

March 14, 2011

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**Re: Comments on ICE's Proposed Policy for Resumed Removals to Haiti**

Dear President Obama, Vice President Biden, Secretary Napolitano, and Secretary Clinton:

We write to comment on the Policy for Resumed Removals to Haiti posted on the website of Immigration and Customs Enforcement (ICE) on March 7, 2011. Our comments address serious concerns with both the substance of the decision to resume deportations to Haiti as well as the lack of transparency surrounding this decision. As we underscore below, the United States' decision to resume deportations to Haiti at this time has already resulted in grave human rights violations. We strongly urge our country to stop deportations, respect its human rights obligations, and discard this senseless removal policy.

The January 12, 2010 massive earthquake in Port-au-Prince, Haiti left nearly 300,000 Haitians dead and over 1.2 million more displaced and homeless. These people and countless others in Haiti lack basic sanitation, adequate food, potable water, lighting, and basic security. One year after the earthquake, the serious humanitarian crisis in Haiti not only persists but has worsened due to the cholera epidemic, political violence, and social unrest. The situation is particularly bad in Haitian detention centers, where deportees are routinely jailed and where cholera has already claimed at least 48 lives.

Notwithstanding the epic humanitarian crisis in Haiti, ICE has begun to deport people to Haiti. On January 20, 2011, the first plane was sent back to Haiti with tragic results.

Wildrick Guerrier, a 34-year-old man deported on the first plane, died shortly after being detained in a Haitian jail and being exposed to crowded and unsanitary conditions. He, along with the 26 other deportees, was detained in life-threatening conditions upon arrival in Haiti pursuant to the Haitian government's longstanding policy of detaining deportees from the U.S. for indefinite periods of time in unsanitary and abusive conditions in which they are deprived of food, water, medical care, and medicine. This policy is well-known to the United States, having been the subject of numerous State Department reports and congressional hearings.

The Inter-American Commission on Human Rights (IACHR) has already signaled its serious concern with the U.S. decision to resume deportations. On February 4, 2011, the IACHR granted a request filed and supported by many of the undersigned organizations for precautionary measures, and urged the U.S. government to cease deportations to Haiti immediately for persons with serious illnesses or U.S. family ties. The IACHR specifically requested that the U.S. not deport the five named petitioners, until: 1) Haiti is able to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards, and 2) the U.S. is able to put procedures in place to decide upon and review the deportation of the five beneficiaries and adequately take into account their right to family life and their family ties in the U.S. The Commission has granted the petitioners a working meeting with the U.S. government on March 26 at the headquarters of the Organization of American States in Washington, D.C., to further address this serious matter.

### **Deportations to Haiti Are Unsafe and Inhumane**

Deportations to Haiti must stop because they pose an unacceptable risk of death and disease and violate our country's human rights obligations. 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."

In the past month, a fact-finding mission to Haiti, during which 10 of the 27 deportees were interviewed, confirms that the inhumane treatment of deportees to Haiti that was common practice before the earthquake has continued, and in fact, worsened since the earthquake.<sup>1</sup> The deportees described a horrific deportation process, culminating in the detention of 17 individuals within a small (approximately 3x15 feet) Haitian jail holding cell. Deportees described the squalid jail as unbearable, and vividly recalled dirt, feces, vomit and trash-layered floors, blood-stained walls, and an infestation of mosquitoes. They were traumatized by witnessing severe abuse of other inmates by the police officers, including an officer clubbing an individual with the butt of a rifle for a prolonged period of time, including in the eye, to the point that the individual vomited and defecated on himself. Deportees described how their pleas for help and medical assistance fell on

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<sup>1</sup> Interviews by Caroline Bettinger-Lopez and Marleine Bastien with Haitian deportees, Haiti Fact-Finding Mission (Feb. 12, 2011).

deaf ears, and were sometimes met with cavalier comments by police guards such as “you are here to suffer/die.” Moreover, when representatives of the Red Cross and Alternative Chance, a local assistance organization for deportees, visited the facility, the police seized the supplies they wished to distribute and failed to pass flyers on cholera prevention along to deportees.

Deportees suffered in these conditions nearly two weeks. These unsafe and inhumane conditions were coupled with a complete lack of access to clean water, food, hygiene products or medical care – despite the risk of cholera and other diseases.<sup>2</sup> Deportees were entirely dependent on family members to bring them food, water, and hygienic items.<sup>3</sup> At least five deportees fell seriously ill, and one, Wildrick Guerrier, died two days after being released.

Medical doctors have condemned the deportations to Haiti. Dr. Arthur M. Fournier, Professor and Vice Chairman Family Medicine and Community Health and Associate Dean for Community Health Affairs at the University of Miami, Miller School of Medicine, has warned that deporting people to Haiti at this time “constitutes, in my opinion, cruel and inhuman treatment of the deportees . . . expos[ing] [them] to serious and life-threatening conditions in the jail cells and holding facilities.”<sup>4</sup>

### **DHS Should Rescind this Policy and Permit a Transparent Process**

DHS’s decision to commence deportations to Haiti has been clouded in secrecy. This policy was not publicly announced until Monday, March 7, 2011. It was communicated verbally in December 2010 only to a small group of organizations. The first plane to Haiti departed on January 20, 2011 with no public announcement and no notice to the deportees or their families. Only on Monday, more than three months after the policy was first mentioned off the record and more than two months after deportations began, did DHS issue a public policy statement. In light of this timeline, and the life-and-death consequences of this policy, permitting only four days for public comment, or eleven days under the short extension that was communicated to advocates on Friday, suggests that DHS is not pursuing this process in good faith.

The lack of transparency is also apparent from the inconsistencies in official statements regarding the Haiti policy. The March 7 policy statement alleges ICE to be working “in coordination with the Department of State and the Government of Haiti, to resume

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<sup>2</sup> Office of the U.S. Foreign Disaster Assistance, U.S. Agency for Int’l Dev., Fact Sheet #20, Fiscal Year (FY) 2011 (Feb. 18, 2011) (stating that the cholera epidemic has infected more than 231,000 people and claimed approximately 4,500 lives).

<sup>3</sup> *Supra* note 1 (family donations of food, water and hygiene products were often seized by Haitian police officials).

<sup>4</sup> Decl. of Dr. Arthur Michael Fournier, M.D., in support of Petitioner’s Request for Precautionary Measures to the Inter-American Commission on Human Rights. H.R., No. MC-5-11, ¶ 33 (Jan. 5, 2011).

removals in as safe, humane, and minimally disruptive a manner as possible.”<sup>5</sup> By the United States own admission, however, this is not the case.<sup>6</sup> In a recent response to the Inter-American Commission, the Department of State stated: “The United States has *not* received assurances from the Haitian Government regarding the medical care or provisions that the proposed beneficiaries will be able to obtain upon their return (emphasis added).”<sup>7</sup>

Last week, when advocates raised concerns during a conference call/meeting with civil society advocates and the U.S. State Department concerning the UN Universal Periodic Review (UPR) process, the State Department representative simply responded: “we are in communication with the Inter-American Commission on Human Rights about this matter.” But when pressed about whether the United States would communicate with civil society and the Haitian-American community, officials responded without explanation: “we’ll share information with the community in due course.” The lack of transparency is distressing and underscores the importance of a cessation of deportations until an open dialogue is possible.

### **ICE Can Stop Inhumane Deportations and Keep the Public Safe**

ICE can both honor our nation’s human rights obligations by ceasing deportations and keep the public safe. It is simply untrue that ICE must choose between these objectives. Many of the people facing deportation had been leading law-abiding lives in their communities as lawful permanent residents before they were unexpectedly rounded up and detained. Moreover, ICE has robust supervision and electronic monitoring programs that it routinely uses to monitor noncitizens with criminal backgrounds who cannot be deported—including people from Cuba and other countries to which deportation is not possible and people who are stateless.

The Haiti deportation policy is expansive, despite ICE’s suggestion to the contrary. The policy appears to apply to *any* Haitian who is not eligible for temporary protected status—a remedy denied anyone who has more than two-misdemeanor record. Under ICE’s policy, a person with three (3) driving-related criminal infractions, such as driving without a license, faces deportation to Haiti.

ICE’s description of the people they are deporting to Haiti is inaccurate and misleading. The Haitian men and women slated for deportation have already served any criminal sentences imposed on them. Many had been living in the community and complying

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<sup>5</sup> Department of Homeland Security, U.S. Immigration and Customs Enforcement, ICE draft policy, March 7, 2011, available at <http://www.ice.gov/news/library/policies/>.

<sup>6</sup> U.S. State Department, United States Permanent Representative Organization of American States, Department of State, Response of the United States regarding a request for information by the Inter-American Commission on Human Rights relating to Certain Haitian Nationals. And other similarly situated Haitian nationals subject to immediate deportation by the USA (February 18, 2011).

<sup>7</sup> *Id.*

with ICE supervision orders, and none has had a day in court to determine whether he or she would pose any *current* danger to society. Representatives of organizations signing onto this letter recently traveled to three remote jails in Louisiana to meet with some of the detainees held for deportation. Far from being limited to “violent felons,” the people slated for deportation include people with only nonviolent misdemeanor records and nonviolent drug offenses. Many have family members, including young children, who are United States citizens and who rely on them for support.

In any event, ICE’s focus on criminal records is a distraction from the real issue. Consistent with our nation’s human rights obligations, *no* person—regardless of his or her crime—should be sent back to Haiti in light of the existing life-threatening conditions.

## **Requested Action**

Because deporting anyone to Haiti under current circumstances is inhumane and life-threatening, the undersigned hereby request that DHS:

1. Immediately halt all deportations to Haiti.
2. Based upon humanitarian factors, grant deferred action and/or stays of removal to all Haitians with final orders of removal.
3. Meet with representatives of the undersigned organizations to discuss the March 7, 2011 policy.
4. Immediately halt roundups and detention of Haitian nationals in the United States and release those currently in custody.
5. Extend the comment period for at least one month and simultaneously suspend deportations to permit a true review process.
6. Publicly release information about the basis for the newly announced DHS policy, and explain what assessment was conducted of the circumstances in Haiti prior to the change in policy.

Sincerely,

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Cc.: The White House and National Security Council  
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Robert M. Gates, Secretary of Defense  
Thomas Donilon, National Security Advisor  
Felicia Escobar, Senior Policy Advisor, Domestic Policy Council  
Scott Busby, Director for Human Rights, Office of Multilateral Affairs  
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Kara McDonald, Deputy Coordinator for Haiti

### **Organizational Sign-ons**

1. ACLU of Florida Racial Justice & Voting Rights Projects
2. African Services Committee
3. American Jewish World Service
4. Amigos Center
5. Asian Law Caucus
6. Capital Area Immigrants' Rights Coalition
7. Catholic Charities Legal Services, Archdiocese of Miami

8. Central American Legal Assistance
9. Environmental Justice Initiative for Haiti
10. Fanm Ayisyen Nan Miyami/Haitian Women of Miami
11. Florida Coastal Immigrant Rights Clinic
12. Georgia Rural Urban Summit
13. Haiti Support Group
14. HIV & AIDS Legal Services Alliance
15. Immigrant and Refugee Rights Project of the Washington Lawyers' Committee for Civil
16. Immigrant Child Advocacy Project at the University of Chicago
17. Immigrant Defense Project
18. Immigration Advocacy Project (Student Organization)
19. Immigration Law Clinic, University of Pittsburgh - School of Law
20. Institute for Justice & Democracy in Haiti
21. IRATE & First Friends
22. Jacksonville Area Legal Aid
23. Judson Memorial Church
24. Los Angeles Chapter, National Lawyers Guild
25. Lutheran Immigration and Refugee Service
26. MAS (Muslim American Society) Immigrant Justice Center
27. Mississippi Immigrants Rights Alliance (MIRA)
28. Mobilize For Haiti
29. National Advocacy Center of the Sisters of the Good Shepherd
30. National Immigration Forum
31. National Immigration Project of the National Lawyers Guild
32. National Lawyers Guild Task Force on the Americas
33. National Network for Immigrant and Refugee Rights
34. New Jersey Forum for Human Rights
35. Nicaragua Center for Community Action
36. Northeast Florida Immigrant Alliance
37. Progressive Democrats of America  
Rights and Urban Affairs
38. South Asian Americans Leading Together (SAALT)
39. Southeast Regional Economic Justice Network
40. St Thomas University Human Rights Institute
41. The Detention Watch Network
42. The Immigrant Legal Resource Center
43. The National Lawyers Guild
44. The New Sanctuary Coalition of NYC
45. The Student Organization for Human Rights
46. UC Davis Immigration Law Clinic
47. United Methodist Church, General Board of Church and Society
48. Urban Justice Center
49. Washington Defender Association's Immigration Project
50. Women Watch Afrika, Inc.
51. World Organization for Human Rights USA

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110. Morayma James
111. Erika Kreider
112. Colleen Rose
113. Haydee Negroni
114. Angela Flores
115. Amanda Leipold
116. Nicolas Touron
117. Roxanne Ryce-Paul
118. Marjory Sainttulias
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122. Grace Goodman
123. Jeff Weinberger
124. Clif Bennette
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147. Kwame-Osagyefo Kalimara
148. Rev. Linda Theophilus