPONENT OUTREACH PLAN)
2. **Press Releases/Media Outreach** - DHS OPA will issue a national press release announcing the extension/re-designation of TPS for Haitians in the United States. U.S. Embassy Port-au-Prince will initiate PSAs, radio interviews, etc. to communicate the same messages in-country.
3. **Web Copy** – DHS OPA will update web copy on the extension/re-designation of TPS for Haitians in the U.S. Web pages will include resources for Haitians in the United States and information.
4. **Employee Messaging** – DHS OPA will create employee materials, including a broadcast message and information on DHS Connect related to the announcement of the extension/re-designation of TPS for Haitians in the United States.

Timeline

May X –USCIS/DHS OLA will make relevant congressional notifications prior to the public announcement. Relevant program offices within DHS/ICE/USCIS/USCG will email communications materials and/or host conference calls with subject matter experts and local and national stakeholders, including community leaders, non-governmental organizations, and state and local governments.

Day of Announcement (May X) - DHS OPA will issue a national press release announcing the extension/re-designation of TPS for Haitians in the U.S.; USCIS will hold stakeholder calls and proactively distribute appropriate materials. Corresponding press release will be issued in Haiti by U.S. Embassy Port-au-Prince.

After Announcement (May X) – USCIS will hold a radio tour and host additional stakeholder calls with subject matter experts, continually assessing communication and engagement efforts and refining outreach as necessary. U.S. Embassy Port-au-Prince will initiate PSAs, radio interviews, etc. to communicate the same messages in-country.

July 23 – The extension/re-designation of TPS for Haitians in the United States officially takes effect.



OPERATIONS ORDER San Ysidro, California



Deferred Action for Childhood Arrivals (DACA)
Operation Date: March 10, 2014 10 am (PST)

EXECUTIVE SUMMARY: Through open source reporting, the San Diego Field Office has learned that the Bring Them Home project is planning to conduct a “Coming out of the Shadows at the Border” demonstration. The group is claiming many members qualify to enter the United States under the Deferred Action for Childhood Arrivals (DACA) act, also known as “Dream Act.” The event is scheduled to occur at the Otay Mesa Port of Entry on Monday March 10, 2014 at 10 am (PST). It is anticipated that a significant number of “Dreamers” will present themselves at the port of entry and request that they be admitted to the United States.

BACKGROUND: The National Immigrant Youth Alliance (NIYA) activists have coordinated previous demonstrations along the Southwest Border (Laredo, Texas and Nogales, Arizona). During this iteration, NIYA seek to bring 250 people to the Otay Mesa Port of Entry where they will request entry to the U.S. Previous CBP reporting of these events indicate the individuals applying for entry will have no entitlements to enter, pass through or remain in the United States and will summarily claim Credible Fear (CF). CBP’s approach has been to detain said individuals pending an Expedited Removal/Credible Fear (ER/CF) interview with an Asylum Officer and/or subsequently issue a significant public benefit parole, pending removal proceedings before an Immigration Judge.

CURRENT STATUS: The San Ysidro/Otay Mesa Admissibility Enforcement Unit’s (AEU) management team has developed this operational plan to address the potential Dreamer arrivals. Communication lines have been established with the San Diego Police Department (SDPD), Federal Protective Service (FPS), Homeland Security Investigations (HSI), San Diego Sector Border Patrol (SDC), Office of Chief Counsel (OCC) and, Immigration and Customs Enforcement-Enforcement Removal Office (ICE-ERO).

OPERATION DATE(S) AND TIME:

Date: Monday, March 10, 2014
Time: 0800 hours to 2400 hours

OPERATIONAL AREAS: For the purposes of this plan, the following international crossings are identified as operational areas:

Otay Mesa Port of Entry – Most Likely Point of Arrival
Privately Owned Vehicles, Pedestrians and Commercial Buses
Open 24 hours, 7 days a week

San Ysidro Port of Entry

Privately Owned Vehicles, Pedestrians and Commercial Buses

Open 24 hours, 7 days a week

LOGISTICS: It is the San Diego Field Office's intent to complete all processing requirements in the most expeditious manner possible while maintaining the integrity of due process afforded to every alien in removal proceedings. The following measures will be employed:

- Resources
 - An Incident Commander will be designated to direct this event.
 - A dedicated team, comprised principally of AEU/CEU personnel, has been developed to manage the arriving group.
- Space
 - Dreamers will be processed independently and not comingled with other and arriving travelers and inadmissible aliens.
 - Ancillary holding and processing space with 3 outlying Border Patrol Stations (creating added holding capacity for 90 detainees) has been established. Imperial Beach, Chula Vista and Brown Field OBP Stations.
 - Coordination with Office of Information Technology (OIT) was made and test runs for processing capabilities with SIGMA connectivity at all outlying stations and the SENTRI office are complete.
- Transportation:
 - If needed, ICE-ERO will provide bus and driver to facilitate the movement detainees to outlying stations.
 - ICE-ERO will immediately transfer and move required mandatory detentions cases directly to the San Luis Detention Facility
- Security:
- Special Handling:
 - Two medical physician assistants will be on-site to augment medical clearance.
 - Coordination with Food Service contractors notified.

(b)(7)(E)

FOR OFFICIAL USE ONLY

CONTINUITY OF OPERATIONS: Upon arrival of the Dreamers, CBP process the group utilizing assembly line protocol. Dreamers will go to 6 stations with designated teams with designated Officers:

• **TEAM #1: (6) Officers PRIMARY**

(b)(6),(b)(7)(C)

- CEU [Redacted] Pre-primary
- CEU [Redacted] Pre-primary
- AEU [Redacted] Pre-primary
- CEU [Redacted] Primary
- CEU [Redacted] Primary
- CEU [Redacted] Primary

- ❖ Officers will be at pre-primary to separate the Dreamers from other pedestrian travelers. Officers will divert Dreamers to three pedestrian primary lanes located inside the building.
- ❖ Officers will be assigned to primary lanes designated for Dreamers. They will take primary declarations for primary inspection record query and write referrals. Any identification will be placed in small envelope and given to Dreamer to take to next station.

• **TEAM #2: (7) Officers and (1) Supervisor – PAT DOWN**

(b)(6),(b)(7)(C)

- AEU [Redacted] – Admissibility Screening
- CBPC [Redacted] Patdown
- CBPC [Redacted] Patdown
- CBPC [Redacted] Patdown
- CEU [Redacted] Patdown
- CEU [Redacted] Patdown
- AEU [Redacted] Patdown
- AEU [Redacted] Patdown

- ❖ Officers will conduct Personal Search of person and property. The Appendix D and property tag will be placed in a folder with identification envelope stapled to the front. The pat down will ensure no audio or video recording devices were on the applicants. All jewelry, belts, shoelaces will be removed and placed in with personal effects. Money will be counted and documented on the Appendix D. Applicant will keep money on his/her person at all times. Applicant will be escorted to the next team.
- ❖ 1 AEU Supervisor will conduct initial secondary interview to determine admissibility of each applicant and provide an explanation concerning a Humanitarian Parole and or Credible Fear.

FOR OFFICIAL USE ONLY

• **TEAM #3:** (5) Officers – IAFIS/IDENT

(b)(6),(b)(7)(C)

- AEU [redacted] is
- AEU [redacted] s
- AEU [redacted] is
- AEU [redacted] Iafis
- AEU [redacted] Iafis

❖ Officers will roll fingerprints, take photo and print out any US Visit hits.

• **TEAM #4:** (8) Officers - RUN CHECKS

(b)(6),(b)(7)(C)

- L/D [redacted] Run Checks
- L/D [redacted] un Checks
- AEU [redacted] Run Checks
- AEU [redacted] Checks
- AEU [redacted] – Run Checks
- AEU [redacted] Checks
- AEU [redacted] – Run Checks
- CBP [redacted] un Checks

❖ Officers will run all required checks ([redacted]) and assign Alien (b)(7)(E) Number or Tfile.

• **TEAM #5:** (11) Officers and 2 Supervisors - HANDWRITTEN SWORN STATEMENT

(b)(7)(C),(b)(6)

- CEU [redacted]
- AEU [redacted]
- CEU [redacted]

❖ Officers will take handwritten sworn statements to establish identity, alienage, admissibility. Statements will be placed in the Alien file.

FOR OFFICIAL USE ONLY

• **TEAM #6:** (5) Officers – MEDICAL SCREENING

(b)(6),(b)(7)(C)

- AEU [redacted] Medical Screen Form
- AEU [redacted] Medical Screen Form
- CEU [redacted] Medical Screen Form
- CEU [redacted] – Medical Screen Form
- L/D [redacted] MEDPAR forms

- ❖ Officers will fill out DIHS 794 form for a general medical history of each applicant. Light Duty AEU Officer will fill out all MEDPAR forms for applicants needing full medical clearance.

Upon completion of the 6 stations, applicants will be separated into groups and transported to staging areas at (3) outlying Border Patrol Stations or San Ysidro Port of Entry, for final processing and signature of serving documents.

MEDIA ACTION PLAN: The San Diego Field Office Public Affairs Officer Decima will be on site at the Otay Mesa POE and will advise media to take b-roll from the public areas. Should the Dreamers cross at a different location, media will only be allowed to film from public areas. The media will not be allowed to film from within the footprint of the Federal Inspection Site (FIS) and will be provided with a statement to be distributed electronically.

CBP will not conduct any on-camera interviews at the location. If there are any live national media trucks that wish to broadcast from the site, they will be directed to designated areas that are away from the FIS and do not impede the flow of traffic.

COMMUNICATION/COMMAND/CONTROL: Customs and Border Protection will have access to communication devices such as government cell phones and computers... The Otay Mesa Command Center, will be notified of any developments and will be the command and control site for Otay Mesa Port of Entry. Senior management will also be made aware of developments as the event unfolds. Regular updates will be provided.

SAFETY: A Mobile Field Force, composed of the SDFO Special Response Team members and San Ysidro/Otay Mesa Ports of Entry Tactical Enforcement Officers, will be on standby in an area out of public view. The Otay Mesa Port of Entry will maintain a heightened enforcement posture to prevent illegal activity, enhance security capabilities, and disrupt Transnational Criminal Organizations potentially attempting to exploit areas of vulnerabilities.

MEDICAL RISK / SERVICES / PERSONNEL: Low risk for injury relating to heat, cold, flora, fauna, drowning, falling, blunt trauma, assault, and gunshot. Emergency Medical Service (EMS) providers will be dispatched using the 911 emergency notification system (i.e., ground ambulance, Life Flight/air ambulance and air evacuation) for treatment and transport to an appropriate medical facility. All casualties will be stabilized and transported to the nearest medical facility according to local EMS protocols.

FOR OFFICIAL USE ONLY

PRIMARY POINTS OF CONTACT:

(b)(6),(b)(7)(C) [Redacted] **Port Director – Incident Commander**

(b)(6),(b)(7)(C) [Redacted] **Chief – Admissibility Enforcement Unit**

(b)(6),(b)(7)(C) [Redacted] **Chief – Admissibility Enforcement Unit**

(b)(6),(b)(7)(C) [Redacted] **Advisor – Admissibility Enforcement Unit**

(b)(6),(b)(7)(C) [Redacted] **Supervisor – Criminal Enforcement Unit**

Watch Commander Otay Mesa Passenger

(b)(6),(b)(7)(C) Office: (619) 6 [Redacted]

(b)(6),(b)(7)(C) [Redacted] **Assistant Port Director Otay Mesa POE**

(b)(6),(b)(7)(C) [Redacted] **Port Director San Ysidro/Otay Mesa**

(b)(6),(b)(7)(C) [Redacted] **Assistant Director Border Security - Field Operations**

FOR OFFICIAL USE ONLY

MAR 02 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All ICE Employees

(b)(6),(b)(7)(C) FROM:

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Page 2

- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.¹

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.²

- Level 1 offenders: aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act,³ or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.⁴

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as “catch and release,” the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

- fugitive aliens, in descending priority as follows:⁵

¹ This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

² The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

³ As the definition of “aggravated felony” includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

⁴ Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

⁵ Some fugitives may fall into both this priority and priority 1.

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Page 3

- fugitive aliens who pose a danger to national security;
- fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
- fugitive aliens with criminal convictions other than a violent crime;
- fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
 - previously removed aliens who pose a danger to national security;
 - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - previously removed aliens with criminal convictions other than a violent crime;
 - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.⁶

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls

⁶ ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. See Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens
Page 4

within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor [redacted] and the November 7, 2007 Memorandum from then Assistant

(b)(6),(b)(7)(C) Secretary [redacted]

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.

F. No Private Right Statement⁷

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

⁷ This statement was added to ICE Policy 10072.1, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" on February 7, 2011. The policy contained in this memorandum has not been altered or changed.



U.S. Citizenship
and Immigration
Services

Office of Communications

Month AP style

18-Month Extension and Re-designation of Haiti for Temporary Protected Status *Filing Instructions for Haitian Nationals Requesting TPS*

Introduction

Secretary of Homeland Security Janet Napolitano has re-designated Haiti for Temporary Protected Status (TPS) and extended the country's current TPS designation for 18 months—through Jan. 22, 2013.

Secretary Napolitano first designated Haiti for TPS in January 2010 after major earthquakes devastated the country. Following consultations with other federal agencies, Secretary Napolitano has determined that current conditions in Haiti support extending the designation period for current TPS beneficiaries and re-designating Haiti for TPS. The re-designation re-establishes the date by which applicants must prove that they have continuously resided in the United States. Applicants must have continuously resided in the United States since Jan. 12, 2011.

The TPS re-designation of Haiti allows eligible Haitians (and persons without nationality who last habitually resided in Haiti) who do not currently have TPS, or have a pending TPS application, *and* who have continuously resided in the United States since Jan. 12, 2011, to start applying immediately. Applicants can file for TPS during a 180-day registration period that begins [date FRN is published] and ends [180-days after FRN publ. date]. The extension will also allow Haitians who currently have TPS to re-register from May 23, 2011, until Aug. 22, 2011, following publication of a *Federal Register* notice in May outlining re-registration procedures. Haitians who already have TPS must not file before May 23, 2011, for re-registration or their application will be rejected.

Applicants for TPS under the Haiti designation may refer to the following information as general instructions on how to file the TPS application. USCIS strongly encourages Haitian nationals to review the *Federal Register* notice published DATE and to follow instructions on how to file an initial application for TPS.

Background

TPS is an immigration status granted under the Immigration and Nationality Act (INA) to eligible nationals of a country designated for TPS (or to persons without nationality who last habitually resided in the designated country). During the TPS designation period, TPS beneficiaries may remain in the United States and obtain work authorization documentation, so long as they continue to meet the terms and conditions of their TPS status. TPS beneficiaries may also be granted travel authorization, as a matter of discretion.

TPS is a temporary benefit that does not lead to lawful permanent resident status or give any other immigration status. Registration for TPS does not prevent you from:

- Applying for nonimmigrant status;
- Filing for adjustment of status based on an immigrant petition; or
- Applying for any other immigration benefit or protection for which you may be eligible.

In addition, an application for TPS does not affect an application for asylum or any other immigration benefit and vice versa. Denial of an application for asylum or any other immigration benefit does not affect your ability to register for TPS, although the grounds of denial of that application may also lead to denial of TPS.

General Eligibility Requirements

To qualify for TPS under the Haiti re-designation, you must:

- Timely file your initial TPS application packet during the 180-day registration period that runs from [Insert FRN date] through [Insert 180 days after FRN];
- Be a national of Haiti, or a person without nationality who last habitually resided in Haiti;
 - U.S. law defines a “national” as “a person owing permanent allegiance to a state.” USCIS accepts the definition of a Haitian national as stated in Haiti’s constitution. If you have questions about the definition of a Haitian national, please consult a legal advisor.
- Have continuously resided in the United States since Jan. 12, 2011;
- Be continuously physically present in the United States since July 23, 2011, the effective date of the re-designation of Haiti as described in the *Federal Register* notice. USCIS will make the final determination of TPS eligibility after July 23, 2011, for applications under the re-designation, but employment authorization documentation will be issued during the registration period in advance of that date to initial applicants who are found *prima facie* eligible for TPS in accordance with 8 C.F.R. §244.5(b) (see below for description of *prima facie* eligibility);
- Meet certain immigrant admissibility requirements;
- Meet other TPS eligibility requirements specified in section 244 of the INA and implementing regulations at 8 C.F.R. Part 244; and
- Satisfactorily complete all TPS application procedures as described in the *Federal Register* notice announcing Haitian TPS, the TPS application instructions (Form I-821), and appropriate regulations.

Individuals may **NOT** be eligible for TPS if they have been:

- Convicted of any felony or two or more misdemeanors committed in the United States;
- Found inadmissible as an immigrant under applicable grounds in INA section 212(a), including non-waivable criminal and security-related grounds; or
- Subject to several other mandatory bars to asylum. These include, but are not limited to, participating in the persecution of another individual or engaging in or inciting terrorist activity.

The Application Process for TPS

Once you file your initial application, your case will go through several processing steps. It is important to understand what these steps are so you can monitor the progress along the way and know when and how to ask for help.

1. *Intake:* When you file your TPS application with the USCIS Lockbox facility, the Lockbox facility will review your application for completeness and for the proper fees or a properly documented fee waiver request. If your case meets the basic acceptance criteria, your application will be received into our system, and you will receive a receipt notice. If you do not receive your receipt notice within three weeks of filing, you can call Customer Service at 1-800-375-5283 to request assistance. If your application is rejected at the initial Lockbox stage, you may re-file within the registration period after correcting the problems described in the USCIS notification.

If there is an emergency need for you to travel abroad for humanitarian reasons, you may request expedited processing on your advance parole application (Form I-131) after intake and after you have appeared at an Application Support Center (ASC) for your biometrics appointment. Please note the travel warnings further below.

2. *ASC Scheduling Appointment and Biometrics Collection:* After your initial application has been accepted, you may be scheduled for an appointment at an ASC for your biometrics to be collected as stated on your receipt notice. Every TPS applicant age 14 and older must have ten-print fingerprints taken. All initial applicants who wish to have an EAD must go to the ASC to have a photograph, signature and a press print collected, unless USCIS determines, in its discretion, that the press print or signature can be waived. Biometrics are required for identity verification, background checks and the production of an EAD, if one has been requested.

If you cannot make your scheduled appointment, you may reschedule. To reschedule an ASC appointment, make a copy of your appointment notice to retain for your records, then mail the original notice with your rescheduling request to the ASC address listed on the notice. You should submit your request for rescheduling as soon as you know you have an unavoidable conflict on your scheduled ASC date. A new appointment notice will be sent to you by mail. Please note that rescheduling a biometrics appointment may cause the adjudication of your applications to be delayed.

If you fail to appear for your ASC appointment without rescheduling, or if you repeatedly miss scheduled ASC appointments, your TPS application could be denied for abandonment.

3. *Adjudication:* USCIS will review your case initially to determine whether you are eligible for an EAD, if you have requested one, prior to a final decision on your TPS application. If eligible, you will receive an EAD after you have appeared for your biometrics appointment at an ASC. USCIS is making every effort to avoid backlogs at this stage that would hinder meeting this goal, but we urge you to remember that USCIS may experience a higher volume of applications in the first few months of the registration period.

During the registration period, an EAD designated "C-19" will be issued to an applicant who applies before July 23, 2011, if one is requested, *provided that* the applicant demonstrates that he or she is *prima facie* eligible for TPS. See 8 C.F.R. § 244.5(b). To be *prima facie* eligible, it must appear to USCIS that you are eligible for TPS on the face of your application and that there is no known, potentially disqualifying information resulting from your background checks. Final determination on initial TPS applications filed under the re-designation will be made after July 23, 2011, so USCIS can determine whether the applicants have met the "continuous physical presence" requirement to have been presenting the United States since that date. This requirement is separate from that of applicants to demonstrate to have "continuously resided" in the United States since Jan. 12, 2011.

After this initial review of your TPS application, USCIS will complete final adjudication of your request for TPS. During this phase, we may ask you for additional documents to establish your eligibility for TPS. If you receive a request for evidence (RFE) or a notice of intent to deny, it is extremely important that you respond immediately to avoid processing delays and possible denial for failure to timely respond. USCIS will notify you that it has granted or denied your request for TPS upon completion of your case. If one of the grounds of inadmissibility that may be waived applies to you, USCIS will give you an opportunity to submit an Application for Waiver of Grounds of Inadmissibility, Form I-601. Please submit this form within the time frame specified in the USCIS notice, or your case will be denied. (If you are aware at the time you apply for TPS

that a waivable ground of inadmissibility applies to you, please include a Form I-601, with fee or fee waiver request, with your TPS application package.)

When to File for TPS Initial Registration or Re-registration

If...	And...	Then...
You filed a TPS application by Jan. 18, 2011, or after Jan. 18, 2011, with fee(s) following denial of your previous fee waiver request.	Your application was approved by [Insert date of FRN publication]	You must re-register during the re-registration period, starting May 23, 2011, and ending Aug. 22, 2011. <i>If filed before May 23, 2011, your application will be rejected.</i>
You filed a TPS application by Jan. 18, 2011, or after Jan. 18, 2011, with fee(s) following denial of your previous fee waiver request.	Your application is still pending as of [Insert date of FRN publication]	You do not need to file a new Form I-821. Please refer to table below to determine if you need to file a new Form I-765.
You filed a TPS application by Jan. 18, 2011, or after Jan. 18, 2011 with fee(s) following denial of your previous fee waiver request.	Your application was denied before [FRN date], and you believe you are eligible for TPS under the re-designation.	You may file another TPS application packet (Form I-821 and Form I-765) starting [insert date of FRN, 2011, and ending 180-days after FRN date].
You have never filed a TPS application	You believe you may be eligible for TPS under the re-designation	You may file a TPS application packet (Form I-821 and Form I-765) starting [date of FRN] and ending [180 days after FRN date].

EAD Information for TPS Applications Still Pending as of [Insert FRN publ. date]

If...	And...	Then...	But If...
You requested an EAD during the original registration period for Haiti TPS	You received an EAD with Category C19 or A12	You must file a new Form I-765 with fee (or fee waiver request) during the re-registration period that opens May 23, 2011, if you wish to have a new EAD valid through Jan. 22, 2013.	Your Form I-821 is denied before the re-registration period opens May 23, 2011, then DO NOT file a new Form I-765. If you file a new Form I-765, it will be denied due to the denial of your Form I-821.
You requested an EAD during the original registration period for Haiti TPS	You did not receive an EAD with Category C19 or A12	You do not need to file a new Form I-765. If your TPS application is approved, your Form I-765 will be approved through Jan. 22, 2013.	----
You did not request an EAD during the original registration period	You wish to have an EAD valid through Jan. 22, 2013	You must file a new Form I-765 with fee (or fee waiver request) during the re-registration	Your Form I-821 is denied before the re-registration period opens on May 23, 2011, then DO NOT file a

for Haiti TPS		period that opens May 23, 2011.	new Form I-765. If you file a new Form I-765, it will be denied due to the denial of your Form I-821.
You did not request an EAD during the original registration period	You do not wish to have an EAD valid through Jan. 22, 2013	You do not need to file a new Form I-765.	----

Forms and Cost

Forms

The forms used to register and re-register for TPS are:

- I-821, Application for Temporary Protected Status
- I-765, Application for Employment Authorization

These forms are free and available on the forms section of the USCIS Website: www.uscis.gov/forms or by calling the toll-free USCIS Forms Hotline, 1-800-870-3676.

Cost for Registering for TPS for the First Time

Applicant Age	I-821 Fee	Biometrics Fee	Requesting EAD	I-765 Fee	Total
0 - 13	\$50	\$0	Yes	\$0	\$50
0 - 13	\$50	\$0	No (You still must file the I-765)	\$0	\$50
14 – 65	\$50	\$85	Yes	\$380	\$515
14 – 65	\$50	\$85	No (You still must file the I-765)	\$0	\$135
66+	\$50	\$85	Yes	\$0	\$135
66+	\$50	\$85	No (You still must file the I-765)	\$0	\$135

Cost for TPS Re-registrants

If you are re-registering, there is no fee required to submit Form I-821. A biometric services fee of \$85 is required if you are 14 years of age or older. You must include the fee of \$380 for the Application for Employment Authorization (Form I-765) if you wish to receive an EAD, regardless of age. If you are not seeking an EAD, you must still submit Form I-765 without fee. Please note if you are re-registering for Haiti TPS, you **must not** file until May 23, 2011, following publication of the *Federal Register* notice instructing you to file.

Fee Waivers

If you cannot afford the costs associated with filing, please make sure to include a fee waiver request. USCIS encourages you to use the Request for Fee Waiver Form (Form I-912), but you may also submit a properly documented written request without using the form. Failure to submit the required application and biometric fees, or a properly documented fee waiver request, will result in the rejection of the re-registration application. For information on fee waivers, visit the Fee Waiver Guidance Web page at www.uscis.gov.

Evidentiary Requirements

There are many different types of documents you can submit to help demonstrate that you are a Haitian national, such as:

- A copy of your Haitian passport;
- A copy of your Haitian identification card;
- A copy of your Haitian naturalization documentation;
- Nationality documentation issued by a Haitian Embassy or Consulate in the United States,
- A copy of your birth certificate; or
- Your baptismal certificate if it indicates your Haitian nationality or a parent’s Haitian nationality.

You may also submit copies of your school or medical records if they have information supporting your claim of Haitian nationality. If you do not have the documents listed above, you may provide other documentation that proves you are a Haitian national. You may also provide affidavits from friends or family members who have close personal knowledge of the date and place of your birth and your parents' nationality. The person making the affidavit should include information about how he or she knows you or is related to you, and how he or she knows the details of the date and place of your birth and the nationality of your parents. Remember that birth in Haiti alone does not necessarily mean you are a Haitian national. At least one parent must have been a Haitian national at the time of your birth, or you must have been naturalized in Haiti. If you were born to a Haitian parent in some country other than Haiti, you may also be a Haitian national, but you must still provide sufficient evidence to support your nationality. If USCIS does not find that the documents you submit with your application sufficiently demonstrate that you are Haitian (or that you have no nationality but last resided in Haiti before coming to the United States), then USCIS will send you a Request for Additional Evidence of your nationality (or your claim to have last lived in Haiti without nationality).

Any document that is not in English must be accompanied by a complete word-for-word English translation. The person translating the document must certify that he or she is competent both in English and the foreign language used in the document that is being translated. He or she must also certify that the translation is true and correct to the best of his or her ability, knowledge and belief.

Where to File Your Application Package

You must register for TPS by filing an Application for Temporary Protected Status, Form I-821, and an Application for Employment Authorization, Form I-765, with any appropriate fees or fee waiver requests, and supporting documentation.

If you live in...	Regular Mail	Express Mail or Courier Deliveries
The state of Florida	USCIS P.O. Box 4464 Chicago, IL 60680-4464	For USCIS Attn: Haiti TPS 31 South Dearborn, 3rd Floor Chicago, IL 60603-5520
The state of New York	USCIS P.O. Box 660167 Dallas, TX 75266-0167	USCIS Attn: Haiti TPS 2501 S. State Hwy. 121 Business, Suite 400 Lewisville, TX 75067
All other states	USCIS P.O. Box 24047 Phoenix, AZ 85074-4047	USCIS Attn: Haiti TPS 1820 E. Skyharbor Circle S Suite 100, Phocnix, AZ 85034

These forms are free and available on the forms section of the USCIS Website, www.uscis.gov/forms, or by calling the toll-free USCIS Forms Hotline, 1-800-870-3676.

Change of Address

If your address changes after you file your application, you must complete and submit Form AR-11, Change of Address, by mail or electronically. The mailing address is:

U.S. Citizenship and Immigration Services
Attn: Change of Address
1344 Pleasants Drive
Harrisonburg, VA 22801

Form AR-11 can also be filed electronically by following the directions on the USCIS Web site at www.uscis.gov. To facilitate processing your address change on your TPS application, you may call the USCIS National Customer Service Center at [1-800-375-5283](tel:1-800-375-5283) (TTY [1-800-767-1833](tel:1-800-767-1833)) to request that your address be updated on your application. Please note that calling the USCIS National Customer Service Center does not relieve you of your burden to properly file a Form AR-11 with USCIS.

Travel

If you are granted TPS and you need to travel abroad temporarily, you must obtain approval from USCIS before you travel if you wish to re-enter the United States with TPS status. Approval is not mandatory, but rather is within USCIS's discretion to grant. To obtain travel authorization, you must file Application for Travel Document, Form I-131, with the appropriate fee. The fee cannot be waived. Please follow the filing instructions for Form I-131.

If you need to travel while your TPS application is still pending with USCIS, you may also receive approval to travel as a matter of USCIS's discretion. However, if your TPS application is denied while you are out of the United States, you may not be able to re-enter if you have no other immigration status. Please see additional warnings below.

Travel Warning: If you have been unlawfully present in the United States and then you leave, even on an approved advance parole document, you may become inadmissible for three or 10 years, depending on how long you were unlawfully present before you left. In addition, you may become ineligible for certain other immigration benefits in the future that you may seek, such as permanent resident status. If adjudication of your TPS application has not been completed, you may also risk missing important USCIS notices, such as RFEs, and your application may be denied while you are out of the country. We encourage you to read and understand the travel warning on Form I-131 before you ask for advance parole, regardless of whether you have been granted TPS. Before requesting advance parole for travel, you may also want to seek legal advice if you have been unlawfully present in the United States for any period of time.

TPS Granted by an Immigration Judge or the Board of Immigration Appeals

If an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) granted you TPS, you must provide USCIS with proof of the TPS grant (such as a final order from the IJ or final decision from the BIA) when you file for your first TPS benefit (such as an EAD or travel authorization). You should also submit a copy of the I-821 TPS application that the IJ or the BIA approved.

If you are applying for an EAD, you must File Form I-765 with required fee(s) or fee waiver request. You must also submit a cover sheet that states "DO NOT REJECT - TPS GRANTED BY IJ/BIA." File your

Form I-765 at the appropriate filing location based on your TPS country. If you previously applied for TPS with USCIS and were denied, please make sure to explain that the IJ or BIA granted you TPS based on the I-821 that USCIS previously denied, make sure to explain on your cover sheet that you were granted *de novo* review. (Note: A *de novo* review is when the immigration judge adjudicates your TPS request anew, as if your request had not previously been adjudicated.)

If you are applying for travel authorization, you must file Form I-131 with required fee. File your Form I-131 at the appropriate filing location based on the state where you live.

After following the instructions above, we will send you a receipt notice (Form I-797). When you get the receipt notice, you must immediately send an email to the Service Center that will adjudicate your application.

- If your receipt notice starts with the letters "LIN," e-mail the Nebraska Service Center at TPSijgrant.nsc@dhs.gov.
- If your receipt notice starts with the letters "WAC," e-mail the California Service Center at TPSijgrant.csc@dhs.gov.

Your email must include:

- Your name;
- Your date of birth;
- Your A-number; and
- The date the IJ or BIA finally granted you TPS (Note: To be final, your IJ order granting TPS must not be subject to further appeal, or your BIA decision granting TPS must not be subject to further review.)

Only individuals that were granted TPS by an IJ or the BIA who are requesting an EAD or travel authorization will receive responses from the above email addresses. These email addresses are not for individual case status inquiries.

Appealing a Denial

If USCIS denies your application, you will be informed in the denial notice whether you have 30 days to appeal to the USCIS Administrative Appeals Office (AAO) pursuant to the TPS regulations in 8 C.F.R. Part 244. In some cases, such as when TPS is denied on certain mandatory criminal or security grounds, you may not have AAO appeal rights, although you can request an immigration judge to review your TPS request if you are in removal proceedings (see below). See 8 C.F.R. §§ 244.10; 244.18. You may also choose to file a Motion to Reconsider with the Service Center that adjudicated your TPS application.

You may file your motion or appeal to the AAO by submitting a Notice of Appeal or Motion, Form I-290B. The fee for filing a Form I-290B is \$630, however you may request a fee waiver if you are unable to pay. If your TPS application is denied by the USCIS Service Center, we recommend that you consult with an accredited legal representative to determine whether you should pursue an appeal or motion. If you have been placed in removal proceedings, you may request that the immigration judge adjudicate your TPS application, and it will receive *de novo* review by the judge. If an immigration judge denies your request for TPS, you may file an appeal with the Board of Immigration Appeals (BIA).

Need Help Filing a TPS Application?

Please be aware that some unauthorized practitioners may try to take advantage of you by claiming they can file TPS forms. These same individuals may ask that you pay them to file such forms. We want to ensure that all potential TPS applicants know how to obtain legitimate, accurate legal advice and

assistance. A list of accredited representatives and free or low-cost legal providers is available on the USCIS website on the finding legal advice Web page.

Additional Information

USCIS strongly encourages TPS-eligible Haitian nationals to review the *Federal Register* notice published DATE and follow instructions on how to register.

To learn more about TPS, please go to USCIS Web site's TPS web page at www.uscis.gov. For further questions, please contact the USCIS National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TTY).

**EXTENSION AND RE-DESIGNATION OF TEMPORARY PROTECTED STATUS
(TPS) FOR HAITI**

Statement

“In the extended aftermath of the devastating earthquakes in Haiti on Jan. 12, 2010, the Department of Homeland Security (DHS) has remained fully committed to upholding our responsibility to assist individuals affected by this tragedy by using tools available under the law. Three days after the disaster, Secretary Napolitano announced the designation of Temporary Protected Status (TPS) for Haitian nationals who were in the United States as of Jan. 12, 2010. Currently, more than 47,500 Haitian nationals with TPS reside in our country.

“As part of DHS’ ongoing efforts to assist Haiti, Secretary Napolitano is extending TPS for Haiti TPS beneficiaries for 18 months to allow these TPS beneficiaries to remain in the United States through Jan. 22, 2013.

“In addition, Secretary Napolitano is re-designating Haiti for Temporary Protected Status (TPS) meaning that Haitian nationals who have continuously resided in the United States since January 12, 2011, will also be eligible for TPS through January 22, 2013. Under the original designation, TPS applicants needed to show that they had continuously resided in the United States since Jan. 12, 2010, but the re-designation now permits eligible individuals who arrived up to one year after the earthquake in Haiti to receive the protection of TPS. Many of these individuals were authorized to enter the United States immediately after the earthquake on temporary visas, humanitarian parole and other measures.

“Both the extension and re-designation are effective July 23, 2011. No individual who arrived in the United States after Jan. 12, 2011, will be eligible for TPS. A person who has been convicted of a felony or two misdemeanors in the United States, or is subject to one of the criminal or security-related bars to admissibility under immigration law, is not eligible for TPS.

“Individuals who attempt to enter the United States illegally will not be granted TPS and will be repatriated. Since the earthquake in 2010, the U.S. Coast Guard has been intercepting and returning Haitians who have attempted to enter by sea to the United States illegally; U.S. Customs and Border Protection has been removing inadmissible Haitians who have arrived at U.S. ports of entry; and – since January 2011 – U.S. Immigration and Customs and Enforcement has removed Haitians who have been convicted of a criminal offense and have been issued a final order of removal.

“Providing a temporary refuge for Haitian nationals who are currently in the United States and whose personal safety would be endangered by returning to Haiti is part of the Obama administration’s continuing efforts to support Haiti’s recovery.

“Haitians in the United States who are eligible to apply for TPS should go to www.uscis.gov/tps or call the toll-free USCIS Forms Hotline 1-800-870-3676.”

Key Messages

Extension and Re-Designation of Temporary Protected Status (TPS) for Haitians in the US

- In the extended aftermath of the devastating earthquakes in Haiti on Jan. 12, 2010, DHS has remained fully committed to upholding our responsibility to assist individuals affected by this tragedy by using tools available under the law.
- Today, Secretary of Homeland Security Janet Napolitano extended TPS for Haitian nationals by 18 months to allow Haitians who have already been granted TPS to re-register and to remain in the United States through January 22, 2013.
- In addition, Secretary Napolitano re-designated Haiti for TPS—meaning that Haitian nationals who have continuously resided in the United States since Jan. 12, 2011, may also be eligible for TPS through Jan. 22, 2013.
- Under the prior designation, TPS applicants needed to show that they had continuously resided in the United States since Jan. 12, 2010. The re-designation now permits eligible individuals who arrived up to one year after the earthquake in Haiti to receive the protection of TPS. Many of these individuals were authorized to enter the United States immediately after the earthquake on temporary visas, humanitarian parole and other measures.
- Both the extension and re-designation are effective July 23, 2011. No individual who arrived in the United States after Jan. 12, 2011, will be eligible for TPS. A person who has been convicted of a felony or two misdemeanors in the United States, or is subject to one of the criminal or terrorism-related bars to admissibility under the immigration laws, is not eligible for TPS.
- TPS re-designation has been employed several times in recent years, including for Liberia (President Clinton); Sudan (President Clinton and President Bush), and Somalia (President Bush).
- Individuals who attempt to enter the United States from Haiti illegally will not be granted TPS and will be repatriated. Since the earthquake, the U.S. Coast Guard has been intercepting and returning Haitians who have attempted to travel by sea to the United States; U.S. Customs and Border Protection has been removing inadmissible Haitians who have arrived at U.S. ports of entry; and U.S. Immigration and Customs and Enforcement has removed Haitians who have been convicted of a criminal offense and have been issued a final order of removal.
- Providing a temporary refuge for Haitian nationals who are currently in the United States and whose personal safety would be endangered by returning to Haiti is part of the Obama administration's continuing efforts to support Haiti's recovery.

- In addition to granting TPS, U.S. Citizenship and Immigration Services (USCIS) has also made some temporary measures available to nationals of Haiti as they relates to change or extension of nonimmigrant status, advance parole, employment authorization for F-1 students, processing of immigrant petitions for children of U.S. citizens and lawful permanent residents, among others. As part of these efforts, USCIS has granted more than 90 percent of all fee waiver requests for Haitians seeking these and other immigration benefits. We continue to consider any application for discretionary benefits on a case-by-case basis.

Revised Repatriation Protocol

1. Haitians who are interdicted at sea will be repatriated directly to Cap-Haïtien, where temporary accommodations will be provided as recovery efforts continue.
2. Haitians who do not have lawful permission to enter the U.S. and who reach U.S. soil following Jan. 12, 2011, will be repatriated directly to Cap-Haïtien unless they express a fear of returning to Haiti and DHS determines that they have a credible fear of persecution or torture. In Cap-Haïtien, temporary accommodations will be provided to those Haitians who are repatriated as recovery efforts continue.
3. Haitians who are currently living in the Bahamas who are interdicted at sea before they reach U.S. soil will be returned back to the Bahamas pursuant to current protocol with the Bahamas. As appropriate, credible fear procedures will also be followed.

The preferred repatriation processes for Haitians who reach U.S. soil is voluntary return or expedited removal taking into account potential asylum claims. DHS will interview Haitians who are interdicted by U.S. authorities and who express a fear of returning to Haiti to determine whether they have a credible fear of persecution or torture.

Capacity

- Cap-Haïtien can accommodate up to 1,000 individuals in the short term with additional accommodations available if needed.

Questions & Answers

Q1. Why did the United States extend and re-designate Haiti for TPS? For how long will it be in effect?

- The United States remains concerned about the welfare of Haitians following the devastating January 12, 2010, earthquake in Haiti..
- Therefore, as of [date of FRN publication] , Haitians currently in the United States who have continuously resided in the United States since Jan. 12, 2011, may apply for TPS immediately, and if found eligible, they will be permitted to stay in the United States for 18 months—through January 22, 2013 .
- Haitians who received TPS under the previous designation may send their application to remain in the United States for the same period—Jan. 22, 2013.

Q2. What is TPS?

- TPS, signed into law in 1990, affords temporary immigration protection to nationals of foreign countries who cannot return home safely due to ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions that prevent nationals of that state from returning home in safety.
- The DHS and the Department of State continuously monitor country conditions as they relate to the statutory requirements of TPS, and the departments consult on a regular basis.

Q2. Can Haitians who are in Haiti now come to the United States and receive TPS?

- No. TPS is available for eligible Haitians who were already in the United States as of Jan. 12, 2011. Haitians who have not resided continuously in the United States since that date or those who attempt to enter the United States now or in the future will not be eligible for TPS.

Q3. Who exactly is eligible for TPS Haiti under the re-designation?

- To qualify, you must:
 - Be a national of Haiti, or a person without nationality who last habitually resided in Haiti;
 - Have continuously resided in the United States since Jan. 12, 2011;
 - Be continuously physically present in the United States since July 23, 2011, the effective date of the re-designation of Haiti;
- Meet certain immigrant admissibility requirements, and other TPS eligibility requirements (See INA § 244(c), 8 U.S.C. § 1254a and 8 C.F.R. §§ 244.2-244.4.); and satisfactorily complete all TPS application procedures.

Q4. What will the USG do with individual Haitian migrants who may be interdicted at sea?

- Haitians who attempt to embark on a dangerous sea voyage to the United States now or in the future will not be eligible for TPS. They will be intercepted and will not be allowed entry to the United States, unless they express and are determined to have a credible fear of persecution or torture if they return to Haiti. Those who do not meet the credible fear criteria and who attempt such a voyage and are interdicted at sea will be returned to Cap-Haïtien, where temporary accommodations will be provided as recovery efforts continue.

Q5. What about interdicted Haitians with refugee claims?

- DHS will interview Haitians who are interdicted by U.S. authorities and who express a fear of returning to Haiti to determine whether they have a credible fear of persecution or torture.

Q6. How do Haitians who are currently in the United States register for TPS?

- Only Haitians currently in the United States can register for TPS by filing both an Application for Temporary Protected Status (Form I-821) and an Application for Employment Authorization (Form I-765) with the appropriate fees or fee waiver requests. (Both of these forms are necessary for data collection purposes, even if the applicant is

not seeking employment authorization). These forms are available at www.uscis.gov or by calling the toll-free USCIS Forms Hotline 1-800-870-3676.

Q7. Can TPS be used as a basis for obtaining permanent resident status?

- No. TPS is a temporary benefit that does not lead to lawful permanent resident status or any other immigration status.

Background

- DHS estimates that approximately 10,000 more individuals may become eligible for TPS under the re-designation of Haiti due to the Secretary's re-establishment of the continuous residence date as Jan. 12, 2011.



Month. AP style

18-Month Extension and Re-designation of Haiti for Temporary Protected Status *Registration Now Open to Haitians Who Have Continuously Resided in the United States Since Jan. 12, 2011*

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) announced today that Secretary of Homeland Security Janet Napolitano has re-designated Haiti for Temporary Protected Status (TPS) and extended the country's current TPS designation for 18 months—through Jan. 22, 2013.

USCIS strongly encourages Haitian nationals to review the *Federal Register* notice published DATE and to follow instructions on how to file an initial application for TPS. Individuals who do not have TPS or a pending TPS application may begin filing immediately and must file no later than [Insert date 180 days from FRN publication]. Individuals who already have Haiti TPS must wait to file for re-registration until a *Federal Register* notice describing the re-registration procedure is published.

Secretary Napolitano first designated Haiti for TPS in January 2010 after major earthquakes devastated the country. Following consultations with other federal agencies, Secretary Napolitano has determined that current conditions in Haiti support extending the designation period for current TPS beneficiaries and re-designating Haiti for TPS in order to re-establish the continuous residence date to [Jan. 12, 2011]. Under the designation in 2010, TPS applicants needed to show that they had continuously resided in the United States since Jan. 12, 2010, but the re-designation now permits eligible individuals who arrived up to one year after the earthquake in Haiti to receive the protection of TPS. Many of these individuals were authorized to enter the United States immediately after the earthquake on temporary visas, humanitarian parole and other measures.

The Haiti TPS application procedures described in the *Federal Register* notice cover the following three groups:

- **Individuals filing for the first time:** The re-designation of Haiti allows additional Haitians (and persons without nationality who last habitually resided in Haiti) who have continuously resided in the United States since [Jan. 12, 2011] to obtain TPS, provided they meet all other Haiti TPS eligibility criteria. Individuals who do not currently have TPS may apply from [Date of FRN publ.] through [180-days from FRN publ.] Additional registration instructions are available at www.uscis.gov/tps on the Haiti TPS Web page.
- **Individuals with pending TPS applications:** Individuals who applied for TPS under the initial designation announcement in January 2010 and whose applications are still pending as of [date of FRN] will not need to file a new Application for Temporary Protected Status (Form I-821). Their pending applications will be considered initial filings under this re-registration. Individuals with a pending TPS application who need to extend or request an Employment Authorization Document (EAD) must file a new Application for Employment Authorization (Form I-765) starting May 23, 2011. Please visit www.uscis.gov/tps for additional information.
- **Individuals re-registering for TPS:** Individuals who have already been granted TPS for Haiti must re-register starting May 23, 2011, and ending Aug. 22, 2011, once the *Federal Register* notice with re-registration instructions is published. TPS beneficiaries are encouraged to file for re-registration as soon as this time period opens on May 23, 2011, to expedite processing.

All individuals registering for the first time or re-registering for TPS must file an Application for Temporary Protected Status (Form I-821) and an Application for Employment Authorization (Form I-765), with any required fees or a fee waiver request. Failure to submit the required application and biometric fees or a properly documented fee waiver request will result in the rejection of the TPS application package. For TPS and EAD fee requirements, please see the *Federal Register* notice or the accompanying Fact Sheet. Fees for re-registering TPS beneficiaries will also be described in the notice and information to be published in May. For information on fee waivers, visit USCIS's [Fee Waiver Guidance](#) web page.

Further details on the extension and re-designation of TPS for Haiti, including information regarding the application requirements and procedures, are available at www.uscis.gov/tps on the Haiti Web page and in the *Federal Register* notice published [date]. TPS forms are free and available online or by calling the toll-free USCIS Forms line at 800-870-3676. Applicants may also get more information by contacting USCIS's National Customer Service Center toll-free at 800-375-5283.

For more information on USCIS and its programs, please visit www.uscis.gov or follow us on Twitter ([@uscis](#)), YouTube ([/uscis](#)) and the USCIS blog [The Beacon](#).

– USCIS –



Homeland
Security

Secretary Napolitano Announces the Extension of Temporary Protected Status for Haiti Beneficiaries

Release Date: May 17, 2011

For Immediate Release
Office of the Press Secretary
Contact: 202-282-8010

WASHINGTON — Secretary of Homeland Security Janet Napolitano today announced the extension of Temporary Protected Status (TPS) for Haiti beneficiaries. This extension will be effective July 23, 2011 and is for an additional 18 months. It will allow these TPS beneficiaries to remain in the United States through Jan. 22, 2013. The designation of TPS for eligible Haitian nationals who had continuously resided in the United States since Jan. 12, 2010 was originally announced by Secretary Napolitano on Jan. 15, 2010 and became effective on Jan. 21, 2010. Currently, approximately 48,000 Haitian nationals with TPS reside in the United States.

"In the extended aftermath of the devastating earthquakes in Haiti, the United States has remained fully committed to upholding our responsibility to assist individuals affected by this tragedy by using tools available under the law," said Secretary Napolitano. "Providing a temporary refuge for Haitian nationals who are currently in the United States and whose personal safety would be endangered by returning to Haiti is part of this administration's continuing efforts to support Haiti's recovery."

Secretary Napolitano's action will extend TPS for eligible Haitian beneficiaries for 18 months to allow these TPS beneficiaries to remain in the United States through Jan. 22, 2013.

In addition, Secretary Napolitano is re-designating Haiti for TPS — meaning that eligible Haitian nationals who have continuously resided in the United States since Jan. 12, 2011, will also be able to obtain TPS through Jan. 22, 2013. Under the original designation, TPS applicants needed to show that they had continuously resided in the United States since Jan. 12, 2010, but the re-designation now permits eligible individuals who arrived up to one year after the earthquake in Haiti to receive the protection of TPS. Many of these individuals were authorized to enter the United States immediately after the earthquake on temporary visas, humanitarian parole and through other immigration measures.

This re-designation of TPS applies only to those Haitians who have continuously resided in the United States since Jan. 12, 2011. Haitians who are not currently in the United States will not qualify for TPS under this new TPS announcement and should not attempt to enter the United States illegally to try to take advantage of this benefit. Both the extension and re-designation are effective July 23, 2011. No individual who arrived in the United States after Jan. 12, 2011, will be eligible for TPS.

A person who has been convicted of a felony or two or more misdemeanors in the United States, or is subject to one of the criminal, or security-related bars to admissibility under immigration law, is not eligible for TPS. In addition, an applicant cannot obtain TPS if he or she is subject to one of the mandatory bars to asylum, such as committing a particularly serious crime that makes the person a danger to the U.S. community or persecuting others.

Haitians who attempt to enter the United States now or in the future will not be granted TPS. DHS has been repatriating Haitians seeking to illegally enter the United States since the earthquake in 2010. The U.S. Coast Guard has been intercepting Haitians at sea and returning Haitians who have attempted to enter the United States illegally and who do not meet U.S. protection screening criteria; U.S. Customs and Border Protection has been removing inadmissible Haitians who have arrived at U.S. ports of entry consistent with U.S. policy; and—since January 2011—U.S. Immigration and Customs and Enforcement (ICE) has removed certain Haitians who have been convicted of certain criminal offenses (or who pose a threat to U.S. national security) and have been issued a final order of removal.

ICE is prepared to aggressively investigate and present for prosecution those who seek to defraud the U.S. government in

Obtained via FOIA by Judicial Watch, Inc.

an attempt to gain TPS or engage in immigration benefit fraud as the result of the expansion of this program. ICE will also pursue human smugglers whose only goals are to profit at the expense of others.

In addition to the extension and re-designation of TPS for Haiti, DHS has taken a number of other actions to provide humanitarian assistance to Haitian nationals in the United States. DHS will soon publish a notice in the Federal Register announcing the continued suspension of regulatory requirements related to certain F-1 students who have suffered severe economic hardship as a result of the earthquake in Haiti. Originally announced in September 2010, the continued suspension of these requirements through Jan. 22, 2013, allows eligible F-1 students to obtain employment authorization, to work an increased number of hours during the school term, and if necessary, to reduce their course load while continuing to maintain their F-1 student status. F-1 students granted employment authorization will be deemed to be engaged in a full course of study if they meet the minimum course load requirements.

Haitians in the United States who are eligible to apply for TPS should go to www.uscis.gov/tps or call USCIS toll-free at 1-800-375-5283.

###

This page was last reviewed/modified on May 17, 2011.



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

This Framework supports the Maritime Operational Threat Response (MOTR) Plan by outlining a consistent, repeatable process to facilitate national-level interagency decision-making regarding the disposition of undocumented aliens without protection status interdicted or intercepted in the Caribbean region.¹ Though every case is factually unique, the goal is to reach final disposition decisions within 10 days of maritime interdiction.

When a U.S. government (USG) vessel² operating in the Caribbean region interdicts or intercepts undocumented aliens without protection status, the interdicted aliens are ordinarily repatriated to their country of origin or transit in accordance with existing agreements or arrangements with those countries, or as arranged through diplomatic engagement.³ In limited circumstances, the country of origin and/or transit may not initially accept repatriation of interdicted aliens via routine means, requiring continued custody and care of the aliens while MOTR agencies determine appropriate disposition.

PRELIMINARY STEPS:

Within 24 hours of being informed that the country of origin and/or transit has not agreed to accept repatriation of the interdicted aliens, the Department of Homeland Security (DHS), via the U.S. Coast Guard (USCG) or other interdicting agency, initiates coordination activities under the MOTR Plan via the Global MOTR Coordination Center (GMCC). GMCC convenes and facilitates MOTR conferences as necessary to achieve the desired national outcome. For all MOTR conferences, the GMCC records the case details, desired national outcome, proposed courses of action, and other pertinent issues for distribution to the involved MOTR agencies.

The initial MOTR conference provides interagency decision-makers with essential information necessary to evaluate potential options for case disposition. At minimum, the following information should be provided by the appropriate agency(ies) during the initial MOTR conference, to the extent available and applicable:

- (1) Specific location at the time of interdiction/interception;
- (2) State of registry of the intercepted vessel, including any verbal claims and amplifying or contradictory information;
- (3) Claimed nationality of the undocumented alien(s);
- (4) Identification and/or travel documents presented or discovered;
- (5) Presence of unaccompanied minors & location of legal guardians;
- (6) Significant medical condition(s);
- (7) Country of origin and/or transit of the alien(s);
- (8) Summary of communications with country of origin and/or transit;

¹ This Framework applies to steady-state maritime migration and is intended to document the current MOTR process. Further, it is not intended to interfere with the execution of the roles and responsibilities or the authorities of individual departments and agencies concerning U.S. maritime migration missions.

² USG vessels could include assets from multiple U.S. Government departments. Though nothing in this Framework supplants the authority of an operational commander, it provides guidance to facilitate discussions, decision making, and coordinated courses of action.

³ In certain instances, DHS may, on a case by case basis, parole into the United States undocumented aliens to serve as material witnesses to support maritime smuggling prosecutions. 8 U.S.C. 1182 (d)(5)(A), 8 C.F.R. 212.5(b)(4). *See also* Caribbean Border Interagency Group Migrant Smuggling Prosecution Standard Operating Procedures.



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

- (9) Interdicting agency's operational considerations; and
- (10) A proposed course of action for disposition.

DISPOSITION OPTIONS: If the country of origin and/or transit does not initially accept repatriation of the interdicted alien(s) via routine means, continued diplomatic engagement may be necessary to achieve the desired national outcome. In these circumstances, MOTR agencies develop a plan, via the MOTR process, for the temporary custody and care of the undocumented alien(s) until final disposition.

The first two courses of action (COA) below propose options for the temporary custody of undocumented alien(s) while diplomatic negotiations are conducted. Absent exceptional circumstances, paroling undocumented aliens without protection status into the United States on humanitarian grounds may exist as a course of action after all other options are exhausted.

COA: Temporarily holding undocumented aliens without protection status aboard the interdicting USG vessel

Consistent with the desired national outcome, any MOTR agency may request interagency concurrence for the interdicting USG vessel to maintain temporary custody of the undocumented aliens while diplomatic negotiations are conducted with the country of origin and/or transit.

While this COA may present significant concerns related to the comfort of the undocumented aliens, as well as considerable operational impacts on the interdicting agency, this option eliminates the need to identify or arrange alternate interim housing facilities while appropriate disposition is sought via diplomatic channels.

Conditions and considerations under this option include but are not limited to:

- National-level interagency concurrence via MOTR;
- Type/size and operational availability of USG ships;
- Living conditions for undocumented aliens; and
- Anticipated holding time.

Throughout the temporary holding period, Department of State should provide weekly updates, or more frequently as appropriate, to MOTR agencies, via the GMCC, regarding the status of diplomatic negotiations with the country of origin and/or transit or nationality.

COA: Temporarily housing undocumented aliens without protection status at the Migrant Operations Center (MOC) in Guantanamo Bay, Cuba

When expeditious repatriation or return of undocumented aliens without protection status is not initially accepted by the country of origin or transit, it may not be operationally practical or in the interest of the undocumented alien's welfare to hold them aboard the exposed decks of USG ships for an extended period while diplomatic solutions are sought. Thus, alternative temporary housing options may be necessary.



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

Consistent with the desired national outcome, any MOTR agency may request interagency concurrence to temporarily house the undocumented aliens at the Migrant Operations Center (MOC) in Guantanamo Bay, Cuba, while appropriate disposition is sought via diplomatic channels.

While this COA presents a temporary housing option that maximizes the comfort and welfare of the undocumented aliens and minimizes the operational impact on the interdicting agency, it may present funding, logistical and/or other issues for DHS that should be addressed between DHS Headquarters and involved DHS operational Components, and any other interdicting agency, on a case-by-case basis.

Conditions and considerations under this option include but are not limited to:

- USG authorities⁴ and national-level interagency concurrence via MOTR;
- Length of time the USG [ship][vessel] can operationally hold undocumented alien(s);
- Capacity/availability of MOC facilities;
- Irregular security risks a particular undocumented alien may create for NAVSTA GTMO and/or the existing MOC population;
- DHS's ability to maintain MOC population separation requirements within the scope of the existing staffing contract;
- Consideration of humanitarian parole into the U.S. after all other disposition options are exhausted;
- DHS's ability to support higher level health care needs beyond the capabilities of the Naval Station Hospital, if required; and
- DHS's ability to fund administrative and travel expenses related to the final disposition of undocumented aliens without protection status.⁵

Throughout the temporary holding period, Department of State should provide weekly updates, or more frequently as appropriate, to MOTR agencies, via the GMCC, regarding the status of diplomatic engagement with the country of origin and/or transit or nationality.

⁴ Executive Order 13276 (Nov. 15, 2002), Sec. 1, as amended by Executive Order 13286 (Feb. 28, 2003) states in part: "Consistent with applicable law, The Secretary of Homeland Security may maintain custody, at any location [s]he deems appropriate, of any undocumented aliens [s]he has reason to believe are seeking to enter the United States and who are interdicted or intercepted in the Caribbean region. In this regard, the Secretary of Homeland Security shall provide and operate a facility, or facilities, to house and provide for the needs of any such aliens. Such a facility may be located at *Guantanamo Bay Naval Base* or any other appropriate location.... The Secretary of Homeland Security shall continue to provide for the custody, care, safety, transportation, and other needs of aliens who are determined not to be persons in need of protection until such time as they are returned to their country of origin or transit." Statutory authorities include: Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1182(f) & 1185(a)(1)); and 3 U.S.C. 301. Interagency discussions through the MOTR process may, as appropriate, address the legal authority to involuntarily house undocumented aliens at the MOC on a temporary basis.

⁵ Consistent with Executive Order 13276, DHS is responsible for the custody, care, safety, transportation and other needs of aliens without protection concerns while temporarily housed at the MOC. Nothing in this document, however, is intended to interfere with an agency's policies or interagency agreements with respect to the funding of the Migrant Operations Center in Guantanamo Bay, Cuba.



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

COA: Paroling undocumented aliens without protection status into the United States on humanitarian grounds

Paroling undocumented aliens without protection status into the United States on humanitarian grounds may be considered after all other options are exhausted.⁶

Besides the minimal deterrent effect this option has on USG efforts to combat illegal and often dangerous maritime migration, other conditions and considerations under this option include but are not limited to:

- Country of origin and/or transit opposes or does not respond to diplomatic requests to accept the undocumented aliens;
- National-level interagency concurrence via MOTR to parole the undocumented aliens into the United States on humanitarian grounds;
- Exceptional circumstances regarding unaccompanied minors;
- Consideration of a démarche against the country of origin and/or transit, as appropriate.

⁶ DHS's legal authority for humanitarian parole is section 212(d)(5)(A) of the Immigration and Nationality Act, which states that the Secretary of DHS may "in [her] discretion parole into the United States temporarily under such conditions as [s]he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States." 8 U.S.C. 1182(d)(5)(A).



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

This Framework supports the Maritime Operational Threat Response (MOTR) Plan by outlining a consistent, repeatable process to enable national-level interagency decision-making regarding the disposition of undocumented aliens without protection status interdicted or intercepted in the Caribbean region.¹ Though every case is factually unique, the goal is to reach final disposition decisions within 10 days of maritime interdiction.

When a U.S. government (USG) vessel² operating in the Caribbean region interdicts or intercepts undocumented aliens without protection status, they are ordinarily repatriated to their country of origin or transit.³ In some circumstances, the country of origin and/or transit may initially deny repatriation of undocumented aliens via routine means, resulting in a decision point for MOTR agencies concerning the temporary care of the undocumented aliens while a diplomatic solution is developed.

PRELIMINARY STEPS:

Within 24 hours of being informed that the country of origin and/or transit has initially denied repatriation of the undocumented aliens, the Department of Homeland Security (DHS), via the U.S. Coast Guard (USCG) or other interdicting agency, shall initiate coordination activities under the MOTR Plan via the Global MOTR Coordination Center (GMCC). MOTR conferences will be facilitated by the GMCC and conducted as necessary to achieve the desired national outcome. For all MOTR conferences, the GMCC shall record the desired national outcome, possible courses of action, and other pertinent issues for distribution to involved agencies.

The initial MOTR call provides interagency decision-makers with essential information necessary to evaluate potential options for case disposition. At minimum, the following information should be provided by agencies during the initial MOTR call:

- (1) Location at the time of interdiction/interception;
- (2) State of registry of the vessel including any verbal claims and amplifying or contradictory information;
- (3) Nationality of the undocumented alien(s);
- (4) Identification and/or travel documents discovered;
- (5) Presence of unaccompanied minors & location of legal guardians;
- (6) Significant medical conditions;
- (7) Country of origin and/or transit;
- (8) Summary of communications with country of origin and/or transit;
- (9) Interdicting agency's operational considerations; and
- (10) A proposed course of action within the scope of this framework.

¹ This Framework applies to steady-state maritime migration and is intended to complement vice supplant existing U.S. maritime migration doctrine.

² USG vessels could include assets from multiple U.S. Government departments. Though nothing in this Framework supplants the authority of an operational commander, it provides guidance to facilitate discussions, decision making, and coordinated courses of action.

³ On a limited basis, some undocumented aliens are paroled into the United States as material witnesses to support maritime smuggling prosecutions.



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

DISPOSITION OPTIONS: If the country of origin and/or transit initially denies repatriation of undocumented aliens via routine means, prolonged diplomatic negotiations may be necessary to achieve the desired national outcome. In these circumstances, MOTR agencies will develop a plan, via the MOTR process, that ensures an expeditious, safe, and legal disposition for the undocumented aliens.

The first two courses of action (COA) below propose temporary holding facilities for the undocumented aliens while diplomatic negotiations are conducted. Absent exceptional circumstances, paroling undocumented aliens without protection status into the United States on humanitarian grounds may exist as a course of action after all other options are exhausted.

COA: Temporarily holding undocumented aliens without protection status aboard the interdicting USG vessel

Consistent with the agreed-upon desired national outcome, any MOTR agency may request interagency concurrence for the interdicting USG vessel to temporarily hold the undocumented aliens while diplomatic negotiations are conducted with the country of origin and/or transit.

While this COA may present significant concerns related to the comfort of the undocumented aliens as well as considerable operational impacts on the interdicting agency, this option eliminates the need to identify alternate interim holding facilities while appropriate disposition is sought via diplomatic channels.

Conditions and considerations under this option include but are not limited to:

- National-level interagency concurrence via MOTR;
- Type/size and operational availability of USG ships;
- Living conditions for undocumented aliens; and,
- Anticipated holding time.

Throughout the temporary holding period, Department of State should provide weekly updates, or more frequently as appropriate, to MOTR agencies, via the GMCC, regarding the status of diplomatic negotiations with the country of origin and/or transit or nationality.

COA: Temporarily housing undocumented aliens without protection status at the Migrant Operations Center (MOC) in Guantanamo Bay, Cuba

When expeditious repatriation or return of undocumented aliens without protection status is not initially accepted by the country of origin or transit, it may not be operationally practical or in the interest of the migrants' welfare to continue to hold them aboard the decks of USG ships while lengthy diplomatic solutions are sought. Thus, alternative and temporary housing options may be necessary.



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

Consistent with the agreed-upon desired national outcome, any MOTR agency may request interagency concurrence to temporarily house the undocumented aliens at the Migrant Operations Center (MOC) in Guantanamo Bay, Cuba, while diplomatic negotiations are conducted with the country of origin and/or transit or nationality.

While this COA presents a temporary housing option that maximizes the welfare of the undocumented aliens and minimizes the operational impact on the interdicting agency, it creates potential funding concerns, among other issues, within DHS components that should be addressed between DHS Headquarters and involved components on a case-by-case basis.

Conditions and considerations under this option include but are not limited to:

- USG authorities⁴ and national-level interagency concurrence via MOTR;
- Length of time an afloat unit can operationally hold undocumented alien(s);
- Capacity/availability of MOC facilities;
- Irregular security risks a particular undocumented alien(s) may create for NAVSTA GTMO and/or the existing MOC population;
- DHS's ability to maintain MOC population separation requirements within the scope of the existing staffing contract;
- Consideration of humanitarian parole into the U.S. after all other return options are exhausted;
- DHS's ability to support higher level health care needs beyond the capabilities of the Naval Station Hospital, if required; and
- DHS's ability to fund administrative and travel expenses related to the final disposition of undocumented aliens without protection status.⁵

Throughout the temporary holding period, Department of State should provide weekly updates, or more frequently as appropriate, to MOTR agencies, via the GMCC, regarding the status of diplomatic negotiations with the country of origin and/or transit or nationality.

⁴ Executive Order 13276 (Nov 2002) as amended by Executive Order 13286 (Feb 2003) states: *The Secretary of Homeland Security may maintain custody, consistent with applicable law, at any location she deems appropriate, of any undocumented aliens she has reason to believe are seeking to enter the United States and who are interdicted or intercepted in the Caribbean region. In this regard, the Secretary of Homeland Security shall provide and operate a facility, or facilities, to house and provide for the needs of any such aliens. Such a facility may be located at Guantanamo Bay Naval Base or any other appropriate location. Furthermore, the Secretary of Homeland Security shall continue to provide for the custody, care, safety, transportation, and other needs of aliens who are determined not to be persons in need of protection until such time as they are returned to their country of origin or transit.* Statutory authorities include: Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act (INA), as amended by 8 U.S.C. 1182(f) & 1185(a)(1); and 3 U.S.C. 301. Interagency discussions through the MOTR process may, as appropriate, address the legal authority to involuntarily house undocumented aliens at the MOC on a temporary basis.

⁵ DHS is responsible for the custody, care, safety, transportation & other needs of aliens without protection concerns while temporarily housed at the MOC. However, nothing in this document is intended to supplant an agency's policies or interagency agreements with respect to the funding of the Migrant Operations Center in Guantanamo Bay, Cuba.



DISPOSITION FRAMEWORK FOR UNDOCUMENTED ALIENS WITHOUT PROTECTION STATUS INTERDICTED OR INTERCEPTED IN THE CARIBBEAN REGION

5/22/2013

COA: Paroling undocumented aliens without protection status into the United States on humanitarian grounds

Paroling undocumented aliens without protection status into the United States on humanitarian grounds may be considered after all other options are exhausted.⁶

Besides the minimal deterrent effect this option has on USG efforts to combat illegal and often dangerous maritime migration, other conditions and considerations under this option include but are not limited to:

- Country of origin and/or transit opposes or does not respond to diplomatic requests to accept the undocumented aliens;
- National-level interagency concurrence via MOTR to parole the undocumented aliens into the United States on humanitarian grounds;
- Exceptional circumstances regarding unaccompanied minors;
- Consideration of a démarche against the country of origin and/or transit, as appropriate.

⁶ The legal foundation for Humanitarian Parole comes from 212(d) (5) (A) of the Immigration and Nationality Act, which states that the Secretary of DHS in her discretion may parole into the United States temporarily under such conditions as she may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.



Haiti TPS Re-designation/Re-registration Outreach Strategy

Pre-Announcement

- Develop plan for the dissemination of information and materials with input from regional and field offices.
- Develop a list of key stakeholders (advocacy community and state/local government) to call on day of announcement.
- Review existing public education materials, related to fee waivers and filing tips, to determine if any revisions are necessary.
- Coordinate national stakeholder call with Director Mayorkas and subject matter experts: send invitation one day prior.
- Continue to work with impacted District Offices and Community Relations assets to identify stakeholders, mechanisms for engagement, and need to augment capacity as appropriate.

Day of Announcement – Extension and Re-Designation

- Director Mayorkas, Office of Public Engagement (OPE) and other relevant program offices make calls to key national stakeholders including advocacy community and state/local government (Catholic Legal Immigration Network (CLINIC), U.S. Conference of Catholic Bishops (USCCB), Andre Pierre (Mayor, North Miami), Hiram Ruiz (Director, Refugee Services, FL DCF).
- Proactively send communications materials to our Congressional distribution list, House/Senate Committees on: Judiciary, Homeland Security, Foreign Relations, Appropriations and CRS and Dem/Rep Policy Conference.
- Send a notice to the CBC and Florida delegation and all the congressional caseworkers on the Haiti Adoptions list.
- OLA will make calls to the Judiciary Chairs and Rankings as well as the South Florida delegation. (*See attached OLA distribution list.*)
- Host national stakeholder call with participation of Director Mayorkas and subject matter experts. (*See attached OPE distribution list.*)
- Disseminate materials to national stakeholders, regional and field offices.
- Instruct field community relations assets to make calls to key Haitian community members and relevant CBO communities; coordinate information sessions with larger audiences.

Post Announcement

- Coordinate radio tour with Director Mayorkas on Haitian radio stations in target markets (South Florida, New York and Boston)



U.S. Citizenship
and Immigration
Services

- Host second national stakeholder call with subject matter experts when Federal Register Notice describing re-registration procedure publishes.
- Coordinate regular, targeted national engagement efforts to focus on the actual registration and re-registration requirements and process.
- Coordinate field stakeholder engagements and provide HQ OPE support as appropriate.
- Maintain regular contact with external stakeholders to ensure they are familiar with the process for registration/re-registration and share feedback to the agency on issues related to the application of process and policy.
- Refine communication and registration materials incorporating input provided by internal and external stakeholders.
- Continue to assess community capacity and overall program response.
- Provide training and guidance to community service providers.
- Continue to coordinate with national stakeholders identifying areas of strength and opportunities for further collaboration during the registration/re-registration process.
- Coordinate weekly calls with field assets to assess effectiveness of engagement efforts and recalibrate strategy as appropriate.
- Continue to coordinate registration, information delivery, and training with internal and stakeholders as delineated above.

DRAFT



U.S. Immigration
and Customs
Enforcement

January 20, 2010

Contact: (b)(6),(b)(7)(C)

305-(b)(6),(b)(7)(C)

LAST MODIFIED

01/20/10

GUIDANCE

Reactive

PRODUCTS

- Background
- Communication Objectives
- Talking Points
- Statistics
- Questions and Answers

ICE response to Haiti crisis

BACKGROUND

Homeland Security Task Force Southeast (HSTFSE) was established in June 2003 pursuant to Homeland Security Presidential Directive Five to provide the organizational framework to facilitate the assignment of roles to participating agencies in the event of a mass migration from a Caribbean nation.

On Jan. 12, 2010, the island nation of Haiti was struck by a magnitude 7.0 earthquake that caused widespread destruction and death and effectively crippled the country. International aid efforts have been hindered by the destruction of infrastructure and the limited capacity of remaining infrastructure.

On Jan. 14, 2010, the Secretary of the Department of Homeland Security directed Homeland Security Task Force Southeast to identify courses of action to support USAID in providing humanitarian assistance in Haiti; assist in the evacuation of U.S. citizens from Haiti and to conduct required preparatory actions that would facilitate rapid activation of the HSTFSE Operations Plan Vigilant Sentry (OVS).

On January 15, 2010, Department of Homeland Security Secretary Janet Napolitano announced the designation of Temporary Protected Status (TPS) for Haitian nationals who were in the United States as of January 12, 2010.

While OVS is not activated, the Secretary has directed action to prepare for rapid activation of OVS should indications warn of a pending mass migration.

Mass migration of Haitian migrants has happened twice since 1993. Operation Able Manner (Jan 93 to Nov 94) saw 25,177 migrants recovered with max one day flow of 3,247 migrants. In 2004, Operation Able Sentry resulted in the recovery of 905 migrants in less than one month with 454 migrants recovered in one day.

COMMUNICATIONS OBJECTIVES

- Deter and dissuade Haitian citizens from taking to the sea in attempts to illegally migrate to other countries.
- Clearly explain U.S. Government policy as it relates to the repatriation of Haitian migrants interdicted at sea.
- Mitigate criticism of enforcement of policy through media coverage of conditions of Haitians in overloaded/unsafe vessels at sea.
- Reassure audiences that HSTFSE is ready to save lives at sea and secure maritime border.

TALKING POINTS

ICE's role with humanitarian parole

- In response to DHS's granting of humanitarian parole to certain categories of children orphaned by last week's earthquake in Haiti, U.S. Immigration and Customs Enforcement (ICE) will work with U.S. Customs and Border Protection (CBP) and the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) to ensure the safety and well-being of the children being united with their prospective adoptive parents in accordance with state and federal law.
- ICE officers will be prepositioned at airports that anticipate flights arriving with Haitian orphans.
- ICE officers will assist CBP and HHS/ORR in reuniting the orphans with their prospective adoptive parents in accordance with state and federal law.
- Orphans, who for some reasons cannot be reunited with their prospective adoptive parents, will be transported by ICE to the care and custody of HHS, ORR.
- Orphans eligible for humanitarian parole will not be placed in removal proceedings.
- Prospective adoptive parents should contact USCIS to determine what action needs to be taken to ensure that the formal adoption procedures are completed.

ICE's role in Haiti

- ICE has deployed a team of agents to partner with the U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) to streamline and facilitate departures for U.S. citizens who may be in Haiti. The goal is to make their return to the United States as rapid and seamless as possible.
- ICE has also temporarily suspended removals to Haiti of Haitian nationals who have been ordered removed from the United States.
- ICE will assist the U.S. Department of State and USCIS in facilitating the evacuation of orphaned children who have been granted humanitarian parole to temporarily enter the United States.
- As needed, ICE agents may provide support to local law enforcement in Haiti.
- As needed, ICE is working with DHS partners to develop contingency response and logistical plans in the event that large numbers of Haitian citizens require shelter or relocation.

Migrant Operations Center, Guantanamo Bay, Cuba

- GTMO day-to-day operations are conducted through an intergovernmental effort between the State Department, U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services and the Navy.
- The small numbers of individuals that are found to have met the protection standard after being intercepted at sea are transferred to GTMO for a further evaluation of their case.
- If necessary, those individuals may be resettled in a third-country with the assistance of the State Department.
- The U.S. Government continues deterring illegal migration by sea.
- Most individuals intercepted at sea are repatriated to their country of origin.

ICE's role with TPS

- ICE is prepared to aggressively investigate and present for prosecution those who seek to defraud the U.S. government in attempt to gain Temporary Protective Status (TPS) or engage in immigration benefit fraud. ICE will also pursue human smugglers whose only goal is to profit at the expense of others.
- ICE will actively investigate fraud by immigration service providers or unscrupulous attorneys or others who would supply false documents to support TPS applications.

STATISTICS

Haitians in ICE custody

As of Jan. 11, there were 528 individuals in ICE custody. Of those, 124 are criminals and 36 are non-criminals. All 124 have been ordered removed by an immigration judge. In addition, there are 294 criminal and 74 non-criminal Haitian nationals in ICE custody who have appealed orders or are still in removal proceedings.

Haitians with final orders of removal

31,316

Haitian Removals

	Criminal Removals	Non-Criminal Removals	Total Removals
FY2004	223	631	854
FY2005	590	573	1163
FY2006	292	593	885
FY2007*	538	1037	1575
FY2008*	428	1226	1654
FY2009*	466	221	687

QUESTIONS AND ANSWERS

What is the status now for Haitians at the local detention center?

ICE is currently reviewing each individual case to evaluate whether release is appropriate. As a general matter, Haitian nationals who are not precluded from qualifying for TPS as a result of criminal convictions or other factors should be released from custody, absent a national security risk, history of human rights violations, danger to the community, gang affiliation, medical or mental health conditions affecting the viability of release, and any other such relevant factors. Similarly, Haitian nationals who appear to be eligible for TPS, including non-detained, non-criminal, and non-dangerous Haitian nationals currently supervised on forms of Alternatives to Detention (ATD), should not be supervised pursuant to the ATD program. ICE will take steps to ensure awareness of the locations of all Haitian nationals granted TPS in order to enforce any final orders of removal when the TPS period expires.

As a result of TPS are they being released?

Yes, those identified as eligible for TPS will be released.

What are the requirements for their release? Will they wear ankle bracelets?

Those identified as eligible for TPS will not be on any form of supervision. ICE will, however, take steps to ensure awareness of the locations of all Haitian nationals granted TPS in order to enforce any final orders of removal when the TPS period expires.

How many Haitian nationals have final orders of removal?

There are 31,316 Haitian nationals who have outstanding orders of removal.

We also have heard that detention centers are being prepared just in case there is a massive wave of Haitians leaving the country and coming to US in boats. Is that true?

Are any measures being taken to face this scenario?

Homeland Security Task Force Southeast is not making preparations for an imminent or anticipated mass migration, rather, the task force is taking prudent measures to ensure readiness to rescue Haitian citizens in peril at sea. We have not yet encountered any signs of illegal maritime migration, but we continue to monitor conditions closely.

Attempts to illegally migrate to other countries from the sea are inherently life-threatening and infinitely more dangerous than the current conditions in Haiti.

Temporary Protected Status, or TPS, only applies to those Haitian who were in the United States as of Jan. 12, 2010. Haitians interdicted at sea will be repatriated so we urge people to not put their lives at additional risk by embarking on a dangerous sea voyage.

It may be tempting for people suffering in the aftermath of the earthquake to seek refuge elsewhere. But attempts to leave Haiti by sea will only bring more hardship to the Haitian people. The international community has rallied to deliver relief to Haiti and much more is on the way.

We encourage Haitian-American communities throughout the United States to join us in discouraging the people of Haiti from taking to the sea.

Why are individuals intercepted at sea and found to have a credible fear transported to GTMO?

Migrant safety is of utmost importance to the Department of Homeland Security. Individuals who have made a claim of fear of return to their home country, and that have been found to have met the credible fear criteria, are transported to GTMO for a further evaluation of their case in a safe, and stable environment. While Coast Guard cutters are equipped with necessary safety materials, they are not intended for long-term migrant care.

How many migrants are usually at GTMO during regular operations?

The number of migrants held at GTMO awaiting final disposition fluctuates. However, that number is usually low, as there are only small numbers of individuals that are found to have met the protection standard.

How long are migrants held at GTMO while their case is evaluated by Citizenship and Immigration Services (CIS)?

The dispositions of migrant cases are given careful review and consideration. Every case is handled individually; therefore, the time frames that migrants are in the camps may vary.

What happens to migrants that are found to not have a valid claim for protection?

Migrants that are found to not have a valid claim for protection are repatriated to their country of origin.

What happens to migrants that are found to have a valid claim for protection?

Migrants that are found to have a valid claim for protection are resettled in a third-country with the assistance of the State Department.

Which countries are they resettled in?

The countries that migrants are resettled in vary case by case. However, we can tell you that the resettlement process is carefully coordinated to ensure that migrants in need of protection are resettled in countries that can provide a safe and stable environment.

ICE

U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of four integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities.

**ISSUE**

18-Month Extension and Re-designation of Haiti for Temporary Protected Status

LAST MODIFIED

May 3, 2011

GUIDANCE

Proactive

PRODUCTS

- Fact Sheet – External Distribution (English, French & Creole)/ Post to Web
- Update – External Distribution (English, French & Creole)/ Post to Web
- Talking Points – Internal Use for Response to Query
- Webpage – [TPS Designated Country: Haiti](#)

Introduction

Secretary of Homeland Security Janet Napolitano has re-designated Haiti for Temporary Protected Status (TPS) and extended the country's current TPS designation for 18 months—through Jan. 22, 2013.

Secretary Napolitano first designated Haiti for TPS in January 2010 after major earthquakes devastated the country. The disaster created extraordinary conditions that prevent Haitians in the United States from safely returning to their homeland at this time. Following consultations with other federal agencies, Secretary Napolitano has determined that current conditions in Haiti support extending the designation period for current TPS beneficiaries and re-designating Haiti for TPS. The re-designation re-establishes the date by which applicants must prove that they have continuously resided in the United States. Applicants must have continuously resided in the United States since Jan. 12, 2011.

The TPS re-designation of Haiti allows eligible Haitians (and persons without nationality who last habitually resided in Haiti) who do not currently have TPS, or have a pending TPS application, *and* who have continuously resided in the United States since Jan. 12, 2011, to start applying immediately. Applicants can file for TPS during a 180-day registration period that begins [date FRN is published] and ends [180-days after FRN publ. date]. The extension will also allow Haitians who currently have TPS to re-register from May 23, 2011, until Aug. 22, 2011, following publication of a *Federal Register* notice in May outlining re-registration procedures. Haitians who already have TPS must not file before May 23, 2011, for re-registration or their application will be rejected.

As a result of the TPS re-designation for Haitians, DHS is implementing a deterrent strategy to discourage and prevent mass migration. The following talking points are aimed at deterring any type of mass migration from Haiti.

Talking Points

General TPS Haiti

- Secretary of Homeland Security Janet Napolitano has re-designated Haiti for Temporary Protected Status (TPS) and extended the country's current TPS designation for 18 months—through Jan. 22, 2013. Both the extension and re-designation are effective July 23, 2011.
- Secretary Napolitano first designated Haiti for TPS in January 2010 after strong earthquakes devastated the country. The disaster created extraordinary temporary conditions that prevent Haitians in the United States from safely returning to their homeland.
- Following consultations with other federal agencies, the Secretary has determined that current conditions in Haiti support extending the designation period for current TPS beneficiaries and re-designating Haiti for TPS. The re-designation will re-establish the date by which applicants must demonstrate that they have continuously resided in the United States to Jan. 12, 2011 (i.e., the “continuous residence” date).
- The TPS re-designation of Haiti allows eligible Haitians (and persons without nationality who last habitually resided in Haiti) who do not currently have TPS, or have a pending TPS application, *and* who have continuously resided in the United States since Jan. 12, 2011 to start applying immediately.
- Applicants have a 180-day registration period to file that starts [date FRN is published] and ends [180-days after FRN publ. date]. The extension will also allow Haitians who currently have TPS to re-register from May 23, 2011, until Aug. 22, 2011, following publication of a *Federal Register* Notice in May outlining re-registration procedures.
- Applicants for TPS under the Haiti designation may refer to the following information as general instructions on how to file the TPS application. USCIS strongly encourages Haitian nationals to review the *Federal Register* Notice published DATE, and to follow instructions on how to file an initial application for TPS. Individuals who already have Haiti TPS **must not** file for re-registration until the re-registration period opens in May or your application package will be rejected.

Who's Eligible

- **Individuals filing for the first time:** The re-designation of Haiti allows additional Haitians (and persons without nationality who last habitually resided in Haiti) who have continuously resided in the United States since [Jan. 12, 2011] to obtain TPS, provided they meet all other Haiti TPS eligibility criteria. Individuals who do not currently have TPS may apply from [Date of FRN publ.] through [180-days from FRN publ.] Additional registration instructions are available at www.uscis.gov/tps on the Haiti TPS Web page.
- **Individuals with a pending TPS application:** Individuals who applied for TPS under the initial designation announcement in January 2010 and whose applications are still pending as of [date of FRN] will not need to file a new Application for Temporary Protected Status (Form I-821). Their pending applications will be considered initial filings under this re-registration. Individuals with a pending TPS application who need to extend or request an Employment Authorization Document (EAD) must file a new Application for Employment Authorization (Form I-765) starting May 23, 2011. Please visit www.uscis.gov/tps for additional information.

- **Individuals re-registering for TPS:** Individuals who have already been granted TPS for Haiti must re-register starting May 23, 2011, and ending Aug. 22, 2011, once the *Federal Register* Notice with re-registration instructions is published. By filing for re-registration as soon as this time period opens, current TPS beneficiaries will enhance USCIS's ability to complete all routine background checks, application processing and delivery of EADs promptly. Applications from current TPS beneficiaries will *not* be accepted before May 23, 2011.

Mass Migration Deterrence

- Only those Haitian nationals who have continuously resided in the United States since Jan. 12, 2011 are eligible to apply for Temporary Protected Status. Haitian nationals who arrive in the United States after Jan. 12, 2011 are not eligible for Temporary Protected Status.
- Migrants attempting to enter the United States via maritime routes must understand that in doing so they place themselves in extreme danger. They are often on overcrowded, unseaworthy vessels, without any safety equipment and being operated by ruthless smugglers. Sadly, too many times in the past migrants have lost their lives in these attempts.
- Through increased reconnaissance, surveillance and patrolling along migrant transit routes, DHS agencies will intercept and apprehend migrants attempting to enter the United States. Those migrants picked-up will most likely be returned to their country of departure or home country.
- DHS uses a layered strategy to conduct homeland security operations, including migrant interdiction. Many agencies from DHS, DOJ, and FDLE down to the local police departments work together to conduct migrant interdiction patrols. The goal is to first intercept the migrants as far offshore as possible, but understanding the magnitude of the challenge based on the large geographic area and flow volumes, systems are in place from offshore to on-land to provide for interdiction and apprehension of illegal migrants.
- By interdicting migrants far out at sea we have better control of our borders and prevent people from entering the U.S. illegally and unknown. Simultaneously, these voyages, particularly when involving smugglers, are a recipe for disaster and by removing migrants from their dangerous vessels we prevent the loss of life at sea.
- Migrants illegally entering the U.S. using smugglers put their lives in the hands of criminals; the smugglers' primary consideration is often greed, not safety or compassion. Migrant interdiction patrols save lives by deterring dangerous migrant activity and removing migrants from dangerous environments. We protect the U.S. from illegal migrants and the illegal migrants from the seas.
- In the event of migrant smuggling interdictions DHS agencies will continue to work closely with other Federal, State and local agencies, including the U.S. Attorney's office, to investigate and identify those involved in smuggling and hold them accountable for their dangerous and criminal actions. **Conspiring to bring migrants into the country illegally is a violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I) and carries a maximum penalty of ten years of imprisonment.**

Background: The U.S. has experienced four mass migrations in the last 20 years. In 1980, the Mariel boatlift resulted in more than 125 thousand Cubans entering Florida. In 1991 and 1994 over 50 thousand Haitians were interdicted by the USCG and returned to Haiti. In 1994, 38 thousand Cubans were interdicted in less than one month.

TPS Haiti Statistics

- USCIS has received approximately 55,689 applications
- Approximate number approved: 47,617
- Approximate number pending: 3,047
- The remaining number includes denied, rejected, admin closed, relocated (approximately 5,025).

- USCIS -

Haitian Removals

December 9, 2011

1. What is the number of Haitian nationals returned to Haiti or deported from your country, as well as those that are or have been subject to a deportation order, since 12 January 2010?

On January 13, 2010, the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) temporarily halted removals to Haiti of aliens with final orders of removal in the wake of the earthquake and the resulting humanitarian crisis.

On January 20, 2011, ICE resumed the limited repatriation of certain Haitian nationals to Haiti. As of December 9, 2011, ICE has completed nine repatriation flights in 2011, removing 328 Haitian nationals to Haiti. It should be noted that these removals represent a subset of the total number of removals and returns of Haitian nationals recorded by ICE during this time period. ICE recorded 1,053 removals or returns of Haitian nationals from January 12, 2010 through December 9, 2011. This figure includes removals, voluntary returns, voluntary departures, and withdrawals under docket control¹.

As of December 5, 2011, 203 detained and 30,128 non-detained Haitians² are subject to final orders of removal and 15,099 Haitians are currently in proceedings.³

¹ As reported in IIDS 1.10 as of December 5, 2011 The figures contained in this report for FY2001 through FY2011 are historical and remain static. Only FY2012 YTD figures are updated in this report. FY2010 removals data does not include lag as they ask for actual removals post 1/12/2010, not case closures of removals from the previous fiscal year. Returns include Voluntary Returns, Voluntary Departures and Withdrawals Under Docket Control. This report only includes aliens processed for Expedited Removal (ER) and turned over to ERO for detention. Aliens processed for ER and not detained by ERO are primarily processed by Border Patrol. CBP should be contacted for those statistics. Starting in FY2009, ICE began to "lock" removal statistics on October 5th at the end of each fiscal year and counted only the aliens whose removal or return was already confirmed. Aliens removed or returned in that fiscal year but not confirmed until after October 5th were excluded from the locked data and thus from ICE statistics. To ensure an accurate and complete representation of all removals and returns, ICE will include the removals and returns confirmed after October 5th into the next fiscal year. The number of removals in FY2009, excluding the "lag" from FY2008, was 387,790. The number of removals in FY2010, excluding the "lag" from FY2009, was 373,440. This number does not include 76,732 expedited removal cases which ICE closed on behalf of CBP in FY2010. Of those 76,732, 33,900 cases resulted from a joint CBP/ICE operation in Arizona. ICE spent \$1,155,260 on those 33,900 cases. The number of removals in FY2011, excluding the "lag" from FY2010, was 385,145. FY Data Lag/Case Closure Lag is defined as the physical removal of an alien occurring in a given month; however, the case is not closed in EARM until a subsequent FY after the data is locked. Since the data from the previous FY is locked, the removal is recorded in the month the case was closed and reported in the next FY Removals. This will result in a higher number of recorded removals in an FY than actual departures.

² As reported in IIDS v. 1.10 data as of December 5, 2011, as provided by the Statistical Tracking Unit, but from EID data as of November 30, 2011. Currently Detained data Excludes ORR and MIRP facilities

³ As reported in IIDS Data v1.10 as of December 5, 2011 as reported by the Statistical Tracking Unit, but from EID data as of November 30th 2011. Removal Proceedings are calculated by filtering the overall number of currently Detained and Non-Detained Haitians with a pending count of 1, a Case Category equal to 2A, 2B, 8A, 8B, 8D, 8F, 8G, 8H, 11, or 16, and have an 'Active' Case Status. Removal Proceedings are calculated by filtering the overall number of currently Detained and Non-Detained Haitians with a pending count of 1, a Case Category equal to 2A, 2B, 8A, 8B, 8D, 8F, 8G, 8H, 11, or 16, and have an 'Active' Case Status.

FOR OFFICIAL USE ONLY

[ICE defers to CBP and U.S. Coast Guard for additional information regarding returns completed by those components]

2. *What is the legal and administrative framework currently in place in your country that applies to Haitian nationals with irregular migratory status and/or Haitian nationals subject to forced removals (including deportation, repatriation, or any other form of removal)?*

The immigration laws of the U.S. are governed by the Immigration and Nationality Act as amended.

3. *Have specific legislative or administrative measure been taken to address specific circumstances, and give special consideration to the situation of Haitian nationals, subject to forced removals (including deportation, repatriation, or any other form of removal) in your country? If so, kindly describe these measures and provide information on the number of persons that have benefited from such measures.*

On January 15, 2010, DHS released a Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals extending TPS to Haitian nationals who were in the United States as of January 12, 2010. On May 17, 2011, DHS announced the Extension of Temporary Protected Status for Haiti Beneficiaries, which also affects the groups outlined above. The extension was effective on July 23, 2011 and was for an additional 18 months, allowing TPS beneficiaries to remain in the United States through January 22, 2013. TPS is not available to Haitian nationals convicted of crimes.

The *ICE Policy for Resumed Removals to Haiti* was published on April 01, 2011. This policy provides:

APRIL 1, 2011
WASHINGTON, DC

Policy for resumed removals to Haiti

Following the tragic January 12, 2010 earthquake in Haiti, U.S. Immigration and Customs Enforcement (ICE) temporarily ceased removing criminal Haitian nationals to Haiti. Pursuant to the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), ICE has the presumptive authority to detain aliens with final orders of removal for up to 180 days. After six months, with limited exceptions, continued detention is no longer presumptively lawful and ICE may extend the detention of aliens with final orders of removal only when their removal is significantly likely in the reasonably foreseeable future. The moratorium on removals to Haiti therefore meant that ICE was required to release some detained Haitian nationals with significant criminal records into U.S. communities, which in turn poses a significant threat to the American public. As a result, after a year of suspended removals, the U.S. government made the difficult decision to resume removals of a limited group of Haitian nationals to ensure the safety of U.S. communities.

Going forward, in coordination with the Government of Haiti and the U.S. Department of State, ICE is resuming limited removal of convicted criminal Haitians with final orders of removal. The removal of Haitian nationals will be conducted in a manner that comports with the March 2, 2011, ICE memo entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* which prioritizes the removal of aliens with final orders who pose a threat to

public safety. Consistent with that memo, ICE will prioritize the removal of Level 1 and Level 2 offenders. Removals will be guided by that memorandum's Section D, "Prosecutorial Discretion" which focuses on the exercise of sound judgment and discretion in exercising decision making with respect to these priorities. At this time, ICE is not removing non-criminal Haitian nationals (unless they are determined to be a significant national security threat). Haitians who have pending applications for temporary protected status (TPS) are not subject to removal. Individuals who have been convicted of any felony as defined in 8 C.F.R. §244.1 are not eligible for TPS, and, as a result, an application for TPS from such an individual will not prevent removal. ICE also will not remove any Haitian national who has TPS or is otherwise present in the United States in a lawful status.

When prioritizing aliens for removal, ICE will make decisions on individuals to remove through the consideration of adverse factors, such as the severity, number of convictions, and dates since convictions, and balance these against any equities of the Haitian national, such as duration of residence in the United States, family ties, or significant medical issues. In certain cases, where there are compelling medical, humanitarian, or other relevant factors, supervised release or other alternatives to detention programs may be appropriate. ICE will minimize transferring Haitian nationals to remote facilities to the greatest degree possible, and, where possible, detain individuals in facilities close to family and representation, except to facilitate the actual removal process.

ICE and the Department of State have been working with the Government of Haiti and other key partners to resume removals in as safe, humane, and minimally disruptive a manner as possible and to develop a comprehensive reintegration strategy that encompasses a range of services for returned Haitians to smooth their transition into Haitian society, including healthcare assistance and skills training to enhance employment prospects.

The resumption of removals to Haiti will continue to take place in a measured manner with a limited number of eligible aliens removed to Haiti each month, addressing the public safety needs of both the United States and Haiti.

In addition, ICE has the authority to review each case on an individual basis for discretion under the following policies:

Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens

Prosecutorial Discretion Memo: Certain Victims, Witnesses and Plaintiffs

4. *Have specific measures been taken with regards to the following groups of Haitian nationals, mentioned in the joint OHCHR/UNHCR advisory issued in June 2011?*
 - *Unaccompanied minors*
 - *Persons living with disabilities or suffering from a severe medical condition.*
 - *Victims of human trafficking*
 - *Victims of sexual or gender based violence*
 - *Persons whose deportation would lead to the separation of family members*
 - *Unaccompanied minors*

Unaccompanied minors are not taken into ICE custody and are referred immediately to the U.S. Department of Health and Human Services, Office of Refugee Resettlement. All persons, regardless of nationality, are afforded due process pursuant to the rights and protections guaranteed under the U.S. Constitution. Haitian nationals have also received special consideration under the provisions of Temporary Protected Status (TPS), so long as they meet special eligibility criteria. Victims of crimes, human rights violations, or other persecution are also eligible for continued protection pursuant to specialized nonimmigrant "U" visas.

In addition, ICE has the authority to review each case on an individual basis for discretion under the following policies:

Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens

Prosecutorial Discretion Memo: Certain Victims, Witnesses and Plaintiffs

5. *Have specific measures been taken with regards to the following groups of Haitian nationals?*
- *Persons not born in Haiti*
 - *Persons with no family members in Haiti*

On January 15, 2010, DHS released a Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals that deals directly with citizens and nationals of Haiti. On May 17, 2011, DHS announced the Extension of Temporary Protected Status for Haiti Beneficiaries, which also affects the groups outlined above.

The ICE Policy for Resumed Removals to Haiti governs persons not born in Haiti, but who have been ordered removed from the United States. This same ICE Policy for Resumed Removals to Haiti pertains to all citizens and nationals of Haiti, regardless of community ties.

The *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention and Removal of Aliens Policy* and the *Prosecutorial Discretion Memo: Certain Victims, Witnesses and Plaintiffs* also pertain to citizens and nationals of Haiti.

6. *Please provide information with regard to existing appeal procedures that apply to Haitian nationals in your country subject to forced removals (including deportation, repatriation, or any other form of removal).*

All Haitian nationals are afforded due process pursuant to the rights and protections guaranteed under the U.S. Constitution. Nationals are provided an opportunity to dispute any and all allegations brought against them in removal proceedings. Nationals found to be removable from the United States and ordered removed to Haiti have the opportunity to appeal the decision to progressively higher courts. Only upon the finalization of an order and appeals will Haitian nationals be considered for removal from the United States.

7. *With which Haitian authorities does your Government coordinate the return, deportation, and/or repatriation of Haitian nationals?*

ICE coordinates with the Central Directorate of the Judicial Police, Office of National Migration, Minister of the Interior and Territorial Collectives, and Secretary of State for Public Security.

(b)(6),(b)(7)(C)

[Redacted]

Executive Secretary
Inter-American Commission on Human Rights
1889 F Street NW
Washington, DC 20006

(b)(6),(b)(7)(C)

Fax: (202) 45 [Redacted]

(b)(6),(b)(7)(C)

[Redacted]

January 10, 2011

**Re.: Letter in Support of Precautionary Measures to Stop Imminent
Deportations of Haitians from the United States**

(b)(6),(b)(7)(C)

Dear Dr. [Redacted]

We, the undersigned human and civil rights advocates, write to express great concern about the recent announcement by the United States government to resume deportations to Haiti beginning January 2011. In the one year since the January 12, 2010 earthquake devastated Haiti, the United States has laudably set in place several humanitarian policies to respond to the catastrophe, including granting temporary protected status (TPS) for many Haitian nationals living in the United States, humanitarian parole for certain orphans, and, until recently, an indefinite stay of deportations to Haiti until conditions improve.

Far from improving, conditions in Haiti are equally bad, if not worse, than one year ago. A cholera epidemic is raging across the country. Over 100,000 people have contracted cholera and 3,333 have died as a result of the disease. The World Health Organization and Pan-American Health Organization expect another 650,000 cases within the first 6 months of 2011. Over 1.2 million people are living in temporary shelters in internally displaced persons camps. These people and countless others in Haiti lack basic sanitation, adequate food, potable water, and lighting, and basic security. Haitian detention centers, where deportees would undoubtedly be held, are widely-documented as unsanitary, rodent-infested spaces where detainees have little to no access to food or drinking water and are exposed to disease. Cholera has already claimed at least 48 lives in detention centers.

In light of these grim conditions, the deportation of Haitian nationals by the U.S. is inhumane and impracticable.

We therefore write to express our support of the request for precautionary measures submitted to this Commission on January 6, 2011 by the University of Miami School of Law Human Rights and Immigration Clinics, the Florida Immigrant Advocacy Center, the Center for Constitutional Rights, Alternative Chance, and the Loyola Law Clinic and Center for Social Justice to halt the roundups, detention, and imminent deportations of Haitian nationals by the United States government.

We ask that this Commission act decisively and quickly bring the full weight of its authority to bear on the United States Government, so that it will fulfill its legal responsibility to protect the rights of vulnerable Haitian individuals who are at risk of serious harm, even death, and who, if deported, will place an impossible burden on a detention and justice system in Haiti that is broken.

Sincerely,

Organizational Sign-Ons

1. Partners in Health
2. American Friends Service Committee
3. Catholic Legal Services, Archdiocese of Miami
4. You.Me.We
5. Grassroots International
6. Institute for Justice & Democracy in Haiti
7. Robert F. Kennedy Center for Justice & Human Rights
8. American Civil Liberties Union, Florida
9. The Society of American Law Teachers
10. National Lawyers Guild
11. MADRE: Demanding Rights, Resources & Results for Women Worldwide
12. World Organization for Human Rights USA
13. Haitian Congress to Fortify Haiti, Chicago, IL
14. Task Force for the Homeless
15. Drum Major Institute for Public Policy
16. Environmental Justice Initiative for Haiti
17. La Fuente: NY and Long Island Civic Participation Projects
18. Utah Health and Human Rights Project
19. The National Lawyer's Guild, New York
20. Secular Jewish Humanists
21. Trail of DREAMs
22. Coalition of African, Arab, Asian, European, and Latino Immigrants of Illinois (CAAELII)
23. Maurice & Jane Sugar Law Center for Economic & Social Justice
24. WE Count!, Miami, Florida
25. Black Law Students Association, University of Miami School of Law
26. Florida Immigrant Coalition
27. Scott D. Pollock & Associates, P.C.
28. Florida Immigrant Coalition
29. Immigration Law Clinic, Michigan State University College of Law
30. N'Cobra
31. KINDRED Afro Americas Alliance
32. Rising in Support of Ayiti (RISA), Chicago, Illinois

33. Cidadao Global
34. New Jersey Forum for Human Rights
35. The All Peoples Democratic Club, Democratic Caribbean Caucus of Florida Democratic Party
36. Executive Director, Georgia Latino Alliance for Human Rights
37. General Counsel, International Indian Treaty Council
38. New York City Chapter of the National Lawyers Guild's Anti Racism Committee
39. Chair, Social Responsibilities Council Unitarian Society of Ridgewood
40. New Jersey Advocates for Immigrant Detainees
41. Washington Defender Association's Immigration Project
42. Middlesex County Coalition for Immigrant Rights
43. Legal Aid Service of Broward County
44. Georgia Detention Watch
45. Amigos Center
46. Just Cause, the Union of St. Peter's Housing Committee & Just Cause Oakland
47. Human Rights Advocates
48. Virginia Coalition of Latino Organizations
49. Global Justice Program/Kirwan Institute for the Study of Race & Ethnicity
50. Foreign Policy in Focus, Institute for Policy Studies
51. Lutheran Immigration and Refugee Service
52. Immigrant Rights Clinic, Florida Coastal School of Law
53. New York Immigration Coalition
54. Urban Justice Center
55. University of Houston Immigration Clinic
56. IRATE
57. First Friends
58. New Jersey Advocates for Immigrant Detainees
59. Immigration Law Clinic, University of California, Davis, School of Law Clinical Programs
60. American Jewish World Service
61. Church World Service, Haiti
62. Legal Aid Society, New York, New York
63. Capital Area Immigrants' Rights Coalition
64. Pax Christi New Jersey
65. Vermont Medical Response Team
66. The Legal Aid Society of the Orange County Bar Association, Inc.
67. Immigrant Defense Project
68. Worker's Rights Law Center of NY
69. Immigrant Rights Clinic, New York University School of Law
70. Council on American-Islamic Relations (CAIR Florida)
71. South Asian Americans Leading Together
72. Tampa Chapter of the Council on American-Islamic Relations (CAIR-Tampa)
73. Immigration Law Society, UCLA Law School
74. Center for Gender & Refugee Studies, University of California , Hastings College of the Law
75. Political Asylum/Immigration Representation Project

- 76. Massachusetts Immigrant and Refugee Advocacy Coalition
- 77. Mennonite Central Committee U.S. Washington Office
- 78. December 12th Movement International Secretariat
- 79. International Association Against Torture
- 80. United We DREAM
- 81. Presente.org
- 82. The Post-Deportation Human Rights Project, Center for Human Rights and International Justice, Boston College
- 83. Vermont Medical Response Team
- 84. United Confederation of Taino People
- 85. The New Sanctuary Movement of NYC
- 86. Families for Freedom

Individual Sign-Ons (Institutional affiliations provided for identification purposes only)

- | | | |
|------|--|--|
| 83. | (b)(6),(b)(7)(C) | Doctoral Candidate: Political Science Clark Atlanta University |
| 84. | | University of Michigan Law School |
| 85. | | Student, Seattle University School of Law |
| 86. | | Insightful Mind Initiative, Miami Law Women, University of Miami School of Law |
| 87. | | Assistant Professor, Loyola University New Orleans, College of Law |
| 88. | | Concerned Citizen |
| 89. | | Roger Williams University School of Law |
| 90. | | Immigration specialist, Adjunct Professor, Golden Gate University School of Law |
| 91. | | Legal Director, Nevada Immigrant Resource Project, William S. Boyd School of Law |
| 92. | | Task Force for the Homeless (Metro Atlanta) |
| 93. | | NYC National Lawyer's Guild Executive Committee |
| 94. | | Director, Pediatric and Youth Advocacy Initiative, University of Michigan Law School |
| 95. | | Corso, Kennedy & Campbell, LLP |
| 96. | | Student Organization for Human Rights, University of Miami School of Law |
| 97. | Senior Program Officer, Sauti Yetu Center for African Women | |
| 98. | Concerned Citizen | |
| 99. | Clinical Law Professor, University of Iowa College of Law | |
| 100. | University of Texas School of Law, Immigration Clinic | |
| 101. | University of Cincinnati College of Law, Urban Morgan Institute for Human Rights | |
| 102. | Concerned Citizen, Duluth, Georgia | |
| 103. | Université du Québec à Montréal, Faculté de science politique et de droit, Département des sciences juridiques | |
| 104. | Villanova School of Law | |

105.		Producer, Alternative Perspectives, WRFG 89.3 FM
106.		International Human Rights Advocacy Center at Sturm College of Law
107.		Professor of Sociology, Albany State University
108.		Student, University of California at Los Angeles School of Law
109.		International Law Society, University of Miami School of Law
110.		Program on Human Rights and the Global Economy, Northeastern University School of Law
111.		Director, Education Center, New England Tropical Conservatory
112.		Senior Attorney, Adjunct Professor, Catholic Charities, St. John's Law School
113.		Trail of Dreams/Presente.org
114.		Chair, Immigration Solidarity Committee, Community to Community Development, Bellingham, WA
115.		Empire State College
116.		Cowden Distinguished Professor, School of Social and Family Dynamics, Director of Graduate Studies, Sociology, Program in Sociology, Arizona State University
117.		Black Communities Process (PCN), International Working Group United States
118.	(b)(6),(b)(7)(C)	Clinical Associate Professor/Director, Walter Lietner International Human Rights Clinic, Fordham Law School
119.		Student, Temple University
120.		Adjunct Professor of Immigration Law, University of Tennessee School of Law
121.		University of Chicago Law School
122.		Safe Harbor Project, Brooklyn Law School
123.		Executive Director, Brandworkers International
124.		Boston College Law School, Human Rights Program
125.		Past President, National Lawyers Guild-NYC Chapter
126.		Editor-in-Chief, Bender's Immigration Bulletin (LexisNexis)
127.		COO, Positive Anti-Crime Thrust, Inc.
128.		University of Miami School of Law
129.		Michigan State University College of Law
130.		American University, Washington College of Law
131.		University Chair in Human Rights and International Justice, Director, Center for Human rights and International Justice, Boston College
132.		Secular Jewish Humanists
133.		Harvard Law School; Harvard Immigration and Refugee Clinical Program
134.		Deborah J. Townsend, P.A.
135.		University of North Carolina Law School
136.		University of Virginia School of Law, International Human Rights Clinic and Human Rights Program

- 137. [REDACTED] Clinical Professor of Law, Immigration Clinic, University of Texas School of Law
- 138. [REDACTED] Judge John D. Wessel Distinguished Professor of Law, Loyola University New Orleans College of Law
- 139. [REDACTED] University of Maryland School of Law
- 140. [REDACTED] Henry G. Bryant Professor of Sociology and Public Affairs, Princeton University
- 141. [REDACTED] Activist, Cultural and Human Rights Consultant
- 142. [REDACTED] Sharswood Fellow in Law and Philosophy, University of Pennsylvania Law School, Philadelphia, PA
- 143. [REDACTED] Concerned Citizen, Wynnewood, PA
- 144. [REDACTED] Concerned Citizen
- 145. [REDACTED] Executive Director, Malcolm X Center for Self Determination
- 146. [REDACTED] Concerned Citizen
- 147. [REDACTED] Attorney at Law, New York, New York
- 148. [REDACTED] Associate Clinical Professor of Law, Director, Immigrant Rights Project, University of Tulsa College of Law
- 149. [REDACTED] University of Miami School of Law
- 150. [REDACTED] DePaul University School of Law
- 151. [REDACTED] Student, University of California at Los Angeles School of Law
- 152. [REDACTED] Harvard Immigration and Refugee Clinical Program
- 153. (b)(6),(b)(7)(C) [REDACTED] Associate Professor of Law, Director of the Immigration Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas
- 154. [REDACTED] Distinguished Professor of Law Emeritus, University of Tennessee College of Law
- 155. [REDACTED] Light of The World, Christian Tabernacle International Association
- 156. [REDACTED] National Coalition for the Homeless
- 157. [REDACTED] Northeastern University School of Law
- 158. [REDACTED] Concerned Citizen
- 159. [REDACTED] Secular Jewish Humanists
- 160. [REDACTED] Massachusetts Law Reform Institute
- 161. [REDACTED] University of Miami School of Law
- 162. [REDACTED] Greater Boston Legal Services
- 163. [REDACTED] Professor, Political Science Department, Northwestern University
- 164. [REDACTED] Lecturer in Residence, University of California, Berkeley School of Law
- 165. [REDACTED] Clinic Supervisor, Harvard Immigration and Refugee Clinic of Greater Boston Legal Services
- 166. [REDACTED] Professor of Law, CUNY School of Law
- 167. [REDACTED] Latin American and Caribbean Community Center

168.		Associate Professor of Law, Temple University, Beasley School of Law
169.		Director, Immigration Legal Services, Catholic Charities of the Archdiocese
170.		Henry F. Bonura, Jr. Distinguished Professor of Law, Loyola University College of Law
171.		President, International Association of Democratic Lawyers
172.		One Struggle South Florida
173.		Assistant Professor of Law, Western State University College of Law
174.		Professor of Law, University of New Mexico School of Law
175.		University of St. Thomas School of Law
176.		Concerned Citizen
177.		Executive Director, Presente.org
178.		Member of JustFaith community, St. Thomas the Apostle Church, Smyrna, GA
179.		Clinical Professor of Law and Director, Asylum and Human Rights Clinic, University of Connecticut School of Law
180.		Baumann Landau & Simon
181.		University of Miami School of Law, Health & Elder Law Clinic
182.		Citizen, Chicago, Illinois
183.		Executive Director, Four Freedoms Forum
184.	(b)(6),(b)(7)(C)	National Lawyers Guild Task Force on the Americas
185.		KINDRED Afro Americas Alliance
186.		Assistant Professor of Law, Loyola University New Orleans College of Law
187.		Clinical Professor of Law & Director, Center for Gender & Refugee Studies, University of California, Hastings College of the Law
188.		The Baker Defense Project, Jacksonville Area Legal Aid
189.		Director, You.Me.We., South Texas College of Law
190.		Clinical Professor, Lewis & Clark Law School
191.		la Student, University of California - Irvine
192.		Professor, University of California-Davis School of Law
193.		Director, Sexual Violence & Accountability Project, Human Rights Center, Berkeley Law
194.		Light of The World Christian Tabernacle International Association
195.		Director, Immigration and Human Rights Clinic, University of the District of Columbia
196.		Western New England College School of Law
197.		Professor of Law, St. Thomas University School of Law
198.		University of Kentucky, Department of Geography
199.		Concerned Citizen
200.		University of California, Los Angeles
201.		Esq. Alderman, 2nd Ward City of Evanston, IL

202		Social Justice Guild of the First Existentialist Congregation of Atlanta
203		Feldman Feldman & Associates, PC
204		Professor of Community-Cultural Psychology, Boston College/Lynch School of Education, Center for Human Rights & International Justice
205		Ferris Family Distinguished Professor of Law, Loyola University New Orleans College of Law
206		Light of The World Christian Tabernacle International Association
207		co Lawyers' Committee for Civil Rights Under Law
208		Executive Director, Legal Director, HIV & AIDS Legal Services Alliance
209		Professor of Clinical Law, Director of Clinics and Experiential Learning, University of Cincinnati College of Law
210		vaite New York University School of Law, Global Justice Clinic
211		Iverson, PhD School of Social Work, Indiana University Labor Studies Program
212		D. Concerned Citizen
213		Professor of Law, Thomas Jefferson School of Law
214		Concerned Citizen
215	(b)(6),(b)(7)(C)	University of Miami School of Law
216		Retired, National AFL-CIO, Director, Advocacy and Outreach, Samuel DeWitt Proctor Conference
217		Secular Jewish Humanists
218		Colombo, Hurd & Brandt, PI
219		Director, Immigration Clinic, St. Thomas University School of Law
220		s Loyola University New Orleans College of Law
221		University of Oregon School of Law
222		Concerned Citizen
223		r Fort Lauderdale High School
224		Citizen, Brooklyn, NY
225		Citizen, New Orleans, Louisiana
226		Concerned Citizen
227		New York State Interfaith Network for Immigration Reform
228		Operations Coordinator, Casa Marianella, Austin, Texas
229		Columbia Law School, Human Rights Institute
230		Immigration Law Offices of Patrice Dziire
231		elly Princeton University
232		New York University School of Law
233		Associate Professor, University of Denver Sturm College of Law
234		Associate Professor, University of Tennessee College of Law
235		Citizen, Montpelier Vermont

236.		Professor, Roger Williams University School of Law
237.		International Committee of the National Lawyers Guild
238.		City University of New York
239.		Assistant Professor of Law, Northeastern University School of Law
240.		Assistant Clinical Professor of Law, Suffolk Law School
241.		Attorney with the office of David R. Fletcher, P.A.
242.		ops, Esq. Casa Esperanza
243.		Associate Pastor for Justice and Witness, Congregational Church in Deerfield UCC
244.		Concerned Citizen
245.		Director, Notre Dame Legal Aid Clinic
246.		Professor of Sociology, Immigration Studies and Public Affairs, Baruch College School of Public Affairs and Sociology Department, Graduate Center, CUNY
247.		Yale Law School, Professor
248.		Retired Schoolteacher, East Baton Rouge Parish Schools
249.		ach Concerned Citizen
250.		Retired Citizen
251.		Citizen, New York, NY
252.		University of California, Irvine
253.		President, Women's City Club of New York
254.	(b)(6),(b)(7)(C)	Harvard Law School; Harvard Immigration and Refugee Clinical Program
255.		Southern Regional Education Board, Atlanta, Georgia
256.		Practice Associate Professor, Transnational Legal Clinic, University of Pennsylvania School of Law
257.		American Constitution Society, Cardozo Jewish Legal Society, University of Miami School of Law
258.		Attorney
259.		General Secretary, American Friends Service Committee
260.		Concerned Citizen
261.		Wynnewood, PA
262.	(b)(6),(b)(7)(C)	Clinical Professor and Director Center for Immigrants' Rights, Penn State Law
263.		Cornell Law School
264.		Immigration Policy Coordinator, Institute for Justice & Democracy in Haiti
265.		Public Interest Projects
266.		Robert M. Cover Fellow, Yale Law School
267.		Immigration and Refugee Advocate, Harvard Immigration and Refugee Clinical Program, Harvard Law School
268.		Master's Candidate Public Administration and Community Regional Planning, University of New Mexico
269.		Director of Strategic Partnerships, Applied Research Center
270.		Public Interest Projects

271.	(b)(6),(b)(7)(C)	D. U.S. Citizen, Atlanta, Georgia
272.		Coordinator, Foundation for Global Community
273.		Johns Hopkins University School of Public Health
274.		Mississippi Innocence Project, University of Mississippi School of Law
275.		Staff Attorney, Florida Legal Services, Inc.
276.		Faculty Supervisor, Immigration Justice Clinic, Pace University School of Law
277.		American Association of Jurists
278.		Student, University of California at Los Angeles School of Law
279.		The University of Dayton School of Law
280.		Maureen B. Cavanaugh Distinguished Faculty Scholar & Professor of Law, The Pennsylvania State University, Dickinson School of Law
281.		University of St. Thomas School of Law
282.		Center for Creative Activities
283.		FSU Center for the Advancement of Human Rights
284.		Afropunk LLC, New York, New York
285.		Program director, The Center For Pan Asian Community Services, Inc.

Talking Points For Inter-American Commission on Human Rights Working Meeting
“Deportation of Haitian Nationals”

March 26, 2011 – 9:00am to 9:45am

Kelly Ryan, Acting Deputy Assistant Secretary for Immigration and Border Security, U.S.
Department of Homeland Security

Introduction:

I am Kelly Ryan, the Acting Deputy Assistant Secretary for Immigration and Border Security at the Department of Homeland Security (DHS).

On behalf of DHS, I would to express my gratitude for this opportunity to present the views of the United States Government (USG) to the Commission with regard to the petition of the University of Miami School of Law Human Rights Clinic and Immigration Clinic, the Florida Immigrant Advocacy Center, Alternative Chance, the Center for Constitutional Rights, and the Loyola Law Clinic and Center for Social Justice (Petitioners) on behalf of (b)(6),(b)(7)(C)
(b)(6),(b)(7)(C) and other unnamed Haitian nationals facing deportation from the United States (named and unnamed beneficiaries or beneficiaries). The USG takes seriously its international human rights obligations and is committed to the protection and promotion of human rights both at home and abroad. We would like to take this opportunity to share our views and clarify the facts surrounding the removal of criminal aliens to Haiti.

As an initial matter, DHS would note that we are quite limited in the information that we may disclose today with regard to specific petitioners. The DHS policy regarding the application of the Privacy Act of 1974 (Privacy Act), the asylum confidentiality regulations, and statutory confidentiality requirements regarding specific applications for immigration benefits, strictly limits our disclosure of such information. Specific laws, regulations, and policies generally prohibit DHS’s disclosure of personal information contained in its records absent a waiver executed by the subject of the record. The Department takes these policy and legal limitations very seriously.

As noted in our written response to the petition, the U.S. Government seeks the Commission’s assistance in facilitating the execution of relevant privacy waivers by named beneficiaries identified by Petitioners in this matter, so that the Commission may timely address it with complete and accurate facts. Once privacy waivers are obtained, the United States stands ready to provide the Commission with timely factual information pertinent to this matter.

USG Humanitarian Efforts:

The USG has worked diligently with its international partners—public and private—to assist Haiti in its rescue, recovery, and rebuilding efforts following the January 12, 2010 earthquake. We are working, and will continue to work, with the Government of Haiti and our international partners on a broad array of efforts to meet both the immediate needs of vulnerable populations and to reduce vulnerabilities over the long term. Since January 2010, the U.S. government has provided \$1.1 billion in humanitarian relief assistance and \$406 million in recovery assistance. The United States has pledged an additional \$1.15 billion in future reconstruction funds.

DHS has made efforts to assist Haitians present in the United States, including designating Haiti for temporary protected status (TPS), allowing for temporary immigration relief for eligible Haitian nationals who were physically present in the United States as of January 12, 2010, temporarily suspending certain regulatory requirements to permit qualifying Haitian nonimmigrant students to obtain employment authorization, granting humanitarian parole to Haitian orphans, and releasing and granting discretionary stays of removal to many Haitians with final removal orders.

On January 13, 2010, DHS's U.S. Immigration and Customs Enforcement (ICE) temporarily halted its removals to Haiti of aliens with final orders of removal in the wake of the earthquake and the resulting humanitarian crisis. After carefully considering the conditions in Haiti, the USG and international humanitarian relief and reconstruction efforts, the threat to public safety, and the need to enforce U.S. immigration laws, the USG decided to resume the removal of criminal aliens to Haiti. The decision to temporarily suspend removals to Haiti in the aftermath of the earthquake was made for humanitarian reasons and was vital to enabling U.S. and international relief efforts to proceed.

Resumption of Removals to Haiti:

The suspension of removals to Haiti resulted in DHS facing the difficult dilemma of releasing convicted criminals within the United States or resuming removals to Haiti since U.S. Supreme Court precedent limits the legal authority to continue to detain aliens whose removal is not reasonably foreseeable.

Since the earthquake, hundreds of detained Haitians were released from ICE custody, including a significant number of Haitian nationals who had committed serious crimes and whose release posed significant threats to the American public. In fact, data shows that some of the released criminal Haitians continue to commit crimes after release, including sex offense against a child, multiple possession and/or sale of marijuana and cocaine, criminal trespass, larceny, driving under the influence of alcohol, and assault.

Against this backdrop and consistent with our domestic immigration enforcement priorities, DHS resumed removals on January 20, 2011. The decision to resume removals of a limited number of Haitian nationals was made only after careful deliberation, which included consideration of potential alternatives. Considering the potential threat posed to public safety by the release of certain aliens who were convicted of, or pled guilty or no contest to, crimes, or who pose a threat

to national security, the USG concluded that the resumption of limited removals was necessary and appropriate. This policy is limited to aliens with a final order of removal who pose a threat to the public safety given their previous serious criminal offense or history. Haitian nationals facing removal over the coming year will be individuals convicted of a range of serious crimes such as homicide, rape, sexual assault, robbery, sex offense against children, aggravated assault, assault, kidnapping, false imprisonment, sale of cocaine, smuggling cocaine, sale of marijuana, larceny, and other offenses. At this time, ICE is not removing non-criminal aliens, aliens with a pending application for TPS, aliens who have been granted TPS, or aliens who are otherwise present in the United States in a lawful status.

Of particular note:

- When selecting criminal deportees to remove to Haiti, ICE has limited the removal of Haitians with serious medical conditions and made any medical issues known to the Government of Haiti prior to removal;
- Of the 27 Haitians removed to Haiti since the earthquake, none were held in Haitian prisons for more than 11 days; and
- Of the 27 Haitians removed to Haiti since the earthquake, none had pending motions to reopen their immigration removal proceedings. In all cases, including these, ICE provides each alien the opportunity to present evidence as to any legal impediment or other evidence that may prevent his or her removal.

Haitian cases are carefully reviewed on an individual case-by-case basis to determine whether release, continued detention, or removal is appropriate.

Public Engagement Regarding Resumption of Removals:

Despite conflicting allegations made by the Petitioners that “ICE has remained decidedly silent about the decision to resume deportation[s] [.]” ICE publicly announced on December 9, 2010 plans to end its suspension of Haitian removals by resuming limited removals of convicted criminal Haitian nationals to Haiti. Further, ICE posted a draft of the removal policy on its website from March 7 – 18, 2011, during which period concerned individuals and organizations could submit comments on the policy. DHS, working with the Department of State and other partners in the Federal government, is reviewing and processing those comments. Based on that review, ICE will generate a final version of the removal policy, which will then be posted on its website.

Standards of U.S. Immigration Detention:

The Petitioners make broad allegations critical of the DHS immigration detention system. The Petitioners assert, among other things, that detainees are held in remote areas, do not have reasonable access to telephones, and do not have access to adequate medical care. DHS takes detention issues very seriously as evinced by the policies and procedures in place including providing telephone access, visitation, medical care, and protections for vulnerable populations, as well as by limiting transfers between detention facilities.



News Releases

APRIL 11, 2011

WASHINGTON, DC

Policy for resumed removals to Haiti

Following the tragic January 12, 2010 earthquake in Haiti, U.S. Immigration and Customs Enforcement (ICE) temporarily ceased removing criminal Haitian nationals to Haiti. Pursuant to the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), ICE has the presumptive authority to detain aliens with final orders of removal for up to 180 days. After six months, with limited exceptions, continued detention is no longer presumptively lawful and ICE may extend the detention of aliens with final orders of removal only when their removal is significantly likely in the reasonably foreseeable future. The moratorium on removals to Haiti therefore meant that ICE was required to release some detained Haitian nationals with significant criminal records into U.S. communities, which in turn poses a significant threat to the American public. As a result, after a year of suspended removals, the U.S. government made the difficult decision to restart removals of a limited group of Haitian nationals to ensure the safety of U.S. communities.

Going forward, in coordination with the Government of Haiti and the U.S. Department of State, ICE is resuming limited removal of convicted criminal Haitians with final orders of removal. The removal of Haitian nationals will be conducted in a manner that comports with the March 2, 2011 ICE memo entitled *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* which prioritizes the removal of aliens with final orders who pose a threat to public safety. Consistent with that memo, ICE will prioritize the removal of Level 1 and Level 2 offenders. Removals will be guided by that memorandum's Section D, "Prosecutorial Discretion" which focuses on the exercise of sound judgment and discretion in exercising decision making with respect to these priorities. At this time, ICE is not removing non-criminal Haitian nationals (unless they are determined to be a significant national security threat). Haitians who have pending applications for temporary protected status (TPS) are not subject to removal. Individuals who have been convicted of any felony as defined in 8 C.F.R. §244.1 are not eligible for TPS, and, as a result, an application for TPS from such an individual will not prevent removal. ICE also will not remove any Haitian national who has TPS or is otherwise present in the United States in a lawful status.

When prioritizing aliens for removal, ICE will make decisions on individuals to remove through the consideration of adverse factors, such as the severity, number of convictions, and dates since convictions, and balance these against any equities of the Haitian national, such as duration of residence in the United States, family ties, or significant medical issues. In certain cases, where there are compelling medical, humanitarian, or other relevant factors, supervised release or other alternatives to detention programs may be appropriate. ICE will minimize transferring Haitian nationals to remote facilities to the greatest degree possible, and, where possible, detain individuals in facilities close to family and representation, except to facilitate the actual removal process.

ICE and the Department of State have been working with the Government of Haiti and other key partners to resume removals in as safe, humane, and minimally disruptive a manner as possible and to develop a comprehensive reintegration strategy that encompasses a range of services for returned Haitians to smooth their transition into Haitian society, including healthcare assistance and skills training to enhance employment prospects.

The resumption of removals to Haiti will continue to take place in a measured manner with a limited number of eligible aliens removed to Haiti each month, addressing the public safety needs of both the United States and Haiti.

Information for Prospective Adoptive Parents Who Have Been Matched to Children in Haiti and Whose Prospective Adoptive Children Are Being Granted Humanitarian Parole

When the child you are planning to adopt arrives in the United States, he or she will be met by federal immigration officials. If the Department of Homeland Security (DHS) determines that you are the legal guardian of the child, as would be the case if a court has issued you a final adoption decree, then she or he will be released to you once we have verified all of the parties' identities and statuses.

If DHS does not make such a determination, then the child cannot automatically or immediately be released to you. However, as described below, prospective adoptive parents can request that such children be released into their care.

Process for Applying to Have a Child Released to Your Care

Children who are coming from Haiti who have been matched with an adoptive family but who do not yet have legal guardians are placed in the custody of the Federal government, and are the responsibility of the Department of Health and Human Services' Office of Refugee Resettlement (ORR).

As a prospective adoptive parent, you may request that the child you plan to adopt be released from ORR to your care as a "sponsor." You would serve as a temporary custodian for the child while your adoption application process is finalized.

You will be asked to complete a "Family Reunification Packet" found at: www.acf.hhs.gov/programs/orr (look on the right under "What's New"). If you are unable to download the documents, you can request them from HHS staff (or staff of private service providers under contract with HHS) who will be available at the airport when the flight arrives in most cases. In most cases, you will complete the paperwork at the airport.

(b)(6),(b)(7)(C)

You may also contact ORR at 202-4[] to request the documents or to ask any questions you may have.

ORR will review information in your adoption file to ensure that a criminal background check, fingerprints, and home study have been completed and to verify that you have been matched to this particular child. To ensure the process runs smoothly at the airport, we encourage you to bring these materials and other information related to your adoption with you.

We expect that most prospective adoptive parents will be approved as sponsors within a day or so of the child arriving in the United States, though many factors can affect how quickly the process can be completed. If you, as the prospective adoptive parent, are approved for temporary custody, then the child can be released to you. ORR cannot release the child to you, however, until this process is complete. If any issue arises that

causes a delay in this process, please be assured that your child will be well cared for under ORR supervision at an organization skilled in providing temporary care for children, and that barring any exceptional safety concerns, you will be able to visit the child at that location.

We understand that you are anxious to be united with the child whom you intend to adopt. Please understand that these procedures are critical safeguards to ensure that children whose adoptions are not yet finalized, and who do not yet have legal guardians, are being placed in homes that are prepared to care for them in the meantime. We will do everything we can to make this process go as quickly and smoothly as possible, and appreciate your patience.

TO THE HONORABLE MEMBERS OF THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES:

REQUEST BY THE UNIVERSITY OF MIAMI HUMAN RIGHTS CLINIC, THE
UNIVERSITY OF MIAMI IMMIGRATION CLINIC, THE FLORIDA IMMIGRANT
ADVOCACY CENTER (FIAC), ALTERNATIVE CHANCE, THE CENTER FOR
CONSTITUTIONAL RIGHTS (CCR), AND LOYOLA LAW CLINIC & CENTER FOR
SOCIAL JUSTICE

FOR PRECAUTIONARY MEASURES UNDER ARTICLE 25(2) OF THE COMMISSION'S
RULES OF PROCEDURE, AGAINST
THE UNITED STATES OF AMERICA
ON BEHALF OF:

(b)(6),(b)(7)(C)

AND OTHER SIMILARLY-SITUATED HAITIAN NATIONALS SUBJECT TO
IMMEDIATE DEPORTATION BY THE UNITED STATES

Submitted under the provisions of Article 23 of the Commission's Rules of Procedure by
advocates for the Petitioners:

(b)(6),(b)(7)(C)

Human Rights Clinic
University of Miami School of Law

(b)(6),(b)(7)(C)

Immigration Clinic
University of Miami School of Law

(b)(6),(b)(7)(C)

Center for Constitutional Rights

(b)(6),(b)(7)(C)

Alternative Chance

(b)(6),(b)(7)(C)

Florida Immigrant Advocacy Center

(b)(6),(b)(7)(C)

Loyola Law Clinic & Center for Social
Justice

I. INTRODUCTION

The University of Miami School of Law Human Rights Clinic and Immigration Clinic, The Florida Immigrant Advocacy Center (FIAC), Alternative Chance, The Center for Constitutional Rights (CCR), and Loyola Law Clinic and Center for Social Justice request precautionary measures, under Article 25 of the Rules of Procedure of the Inter-American

(b)(6),(b)(7)(C) Commission on Human Rights, on behalf of [REDACTED]

(b)(6),(b)(7)(C) [REDACTED] as well as all similarly-situated detained Haitian nationals who have final orders of removal from the United States immigration authorities based on criminal offenses and who face imminent and forcible deportation to Haiti.¹ In accordance with Art. 28(i) and Art. 33 of the Rules of Procedure of this Commission, no claim contained within this petition has been submitted pursuant to another procedure before an international governmental organization of which the United States is a member.²

¹ Throughout this Petition, the named and unnamed Petitioners will collectively be referred to as "Petitioners."

(b)(6),(b)(7)(C) ² Undersigned advocates for Petitioners are aware that a similarly-situated individual, Paul Pierre, has filed for precautionary measures with this Commission. *Paul Pierre v. United States*, Inter-Am. C.H.R., Case No. P-1431-08 (filed December 6, 2008). Undersigned advocate [REDACTED] is representing Mr. Pierre in his case before the Commission. Mr. Pierre's case was filed in December 2008 and is still pending. Mr. Pierre, like the Petitioners here, has been detained by U.S. immigration authorities and is scheduled for imminent deportation. The Undersigned urge the Commission to grant both Mr. Pierre's request for precautionary measures as well as the instant request filed by Petitioners.

II. OVERVIEW: BACKGROUND AND CONTEXT

The January 12, 2010 massive earthquake in Port-au-Prince, Haiti left over 200,000 Haitians dead and 1.2 million more displaced and homeless. One year later, the serious humanitarian crisis in Haiti not only persists but has worsened. The recent cholera epidemic, combined with contested elections, severe street violence and social unrest, has sent Haiti into a tailspin. The country is experiencing a public health and humanitarian crisis of epic proportions.³

Notwithstanding the continuing catastrophe in Haiti, Immigration and Customs Enforcement (ICE) announced on December 9, 2010 to a small group of community-based organizations and legal aid groups that it was (1) lifting a prior ban on deportations to Haiti for individuals with criminal convictions, and (2) ending its policy of releasing detainees with orders of removal after 90 days.⁴ The moratorium was one of a number of humanitarian measures that

³Secretary General Ban Ki Moon, Remarks to the General Assembly, UNITED NATIONS NEWS SERVICE. (Dec. 3, 2010), available at http://www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=1025 (last visited Jan. 6, 2011) (“The challenges arising from the January 12 earthquake – enormous as they were already -- have been compounded by the needs arising from the passage of Hurricane Tomas, the cholera outbreak and increasing political tensions.”). The Pan-American Health Organization expects 650,000 new cholera victims over the next six months, meaning that 8.3% of the total Haitian population is expected to have contracted cholera by June 2011 – meaning another 23,000 deaths are expected in the next 6 months. See also Richard Knox, Doctors Urge Cholera Vaccine for Haiti, Neighbors: NPR, NAT’L PUB. RADIO (December 10, 2010), available at <http://www.npr.org/2010/12/10/131950133/doctors-urge-cholera-vaccine-for-haiti-neighbors> (last visited Jan. 6, 2011) (The epidemic has reportedly spread to neighboring Dominican Republic, and experts believe that Haiti will continue to suffer from the outbreak for several years); IACHR Expresses Concern Over Situation in Camps for Displaced Persons in Haiti, No. 114/10, IACHR HOME (November 10, 2010), available at <http://www.cidh.oas.org/Comunicados/English/2010/115-10eng.htm> (last visited Jan. 6, 2011) (“An estimated 1.4 million people are still living in camps for internally displaced persons with limited access to food water and hygienic facilities.”); UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (OCHA), Haiti Earthquake Situation Report #34, 1-2 (Apr. 16, 2010); Liesl Gerntholtz, Sexual Violence: Help Haiti's Women, Human Rights Watch, Mar. 9, 2010, available at <http://www.hrw.org/en/news/2010/03/10/haitis-rape-crisis> (last visited Jan. 6, 2011).

⁴Jennifer Kay, Deportations Loom as Deadline for Haitians nears, Miami Herald (Dec. 20, 2010) available at: <http://www.deseretnews.com/article/700093504/Deportations-loom-as-deadline-for-Haitians-nears.html> (351 deportees being held in Louisiana with ICE expecting to deport 700 in 2011) (Last visited Jan. 4, 2011); Frances Robles and Nadege Charles, Deportations of Haitian Convicts Set to Resume, MIAMI HERALD.COM (Dec. 21, 2010), available at <http://www.miamiherald.com/2010/12/21/1982902/deportations-of-haitian-convicts.html#ixzz1A5H8poJI> (last visited Jan. 6, 2011) (“Some 100 Haitians in South Florida had their deportations placed on hold after a Jan. 12 earthquake that killed an estimated 300,000 people. But recently they

the U.S. Government had adopted until conditions improve in Haiti. The other humanitarian measures included Temporary Protected Status (TPS) designation to Haitian nationals living in the United States prior to the earthquake,⁵ humanitarian parole for certain orphans,⁶ and deferred action for qualifying individuals who arrived after the earthquake.⁷

It is ironic that on December 9, 2010, the same day ICE lifted its ban on deportations, the U.S. State Department issued a travel warning discouraging any nonessential travel to Haiti on account of the situation of “continued high crime, the cholera outbreak, frequent disturbances in Port-au-Prince and in provincial cities, and limited police protection and access to medical care.”⁸ Authorities immediately began rounding up Haitians from their homes in communities across the country, detaining hundreds of individuals. ICE is holding Haitians in various

were rounded up, held at the Krome Detention Center in West Miami-Dade and then last week transferred to three facilities in Louisiana. They make up about a third of the 351 ex-convicts nationwide whose deportations to Haiti were suspended after a 7.0-magnitude earthquake rocked the country.”).

⁵ TPS is a temporary immigration status granted to eligible nationals of Haiti, or persons without nationality who last lived in Haiti. Haitian TPS beneficiaries are allowed to both remain and legally work in the U.S. for an 18-month period beginning January 21, 2010. Pending extension by the Secretary of Homeland Security, TPS status will expire on July 22, 2011. *See* Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (Jan. 21, 2010); Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals, U.S. Dep’t of Homeland Security (Jan. 15, 2010), available at http://www.dhs.gov/ynews/releases/pr_1263595952516.shtm (last visited Jan. 6, 2011).

⁶ Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans, U.S. Dep’t of Homeland Security (Jan. 18, 2010), available at http://www.dhs.gov/ynews/releases/pr_1263861907258.shtm (last visited Jan. 6, 2011). Advocates had also asked the U.S. government to take additional steps to address the scope of the current humanitarian crisis in Haiti by granting humanitarian parole to Haitians in Haiti with family members residing in the U.S. or with urgent medical needs. The U.S. government, however, has refused to exercise its parole authority for these groups of Haitians. *See generally* Haiti Advocacy Working Group (HAWG), available at http://ijdh.org/wordpress/wp-content/uploads/2010/07/HAWG_Immigration_FINAL.pdf (last visited Jan. 6, 2011).

⁷ “Refugees Live Uncertain Existence In a Maze of Immigration Laws,” Miami Herald (July 7, 2010), available at <http://www.miamiherald.com/2010/07/11/v-fullstory/1726132/refugees-live-uncertain-existence.html#> (last visited Jan. 5, 2011).

⁸ U.S. State Department, Bureau of Consular Affairs, Travel Warning: Haiti (Dec. 9, 2010), available at http://travel.state.gov/travel/eis_pa_tw/tw/tw_4632.html (last visited Jan. 6, 2011). *See also* Letter From Vincent Warren, Executive Director Center for Constitutional Rights, and Bill Quigley, Legal Director Center for Constitutional Rights, to President Barack Obama (Dec. 16, 2010), available at http://www.ccrjustice.org/files/FINAL%20Letter%20to%20President_Haiti%20Deportations%20%282%29.pdf (last visited Jan. 5, 2011).

facilities, including Hudson County Jail in New York and T. Don Hutto Residential Center in Taylor, Texas. ICE transferred a large number male detainees from the Krome Service Processing Center in Miami, Florida, where they had access to their families and a large nearby Haitian community, to three remote jails in Basile, Lasalle, and Waterproof, Louisiana, effectively cutting them off from their families, communities, and advocates.⁹ In at least one case, guards assaulted a detainee who peacefully resisted transfer.¹⁰

According to U.S. immigration authorities, the detained groups are slated for deportation to Haiti in mid-January 2011.¹¹ On January 5, 2011, some Petitioners detained at Tensas Parish Correctional Center in Waterproof, Louisiana were fingerprinted in apparent preparation for deportation. Petitioners have not only been detached from their families and lives in the United States but also face indefinite and arbitrary detention in squalid detention facilities upon their arrival in Haiti. Under a longstanding policy of the Haitian government, explained below, all deportees with criminal records are detained in Haitian police station holding cells upon arrival in Haiti under conditions that have been widely documented as inhumane.

⁹ There are only six nonprofit immigration attorneys in Louisiana. Of the 77 attorneys who are members of the American Immigration Lawyers Association, 55 are located in New Orleans. Moreover, unlike other cities in the United States, New Orleans has only a small community of private attorneys willing to accept pro bono immigration cases.

(b)(6),(b)(7)(C) ¹⁰ [redacted] Decl., Ex. A-1 ¶ 8.

¹¹ Frances Robles and Nadege Charles, *Deportations of Haitian Convicts Set to Resume*, MIAMI HERALD.COM (Dec. 21, 2010), available at <http://www.miamiherald.com/2010/12/21/1982902/deportations-of-haitian-convicts.html#ixzz1A5H8poJI> (last visited Jan. 6, 2011) (“Some 100 Haitians in South Florida had their deportations placed on hold after a Jan. 12 earthquake that killed an estimated 300,000 people. But recently they were rounded up, held at the Krome Detention Center in West Miami-Dade and then last week transferred to three facilities in Louisiana. They make up about a third of the 351 ex-convicts nationwide whose deportations to Haiti were suspended after a 7.0-magnitude earthquake rocked the country.”). This timing has been confirmed by advocates’ conversations with U.S. immigration officials.

Despite pleas to halt the removal program, ICE quietly continues to move forward with the planned deportations. Public pressure, including letters and op-eds, has fallen on deaf ears.¹² Family members and advocates for these Haitians have reported continued round-ups or threats thereof throughout December 2010 and early January 2011.

Meanwhile, ICE has remained decidedly silent about the decision to resume deportation. ICE's website contains no information concerning this systematic removal of Haitians from U.S.

¹² U.S. Gov't Resumes Deportations to Haiti Amid Spiraling Cholera Outbreak and Worsening Humanitarian Situation, JSF Post (Jan. 1, 2011), available at <http://www.jsf-post.com/2011/01/01/u-s-government-resumes-deportations-to-haiti-amid-spiraling-cholera-outbreak-and-worsening-humanitarian-situation/> (last visited Jan. 4, 2011); CCR Sends Letter to Obama Raising Concerns Over Immediate Plans to Resume Deportations to Haiti Amid Spiraling Cholera Outbreak, Center For Constitutional Rights (Dec. 16, 2010), available at <http://www.ccrjustice.org/newsroom/press-releases/ccr-sends-letter-obama-raising-concerns-over-immediate-plans-resume-deportat> (last visited Jan. 4, 2010); Letter from Vincent Warren, Executive Director, Center for Constitutional Rights and Bill Quigley, Legal Director, Center for Constitutional Rights to President Barack Obama, December 16, 2010, available at [http://www.ccrjustice.org/files/FINAL%20Letter%20to%20President_Haiti%20Deportations%20\(2\).pdf](http://www.ccrjustice.org/files/FINAL%20Letter%20to%20President_Haiti%20Deportations%20(2).pdf) (last visited Jan. 4, 2011); Rights Groups Denounce U.S. Decision to Resume Deportations to Haiti Amid Cholera Outbreak and Worsening Humanitarian Situation, Center for Constitutional Rights (Dec. 13, 2010), <http://www.ccrjustice.org/newsroom/press-releases/rights-groups-denounce-u.s.-government's-decision-resume-some-deportations-h> (last visited Jan. 4, 2011); Brandon Hensler, ACLU and Congresswoman-elect Frederica Wilson call on Obama Administration to Avert "Human Rights Disaster," Halt Deportation of Haitian Nationals, ACLU of Florida (Dec. 29, 2010), http://www.aclufl.org/news_events/index.cfm?action=viewRelease&emailAlertID=3886). Letter from Laura Murphy, ACLU Washington Legislative Director, and Howard Simon, Executive Director American Civil Liberties Union of Florida, to President Barack Obama (Dec. 29, 2010), available at http://www.aclu.org/files/assets/ACLU_Haitian_Letter_12-29-10_final.pdf; U.S. Government Resumes Deportations To Haiti Amid Spiraling Cholera Outbreak And Worsening Humanitarian Situation, Institute For Justice & Democracy In Haiti (Dec. 14, 2010), <http://ijdh.org/archives/16072> (Last Visited January 4, 2011); Michelle Karshan, Being Deported To Post Earthquake Haiti, Alternative Chance/Chans Alternatif (Dec. 15, 2010), <http://www.alternativechance.org/> (Last Visited January 4, 2011); Imam Mahdi Bray, Mas Freedom Condems U.S. Gov't's Decision To Resume Deportations To Haiti Amid Soaring Cholera Outbreak And Deteriorating Humanitarian Conditions, The Crescent Report (Dec. 14, 2010), <http://MahdiBray.Net/2010/12/15/> (Last Visited Jan. 4, 2011); Letter From @AFSC_Org To President Obama On Haitian Deportations, Detention Watch Network (Dec. 20, 2010), <http://Detentionwatchnetwork.wordpress.com/2010/12/23/Letter-From-Afsc-Org-To-President-Obama-On-Haitian-Deportations/> (Last Visited Jan. 4, 2010); Letter From Shan Cretin, American Friends Service Committee, To President Obama (Dec. 21, 2010), Available At: http://afsc.org/sites/afsc.civicactions.net/files/documents/Letter_To_President_Obama_Re_Haiti_Deportation_20Dec2010.Pdf (Last Visited: Jan. 4, 2010); Immigrant Advocates Call To Halt Haitian Deportations, CBS News Miami (Dec. 29, 2010) <http://Miami.Cbslocal.Com/2010/12/29/Immigrant-Advocates-Call-For-Halt-Of-Haitian-Deportations/>. (Last Visited: Jan. 4, 2010).

soil.¹³ There is very little information in the public domain. The dearth of public information only contributes to the terror that family members feel at the prospect of losing their parents, children, siblings, and other loved ones to a dangerous fate in Haiti. ICE's announced deportation date of mid-January 2011 gives Petitioners, their families, and their communities virtually no opportunity to seek reversal of the decision to lift the deportation moratorium and no possibility of preparing for the serious consequences of deportation.

III. THE FIVE NAMED PETITIONERS, THEIR FAMILIES, AND THE LARGER GROUP THEY REPRESENT

As detailed in the stories below and in the declaration of Romy Lerner, a supervising attorney at Florida Immigrant Advocacy Center, (Ex. A-1), the recent roundups, detention, and announced deportations of Petitioners have created fear, confusion, and major life disruptions for Petitioners, their families, and Haitian communities in the United States.

A. Named Petitioner [redacted]

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

[redacted] is a 61-year-old Haitian man who has been living as a lawful permanent resident in the United States since 1967. [redacted] fled Haiti after his family was attacked for political reasons. He has five United States citizen children for whom he was the primary caretaker after his marriage ended in divorce approximately ten years ago. He worked as a real estate investor and is also an accomplished musician. [redacted] is currently detained at Tensas Parish Detention Center in Waterproof, Louisiana, after having been transferred from Krome Service Processing Center in Miami, Florida – a detention facility near his residence in Boca Raton, Florida. He has a final order of removal from August 2010 based upon criminal

(b)(6),(b)(7)(C)

¹³ See ICE, News Releases-Enforcement & Removal, 1/8/2008–current, available at <http://www.ice.gov/news/releases/index.htm> (last visited Jan. 6, 2011).

(b)(6),(b)(7)(C)

¹⁴ [redacted] Decl., Ex. A-1 ¶¶ 13-17.

convictions for theft and racketeering offenses relating to his business. For reasons set forth below, he therefore faces immediate incarceration by Haitian authorities if he is deported to Haiti.

(b)(6),(b)(7)(C) [redacted] suffers from a number of serious medical conditions, including diabetes, rapid heartbeat, high blood pressure, and anxiety. To keep his diabetes under control, [redacted] takes (b)(6),(b)(7)(C) the medication Metformin. He suffers from the related condition of low platelets, which requires that he get a blood test every two months and that he take steroids when his platelet count is too (b)(6),(b)(7)(C) low. [redacted] has not been getting his required diabetic diet in Tensas Parish Detention Center.

As his only remaining relatives in Haiti were killed in the January 2010 earthquake, Mr.

(b)(6),(b)(7)(C) [redacted] has no family in Haiti to bring food and water to him in jail or to help secure his release.

Given the current cholera epidemic and the situation of general unrest in Haiti, [redacted] lack (b)(6),(b)(7)(C) of family ties could have devastating consequences for his life, health, and well-being.

(b)(6),(b)(7)(C) **B. Named Petitioner** [redacted] 15

(b)(6),(b)(7)(C) [redacted] is a 30-year-old Haitian man who came to the United States as a lawful permanent resident in 1999 at the age of 19. U.S. immigration authorities are detaining Mr.

(b)(6),(b)(7)(C) [redacted] at Tensas Parish Detention Center in Waterproof, Louisiana, after having transferred him there from Krome Service Processing Center in Miami, Florida. Prior to being detained, Mr.

(b)(6),(b)(7)(C) [redacted] resided in Florida with his 6-year-old son, a U.S. citizen, and the mother of his son, a lawful permanent resident.

(b)(6),(b)(7)(C) [redacted] son suffers from Canavan, a rare leukodystrophy disease afflicting children that is degenerative. There is no cure for the disease. Treatment is limited to supportive care with symptoms progressing until the child's death in their early teens. Children without

(b)(6),(b)(7)(C) 15 [redacted] Decl., Ex. A-1 ¶¶ 18-22.

care have a life expectancy of only 4 to 5 years. [redacted] son does not walk or talk, [redacted] (b)(6),(b)(7)(C)
suffers from seizures, and is on a feeding tube. A nurse helps [redacted] and his partner take [redacted] (b)(6),(b)(7)(C)
care of his son because of the severity of his condition. Since [redacted] has been away from [redacted] (b)(6),(b)(7)(C)
home, his son has experienced more seizures.

(b)(6),(b)(7)(C) An immigration judge ordered [redacted] removed on September 21, 2010 on
account of convictions for burglary of an unoccupied dwelling and offenses involving theft and
dealing in stolen property. Thus, like the other Petitioners, [redacted] faces immediate [redacted] (b)(6),(b)(7)(C)
incarceration by the Haitian authorities upon his deportation to Haiti. He lost in the earthquake
the only two remaining family members he had in Haiti: his mother's brother and sister. Mr.
(b)(6),(b)(7)(C) [redacted] would therefore have no one to bring him food and water in the Haitian jail or help to
attempt to secure his release from detention.

(b)(6),(b)(7)(C) **C. Named Petitioner** [redacted] ¹⁶

(b)(6),(b)(7)(C) [redacted] is 43 years old and arrived in the United States as a lawful permanent
resident in 1999. He is detained at Tensas Parish Detention Center in Waterproof, Louisiana
after having been transferred from Krome Service Processing Center in Miami, Florida. A

(b)(6),(b)(7)(C) Florida resident, [redacted] has four children, ages 22, 19, 16, and 12, and a 2-year-old
grandchild, all of whom are lawful permanent residents or U.S. citizens. Since their mother
(b)(6),(b)(7)(C) passed away in 2000, [redacted] has been a single father and the sole financial provider for his
children. Since his detention his children have fallen months behind on their rent.

(b)(6),(b)(7)(C) [redacted] was ordered removed on September 7, 2010 based on his conviction for two
counts of drug possession with intent to sell, for which he was sentenced to a total of six months

(b)(6),(b)(7)(C) in prison. [redacted] has no family or friends in Haiti. If he were deported to Haiti and

(b)(6),(b)(7)(C) ¹⁶ [redacted] Decl., Ex. A-1 ¶¶22-26.

(b)(6),(b)(7)(C) **E. Named Petitioner** [redacted] 19

(b)(6),(b)(7)(C) [redacted] is a 27-year-old man from Haiti who has lived in the United States as a lawful permanent resident since 2001. He is detained at Tensas Parish Detention Center in Waterproof, Louisiana after having been transferred from Florida. [redacted] had been (b)(6),(b)(7)(C) supporting his five-year-old son, a U.S. citizen, and his father, a lawful permanent resident, by working for National Car Rental. On February 23, 2010, [redacted] received a final order of (b)(6),(b)(7)(C) removal based upon a conviction for falsely claiming to be a U.S. citizen, in connection with an application to register to vote. He also has criminal convictions for misdemeanor battery and stealing a bookbag. Like the other petitioners, he faces incarceration upon arrival in Haiti.

(b)(6),(b)(7)(C) [redacted] has suffered from schizophrenia since he was a teenager and has been prescribed the antipsychotic medication Seroquel. He fears living without his medication because he hears voices, talks to himself, and cries a lot. [redacted] is terrified of being deported (b)(6),(b)(7)(C) to Haiti and jailed because he is aware that detainees do not receive medication or medical treatment. He has no family in Haiti to help him deal with his serious medical condition, bring him food while he is in jail, and advocate for his release. [redacted] only relative in Haiti, his (b)(6),(b)(7)(C) aunt, died in the earthquake.

F. The Unnamed Petitioners

(b)(6),(b)(7)(C) The stories of Petitioners [redacted] reflect the stories of the larger group of Petitioners represented in this request for precautionary measures. These Petitioners may be found in the custody of the United States in the system of U.S. ICE detention, including in the Hudson County Jail in Kearny, New Jersey; Baker County Jail, in Macclenny,

(b)(6),(b)(7)(C) 19 [redacted] Decl., Ex. A-1 ¶31-33.

Florida; Tensas Parish Detention Center in Waterproof, Louisiana; South Louisiana Correctional Center in Basile, Louisiana; and LaSalle Detention Center in Jena, Louisiana.²⁰

The unnamed Petitioners include men and women; individuals with acute and chronic illnesses and mental disabilities; the elderly; and former asylum seekers. The majority of the unnamed Petitioners have lived as lawful permanent residents in the United States for many years and possess extensive family, economic, and community ties to this country.²¹ Some suffer from serious mental health and/or other medical conditions that will go untreated and become life-threatening upon removal to Haiti.²²

U.S. immigration law, however, largely precludes immigration judges from considering the effects of deportation on these immigrants and their families due to the broad categories of crimes which render non-citizens ineligible for judicial review of their removal charges and narrow judicial interpretations of the Convention Against Torture. *See supra*, Part IV.D. As a result, the immigration judges issued removal orders against most of the Haitian nationals at issue in this petition after only short hearings.

IV. HISTORICAL, LEGAL, AND POLITICAL CONTEXT

A. The History of U.S. Policy Towards Haitian Migrants

The decision by ICE to resume deportations of Haitian nationals must also be understood in the context of a long history of the U.S. government forcing Haitians into harm's way.²³ The

²⁰ Decl., Ex. A-1 ¶¶ 8, 13, 18, 23, 27.

²¹ Decl., Ex. A-1 ¶¶ 4, 11, 13-15, 18, 20, 23, 25.

²² Decl., Ex. A-1 ¶¶ 11, 17, 33.

²³ *See* Florida Immigrant Advocacy Center, *Haitian Refugees: A People In Search Of Hope* 1-2 (2004), available at <http://www.fiacfla.org/reports/HaitianRefugeesAPeopleInSearchofHope.pdf> (noting a history of discrimination against Haitian refugees that spans four decades) (last visited Jan. 6, 2011).

(b)(6),(b)(7)(C)



first Haitian “boatpeople” seeking protection from persecution arrived in the United States in September 1963. All twenty-five refugees in the group were fleeing Haiti’s ruthless, U.S.-supported dictator, François (“Papa Doc”) Duvalier. In heavily criticized decisions, all were denied asylum and deported.²⁴ Harsh measures and tactics continued through the 1960s, 70s and 80s to force their return to Haiti or keep them locked up as a group, resulting in a grant of asylum for less than two percent of Haitians who sought it between 1980 and 1991.²⁵ Later, following the September 1991 coup that deposed democratically elected Haitian President Jean Bertrand Aristide, the tide of refugees swelled. The United States continued interdicting Haitian asylum-seekers at sea, only pausing repatriations for less than three months.²⁶ Whereas the United States had previously brought Haitians whom interviewers deemed to have a “credible fear” of

²⁴ Cheryl Little, *United States Haitian Policy: A History of Discrimination*, 10 N.Y.L. Sch. J. Hum. Rts. 269, 270 (1993) (“The fundamental principles of refugee protection have been abandoned time and again in favor of returning Haitians to a country where its people are routinely victimized.”).

²⁵ The United States Court of Appeals for the Eleventh Circuit, or southeastern United States, found that statistical data on individual immigration detention decisions demonstrated a “stark pattern of discrimination” against Haitians. *Jean v. Nelson*, 711 F.2d 1455, 1487 (11th Cir. 1983). Professor Carlos Ortiz Miranda has written that throughout the 1980s and the first half of the 1990s, “the United States domestic and foreign policy regarding Haitian boatpeople and refugees ... had three objectives: (1) to exclude, detain, and restrict the use of parole for Haitians physically present in the United States, (2) to interdict Haitians on the high seas, and (3) to process Haitian refugees in their own country.” Carlos Ortiz Miranda, *Haiti and the United States During the 1980s and 1990s: Refugees, Immigration, and Foreign Policy*, 32 San Diego L. Rev. 673, 679 (1995). Contemporary United States policy retains the first two objectives. It is important to note that while the United States government termed Haitian refugees fleeing the repressive, United States-supported Duvalier regime in the 1980s “economic immigrants,” and thus denied the vast majority political asylum, almost three times more Haitians were deemed political refugees under the democratic government of President Jean Bertrand Aristide in the early and mid 1990s “than during an entire decade marked by human rights abuses and tyranny.” See Convention on the Elimination of all Forms Racial Discrimination (CERD), Shadow Report 2008, available at <http://www.ijdh.org/pdf/headline1-8-08.pdf> (last visited Jan. 6, 2011). This was so despite a dramatic drop in the number of refugees attempting to reach the United States during Aristide’s term. Cheryl Little, *Intergroup Coalitions and Immigration Politics*, 53 U. Miami L. Rev. 717, 722 (1999).

²⁶ Cheryl Little, *United States Haitian Policy: A History of Discrimination*, 10 N.Y.L. Sch. J. Hum. Rts. 269, 299, n.129 (“Unable to find a regional solution and unwilling to bring the Haitians to the United States, the U.S. government began forcibly repatriating the Haitians on November 18, 1991.”).

persecution to the United States, after the coup the U.S. Government began warehousing Haitian refugees at makeshift camps at the U.S. naval base in Guantánamo Bay, Cuba.²⁷

In March 1992, the former U.S. Immigration and Naturalization Service decided to re-interview the Haitians who had already been found to have a credible fear of return and to repatriate those who failed the second interview.²⁸ When a federal judge required that counsel be made available for these interviews, President George W. Bush issued an executive order making screening for fear of return discretionary rather than mandatory.²⁹

Continuing this pattern of unrestrained repatriation in 2005, a politically violent year in Haiti, the United States granted only nine pre-screening interviews for the over 1800 Haitians intercepted at sea.³⁰ This failure to comply with the fundamental principle of *non-refoulement* was consistent with President George H.W. Bush's statement at a 2004 press conference: "we will turn back any *refugee* that attempts to reach our shore."³¹

²⁷ Harold Koh, The "Haiti Paradigm" in United States Human Rights Policy, 103 Yale L.J. 2391, 2394 (1994); see *Haitian Refugee Ctr. v. Baker*, 789 F. Supp. 1552, 1571-72 (S.D. Fla. 1991).

²⁸ Koh, *infra* note 26, at 2394. Those Haitian detainees remaining at Guantánamo were brought to the United States in 1993 following a court order and legal settlement. *Id.* at 2397.

²⁹ Whereas the Executive Order 12,324 had provided that "no person who is a refugee will be returned without [the U.S. Attorney General's] consent, 46 Fed. Reg. 48,109 (Sept. 29, 1981), Executive Order 12,807 provided only that "the Attorney General, in his unreviewable discretion, *may* decide that a person who is a refugee will not be returned without his consent," 57 Fed. Reg. 23,133 (June 1, 1992).

³⁰ *Our Opinion: Give Haitians a Fair Opportunity to Seek Refuge*, Miami Herald at L4 (Jan. 22, 2006).

³¹ President Bush Welcomes Georgian President Saakashvili to White House: Remarks by the President and Georgian President Saakashvili in Photo Opportunity, White House News Release/Transcript (Feb. 25, 2004) (emphasis added).

B. The Cholera Epidemic and Other Troubling Conditions In Haiti

Haiti is currently suffering its first cholera outbreak in decades, if not a hundred years.³² While normally cholera can be treated and the mortality rate kept low, in Haiti under the existing humanitarian crisis, the mortality rate is more like 5-10%.³³ As of December 3, 2010, the cholera epidemic had spread to all ten departments of the country and there were 81,000 reported cases with 1,800 deaths, although experts estimate that the actual numbers are probably close double that.³⁴ As of December 26, those numbers had risen to 109,196 people who have contracted cholera and 3,333 who have died as a result of the disease.³⁵ The disease continues to spread, and the World Health Organization and Pan-American Health Organization expect another 650,000 cases within the first 6 months of 2011.³⁶ [redacted] an expert on [redacted] medicine and disease in Haiti, estimates that roughly 5-10% of the Haitian population will become infected with cholera.³⁷

The epidemic has been traced to a particularly lethal strain, *vibrio cholerae*, that appeared in India four years ago and can result in death in as little as two hours after symptoms first exhibit.³⁸ Jailed populations are particularly at risk, where the overcrowding, lack of sanitation

³² Declaration of [redacted] (Jan. 5, 2011) (hereinafter, "[redacted] Decl."), Ex. A-4 ¶10. (b)(6),(b)(7)(C)

³³ [redacted] Decl., Ex. A-4 ¶15. (b)(6),(b)(7)(C)

³⁴ See Secretary General Ban Ki Moon, Remarks to the General Assembly, United Nations News Service (Dec. 3, 2010), available at http://www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=1025 (last visited Jan. 6, 2011).

³⁵ [redacted] Decl., Ex. A-4 ¶16. (b)(6),(b)(7)(C)

³⁶ [redacted] Decl., Ex. A-4 ¶17.

³⁷ [redacted] Decl., Ex. A-4 ¶16.

³⁸ Richard Knox, Doctors Urge Cholera Vaccine for Haiti, Neighbors: NPR (December 10, 2010) available at: <http://www.npr.org/2010/12/10/131950133/doctors-urge-cholera-vaccine-for-haiti-neighbors> (last visited Jan. 6, 2011); Fournier Decl., ¶¶10-11.

or toilets, and lack of clean drinking water present classic conditions for cholera transmission.³⁹ Deportation of individuals with criminal convictions to Haiti is particularly worrisome then, since “Haiti often puts criminal detainees in prison, where cholera can quickly spread unchecked.”⁴⁰ Individuals held in police holding cells lack regular access to food, safe drinking water, and medical or mental health care.⁴¹ As a result, individuals in these detention settings are not able to take the precautions necessary to avoid contracting cholera such as hand-washing several times a day with treated water, drinking only treated water, and eating food still hot taken right from the stove.⁴² Moreover, detainees are held in overcrowded cells and locked inside for 24 hours at a time with no outside break and are forced to sleep on insect and rodent infested cement floors and to defecate in bags and urinate in communal buckets.⁴³

Similar conditions have existed in Haiti’s prison system.⁴⁴ [redacted] a U.S. citizen (b)(6),(b)(7)(C) aid worker recently released from Haiti’s National Penitentiary, told The Montreal Gazette that (b)(6),(b)(7)(C) there was no clean water in prison. [redacted] also reported that while he was in the National Penitentiary, “A couple of bodies a day were being removed from there. . . The last night I just

³⁹ [redacted] Decl., ¶¶23-33; May Decl., ¶¶13-21; BBC News—Haiti Cholera Outbreak Spreads to Port-au Prince Prison (Nov. 19, 2010) available at: <http://www.bbc.co.uk/news/world-latin-america-11800143> (last visited on Dec. 29, 2010).

⁴⁰ Jennifer Kay, Deportations Loom as Deadline for Haitians nears, Miami Herald (Dec. 20, 2010) available at: <http://www.deseretnews.com/article/700093504/Deportations-loom-as-deadline-for-Haitians-nears.html> (last visited Jan. 4, 2011).

⁴¹ [redacted] Decl., Ex. A-4 ¶14.

⁴² [redacted] Decl., Ex. A-4 ¶15.

⁴³ [redacted] Decl., Ex. A-4 ¶20.

⁴⁴ Declaration of [redacted] (Jan. 5, 2011) (hereinafter, “[redacted] Decl.”), Ex. A-2 ¶¶18-21. (b)(6),(b)(7)(C)

went to the bathroom in plastic bags my friends had given me.”⁴⁵

The cholera epidemic is occurring in the context of the aftermath of the earthquake nearly a year ago, from which Haiti has still not recovered and which killed more than 230,000 people, injured another 300,000 people and left approximately 1.5 million people displaced, and amid post-election violence and civil unrest so severe that the U.S. State Department warned U.S. citizens against traveling to Haiti:

Beginning in October, protests, demonstrations, and violent disruptions have occurred regularly in downtown Port-au-Prince. In November, violent demonstrations occurred for several days in and around Cap Haitien, making travel in and out of the area very hazardous. In several cases UN police had to shelter U.S. citizen missionaries and Non-Governmental Organization (NGO) workers and coordinate their departure once protests ended. Following the first round of elections in late November, demonstrations occurred in numerous parts of Port-au-Prince and in cities throughout the country. During demonstrations protestors have damaged vehicles, thrown rocks, and burned tires to block traffic.⁴⁶

On January 4, 2011, Haiti announced that it was postponing the second round of presidential elections widely disputed and condemned as fraudulent, further intensifying the atmosphere of uncertainty and instability.⁴⁷

Finally, it should be recognized that this Commission has recently addressed additional aspects of the still-deteriorating human rights situation in Haiti when it issued precautionary measures ordering a halt to forced evictions from temporary encampments

⁴⁵ See Harrold, Max, *Despite Prison Ordeal, Aid Worker Anxious to Return to Haiti*, *The Gazette* (Jan. 2, 2011), available at <http://www.montrealgazette.com/news/Despite+prison+ordeal+worker+anxious+return+Haiti/4050156/story.html#xzz19w5GkOMi> (last visited Jan. 6, 2011).

⁴⁶ U.S. State Department, Bureau of Consular Affairs, *Travel Warning: Haiti* (Dec. 9, 2010), available at http://travel.state.gov/travel/cis_pa_tw/tw/tw_4632.html (last visited Jan. 6, 2011).

⁴⁷ *Haiti Second Round Vote Impossible Before February*, *Reuters* (Jan. 4, 2011) available at <http://www.trust.org/alertnet/news/haiti-second-round-vote-impossible-before-february/> (last visited Jan. 6, 2011).

of those displaced by the earthquake and requested precautionary measures be put in place to address rape and other gender-based violence occurring in the camps.⁴⁸

C. Treatment of Criminal Deportees in Haiti

Deportees with criminal records face illegal, indefinite, and degrading detention by Haitian authorities upon arrival in Haiti. In general, there is no medical treatment and no food other than what is provided by family members of the detainees.⁴⁹ The police station holding cells in which detainees have been held in recent years are perilously unsanitary.⁵⁰ Contagious diseases like tuberculosis and parasites like scabies are common.⁵¹ The water is contaminated and is extremely dangerous to drink.⁵² The temperature typically runs over 100 degrees with no, or virtually no, ventilation.⁵³ People are detained for 24 hours a day with no natural light in terribly overcrowded conditions.⁵⁴ Prisoners are forced to defecate in bags and urinate in communal buckets.⁵⁵ Detainees sleep standing up or on cement floors that are infested with

⁴⁸ Inter-American Commission on Human Rights, PM 367-10, Forced Evictions from Five Camps for Displaced Persons, Haiti (2010) available at <http://www.cidh.oas.org/medidas/2010.eng.htm> (last visited Jan. 6, 2011); Press Release: Inter-American Human Rights Commission Sets Unprecedented Recommendations for Haitian Government to Address Wave of Sexual Violence in Displacement Camps, Institute for Justice and Democracy in Haiti, Jan. 4, 2011, available at <http://ijdh.org/archives/16256> (last visited Jan. 6, 2011).

⁴⁹ Declaration of [redacted], Executive Director of Alternative Chance in Haiti, (Jan. 5, 2011) (hereinafter, "[redacted] Decl."), Ex. A-3 ¶28; [redacted] Decl., Ex. A-2 ¶10; [redacted] Decl., Ex. A-4 ¶31.

⁵⁰ [redacted] Decl., Ex. A-3 ¶16; [redacted] Decl., Ex. A-2 ¶11.

⁵¹ [redacted] Decl., Ex. A-3 ¶29.

⁵² *Id.* ¶14.

⁵³ *Id.* ¶20.

⁵⁴ *Id.*

⁵⁵ *Id.*

insects and rodents.⁵⁶

The abysmal conditions in police station holding cells reflect the conditions generally in Haitian prisons. The more than 6,000 individuals incarcerated in detention facilities in Haiti live in conditions that are severely overcrowded, poorly ventilated, and unsanitary.⁵⁷ Prisoners and detainees suffer from lack of basic hygiene, malnutrition, inadequate health care, and rodent infestation, and disproportionately suffer from preventable diseases such as beriberi, AIDS, and tuberculosis.⁵⁸ In 2009, the U.S. Congressional Committee on Appropriations concluded that there is a “persistent problem of overcrowding at the National Penitentiary, where thousands of inmates languish in squalor, some dying of TB, without being charged with any crime.”⁵⁹ This Commission has also expressed its concern about Haiti’s prison, stating in its 2009 Annual Report that: “Persons deprived of liberty continue to live in overcrowded conditions that do not respect the minimum universally recognized standards for detention, in violation of their fundamental rights.”⁶⁰

The earthquake has exacerbated the already life-threatening conditions in Haiti’s prisons.⁶¹ For example, overcrowding has made it necessary for detained individuals to sleep standing up with a rope tied around their waist and affixed to a window, to prevent themselves

⁵⁶ *Id.* ¶¶11, 20.

(b)(6),(b)(7)(C) ⁵⁷ [redacted] Decl., Ex. A-2 ¶7.

(b)(6),(b)(7)(C) ⁵⁸ *Id.*; see also [redacted] Decl., Ex. A-4 ¶29.

⁵⁹ Department of State, Foreign Operations, and Related Programs, Appropriations Bill, 110th Cong. (2009).

⁶⁰ Inter-American Commission on Human Rights, Annual Report 2009, Chapter IV, ¶404.

(b)(6),(b)(7)(C) ⁶¹ [redacted] Decl., Ex. A-3 ¶¶5, 11.

from falling over.⁶² Moreover, as discussed above, the cholera epidemic has taken a tremendous toll on the Haitian population generally; individuals in overcrowded detention conditions are particularly susceptible to contracting and dying from this contagious disease.⁶³

In addition to these horrendous conditions, Haitian authorities are well-known to inflict physical abuse on, and sometimes even kill, imprisoned individuals. In 2010, after the earthquake, police and corrections officers killed unarmed prisoners at a national prison in Les Cayes.⁶⁴ In 2009, the U.S. State Department stated that “[p]risoners reported abuse by correctional officers.”⁶⁵ A 2003 U.S. State Department report described “[b]eatings with fists, sticks, belts, and ‘kalot marassa’—a severe boxing of the ears—[as] the most common form of abuse.”⁶⁶

Corruption and indifference pervade Haiti’s correctional and police system.⁶⁷ Prior to the moratorium on deportations to Haiti, officials routinely extorted money from detainees and their relatives in order to buy release from detention.⁶⁸ In 2009, the U.S. State Department reported that “returnees” faced “alleged corruption, widespread discrimination, and social abuse after

⁶² *Id.* at ¶11. (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)

⁶³ *Id.* at ¶¶13, 16, 19, 54; [redacted] Decl., Ex. A-2 ¶¶14-17; [redacted] Decl., Ex. A-4, ¶31.

⁶⁴ Deborah Sontag and Walt Bogdanich, “Escape Attempt Led to Killings of Unarmed Inmates”, N.Y. Times (May 22, 2010), available at <http://www.nytimes.com/2010/05/23/world/americas/23haiti.html> (Last visited Jan. 6, 2011). See also “Report Assails Haiti Officers in Prison Killings” N.Y. Times (Oct. 21, 2010) available at [Haiti-info.com, http://www.haiti-info.com/Panel-s-Report-Assails-Haiti](http://www.haiti-info.com/Panel-s-Report-Assails-Haiti) (Last visited Jan. 6, 2011).

⁶⁵ U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/drl/rls/hrrpt/2009/wha/136116.htm> (Last visited Jan. 6, 2011).

⁶⁶ U.S. Department of State, 2003 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/drl/rls/hrrpt/2003/27902.htm> (Last visited Jan. 6, 2011); see also [redacted] Decl., Ex. A-3 (b)(6),(b)(7)(C) ¶21.

⁶⁷ U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/drl/rls/hrrpt/2009/wha/136116.htm> (Last visited Jan. 6, 2011).

⁶⁸ *Id.*; [redacted] Decl., Ex. A-3 ¶50.

(b)(6),(b)(7)(C)

returning home.”⁶⁹ This included “arbitrary arrests, false accusations about their activities to local police, and extortion attempts against them and their families abroad during the initial detention phase.”⁷⁰

The Haitian government has failed to implement relatively simple and costless measures to improve conditions for criminal deportees. For example, although the United States government provides the medical records of deportees to the Haitian authorities, it is the practice of the Haitian government to store these records at the Ministry of Interior, where they are never made available to medical professionals.⁷¹

The detention of criminal deportees is illegal under both Haitian and international law, both of which prohibit detention without charge.⁷² In 2009, the U.S. Department of State reported that Haitian law

prohibits arbitrary arrest and detention, and the constitution stipulates that a person may be arrested only if apprehended during the commission of a crime or on the basis of a warrant by a legally competent official such as a justice of the peace or magistrate. The authorities must bring the detainee before a judge within 48 hours of arrest.”⁷³

The State Department noted, however, that “officials frequently did not comply with these

⁶⁹ U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm> (Last visited Jan. 6, 2011).

⁷⁰ *Id.*

(b)(6),(b)(7)(C) ⁷¹ [redacted] Decl., Ex. A-3 ¶23.

⁷² The policy also violates international standards prohibiting arbitrary arrest and detention. Universal Declaration of Human Rights (UDHR) G.A. Res. 217 A III, Art. 9 (Dec. 10, 1948) (ensuring “fair and public hearing by an independent and impartial tribunal” on criminal charges); Art. 9 & 14, International Covenant on Civil and Political Rights (ICCPR) G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 59, U.N. Doc. A/6316, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976; ratified by U.S. June 8, 1992) (forbidding arbitrary arrest and detention as well as punishment after a criminal sentence has already been completed).

⁷³ U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm> (last visited Jan. 6, 2011) (explaining rationale in Haitian law and noting that the Haitian Penal Code makes it a crime punishable by up to five years imprisonment to illegally detain a person (Haiti Penal Code Article 289)).

provisions in practice.”⁷⁴ The United Nations Commission on Human Rights has concluded that the detention of criminal deportees constitutes a violation of the International Covenant on Civil and Political Rights.⁷⁵

Despite the dire situation facing criminal deportees to Haiti, U.S. administrative and federal courts have adopted an exceptionally narrow interpretation of the protections available to prevent deportation under Article 3 of the Convention Against Torture (CAT). Under Article 3, individuals who are likely to suffer torture (defined as severe pain and suffering) at the hands of government agents in their home country can apply to immigration judges to have their deportations stopped until there is no likelihood of torture.⁷⁶ The vast majority of Haitians facing indefinite incarceration and mistreatment in Haiti therefore have no domestic remedy available to them.

D. The Treatment of Immigrants with Criminal Convictions Under U.S. Law

As this Commission has recently recognized in the *Smith & Armendariz* case, U.S. immigration law imposes virtually automatic deportation on immigrants with a wide-range of criminal convictions, leaving no room for immigration judges to balance the negative effects of deportation against concerns for public safety.⁷⁷ Traditional humanitarian factors such as

⁷⁴ *Id.*

⁷⁵ International Covenant on Civil and Political Rights, art.14, para.7, Dec. 16, 1966. (“No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”) *See also* UN Commission on Human Rights, Report of the Situation of Human Rights in Haiti, prepared by Mr. Adama Dieng, independent expert, in accordance with Commission resolution 2000/78, ¶21 (Geneva: E/CN.4/2001/106, (Jan. 30 2001).

⁷⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, reprinted in Human Rights Web, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984) (providing “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”)

⁷⁷ *Wayne Smith and Hugo Armendariz v. U.S.*, Inter-Am. C.H.R., Report No. 81/10, Case. Co. 12.562 (July 12, 2010).

rehabilitation, length of residency in the United States, family ties, hardship to U.S. citizen children and spouses, work history, conditions in the home country, and property ties are irrelevant in many immigration court proceedings. Many have commented on the many ways in which the U.S. Government has criminalized its civil immigration system, especially since the draconian reforms to immigration law in 1996.⁷⁸ As recently noted by the United States

Supreme Court:

While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The “drastic measure” of deportation or removal . . . is now virtually inevitable for a vast number of noncitizens convicted of crimes.⁷⁹

As a result, deportation—or “the equivalent of banishment or exile”—is now a consequence that often far outweighs the punishment for a crime.⁸⁰ Lacking defenses to removal, many immigrants are ordered removed at preliminary administrative hearings and have no basis for filing administrative and federal court appeals.

Compounding the restrictions on remedies for immigrants convicted of a crime is the country’s strict mandatory detention policy for almost all immigrants deportable for a criminal offense.⁸¹ The law ties the hands of immigration judges, precluding them from setting bond for even longtime lawful permanent residents who never served any time in criminal custody or

⁷⁸ See, e.g., Teresa A. Miller, *Citizenship and Severity: Recent Immigration Reforms and the New Penology*, 17 *Georgetown Immigration L.J.* 611 (2003); Robert Pauw, *A New Look at Deportation as Punishment: Why at Least Some of the Constitution’s Criminal Procedure Provisions Must Apply*, 52 *Administrative L. Rev.* 305 (2000); Juliet Stumpf, “The Crimimmigration Crisis: Immigrants, Crime, and Sovereign Power,” 56 *American Univ. L. Rev.* 367 (2006). See also *Deportation Nation: A Timeline Of Immigrant Criminalization*, <http://www.deportationnation.org/multimedia/deportation-nation-a-timeline-of-immigrant-criminalization/> (last visited Jan. 5, 2011).

⁷⁹ *Padilla v. Kentucky*, 130 S.Ct. 1473, 1477 (2010).

⁸⁰ *Id.* at 1486.

⁸¹ 8 U.S.C. § 1226(c).

were granted release by criminal judges, and are neither flight risks nor risks to the community. The United States Supreme Court has upheld this mandatory detention policy as constitutional, at least with respect to lawful permanent residents who have been detained for a “brief period.”⁸² This inflexible approach to detention has had tragic consequences.⁸³

E. U.S. Detention Policy

The United States detains over 380,000 people in approximately 350 facilities across the country, at a cost to tax payers of more than \$1.7 billion per year.⁸⁴ Starting in the 1990s, the U.S. Government began to expand its use of detention as a routine means of enforcing immigration law.⁸⁵ Detentions have skyrocketed over the last decade. According to Detention Watch Network, “[t]he average daily population of detained immigrants has grown from approximately 5,000 in 1994, to 19,000 in 2001, and to over 30,000 by the end of 2009.” ICE continues to expand its bed capacity, aiming to deport 400,000 noncitizens in 2010.⁸⁶

⁸² *Demore v. Kim*, 538 U.S. 510, 513 (2003). The court considered lawful detention during removal proceedings that lasts “an average time of 47 days and a median of 30 days.” *Id.* at 529.

⁸³ Bernstein, Nina, Officials Hid Truth of Immigrant Deaths in Jail, *New York Times* (Jan. 9, 2010), available at <http://www.nytimes.com/2010/01/10/us/10detain.html> (last visited Jan. 5, 2010); A Closer Look at 83 Deaths, *The Washington Post*, available at <http://www.washingtonpost.com/wp-srv/nation/specials/immigration/map.html> (last visited Jan. 6, 2011).

⁸⁴ Detention Watch Network, About the U.S. Detention and Deportation System, available at <http://www.detentionwatchnetwork.org/aboutdetention> (last visited Jan. 4, 2011). Shankar Vedantam, Immigration Backlog Stirs Move to Release Some U.S. Detainees, *Washington Post* (Aug. 28, 2010), available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/27/AR2010082705023.html> (“The number of immigrants being detained in the United States has doubled in the last decade, to 369,000 annually.”) (last visited Jan. 5, 2010).

⁸⁵ Detention Watch Network, The History of Immigration Detention in the U.S: A Rapidly Expanding Detention System., available at <http://www.detentionwatchnetwork.org/node/2381> (last visited Jan. 4, 2011).

⁸⁶ *Id.* See also Human Rights Advocates Say NO to Massive Immigration Detention Center in Northeast, News Release, American Friends Service Committee (Dec. 21, 2010), available at <http://afsc.org/story/human-rights-advocates-say-no-massive-immigration-detention-center-northeast#> (last visited on Jan. 5, 2011).

Immigration detention has become a multi-billion dollar industry, with counties and private contractors being awarded lucrative federal contracts.⁸⁷

Many detention facilities with contracts to hold immigrants—including many of the large capacity facilities—are located in remote areas of the country, resulting in the separation of detainees from their families, support networks, and lawyers.⁸⁸ Telephone access is prohibitively expensive and often limited to 10-15 minutes per call.⁸⁹ Even if a detainee were lucky enough to have family nearby, detention facilities often impose arbitrary restrictions on visiting hours and may prohibit physical contact during visits.⁹⁰

U.S. immigration authorities have been documented as providing inadequate oversight and review of due process and conditions of confinement. The Inspector General for the Department of Homeland Security reported widespread violations of detention standards in the facilities it audited.⁹¹ Poor conditions of confinement include lack of medical care that has

⁸⁷ See Laura Sullivan, Prison Economics Help Drive Arizona Immigration Law, National Public Radio (Oct. 28, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=130833741> (last visited Jan. 5, 2010); See GEO Receives ICE Contract for 600-Bed Low-risk Immigration Detention Center in Texas, Business Wire (Dec. 8, 2010), available at <http://sinelson.typepad.com/susan-i-nelson-immigrat/2010/12/geo-receives-ice-contract-for-new-600-bed-immigration-civil-detention-center-in-texas.html> (last visited Jan. 5, 2011).

⁸⁸ Locked Up Far Away, Human Rights Watch (Dec. 2, 2009), available at <http://www.hrw.org/en/reports/2009/12/02/locked-far-away-0> (last visited Jan. 6, 2011).

⁸⁹ See New York University School of Law Immigrant Rights Clinic, Locked Up but Not Forgotten: opening access to family & community in the Immigration Detention System (2010), http://www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__news__media/documents/documents/ecm_p ro_065626.pdf (last visited Jan. 6, 2011); Nina Bernstein, Move Across Hudson Further Isolates Immigrant Detainees, N.Y. Times, Mar. 17, 2010, available at <http://www.nytimes.com/2010/03/17/nyregion/17detain.html> (last visited Jan. 2, 2011) (same).

⁹⁰ See, e.g., New York University School of Law Immigrant Rights Clinic, Locked Up but Not Forgotten: opening access to family & community in the Immigration Detention System (2010), http://www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__news__media/documents/documents/ecm_p ro_065626.pdf (last visited Jan. 6, 2010).

⁹¹ Department of Homeland Security, Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities* (Jan. 16, 2007), available at http://www.dhs.gov/xoig/assets/mgmtreports/OIG_07-01_Dec06.pdf (last visited Jan. 6, 2011). These violations

resulted in deaths, physical and sexual abuse, retaliation, and overcrowding.⁹² Those most vulnerable populations—women, mentally disabled, refugees and children—are also least equipped to protect their own rights.⁹³ Although the U.S. Government does not track the incidence of mental disabilities among individuals in immigration detention, a recent report by the American Civil Liberties Union and Human Rights Watch estimated that at least 15 percent of the daily or annual total of individuals in detention have mental disabilities, including mental illness.⁹⁴ Individuals with mental disabilities in detention disproportionately suffer from inadequate medical care, abuse, separation from family, and an inability to successfully pursue legal relief from removal.⁹⁵

related to standards concerning medical care, environmental health and safety, detainee grievance procedures, access to legal materials, access to telephones, housing classifications, recreation, among other things.

⁹² Bernstein, Nina, Officials Hid Truth of Immigrant Deaths in Jail, *New York Times*, available at <http://www.nytimes.com/2010/01/10/us/10detain.html> (last visited Jan. 5, 2010); A Closer Look at 83 Deaths, *The Washington Post*, available at <http://www.washingtonpost.com/wp-srv/nation/specials/immigration/map.html> (last visited Jan. 6, 2011); National Public Radio, Immigrant Detainees Tell of Attack Dogs and Abuse (Nov. 17, 2004), available at <http://www.npr.org/templates/story/story.php?storyId=4170152> (last visited Jan. 6, 2011); Anil Kalhan, *Rethinking Immigration Detention*, 110 Colum. L. Rev. Sidebar 42, 47 (2010) (Explaining that detention has been worsened by inadequate conditions of confinement--particularly with ICE's expanded use of county jails, whose conditions long have been "excoriat[ed]" as the "worst blight in American corrections."); Detention Watch Network, Conditions in Immigration Detention, available at <http://www.detentionwatchnetwork.org/node/2383> (last visited January 4, 2011).

⁹³ See, e.g., Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers, 167-173 (June 2003), available at <http://physiciansforhumanrights.org/library/report-persprison.html> (last visited Jan. 6, 2011).

⁹⁴ American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System* (July 2010) available at www.aclu.org/human-rights/deportation-default-mental-disability-unfair-hearings-and-indefinite-detention-us-immig or <http://www.hrw.org/node/91725> (last visited Jan. 6, 2011); American Immigration Council, *Non-Citizens with Mental Disabilities*, 2010, available on <http://www.immigrationpolicy.org/special-reports/non-citizens-mental-disabilities> (last visited Jan. 6, 2011). See also *Dying for Decent Care*, Florida Immigrant Advocacy Center (Feb. 2009), available at www.fiacfla.org/reports/DyingForDecentCare.pdf (last visited Jan. 6, 2011).

⁹⁵ *Id.*

V. PETITIONERS FACE IMMINENT AND IRREPARABLE HARM AS A RESULT OF THEIR DEPORTATIONS.

Petitioners seek the immediate intervention of this Commission to order precautionary measures requesting that the United States halt its plans to resume deportations to Haiti in mid-January 2011, in preparation for which it has already begun roundups, detention and processing. Article 25 of the Inter-American Commission Rules of Procedure provides that “[i]n serious and urgent situations,” the Commission may request that a State adopt precautionary measures “to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any petition or case.”⁹⁶ Such measures “may be of a collective nature to prevent irreparable harm to persons due to their association with . . . a group, or a community with identified or identifiable members.”⁹⁷

The Commission has authority to consider this Petition and award precautionary measures against the United States, a Member State of the Organization of American States (“OAS”), in accordance with Article 20 of the Statute of the Commission and Article 23 of the Rules of Procedure of the Commission, which authorizes petitioners to file complaints alleging violations of the rights protected under the American Declaration.

Moreover, in accordance with the principles contained in Article 25(4)(a) of the Commission’s Rules of Procedure, the situation of risk has been brought to the attention of the pertinent authorities. Advocates have contacted ICE and petitioned President Barack Obama

⁹⁶ Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25(2).

⁹⁷ Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25(3).

himself to plea for a halt to the roundups, detention, and imminent deportations of Petitioners.⁹⁸ Unfortunately, these calls have fallen on deaf ears. According to the New York Times, “Barbara Gonzalez, a spokeswoman for Immigration and Customs Enforcement, said in a statement last week that the agency was deciding whom to deport in a manner ‘consistent with our domestic immigration enforcement priorities,’ but did not elaborate.”⁹⁹ No information about the new deportation program is available on ICE’s website. Petitioners and their advocates are left in the dark, with little information about next steps, and few if any avenues for domestic relief.

A. Petitioners’ imminent removal to Haiti is “serious and urgent” and will result in irreparable harm.

Upon removal, Petitioners will be detained *en masse* in Haitian police station holding cells and, if history is a guide, be subject to indefinite, unreasonable and arbitrary detention as well as life-threatening, cruel and degrading treatment. As detainees in the police station holding cells, Petitioners will be exposed to filthy and unhealthy conditions, will have little to no access to food and drinking water, and will be directly exposed to cholera, which has already claimed the lives of at least 48 individuals detained in the national prison system in Haiti and which will undoubtedly spread even more quickly in light of the overcrowding. The sheer number of Petitioners will likely contribute to massive overcrowding of Haitian police station holding cells. Even if and when they are released, they will face the stigma of being an “American” ex-convict

⁹⁸ See *infra* note 11.

⁹⁹ Kirk Semple, Haitians in U.S. Brace for Deportations to Resume, N.Y. Times (Dec. 19, 2010) at A20, available at <http://www.nytimes.com/2010/12/20/nyregion/20haitians.html> (last visited Jan. 6, 2011).

deportee in Haiti, which has serious social and economic consequences, discussed above.¹⁰⁰ The burden of additional people will necessarily compound the human rights, humanitarian, and public health crises in Haiti associated with the earthquake, including internal displacement, malnutrition, interpersonal violence, and a cholera outbreak, along with highly contested elections and post-election violence.

1. Right to Life; Security of Person; and Freedom from Cruel, Infamous or Unusual Punishment (Arts. I, XXVI)

Article I of the American Declaration of the Rights and Duties of Man (“the Declaration” or “American Declaration”) provides: “Every Human being has the right to life, liberty and the security of person”. Article XXVI of the Declaration provides, in relevant part: “. . . Every person accused of an offense has the right . . . not to receive cruel, infamous or unusual punishment.”¹⁰¹ The U.S. government’s decision to initiate round-ups and detentions of Haitian nationals and to commence deportations on or about mid-January 2011, directly contravenes the guarantees contained in these provisions and will undoubtedly lead to violations of these fundamental rights.

a. Right to life

In the Inter-American system, the right to life is the most fundamental right, as without it the enjoyment of other rights cannot be fulfilled.¹⁰² The Commission has defined the right to include “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health,

(b)(6),(b)(7)(C) ¹⁰⁰ [redacted] Decl., Ex. A-2 ¶10; [redacted] Decl., Ex. A-3 ¶ 11-12, 14-16, 18-20, 22, 47-54.

¹⁰¹ American Declaration of the Rights and Duties of Man, Art. XXVI, OEA/Ser.L.V/II.4 rev. 13, June 30, 2010).

¹⁰² See, e.g., *Gary T. Graham (Shaka Sankofa) v. United States*, Case 11.193, Inter-Am. C.H.R., Report No. 97/03, OEA/Ser.L/V/II.114 Doc. 70 rev. 1 ¶ 26 (2003) (“[T]he right to life is widely recognized as the supreme right of the human being, respect for which the enjoyment of other rights depends.”).

and his reputation.”¹⁰³ Although the right to life is principally aimed at protecting against arbitrary deprivations of life by the State or its agents, the Commission has found the right implicated in a broad range of situations, which do not necessarily result in death but expose individuals “to the genuine and foreseeable risk of death,”¹⁰⁴ including cases of detentions and forcible repatriations.¹⁰⁵

The United States’ decision to deport Petitioners violates their right to life. These individuals will, upon arrival in Haiti, undoubtedly be packed into police station holding cells, where they will face a genuine and foreseeable risk of death on account of several factors. First, the historically unsanitary and dangerous conditions in these holding cells themselves create serious health risks before the earthquake.¹⁰⁶ As described above, due the lack of sanitation, food and water, detainees in these holding cells are forced to defecate, urinate, and eat in the same tight quarters; drinking water, food, and medical care are rarely available to detainees, who are dependent on family and friends to bring them provisions;¹⁰⁷ and the facilities are rodent-infested.¹⁰⁸ Moreover, with the recent cholera outbreak, this situation is only exacerbated.

¹⁰³ *The Haitian Center for Human Rights et al. v. United States*, Case 10.675, Inter-Am. C.H.R., Report No. 51/96OEA/Ser.L/V/II95 Doc. 7 rev. ¶ 170 (1997).

¹⁰⁴ *Haitian Center for Human Rights v. U.S.*, Cas 10.675, Inter-Am. C.H.R., Report No. 51/96, OEA/Ser. L. IV/11.95 Doc. 7 rev. ¶ 16 (1997).

¹⁰⁵ *Parque Sao Lucas v. Brazil*, Case 10.301, Inter-Am, C.H.R., Report No. 40/03, OEA/Ser./L/V/II.114, doc. 70 rev. 1 ¶¶ 44-55 (2003) (detention of prisoners); *The Haitian Centre for Human Rights*, Case 10.675, Inter-Am. C.H.R. (Forcible Repatriation of Haitian nationals).

(b)(6),(b)(7)(C) ¹⁰⁶ [redacted] Decl., Ex. A-2 ¶ 10; Karshan Decl., Ex. A-3 ¶ 26-30.

¹⁰⁷ See Institute for Justice and Democracy in Haiti, *Being Deported to Post-Earthquake Haiti?* (Dec. 16, 2010) available at <http://ijdh.org/archives/16127> (last visited Jan. 6, 2011) (“While in detention criminal deportees are not provided food, treated drinking water, medical or mental health care, and are not provided any necessary medications.”); Karshan Decl., Ex. A-3 ¶¶ 12, 20, 22, 28, 34; May Decl., Ex. A-2 ¶¶ 7-9.

(b)(6),(b)(7)(C) ¹⁰⁸ [redacted] Decl., Ex. A-2 ¶ 7.

Indeed, the spread of cholera is worsened by cramped conditions, and someone who has acquired cholera can die within two to three hours without proper fluid intake and medical attention.¹⁰⁹

Prior to the earthquake, deportees detained in Haitian police station holding cells suffered dire fates before the earthquake, especially those without family and/or support networks. Today, even those who have families in Haiti who are willing and able to help are at grave risk of death under the current circumstances. The fabric of nearly every Haitian family has been severely stressed due to post-earthquake conditions. Nearly 1.4 million people in Haiti are estimated to be internally displaced or homeless.¹¹⁰ Thus, detained deportees may not be able to even contact their family members in Haiti; or these family members may have perished, as is the case with the five named petitioners as discussed above, or moved since the earthquake.¹¹¹ Even if they are present in Port-au-Prince, where the police holding cells are located, they may not be able to care for themselves, let alone a relative.

b. Right to liberty and security of person

The Commission has defined the right to security of person as “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.”¹¹² The Commission has interpreted this provision to include similar protections to those rights protected under Article 5 of the American Convention,¹¹³ which establishes the right of every person to

(b)(6),(b)(7)(C) ¹⁰⁹ [redacted] Decl., Ex. A-2 ¶¶ 13-17.

¹¹⁰ See Ban Ki Moon, REMARKS TO THE GENERAL ASSEMBLY ON HAITI (December 3, 2010), available at http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1025 (last visited on Jan. 6, 2011).

(b)(6),(b)(7)(C) ¹¹¹ [redacted] Decl., Ex. A-1 ¶¶ 16, 22, 26, 30, 33.

¹¹² *The Haitian Centre for Human Rights et al.*, Case 10.675, Inter-Am. C.H.R. at ¶¶ 170-71.

¹¹³ Report on Terrorism and Human Rights, Inter-American C.H.R. OEA/Ser.L/V/II.116, Doc. 5 rev. 1 ¶155 (Oct. 22 2002) (noting that while the American Declaration lacks a general provision on the right to humane treatment, the

respect for their “physical, mental and moral” integrity and to be free from “cruel, inhuman or degrading treatment.”

Significantly, the protections encompassed by these provisions are much broader in scope than mere protection from physical mistreatment. They extend to any act that is clearly contrary to respect for the “inherent dignity of the human person” and specifically include acts that cause psychological and emotional damage,¹¹⁴ “emotional trauma,”¹¹⁵ “trauma and anxiety,”¹¹⁶ and “intimidation” or “panic.”¹¹⁷ The Inter-American Court has indicated that it is “proper to human nature that the person subjected to arbitrary detention will experience extreme suffering.”¹¹⁸

Additionally, the court has stated that “it is enough that the illegal detention was brief so as to give rise” to a violation of personal dignity.¹¹⁹ A violation of this right may arise from

Commission has interpreted Art. I as containing a prohibition similar to that of Art. 5 of the American Convention) (citing Juan Antonio Aguirre Ballesteros (Chile), Case 9437, Inter-Am. C.H.R., Report No.5/85, OEA/Ser.L/V/II.66, doc. 17 (1985)).

¹¹⁴ *Castillo Paez*, Inter-Am. Ct. H. R., (Ser. C) No. 35, at pp 63, 66 (Nov. 3, 1997).

¹¹⁵ *Victims of the Tugboat “13 de Marzo” v. Cuba*, Case 11.436, Inter-Am. C.H.R., Report No. 47/96, OEA/Ser.L/V/II.95, doc. 7 rev. at ¶ 106 (1997) (finding Cuba responsible for violating the personal integrity of 31 survivors of a refugee boat fleeing to U.S. as a consequence of the emotional trauma resulting from the shipwreck caused by Cuba).

¹¹⁶ *See, e.g., Maria Mejia v. Guatemala*, Case 10.553, Inter-Am. C.H.R. Report No. 32/96, OEA/Ser.L/V/II.95, doc. 7 rev. at 370, p 60 (1997) (Guatemalan Military officials found liable for causing trauma and anxiety to the victims [constraining] their ability to lead their lives as they desire”).

¹¹⁷ *See, e.g., id.* at 61 (finding Guatemalan military responsible for actions designed to “intimidate” and [incite] “panic” among community members).

¹¹⁸ *Caso Juan Humberto Sanchez v. Honduras*, Inter-Am. Ct. H.R. (Ser. C) No.99, ¶¶ 201, 174 (June 7, 2003).

¹¹⁹ *Caso de los Hermanos Gomez Paquiyauri v. Peru*, Inter. Am. Ct. H.R. (Ser. C) No. 110, ¶ 108, n. 159; *Caso Maritza Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (Ser.C) Nu. 103, ¶ 87; *Caso Juan Humberto Sanchez*, Inter-A. Ct. H.R. (Ser. C) No. 99, ¶ 98 (June 7, 2003); *Tamayo Case v. Peru*, Inter-Am. Ct. H.R. (Ser.C) No. 33 ¶¶ 57-58. *See also Casillo Petruzzi et al. Case*, Inter-A. Ct. H.R. (Ser.C), No. 52 (30 May 1999).

degrading conditions during detention,¹²⁰ degrading treatment while in the custody of the state¹²¹ or the violation of fundamental human rights.

The fact that Petitioners face detention in Haiti places them in a particularly precarious position. In *Caso de los Ninos de la Calle v. Guatemala*,¹²² the Inter-American Court held that an illegally detained person finds himself in an aggravated and vulnerable situation, in which there is a risk that his rights to physical integrity and to be treated with dignity will be violated.¹²³ The United States has violated the Article I right to personal security of Petitioners by deporting them to Haiti knowing that they will be detained and subjected to illegal, cruel, and degrading incarceration.¹²⁴

c. Right to freedom from cruel, infamous or unusual punishment

Recently, in the case of *Mortlock v. U.S.*, this Commission emphasized that the guarantee against “cruel, infamous or unusual punishment” is not limited to the penal context, but applies with equal force in the immigration context.¹²⁵ “[T]he appropriate test,” the Commission found, is whether the humanitarian appeal of the case is so powerful that it could not reasonably be resisted by the authorities of a civilized state.”¹²⁶ The appropriate standard for the application of

¹²⁰ Cfr. IDH Court, *Caso Instituto de Reeducacion del Menor*, Sentencia de 2 de Septiembre de 2004. Series C No. 112; *Caso Cantoral Benavides*, Sentencia de 18 de agosto de 2000. Serie C No. 69; Corte I.D.H., *Caso Fermin Ramirez*, Sentencia de 20 de junio de 2005. Serie C No. 126 parr. 118.

¹²¹ Caso IDH Court, *Caso Instituto de Reeducacion del Menor*, Sentencia de 2 de Septiembre de 2004. Series C No. 112; *Ms. X v. Argentina*, Case 10.506. Inter-Am. CHR No. 38/96; *Caso Maritza Urrutia*, Sentencia de 27 de noviembre de 2003. Serie C No. 103, parra. 85;

¹²² *Caso de los Ninos de la Calle v. Guatemala*, Inter-Am. Cl. H.R. (Ser. C). No. 63 (Nov. 19, 1999).

¹²³ *Id.* at 166.

¹²⁴ *Caso de los Ninos de la Calle v. Guatemala*, at ¶¶ 174-76.

¹²⁵ *Mortlock v. U.S.*, Inter-Am. C.H.R., Report no. 63/08, Case No. 12.534, ¶82-85.

¹²⁶ *Mortlock* ¶ 91.

the test is “whether the deportation will create extraordinary hardship to the deportee and her family and may well amount to a death sentence given two principal considerations: (1) the availability of medical care in the receiving country, and (2) the availability of social services and support, in particular the presence of close relatives.”¹²⁷

The United States violates Article XXVI by deporting sick and healthy individuals to the center of an internationally recognized epidemic that is already beginning to spread to neighboring Dominican Republic and for which there are limited resources available. Even Petitioners who are not currently ill or who have some form of social services and support in Haiti would be at serious risk of contracting cholera during their detention in a police station holding cell, as documented in the declarations of [redacted]

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

[redacted] ¹²⁸

In present-day Haiti, medical care, particularly for the treatment of cholera, is not available to the vast majority of the population.¹²⁹ Deportees with physical or mental health problems, such as Petitioners Gary Resil and Pierre Louis, discussed above, are at heightened risk of acquiring cholera in this environment. Moreover, even deportees with family members in Haiti would not necessarily have contact with them, due to the massive displacement and lack of traditional modes of communication. This is the very type of extreme circumstance and

¹²⁷ Mortlock ¶91.

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

¹²⁸ [redacted] Decl., Ex. A-2 ¶ 10-14, 20; [redacted] Decl., Ex. A-4 ¶ 15, 16, 29-34; [redacted] Decl., Ex. A-3 ¶ 14-19.

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

¹²⁹ [redacted] Decl., Ex. A-4 ¶¶15-18; 22, 24-28. See also Ban Ki Moon, REMARKS TO THE GENERAL ASSEMBLY ON HAITI (December 3, 2010), available at http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1025 (last visited on Jan. 6, 2011).

“extraordinary hardship” to the deportee and her family that, as the Commission articulated in *Mortlock*, “may well amount to a death sentence.”¹³⁰

As this Commission has underscored, a State must bear responsibility not only for direct state action that results in rights violations, but also for “foreseeable consequences that flow from state action.”¹³¹ When the United States knowingly deports individuals to post-earthquake Haiti, in the midst of a cholera epidemic, and some of those individuals contract the disease, the United States incurs international responsibility.

2. Right to family life; Special protections for children (Arts. V, VI, VII)

Article V of the American Declaration guarantees the “right to the protection of law against abusive attacks upon... private and family life,” and Article VI guarantees the “right to establish a family, the basic element of society, and to receive protection therefore.” Article VII states that: “all children have the right to special protection, care and aid.”

The Inter-American Commission has established that Articles V and VI of the American Declaration, taken together, “prohibit arbitrary or illegal interference with family life” by the State.¹³² However, this fundamental right is not absolute. In that vein, the Commission has stated that “interference with family life may only be justified where necessary to meet a pressing need to protect public order, and where the means are proportional to that end.”¹³³

To assess the public necessity and proportionality of the interference in family life in the deportation context, the Commission has articulated a balancing test: “the state’s right and duty

¹³⁰ [REDACTED] Decl., Ex. A-4 ¶33.

¹³¹ *Smith & Armendariz v. U.S.* at ¶ 48.

¹³² Inter-Am. C.H.R., Report on the Situation of Human Rights of Asylum Seeker within the Canadian Refugee Determination System, ¶ 162; *see also Smith & Armendariz v. U.S.* ¶ 48.

¹³³ *Smith & Armendariz v. U.S.*, ¶ 166.

in maintaining public order” through expulsion of removable non-citizens “must be balanced against the harm that may result to the rights of the individuals concerned in the particular case.”¹³⁴ To that end, the Commission has looked to the following elements under this balancing test:

the age at which the non-citizen immigrated to the host state; the non-citizen’s length of residence in the host state; the non-citizen’s family ties in the host state; the extent of hardship the non-citizen’s deportation poses for the family in the host state; the extent of the non-citizen’s links to the country of origin; the non-citizen’s ability to speak the principal language(s) of the country of origin; the nature and severity of the non-citizen’s criminal offense(s); the non-citizen’s age at the time of the criminal offense(s) was/were committed; the time span of the non-citizen’s criminal activity; evidence of the non-citizen’s rehabilitation from criminal activity; and the non-citizen’s efforts to gain citizenship in the host state.¹³⁵

Moreover, the Commission has laid particular emphasis on State taking “the best interest of minor child . . . into consideration in a parent’s removal proceeding”¹³⁶ under Article VII.

Importantly, the Commission has emphasized that “these elements are not an exhaustive list or a rigid set of considerations to be addressed in every case. The balancing test must be flexible to the specific facts of each individual case.”¹³⁷ The present case is precisely the type which requires a flexible approach to an extreme set of facts involving dire public health and human rights emergencies.

Here, as in *Smith and Armendariz v. U.S.*, Petitioners have not been given the opportunity to present a humanitarian defense to deportation or to have their rights to family duly considered before deportation. Nor were the best interests of Petitioners’ U.S. citizen children taken into

¹³⁴ *Id.*

¹³⁵ *Id.* ¶ 54.

¹³⁶ *Id.* ¶ 56.

¹³⁷ *Id.* ¶ 55.

account by any decision maker.¹³⁸ Petitioners face deportation to a country in extreme crisis, with no guarantees of continued contact (telephonically, electronically, or in person) with their children and families. In many cases, primary breadwinners will lose the ability to financially provide for their families, which in most cases include small children and elderly parents. As documented above, many Petitioners and their families have expressed a sense of panic and desperation at the prospect of having their families and lives torn apart by the pending deportations. Accordingly, the United States' detention and planned deportation of Petitioners constitutes a violation of their and their families' rights under Articles V, VI, and VII.

3. Rights to fair trial and due process (Arts. XVIII, XXVI)

Article XVIII of the American Declaration provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights." Article XXVI provides, in relevant part: "Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws"

In *Smith and Armendariz v. U.S.*, the Commission adopted the balancing test articulated above for determining the existence due process violations in the deportation context. Noncitizens subject to deportation, the Commission found, must have an opportunity "to present a defense against deportation based on humanitarian and other considerations."¹³⁹ The State must permit judicial bodies charged with reviewing

¹³⁸ *Id.* ¶ 59.

¹³⁹ *Id.* at ¶ 5

deportation orders to give meaningful consideration to a non-citizen's defense and "balance it against the State's sovereign right to enforce reasonable, objective immigration policy."¹⁴⁰ Following *Mortlock*, the Commission underscored that, "in the context of immigration proceedings that include the sanction of deportation, . . . heightened due process protections apply."¹⁴¹

Here, as in *Smith and Armendariz v. U.S.*, the majority of Petitioners have not been given the opportunity to present a humanitarian defense to deportation or to have their due process rights considered before deportation. They have been found deportable based on the nature of their convictions, without having had any opportunity to present arguments or evidence of extenuating circumstances that would mitigate against their deportation or for a waiver of their deportation. Such a practice directly contravenes the Commission's recommendations in *Smith and Armendariz*.

Indeed, the situation at hand is amongst the most compelling imaginable scenarios for a humanitarian defense to deportation. Many Petitioners have been in the U.S. for decades, many from a young age. In many cases, Petitioners' family and cultural ties to Haiti were limited to begin with, and even further distanced after the earthquake's catastrophic death, injury, and displacement toll. Several Petitioners do not speak Haitian Kreyol. The majority of Petitioners have children and other close relatives in the United States. In many cases, Petitioners are the primary breadwinners in their families.

Most compelling in the immediate future, however, is the catastrophic situation in Haiti. As documented above, if Petitioners are deported to Haiti, many if not all will

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at ¶ 63.

undoubtedly be indefinitely detained in police station holding cells, where they will be subjected to mistreatment, deprived of adequate food and water, devoid of communication with family, friends, lawyers, and exposed to a deadly cholera epidemic. All of these factors weigh heavily in favor of the U.S. government not deporting Petitioners to Haiti.

The United States' resumption of deportations of Haitian noncitizens without an opportunity to present individualized defenses to their deportation based on humanitarian and other concerns therefore also violates Articles XVIII and XXVI of the American Declaration.

B. The Commission has previously urged States to adopt precautionary measures in similar situations to this one.

The Commission has previously requested that the United States adopt precautionary measures in the context of immigration and health, such as in the case of *Andrea Mortlock v. U.S.*¹⁴² Here, several Petitioners suffer from serious medical and mental health conditions that would not be treated appropriately in Haitian detention centers. Moreover, the entire class of Petitioners would be exposed to a cholera epidemic in Haiti that will undoubtedly grow in detention centers if the population housed in those centers is dramatically increased.

The Commission has also previously requested that OAS member states adopt precautionary measures on behalf of entire communities to protect members who are in danger of irreparable harm. In the *Haitians and Dominicans of Haitian Origin Case*, the Commission granted precautionary measures on behalf of “thousands of persons of Haitian origin and Dominicans of Haitian descent who had been expelled by the authorities of the Dominican

¹⁴² *Mortlock v. U.S.*, Inter-Am. C.H.R., Report no. 63/08, Case No. 12.534.

Republic, through collective round-ups, and without legal procedures to properly determine the nationality and family ties of the expelled persons.¹⁴³ In 2001, the Commission granted precautionary measures to the people of La Granja, Ituango municipality, in Antioquia, Colombia.¹⁴⁴ The precautionary measures were granted for the municipality as whole and individuals were not specifically named. Also in 2001, the Commission granted precautionary measures on behalf of members of the National Association of Peasant and Indigenous Women of Colombia (ANMUCIC).¹⁴⁵ Though only the president of the association was named, the Commission granted measures to protect the lives and persons of all the unnamed association members.”

Although only some of the Petitioners are individually named, the exact number of persons in need of precautionary measures is not known, since the U.S. government’s announcement regarding resumed deportations came with no warning and with a short time frame for implementation. A few media reports indicate the initial numbers of deportees are estimated to be well over one hundred, but this number is unconfirmed and could easily grow or change. Petitioners, however, form a distinct class and identifiable group with identifiable members in that they all have been identified as subject to imminent deportation due to their criminal convictions in the U.S.

¹⁴³ *Case of Persons of Haitian Origin and Dominicans of Haitian Descent, Dominican Republic*, Granting of Precautionary Measures, Inter-American Commission on Human Rights, Nov. 22, 1999.

¹⁴⁴ *Case of La Granja, Ituango municipality, Colombia*, Granting of Precautionary Measures, Inter-American Commission on Human Rights, Sept. 5, 2001.

¹⁴⁵ *Case of National Association of Peasant and Indigenous Women, Colombia*, Granting of Precautionary Measures, Inter-American Commission on Human Rights, Mar. 2, 2001.

VI. RELIEF REQUESTED

The facts outlined above establish the serious and urgent situation facing the Petitioners. The U.S. Government's plan to resume deportations to Haiti will place Petitioners (both named and unnamed) at risk of death, degrading treatment, arbitrary detention in Haiti, and permanent separation from family members. Moreover, the change in U.S. Government policy will create an additional strain on the Government of Haiti despite the Commission's reminder to States of their obligation to assist Haiti following the earthquake.¹⁴⁶

To prevent imminent and irreparable harm, Petitioners respectfully request that the Honorable Commission urge the United States Government to adopt precautionary measures and, most importantly, immediately halt its plans to resume deportations to Haiti on or about mid-January 2011 of all Petitioners, which include the 5 named Petitioners and all Haitian nationals subject to imminent deportation from the U.S.

¹⁴⁶ The Commission has reminded the international community of the importance of respecting international human rights obligations "in all circumstances" subsequent to the earthquake in Haiti, "in particular non-derogable rights and the rights of those most vulnerable." Inter-Am. C.H.R., Press Release No. 11/10, IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), available at <http://www.cidh.nas.org/Comunicados/English/2010/11-10eng.htm> (last visited on Jan. 6, 2011). Additionally, Member States of the Organization of American States (the "OAS") are obligated by the OAS Charter to "join together in seeking a solution... whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State." Charter of the Organization of American States, Art. 37, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.X. 3.

Specifically, Petitioners seek the following precautionary measures:

- Instruct United States Government to halt its plans to resume deportations to Haiti of Petitioners, including the 5 named Petitioners and all Haitian nationals subject to imminent deportation;
- Instruct the United States Government to immediately halt roundups and detentions of Haitian nationals in the U.S. and to release Petitioners into the community and facilitate their return home while the Commission considers the instant request for precautionary measures and during any stay of deportations to Haiti.
- Instruct the U.S. Government to publically release information about its decision to resume deportations to Haiti; and to explain what assessment was conducted of the circumstances in Haiti prior to the change in policy;
- Instruct the U.S. Government to engage with the Haitian-American and immigration advocacy communities in the U.S. in decision-making around changes in immigration policy with respect to Haiti. This engagement should be public, transparent and meaningful;
- Instruct the U.S. Government to protect Petitioners from retaliation or harm for filing the instant request for precautionary measures;
- Instruct the U.S. Government to prevent forced sedation or drugging to effectuate removals to Haiti;
- Instruct the U.S. Government to grant deferred action to all persons facing removal to Haiti;
- Protect Petitioners from inhumane conditions of confinement while in U.S. custody, including providing medical and mental health care and protection from excessive force and discriminatory treatment;
- Ensure the U.S. Government implements special protections for women, children, and those with chronic medical and/or mental illnesses or disabilities while in immigration detention;
- Instruct the U.S. Government to undertake an investigation into any allegations of cruel, inhuman and degrading treatment and other harsh conditions of detention and transfers, including allegations of the excessive use of force in the arrest, detention and transfers of Petitioners;

- Ensure the U.S. Government allow access to family members and human rights organizations to observe and assess the conditions of detention and assist detainees obtain assistance; and
- Pursuant to article 18(g) of the Commission's Statute, order further investigation into the facts of this case and, if possible, conduct an on-site visit to the detention facilities where numerous Haitian nationals are held, namely: Tensas Parish Detention Facility in Waterproof, Louisiana, South Louisiana Correctional Center, in Basile, Louisiana, and LaSalle Detention Center in Jena, Louisiana.
- Instruct the wardens, custodians and agencies not to commence removal while the Commission considers Petitioners requests, including the individuals and agencies in the following list and all other wardens, custodians and local ICE Field Offices where Petitioners are detained:

Tensas Parish Detention Center South

(b)(6),(b)(7)(C)

Warden [redacted]
8606 Highway 65
Waterproof, LA 71375
USA

(b)(6),(b)(7)(C)

318-7 [redacted] Tel
318-7 [redacted] Fax

South Louisiana Correctional Center

(b)(6),(b)(7)(C)

Warden [redacted]
3843 Stagg Aven.
Basile, LA 70515
USA

(b)(6),(b)(7)(C)

337-4 [redacted] Tel
337-4 [redacted] Fax

Krome Detention Center and Field Office

(b)(6),(b)(7)(C)

Field Office Director [redacted]
18201 SW 12th Street
Miami, FL 33194

(b)(6),(b)(7)(C)

305-24 [redacted] Tel

LaSalle Detention Facility (LDF)

(b)(6),(b)(7)(C)

Field Office Director [redacted]
Assistant Field Office [redacted]
830 Pine Hill Road
Jena, LA 71342

Facility Main Telephone Line: (318) 94 [redacted]
Field Office Main Telephone Line: (31 [redacted]

(b)(6),(b)(7)(C)

Hudson County Correctional Facility
30-35 Hackensack Avenue
Kearny, NJ 07032
U.S.A.

(b)(6),(b)(7)(C)

Field Office Director: [redacted]
Assistant Field Office Director (Detention): [redacted] (b)(6),(b)(7)(C)
Assistant Field Office Director (Detained Case Management): [redacted] (b)(6),(b)(7)(C)
Facility Main Telephone Line: (201) 39 [redacted] (b)(6),(b)(7)(C)
Field Office Main Telephone Line: (212) [redacted]

New Orleans Field Office
1250 Poydras Suite 325
New Orleans, LA 70113
Phone: (504) 5 [redacted]

(b)(6),(b)(7)(C)

Newark Field Office
614 Frelinghuysen Ave., 3rd Floor
Newark, NJ 07114
(973) 64 [redacted] Tel

(b)(6),(b)(7)(C)

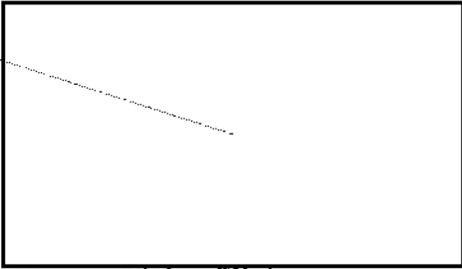
New York Field Office
26 Federal Plaza, Rm. 1105
New York, NY 10278
(212) 2 [redacted] Tel

(b)(6),(b)(7)(C)

Baker County Facility
1 Sheriff's Office Drive
MacClenny, FL 32063
Facility Main Telephone Line: (904) 2 [redacted] (b)(6),(b)(7)(C)
Field Office Main Telephone Line: (904) [redacted]

Respectfully submitted,

(b)(6),(b)(7)(C)

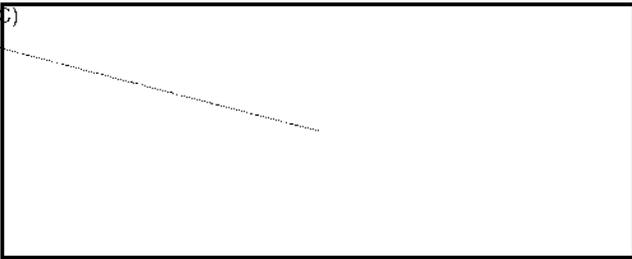


Human Rights Clinic
University of Miami School of Law
1311 Miller Drive, E256
Coral Gables, FL 33146

(b)(6),(b)(7)(C)

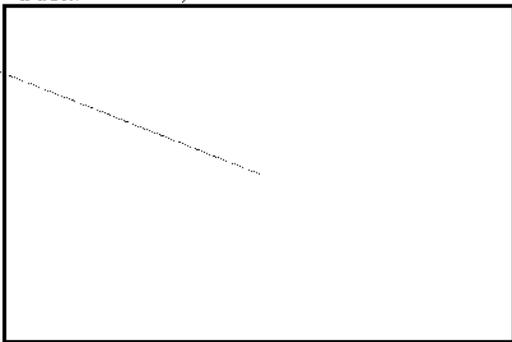


(b)(6),(b)(7)(C)



Immigration Clinic
University of Miami
School of Law
1311 Miller Drive, E257
Coral Gables, FL 33146

(b)(6),(b)(7)(C)

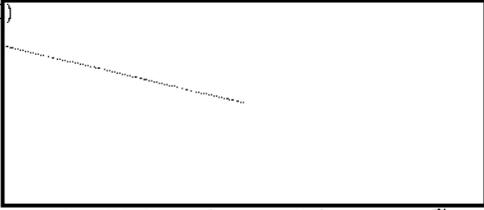


Center for Constitutional Rights
666 Broadway, 7th Fl.
New York, NY 10012

(b)(6),(b)(7)(C)

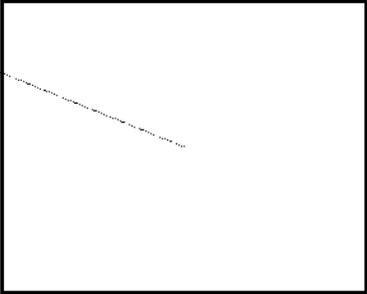


(b)(6),(b)(7)(C)

A rectangular black box redacting information, with a diagonal line from the top-left corner to the middle of the right edge.

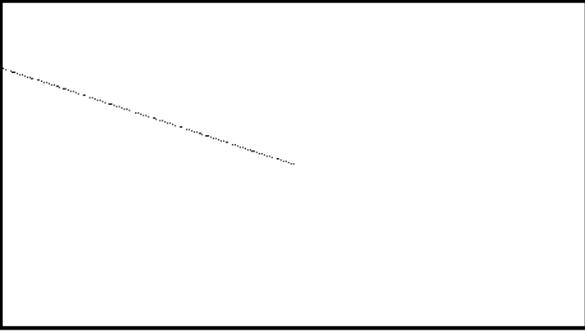
Florida Immigrant Advocacy Center
3000 Biscayne Blvd, #400
Miami, FL 33137

(b)(6),(b)(7)(C)

A rectangular black box redacting information, with a diagonal line from the top-left corner to the middle of the right edge.

70A Greenwich Avenue #373
New York, New York 10011

(b)(6),(b)(7)(C)

A large rectangular black box redacting information, with a diagonal line from the top-left corner to the middle of the right edge.

In Haiti

Loyola Law Clinic & Center for Social Justice
Loyola University New Orleans
College of Law
7214 St. Charles Ave.
New Orleans, LA 70118

(b)(6),(b)(7)(C)

A rectangular black box redacting information, with a diagonal line from the top-left corner to the middle of the right edge.

RESPONSE OF THE UNITED STATES TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REGARDING CERTAIN HAITIAN NATIONALS [redacted]

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

AND OTHER SIMILARLY-SITUATED HAITIAN NATIONALS SUBJECT TO IMMEDIATE DEPORTATION, PETITION AND REQUEST FOR PRECAUTIONARY MEASURES MC 5.11 US

The Government of the United States welcomes the opportunity to respond to the Commission's request of February 1, 2011, regarding the petition of the University of Miami School of Law Human Rights Clinic and Immigration Clinic, the Florida Immigrant Advocacy Center, Alternative Chance, the Center for Constitutional Rights, and the Loyola Law Clinic and Center for Social Justice (Petitioners) on behalf of [redacted]

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

[redacted] and other unnamed Haitian nationals facing deportation from the United States (named and unnamed beneficiaries or beneficiaries).¹ The Commission is requesting precautionary measures regarding named Haitian nationals, as well as a response to the Petition...

I. The Commission lacks authority to request the adoption of precautionary measures by the United States, a non-State Party to the American Convention

The Commission on February 1, 2011 requested that the United States adopt precautionary measures to ensure that the named beneficiaries are not deported until:

1. Conditions are in place in Haiti to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards; and
2. The procedures in place to decide upon and review the deportation of those named take adequately into account their right to family life and their family ties in the United States.

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

[redacted] as the subject of a final order of removal, was removed to Haiti on a January 20, 2011 charter flight. The Commission's disposition of the petition and request for precautionary measures pertaining to [redacted] accordingly are moot and the United States respectfully requests that the Commission refrain from considering [redacted] a proposed beneficiary as identified by Petitioners.

The United States Government respectfully submits that the Commission does not have authority to request that it adopt precautionary measures. The practice of requesting precautionary measures is based on Article 25 of the Commission's Rules of Procedure, which reads:

In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.

As an initial matter, it should be noted that the Commission's Rules of Procedure were not adopted by the Member States of the Organization of American States (OAS), but were approved only by the Commission itself. The Statute of the Commission – which was adopted by OAS Member States – however, refers to precautionary measures only in the context of States Parties to the American Convention on Human Rights. With regard to those States Parties, the Commission's Statute states, at Article 19(c), that the Commission shall have the power:

To request the Inter-American Court of Human Rights to take such provisional measures as it considers appropriate in serious and urgent cases which have not been submitted to it for consideration, whenever this becomes necessary to prevent irreparable injury to persons.

For non-States Parties to the American Convention, there is no parallel provision either in the Commission's organic document, the American Convention on Human Rights, or the Commission Statute, which would provide specific authority for the Commission to request precautionary measures. Rather, Article 20(b) of the Commission's Statute provides for the Commission to have the power:

[T]o make recommendations to [non-parties to the American Convention], when it finds this appropriate, in order to bring about more effective observance of fundamental human rights;

Where Member States of the OAS thought it appropriate for one of its bodies to be authorized to request provisional or precautionary measures, they expressly created such authority. For instance, Article 63 of the American Convention explicitly gives the Inter-American Court of Human Rights the power to “adopt such provisional measures as it deems pertinent” in cases of “extreme gravity and urgency, and when deemed necessary to avoid irreparable damage to persons.” Moreover, the American Convention gives the Commission the authority to request that the Court take such measures.²

Indeed, that authority is explicitly delineated in Article 19 of the Commission’s Statute for States Parties to the American Convention “to request the Inter-American Court of Human Rights to take...provisional measures” Comparing Article 19, authorizing the Commission to request the Inter-American Court of Human Rights to take such provisional measures as it deems necessary with respect to States Parties of the American Convention, with Article 20, which authorizes the Commission to make recommendations with respect to Non-Parties to the American Convention, but which contains no authorization of provisional measures, makes clear that the American Convention does not vest the authority to request precautionary measures in the Commission itself, nor does it provide a basis for the Commission to request the Court to take such measures with respect to non-States Parties to the American Convention.

Therefore, while Member States of the OAS expressly gave the Commission the authority to request that the Court take provisional measures vis-à-vis States Parties to the American Convention (and States then enjoyed the right to determine for themselves if such procedures would apply to them by virtue of deciding to become parties to the American Convention), the Commission has not been given the same such

² Article 63 provides: “With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”

authority vis-à-vis a State such as the United States, which is not a party to the Convention.

The United States is not party to the American Convention on Human Rights or to any other Convention that would confer upon the Commission the authority to request that precautionary measures be taken by the United States. Because the United States is not party to the American Convention, the Commission has only the authority “to make recommendations...to bring about more effective observance of fundamental human rights.”³ Nothing in the Commission’s Statute provides the Commission with the authority to request precautionary measures of the United States. Accordingly, the Commission enjoys no such authority to act in this manner.

In sum, the Commission lacks the requisite authority to request precautionary measures of the United States, and such an action constitutes *ultra vires* action by the Commission.

In the spirit of cooperation, without waiving or otherwise withdrawing its objections to the Commission’s request for precautionary measures, the United States Government provides the following response to the merits of Petitioners claims.

II. Statement of Facts

A. Named and Unnamed Beneficiaries

Named and unnamed beneficiaries are Haitian nationals who have been convicted by U.S. courts of committing serious criminal offenses and who are subject to final orders of removal.⁴

³ Commission’s Statute, Art. 20(b).

⁴ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) significantly changed the nomenclature of deportation. The IIRIRA consolidated what were previously known as “exclusion” and “deportation” proceedings into one unified “removal” proceeding. As such, the terms deportation and removal will be used interchangeably throughout.

Petitioners set forth a statement of facts concerning each of the five named beneficiaries. Petition at 7-11. The United States respectfully submits that its ability to effectively respond to matters filed with the Commission, including in offering and contesting statements of fact, is limited by Department of Homeland Security (DHS) policy regarding the application of the Privacy Act of 1974 (Privacy Act), 5 U.S.C. § 552a, to “visitors and aliens,” the asylum confidentiality regulations, and statutory confidentiality requirements regarding specific applications for immigration benefits.

In matters relating to the treatment of aliens in the United States, DHS is the custodian of the majority of records relevant to matters before the Commission. Specific laws, regulations, and policies, however, generally prohibit DHS’s disclosure of personal information contained in its records absent a waiver executed by the subject of the record. Without the ability to disclose information contained in DHS records, the U.S. Government’s ability to rebut allegations lodged by Petitioners, further develop the record before the Commission, and defend its actions is greatly handicapped.

In light of the privacy protections afforded aliens by DHS with regard to their personal information, waivers are necessary to permit the U.S. Government to adequately respond to certain matters before the Commission. Therefore, the U.S. Government seeks the Commission’s assistance in facilitating the execution of relevant privacy waivers by named beneficiaries identified by Petitioners in this matter, so that the Commission may timely address it with complete and accurate facts. Once privacy waivers are obtained, the United States stands ready to provide the Commission with timely factual information pertinent to this matter.

B. Resumption of removals to Haiti and related community outreach

The U.S. Government has worked diligently with its international partners—public and private—to assist Haiti in its rescue, recovery, and rebuilding efforts following the January 12, 2010 earthquake. We are working, and will continue to work, with the Government of Haiti and our international partners on a broad array of efforts to meet

both the immediate needs of vulnerable populations and to reduce vulnerabilities over the long term. Since January 2010, the U.S. government has provided \$1.1 billion in humanitarian relief assistance and \$406 million in recovery assistance. The United States has pledged an additional \$1.15 billion in future reconstruction funds.

In addition, DHS has made efforts to assist Haitians present in the United States, including designating Haiti for temporary protected status (TPS), allowing for temporary immigration relief for eligible Haitian nationals who were physically present in the United States as of January 12, 2010, temporarily suspending certain regulatory requirements to permit qualifying Haitian nonimmigrant students to obtain employment authorization, granting humanitarian parole to Haitian orphans, and granting discretionary stays of removal.

DHS also favorably exercised its prosecutorial discretion in a variety of enforcement-related actions, for example:

- DHS's U.S. Immigration and Customs Enforcement (ICE) has released approximately 584 Haitian nationals subject to a final order of removal from custody since the earthquake;
- ICE granted orders of supervision with the opportunity for work authorization, to Haitians released since the earthquake; and
- DHS administratively closed or terminated removal proceedings in 3,181 cases involving Haitian nationals after the earthquake.

With these favorable exercises of prosecutorial discretion in mind, DHS also notes the following facts as it resumes removals to Haiti:

- When selecting criminal deportees to remove to Haiti, ICE has limited the removal of Haitians with serious medical conditions and made any medical issues known to the Government of Haiti prior to removal;
- Of the 27 Haitians removed to Haiti since the earthquake, none were held in Haitian prisons for more than 11 days; and

- Of the 27 Haitians removed to Haiti since the earthquake, none had pending motions to reopen with the Executive Office for Immigration Review (EOIR). In all cases, including these, ICE provides each alien the opportunity to present evidence as to any legal impediment or other evidence that may prevent his or her removal...

Haitian cases are reviewed on an individual case-by-case basis to determine whether release, continued detention, or removal is appropriate. ICE has also had extensive follow-up review for Haitians in detention or released.

On January 13, 2010, ICE temporarily halted its removals to Haiti of aliens with final orders of removal in the wake of the earthquake and the resulting humanitarian crisis. After carefully considering the conditions in Haiti, the U.S. Government and international humanitarian relief and reconstruction efforts, the threat to public safety, and the need to enforce U.S. immigration laws, the U.S. Government decided to resume the removal of criminal aliens to Haiti. The decision to temporarily suspend removals to Haiti in the aftermath of the earthquake was made for humanitarian reasons and was vital to enabling U.S. and international relief efforts to proceed. However, a failure to resume removal operations to Haiti would pose a significant threat to public safety in the United States. The public safety threat posed by releasing serious criminals is the primary motivation for the decision to resume the removal of Haitian criminal aliens who are ineligible for TPS.

Despite conflicting allegations made by the Petitioners that “ICE has remained decidedly silent about the decision to resume deportation[s] [.]” ICE publicly announced on December 9, 2010 plans to end its suspension of Haitian removals by resuming limited removals of convicted criminal Haitian nationals to Haiti. ICE later posted the proposed policy for public comment and has responded to congressional, stakeholder, and public questions regarding the resumed removals to Haiti. ICE has addressed those inquiries on a consistent basis indicating both our intent to resume removals to Haiti and the planned process for resumption.

C. Standards of Detention

The Petitioners make broad allegations regarding the DHS immigration detention system. The Petitioners assert, inter alia, that detainees are held in remote areas, do not have reasonable access to telephones, and do not have access to adequate medical care. DHS takes detention issues very seriously as evinced by the policies and procedures in place.

ICE makes detainee transfer determinations only after thoroughly considering all information currently available to the agency, and only when they are necessary for operational reasons. Transferring a detainee is never used as a punitive measure. To the contrary, ICE appreciates the significant benefit that staying in a facility near family members and attorneys can have for an individual detainee. ICE is developing a new transfer directive which will seek to further minimize transfers, and in particular of individuals who have family roots in the community, an attorney of record, and who have been granted bond. The new policy will also underscore ICE's current practice of not transferring from a facility a detainee who has reported to ICE (including contractor staff) an allegation of sexual assault that is still under investigation, unless the detainee requests a transfer.

The current detention standards provide that when a detainee is represented by legal counsel and counsel has properly filed a Notice of Entry of Appearance (Form G-28), the legal representative of record will be notified that the detainee was transferred. This notification includes the reason for the transfer and the name, location, and telephone number of the new facility. The legal representative of record is notified once the detainee has arrived at the new detention location. Typically, this notification occurs as soon as practicable but not later than twenty-four (24) hours after the detainee is transferred. It is then the legal representative or detainee's responsibility to notify any family members of the transfer.

ICE has also launched an Online Detainee Locator System (ODLS), a public, internet-based tool designed to assist family members, attorneys, and other interested parties in locating detained aliens in ICE custody. The ODLS, located on ICE's public website at www.ice.gov, provides users with information on the location of the detention facility where a particular individual is being held, the facility's phone number, and contact information for the ICE Enforcement and Removal Office in the region where the facility is located. The roll-out of the ODLS, including the translation of the website, an informational brochure, and facility fact sheets in numerous languages, occurred in July 2010. It is being used extensively by the public.

ICE provides detainees with free telephone calls to pro-bono legal service providers, consular officials, and DHS's Office of the Inspector General, among others, and ensures that detainees with hearing or speech disabilities have appropriate accommodations to allow for accessible telephone services. Telephones are tested daily and placed in strategic locations throughout the facility to afford privacy and minimal distraction for conversations to take place. In addition to these services, the current detention standards ensure that detainees will have an appropriate number of operating telephones for the population size and equitable access to reasonably priced telephone services. ICE has encouraged facilities to seek out and use emerging telecommunications, voiceover, and Internet protocol technologies to reduce telephone costs. ICE strives to provide reasonably priced telephone services for detainees to maintain contact with family members, friends, and legal representation.

ICE understands the needs of detainees to maintain morale and connections through visitation with family, friends, legal representatives within the necessary safety and security parameters of each individual facility. The current Performance Based National Detention Standards (PBNDS) and new draft PBNDS seek to encourage visits by family and friends. Each facility is afforded the flexibility to establish a generous visiting schedule balancing the detainee population and the actual demand for visits. The facility's written rules specify time limits for visits, which under normal conditions are not less than one hour. Visits are permitted during established hours and on Saturdays,

Sundays and holidays. When visitors cannot come during established hours, the facility is instructed to accommodate such visitors' scheduling needs. ICE is aware of the hardship some visitors encounter while traveling significant distances and seeks to provide more generous time limits for such visits.

As part of its detention reform initiative, ICE is exploring the options for expanded family visitation. ICE is also exploring the use of video-teleconferencing to allow detainees contact with family members who may not be able to visit the detention facility. Additionally, ICE is working to improve access to legal counsel and legal materials. This includes access to materials that explain State laws that affect custody and family issues.

The current detention standards address care for detainees with chronic conditions. The current PBNDS Medical Care standard specifically provides:

When a detainee requires close medical supervision, including chronic and convalescent care, a written treatment plan that includes access to health care and other personnel regarding care and supervision, shall be developed and approved by the appropriate physician, dentist, or mental health practitioner, in consultation with the patient, with periodic review. The written treatment plan will conform to National Commission on Correctional Health Care and The Joint Commission requirements.

The National Detention Standards (NDS) specifically requires that every facility provide its detainee population with primary medical care and may arrange for specialized health care. In addition, those detainees with a medical or psychiatric condition requiring special attention, such as a special diet, are identified and ICE is notified. Although the petitioners allege that [redacted] has not been getting his required diabetic diet, the NDS provides that "[d]etainees with certain conditions -- chronic or temporary; medical, dental, and/or psychological -- shall be prescribed special diets as appropriate."

(b)(6),(b)(7)(C)

The grievance procedures in the current detention standards and in the Detainee Handbook convey that detainees are afforded certain protections and rights, including the ability to file grievances. The goal of a grievance standard is to ensure detainee legal rights are respected, including a detainee's rights to: (1) due process, including the ability to access redress for a grievance quickly; (2) translation and interpreter services so a detainee can understand and communicate with staff; and (3) aids or services that ensure effective communication between a detainee and facility staff if there is any impediment to communication. In addition, detainees, through the detainee handbook and notices posted in the housing pods, are informed that they may report any staff misconduct or inappropriate treatment through any staff member, to ICE, the DHS Office of Inspector General, or the Joint Intake Center.

ICE is mindful of the particular vulnerabilities some female and juvenile detainees face, and as a result the PBNDS and draft PBNDS specifically address sexual abuse and assault prevention and intervention. Detainees, both male and female, are screened by staff in an effort to identify those likely to be sexual aggressors or sexual victims. The detainees falling into these distinct categories are housed accordingly. ICE is working to ensure that:

- Facility staff are properly trained;
- Prevention of sexual abuse is sought before an act occurs;
- Prompt intervention results if sexual abuse does occur;
- Confidential reporting and notification is in place;
- Prompt and effective investigation of an assault; and
- Appropriate medical care following an assault.

III. State Sovereignty: Action on this Petition would signal a rejection of the principle of international respect for independent judicial processes of a sovereign State embraced by the Commission

Petitioners request that the United States fail to enforce U.S. immigration law and act in a manner contrary to the protection of public safety in the United States by extending to criminal aliens with final orders of deportation protections above and beyond the law. The Petition, however, fails to establish that deportations of named and unnamed beneficiaries are inconsistent with any norm set forth in the American Declaration of the Rights and Duties of Man (“Declaration” or “American Declaration”). In fact, a finding in Petitioners’ favor would signal a rejection of the principle of international respect for the independent judicial processes of sovereign states, which has been previously embraced by the Commission.

The issue of state sovereignty and the state’s ability to control immigration is central to these proceedings. International law protects the sovereign right of states to regulate the entry and residence of aliens in their territory. A nation’s legitimate interests in controlling the admission of aliens, their departure, and their conditions and duration of stay within the country has long been universally recognized and affirmed through treaty law. The Convention on the Status of Aliens (“Havana Convention”), Article 1, provides: “States have the right to establish by means of laws the conditions under which foreigners may enter and reside in their territory.”⁵ Article 6 further provides: “For reasons of public order or safety, states may expel foreigners domiciled, resident, or merely in transit through their territory.”⁶

Furthermore, according to the U.S. Third Circuit Court of Appeals citing the U.S. Supreme Court, “It is well settled that the power to regulate the admission or removal of

⁵ See Convention on the Status of Aliens (“Havana Convention”), art. 1, adopted Feb. 20, 1928, 132 L.N.T.S. 301, T.S. 815, 46 Stat. 2753, 2 Bevans 710, 4 Malloy 4722. The United States became a party to the Havana Convention on May 21, 1930.

⁶ *Id.* art. 6, ¶ 1.

aliens is a ‘fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.’ Pinho v. INS, 249 F.3d 183, 190 (3d Cir. 2001), (citing Fiallo v. Bell, 430 U.S. 787, 792 (1977) quoting Shaughnessy v. Mezei, 345 U.S. 206, 210 (1953)); see also Rojas-Reyes v. INS, 235 F.3d 115, 122 (2d Cir. 2000).

This issue concerns every sovereign nation and every OAS member state, not only the United States. Indeed, the U.S. Supreme Court noted as early as 1892 that every sovereign nation has power, inherent in sovereignty and essential to self-preservation, to forbid entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. Nishimura Ekiu v. United States, 142 U.S. 651, 659 (1892).

Therefore, a sovereign state has the right to exclude from its territory aliens whose presence is not in the public interest. It is well-settled in international law that a State has no obligation to admit aliens into its territory or to allow aliens to remain in its territory whose presence is potentially harmful to its public safety or threatens the economic, political, or social well-being of its citizens. Ting v. U.S., 149 U.S. 698, 705 (1893), citing Ekiu v. U.S., 142 U.S. 651, 659; see Conventions Relating to the Status of Refugees, done July 28, 1951, ch. 1 art 1(F), ch. 5, art. 33(2), 19 U.S.T. 6223, 33, 49, 189 U.N.T.S. 137, 157-7, 176. Restricting the release into the community, by detention and deportation, of aliens convicted of certain crimes is a legitimate means of exercising that right and violates no principle of international law, let alone any binding international obligation.

Limited exceptions do apply to a state’s lawful ability to remove aliens from its territory, and states must exercise their sovereign prerogative with due regard to the obligations they have assumed under international human rights and refugee law. The United States takes seriously its obligations under human rights and refugee law and is

likewise committed under its domestic law to protecting the rights of aliens as a matter of U.S. constitutional law. For example, the United States recognizes its obligations under the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol), which prohibits state parties in certain situations from expelling or returning a refugee to a country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.⁷ Likewise, Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits the expulsion, return, or extradition of a person to any country “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁸

However, these exceptions are not applicable to beneficiaries, nor do the other human rights conventions or other treaties to which the United States is a party provide criminal aliens any substantive right to remain in the United States contrary to final orders of deportation reached in accordance with law. Domestic U.S. law provides robust protection law and due process protections to aliens. An alien in removal proceedings may seek asylum in such proceedings. An asylum application filed in removal proceedings is deemed to constitute at the same time an application for withholding of removal under 8 U.S.C. § 1231(b)(3), 8 C.F.R. § 1208.3(b). An alien in removal proceedings may also seek regulatory withholding of removal and deferral of removal under the regulations implementing Article 3 of the CAT, 8 C.F.R. §§ 1208.16(c) - .18. There are a number of bars to asylum, statutory withholding of removal, and withholding of removal under the CAT, including those pertaining to particularly serious crimes. 8 U.S.C. §§ 1158(b)(2)(A)(ii), 1231(b)(3)(B), 8 C.F.R. § 1208.16(d)(2). There are, however, no bars to *deferral of removal* under the CAT; an alien who is otherwise

⁷ Protocol Relating to the Status of Refugees, adopted by the U.N. General Assembly Dec. 16, 1966, entered into force Oct. 4, 1967, ratified by the United States on Nov. 1, 1968, 606 U.N.T.S. 267; see also 8 U.S.C. 1231(b)(3) and 8 C.F.R. § 208.16 (implementing the Protocol’s non-refoulement guarantees).

⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, entered into force June 26, 1987, ratified by the United States on Oct. 21, 1994, 1465 U.N.T.S. 85; see also 8 C.F.R. § 208.17 (implementing the Convention Against Torture for criminal aliens).

eligible for CAT withholding, but for its bars, must be granted CAT deferral. 8 C.F.R. § 1208.17(a).

An alien may appeal an immigration judge's denial of asylum, statutory withholding of removal, or CAT withholding or deferral of removal to the Board of Immigration Appeals (Board). 8 C.F.R. § 1240.15. If an alien is unsatisfied with an administratively final order of removal, including a decision denying these forms of protection, the alien may file a petition for review with the federal circuit court of appeals in the jurisdiction where the alien's removal proceedings were conducted. 8 U.S.C. § 1252.

Furthermore, an alien subject to an administratively final order of removal issued through formal removal proceedings may, subject to certain limitations, move for reconsideration or reopening. 8 U.S.C. §§ 1229a(c)(6), (c)(7). If a motion to reconsider or reopen is denied, the appeal and review process for the denial is the same as that for an administratively final order of removal, i.e., the alien may appeal to the Board and, if necessary, file a petition for review with a federal circuit court of appeals.

The named and unnamed beneficiaries of this Petition would have had the opportunity to seek protection from removal from the United States in the forms of asylum, withholding of removal and protection under the Convention Against Torture. Should beneficiaries have qualified for any such protection, they would not be subject to removal. Thus, the United States' termination of their privilege of residing in its territory does not give rise to a violation of international human rights law.

The United States therefore respectfully urges the Commission to find that the detention and deportation of named and unnamed beneficiaries by the United States is *not* inconsistent with and does not "violate"⁹ any norm set forth in the American Declaration.

⁹ As the American Declaration is a non-binding instrument and does not itself create legal rights or impose legal obligations, we understand that "violation" in this context means a declaration that a state has not lived up to its political commitment to uphold the Declaration.

IV. Petitioners rely on an erroneously expansive conception of the substantive and procedural protections in the American Declaration.

Petitioners claim that the United States is violating Articles I and XXVI of the Declaration because deporting beneficiaries to Haiti violates the rights to life, liberty and security of person and freedom from cruel infamous or unusual punishment. Petitioners also contend that the United States is violating Articles V, VI, and VII of the Declaration because deportation violates the right to be free from arbitrary or illegal interference with family life. Lastly, Petitioners assert that the United States is violating Articles XVIII and XXVI of the Declaration because depriving beneficiaries the opportunity to present a humanitarian defense to deportation denies them due process.

First, as a matter of law, states adhere to the principle of non-refoulement under the terms of their express treaty obligations and domestic laws. Broader duties to refrain from legitimate enforcement of a state's immigration law cannot be inferred when non-refoulement obligations do not apply, nor can a state be found secondarily liable for actions that may be undertaken by another government within that government's territory merely because it effected the return of that state's nationals consistent with its legal obligations.

Petitioners' arguments also depend upon an erroneously expansive conception of the substantive family life provisions in the American Declaration. No reasonable reading of the American Declaration in general, or of the particular provisions identified by Petitioners, contradicts the fact that states have the right under international law to regulate the residence of criminal aliens in their territory. Nowhere does the Declaration confer upon aliens a liberty interest in familial or private relations that may outweigh a country's legitimate interest in regulating the residence of criminal aliens in its territory.

Petitioners have likewise misinterpreted the procedural provisions of the Declaration. These provisions do not require a state to offer procedures where there is no underlying right under the American Declaration to be protected. This misinterpretation

notwithstanding, as a matter of U.S. domestic law, beneficiaries were able to take advantage of extensive process in the U.S. administrative and judicial systems.

Petitioners have likewise ignored the fact that the American Declaration itself speaks directly in support of the U.S. position by recognizing that states have the right to protect their citizens against legitimate threats to their welfare. Article XXVIII makes plain that other rights protected under the Declaration, including rights cited by Petitioners, are “limited” by the state’s inherent duty to protect the “security of all” and to meet “the demands of the general welfare.” To that end, states may permissibly choose to remove criminal aliens whose presence in that country represents a threat to the security and well-being of society.

Petitioners also fail to acknowledge the fact that the American Declaration sets forth duties of individuals as well as rights. While Petitioners have alleged many violations of the Declaration, the only violations that indisputably occurred are the ones committed by beneficiaries themselves, namely, the violation of “the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be” as provided by Article XXXIII of the American Declaration. Beneficiaries have all been convicted of serious criminal offenses after criminal proceedings complying with the requirements of due process. In light of these serious criminal convictions, they may fall within the scope of the resumed removals to Haiti which focus on serious offenders who have committed crimes such as homicide, rape, sexual assault, robbery, sex offense against children, aggravated assault, assault, kidnapping, false imprisonment, sale of cocaine, smuggling cocaine, sale of marijuana, and larceny.

- A. **Petitioners erroneously read into Articles I and XXVI of the Declaration non-refoulement obligations which are both unfounded and contrary to legitimate state actions undertaken pursuant to enforcement of U.S. immigration law.**

Petitioners assert that “The United States’ decision to deport [beneficiaries] violates their right to life” under Article I of the Declaration as well as the rights to liberty and security of person. Petition at 30-31. Petitioners further assert that deportation to Haiti constitutes cruel, infamous or unusual punishment under Article XXVI. Petition at 34. Petitioners conclude *a fortiori* that the United States has already incurred responsibility for any possible action by individuals in Haiti – whether government officials or otherwise – that would interfere with the full enjoyment of these rights because, once in Haiti, beneficiaries *may or may not* encounter one or more of the scenarios Petitioners describe. No state could ever ensure that its actions effectively guard against such speculative assertions of conduct by another state with respect to its own nationals, nor does any obligation or commitment undertaken by the United States require it to do so.

The United States takes seriously its obligations to protect the rights of aliens as a matter of U.S. law and in accordance with its international obligations. In limited instances, protection of these rights carries with it a non-refoulement obligation. For example, as discussed in Section III above, the United States recognizes its obligations under the Refugee Protocol, which prohibits state parties in certain situations from expelling or returning a refugee to a country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.¹⁰ Likewise, Article 3 of the CAT prohibits the expulsion, return, or extradition of a person to any country “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹¹ In such instances, each alien seeking non-refoulement protections must bring before immigration authorities a concrete and individualized concern, which is evaluated in keeping with the Refugee Protocol and CAT as incorporated into U.S. law through the Immigration and Nationality Act of 1952 (as amended). However, while beneficiaries in this matter had the ability to raise concerns under these legal protections in their individual deportation

¹⁰ See note 7, *supra*.

¹¹ See note 8, *supra*.

proceedings, such concerns either were not asserted or have been determined to not be applicable here.

No other human rights conventions or other treaties to which the United States is a party provide criminal aliens any substantive right to remain in the United States contrary to final orders of deportation reached in accordance with law. Moreover, the American Declaration itself recognizes that the scope of a state's non-refoulement protections is defined under the domestic laws it has enacted and international obligations it has expressly undertaken. Article XXVII provides that: "Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, *in accordance with the laws of each country and with international agreements.*" (emphasis added).

To infer a broad non-refoulement duty into the text of each provision of the Declaration would not only be contrary to Article XXVII, it would also result in a prohibition on all OAS states from removing any person within their territory, including the most serious criminal aliens, who makes any manner of a claim of interference with the enjoyment of his or her human rights in the country of return. This could, for example, touch on non-discrimination, freedom of expression, freedom of private life, educational and vocational opportunities, and assessments of foreign courts' protections of due process and other trial and appellate rights in the country of origin or return. It would impart on OAS states responsibility for any number of *possible* acts undertaken by the governments of all other 193 countries in the world. In this context, the result of implementing Petitioners' request would be paralysis of the U.S. immigration system.

Accordingly, because the remedies Petitioners seek exceed the scope of the American Declaration, Petitioner's Article I and XXVI claims should be denied.

Petitioners' Article XXVI claim also must be denied because that article, by its own terms, applies solely to *criminal* proceedings.¹² Petitioners' invocation of Article XXVI in the immigration context is improper because immigration proceedings are part of a civil, administrative process distinct from criminal prosecution, conviction and sentencing. Moreover, deportation can in no way be characterized as "punishment." As the United States Supreme Court has found: "'Deportation' is the removal of an alien out of the country simply because his presence is deemed inconsistent with the public welfare, and without any punishment's being imposed or contemplated either under the laws of the country out of which he is sent or under those of the country to which he is taken." Fong Yue Ting v. U.S., 149 U.S. 698, 709 (1893); see also INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984) (stating: "A deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish unlawful entry."); Reno v. Am.-Arab Anti-Discrim. Comm., 525 U.S. 471, 491 (1999) ("While the consequences of deportation may assuredly be grave, they are not imposed as a punishment Even when deportation is sought because of some act the alien has committed, in principle the alien is not being punished for that act (criminal charges may be available for that separate purpose) but is merely being held to the terms under which he was admitted. And in all cases, deportation is necessary in order to bring to an end an ongoing violation of United States law." (emphasis in original) (citing Carlson v. Landon, 342 U.S. 524, 537 (1952))). See also S. Rep. No. 104-249, at 7 (1996) ("Aliens who are required by law or the judgment of our courts to leave the United States are not thereby subjected to a penalty. The opportunity that U.S. immigration law extends to aliens to enter and remain in this country is a privilege, not an entitlement.").

B. Petitioners' claims concerning Articles V, VI and VII expand impermissibly on the scope of these articles and are also unfounded, as U.S. immigration law adequately takes into account family life and family ties in the United States.

¹² Article XXVI: "Every *accused person* is presumed to be innocent until proved guilty. Every *person accused of an offense* has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment." (emphasis added.)

The rights to private and family life established by Articles V and VI of the Declaration were not intended to apply to the situation at hand, in which individuals convicted of committing serious crimes in the United States are the subject of final orders of deportation. Rather, the language of these Articles makes clear that they are intended to ensure, first, that all persons have the right to procreate and raise a family, and second, that families are not subject to direct violence by the state. The words “abusive attacks upon . . . private and family life” in Article V clearly imply state action directly aimed at harming family life.¹³ Any expansion of Articles V and VI to cover the secondary consequences of lawful and reasonable state action would have the effect of seriously disrupting the state’s ability to make the many thousands of routine administrative determinations necessary to provide for security and promote the general welfare.

Petitioners have also alleged a violation of the Article VII right of children to special protection, care and aid. While the United States firmly believes that states are obligated to protect the health and welfare of children, the United States respectfully submits that the protection of children is not directly implicated in this situation, as all beneficiaries are adults.

In short, if the United States were compelled to weigh the interests of the child and family ties in removing criminal aliens from its territory, the overwhelming majority of criminal aliens would gain the ability to remain in the United States in perpetuity, as nearly all criminal aliens will have family or community ties in this country. International law does not so require. Indeed, if a sovereign State were compelled to weigh family ties in enacting and implementing laws governing the general welfare and protecting public safety, it could be precluded from incarcerating a parent who had committed a serious crime or from conscripting a parent for military service.

C. Petitioners’ claims concerning Articles XVIII and XXVI are without

¹³Article V of the Declaration provides: “Every person has the right to the protection of the law against abusive attacks upon his . . . private and family life.”

merit because U.S. immigration law affords individuals robust due process protections.

Petitioners claim that “the majority of [beneficiaries] have not been given the opportunity to present a humanitarian defense to deportation or to have their due process rights considered before deportation. They have been found deportable based on the nature of their convictions, without having had any opportunity to present arguments or evidence of extenuating circumstances that would mitigate against their deportation or for a waiver of their deportation.” Petition at 38.

Petitioners have mischaracterized the procedural protections provided by Articles XVIII and XXVI. Under the Declaration, procedural guarantees exist to ensure respect for substantive rights to which an individual is entitled, that is, for the “legal rights” referenced in Article XVIII. Thus, no person has a “right” to receive any particular procedure unless the state is depriving him or her of some other protected right. Because Articles I, V, VI, VII, and XXVI do not afford beneficiaries the right to remain in the United States after having committed serious crimes nor do they possess any “fundamental constitutional rights” under U.S. constitutional law to remain in the United States—they simply are not entitled to any particular level of process concerning their removal under Article XVIII. Nevertheless, as outlined in Section III, as a matter of U.S. domestic law, beneficiaries were guaranteed access to numerous administrative and judicial procedures prior to their removal, affording them more than adequate due process. Additionally, with respect to Article XXVI, as stated above, the due process provision protecting the criminally accused, it must be stressed that removal proceedings are not criminal proceedings, but are civil administrative proceedings.¹⁴

¹⁴ Beneficiaries were entitled to a fair trial and due process of law under Articles XVIII and XXVI with respect to their criminal charges. Procedural protections received by aliens in criminal proceedings are no different from those received by U.S. citizens. Aliens, like citizens, cannot be convicted unless the charged crime is proven beyond a reasonable doubt. Aliens, like citizens, have full rights to appeal their convictions or to challenge the conditions of any subsequent incarceration. Aliens also have the right to be represented by counsel, the right to a trial by jury, the right to cross-examine the government’s witnesses, the right against self-incrimination, the right to have improperly obtained evidence suppressed, the right to have evidence of prior criminal convictions excluded, and the right not to be subjected to double jeopardy, ex post facto laws, or bills of attainder, among many other statutory and constitutional protections that apply to aliens and citizens alike. In short, the United States has one of the most robust systems of Article XXVI due process in the world.

Even if Articles XVIII and XXVI somehow did apply to this matter, contrary to Petitioners' assertions, the United States has in place both extensive administrative procedures *and* opportunity for judicial review to challenge deportation and detention. In addition to claims challenging their deportability, see 8 U.S.C. § 1252(c) and discussion of administrative procedures above and below, criminal aliens continue to have access to the federal courts to raise other substantial legal or constitutional challenges relating to their removal orders. Notably, it is well established that the Fifth Amendment of the U.S. Constitution entitles aliens to due process of law in removal proceedings. See, e.g., Demore v. Kim, 538 U.S. 510, 523 (2003) (quoting Reno v. Flores, 507 U.S. 292, 306 (1993)). These administrative and judicial remedies more than satisfy any requirement under the Articles cited above or under the Declaration.

More specifically, at the administrative level, an immigration judge presides in immigration court over a removal hearing, which the Petitioners received. 8 U.S.C. § 1229a. In these proceedings, an alien is afforded substantial rights, such as the privilege of being represented by counsel, at no expense to the Government. During these proceedings, aliens may present applications for relief and protection from removal. It is therefore inaccurate to say that beneficiaries were precluded from presenting defenses against deportation based on humanitarian or any other considerations beneficiaries deemed relevant. Petition at 37. Rather than being prevented from presenting defenses to removal, beneficiaries were rendered ineligible for most forms of relief and protection based upon their criminal convictions.

Furthermore, aliens who have committed serious crimes, such as the Petitioners, continue to have access to the United States' judicial court to review their immigration orders. INS v. St. Cyr, 533 U.S. 289, 318 (2001). These aliens may seek judicial review to challenge the charges of deportability as well as to seek review of other substantial legal and constitutional questions.

Accordingly, the administrative and judicial remedies that were provided to beneficiaries under U.S. law are entirely consistent with basic principles of due process and with the balance of interest to be accommodated, and therefore are fully consistent with the terms of the Declaration. In this area as in all others, Petitioners have no grounds for complaint under the Declaration.

V. Conclusion

The deportation of individuals to Haiti undertaken pursuant to U.S. immigration laws governing the removal of criminal aliens does not violate the substantive or procedural guarantees of the American Declaration. While Petitioners may prefer a different, more generous, policy toward criminal aliens to the policies that the people of the United States have chosen through their elected representatives and President, this policy disagreement does not evidence any violation of international human rights law, much less a violation of the American Declaration. The Commission should give deference to the reasoned policy judgments of Congress and the President and refrain from attempting to impose a different policy choice through its recommendations on the merits of this case.

Moreover, the likely result of implementing Petitioners' request would be paralysis of the U.S. immigration system, as the overwhelming majority of all removable lawful permanent resident criminal aliens in the United States would gain the ability to remain the country. As a practical matter, the vast majority of aliens removed from the United States are returned to countries of origin in which living conditions are less advantageous than those enjoyed in the United States. All or nearly all aliens will have family, community, or other private ties to persons in the territory of the United States. The United States' ability to protect its lawful residents depends in turn upon its ability to strike balances between the interests of private individuals and "the just demands of the general welfare." As such, those who disagree with the current immigration system should pursue their desired policy changes through the political process rather than

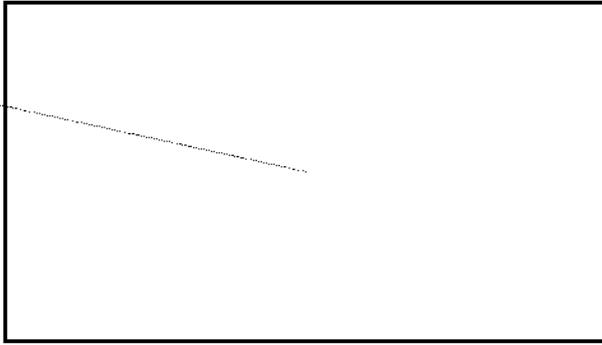
through the Commission, which is neither authorized nor well-equipped to handle matters of U.S. domestic policy.

For the reasons set forth above, the Commission should find that the United States did not violate Articles I, V, VI, VII, XVIII, and XXVI of the American Declaration.

(b)(6),(b)(7)(C)

Drafted by:

Cleared by:



(ok)
(ok)
(ok)
(info)
(info)
(ok)

Memorandum of Agreement

Between

United States Citizenship and Immigration Services (USCIS)
United States Department of Homeland Security,

United States Immigration and Customs Enforcement (ICE)
United States Department of Homeland Security,

And

United States Customs and Border Protection (CBP)
United States Department of Homeland Security

For the purpose of

COORDINATING THE CONCURRENT EXERCISE BY USCIS, ICE, AND CBP, OF THE SECRETARY'S PAROLE AUTHORITY UNDER INA § 212(d)(5)(A) WITH RESPECT TO CERTAIN ALIENS LOCATED OUTSIDE OF THE UNITED STATES

1. PARTIES

The parties to this Memorandum of Agreement (MOA or Agreement, inclusive of addenda thereto) are U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and United States Customs and Border Protection (CBP), three bureaus within the U.S. Department of Homeland Security (DHS).

2. AUTHORITY

This Agreement is authorized under § 872 of the Homeland Security Act (HSA) of 2002 (Pub. L. No. 107-296) and is in accordance with the following DHS Delegation Orders: *Delegation of Authority to the Commissioner of U.S. Customs and Border Protection* (Delegation No. 7010.3, Sec. 2(B)(15)); *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement* (Delegation No. 7030.2, Sec. 2(M)); and *Delegation of Authority to the Bureau of Citizenship and Immigration Services* (Delegation No. 0150.1, Sec. 2(O)).

3. PURPOSE AND SCOPE

This Agreement articulates a decisional framework to coordinate the bureaus' concurrent exercise of parole authority with respect to aliens who are outside of the United States or who present themselves at a U.S. port of entry upon initial approach to the United States. Next, the MOA applies the framework to a non-exhaustive, sample list of parole requests and designates the appropriate bureau(s) that would exercise jurisdiction over each request. Third, the MOA establishes two case management rules: (1) consolidation of principal and derivative parole applications for adjudication by one bureau; and (2) except as provided herein, requests for re-parole will be adjudicated by the bureau that adjudicated the initial parole request. Finally, the MOA establishes a dispute resolution mechanism.

This MOA does not cover conditional parole and release from detention pursuant to section 236 of the Act,¹ nor other forms of parole issued to aliens who are already within the United States (e.g., parole to trafficking victims; parole in place; advance parole), nor other immigration benefits often associated with certain categories of parole (e.g., work authorization, adjustment of status). An Addendum to this MOA will address jurisdiction over parole issued to aliens who are in removal proceedings, who have a final order, or who have been granted deferred action by ICE at any time after commencement of removal proceedings, regardless of whether the alien is within or outside of the United States. See Addendum 1.

4. BACKGROUND

A. Parole under INA § 212(d)(5)(A)

¹ See memorandum dated August 21, 1998, by U.S. Immigration and Naturalization Service General Counsel Paul W. Virtue entitled, *Authority to Parole Applicants for Admission Who Are Not Also Arriving Aliens*, superseded in part by Memorandum of the DHS General Counsel, dated September 28, 2007, by DHS General Counsel Gus P. Coldebella entitled, *Clarification of the Relation Between Release Under Section 236 and Parole Under Section 212(d)(5) of the Immigration and Nationality Act*.

Section 212(d)(5)(A) of the Immigration and Nationality Act (INA, or the Act) authorizes the Secretary of the Department of Homeland Security (DHS)² "in his discretion [to] parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission into the United States. . . ." Parole is an extraordinary measure, sparingly used only in urgent or emergency circumstances, by which the Secretary may permit an inadmissible alien temporarily to enter or remain in the United States. Parole is not to be used to circumvent normal visa processes and timelines.

The Secretary has delegated his parole authority USCIS, ICE, and CBP.

B. Current Parole Practice by Bureaus

As practice has evolved, DHS bureaus have generally construed "humanitarian" paroles (HPs) as relating to urgent medical, family, and related needs and "significant public benefit paroles (SPBPs) as limited to persons of law enforcement interest such as witnesses to judicial proceedings. Categorizing parole types helps prospective parole beneficiaries direct their applications to the appropriate bureau and facilitates DHS tracking. In the vast majority of cases, parole queries and applications are directed to the appropriate bureau and adjudicated without re-routing the parole request to another bureau.

In a January 18, 2007, letter to the Senate Committee on Health, Education, Labor, and Pensions, DHS Secretary Chertoff explained that the Cuban and Haitian Entrant Program (CHEP), Humanitarian Parole Program, and the Moscow Refugee Parole Program would transfer from ICE to USCIS, stating, "DHS will consolidate CHEP and the non-law enforcement functions of related parole programs from [ICE] to [CIS]."

Below is a non-exhaustive list of outside the United States and port of entry parole programs and categories and how those requests are staffed:

1. Urgent medical, family, and related needs: USCIS
2. Moscow Refugee Parole Program (MRPP): USCIS
3. Specific Cuban parole programs:³
 - a. Special Cuban Migration Parole issued at U.S. Interest Section (USINT) Havana (Lottery; CP-2/5): USCIS
 - b. Cuban Family Reunification Program issued at USINT Havana (CFRP; CP-1): USCIS
 - c. Cuban family of immigrant-visa bearers, issued at USINT Havana (CP-3): USCIS
 - d. Cuban Medical Professional Parole (CMPP): USCIS
 - e. Cubans paroles from the U.S. Naval Station at Guantánamo, Cuba: USCIS
4. As further clarified with the examples and exception below, aliens who will participate in administrative, judicial, or legislative proceedings, and/or investigations, whether at the federal, state, local, or tribal level of government: ICE
 - a. Individual necessary for prosecution or investigation in the U.S.: ICE
 - b. Confidential Informant from overseas with a specific credible threat: ICE
 - c. Extradition of an individual to the U.S.: ICE
 - d. Aliens who will participate in civil proceedings where all parties are private litigants: USCIS
5. Section 7 parole [50 USC 403h]: ICE
6. Trainees: ICE
7. Intelligence:
 - a. If the individual is a registered source of a member of the US Intelligence Community and the parole furthers the national Intelligence mission: ICE

² Homeland Security Act, 6 U.S.C. §§ 251-98 (transferring authorities exercised exclusively by the former Immigration and Naturalization Service to DHS).

³ This MOA addresses parole adjudications relating to aliens who are either outside of the United States (OCONUS) or at a U.S. port of entry. Each bureau may and does issue paroles to Cuban nationals who are present without inspection in the United States, and this MOA does not assign such cases to one or more bureaus.

- b. Promote National Security—If the parole application is submitted or recommended by the Department of State Cooperative Threat Reduction Program or by the Intelligence Community: ICE
- B. In Transit Aliens (paroled to travel through the U.S. en route to legal proceedings in a 3rd country): ICE
- 9. Aliens who will participate in events hosted by an international organization located within the United States (e.g., UN, DAS): ICE

C. Notes on Construction

- 1. The bureaus have attempted to draft the above categories in a manner that captures and assigns as many parole scenarios as could be foreseen. Nonetheless, if a parole request does not readily fall within an above category, the bureaus will weigh the totality of the circumstances, including but not limited to the motive(s) for the parole application and its nexus to one of the above categories, to determine which bureau should adjudicate the parole request.
- 2. To the extent that this MOA largely assists ICE and USCIS apportion its parole caseloads, omission of specific reference to CBP should not be construed to detract from CBP's inherent authority to issue paroles. CBP does and will continue to exercise parole authority for both urgent humanitarian reasons and significant public benefit.

5. CASES THAT WARRANT MONITORING

- A. USCIS will adjudicate all other parole applications that are not otherwise apportioned pursuant to Sections 4 and that relate to aliens with respect to whom, as necessary, ICE concludes do not warrant monitoring by DHS or DHS organizations.
- B. Notwithstanding Section 4, ICE will adjudicate any parole request in which ICE determines that, if granted, the parolee would warrant monitoring by DHS or DHS organizations.
- C. If USCIS receives a parole request for which USCIS determines that parole is otherwise appropriate but questions whether monitoring is appropriate to the situation, it will request that ICE evaluate whether monitoring is warranted. ICE will respond within one (1) working day in writing or by email.
 - 1. If ICE concludes that monitoring by DHS or DHS organizations is required, per Section 5.B., ICE will adjudicate the parole request.
 - 2. If ICE concludes that monitoring by a non-DHS agency is warranted, ICE will stipulate the conditions of monitoring by the non-DHS entity. USCIS will retain jurisdiction and secure the non-DHS agency's agreement to comply with the ICE stipulated conditions before USCIS approves the parole. During the period of initial parole or upon any request for re-parole, USCIS and/or ICE may require that the agency demonstrate compliance with set conditions.

6. CONSOLIDATION OF PRINCIPAL AND DERIVATIVE PAROLE APPLICATIONS

The bureau that adjudicates a parole (and re-parole) request related to a principal applicant will adjudicate all related parole (and re-parole) applications on behalf of derivative family members, whether accompanying the principal or following to join at a later date. Consolidating principal and derivative parole adjudication affords comprehensive analysis of derivatives' merits, as well as efficiencies in adjudication and post-adjudication case management. This case management rule may not be circumvented by advancing or construing a derivative's parole application under a different parole category than that of the principal parole applicant.

7. ADJUDICATION OF REQUESTS FOR RE-PAROLE

Except as provided in the paragraph below, if a bureau has previously adjudicated and granted parole to an individual, the issuing bureau should, in the interest of efficiency, adjudicate requests for re-parole, unless (1) the circumstances or intent of the parole have changed such that additional factors render the bureau inappropriate to adjudicate the new application, or (2) another bureau agrees to assume a particular caseload in the interest of expediency or settled local practice.

If an original parole was granted by the ICE Parole and Humanitarian Assistance Branch (PHAB) prior to the transfer of the HP, MRPP, and CHEP parole programs to USCIS under the Memorandum of Understanding dated July 26, 2007, a subsequent request for re-parole will be apportioned among the bureaus pursuant to Sections 4 and 5 above.

8. FORUM-SHOPPING PREVENTION

To discourage forum-shopping by parole-requesters, engender inter-bureau comity, promote consistency of case adjudication, and preserve resources, the bureaus adopt the following case management rule: If a bureau identifies a request that was previously denied on the merits by another bureau, the second receiving bureau will refer such a request back to the bureau that originally adjudicated and denied parole.

There may, however, be situations where it is inappropriate for one bureau to grant a parole, whereas the same applicant may and possibly should be granted parole by another bureau at a different time, location, and/or under different factual or procedural circumstances. In such a case, the second bureau to receive the parole request may elect to adjudicate the new request after consultation with the original bureau.

9. POINTS OF CONTACT

To enhance coordination among the bureaus in the exercise of the Secretary's parole authority under INA § 212(d)(5)(A), the following positions within the respective bureaus designates, or their assigned delegates, will serve as points of contact for parole-related matters that fall within the scope of this Agreement.

A. ICE: Branch Chief, Law Enforcement Parole Branch
ICE Office of International Affairs
800 N. Capitol, NW
Washington DC, 20002
Telephone: 202-74-

(b)(6),(b)(7)(C)

B. CBP: Executive Director
CBP Admissibility and Passenger Programs
1300 Pennsylvania Avenue, NW, Suite 2.5A
Washington, DC 20004
Telephone: 202-3-

(b)(6),(b)(7)(C)

C. USCIS: Chief, Humanitarian Assistance Branch
USCIS Refugee, Asylum, & International Operations Directorate (RAIO)
20 Massachusetts Avenue, NW, 3rd Floor
Washington, DC 20529
Telephone: 202-

(b)(6),(b)(7)(C)

10. EXTERNAL GUIDANCE TO PAROLE REQUESTING ENTITIES

While most parole applications are directed by the requesting entity, in the first instance, to the appropriate bureau, and while this MOA will guide the bureaus in case assignment, the bureaus will make available to appropriate U.S. government entities external guidance contained in Addendum 2 to this MOA, so that the requesting entities better understand to which bureau a request for parole should be directed. Addendum 2 is to be read consistent with the terms of this MOA and Addendum 1 thereto. Addendum 2 is incorporated into the MOA and subject to all governing paragraphs, including but not limited to, paragraphs 14 through 16. The parties will also update public outreach materials consistent with the terms of this MOA and Addendum 1.

11. DISPUTE RESOLUTION MECHANISM

It is contemplated that the decisional framework set out above will produce a consensus as to case assignment among the bureaus. In the event that the parole unit staff of the bureaus are unable, within one work day, to agree upon proper case assignment, the receiving bureau(s) will refer the case to their respective bureau deputies -- USCIS Deputy Director, ICE Deputy Assistant Secretary, and CBP Deputy Commissioner -- or their designees to confer on case assignment. If the deputies (or designees) cannot concur upon case assignment within one additional work-day, the case will be referred to the Deputy Secretary of DHS, or designee, for assignment.

12. OTHER PROVISIONS

Nothing in this MOA or addenda thereto is intended to conflict with current law or regulation or the directives of DHS or existing agreements. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect. This MOA and addenda thereto supersede bureau-issued guidance or directives that are inconsistent.

This Agreement does not disturb the July 26, 2007, Memorandum of Agreement between USCIS and ICE for the purpose of Defining the Roles and Responsibilities of Both ICE and USCIS on the Transfer of the Cuban and Haitian Entrant Program, the Moscow Refugee Parole Program, and the Humanitarian Parole Program to USCIS, or its August 3, 2007 implementing Interagency Agreement. To the extent that there is a disagreement between the documents, USCIS and ICE agree to make every effort to resolve the inconsistency.

13. NO PRIVATE RIGHT STATEMENT

This MOA and addenda thereto provide internal administrative guidance to DHS components and are not intended to, nor do they, create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against: the United States; its departments, agencies or other entities; nor its officers, employees, or any other person.

14. MODIFICATIONS

This Agreement may be modified upon the mutual written consent of the parties.

15. TERMINATION

The terms of this Agreement, and any subsequent modifications consented to by the parties, will remain in effect unless terminated as provided herein. Any party, upon 30 days written notice to the other two parties, may terminate this Agreement, which thereafter would not be in force as between the remaining parties.

16. EFFECTIVE DATE

The terms of this Agreement will become effective immediately upon signature of both this MOA and Addendum 1.

APPROVED BY:


Jonathan Scharfen

Acting Director
U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security

9/10/08
Date


Julie L. Myers

Assistant Secretary
U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security

9/9/08
Date



W. Ralph Basham
Commissioner
U.S. Customs & Border Protection, U.S. Department of Homeland Security

9/29/08
Date

Addendum 1 to Tri-Bureau Parole MOA of [DATE of signature]

1. Further to Section 4 of the MOA, ICE will adjudicate parole requests relating to aliens in removal proceedings or who have final orders, as well as aliens granted deferred action by ICE at any point after the commencement of removal proceedings, regardless of whether the alien is within or outside of the United States. Given the context of removal proceedings, it is anticipated that parole of such aliens would occur only in very rare circumstances. Addendum 1 is incorporated into the MOA and subject to all governing paragraphs, including but not limited to, paragraphs 6 through 8.

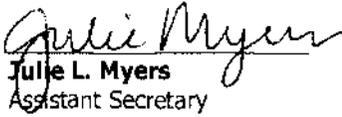
APPROVED BY:


Jonathan Scharfen

Acting Director

U.S. Citizenship & Immigration Services, U.S. Department of Homeland Security

9/10/08
Date


Julie L. Myers

Assistant Secretary

U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security

9/10/08
Date



W. Ralph Basham

Commissioner

U.S. Customs & Border Protection, U.S. Department of Homeland Security

9/29/08
Date

Guidance for U.S. Government entities requesting that DHS parole an alien into the US under INA § 212(d)(5)(A)¹

Section 212(d)(5)(A) of the Immigration & Nationality Act (INA) authorizes the Secretary of the Department of Homeland Security (DHS) to parole persons into the US "for urgent humanitarian reasons or significant public benefit." Parole is an extraordinary measure, sparingly used only in urgent circumstances, and not to circumvent normal visa processes and timelines. DHS will not generally adjudicate a parole request absent evidence that the prospective parolee has exhausted visa processes, including any available waivers to applicable grounds of inadmissibility.

The Secretary delegated his parole authority concurrently to Customs & Border Protection (CBP), Immigration & Customs Enforcement (ICE), and U.S. Citizenship & Immigration Services (USCIS). Below is a list of parole categories, followed by which DHS bureau will receive and adjudicate parole requests for each category.

1. Urgent medical, family, and related needs: USCIS
2. Aliens who will participate in civil proceedings where all parties are private litigants: USCIS
3. Except as provided in (2) above, aliens who will participate in administrative, judicial, or legislative proceedings, and/or investigations, whether at the federal, state, local, or tribal level of government: ICE
4. Aliens in removal proceedings or who have final orders, as well as aliens granted deferred action by ICE at any point after the commencement of removal proceedings, regardless of whether the alien is within or outside of the US: ICE
5. Aliens who will participate in events hosted by an international organization located within the U.S. (e.g., UN, OAS): ICE
6. Section 7 parole [50 U.S.C. 403(h)]: ICE
7. Intelligence. Aliens who are registered sources of a member of the US Intelligence agency Community and whose parole would further the national Intelligence mission, or aliens whose parole is sought by the Department of State Cooperative Threat Reduction Program or by the Intelligence Community: ICE

The following case management rules apply:

1. Consolidation of family members: A single bureau will adjudicate parole applications of both principal and derivative family members, whether accompanying the principal or later following to join.
2. Requests for re-parole: The issuing bureau will adjudicate subsequent requests for re-parole.

U.S. Government entities may contact the appropriate DHS immigration bureau as follows:

- | | | | |
|----|--|---------------------------|------------------|
| A. | ICE: Branch Chief, Law Enforcement Parole Branch
ICE Office of International Affairs
800 N. Capitol, NW
Washington DC, 20002 | Telephone: 202-[REDACTED] | (b)(6),(b)(7)(C) |
| B. | CBP: Executive Director
CBP Admissibility and Passenger Programs
1300 Pennsylvania Avenue, NW, Suite 2.5A
Washington, DC 20004 | Telephone: 202-[REDACTED] | (b)(6),(b)(7)(C) |
| C. | USCIS: Chief, Humanitarian Assistance Branch
USCIS Refugee, Asylum, & International Operations Directorate (RAID)
20 Massachusetts Avenue, NW, 3 rd Floor
Washington, DC 20529 | Telephone: 202-[REDACTED] | (b)(6),(b)(7)(C) |

With this guidance, DHS seeks to better assist other U.S. entities with its missions, while performing our essential mission of protecting homeland security.

¹ Revised 8-27-08. No private right: This guidance addresses internal administration and is not intended to, nor does it, create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against: the US; its departments, agencies or other entities; nor its officers, employees, or any other person.

~~FOR OFFICIAL USE ONLY~~

JUN 17 2011



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All Field Office Directors
All Special Agents in Charge
All Chief Counsel

FROM: John Morton 
Director

SUBJECT: Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs

Purpose:

This memorandum sets forth agency policy regarding the exercise of prosecutorial discretion in removal cases involving the victims and witnesses of crime, including domestic violence, and individuals involved in non-frivolous efforts related to the protection of their civil rights and liberties. In these cases, ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice. This memorandum builds on prior guidance on the handling of cases involving T and U visas and the exercise of prosecutorial discretion.¹

Discussion:

Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime. In practice, the vast majority of state and local law enforcement agencies do not generally arrest victims or witnesses of crime as part of an investigation. However, ICE regularly hears concerns that in some instances a state or local law enforcement officer may arrest and book multiple people at the scene of alleged domestic violence. In these cases, an arrested victim or witness of domestic violence may be booked and fingerprinted and, through the operation of the Secure

¹ For a thorough explanation of prosecutorial discretion, see the following: Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U. Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009); Memorandum from William J. Howard, Principal Legal Advisor, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Memorandum from Julie L. Myers, Assistant Secretary of ICE, Prosecutorial and Custody Discretion (Nov. 7, 2007); Memorandum from William J. Howard, Principal Legal Advisor, Prosecutorial Discretion (Oct. 24, 2005); Memorandum from Doris Meissner, Commissioner, Immigration and Naturalization Service, Exercising Prosecutorial Discretion (Nov. 17, 2000).

Communities program or another ICE enforcement program, may come to the attention of ICE. Absent special circumstances, it is similarly against ICE policy to remove individuals in the midst of a legitimate effort to protect their civil rights or civil liberties.

To avoid deterring individuals from reporting crimes and from pursuing actions to protect their civil rights, ICE officers, special agents, and attorneys are reminded to exercise all appropriate discretion on a case-by-case basis when making detention and enforcement decisions in the cases of victims of crime, witnesses to crime, and individuals pursuing legitimate civil rights complaints. Particular attention should be paid to:

- victims of domestic violence, human trafficking, or other serious crimes;
- witnesses involved in pending criminal investigations or prosecutions;
- plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaging in a protected activity related to civil or other rights (for example, union organizing or complaining to authorities about employment discrimination or housing conditions) who may be in a non-frivolous dispute with an employer, landlord, or contractor.

In deciding whether or not to exercise discretion, ICE officers, agents, and attorneys should consider all serious adverse factors. Those factors include national security concerns or evidence the alien has a serious criminal history, is involved in a serious crime, or poses a threat to public safety. Other adverse factors include evidence the alien is a human rights violator or has engaged in significant immigration fraud. In the absence of these or other serious adverse factors, exercising favorable discretion, such as release from detention and deferral or a stay of removal generally, will be appropriate. Discretion may also take different forms and extend to decisions to place or withdraw a detainer, to issue a Notice to Appear, to detain or release an alien, to grant a stay or deferral of removal, to seek termination of proceedings, or to join a motion to administratively close a case.

In addition to exercising prosecutorial discretion on a case-by-case basis in these scenarios, ICE officers, agents, and attorneys are reminded of the existing provisions of the Trafficking Victims Protection Act (TVPA),² its subsequent reauthorization,³ and the Violence Against Women Act (VAWA).⁴ These provide several protections for the victims of crime and include specific provisions for victims of domestic violence, victims of certain other crimes,⁵ and victims of human trafficking.

Victims of domestic violence who are the child, parent, or current/former spouse of a U.S. citizen or permanent resident may be able to self-petition for permanent residency.⁶ A U nonimmigrant visa provides legal status for the victims of substantial mental or physical abuse as

¹ Pub. L. No. 106-386, §§101-113, 114 Stat. 1464, 1466 (codified as amended in scattered sections of the U.S.C.).

² William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

³ Pub. L. No. 106-386, §§1001-1603, 114 Stat. 1464, 1491 (codified as amended in scattered sections of the U.S.C.).

⁴ For a list of the qualifying crimes, see INA §101(a)(15)(U)(iii).

⁵ See INA §101(a)(5)(D).

a result of domestic violence, sexual assault, trafficking, and other certain crimes.⁷ A T nonimmigrant visa provides legal status to victims of severe forms of trafficking who assist law enforcement in the investigation and/or prosecution of human trafficking cases.⁸ ICE has important existing guidance regarding the exercise of discretion in these cases that remains in effect. Please review it and apply as appropriate.⁹

Please also be advised that a flag now exists in the Central Index System (CIS) to identify those victims of domestic violence, trafficking, or other crimes who already have filed for, or have been granted, victim-based immigration relief. These cases are reflected with a Class of Admission Code "384." When officers or agents see this flag, they are encouraged to contact the local ICE Office of Chief Counsel, especially in light of the confidentiality provisions set forth at 8 U.S.C. § 1367.

No Private Right of Action

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

⁷ See INA §101(a)(15)(U).

⁸ See INA §101(a)(15)(T).

⁹ See Memorandum from John P. Torres, Director, Office of Detention and Removal Operations and Marcy M. Forman, Director, Office of Investigations, Interim Guidance Relating to Officers Procedure Following Enactment of VAWA 2005 (Jan. 22, 2007).

Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities



A Road Map

The ICE Mission

Strategic Plan (Goals and Objectives)

Priorities

Criteria for Review

Application of Hypothetical Scenarios



U.S. Immigration
and Customs
Enforcement

The ICE Mission

ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.



U.S. Immigration
and Customs
Enforcement

ICE's Four Primary Goals

- Prevent terrorism and enhance security
- Protect the borders against illicit trade, travel, and finance
- Protect the borders through smart and tough interior immigration enforcement
- Construct an efficient, effective agency



ICE Priorities Relating to Civil Immigration Enforcement

Priority #1

- Aliens who pose a danger to national security or risk to public safety

Priority #2

- Recent illegal entrants

Priority #3

- Aliens who are fugitives or otherwise obstruct immigration controls



Fiscal Year 2011 Removals

In Fiscal Year (FY) 2011, ICE removed approximately 386,443 aliens. Of the total number of aliens removed, 202,169 had a criminal conviction, which is nearly 55 percent of the aliens. In total, 90 percent of the removals in FY 2011 fell within one of ICE's enforcement priorities. ICE removed more aliens than at any other point in our nation's history.



U.S. Immigration
and Customs
Enforcement

A Few Words About Prosecutorial Discretion

What is it?

“Prosecutorial discretion is the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone In the immigration context, the term applies not only to the decision to issue, serve, or file a Notice to Appear (NTA), but also to a broad range of other discretionary enforcement decisions”

INS Commissioner Doris Meissner memorandum, *Exercising Prosecutorial Discretion* (November 17, 2000).



U.S. Immigration
and Customs
Enforcement

A Few Words About Prosecutorial Discretion (Cont.)

Courts recognize that prosecutorial discretion applies in the civil, administrative arena just as it does in criminal law. The Supreme Court “has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).



U.S. Immigration
and Customs
Enforcement

A Few Words About Prosecutorial Discretion (Cont.)

Prosecutorial Discretion limits:

“The doctrine of prosecutorial discretion applies to enforcement decisions, not benefit decisions . . . [A] grant of an immigration benefit, such as naturalization or adjustment of status, is a benefit decision that is not a subject for prosecutorial discretion.”

INS General Counsel Bo Cooper memorandum, *INS Exercise of Prosecutorial Discretion* (July 11, 2000).



U.S. Immigration
and Customs
Enforcement

A Few Words About Prosecutorial Discretion (Cont.)

The June 17, 2011 memorandum from Director John Morton includes a non-exhaustive list of factors that should prompt particular care and consideration. Each case may present additional factors that may impact the discretionary determination. These factors must be considered on a case-by-case basis based on the totality of the circumstances presented by the individual case.

ICE Director John Morton memorandum, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011).



U.S. Immigration
and Customs
Enforcement

A Few Words About Prosecutorial Discretion (Cont.)

ICE may exercise prosecutorial discretion at any stage of an enforcement proceeding. It is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing the enforcement proceeding.

ICE Director John Morton memorandum, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011).



U.S. Immigration
and Customs
Enforcement

Factors to Consider

The following should prompt (positive) particular care and consideration:

- Veterans and members of the U.S. armed forces;
- Long-time lawful permanent residents;
- Minors and elderly individuals;
- Individuals present in the United States since childhood;
- Pregnant or nursing women;
- Victims of domestic violence, human trafficking, or other serious crimes;
- Individuals who suffer from a serious mental or physical disability; and
- Individuals with serious health conditions.



Additional Factors to Consider

The following should prompt (negative) particular care and consideration:

- Individuals who are suspected terrorists or pose a clear risk to national security;
- Felons, repeat offenders, or individuals with a lengthy criminal record of any kind;
- Known gang members, human rights violators, or other individuals who pose a clear danger to public safety; and
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud.



Case Pending in Federal Court

When considering the exercise of prosecutorial discretion in a case that is pending before a Circuit Court or District Court, the ICE attorney should engage and work closely with the Department of Justice (DOJ) Office of Immigration Litigation or U.S. Attorney Office attorney assigned to the case to ensure that all ICE and DOJ equities are known and addressed.



Enforcement Priorities vs. Non-Enforcement Priorities

Guidance to ICE Attorneys Reviewing the CBP, USCIS, and ICE Cases Before the Executive Office for Immigration Review



U.S. Immigration
and Customs
Enforcement

The following cases are **enforcement priorities** and should generally be pursued in an **accelerated manner** before EOIR. These cases involve an alien—

- who is a suspected terrorist or national security risk;
- who has a conviction for—
 - a felony or multiple misdemeanors,
 - illegal entry, re-entry, or immigration fraud, or
 - a misdemeanor violation involving—
 - violence, threats, or assault,
 - sexual abuse or exploitation,
 - driving under the influence of alcohol or drugs,
 - flight from the scene of an accident,
 - drug distribution or trafficking, or
 - other threat to public safety;



Enforcement Priorities (Cont.)

- who is a gang member, human rights violator, or other clear threat to public safety;
- who entered the country illegally or violated the terms of their admission within the last three years;
- who has previously been removed from the country;
- who has been found by an immigration officer or immigration judge to have committed immigration fraud; or
- who otherwise has an egregious record of immigration violations.



The following cases are generally **not enforcement priorities** and should be carefully considered for prosecutorial discretion on a case-by-case basis. These cases involve an alien—

- who is a member in good standing of the Coast Guard or Armed Forces of the United States, an honorably discharged veteran of the Coast Guard or Armed Forces of the United States, or the spouse or child of such a member or veteran;
- who is a child, has been in the United States for more than five years, and is either in school or has successfully completed high school (or its equivalent);
- who came to the United States under the age of sixteen, has been in the United States for more than five years, has completed high school (or its equivalent), and is now pursuing or has successfully completed higher education in the United States;



Not Enforcement Priorities (Cont.)

- who is over the age of sixty-five and has been present in the United States for more than ten years;
- who is a victim of domestic violence in the United States, human trafficking to the United States, or of any other serious crime in the United States;
- who has been a lawful permanent resident for ten years or more and has a single, minor conviction for a non-violent offense;
- who suffers from a serious mental or physical condition that would require significant medical or detention resources; or



Not Enforcement Priorities (Cont.)

- who has very long-term presence in the United States, has an immediate family member who is a United States citizen, and has established compelling ties and made compelling contributions to the United States.



Exercising Prosecutorial Discretion Administrative Closure

The criteria set forth in the *Guidance to ICE Attorneys Reviewing CBP, USCIS, and ICE Cases Pending Before the Executive Office for Immigration Review*, should prompt particular care and consideration and are intended to aid attorneys in identifying the cases most likely to be either eligible or ineligible for a favorable exercise of discretion. Based on this review, ICE attorneys should decide whether the proceedings before EOIR should continue or whether prosecutorial discretion in the form of **administrative closure** is appropriate. This guidance in no way replaces or supersedes existing policies or previous memoranda from Director Morton that address specific types of cases where the exercise of prosecutorial discretion may be considered.



Special Rule for Asylum Cases

ICE attorneys may agree to the administrative closure of removal proceedings of an individual who filed an asylum application in the individual jointly requests administrative closure with the immigration judge. Upon the filing of such a joint request, however, the individual will be subject to 8 C.F.R. § 208.7(a)(2) which tolls the 180-day clock for employment authorization eligibility



One last thing before the hypothetical scenarios ...

“The decision [to exercise prosecutorial discretion] should be based on the totality of the circumstances, not on any one factor considered in isolation. General guidance such as this cannot provide a ‘bright line’ test that may easily be applied to determine the ‘right’ answer in every case. In many cases, minds reasonably can differ, different factors may point in different directions, and there is no clearly ‘right’ answer.”

INS Commissioner Doris Meissner memorandum, *Exercising Prosecutorial Discretion* (November 17, 2000).



U.S. Immigration
and Customs
Enforcement

Hypothetical Scenarios

The following are practical scenarios intended to promote discussion and debate. They are composites of typical cases encountered by OCCs. They are meant as a training tool to identify and analyze positive and negative factors to aid you in deciding whether or not to exercise prosecutorial discretion.

For each hypothetical scenario, consider the June 17, 2011 memorandum and the *Guidance to ICE Attorneys Reviewing the CBP, USCIS, and ICE Cases Before the Executive Office for Immigration Review*.



Scenario 1

An alien present without inspection is encountered by ERO Criminal Alien Program (ERO-CAP) after being arrested by a state trooper for driving without a license. Within a day, she pays her state bond and is turned over to ICE custody pursuant to a detainer.

She tells the ERO officer that this is her first arrest since entering the United States in May 1993 somewhere outside of Nogales, Arizona. She has a 13-month-old son who was born in the United States. She states that she has never been arrested before; however, her RAP sheet reveals other arrests since 1993 for driving without a license, driving without registration, and failure to display tags. She also has a 1995 conviction for shoplifting. ERO determines bond at \$7,500.



Scenario 2

An alien from the United Kingdom entered the United States in 2008 with an F-1 visa to study at the College of Higher Learning. Since entering the country, the alien has not enrolled in the school. Instead, he began working as a chef in a local restaurant, where his culinary skills have earned him and the restaurant many accolades and publicity. He is currently living with and taking care of his USC (naturalized) brother who suffers from advanced Parkinson's disease. The alien has no criminal history.

He is now in removal proceedings and he tells the court that his brother filed an I-130 last week.



Scenario 3

An ICE Special Agent is working on an investigation that is rapidly reaching the grand jury stage. It targets a large-scale operation specializing in the production and distribution of fraudulent documentation. If successful, this case will dismantle the distributor for the bulk of fake IDs in the community.

The key witness is currently in removal proceedings for entering the United States without inspection. He has no criminal history but became aware of this operation after he received a fraudulent EAD card. His testimony can link the key players and explain the basic operation as well as the initial predication for the investigation. This alien is scheduled for a removal hearing in one week and GEMS indicates that, if no applications are filed, he will be ordered removed.

What can be done if the Special Agent contacts the OCC *after* an order is entered?



Scenario 4

An LPR since 1985 applied for naturalization. While the N-400 was being adjudicated, the LPR was diagnosed with pancreatic cancer. USCIS denied the petition and referred the matter to HSI based on evidence that the LPR was convicted of theft over \$1,000 in 1984 and failed to disclose this on his application to adjust status. He has been taken into ICE custody.

Other than the theft, for which he received a suspended sentence of one year, he has had no other law enforcement contacts in the United States. He is married to an LPR and the couple has three USC children. For the past 20 years he has been a small business owner, regularly pays taxes, and has been involved with community theater. As HSI is preparing to serve an NTA, they are informed that the alien has just been informed by his doctor that the cancer has advanced and he has one year left to live at most.



Scenario 5

An LPR who entered the United States legally in 1988 as the son of an LPR is encountered by ERO-CAP following a conviction for carrying an illegal firearm.

The alien is placed into proceedings, charged with a firearms offense pursuant to INA § 237(a)(2)(C), and is subject to mandatory detention. Reviewing the I-213, the trial attorney learns that the alien is married to a USC who is currently serving in the U.S. Coast Guard. They have a 5-year-old USC daughter who is in good health. The alien is currently employed as the manager of a sandwich shop and shares equal childcare responsibilities with his wife. He has no prior criminal history.

In advance of the master calendar hearing, the alien's attorney requests that prosecutorial discretion be exercised and his case either be terminated or fast-tracked toward a stipulated grant of cancellation of removal.



Scenario 6

An alien was granted adjustment of status in 1998 based on an approved I-130 filed by his USC brother. The alien owns a home in the United States and has several USC family members. While the alien has made several casual and brief trips to his native country in the past, since 2009, he has not actually resided in this country. The alien recently entered the United States at a local airport and, after an interview in secondary, was paroled into the United States but charged with abandoning his LPR status.

At the initial master calendar hearing, his attorney asks to approach the bench and explains that the alien had intended to reside in the United States but had been unable to do so because he had been employed by the United Nations Children's Fund (UNICEF) for the past several years and was unable to quit his position.

His attorney has filed a motion to terminate proceedings.



Scenario 7

An LPR since 1984 is encountered by ERO-CAP after serving a 6-year sentence for a federal conviction relating to transportation of individuals across state lines with the intent of having them engage in prostitution.

The alien is now in ICE custody and charged as an aggravated felon. While he has a fairly extensive juvenile record with local law enforcement (now sealed), this is his first conviction as an adult. Prior to getting involved in prostitution, the alien received an honorable discharge from the U.S. Army, where he served two tours in Iraq and was injured during combat.

His attorney tells the trial attorney that the alien has no memory of his early years in his native Palau because he and his parents came to the United States when he was 2 years old.

His attorney also states that the alien is needed to take care of his ailing LPR father because his LPR mother cannot bear the burden alone.

A formal request for PD is delivered to the OCC.



Scenario 8

A Mariel Cuban, who has since adjusted to LPR status, has just been convicted of assault on a police officer and sentenced to 10 years in state prison.

Aside from this conviction, the alien has several citations and convictions stemming from marijuana possession and distribution. ICE had appropriately placed a detainer on him.

The Department of Corrections (DOC) has just informed ICE that, due to advanced renal failure, DOC has determined that humanitarian parole is appropriate to allow the alien to receive requisite medical treatment. In addition, the DOC reported some strange behavior recently that is indicative of early signs of dementia.

The alien is now coming into ICE custody. What is the appropriate course of action for the OCC?



Scenario 9

An alien, currently 20 years old, entered the United States without inspection in January 2004. In 2010, she was placed in removal proceedings when she was discovered attempting to purchase a fraudulent LPR card. The alien has no criminal record and has a USC one-year-old daughter. The alien has a non-life-threatening medical condition that is being treated with antibiotics and her daughter suffers from tonsillitis and asthma. Although the alien is a graduate of a U.S. high school, she recently lost her job. She claims she was confused regarding the proper process to obtain immigration status. There are no forms of relief available to the alien.

The alien's attorney requests that ICE exercise prosecutorial discretion and administratively close her removal proceedings.



Scenario 10

An alien entered the United States without inspection in January 1996. In 2001, he was issued an NTA and was placed in removal proceedings. The alien received an in absentia order of removal in 2003. In 2010, an immigration judge granted a motion to reopen the alien's immigration case, based on lack of notice. The alien has no criminal record and has twin USC one-year-old daughters. His wife currently has no immigration status. The alien is a soccer coach at a local elementary school. Through no fault of his own, the alien's immigration case has been delayed for several years. There are no forms of relief available to the alien.

The alien's attorney requests that ICE exercise prosecutorial discretion and administratively close her removal proceedings.





U.S. Immigration and Customs Enforcement