

# Haitian Refugees:

## *A People In Search Of Hope*



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**May 1, 2004**



### **Florida Immigrant Advocacy Center**

A non-profit organization dedicated to promoting and protecting the basic human rights of immigrants of all nationalities.  
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**Cover Photo by Bruce Weber:**

Haitian children protest the detention of other Haitian children, Miami, Florida, 2003



## **Dedication: Arthur C. Helton**

This report is dedicated in memory of Arthur C. Helton, a longtime colleague, who died in the bombing of the United Nation's Baghdad headquarters in August 2003. Arthur was meeting with Sergio Vieira de Mello, the United Nation's chief envoy to Iraq, at the time of the bombing.

Arthur fought tirelessly over the years for fair and humane treatment of Haitian refugees. In 1982 Arthur's advocacy work helped bring about the release of 2,000 Haitian refugees, who were in immigration detention in Florida. Arthur devised a nationwide *pro bono* program to ensure that all 2,000 Haitians had free legal representation upon their release. Arthur also was instrumental in challenging the Haitian interdiction program and bringing about improvements in the screening interviews conducted on Coast Guard cutters in the early 1990's.

Arthur's death is a profound loss to refugees all over the world, as he was a key figure in shaping refugee policy both nationally and internationally. He led the refugee program at the Lawyers Committee for Human Rights from 1982 to 1994. At the time of his death, Arthur was the Director of Peace and Conflict Studies and a Senior Fellow of Refugee Studies and Preventive Action at the Council on Foreign Relations. Arthur's quiet but powerful voice inspired and encouraged us all and we can only hope to emulate his passionate work with half his spirit and resolve.

Arthur served on FIAC's Advisory Board from its inception until his death. We routinely sought his wisdom and advise on critical issues which he so generously shared.



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Finally, FIAC extends its deepest thanks to the Haitian asylum seekers who are the subject of this report, for their profound courage and determination and for the privilege of representing them.

### ***Florida Immigrant Advocacy Center***

Florida Immigrant Advocacy Center, Inc. (FIAC) was founded in January of 1996 in anticipation of the drastic changes in the availability of legal services to immigrants due to federal funding restrictions on Legal Services Corporation. FIAC’s mission is to protect and promote the basic human rights of immigrants of all nationalities through direct legal services and impact advocacy efforts.

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**SPECIAL NOTE:** All letters, statements, articles and other documents cited to in this report are on file and available at FIAC. A special edition of this report, which includes attachments of the most relevant documents cited to, is also available for purchase from FIAC. For more information, please contact: Sharon Ginter, tel. 305/573-1106, ext. 1230





## Executive Summary

The United States prides itself as a nation of immigrants. Its very existence is, after all, the result of a collective effort by those who landed on our shores. And in the course of building a great democracy they have embraced the cultures that make up their diversely rich population. Along the way to becoming the most powerful and the richest country in the world, Americans have also pledged to protect those who have fled political persecution.

To flee from persecution is not a crime; it is a basic human right and one the U.S. government has recognized since it declared independence more than two hundred years ago. Asylum should not depend on politics. Asylum seekers are not asking for special treatment, only fair and just treatment.

But since they first started coming to Miami shores nearly 50 years ago, Haitian asylum seekers – including women and children – have been singled out by the U.S. government and denied the fundamental protections that are promised to refugees of virtually every other nationality. During the last decade tens of thousands of Haitians fleeing a military dictatorship were given a cursory chance to plead for political asylum on Coast Guard cutters, and then repatriated. The number of Haitians seeking asylum dropped off once a democratic government was restored, but not all of the political violence ceased. Our policy towards Haitians became clearer after a December 2001 boat of 167 Haitians reached U.S. shores.<sup>1</sup> It was at that point advocates began to see more pointedly the series of discriminatory measures that created an almost insurmountable barrier that even today prevents *bona fide* Haitian refugees from obtaining protection in the United States.

This has included the worsening interdiction policy; resettlement to third countries as far away as Australia of those few Haitians provided screening and deemed refugees; prolonged and arbitrary detention of Haitians who are able to make it to the United States; criminal prosecution of some Haitians who use false documents to enter the United States, a punitive measure that disregards the reality that refugees often have to resort to the use of false documents to escape persecution; and fast-tracked asylum adjudications in hearings as short as 30 minutes, including time for translation.<sup>2</sup> These policies have been applied to children as young as three years old. As Wendy Young, Director of Government Relations and U.S. Programs for the Women's Commission for Refugee Women and Children (Women's Commission), recently remarked, "In effect, the U.S. asylum system exists ONLY on paper if you are Haitian."<sup>3</sup>

The first boatload of Haitians claiming persecution in Haiti arrived in the U.S. in September 1963. All 23 were denied asylum and deported, signaling the wave of rejection to come. Forty years later, very little has changed. Haitians continue to take boats to flee persecution, only to find discrimination in the very country they hoped would liberate them. Instead of having the opportunity to improve their lives, the lives of their family and their community, the asylum seekers are held as prisoners; hopes of freedom are shattered; and many asylum seekers are forced to return home to face the possibility of even greater persecution than that which they fled.

The most recent high profile case of Haitians fleeing their homeland and landing on U.S. shores in search of protection is a poignant example of the flawed U.S. asylum system. On October 29, 2002,

South Florida and the world watched in disbelief as 212 Haitians took drastic measures to secure asylum in the United States. Scenes of proud, frightened Haitian men, women and children jumping from the ship that had carried them from Haiti were broadcast around the world. Shocked Americans watched how Haitians, just yards from shore, tossed their children overboard to the waiting arms of fellow asylum seekers, whom they hoped would transport them to safety.<sup>4</sup> Rather than processing them in a manner afforded asylum seekers from other nations, however, U.S. immigration officials rounded up the Haitians like criminals and carted them off to detention. Even small children were handcuffed during transport.

Although they came here seeking a better life, a harsh reality soon confronted the Haitian refugees. Following their processing at Miami's Krome Detention Center, families were broken up. Parents were forcibly separated from their children and many spouses and siblings separated from each other. The men remained detained at Krome, while many unaccompanied children and women with children were confined in a local hotel and virtual prisoners in their rooms. Still other women were taken to a Broward County location.<sup>5</sup>

One 13-year-old boy whose father was hospitalized following his arrival went for days without knowing that his father had been transferred to Krome. A 17-year-old girl detained in the hotel went for weeks without knowing that her father had been moved from the hotel to Krome. Detainees in one facility were unable to call family members detained in others.<sup>6</sup>

While many Americans who watched the scene of the Haitians unfold on the news were awed at the emotional courage and determination of the Haitians wading to shore that October day, most did not know about their government's secret policy directed at Haitians, which went into effect eight months earlier.<sup>7</sup> Following the December 3, 2001 arrival of 167 interdicted Haitians who were brought ashore to Florida,<sup>8</sup> the Immigration and Naturalization Service (INS), which is now part of the Department of Homeland Security (DHS),<sup>9</sup> adopted a secret policy directed solely at Haitians, which resulted in the prolonged detention of virtually all Haitian asylum seekers in South Florida, regardless of whether they arrived by boat or by plane, and despite the fact that all but two of the 167 had convinced U.S. Asylum Officers they had a "credible fear" of persecution upon return to Haiti.<sup>10</sup> While adopting the Haitian policy, the INS made no changes regarding asylum seekers of other nationalities in the Miami District and continued to routinely release those from countries other than Haiti who had passed their "credible fear" interviews with the U.S. Asylum Office.<sup>11</sup>

The impact of this policy was dramatic and immediate. The release rate for Haitians who had passed their interviews dropped from 96% in November 2001 to 6% between December 14, 2001 and March 18, 2002.<sup>12</sup> Even Haitians who had been granted asylum and could no longer be legally detained by INS were not immediately released. Only after persistent efforts from immigration lawyers and advocates to determine this sudden change in policy was it revealed that in fact a secret policy did exist, and Acting Deputy INS Commissioner, Michael Becraft, took responsibility for issuing the directive to keep the Haitians in detention (Becraft Policy).<sup>13</sup>

On March 15, 2002, the Florida Immigrant Advocacy Center (FIAC), along with other non-profit legal agencies, filed a class action lawsuit in the Southern District of Florida on behalf of the Haitians.<sup>14</sup> Although the Court made the important finding that the INS detention policy differentiated between Haitians and non-Haitians, on May 17, 2002 the judge summarily dismissed the case on the basis that

INS has virtually unfettered statutory and constitutional authority to discriminate and that it is up to politicians in Washington, not the courts, to determine the Haitians' fate.<sup>15</sup> In her ruling, the judge wrote: "Petitioners' cry for freedom needs to be directed to those representatives of the political branches responsible for enacting immigration laws and policies."<sup>16</sup> The Eleventh Circuit Court of Appeals affirmed the lower court's decision and FIAC unsuccessfully appealed to the United States Supreme Court.<sup>17</sup>

Shortly before publication of this report, the United States' Haitian refugee policy became even more restrictive. As Haiti teetered on the brink of anarchy, leaving hundreds dead, the United States continued to forcibly repatriate Haitians who sought to flee persecution and violence in their homeland. The United States did so despite a plea from the United Nations High Commissioner for Refugees (UNHCR)—on whose Executive Committee the United States serves—for neighboring countries to provide Haitian asylum seekers at least temporary protection.<sup>18</sup> The United States' actions put the lives of hundreds of Haitian men, women, and even children at risk.

On February 25, 2004, while the U.S. State Department urged U.S. citizens in Haiti to evacuate, President Bush made clear that henceforth *all* Haitian *refugees* interdicted by the U.S. Coast Guard would be summarily returned.<sup>19</sup> Human rights advocates criticized the President's statement as a flagrant violation of international refugee law, as well as of the principles on which this country was built.<sup>20</sup>

In early March 2004 U.S. Coast Guard officers reportedly shackled some of the Haitians because they didn't want to go back to Haiti.<sup>21</sup> Frightened interdictees were dropped off in Port-au-Prince under the menacing eye of the Haitian Coast Guard, where they could easily be identified and targeted for trying to escape.<sup>22</sup>

On March 18, 2004 U.S. government officials also reiterated their position that Haitian boat persons lucky enough to have reached U.S. shores would not be paroled from detention.<sup>23</sup> And even as all non-essential U.S. personnel were authorized to leave Haiti, the administration continued to deport Haitian asylum seekers -- including pregnant women -- from some of the most violent regions of Haiti.<sup>24</sup>

These policies create an almost insurmountable barrier that prevents Haitians from obtaining asylum in the United States. True refugees are being returned to persecution as a result.

Just because boats land on Florida shores does not make this a singular South Florida issue – the treatment of Haitians and our comprehensive immigration policy affects the entire nation and deserves national attention. While public attention and criticism of the Haitian policy has been relatively short-lived, a number of human rights and national non-governmental organizations have repeatedly decried the Haitians treatment and urged the government to end its discriminatory policy.<sup>25</sup>

On June 21, 2002 FIAC and the America Civil Liberties Union (ACLU) co-hosted an informal briefing before the United States Commission on Civil Rights. Testimony focused on the fact that the war on terrorism had become a war on immigrants and that Haitian asylum seekers had become the scapegoats for a flawed Administration policy that treated freedom-seeking Haitians like common criminals and terrorists.<sup>26</sup> Members of the Commission later met with Haitian women detained in a Miami maximum security jail, as had actor Danny Glover on July 27, 2002.<sup>27</sup>

On October 1, 2002 Senator Edward Kennedy's Subcommittee on Immigration held a hearing on the recent treatment of Haitian asylum seekers.<sup>28</sup> Representative Ileana Ros-Lehtinen's Subcommittee on International Operations and Human Rights held a briefing on the issue that same day.<sup>29</sup>

In late March 2004 the Organization of American States (OAS) announced it will investigate the interdiction and forced return of Haitian refugees by the United States and asked the United States to provide information about its repatriation policies.<sup>30</sup> In early April 2004 a petition was filed with the United Nations, asking for an investigation into the Haitian detention policy and asking the UN to hold the United States accountable to international standards.<sup>31</sup>

FIAC, along with prominent members of Congress, community leaders, and other advocates, has asked the Bush Administration to grant Haitians Temporary Protected Status (TPS) and permit Haitians already in the United States to remain until conditions are safe for their return.<sup>32</sup> FIAC is also urging the Administration to suspend Haitian deportations, a step already taken by Canada and the Dominican Republic.<sup>33</sup>

The Administration seems unlikely to consider requests as this. Although Haiti has never once been cited as a threat to the security of the American people, the U.S. government has argued that releasing Haitians who have reached U.S. shores in their quest for freedom encourages terrorists to use Haiti as a staging point for invasion. Therefore, it concludes, Haitians should remain in detention during the course of their court proceedings, while asylum seekers from other nations have been allowed to go free.

While advocates for the Haitians recognize the government's responsibility to protect the country from terrorist acts, and support real reasons of doing so, it seems misdirected, if not racist, to indefinitely detain Haitian asylum seekers who have committed no crime and treat them differently than any other group for "national security" reasons. Moreover, the U.S. policy of summarily interdicting and repatriating all Haitians escaping the country – including, by President Bush's own public admission, all those who are in fact *bona fide* refugees fleeing persecution – presents a grave and immediate threat to Haitian refugees' fundamental rights protected under the American Declaration of the Rights and Duties of Man ("Declaration") and subjects them to the threat of irreparable harm.<sup>34</sup> This is a shocking abuse of power that does little to serve U.S. national interests. The Bush Administration should focus its attention on the real criminals of the world, not innocent Haitians.

As the United States seeks to protect the safety of the American people, it is also inexplicable as to why it is wasting limited resources on the prolonged detention of Haitians. Most of the Haitians who arrived in the United States these past few years seeking asylum have family lawfully residing in the U.S. who are ready, willing and eager to care for them. The Haitians themselves want nothing more than to work and be self-supporting during the course of their court proceedings, rather than be a burden on taxpayers. The average cost for detention is \$85 per detainee per day; hundreds of thousands of taxpayers' dollars are diverted each year for this unjust and arbitrary policy.<sup>35</sup>

On May 27, 2003 Haitian women detained in Miami wrote a letter to Members of Congress. Their letter eloquently reminds us of the urgent need to double our efforts to help the Haitians:

"We did not leave our country because of economic problems, but because of political problems. The trip to Miami was a very dangerous

one, but our hopes of reaching a land where we would be truly free and safe from oppression gave us courage to hold on... Why are we, Haitians, being detained? What horrible crime have we committed to be treated this way? Why are we being treated differently than all the other asylum seekers? We are not criminals. We did not come to the United States to commit any crimes. We came here to save our lives... All we are asking is to be treated fairly, to be treated like human beings, not by which country we come from.

If we thought that we could have survived in our country we would have stayed there.... Listen to our cries for help.... Treat us according to what the U.S. stands for: the Land of the Free. Please dry the tears from our eyes. May God bless you."<sup>36</sup>

FIAC and the Women's Commission have documented the very real human cost that the restrictions and measures adopted by the Administration carry. In a report issued in January 2003, the Women's Commission highlighted the story of Rigmane, a Haitian woman who arrived in the U.S. as part of the December 2001 boat.<sup>37</sup> Rigmane suffered eight months of detention in a maximum-security prison in Miami before she was deported. According to the Women's Commission, Rigmane was awakened at 2:00 am by the INS on July 29<sup>th</sup>, 2002, taken to the airport, and handcuffed and shackled throughout the trip back to Haiti. There she was turned over to the Haitian authorities who imprisoned her for two days. She was housed in a cell with 60 women, some of whom were sick or pregnant, one of whom was accompanied by her newborn infant. There was only one cot for every three women. There was no food or water. There were no toilet facilities. Rigmane told the Women's Commission that the smell was unbearable.<sup>38</sup>

Rigmane's family finally got her out of prison, at which point she returned to her home in Gonaives, one of the most troubled areas in Haiti. But her problems did not stop there. The Women's Commission reports that after her return, her mother's restaurant was sprayed with gunfire. Rigmane and her brother-in-law were later attacked by forces aligned with the Lavalas party, who beat her on the back and chest with rifles. Rigmane ended up in the hospital and was still spitting up blood when the Women's Commission interviewed her.<sup>39</sup> She went into hiding after that, from where she told the Women's Commission:

"We were living in a nightmare in Haiti before we left, then we lived a nightmare in the United States of America and we are living a nightmare again in Haiti. I still have the scars of the shackles on my ankles they put on us when they deported us because they were so tight.... Why are we being treated this way? Doesn't anybody care about our lives? The next time that you call, I might be dead. I will do whatever it takes to get out."

And sadly, the U.S. government appears intent on doing whatever it believes it takes to keep Rigmane and others out.<sup>40</sup>

We can't change history, but we can right the wrongs of our times. Rigmane, like many others about

whom you will read in this report deserve our support, not our scorn. We must insure that the policy directed at Haitians is no less than the policy we apply to all other asylum seekers. Everyone in detention deserve the same treatment – both in legislative policy and in attitude. Haitians, like all others knocking at our door for help, should receive at the very least, the respect, dignity, and justice we pride ourselves on offering to people in need.

## Access to Legal Counsel



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Navigating the complex legal system is, at best, cumbersome and daunting; doing so from detention is exceptionally more difficult. Officials created a special Haitian docket to expedite the hearings of the Haitian detainees and additional Immigration Judges have been detailed from their downtown Miami courtrooms to detention centers to rush these cases forward. Many of these hearings were scheduled for only 30 to 60 minutes, including time for translation, whereas non-Haitian cases are regularly set for three to four hours. Judges have held as many as five merit hearings in a single day. Requests for continuances to prepare the cases for those detainees fortunate enough to have legal counsel -- including children -- have routinely been denied.<sup>41</sup>

Both the United Nations High Commissioner for Refugees (UNHCR) and the Lawyers Committee for Human Rights (LCHR)<sup>42</sup> have emphasized that detention severely hinders an asylum seeker's ability to access legal services and effectively present an asylum claim.<sup>43</sup> A study conducted by Georgetown University found that asylum seekers in detention are more than twice as likely as those who aren't detained to be without legal representation. The consequences of moving forward without counsel are harsh, as the same study found that persons with attorneys are four to six times more likely to be granted asylum.<sup>44</sup>

The vast majority of the Haitian asylum seekers speak only Creole; yet in detention, they have been forced to complete complex asylum applications in English. Many Haitians were ordered removed by immigration judges simply because they couldn't properly complete their asylum applications.<sup>45</sup>

Released asylum seekers in South Florida generally have a year or more to find lawyers and prepare their cases. The Haitians, however, have had only weeks to prepare and most must proceed without attorneys. Few agencies are able to provide legal help to the Haitians with *pro bono* resources already stretched thin. Leaders from organizations such as the South Florida chapter of The American Immigration Lawyers Association (AILA) expressed concern that the Haitian detention policy and expedited processing of Haitian asylum cases was discriminatory and therefore their attorney members were reluctant to participate in any effort that would somehow lend it credence.<sup>46</sup> Attorney access is made even more difficult because the Haitians in South Florida are being housed in five different facilities, miles apart

from each other.

As a result of their prolonged detention, Haitians also face serious impediments in gathering essential evidence for their asylum cases. Communications with Haiti are difficult enough for non-detained Haitians given the escalating political violence there and serious lack of infrastructure. Detained Haitians facing fast-tracked adjudication of their cases therefore have found it nearly impossible to contact potential witnesses or gather documentation in support of their claims.<sup>47</sup>

FIAC attempted to assist hundreds of Haitians in filing their briefs with the Board of Immigration Appeals (BIA). However, the Attorney General implemented dramatic changes post 9-11 to streamline BIA decisions and a number of Haitians have received summary affirmances of the judges' decisions without explanation.<sup>48</sup> FIAC even received a BIA denial for a Haitian whose appeal brief was not yet due.

Ironically, at a time when more attorney access than ever was needed to assist the Haitians, there has been less access.<sup>49</sup> Since December 2001, attorneys have faced increased restrictions in meeting with their detained clients, including waiting hours just to meet with them, lack of adequate visitation space and outright denial of access.<sup>50</sup>

Indeed, in late December 2002, after months of documenting concerns to detention officials regarding these increasing restrictions FIAC staff was notified they must quickly vacate the small office they shared for six years with other *pro bono* groups at the Krome detention facility.<sup>51</sup> This has had a tremendous impact on FIAC and others' ability to meet the desperate legal needs of detainees at Krome by decreasing advocates' productivity there by half.

## Conditions of Confinement



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On March 9, 2002, Congressman John Conyers, Jr. visited the Haitians in three Miami facilities: the Krome Service Processing Center (Krome), a large DHS detention center which houses hundreds of men, including those seeking asylum; the Turner Guilford Knight Correctional Center (TGK), a maximum security Miami-Dade County jail used for DHS detention of women; and a local hotel which holds asylum seeker children and families. Congressman Conyers found "serious deficiencies" in all three facilities.<sup>52</sup> Such adverse conditions of detention

further compromise the Haitians' ability to seek asylum.

Until mid-December 2000 all women in immigration detention in South Florida were detained at Krome. Following allegations by female detainees of sexual abuse by officers there, including sexual

molestation, harassment, and even rape, all the women were moved to TKG.<sup>53</sup> At TKG the women were subject to frequent invasive strip searches, lockdowns and hourly interruptions of sleep during the night.<sup>54</sup> The Women's Commission twice assessed conditions at TKG and found that the women were living in deplorable conditions and that incarcerating them there seriously interfered with their access to legal assistance and thus jeopardized their ability to successfully pursue their asylum claims.<sup>55</sup> FIAC issued its own supplemental report about conditions at TKG, focusing on the dehumanizing nature of the Haitian women's detention, including inadequate medical care and the lack of translation services, which routinely led to some officers misunderstanding, berating and humiliating them.<sup>56</sup> On October 1, 2002, Marie Jocelyn Ocean, a Haitian woman who was granted asylum, passionately testified before Senator Edward Kennedy's Subcommittee on Immigration about her detention experience in Florida:

“On behalf of all the asylum seekers still in detention, I would like to thank you for honoring me with the opportunity to speak to you today about our experience and the treatment we have received here in the United States....

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

Like me, all the other Haitian women came here seeking freedom from oppression. We did not leave our homes because of hunger or lack of food; we left because of the political violence in Haiti. So when we first arrived we thought the Americans would treat us with dignity and that they would protect us after what we had suffered.... So I was shocked by how they treated us. Instead of finding freedom, we were thrown in jail. We were treated worse than nothing; we were treated as criminals.... Even though the laws were too complicated for us to understand alone, our detention made it very difficult for us to get access to lawyers and we had to go to court very quickly. Being detained made it so much harder for us to even have a chance in court.

At first I was taken to a local hotel in Miami with many of the other women.... One day the officer yelled, "Ocean, court!" and I left thinking I had a hearing. But they did not take me to court. They took me to jail, to TKG. They took my picture and they strip-searched me. I was so afraid I was about to be deported. I was completely humiliated, and it seemed so unnecessary to treat us like that. But they do this to all the women, not just me.



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

It was at the jail that I met staff from FIAC and they were able to help me and represent me in court. If I didn't have a lawyer I would never have been able to tell the judge my story because the laws are very difficult to understand here. We were supposed to fill out our asylum applications in English, but none of us speak English and many of us cannot read or write.... If it had not been for FIAC, no one would have helped us at all. Most of the women had to go to court and speak to the judge by themselves.... [M]y heart cries for the women that are still there and who did not have a lawyer to help them speak to the judge... it has been almost ten months for them now. They came here because they were afraid for their lives. I cannot understand this because everyone else from every other country was quickly released while the Haitians have stayed in detention. This has made it even more difficult for us, to watch so many other women from other countries come in and quickly get released.

I didn't think the United States would treat people differently just because of the place they were born, I thought everyone was equal here. But we were not treated like everyone else; even though we are all human and we all have the same blood. It became clear to us that the only reason we were in jail indefinitely is because we are Haitian. But I still cannot understand why the Haitians are kept in detention and all the others are released.

I pray that my words today will somehow help the Haitians that are still imprisoned. Thank you for listening to me today."<sup>57</sup>

In late August 2002 the women at TKG were moved to the Broward Transitional Center (BTC), a minimum security facility located in Pompano Beach, Florida.<sup>58</sup> While BTC is a much more appropriate setting for asylum seekers, some Haitian women there complain that certain staff have yelled at them and told them they smell.<sup>59</sup> There are no counseling services available to the women at BTC.<sup>60</sup> In May 2003, one of the Haitian women suffered a mental breakdown and was taken to a psychiatric hospital.<sup>61</sup> Another Haitian woman at BTC used a Creole phrase, "N'ap manje prizon. N'ap bwe prizon," to describe their suffering: "We are eating prison. We are drinking prison."<sup>62</sup>

There have also been serious complaints regarding medical care at BTC. For example, one woman who became pregnant as the result of a rape shortly before she fled Haiti suffered an ectopic pregnancy at the

facility, after which one of her fallopian tubes had to be removed. She was in extreme pain for several days before being taken to the hospital. She told FIAC:

“I think it was around December 18, 2003 that I realized I did not get my period... I started to get worried because I am usually on time and also because I started to experience some pain in my lower stomach.

I put in a written medical request to go to the clinic at BTC. The nurse saw me and I explained my problem. I was told that this was not uncommon. Also that several other women missed their period for two or three months due to stress and not to worry about it. At that visit, I was given about 20 packets of Ibuprofen for the pain. There are two Ibuprofen pills in each packet.

...By January 1, 2004 the pain was getting much worse... [T]he teacher who speaks Kreyol, helped me make a medical request that day because I was in too much pain. After being told again that this was due to stress I was given Tylenol and Ibuprofen and asked to go back to bed.

When I went to bed the pain was so bad that I was moaning and the officers came. They went downstairs to get a nurse but no one is in the clinic at night. The officers thought it might be a stomach problem so they gave me antacid and soda...

When I woke up there was blood everywhere. I was bleeding heavily. The officers wrote the request for me to go to the clinic that morning, on January 2, 2004. I was given more Tylenol and Ibuprofen and asked to go back to bed again. I insisted that it was not normal for me not to get my period and was finally given a pregnancy test. The test revealed that I was pregnant... But the pain continued to get worse and I kept bleeding.

On January 3, 2004, I went to the clinic again... They kept giving me more Tylenol and Ibuprofen and sending me back to bed. They always use a telephonic interpreter service at the clinic with me...

On January 4, 2004 the pain was severe. My roommate... helped me get to the clinic. They [clinic employees] wanted to send me back to my room again but my roommate said no. She told them how much I was suffering and said she would not take me back to my room in that condition.

Finally, they brought me back to a room with a table in the clinic and told me to lie down on the table. A male doctor was there. I was in so much pain I was screaming. All he did was touch my stomach and then he said they had to take me to the emergency room immediately. They

took me out in a wheelchair.

I was taken to the Broward Medical Center and was told by the Doctor there that it was too late and they needed to operate because I had an infection. He said it was an ectopic pregnancy. I had surgery on January 5, 2004. I was told afterwards that one of my tubes had to be removed. I was devastated by the news because not only had I lost the baby but also because now it would be much more difficult for me to have a baby. I don't have children but I want to. I was also very angry because I realized that I could have died because of the treatment that I received after complaining for so long about the pain. I spent three days at the hospital and all the time that I was there, even though there was a phone in my room, the guard that stayed with me did not allow me to use the phone to contact my relatives and let them know what had happened... I was not able to get any special visit with my family either... I am so afraid they will send me back to Haiti. I will never be able to forget all that I went through since I've been here."<sup>63</sup>

Krome, which houses most of the male Haitian asylum seekers, has been terribly overcrowded since the Haitians' arrival in December 2001. In May 2002 the population was over 800 even though officials at the time said the maximum capacity was 538. Shortly before publication of this report, Krome had a population of approximately 750. FIAC has received reports of frequent transfers of arriving asylum seekers in Miami to other detention facilities across the country such as New Jersey, Pennsylvania and Louisiana, even though many have family in South Florida.

Haitian men have complained that certain Krome guards call them "terrorists" and otherwise psychologically abuse them.<sup>64</sup> Some complain they have been physically abused.<sup>65</sup> A statement from one of the young Haitian detainees illustrates the extent of their suffering:

"I am 24-years-old. I fled Haiti and arrived on the boat with my brother and his son....

.... I came to save my life because I thought I would be killed if I stayed in Haiti. I remember I always thought that America is a good and powerful country and that if people fled here for refuge they would be helped. But we have been imprisoned since we arrived, for almost four months now....

... My brother Alfred and his son were granted political asylum and they've been released from detention.... When I talk to Alfred, he often cries on the phone with me, because he knows what we suffered in Haiti, he knows the terrible journey we took by boat to get here, and he knows that we continue to suffer in detention....

There are guards here that say we only came because we are hungry.... The guards look down on us. I told one of the guards that I came here

for refuge and didn't expect to be treated the way we are; that if this is how we are going to be treated, they might as well send us back to be killed. The guard said what do we want; we have food and beds, what more do we want.... We can't communicate with most of the officers though because of the language, although there is one Haitian officer that is nice to us.

What hurts the most is to watch the other nationalities get released. I feel I've seen at least 500 different people come and go from all over the world in these many months I've been here. Only the Haitians stay detained. The people from Guyana, Colombia, China, everywhere you can think of, they all stay for generally a few days and then they are out. Many of the Cubans stay less than a day. But not the Haitians; we stay.

After visitation with our families, we are strip-searched. It is so humiliating....

Sometimes I feel like I'm going crazy in here and that I would rather die than continue facing this mistreatment at Krome.

My dorm is so full of people that sometimes you can't walk without bumping into someone. They had to bring in cots for the people to sleep on. Right before the big group of officials came from Haiti though they moved many people out of my dorm. I don't know where they went, but they haven't come back. It's getting full again though, there are too many people.

...But it's hard to have hope here because... I know there are Haitians from the boat that came in December before us and they are still here 14 months later."<sup>66</sup>

Of all the detention facilities where the Haitians from the October boat were sent, the most egregious is the Comfort Suites Hotel in Southwest Miami, where women and children have been virtual prisoners in their rooms. Armed, uniformed guards and plain clothes DHS guards with handcuffs dangling from their pants monitor the hallways of the fifth floor of the hotel where the mothers and their small children are locked up 24 hours a day, this despite a pool and fitness center located on the premises.<sup>67</sup> Adults and children have gone weeks, even months, without a haircut, comb, change of underclothes, and deodorant.<sup>68</sup> One Haitian mother said she had to bite her 2-year-old's nails because detainees at the hotel had no access to nail clippers or scissors.<sup>69</sup> None of the detainees with whom FIAC has spoken have been able to make any international calls from the hotel, even at their own expense.

Immigration officials issue only adult-sized T-shirts, not pants, to the youngest children. Detainees are not permitted to wear socks and shoes, only flip-flops, unless they are taken to Krome for court. And on random trips to and from Krome some children have been handcuffed with plastic restraints. When taken to court, the detainees, including children, often miss their regular meals and at times have gone all day without eating as no provisions were made for them. For over a month last year, the children

detained at Boystown – the juvenile shelter care facility in Miami – were forced to wait for court at Krome outside in the hot sun for hours, without shade or any chairs to sit on, due to construction at Krome.

Attorney access at the hotel is more restricted than at any other detention facility in South Florida.<sup>70</sup> Despite repeated requests by FIAC and other immigration attorneys to meet with the Haitian women and children who arrived in October 2002, INS withheld information about them for days. It was only on November 8, 2002, a full ten days after their arrival, that INS finally granted FIAC permission to visit children and families at the hotel.<sup>71</sup>

Once inside the hotel, FIAC learned that six of the ten unaccompanied Haitian children being held there had been taken to Krome for court hearings earlier in the day without having any opportunity to speak with an attorney and without legal representation while in court.<sup>72</sup> The remaining children told FIAC that they had no idea what was happening to them and that since their arrival they were unable to contact family members and let them know where they were. The children also said they were told to sign papers they didn't understand. Several children, including two three-year-olds, had not had a change of clothing, including underwear, since their arrival.<sup>73</sup> The inability of the Haitians at the hotel to communicate with guards or staff makes it extremely difficult for them to communicate even their most basic needs.

Children ranging in age from seven to 17 were denied access to education until mid-December 2002, following FIAC's efforts to have them transported from the hotel to the Boystown shelter for classes (primarily English classes). Children younger than six and those 18 and older continue to be denied access to education. For detainees at the hotel, access to recreation and fresh air continues to be sporadic and less frequent than at other facilities. Mothers of children report the troubling effects on those left behind. One child taken to Boystown said he didn't want to return there because he did not have deodorant at the hotel and people at Boystown told him he smelled.<sup>74</sup> While some hygienic supplies are available, the detainees must request supplies themselves. This is unrealistic for most Haitians who do not speak English and are unaware of the availability of the supplies, much less that they may request them.

Family visits almost never occur. Even legal resident fathers of children and legal resident spouses of detainees have not been permitted to visit or speak with their loved ones. During court appearances, relatives are generally forced to sit in the back, unable to give their spouses, sons or daughters a hug or kiss. In order for detainees to have visitation with their loved ones who live in South Florida, they must be transported to Krome, a process fraught with problems. In late 2003, the first three times the uncle of a detained Haitian boy attempted to visit his nephew at Krome were in vain, and even after they were able to visit, serious problems continued.<sup>75</sup> The obstacles to visitation for this particular child were so unconscionable that national advocates raised them with DHS Headquarters on several occasions.

In March 2002, FIAC staff accompanying Congressman John Conyers on a tour of the hotel observed a family of five in one room, which included an ill 79-year-old Haitian woman and a 19-month-old baby. Those in the same hotel room are often unrelated, forcing families to share their small room with others and sleep two to a bed. Although DHS officials have claimed that the hotel is for temporary detention only, a number of Haitian detainees have been held there for months.

Detainees at the hotel spoke to FIAC about the terrible toll conditions there have taken on them and their families. Guilene Silien summarized the particular hardships experienced by women with young children:

"I arrived on the boat on October 29th with my husband and our six children. My oldest son is 18-years-old so he and my husband are detained at Krome. My other five children and I have been detained here at the hotel since we arrived. We are having such a hard time.

My children who are here with me are ages 5, 8, 12, 14, and 16. We are all in the same room together. I sleep in a bed with my two daughters, two of my sons sleep in another bed, and my 16-year-old sleeps on the sofa bed.

I never knew the United States would imprison children, especially under conditions such as these we live in here.

I never leave our room except for court or to walk down the hall to use the phone. About two months ago, they started taking four of my children to school during the day during the week. But they said my 5-year-old is too little for school, so he and I just stay here locked up in our room all the days.

We never get outside; we never breathe the fresh air. It's especially difficult for my little boy because he's just five, and he cries all the time. And when he cries, I begin to cry too, because I don't know how to console him. He's just a child, he's five years old, and he shouldn't be locked up like this. He should be able to go outside and play and be a child. But here they won't even let him out in the hallway, much less outside.

During the day when we're just locked in here alone, I try to teach him things like the alphabet and I try to play with him. But right now we have no pencil or paper because an officer took them away from us. When my other children came back from Boystown once, they had homework to do, but the officers took away their paper and pencils. We've had toys donated at different times that he plays with. My children that go to school at Boystown got toys on Christmas from a Haitian radio station. But some officers have taken the toys away and given them to the white kids at the hotel. My children cried and asked for their toys back but the officers shooed them away.

We have no way to call my husband and son at Krome. We never have visitation with them and it's so hard not to be able to talk to them. The only time we see each other is when we're taken to court but we can't hug each other or really talk then.

Usually they wake us up at 4 am. It's so cold in the morning but we only get one gray t-shirt. My little girls are especially cold. They got warmer clothes at Boystown, but when they got back from school there the officers took them away. The officers put the clothes in a box and I guess they sent them to Krome.

They even took away the sandals they got. Here they only allow us to have rubber flip-flops.

We can only wear these gray clothes they issue us here. It's like a prison uniform. Imagine my five-year-old little boy isn't allowed his own clothes; he has to wear this prison uniform. And why? Why? He's a child!

We've seen many other people who look like they're from all over the world who are detained here, but they don't stay here. We know now it's only the Haitians who stay detained so long like we have. It's been almost four months now. We are not treated the same as the others.

Visitation is terrible. I've filled out the request paper to visit my family so many times and I haven't been able to see them once. I don't think any of the Haitians have gotten visitation. What's worse is that four times - FOUR times - we've been taken to Krome for visitation. But then we don't get to see our family. We're there. They're there. We ask the guards what's going on, but we just stay there waiting all day until they eventually bring us back to the hotel. I don't know why, it doesn't make sense. Four times we've been taken to Krome for nothing. It's not like we could even see my husband and son. They didn't even know we were there....

We only get to use the phone once a day for five minutes. And it depends on the officer because sometimes it's more like three minutes. Not being able to use the phone when we need to is a serious problem. For example, my attorney needed my children's birth certificates and a friend of my family is going to Haiti and I needed to call that person at 5 pm before he left. I went out to start trying to use the phone at 4 pm, but a guard was on the phone. The guard saw I was waiting for the phone. But then she left, without letting me use the phone.... When she returned, the guard went and got another woman, a white woman, who needed to make a call but I know I was waiting before her.... So in the end, I wasn't able to call the person going to Haiti in time, and I don't know what to do about the birth certificates now.

What I don't understand is why the Haitians are treated different; why are we treated worse than everyone else? Why are we blamed for

everything?

One time when my children and I were at court, the judge brought markers and papers for them to color because she knew they were stressed and upset and the kids didn't have anything to do.... When one of the officers left the room, a white man, I think he spoke Spanish, who was also in the room took a Coke from the small refrigerator and drank it. When the officer came back, he went to get his Coke and he got angry. He yelled at my children and me; and then he took their markers and paper away. He brought a Haitian guard who asked us in Creole if we took the Coke. We didn't! My children were crying, and it was the day of our hearing so we were already feeling stressed. That guard still thought we took his Coke. Later on, he found out who really took his Coke and that he was wrong, I don't know how. He did come and apologize to us, but it wasn't necessary, it shouldn't have happened in the first place. He blamed us because we're black and because we're Haitian. And my children suffered for it."<sup>76</sup>

Fortunately, Ms. Silien and her family were released in late February 2003, after being granted political asylum.

Medical care for detainees at the hotel is terribly inadequate. The manager of the hotel acknowledged in July 2003 that when one of his cleaning staff knocked on a Haitian's bathroom door, she found a Haitian woman "in position to give birth." This woman had to be taken to the hospital where her baby was delivered.<sup>77</sup>

Sometimes requests for medical care are outright ignored. On April 10, 2003 FIAC staff observed Lormise Guillaume carrying her 2-year-old son, Jordan, who was visibly ill. FIAC requested immediate assistance and officers called 911. Jordan was rushed to the emergency room of a local hospital. His health had been deteriorating for some time and medical attention repeatedly requested was inexcusably delayed.<sup>78</sup> On April 3, 2003, a week before Jordan was rushed to the hospital, Lormise stated:

"I fled Haiti with my two-year-old son, Jordan, by boat. Our boat landed here on February 17th.... My husband is here in the United States...

I am very worried about my son here at the hotel. We never go outside. Recreation does not exist for us, we only see the outside world through the glass window; we cannot breathe the air. It's very difficult for my little boy. Sometimes he wakes up screaming in the middle of the night, banging his head on the bed and the walls. He cries much more here. I feel helpless because I don't know what to do for him.

We have no exercise. My body aches all over from not moving about. I know it's even worse for Jordan. He was much healthier before we came here.



My son has been sick for weeks. A doctor finally did come and see us here at the hotel and prescribed him some medicine, but the medicine has not worked and it's been well over a week since he saw the doctor. The problem was that I don't speak English and the doctor didn't speak Creole. He did not use an interpreter, so I couldn't tell the doctor about all of my son's symptoms.

Jordan doesn't eat the food they give us here. Mostly, he just drinks juice; he won't eat much at all. I don't know what to do. I'm very worried about his health, because they give the children the same food they give adults. It's terrible food and we're not used to it, and it does not seem nutritional to me. Sometimes Jordan can't sleep because he's hungry, but I have nothing to give him....

Sometimes there aren't even enough diapers for him. He didn't have anything at all for the first couple of weeks we were here. As a result, sometimes he urinates on the floor and then I have to clean up the mess....

At first we were in a room with the other Haitian woman and her 2-year-old daughter when we arrived. There are two beds and a sofa in our room. Now we're in a room with a [unrelated] pregnant lady.

It's just so hard to be locked up all day and to never get out. My little boy is bouncing off the walls. There's nothing for us to do. The only time we've gotten out is when they take us to the van to go to Krome for court....

I never imagined the United States would treat us like this."<sup>79</sup>

Lormise and Jordan were finally granted humanitarian parole on April 17, 2003, following media coverage about the case.<sup>80</sup>

Prolonged detention at the hotel is also causing psychological harm to young children. Milia Auguste, who was detained at the hotel for over two months with her two-year-old daughter, perhaps best described the problems:

"I fled Haiti by boat with my two-year-old daughter, Fara, because of political problems. Our boat made it to shore and we were picked up by Immigration on February 17, 2003. My father lives in Miami and he's a U.S. Citizen.

... I know we are in a 'hotel,' but it's really a prison. They have no pity, no mercy, on us, not even on the children....

... Our children cannot play outside in the sun; they can't breathe the air.

This is no way to treat a child....

Fara, my daughter, has started acting out here. She is constantly running to the window and trying to pull down the curtains. She gets excited looking at the cars and the people outside but she doesn't understand why she can't go outside too. She jumps on the bed and sometimes she's tried to break things. She tries to take the sheets off the bed. She never acted this way in Haiti. I think she's suffering because she's locked up.

She also cries all the time here. I don't have enough diapers for her. I usually get two a day, but it's not enough. If she stays wet her skin gets very irritated. She already has rashes all over her body here... you can see them....

Fara only has a big adult-sized t-shirt. She has two of them so I wash one each day. She has three pairs of boy's underwear that are about five sizes too big. She has no pants and no socks. Only when we go to Krome can she get her shoes she came with. She can't have them here at the hotel....

We do our hair in small braids because it's the cleanest way we can be. The only combs are from detainees who have left so everyone's using the same combs. You can't get a haircut here. Another woman asked for a haircut for her two-year-old son and was told no.

We don't have nail clippers. I bite my nails to trim them. I bite Fara's nails for her to trim hers. They treat us like animals.

Fara can't eat the food here.... I can't force Fara to eat. She's hungry all the time. She only eats the cereal and milk and drinks juice. But for two weeks we didn't even get the juice. They give the children the same food they give the adults. It's not healthy for children. Sometimes she's had diarrhea because she's eating so poorly here.

There is a woman here with a six or seven month old baby. They don't even give her special food for the baby. Sometimes she gets a banana that she tries to feed him, otherwise she's just breastfeeding. The mother told me that's about all her baby boy gets.

The children are starving. What hurts the most is when the guards come in with their own food. Fara loves fried chicken and the guards will come in with Kentucky Fried Chicken. The children smell it, and they're hungry so they go to the doors and stare at the guards eating. The guards just yell at them and make them go back in their rooms.

Why can't they allow our families to at least bring us food so our

children can eat?

When they take us to court they come for us at 6:00AM. I don't know why it's necessary to take us so early since we didn't have to be in court until 1:00PM. When we had court last, Fara didn't eat all day. She had a little cereal in the morning but she wouldn't eat anything at Krome and they didn't bring us back here until 11:00PM at night. We had to just sit in processing at Krome for all those hours.

I told the guards at Krome about Fara's rashes but in all that time while we were waiting they didn't take us to the doctor. They said the doctor would come this week to the hotel. Then Monday they took us to Krome again supposedly to see the doctor. We left at noon and came back around 5:00p.m. But the doctor never saw us....

Not all of the guards are mean though. But some really are, maybe they just don't have children themselves, and they don't understand how much it hurts that the children can't go outside to play....

Some guards allow the children to play in the hall and will let us go to other rooms to visit. But other guards will yell if we stick out necks out of our room for just a second. There is one who is especially mean and orders all the guards not to let us out of our rooms. He yells at us a lot and I cry when he comes.

Fara doesn't understand which guard is which and sometimes when she gets too excited she'll try to run in the hallway when there's a guard who doesn't allow the children out. Guards have told me more than once that if I can't control my little girl they will take her away from me and give her to someone who can. I've heard them say that to other mothers too.

I'm so scared they'll take Fara away from me....

She doesn't want to stay in the room. She wants to go outside and play. One day she was playing by the door, and not all of the women officers knock when they come in our rooms. She opened the door on Fara and it hit her head. I know the officer didn't mean to and it was an accident and she gave Fara ice. But they don't have consideration for children at all.

But other officers are nice.... And others have said they don't understand why we're still here if my father is a U.S. citizen.... They guards said it's not Immigration; it's our attorneys who are keeping us here....

Even my two-year-old daughter understands that we're being treated differently. The others get released and we stay. Some women come to say good-bye and it makes Fara cry so much because she doesn't understand why we can't go too. I can't explain it to her....

We live in a room with two other adult women. I sleep with my daughter in one bed, one woman sleeps in the other bed, and the other woman sleeps on the sofa bed. Fara needs another child to play with though. She has no one....

Some of the women who were here, and had been here for a longer time than we have, talked about wanting to hurt themselves and die. This place drives people to want to kill themselves....

My father is a U.S. citizen. It's not hunger that drove us to leave Haiti... We came because we have real political problems.... We did not come to be a burden to the American people. We have families willing and able to take care of us.... I never expected this from the United States. This is a very powerful country. How can they treat children this way? Why are they punishing us so? Why are they treating my baby this way?"<sup>81</sup>

Not surprisingly, the vast majority of the Haitians are increasingly anxious, depressed and despondent, which has adversely affected their ability to articulate their asylum claims. Many have said they feel pressured by U.S. officials to abandon their asylum claims; it has been hard for them to remain focused on their legal cases after months of detention, lack of contact with their family and friends, and restrictions that make them feel as though they are criminals. Many Haitians have engaged in a number of hunger strikes to call attention to their plight.<sup>82</sup>

Despite these obstacles, approximately 27% of the Haitians who arrived on October 29, 2002 have been granted political asylum, which speaks to the strength of their claims.<sup>83</sup> Several Haitians granted asylum have languished in detention simply because DHS filed an appeal in their case, a harassment that seems particular to the Haitian detainees.<sup>84</sup> One of these Haitians, who along with his son had been granted asylum, tearfully reported:

"I arrived on the boat on October 29, 2002, with my 13-year-old son, Angelo. Our lawyer is Christina [at FIAC]. The judge granted us political asylum... but we're still detained here at the hotel. I don't know when we'll be released but I don't see how they can hold us here anymore since the judge said we can stay. I couldn't sleep all night last night because I was thinking about how we got asylum, but we're still here, and I'm so confused...."<sup>85</sup>

A 56-year-old Haitian man, Rochenel Charles, was granted asylum twice by an Immigration Judge, only to have the decision appealed each time by DHS.<sup>86</sup> Mr. Charles was finally released at the end of February 2004 due to his deteriorating health and after nearly a year and a half in detention, including weeks spent confined to a wheelchair after an injury at Krome.<sup>87</sup>

Another family was tragically torn apart when certain members were granted asylum and others denied. Ernest Moise, along with his two children, his common-law wife, Jesiclaire Clairmont, and her two adult children from a prior relationship, arrived off the coast of Florida on December 3, 2001. The family was detained in three separate locations; initially, INS placed the father and the two teenage sons ages 14 and 16 in a secured hotel room, and the mother in a separate room at the hotel before moving her to TGK. The adult daughter and the adult son, ages 21 and 23, were placed in TGK and Krome, respectively.<sup>88</sup>

Mr. Moise convinced the Immigration Judge that he and his two sons should be granted political asylum. But because INS reserved the right to appeal the case before the BIA, Mr. Moise was forced to return to the locked hotel room with his two sons following the judge's decision in his favor.<sup>89</sup> Only after Congressman Conyers met with the Moise family, and FIAC filed a lawsuit in federal court, did INS finally decide that they would not appeal Mr. Moise's case. INS therefore had to release Mr. Moise and his two sons.<sup>90</sup>

However, because Mr. Moise and the boys' mother were never legally married, she could not benefit from his asylum status. So another Immigration Judge heard her claim and that of her two adult children. He denied their cases, refusing to take into account the asylum status of her other children and common law husband.<sup>91</sup> The mother and daughter were detained at TGK and then BTC for over a year before being forcibly removed to Haiti.<sup>92</sup>

While in detention, Ms. Clairmont was often unable to get even basic information about the children she was forcibly separated from and with whom she arrived on December 3, 2001. It was several days before she learned from someone visiting another detainee that a judge had granted two of her sons political asylum and released them.<sup>93</sup> Knowing that she would soon be deported to Haiti, Mrs. Clairmont left this message for her sons: "Tell them to go to school and tell them to hold on to their faith. That is all I know."<sup>94</sup>

The longer the Haitians are detained, the more desperate their situation becomes. It's frightening, as well as demoralizing, for these asylum seekers to be held behind bars like common criminals. In June 2002 a Haitian asylum seeker at Krome attempted to hang himself, as did another in April 2003.<sup>95</sup> He told advocates, "I thought I wanted to die rather than stay here in Krome being humiliated everyday . . . It looks like they are just going to send us all back anyway. We always feel pressure to just give up. So what am I to do?"<sup>96</sup>

His statement is eerily reminiscent of a letter written by detained Haitian asylum seekers at Krome more than ten years ago. In September 1991, Haitians there wrote, "We wish to emphasize . . . that right now we are living in the most difficult and painful times of human life . . . We prefer to die than to live in the uncertainty that drowns our thoughts."<sup>97</sup>

## Treatment of Unaccompanied Children



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About one third of the more than 30 children from the October boat were unaccompanied minors. These children should have been quickly taken to the Boystown shelter in Miami because there was ample room for them there. Instead, they languished at the hotel for days.<sup>98</sup> Indeed, one Haitian girl was detained at the hotel for six months before being moved to Boystown.<sup>99</sup>

While it is reasonable that sponsors for these children are subject to background checks and suitability assessments, the government is legally obligated to make prompt and continuous efforts to secure their release. This has not been done. On the contrary, even though most of the unaccompanied Haitian children who arrived in October 2002 had family in the United States, their detention was unduly delayed. Rose Termitus, for example, was detained for 14 months before being released to relatives.<sup>100</sup> Rose's parents are

missing in Haiti and presumed dead. Her older brother, who accompanied Rose on the boat that arrived in October, was deported in August 2003 and, as far as FIAC knows, he hasn't been heard from since.<sup>101</sup> The government can still seek to deport Rose after her eighteenth birthday on October 27, 2004.<sup>102</sup>

The release process has also put unreasonable demands on the children's families.<sup>103</sup> Chimene Noel, the legal resident sister of 16-year-old Jimmy Noel, spent weeks gathering the required documents for Jimmy's release and had to travel to Haiti to attempt to secure his original birth certificate.<sup>104</sup> Due to the enormous time spent to satisfy INS' demands, Chimene lost her job. She had also been denied permission to visit Jimmy at the hospital shortly after he arrived in October 2002, and burst into tears when she was forced to leave the hospital:

"I called Haiti and found out that Jimmy, my 16-year-old brother, came to Miami on the October 29, 2002 boat. I found out that he was taken to Jackson Hospital. When I went to the hospital and into his room, there was an immigration Officer there. I was about to go in to hug my brother and see how he was doing, but the officer would not let me in. I tried to plead with the officer and begged him to let me see my brother, but he started screaming at me and did not let me in the room. It had been six years since I had seen my brother. I had to leave the hospital in tears without being able to talk to him and see how he was doing."<sup>105</sup>

Because Chimene spoke to the press about her concerns, Jimmy was advised while at Boystown that he could be deported because his sister was "making problems."<sup>106</sup> Jimmy was finally released on Christmas

Eve, 2002.<sup>107</sup>

Another Haitian boy, Asmath Joseph, was detained at Krome for nearly five months before INS acknowledged that he was a minor and transferred him to Boystown. He was later granted asylum.<sup>108</sup>

At times the INS delays seemed deliberately cruel. Kervens Bellot, who was 16 when he was first taken into immigration custody, won his asylum hearing on January 28, 2003, but was kept in detention solely because his family in Haiti had provided documentation in excess of what INS was requiring. His family's letter from Haiti gave his Miami aunt permission to "adopt" him, rather than simply take "custody" of him. The Miami aunt was forced to obtain a modification of the original letter and send it back to INS, significantly delaying Kervens' release.<sup>109</sup>

Particularly egregious was the prolonged detention of a 17-year-old girl who arrived in October 2002. Although pregnant at the time of her arrival, she was detained at Boystown for three and a half months. She told FIAC "I can't stay here much longer. I am suffering so in this place."<sup>110</sup>

All unaccompanied children taken into custody by immigration enforcement officials are placed in removal proceedings and have the right to a hearing before an immigration judge who will determine if the child will be allowed to remain in the United States.<sup>111</sup> In the past, unaccompanied Haitian children, like many others who have appropriate caregivers in the U.S., have generally been released fairly quickly. However, since they languished in detention, many of the unaccompanied children from the October 2002 boat were forced to go forward with their cases in front of immigration judges while in custody at Boystown, in the same expedited manner as the adults. The INS' Miami Juvenile Coordinator acknowledged that "no Haitian [child] at Boystown has ever [before] had to go forward with their [court] proceedings in detention."<sup>112</sup>

Trying to prepare a case for someone in detention is a serious challenge, if not a penalizing handicap, and for children it is even more so. Unaccompanied children often are intimidated and confused upon arrival, resulting in their inability to make informed decisions. Children, like adult detainees, have little if any understanding of the American legal process and have to overcome language and cultural barriers, too. For children who have fled persecution and may be suffering from post traumatic stress disorder, getting the true history with accurate and verifiable details takes time; something the U.S. government will not afford them.

Of particular concern was the government's decision to send to foster care in New York and Virginia certain children who had family in the United States willing to raise them. In many of these cases, the government insisted that the proper paperwork had not been provided, ignoring the persistent and deliberate efforts of family members to comply with stringent requirements and the extreme difficulties the families faced in attempting to do so.

One such relative told FIAC:

"The worst thing is that INS told my cousin that if she doesn't give them what they ask, they're going to send her nephew to a family he doesn't know in New York. How can they do that? They're going to give the kid to a family he doesn't even know when he has family right

here.... I would do anything to take care of my family. I love my family so much. I can't believe they treating them like this, just because we're not like them."<sup>113</sup>

Ironically, many children without family or other sponsors who should have been sent to foster care remained in custody for far too long. A process that should have taken no more than a few weeks took months.<sup>114</sup>

In addition, children who should have been released to family in the U.S. were instead kept at Boystown until they turned 18 and then transferred to Krome.<sup>115</sup> Ovide Paul is the father of one such child.<sup>116</sup> His statement on December 13, 2002, reflects the devastating effects of this cruel policy:

"The INS is detaining my son in Miami. On November 1, 2002, my brother left me a message from the Krome Detention Center, letting me know that he was on the October 29th boat...

A few days after my brother's call, a caseworker from Boystown called me and put my son on the phone and let me talk to him. The next day I went to Boystown to visit my son. I was told to bring in several documents in order for my son to be released to me. I took all of the documents with me and gave them to the caseworker.

I was told that my son would be released to me before his eighteenth birthday, which was on December 3<sup>rd</sup>. On December 1<sup>st</sup>, I called and was told that I would get a call letting me know when to pick him up.

On my son's birthday, when I did not get any call, I again called Boystown. But this time I was told that he had been transferred to Krome, where they hold adult men.

I was devastated by the news. I did everything I was asked to do and do not think that it was right of INS not to release my son. The situation is very hard for me. He is my oldest son and I love him so much. I am very disappointed by INS' actions.

My son would have not come unless he was scared and desperate. I thought that INS would take the cases of the children into consideration and release them, but they did the opposite. I know that many other families are in the same situation as myself; that they are troubled, depressed and worried because their relatives not being released, especially those who have children that are being detained. I pray that INS will do the right thing and release these children and people to their families."<sup>117</sup>

Although the Office of Refugee Resettlement (ORR) is now responsible for the care and placement of unaccompanied minor children through provisions of the Homeland Security Act, much remains to be



done. Children's advocates are concerned that DHS is dragging its heels in turning cases over to ORR. For example, Gilbert Alcenor was approved by the ORR for foster care placement in Michigan while still a minor, but instead was kept in DHS until he turned 18, and then transferred to Krome, where his status changed from an unaccompanied minor to an adult. The program in Michigan was expecting Gilbert to be transferred there on June 6, 2003, and was fully prepared for his arrival.<sup>118</sup> Following his transfer to Krome, Gilbert told FIAC:

"Last Friday [June 6th] my social worker at Boystown told me Washington approved me for a foster home in Michigan. She said even if I was turning 18 on Monday, it was not a problem, Washington agreed to send me to the foster home. I was so happy and excited. I had so much hope. But I never went to my foster home.

Then Krome came for me on my birthday, on Monday. At about 2:00 pm they came and got me out of class. I was frightened. They said Krome came for me. No one told me anything except that. I didn't see my social worker again. I told the Krome people I want to speak to my Deportation Officer. I want to know why, for what reason did he do this to me? I still haven't spoken to anyone and no one [official] has told me anything.

I couldn't call my family to say I was sent here and not to Michigan. I don't know if my family knows I'm here. I don't have a phone card. No one told me how to get one, and no one let me call anyone to say where I am. I still don't know why I'm here. I mean, they said Washington agreed for me to go to a foster home, but I'm not there, I'm in jail.

I just been crying all the time. I thought I was going to a foster home, and this is what happened to me. They locked me up. I keep thinking they must hate me; they must really want to get rid of me. But why? Why tell me I'm going to a foster home and then take me to a jail? It hurt me a lot, a lot. I feel so alone here.

All I want is to be given a chance. I can't go back to Haiti. I wouldn't last a day. I got real problems there. I just want to be free from all that. I don't want to cry all the time. I can't take it here. I feel like I'm dying here.

What they did to me was very wrong. They give me hope and then they took it away."<sup>119</sup>

Well over 10 months later, Gilbert remains detained as an adult at Krome.<sup>120</sup>

Children who are unable to quickly secure the required documentation can suffer needlessly for months in adult detention if they are subjected to faulty forensic examinations.<sup>121</sup> Groups such as Amnesty International and Physicians for Human Rights have criticized the frequent use of dental exams

conducted in cases of children where the government doubts their age.<sup>122</sup>

Children whose birth certificates clearly support their claims that they are minors have been placed in adult facilities for months based on these highly questionable forensic exams requested by DHS. Kenier Tima, for example, fled Haiti in a small boat and arrived in the U.S. on February 19, 2003 when he was 16-years-old. Within one to two days of his placement at Boystown, DHS subjected him to a forensic dental examination to determine his age. Dr. Eisner, the Miami-Dade dentist who evaluated Kenier's dental x-ray for the government, concluded that Kenier was likely "18-years-old" and Kenier was immediately transferred to Krome where he was detained with adults. Dr. Eisner later admitted to the *South Florida Sun-Sentinel* regarding the accuracy of the evaluation that "at best it's a guesstimate."<sup>123</sup> In March 2003, Kenier was transferred to Orleans Parish Prison (OPP), a jail for adult criminal offenders in New Orleans, Louisiana, nearly 900 miles from his family in Dania Beach, Florida, and his attorney at FIAC. While at OPP, Kenier's attorneys obtained his birth certificate which confirms his status as a minor. Yet DHS continued to insist he was an adult based on the dental examination, and Kenier remained detained in Louisiana. Kenier's uncle could not believe what happened to his nephew:

"He's only 16, he's supposed to go to school. He can't. I'm very worried about him. They treat him like a criminal."<sup>124</sup>

After months of failed efforts to convince DHS that Kenier was a minor, his attorneys at FIAC<sup>125</sup> and the law firm of Shook, Hardy & Bacon filed a federal lawsuit in New Orleans.<sup>126</sup> Shortly thereafter, DHS subjected Kenier to a skeletal examination, which concluded that his skeletal age was that of a "standard male of at least 19 years of age." However, in federal court, expert witnesses debunked the reliability on forensic examinations to determine chronological age. Indeed, the radiologist who conducted the skeletal examination was shocked to learn her results were used to determine Kenier's chronological age. She explained that there is a difference between skeletal and chronological age and that an individual's bone development may be premature or delayed for a host of reasons. She also acknowledged that the "standard male" against whom she was comparing Kenier was a white male of European descent, and that bone development in individuals of African descent is often premature, causing bone age to be older than whites of the same chronological age. Finally, the radiologist explained that as a result of the standard deviation inherent to these examinations, Kenier Tima could be 16 or 17 years old though his bone age was 19. A forensic dentist also testified, stating that dental age assessments show an individual's dental age, which is not the same as chronological age. Like bone age, dental age may be premature or delayed due to a variety of factors. The dentist testified that it was not sound practice to use such examinations to pinpoint a person's chronological age because there is a significant margin of error.<sup>127</sup>

Though DHS had both Kenier's archival birth certificate and a forensics report showing the birth certificate was genuine, DHS officials claimed they were "not yet satisfied" that Kenier should be transferred to Boystown. A New Orleans deportation officer told FIAC that Kenier's relatives in Haiti would have to travel to the American Embassy there to provide further evidence of Kenier's age and DHS insisted it needed to conduct its own investigation to determine if the documents in question belonged Kenier. About one week after the December 3rd federal court hearing, and before the Judge made his decision, DHS officials interviewed Kenier. The next week, an official flew to Miami to interview Kenier's family. Finally, on December 31, 2003, after nine long months locked up in an adult jail far removed from his family, Kenier Tima was transferred back to Boystown. He currently awaits

release to his family.<sup>128</sup>

Richemond Joseph was not so lucky. Richemond, also 16-years-old, was transferred to the Louisiana prison along with Kenier after dental exams ostensibly showed he was eighteen. FIAC and the Archdiocese of New Orleans obtained Richemond's birth certificate and signed declarations from family members confirming he is a minor. Relatives in the U.S. are able and willing to sponsor him, however Richemond remains detained with adults in Louisiana. Since Kenier's transfer back to Boystown, Richemond feels more isolated than ever. A lawsuit filed in federal court in Louisiana on Richemond's behalf is pending.<sup>129</sup>

Ernso Joseph is yet another 16-year-old Haitian boy who was subjected to multiple examinations used by DHS to mislabel him an adult. Ernso arrived on the October 2002 boat, and even though an immigration judge granted him asylum in January 2003, DHS appealed the judge's decision and kept him in detention.<sup>130</sup> Ernso was only released to his uncle in South Florida on June 12, 2003 after he was diagnosed with Post Traumatic Stress Disorder, clinical anxiety and extreme depression by both a government and an independent trauma specialist.<sup>131</sup> A few months later, the Board of Immigration Appeals (BIA) reversed the judge's decision and DHS issued him a "bag and baggage" letter to appear for deportation on October 2, 2003. Ernso duly reported for deportation on October 2 and was re-detained by DHS.<sup>132</sup>

As an orphan in Haiti, Ernso has never been sure of his true date of birth. However, DHS officials decided he was 18 shortly after he arrived, relying primarily on a dental test, and locked him up with adults at the Krome detention center. In October 2003, his attorneys submitted authenticated official Haitian documents showing Ernso to be 16 years old, and establishing his eligibility for a Special Immigrant Juvenile Status (SIJS) visa as an abused, abandoned or neglected child in whose best interest it is not to be returned to Haiti.<sup>133</sup>

While DHS granted Ernso an indefinite stay of deportation while they reviewed FIAC's claim that he was a minor, for over three months he was a virtual prisoner in his hotel room and his mental health rapidly deteriorated.<sup>134</sup> On October 9, 2003 Ernso told FIAC:

“[A]ll I do is think all day... And that hurts me, so I just try to go to bed to sleep so I can forget what's happening to me... [But] I keep thinking about what my life will be like if I'm sent back to Haiti. I don't know how I'll survive there, only God knows.”<sup>135</sup>

Since October 2003 DHS has had in its possession ample evidence to conclude that Ernso is a 16-year old orphan. Yet they have subjected him to additional forensic bone and dental examinations to determine his age and keep him in detention, even after the results of these examinations failed to contradict Ernso's claim to be a minor.<sup>136</sup>

In November, 2003, after visiting Ernesto in detention, Congressman Kendrick Meek wrote Thomas Ridge to ask for his immediate intervention in the case. Meek wrote:

“I was a Captain in the Florida Highway Patrol, and I can tell you from personal experience that we treat hardened criminals in this country

better than we are treating Ernesto Joseph. It is not an exaggeration to say that dogs in kennels receive more humane treatment and have more attentive and kinder human contact than this Haitian teenager has received at the hands of the federal government.”<sup>137</sup>

It was only after repeated calls by Congressman Meek, and the support of organizations like Amnesty International and the Women’s Commission, that Ernso was released on January 16, 2004.<sup>138</sup> On January 28, 2004, DHS finally granted Ernso permission to take his case to state juvenile court.<sup>139</sup>

Still other children were not released because DHS officials labeled them as "accompanied" since they arrived with older siblings, who were 18 to 25 years old. These siblings, however, were placed in immigration custody in adult detention facilities. This is an inescapable quandary. The release of the younger siblings from Boystown is contingent on the release of the older sibling, except those young men are being detained indefinitely at Krome and thus unable to even communicate with their younger siblings much less care for them.

Miami-Dade County Commissioners were so outraged by the treatment of both unaccompanied and accompanied Haitian children who arrived in October that on December 17, 2002 they passed a resolution calling for their immediate release.<sup>140</sup> In March 2003 Senator Bob Graham urged the DHS to release all the Haitian children.<sup>141</sup> TransAfrica Forum, which twice sent a delegation to South Florida to meet with Haitian detainees, called for the children’s release as well.<sup>142</sup>

Sister Jeanne O’Laughlin, President of Miami’s Barry University, even offered to sponsor the Haitian children, but DHS officials repeatedly and mistakenly claimed they were unaware of such a request.<sup>143</sup> Sister Jeanne’s offer was not made lightly. In 1982 she successfully helped sponsor over 300 Haitians following their release from detention.<sup>144</sup>

This Administration’s Haitian-only mandatory detention policy is part of a systemic effort to deter and prevent the arrival of Haitian refugees, including young children. On April 2, 2004 FIAC and the Women’s Commission filed a petition with the United Nations Working Group on Arbitrary Detention, urging the organization to investigate the manner in which Haitians are detained in the United States and declare that the government’s detention policy violates international law.<sup>145</sup>

## Other Measures Designed To Keep Haitians Out



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The prolonged detention of Haitian asylum seekers is but one troubling policy in a series undertaken by the Bush Administration to prevent and deter Haitian refugees from coming to the United States, despite the deteriorating human rights situation in Haiti.

Other measures include summary return by the U.S. Coast Guard of interdicted Haitians with no routine screening of their asylum claims unless a person loudly and explicitly expresses a fear of return.<sup>146</sup> This is the so-called “shout and you get an interview” test, as described by one U.S. State Department official, whereby Haitians on a crowded boat who are most likely hungry, thirsty, exhausted, and traumatized must step forward and inform a uniformed U.S. official on board the cutter that they fear return to Haiti.<sup>147</sup> Not only is this improbable, depriving many boat people genuinely in fear of persecution in Haiti of any realistic opportunity to present their claims, but in all likelihood there

is no official Creole speaker on board to help the Haitians do so even if they were so inclined. According to the Associated Press, U.S. Coast Guard officials in March 2004 “had to rely on a handful of English and Spanish speakers among the bedraggled boat people to translate the Haitians’ native Creole.”<sup>148</sup>

Even those courageous enough to aggressively express their fear of return face tremendous obstacles in eventually making it onto United States soil. It is up to the discretion of the Coast Guard whether an immigration Asylum Officer will fly out to the boat to interview them.<sup>149</sup>

In the midst of the most recent political crisis in Haiti, the U.S. government expressly confirmed that its policy is to turn back all undocumented persons attempting to flee Haiti, whether or not they are refugees within the meaning of U.S. and international law.<sup>150</sup> On February 25, 2004, President George W. Bush stated, “I have made it abundantly clear to the Coast Guard that we will turn back *any refugee* that attempts to reach our shore. And that message needs to be very clear, as well, to the Haitian people.”<sup>151</sup>

Consequently, even the “shout test” appears to have been discontinued. No matter how loud those who are being repatriated protest, they are denied asylum screening.<sup>152</sup> According to a report provided to Senator Kennedy’s office by the U.S. Coast Guard, only three of the 1,040 Haitians interdicted at sea between February 1 and March 4, 2004 were given any cursory asylum screening, and those three were also forcibly returned without a full hearing.<sup>153</sup>

Observers have reported that even interdictees who exhibit extreme distress at the idea of returning to Haiti are repatriated without being informed of their right to apply for asylum and that some boat

people who protested their return to Haiti were shackled.<sup>154</sup>

On March 7, 2004 an Associated Press reporter who was given permission to board one of the Coast Guard cutters wrote:

...On Feb. 27, [Dr. Daniel] Garcia's cutter encountered a 50-foot homemade wooden boat carrying 233 Haitians and brought them aboard.

Garcia spent four hours giving each one a physical checkup. He had to rely on a handful of English and Spanish speakers among the bedraggled boat people to translate the Haitians' native Creole.

He watched as they were dropped at the dock at Haiti's capital of Port-au-Prince.

"Since my six-and-a-half years in the Coast Guard, this has been the most trying time," Garcia said, especially "seeing what they have to go back to."

"I don't blame them. I'd leave too," he told The Associated Press.

Officers said some of the boat people got unruly when they realized they were being returned to Haiti. A few had to be shackled because they didn't want to go back.

The group was among more than 904 boat people, including babies, to be repatriated by the Coast Guard since Bush stepped up the policy.

Many of the Haitians in February were left on the dock on the southern outskirts of the capital as militant Aristide loyalists were setting up flaming barricades and robbing people of cars and money...

U.S. Marines had to guard the frightened returnees and Haitian Coast Guard officers trained their rifles on the taunting crowd to force a passage through for the refugees.

A reporter there watched them walking uncertainly, most barefoot, in the direction of the tumultuous capital -- a city most had never visited many miles from northern hometowns cut off by the rebellion.<sup>155</sup>

A Human Rights Watch press release also claims that one group of refugees dropped off in Port-au-Prince's main port in late February 2004 had to make their way through a crowd of pro-government supporters.<sup>156</sup>

Repatriates have every reason to fear retaliation, given Haiti's long history of reprisal attacks against repatriated refugees, some egregious examples of which have been documented by the Inter-American Commission on Human Rights. The Commission's 1993 Special Report on Haiti noted that in certain cases repatriated Haitians had been arrested at their homes and later found dead, others had been beaten

in public by soldiers, and some had been taken to the National Penitentiary where they were subjected to torture and denied food.<sup>157</sup>

According to US Coast Guard officials, the number of Haitians interdicted between early March and mid-April 2004 dramatically decreased.<sup>158</sup> However, this decrease seems due not to stabilizing country conditions, but rather to the actions of United States led security forces in preventing Haitians from leaving the country including a significant increase in the number of U.S. Coast Guard vessels and aircraft patrolling the Haitian Coast.<sup>159</sup>

U.S. conduct at Haitian exit seaports is also a tremendous discouragement to flight. Evidence indicates that the United States led security forces are blocking key exit points. An April 19, 2004 affidavit from the Church World Service refugee representative reports from sources in Haiti that:

There are places near the sea where Haitians trying to flee by boat usually go – there are military forces in those areas – they are occupying the places on the ground where they (the Haitians) usually go to leave the country...basically US forces.<sup>160</sup>

Evidence also indicates that U.S. led security forces are blocking land borders with the Dominican Republic.<sup>161</sup>

Still, the U.S. Coast Guard acknowledged repatriating 651 Haitians to Port-au-Prince on April 27, 2004, including 380 Haitians interdicted on April 23 and 306 interdicted in two separate incidents on April 24, 2004.<sup>162</sup> Although the Coast Guard claims that the Haitians interdicted on April 23 were generally in good condition, photographs contained in the press release show women who had collapsed from exhaustion and a crying child. Sixty-two children were on the boat along with a woman who was more than seven months pregnant. The press release also references the Coast Guard's "stepped-up presence" off Haiti's coast and "enhanced migrant interdiction operation" to deter Haitian migration and prevent loss of life at sea.<sup>163</sup>

The *New York Times* has reported that an attempt by pro-Aristide forces to interfere with the repatriations was the act that pushed the Administration to harden its position and clearly call for his departure.<sup>164</sup>

It is FIAC's understanding that in February 2004 two Asylum Officers were sent to a Coast Guard cutter after being told that they were going to conduct credible fear interviews with approximately 30 Haitians. Once on board the cutters, they were told they would not be interviewing anyone, and that all the Haitians would be returned. A Haitian police officer still in uniform who had been screaming in fear of return jumped overboard when he realized he was being repatriated and had to be rescued. The Asylum Officers were eventually allowed to interview four Haitians, found two to have a "credible fear" of persecution, and forwarded their recommendations to Washington. Their recommendations were overturned, the Asylum Officers notes confiscated, and all the Haitians forcibly repatriated. The Asylum Officers were also inappropriately asked to assist in the actual repatriation of the Haitians once the Haitians reached shore and disembarked, and told that if they witnessed any violence or unrest during the repatriation, they were not to intervene.<sup>165</sup>

This blatant disregard for the rights of Haitian boat people persists despite the fact that every Cuban who is interdicted receives instructions and an asylum screening interview, and every Chinese national who is interdicted is given a questionnaire in his/her native language to complete and then may be screened as a result.<sup>166</sup>

Interdicted Haitians who are able to successfully convince Asylum Officers they have credible asylum cases are to be transferred to Guantánamo Bay, Cuba for a second refugee interview by yet another Asylum Officer.<sup>167</sup> Those few then found to have a well-founded fear of persecution if returned to Haiti, and who therefore qualify for refugee status, are still not brought to the United States – even if they have close family here. Instead, they are processed for resettlement to Guatemala, Nicaragua or Australia.

On March 16, 2004, FIAC, Harvard Immigration and Refugee Clinic and Harvard Law Student Advocates for Human Rights requested the OAS Inter-American Commission on Human Rights to adopt precautionary measures to prevent irreparable harm to Haitian boat people. Specifically, they asked the Commission to request the U.S. government to investigate and submit information to the Commission on the facts surrounding the interdiction and repatriation of Haitian refugees; adopt all necessary measures to ensure that Haitian boat people with a credible fear of persecution have a reasonable opportunity to present their claims for asylum under appropriate conditions on dry land, including provision of official Creole-speaking interpreters and access to counsel, and the establishment of adequate screening measures to identify those who have a credible fear for their safety if they are forced to return; and immediately cease forced repatriation of Haitians who will be abused, imprisoned, physically harmed or killed when they are returned to Haiti, in compliance with its obligation of *non-refoulement*.<sup>168</sup> On March 22, 2004 the OAS requested the government of the United States to provide information as to the circumstances surrounding Haitian interdictions within seven days.<sup>169</sup>

It should be noted that Haitians have great difficulty entering the U.S. legally. Although Attorney General Ashcroft issued a statement the day after the October 2002 boat arrived urging Haitians to enter the U.S. legally,<sup>170</sup> those attempting to do so, including innocent children, routinely face obstacle after obstacle imposed by U.S. government officials. For example, a number of children eligible for family-sponsored visas were stranded in Haiti for months following the 1991 coup d'etat, while their applications were subject to heightened scrutiny imposed on no other nationality. This group included children who had lived with their parents in the U.S. for years, attended school here, and had little familiarity with Haiti or its language.<sup>171</sup>

The Bush Administration has rejected the recommendation that it provide in-country refugee processing in Haiti.<sup>172</sup> So Haitians genuinely in fear for their lives typically have only one option left, risking their lives on the high seas in order to seek protection.

In the fall of 2002, the U.S. Attorney in Miami began criminally prosecuting asylum seekers who arrive by air without legal travel papers, even though the nation's highest immigration court has recognized that the use of fraudulent documents may be the only means to escape persecution.<sup>173</sup> The policy has most directly affected Haitians.<sup>174</sup> Despite being sentenced to “credit for time served” in exchange for a guilty plea, some female Haitian asylum seekers are being held in a maximum security jail in Miami due to their “criminal alien” status. One Haitian asylum seeker who was unjustly charged for using false documents to flee Haiti was transferred no fewer than six times and held in five different facilities over



the course of a year. Detention sites included the Elizabeth Detention Center in New Jersey, the Kroegh Dwryer Correctional Center in New Jersey, The Krome Detention Center in Miami, Florida, the Federal Detention Center in Miami, Florida, and the Monroe County jail in Key West.<sup>175</sup> All Haitians with criminal convictions are automatically jailed by Haitian authorities in Haiti upon return, under horrific conditions.<sup>176</sup>

Those convicted on a document-fraud charge may face other severe consequences, including denial of asylum, no matter how strong the claim. Even those granted asylum may be precluded from ever gaining permanent resident status. Although the number of asylum seekers prosecuted for using false documents has dropped in recent months, in the fall of 2003 U.S. government officials at the Port-au-Prince airport were checking documents of individuals bound for the U.S. and refusing to allow some Haitians to board.

Unfortunately, the failure to treat Haitians fairly is not limited to the United States. In August 2002, the Women's Commission, in collaboration with the National Coalition for Haitian Rights (NCHR) and FIAC, sponsored a delegation to evaluate the treatment of Haitian asylum seekers in the United States and the Dominican Republic. Their assessment revealed that hundreds of Haitian asylum seekers have been in legal limbo in the Dominican Republic for years and suffer abuses from both the Dominican authorities and the community at large.<sup>177</sup> Also, the Dominican Republic, which reportedly received 20,000 M-16 assault rifles from the U.S. in late 2002 to help seal its border, recently denied entry to Haitian asylum seekers who were later attacked and forced into hiding.<sup>178</sup> In its annual report, the Group For Support to Refugees and Repatriates (GARR), discusses the mistreatment of Haitians in the Dominican Republic. According to the report, at least 14 Haitians were killed on the Haitian-Dominican border in 2003.<sup>179</sup> According to Amnesty International, the Bahamas has stationed troops off its southern islands and said it would return asylum seekers intercepted at sea.<sup>180</sup> Jamaica, by contrast has welcomed arriving Haitians.<sup>181</sup>

## The Situation In Haiti



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Notwithstanding recent U.S. and international intervention, Haiti is an increasingly volatile and dangerous place. Since the beginning of the insurrection instigated by rebels against the government of President Jean Bertrand Aristide in early February 2004, the situation in Haiti, which was already verging on a humanitarian crisis, has degenerated into further violence and disorder.<sup>182</sup>

Recognizing the instability of the situation, the U.S. government ordered its own people out of Haiti for their protection. On February 27, 2004, the U.S. State Department stated that, “the security situation in Haiti has deteriorated to unsafe levels,” evacuated all non-emergency personnel from the U.S. Embassy in Port-au-Prince, and strongly encouraged all U.S. citizens to leave Haiti.<sup>183</sup>

Several of the leaders of the rebellion have demonstrated extreme disregard for human life and fundamental human rights in the past. According to Amnesty International and Human Rights Watch, two of the rebellion's main leaders, Louis Jodel Chamblain and Jean Pierre Baptise ('Jean Tatoune'), are convicted human rights violators.<sup>184</sup> These men, imprisoned for war crimes and crimes against humanity, now effectively have control over sections of the country.<sup>185</sup> Even with international forces present, leaders of the rebellion such as Guy Phillippe have been unwilling to relinquish their weapons until Aristide supporters disarm, creating a stalemate situation.<sup>186</sup> On the other side of the conflict, pro-Aristide gangs and ex-Aristide security forces have attacked those they view as supporters of the opposition.<sup>187</sup> With both sides attacking their enemies, anyone who is, or is viewed as a political opponent by either side, faces a real risk of violent reprisals.<sup>188</sup>

For example, in April 2004 Port-au-Prince gang members continued to intimidate the Haitian population, keeping frightened police from patrolling the streets and neighborhood, and preventing doctors from asking questions of patients seeking help for gunshot wounds.<sup>189</sup> An April 12, 2004 report describes gang leaders and paramilitaries in control of large parts of Northern Haiti, sometimes jailing suspected criminals, sometimes persecuting Aristide supporters, while dispensing their own brand of justice.<sup>190</sup> In April 2004 Haitian lawyer Leslie Jean-Louis was reportedly beaten up and almost lynched simply for supporting former President Aristide.<sup>191</sup> On April 12, 2004, Alix Fils-Aime, an ex-security advisor under Aristide in 1994 stated that, "The potential for errors is much higher this time because the international forces have less control over the population. There are more armed gangs now who are not going to give up."<sup>192</sup>

Many Haitians remain afraid to venture out into the streets. Overall lack of a governmental presence in the countryside leaves a vacuum in countless towns, allowing rebels and other rove gangs to take control. One young Haitian doctor pointed out that, "The person in charge is the person with the biggest gun."<sup>193</sup>

In a report dated March 2, 2004, just days after Aristide's departure, Human Rights Watch states that "the situation is so dangerous and unpredictable that no one is necessarily safe: neither Aristide supporters, nor opposition members, nor Haitians who are merely caught in the midst of rampant violence and a humanitarian crisis."<sup>194</sup> The rising number of dead in Port-au-Prince morgues, as reported on March 3, 2004 in the *Toronto Star*, illustrates the extremity of the crisis:

By late morning yesterday, just one of the [Port-au-Prince] morgue's holding chambers held several hundred corpses, stacked end-to-end about two metres high. Many were clearly victims of gunshot or machete wounds. Several bodies were contorted and charred. A morgue employee said they had been 'necklaced' – a practice in which a gasoline-soaked tire is placed around the neck and then set ablaze.<sup>195</sup>

On March 7, 2004, the Pan-American Health Organization informed newspapers that the main hospital in Port-au-Prince was holding approximately 200 victims of rebellion-related violence and suggested that that death toll was greater than that reported by world media.<sup>196</sup> In mid-March, 2004 the International Committee for the Red Cross in Haiti reported, "It is impossible to come up with a credible number [of dead]. There is no legal identification and the service has collapsed. There are no judges, no police,

nobody to do the job.”<sup>197</sup>

Following President Aristide’s departure on February 29, 2004, Canadian Ambassador Kenneth Cook warned that Haitians “still don’t have a government... There is a tremendous vacuum of real power that people are continuing to take advantage of.”<sup>198</sup> Although a multinational force, including U.S. Marines, is now patrolling Port-au-Prince, it was unable to control the killing of at least five people during a rally in Port-au-Prince on March 7, 2004.<sup>199</sup> The U.S.-led multinational peacekeeping force deployed to Haiti is relatively small, consisting of 3,700 soldiers, which limits its impact.<sup>200</sup> On April 21, 2004 there were demonstrations in Hinche protesting against the multinational force.<sup>201</sup>

A very small percentage of Haiti’s estimated 3500-5000 police have returned to their posts since Aristide fled on February 29, 2004. In the town of Hinche and surrounding areas, with an estimated 400 rebels, only 15 police officers have returned since the revolt.<sup>202</sup>

Haitian police are attacked while on patrol. They are held at knifepoint, their weapons stolen, and they have been stabbed and shot. According to a survey conducted by the Organization of American States and the UN Development Program, about 25,000 Haitians still have weapons.<sup>203</sup> Police reports indicate that during the six weeks of the mission intended to stabilize Haiti, U.S. troops have confiscated fewer than 150 weapons among the thousands held by rival factions.<sup>204</sup>

Members of the former opposition in Gonaives, a 20-man commando, led an attack on the city’s police station on April 25, 2004 disarming police officers, freeing prisoners and stealing vehicles from the police station’s yard.<sup>205</sup> Likewise, on April 27, 2004 ex-rebels in the Central Plateau, angry following the arrest of six of their comrades in Port-au-Prince, declared that any decision to deploy national policemen in the area would be perilous. Their spokesperson reaffirmed in late April 2004 that his men refused to put down arms and join the national police.<sup>206</sup> U.S. Marines in Haiti have also come under fire. At least six Haitians have been killed by U.S. Marines,<sup>207</sup> and a U.S. Marine was shot and wounded in Haiti on March 14, 2004.<sup>208</sup>

Young children have been severely affected by the Haiti violence. According to a recent report by UNICEF, an alarming number of children were wounded, beaten or murdered by armed gangs in the melee that brought about the change in Haiti’s government and the number of child rapes has increased significantly in the urban areas where violence was the most extreme.<sup>209</sup> In recent months, children were recruited by armed gangs and many of them now fear retribution for their actions.<sup>210</sup>

An April 2004 report by Amnesty International summarizes the concerns of a number of human rights groups. Following a 15-day mission to Haiti, Amnesty reported that a number of armed groups, including forces and militia loyal to former President Aristide, continue to be active in Haiti. Amnesty voiced particular concern for the safety of judges, prosecutors, investigators, victims, witnesses, and human rights defenders involved in prosecuting past human rights abuses.<sup>211</sup> Amnesty reported that the interim Haitian government<sup>212</sup> had acted swiftly against former Aristide Lavalas Family Party members suspected of violence while failing to act against known human rights violators.<sup>213</sup> Indeed, Haiti’s new leader, Prime Minister Gerard Latortue, hailed rebel thugs who demanded a revolt against Aristide as “freedom fighters,” alarming many human rights groups.<sup>214</sup>

Given Amnesty’s concerns regarding the safety of Haiti’s civilian population, FIAC is troubled about

reports that U.S. and Haitian government officials are sharing information regarding Haitians' U.S. immigration cases. It appears that sensitive information regarding their asylum claims in the U.S. is being shared with Haitian police at the airport in Port-au-Prince immediately upon the deportees' return. This information is being used to interrogate the Haitians about their reasons for seeking asylum in the U.S. and to threaten them, a serious violation of their right to privacy.<sup>215</sup>

Shortly before publication of this report, with acts of random and targeted violence further destabilizing the country, a group of detained Haitian women who had applied for asylum in the United States pleaded for Americans' help and support. Many had received news of loved ones killed or otherwise harmed in Haiti. Others were unable to get any news at all from their families in Haiti, due to the almost complete breakdown of communications in some parts of the country. The Haitian women reacted by going on a hunger strike.<sup>216</sup>

Following Aristide's departure, the women's fears only increased. They told FIAC: "Haiti is more unstable and dangerous than ever."<sup>217</sup> Their fears were echoed by Haitians on the island, who say that despite the political unrest in Haiti they are unable to leave their homes, much less their country, and feel as if they are trapped inside an island prison. "It's like living in a prison for many people" said Darlene Domercant, an aid worker for Hommes, a Lausanne, Switzerland-based NGO that cares for the malnourished. "Nobody knows what will happen tomorrow."<sup>218</sup>

The vast majority of the Haitians who arrived by boat on December 3, 2001 were from Raboteau, an impoverished seaside neighborhood outside of Gonaïves. Gonaïves and Raboteau were in political turmoil in August of 2002, following a massive jailbreak that resulted in the escape of 159 prisoners, including Amiot "Cubain" Métayer, a former Aristide ally whom the government had arrested in connection with the December 2001 unrest, and former soldiers convicted for 1994 massacre of civilians in Raboteau.<sup>219</sup>

One of the Haitian women who arrived in Miami by boat on December 3, 2001 told FIAC following her deportation:

"Since my return to Haiti, I live in constant fear. I am afraid to go out because you never know if you will return home. What scares me the most is that the people who are suppose to protect and help you are not. You have no one to turn to. There are always protests in the streets of Gonaïves. People shooting, tires burning, dead bodies in the streets. Life here is unbearable. Gonaïves is not a safe place to be right now and it hasn't been for a while. Anything can happen to you here. You just pray that God will protect you and make you see another day."<sup>220</sup>

The Haitians who arrived on December 3, 2001 called their boat, "Si m'ap viv se Jesus" ("If I'm still alive it's because of Jesus").

A March 23, 2004 op-ed piece by Florida Governor Jeb Bush in the Washington Post was critical of the Congressional Black Caucus' focus on Aristide's departure and implied that Haiti was now relatively stable.<sup>221</sup>

## Government's Justification For Its Haitian Policy



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Despite repeated requests from immigrant advocates, politicians and leaders in the Haitian community, INS did not feel it had any responsibility to provide any valid, nondiscriminatory justification for its Haitian policy. Only in March 2002, following FIAC's federal class-action lawsuit, did INS officials claim they adopted the policy in order to save Haitian lives because there was evidence of a "mass exodus" of Haitian boat persons that could rival the tens of thousands who fled Cuba and Haiti in the 1990's or the Cuban Mariel Exodus in 1980.

Yet the U.S. Coast Guard's statistics clearly belied this claim. The only evidence INS put forth in support of its initial claim of a mass migration were Coast Guard statistics which showed that 350 Haitians were intercepted in November 2001 as compared to 96 during the preceding three months. Such patterns are not unusual and Coast Guard statistics have shown similar patterns in the past yet no mass migration followed.<sup>222</sup>

Moreover, although there were fewer interdictions in the first half of 2002 than there were in the first half of 2001, the drop cannot be attributed to the Haitian detention policy because INS denied it had such a policy between December 2001 and mid-March 2002. A secret policy clearly cannot have a deterrent effect. Indeed, although no Haitians were interdicted in January or February of 2002, when this policy was still a secret, in the months *after* this policy was made public the number of interdicted Haitians increased considerably.<sup>223</sup>

According to the Coast Guard's own figures, more Ecuadorians were interdicted at sea in 2002 than Haitians. For months prior to the violent rebellion in Haiti in February 2004, the Coast Guard was interdicting far more Dominicans than Haitians.<sup>224</sup>

Most importantly, INS' claim that absent the current Haitian detention policy the U.S. is likely to see a Haitian exodus rivaling the Mariel Boatlift or the number of Haitians and Cubans who were detained in Guantánamo in the mid-90's was clearly not supported by statistics. Only 1391 Haitians were interdicted at sea by the Coast Guard in FY2001, 1,486 in FY2002 and only 2013 in FY2003. These numbers are significantly smaller than the Mariel Boatlift in the spring of 1980, during which 125,000 Cubans arrived in the United States, or the relatively large flow of refugees in 1994-1995 consisting of 25,069 Haitians and 37,191 Cubans.

History suggests that Haitians who are desperate to flee political violence in their country will not be deterred from coming to the United States by threat of detention; they know full well the risks they undertake when they take to the high seas in flimsy boats. The vast majority are interdicted by the U.S. Coast Guard and forcibly returned. Others, even less fortunate, lose their lives at sea. For many Haitians, however, the only option is to flee by sea. Indeed, Haitian refugees have repeatedly claimed: "the sea is our embassy."

At FIAC's request, the United Nations High Commissioner for Refugees (UNHCR) issued an Advisory Opinion on April 15, 2002 concluding that using detention as a deterrent to asylum seekers, and on the basis of national origin, is a violation of international law and amounts to arbitrary detention.<sup>225</sup> They also concluded that detaining asylum seekers of a particular nationality while releasing those of other nationalities violates international norms of refugee law.

Following the very public arrival of the October 2002 Haitians, the U.S. government suddenly insisted it must detain the Haitians for purposes of "national security."<sup>226</sup> This justification followed decisions by immigration judges to release many of the Haitians on bond.<sup>227</sup> One such Haitian is David Joseph, an 18-year-old who fled Haiti with his younger brother. Attorneys from FIAC represented David in his bond proceedings and after carefully considering the facts, an Immigration Judge concluded that David was neither a flight risk nor did he pose a danger to the community and granted him a bond of \$2500, which his uncle, a legal permanent resident of the United States, was ready and willing to pay. However, at the bond hearing INS invoked a new regulation created post 9-11 to protect us from terrorists which prevented David's release.<sup>228</sup> FIAC filed a brief with the BIA – the highest immigration court in the U.S. – in support of the immigration judge's decision to release David. The BIA upheld the judge's decision, calling into question the legitimacy of the detention policy applied to virtually all Haitians who arrived by boat in October 2002.<sup>229</sup>

In response, on March 20, 2003 Under Secretary for Border and Transportation Security, Asa Hutchinson, urged the Attorney General to deny not only David Joseph's release but also that of all similarly situated Haitians.<sup>230</sup>

On April 17, 2003, John Ashcroft did just that. In a 19-page decision he ordered the indefinite and arbitrary detention of not just David Joseph but of all Haitian asylum seekers granted bonds, even though Mr. Ashcroft recognized that neither David nor any of the other Haitians themselves posed a risk to national security. General concerns about conditions in a particular country were sufficient reason, he claims, to deny release to individuals such as David.<sup>231</sup> Haitians are to be kept in detention, in other words, simply because they are Haitian.<sup>232</sup>

More specifically, the Attorney General concluded that releasing the Haitians would cause a "surge" in other aliens attempting to reach the United States by sea and that there were insufficient resources to adequately screen such persons who might "include persons who present a threat to the national security". He further noted that the State Department has "noticed an increase in third country nations (Pakistanis, Palestinians, etc.) using Haiti as a staging point for attempted migration to the United States," implying that releasing Haitians would encourage terrorists to use Haiti to invade U.S. shores.<sup>233</sup>

Haitian government officials quickly denied this claim and the U.S. Coast Guard and the Bureau of Customs and Border Protection were unable to back up the claim with figures from Haiti.<sup>234</sup> U.S. diplomats were "puzzled" by the charge as well.<sup>235</sup>

In a White House briefing on October 30, 2002, Press Secretary Ari Fleischer said, "the Coast Guard determined that the [Haitians'] vessel did not present a threat to the homeland security of the United States."<sup>236</sup> Even Intelligence experts have criticized the Justice Department's tactics. The former head of counter-terrorism for the CIA, Vincent Cannistrano, has said that Haiti is not a favorable environment

for terrorists.<sup>237</sup> Similarly, Harry "Skip" Brandon, former head of counter-terrorism for the FBI, said of the expanded use of expedited removal that "this is not a national security measure per se and may be a misapplication of the national security rubric."<sup>238</sup> One would also think that U.S. government officials would be able to discern between a black, Creole-speaking Haitian refugee and a true terrorist.<sup>239</sup>

FIAC filed a request under the Freedom of Information Act (FOIA) for all documents forming the basis for the conclusion that Pakistanis, Palestinians and others were using Haiti as a staging area to come into the United States, as alleged by Attorney General Ashcroft. In response, the National Security Agency (NSA) informed FIAC it found one document which was one page but which was "TOP SECRET."<sup>240</sup> The State Department also denied two documents to FIAC for security reasons, but released six documents (one with excisions) in response to the FOIA.<sup>241</sup> The documents provided by the State Department make no mention of Pakistanis or Palestinians and focus primarily on the use of Haiti and the Dominican Republic as a smuggling route for Chinese nationals, none of whom are alleged to be connected to any terrorist-related activity in the documents released.<sup>242</sup> FIAC is appealing the government's refusal to release certain documents.<sup>243</sup>

On December 29, 2003 the State Department again deemed Haitian migrants to be a threat to the national security of the United States. The statement completely ignores the deteriorating human rights situation in the country and the fact that a significant number of Haitians, who flee their homeland, including women and children, are asylum seekers who have the right to seek protection in the United States.<sup>244</sup>

National Security arguments to justify restrictive Haitian policies are clearly a pretext for discrimination and set a dangerous precedent. In a declaration submitted to the District Court on March 18, 2002, the Acting Deputy INS Commissioner never once mentioned national security as a reason for keeping the Haitians in detention. He argued it was the threat of a "mass migration" and the desire to prevent Haitians from risking their lives on the high seas that drove the policy.<sup>245</sup> Moreover, by including airport arrivals in the initial directive not to release the Haitians, it seems clear that saving lives on the high seas was merely a cover for a deeper discriminatory purpose.

DHS' purported rationale is further undermined by the fact that DHS does not seek to detain Cuban nationals who arrive by sea. Yet Cubans represent one of the two largest classes of people who arrive in the United States via watercraft. U.S. Coast Guard interdiction statistics since 1995 indicate that Cubans are interdicted about as frequently as Haitians and represent one quarter of the individuals coming to the United States by sea.<sup>246</sup> If DHS officials actually believed that detaining sea arrivals would deter sea migration, save lives, and free up Coast Guard anti-terrorism resources, surely DHS would not have exempted one of the two largest populations arriving in the U.S. by boat from their detention policy.

Ironically, although Haiti has not once been cited as posing a threat to the security of the American people, Cubans who flee by boat and make it to the United States continue to be quickly released on a regular basis, even though Cuba *is* on the list of seven countries that the Administration designated as a state sponsor of terrorism.<sup>247</sup> In a July 16, 2002 Fact Sheet, the White House states "[t]he Cuban government rightfully remains on the State Department's Terrorist List due to its continued support for terrorism, including the fact that it continues to harbor fugitives from justice wanted in the United States for terrorism-related offenses." It strains credibility for the Administration, on the one hand, to claim that Haitian boat people might be detained for purposes of national security while exempting those

from the only country in the region that appears on the Administration's List of State Sponsors of Terrorism.

The former U.S. ambassador to Haiti, Brian Dean Curran, acknowledged that "we have a double standard, but it's legislated."<sup>248</sup> Still, the government cannot justify its differential treatment of Cubans today solely on the basis that Cubans are automatically eligible for lawful permanent residency soon after they reach U.S. shores. The Cuban Adjustment Act of 1966 (CAA) only applies to Cubans who have been "inspected and admitted" or "paroled." If Cubans were indefinitely detained, as are the Haitians, they would not be eligible to become lawful permanent residents under the CAA.<sup>249</sup>

This is not to suggest that Cuban boat people should be treated as poorly as Haitian boat people, but rather to suggest that if DHS maintains that illegal migration by Cuban nationals does not represent a threat to national security, then there is no legitimate basis for arguing that Haitian boat people do. To imply, as DHS does, that Coast Guard resources expended in the rescue of Cubans is money well spent, but that Coast Guard resources expended to rescue Haitians is a waste of money, is plainly discriminatory.

Not surprisingly, the U.S. government typically describes Cubans as "political refugees" and Haitians as "economic migrants."<sup>250</sup> In its resettlement plan for FY2003, the State Department described Haitian migration as being largely "economic" in nature.<sup>251</sup> The characterization of Haitians as economic migrants seems disingenuous given the political crisis in Haiti, and ignores the fact that Haiti's economic problems are intrinsically tied to its extremely serious political problems.

It is notable that the Office of Inspector General (OIG), the Justice Department's internal oversight unit, released a 198-page report on June 2, 2003 highly critical of the long-term "preventative" detention of immigrants swept up in the aftermath of 9-11. The report concludes that immigrants were denied core due process protections, that the decision to detain them was at times "extremely attenuated" from the focus of the 9-11 investigation, and that their treatment in detention was at times abusive.<sup>252</sup> This report leads us to seriously question the U.S. government's tactics in keeping the Haitians in detention for purposes of national security.

A relative of Wildia Raphael, one of the detained Haitian women, testified at a post 9-11 public forum before the U.S. Senate regarding the discriminatory detention of Haitians on the unjustified basis of national security. Kerline Phelizor told the Senators:

"A judge granted Wildia a bond of \$2500, which my family was ready, willing and eager to pay. But Attorney General Ashcroft has said that Haitians like Wildia should be jailed indefinitely without bond because in the post September 11<sup>th</sup> world, they are a threat to national security.

I cried and mourned for the indescribable loss this nation suffered on September 11<sup>th</sup>. But my heart continues to cry for the way Haitians and many immigrants are being treated since then. Wildia has no connection to what happened on September 11<sup>th</sup>. Even our country, Haiti, has never been connected in any way with terrorism.



When our government makes its arguments about Haitians threatening our national security, they are not looking at us as individual people. They do not see the Wildia I know, who is a kind, proud and beautiful young woman, who in her 24 years on this earth has suffered more violence and pain than most of us fortunately will never know in a lifetime. They do not see that she is someone's daughter, someone's sister, and someone's friend. They do not see that she has family here, that she wants only peace and freedom from violence, that she does not want to be a burden on this great country where she thought she would find laws to protect her.

I want to know how my cousin's indefinite detention is supposed to protect us from terrorists. I want to know how denying my cousin justice and freedom is supposed to safeguard all the values I hold dear as an American. Are we really freer because Wildia is not? I know we are not. We are less free because we are sacrificing the very things that make this country so great.”<sup>253</sup>

Those concerned about the Haitian policy became extremely frustrated in attempting to learn exactly how the Haitian policy was developed and who had final authority for revising it.<sup>254</sup> In remarks to the Senate Immigration Subcommittee held last fall, Florida Senator Bob Graham wrote: “[b]ecause the decision-making process has been shrouded in secrecy, with no person or agency seemingly accountable, the feelings of unfairness, discrimination and disparate treatment have deepened...”<sup>255</sup>

On November 7, 2002, in response to a question about the government's Haitian policy, President George W. Bush said that Haitians should be treated fairly and raised hopes that the government was finally going to do the right thing.<sup>256</sup> Unfortunately, the following day INS announced that in the future all asylum seekers who fled by boat and made it to land on their own – except Cubans – would be subject to mandatory detention, expedited removal, and would no longer be entitled to bond.<sup>257</sup> This was a directive clearly targeting Haitians, as they are almost exclusively the only group of asylum seekers to reach American shores by boat, other than Cubans.<sup>258</sup> Before this, detained boat people who made it to dry land on their own had the right to request a bond, as was the case of the October 2002 boatload of Haitian refugees.

Government officials argue that this new policy will also prevent mass migrations that could divert the Coast Guard from its national security duties.<sup>259</sup> However, as the Executive Director of Amnesty International, USA, Dr. William Schultz, has pointed out, this is a “specious argument,” using national security as an excuse for jailing asylum seekers and putting them into fast-tracked removal proceedings.<sup>260</sup>

Since December 2001, the U.S. government has locked up Haitians for as long as 24 months, while quickly releasing asylum seekers from other countries. Well over eighteen months since his arrival, David Joseph remains behind bars, working the 5:00 am to 9:00 am shift in the Krome cafeteria. With an average national detention cost of \$85/day,<sup>261</sup> David's detention alone has already cost U.S. taxpayers nearly \$50,000.<sup>262</sup> When asked why the United States thinks the Haitians might be dangerous, David responded: "When you talk about an 18-year old kid here you talk about a big person who could do any

bad thing. Maybe [Ashcroft] doesn't realize that I'm a small guy."<sup>263</sup> In August, 2003 the BIA sent David's case back to the immigration judge to hear further evidence.<sup>264</sup> He is currently appealing the judge's most recent decision to deny him asylum.

On October 29, 2003, following one year in detention, David Joseph wrote:

"Today I can't tell you how sad I have one year inside the jail. I wish American people understand Haitian people is not terrorists. Please don't forget me. I pray one day the law change and I will be free. God bless America."<sup>265</sup>

## History of Discriminatory Treatment



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The extraordinary effort to which the U.S. government has recently gone to keep Haitians out is nothing new. Indeed, the current Haitian-only detention policy is a surreal repetition of past discriminatory policies targeting Haitians that have been repudiated by U.S. courts time and again.<sup>266</sup>

In July 1980 a landmark lawsuit was filed on behalf of over 4000 Haitians whose asylum applications had been denied. The trial court held that U.S. government agencies had set up a "Haitian Program" designed specifically to deny these claims in wholesale fashion and as quickly as possible, a program which "in its planning and executing [was] offensive to every notion of constitutional due process and equal protection."<sup>267</sup>

The court found that INS was engaging in scare tactics by encouraging government attorneys to point out "THE DIMENSIONS OF THE HAITIAN THREAT," calling Haitians a threat to the community's social and economic well-being.<sup>268</sup> The judge also concluded that the discriminatory treatment of the Haitians was part of a pattern of discrimination, which began in 1964.<sup>269</sup>

Despite the federal court's absolute condemnation of the U.S. government's Haitian policy, the government began to systematically detain Haitians entering the U.S. In a case filed on behalf of Haitians indefinitely detained at Krome in the early 1980's, the trial court noted INS' callous disregard for the rights of Haitian refugees and ordered the release of over 1,000 Haitians who were improperly denied access to their attorneys and faced overcrowded conditions and illegal transfers.<sup>270</sup> The Appeals Court in this case rejected the Government's claim that there was a massive influx of Haitians coming to the United States and noted that Haitians at the time represented no more than 2% of the illegal immigration flow into the U.S. The Appeals Court concluded that the Federal Government had engaged in a "stark pattern" of discrimination against the Haitians.<sup>271</sup>

In 1990, a District Court Judge in Miami concluded that “INS is routinely engaged in underhanded tactics in dealing with Haitians seeking asylum in this country, and has singled them out for special discriminatory treatment.”<sup>272</sup>

Despite these and numerous other rulings clearly chastising our government for its discriminatory treatment of the Haitians, following the 1991 coup d'etat in Haiti U.S. officials once again claimed they had reason to keep the Haitians out. They were successful, in part because they had Kenneth Starr, then Solicitor General of the United States, argue the case for the government, even at its earliest stages in a Miami District Court. Solicitors General usually only argue cases in particularly important United States Supreme Court cases.

Lawyers for the Haitians had filed a class action lawsuit in this case on behalf of Haitians on board U.S. Coast Guard cutters who were about to be forcibly repatriated.<sup>273</sup> Their goal was to ensure that the Haitians received fair screening interviews before repatriation continued.

On January 28, 1992, the government filed an emergency petition with the Eleventh Circuit, alleging that 20,000 Haitians “were massed” on the Haitian beaches and ready to head to Guantánamo, and that Guantánamo could not accommodate these Haitians.<sup>274</sup> Three days later, even before the Eleventh Circuit had ruled, they went to the Supreme Court with the same allegations.<sup>275</sup>

Attorneys for the Haitians believe that legal issues in this case took a back seat to political maneuvering and that Government lawyers deliberately misled the courts with false claims of a national emergency.<sup>276</sup> For example, under sworn deposition, Undersecretary Bernard Aronson admitted that the term “massing” was ambiguous and that he was quite unsure of the number of Haitians preparing to leave. And independent observers, including the Coast Guard attaché in Port-au-Prince who frequently flew over the point of departure for Haitians, concluded there was no threat of mass migration. In its brief to the United States Supreme Court, the Government relied on the declaration of Robert K. Wolhuis, whom they presented as the Assistant Secretary of Defense. Mr. Wolhuis had assumed that position for one day only - the day he signed the declaration. He readily admitted that most of the facts he swore to in his declaration were what the lawyers who had drafted it told him. The declaration was so defective that attorneys for the Haitians filed a separate memorandum concerning it.<sup>277</sup>

The Supreme Court, in a brief two-sentence order, issued without comment, permitted the Government to repatriate the Haitians. Justice Blackman alone wrote that if the Haitians were to be repatriated, such a ruling from the highest court in the land should only come “after full and careful consideration of the merits of their claims.”<sup>278</sup>

On May 24, 1992 President Bush issued an executive order, ordering INS to repatriate Haitians interdicted at sea without any investigation into the likelihood of their persecution in Haiti (“Kennebunkport Order”).<sup>279</sup>

Haitians who were “screened-in” at Guantánamo in 1991 and 1992 were only allowed to come to the United States after a federal judge issued a temporary injunction prohibiting their forcible return.<sup>280</sup> Several interpreters at Guantánamo provided sworn statements detailing a pattern of heavy pressure by U.S. State Department Officials on asylum officers to decrease the number of Haitians “screened-in”.<sup>281</sup> A 1992 Harvard Law School report on the asylum process expressed concern that “special foreign

policy pressures” had been influencing treatment of the Haitian cases.<sup>282</sup>

In addition, more than 10,000 Haitians “screened-in” to the United States from Guantánamo, as a result of their being found to have a credible fear of persecution, continued to be in real danger of being denied asylum. Even before asylum officers had interviewed many of them following their arrival in the United States, the INS Deputy Commissioner publicly stated that 90 percent of these cases would probably be denied, a self-fulfilling prophecy.<sup>283</sup> Indeed, preliminary assessments by asylum officers in Miami recommended grants of asylum in thirty-three of the first forty-three Haitian cases. Yet, in a May 26, 1992 memorandum to the Associate Deputy Attorney General, the Director and Assistant Director of the Asylum Policy and Review Unit (AAPRU) in Washington disagreed with eighteen of the recommendations to approve, but with only one recommendation to deny. He also expressed concern that the grant rate was “higher than expected.” To combat this, special incentives were given to asylum officers to deny these cases, specifying that the “INS could be encouraged to . . . [count] a completed denial as a double case completion and a completed grant as a single case completion for the purposes of . . . officer evaluation.”<sup>284</sup>

In 1994, after mounting pressure from the Congressional Black Caucus and other groups, President Clinton permitted intercepted Haitians to again be taken to Guantánamo rather than forcibly repatriated. According to United States Government officials, Guantánamo’s facilities at peak times during 1994-95 held as many as 32,362 Cubans and 21,638 Haitians. While the United States Government paroled into the United States virtually all of Guantánamo’s Cuban refugees during this time, it forcibly returned to Haiti virtually all of Guantánamo’s Haitian refugees.

Among Guantánamo’s Haitian refugees were 356 children who arrived there unaccompanied by an adult. Most of these children had witnessed close family members being murdered by Haiti’s paramilitary forces, and some of them had barely escaped Haiti with their own lives. Many of the children’s closest living relatives were in the United States. While all of their Cuban counterparts had long been admitted to the United States, by the end of April, 1995 the United States Government had granted parole to only twenty-three of these Haitian children.<sup>285</sup>

The unaccompanied Haitian minors were held at Guantánamo under extremely distressing conditions. They were largely isolated from their family and friends, as well as from journalists and attorneys. They lived largely without information about the outside world, especially about Haiti, living in several cases without access to proper medical care or counseling for health-threatening complaints. The children were housed in leaking tents where many suffered damage to their few belongings. Some lived without shoes or a change of clothes, and were awakened at 6 a.m. daily, even on weekends.

Several Haitian children attempted suicide. These attempts included drinking Clorox, hanging by the neck from a tree and inserting fence wire into the vagina. In response to complaints made by attorneys who visited the Haitian children in January 1995, the United States Atlantic Command acknowledged in March 1994, that some of its soldiers had subjected Haitian children to physical and verbal abuse. More specifically, military officials acknowledged that “[t]wo soldiers were found to have been involved in isolated cases of mistreatment. They used excessive force in subduing a number of adolescent Haitians.... The force used included... flexible plastic hand-cuffs, and forcing the minors to kneel on the ground for several hours. Some instances of verbal abuse also occurred.”<sup>286</sup>

Although the United States Government claimed to be acting in the “best interests” of Guantánamo’s unaccompanied Haitian children, it never explored the strong support system available to these children in the United States. At the same time, its preparation of a support system for these children within Haiti seems to have been both indifferent and incompetent. In March of 1995 Amnesty International USA criticized the United States government for denying the unaccompanied Haitian children a fair INS screening interview and their right to apply for political asylum.<sup>287</sup>

By June, 1995 the majority of these children had been forcibly repatriated, prompting protests by members of the Congressional Black Caucus and a number of Hollywood notables.<sup>288</sup> The Attorney General subsequently ordered the parole into the United States of most of the remaining Haitian children at Guantánamo.<sup>289</sup>

In the South Florida community, the striking disparity of treatment between the Cubans and Haitians is frequently evident.<sup>290</sup> For example, in July 1991, an old wooden boat, overloaded with 161 Haitians, came upon two Cubans bobbing on an inner tube raft. The Haitians rescued the Cubans and steered towards Miami. The United States Coast Guard stopped the boat, offering refuge to the two Cubans in Miami and returning the Haitians to Haiti.<sup>291</sup> To exacerbate matters, two days later, several young Haitian boys who were “stowaways” on board a Honduran freighter arriving in Miami were put in heavy chains and cages and left for hours on the deck of the ship in the parching sun because the captain had been warned by INS that he would be responsible should the Haitians escape.<sup>292</sup>

It is worth noting that while the 1981 interdiction agreement between the Reagan Administration and Jean Claude (“Baby Doc”) Duvalier clearly specified that legitimate refugees were not to be returned to Haiti, INS determined that only 28 of the 23,000 Haitians intercepted in the decade following the program's inception were qualified to apply for asylum in the U.S.<sup>293</sup> Twenty of the 28 Haitians “screened in” between 1981-1991 were brought to the U.S. after INS agreed to improve the interdiction process, which took effect after President Aristide took power.<sup>294</sup>

In its 1996 Annual Report, the Inter-American Commission on Human Rights of the Organization of American States, concluded that the U.S.' interdiction and repatriation policy toward Haitians violated the following provisions of the American Declaration of the Rights and Duties of Man: the right to life, the right to liberty, the right to security of the person, the right to equality before the law, the right to resort to the courts, and the right to seek and receive asylum.<sup>295</sup>

## Conclusions And Recommendations

Ever since the United States claimed independence more than 200 years ago, refuge seekers from other countries have looked to our country as a haven from injustice, a respite from persecution and as fertile ground to forge a better life. In most instances, we can proudly say we have been able to provide all that and more. But not for all nationalities, and not all the time. There have been some egregious examples in our history when we have failed to provide a safety net, such as when we turned away Jewish refugees fleeing the holocaust on board the *St. Louis*. We can't turn back the clock and make it right for those people, but we can do something about the discriminatory, unjust treatment currently aimed at Haitian refugees.<sup>296</sup>

The Bush Administration should do everything it can to promote true democracy and the rule of law in Haiti. In the meantime, it must uphold its responsibility to protect Haitian refugees until true stability is achieved.

- Given the escalating political instability and human rights abuses in Haiti, it is critical that the United States allow Haitian asylum seekers full access to refugee status determination procedures and offer protection to those found to have a well-founded fear of persecution.
- The United States must acknowledge that it plays the leading role in the Caribbean, and indeed in the world, in terms of offering protection to Haitian refugees. It should not implement measures that shift the responsibility for their protection to other countries. It must also refrain from supporting other governments, such as the Dominican Republic, in their efforts to close their borders to Haitians.
- The United States should extend Temporary Protected Status (TPS) or Deferred Enforced Departure (DED) to Haitians pending resolution of the political unrest Haiti is currently experiencing. Haitians who arrived by the date that TPS or DED is made available should be considered eligible for such protection. TPS or DED, however, should not supplant consideration of Haitians' eligibility for asylum on a case by case basis.
- The United States should increase resettlement opportunities for Haitian refugees.
- The U.S. embassy in Haiti and UNHCR should monitor conditions of return for rejected asylum seekers.
- The United States should facilitate the creation of a return and reintegration program through an appropriate nongovernmental organization or the International Organization for Migration in Haiti.

**The commitment of the United States to refugee protection has markedly deteriorated since the terrorist attacks of September 11, 2001. This degradation may be further exacerbated by the absorption of refugee resettlement processing, asylum, and detention functions into the DHS. The Bush Administration's use of legitimate national security concerns to justify its denial of protection to Haitian asylum seekers is disingenuous and a manipulation of the current political environment.**

- The United States cannot sacrifice its legal, moral, and ethical obligation to protect refugees in its search for national security, but must instead achieve a balance between its humanitarian and security commitments.
- The Department of Homeland Security must give equal attention to the asylum- and refugee-related functions it is absorbing as it does to its law enforcement functions.

**The U.S. characterization of Haitians as "economic migrants" is unfounded and cannot be used to justify interdiction, summary return, arbitrary detention, and fast-tracked asylum procedures. Haiti's economic problems are closely tied to its political instability. Furthermore, the phenomenon of mixed flows of economic migrants with asylum seekers does not alleviate a country of its responsibility to assess an individual's eligibility for asylum and to extend protection to those found to qualify for refugee status.**

- The United States must discontinue its discriminatory treatment of Haitian asylum seekers.
- The United States must fulfill its asylum obligations to Haitians at the same time that it addresses the root causes that compel people to flee Haiti.
- The United States should appoint a high-level task force that includes refugee and human rights experts to restore refugee protection for Haitians, address the root causes of Haitian refugee flows, and coordinate effective U.S. leadership in rebuilding Haiti.

**U.S. concerns about the safety of boat voyages to the United States do not justify implementation of an interdiction and summary return policy for Haitians encountered on the high seas or in the territorial waters of the United States. Rescue-at-sea is the only legitimate response when U.S. authorities encounter Haitians traveling in unsafe vessels. Interdiction risks the return of *bona fide* refugees.**

- The United States must immediately discontinue its interdiction and summary return policy as applied to Haitians.
- At a minimum, asylum officers should be routinely deployed to screen interdicted Haitians to determine whether they have a credible fear of return to their home country. Such screenings should only be conducted after the individual has an opportunity to rest and after he or she has been fully informed about the right to seek asylum. They must be performed with adequate translation services. They should ideally occur on land after the asylum seeker has been provided an opportunity to rest, obtain legal counsel, and prepare for the interview.
- The United States should permit UNHCR and appropriate nongovernmental organizations on board Coast Guard vessels to monitor and assess the interdiction process.
- Those Haitians determined to have a credible fear of return to their home country should be allowed to proceed to the United States to pursue asylum. Alternatively, if instead provided a full refugee status determination offshore, they should be allowed to resettle in the United States.

**When human rights conditions in Haiti have deteriorated during past political crises, the United States has at times facilitated in-country refugee processing and allowed some Haitians found to be refugees to resettle directly to the United States from Haiti. Such programs in isolation represent an inadequate response to refugee situations, as they may place Haitians in danger while they are waiting to complete the processing and many may be too fearful to present themselves while still in-country. However, in-country processing remains a viable option for some when combined with full access to U.S. asylum procedures and refugee processing in neighboring countries. It allows some Haitians to avoid the risky boat voyage to the United States.**

- The U.S. Department of State and Department of Homeland Security should implement in-country refugee processing in Haiti. Processing sites should be established in the capital as well as in outlying regions throughout the country. Processing should also be conducted by the U.S. embassy in Port-au-Prince.
- The Department of State should facilitate the full involvement of nongovernmental organizations with expertise in refugee resettlement in this effort. Such agencies can serve a

valuable role in assisting applicants through the process and in identifying those refugees most in need.

- Those applicants found eligible for refugee resettlement must be promptly transferred to the United States to ensure that they do not face further human rights abuses.
- Any resettlement program must be designed to identify women-at-risk and unaccompanied minors for whom resettlement is the only viable form of protection. Women and children, including those who have experienced gender- and age-related persecution, must be provided appropriate support services once resettled.
- U.S. resettlement processing must be implemented with the intent of resettling individuals found to be refugees to the United States, not to third countries.

**The decision by the U.S. government not to parole Haitian asylum seekers from INS detention is an attempt to deter a mass exodus from Haiti to the United States. The use of detention as a means to deter the arrival of asylum seekers, particularly when it is applied in a discriminatory manner, is in clear violation of international law and undermines U.S. asylum policy as a tool of protection. It is also inhumane.**

- The United States must discontinue its prolonged and arbitrary detention of Haitian asylum seekers and facilitate their prompt release in keeping with the parole policy in place for asylum seekers of other nationalities who are held in the custody of the Miami INS District.
- The Department of Homeland Security must discontinue abusing the discretion given to it after September 11 to stay immigration judges' grants of bond to asylum seekers in the name of national security.
- Families should not be divided while in detention. Most should be released. For those families who cannot be released, they should be placed under supervised release or housed together in appropriate shelter or home environments.
- The Department of Homeland Security must discontinue the use of hotels for detention, especially for unaccompanied children. If it does utilize hotels, detainees should be released or transferred to appropriate settings no later than 24 hours after apprehension.

**The Broward Transitional Center is a significant improvement over other detention facilities used by the Department of Homeland Security, especially county jails. However, it is not appropriate for prolonged detention of female asylum seekers and should not be viewed as an alternative to detention.**

- The Department of Homeland Security must discontinue its use of county prisons to detain asylum seekers.
- Parole of asylum seekers must be the norm.
- For those few asylum seekers who cannot be released from custody, the Department of Homeland Security must develop humane alternatives to detention such as supervised release or open shelters.

**The United States has maintained one of the harshest detention policies in the world with regard to children. The detention of children is inhumane and in violation of international legal**



standards. It also has a serious detrimental effect on a child's wellbeing and fails to address the best interests of the child. Congress enacted legislation transferring custody of unaccompanied children away from the INS to the Office of Refugee Resettlement beginning in March 2003. This shift in responsibility offers an unprecedented opportunity to reform U.S. treatment of such children.

- The Office of Refugee Resettlement must overhaul the detention program for children and reorient their care to models that are in keeping with the best interests of the child. In the vast majority of cases, this means release to family or placement in culturally appropriate foster care rather than institutional settings.
- The U.S. government must also ensure that all children are represented by counsel and appointed guardians *ad litem* to assist them through their immigration proceedings.
- The Department of Homeland Security and the Executive Office for Immigration Review must fully implement the INS Guidelines for Children's Asylum Claims to ensure that refugee children are afforded full protection.
- Children who have family in the United States should be released promptly into their custody.

**The U.S. government has selectively subjected Haitian asylum seekers to expedited processing. Such measures are unfair when they undermine the ability of an asylum seeker to obtain counsel and to fully prepare and present his or her case. Women and children may be disproportionately affected by such measures, as they often present complex and sensitive asylum claims based on gender- or age-related persecution. Furthermore, the INS has placed restrictions on attorneys' access to their clients that severely hamper the ability of Haitian asylum seekers and others to obtain adequate legal representation.**

- No asylum interview or proceeding that involves a Haitian asylum seeker before either an INS asylum officer or an immigration judge should be expedited or summarily conducted in any fashion.
- The Department of Homeland Security and the Executive Office for Immigration Review should take every step possible to identify and facilitate representation for Haitian asylum seekers.
- The Department of Homeland Security must immediately restore the on-site space that was used by charitable organizations to consult with their clients at the Krome Processing Center.
- Unaccompanied children especially should never have to appear in immigration court or before the Board of Immigration Appeals without the assistance of counsel.
- The Department of Homeland Security and the Executive Office for Immigration Review must enhance their sensitivity to age- and gender-related asylum claims.

**All letters, statements, articles and other documents cited to in this report are on file and available at FIAC. A special edition of this report, which includes attachments of the most relevant documents cited to, is also available for purchase from FIAC. For more information, please contact: Sharon Ginter tel. 305/573-1106, ext 1230.**

## Endnotes

1. Twenty additional Haitians on the December 2001 boat reached shore on their own and therefore were not subject to expedited removal. Most were fairly quickly released from detention. Six other men were charged with smuggling. See e.g., "Six charged in smuggling of Haitians," CNN.com/U.S. (October 30, 2002).
2. For a comprehensive review of the discriminatory treatment of Haitians, see "Refugee Policy Adrift: The United States and Dominican Republic Deny Haitians Protection," Women's Commission for Refugee Women and Children (January 2003); Cheryl Little, "Inter-Group Coalitions and Immigration Politics: The Haitian Experience in Florida," *The University of Miami Law Review* (July 1999).
3. Presentation by Wendy Young, Director of Government Relations, Women's Commission for Refugee Women and Children, Church World Service Conference on Haitian Refugees (February 5, 2003).
4. Dana Canedy, "As Cameras Roll, Haitians Dash from Stranded Boat to Florida Shore," *New York Times* (October 30, 2002); Charles Rabin, Jacqueline Charles, and Martin Merzer, "A Desperate Voyage to Miami," *The Miami Herald* (October 30, 2002); "Haitians Jump Ship Off Miami," Reuters (October 29, 2002).
5. Andres Viglucci, "Legal Groups Meet with Haitian Migrants," *The Miami Herald* (November 1, 2002). Due to overcrowding resulting from the Haitians' prolonged detention, some Haitians were sent to facilities far removed from family and pro bono attorneys. One Haitian woman and her infant child were transferred to rural Pennsylvania following their arrival by boat in October 2002, where they have been unable to secure free legal help.
6. See Statement of Guilene Silien (February 14, 2003); Statement of Alfred Selmo (January 16, 2003). All statements and documents cited in this chapter are on file at FIAC. Names of detainees and former detainees are only used in this report when they have already been revealed publicly in the media or where explicit permission was obtained by FIAC from the individual. Otherwise, the detainees' identities are protected by using pseudonyms.
7. Alfonso Chardy, "Detentions are political, attorneys say," *The Miami Herald* (January 18, 2002); Alfonso Chardy, "INS is detaining Haitians rescued at sea last month," *The Miami Herald* (January 18, 2002); Max Rameau, "Hear the Haitians' claim for asylum," *The Miami Herald* (January 18, 2002); Jody A. Benjamin, "166 Haitians who arrived Dec. 3 face deportation, immigration group says," *South Florida Sun-Sentinel* (December 20, 2001); "INS moves to deport Haitians saved at sea," *The*

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*Miami Herald* (December 17, 2001); Jody A. Benjamin, "Haitians rescued from grounded boat await ruling on status," *South Florida Sun-Sentinel* (December 11, 2001); Joe Mozingo, "18 of 185 Haitians released by INS," *The Miami Herald* (December 10, 2001).

8. Jody A. Benjamin, "Haitians rescued from grounded boat await ruling on status," *South Florida Sun-Sentinel* (December 11, 2001); Joe Mozingo, "18 of 185 Haitians released by INS," *The Miami Herald* (December 10, 2001); Luisa Yanez, "Haitian migrants taken ashore," *The Miami Herald* (December 4, 2001).

9. Throughout this report INS is only used when referring to an event before its consolidation into the Department of Homeland Security on March 1, 2003.

10. After a federal lawsuit was filed challenging the Haitian detention, the INS began releasing some Haitian asylum seekers who arrived by plane. However, even these cases were subjected to "enhanced scrutiny" and sponsors required to submit countless documents, such as payroll stubs, bank statements and notarized affidavits of support not required in non-Haitian asylum cases. See Memorandum from Johnny Williams, Executive Associate Commissioner, Immigration and Naturalization Service, "Parole of Haitians Arriving by Regular Means at a Designated Port of Entry in South Florida" (April 5, 2002).

11. Declaration of Cheryl Little (March 14, 2002); Declaration of Clarel Cyriaque (March 13, 2002); and Declaration of Evenette Mondesir (March 12, 2002).

12. Declaration of Howard Gitlow, PhD, School of Business, University of Miami (March 14, 2002); Declaration of Charu Newhouse al-Sahli, Detention Advocacy Coordinator, FIAC, (March 13, 2002).

13. Declaration of Peter Michael Becraft, Acting Deputy Commissioner, Immigration and Naturalization Service (March 18, 2002).

14. *Jeanty, v. Bulger*, Civ-Lenard (S.D.Fla 2002); see also, Alfonso Chardy, "INS sued over detention of 240 Haitian refugees," *The Miami Herald* (March 16, 2002); Jody A. Benjamin and Madeline Baro Diaz, "Haitian detainees sue INS, demand release," *South Florida Sun-Sentinel* (March 16, 2002); "Center to file suit for asylum-seekers," *The Miami Herald* (March 10, 2002).

15. *Jeanty v. Bulger*, 204 F.Supp. 2d 1366 (S.D. Fla. 2002).

16. *Ibid.* at 1368.

17. *Moise v. Bulger*, 321 F.3d 1336 (11th Cir. 2003).

18. UNHCR Press Release, "UNHCR urges international support for Haitians and right of asylum" (February 26, 2004); also note that the Refugee Act of 1980 brought the United States into compliance with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which the U.S. ratified in 1968.

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19. Remarks by the President, "President Bush Welcomes Georgian President Saakashvili to White House," White House News Release/Transcript (February 25, 2004), available at: <http://www.whitehouse.gov/news/releases/2004/02/20040225-1.html>.

20. See e.g., Cheryl Little and Wendy Young, "Bush administration should stop turning refugees away," *The Miami Herald* (March 9, 2004); John Pain, "U.S. Haitian Immigration Policy Condemned," Associated Press (February 27, 2004); "President Bush Finally Speaks the Truth about America's Unlawful Treatment of Haitian Refugees," U.S. Committee for Refugees (February 26, 2004) (describing President Bush's statement as the "first time in more than 50 years that the U.S. has flagrantly rejected the legal and ethical obligation to protect refugees").

21. Michael Smith, "U.S. Coast Guard increases patrols of action to halt any boat people," Associated Press (March 7, 2004).

22. See e.g., Michael Smith, "US Coast Guard increases patrols off Haiti to halt any boat people," Associated Press (March 7, 2004); Also see: Associated Press, "U.S. Coast Guard returns 531 to Haiti," *The Chicago Tribune* (February 28, 2004); David Cázares, "U.S. returns 530 intercepted Haitians, drawing fire from activists, legislators," *South Florida Sun-Sentinel* (February 28, 2004).

23. Letter to Cheryl Little, FIAC from David Lester, Director, Customer Assistance Office, U.S. Citizenship and Immigration Services (March 18, 2004).

24. Deportations were only temporarily halted for a few weeks when commercial flights to Haiti were cancelled; DHS immediately resumed deportations of Haitian asylum seekers on March 9, 2004 when flights resumed.

25. Groups that have been critical of the Haitian policy include the American Immigration Lawyers Association, Amnesty International, Asia America Law Group, Catholic Legal Immigrant Network, Inc., Church World Service, Colombian American Service Association, AFL-CIO, Florida's Catholic Bishops, Human Rights First, Immigrant and Refugee Rights Project, Lutheran Immigration & Refugee Service, NAACP, National Immigration Forum, TransAfrica Forum, National Coalition for Haitian Rights, Physicians for Human Rights, U.S. Committee for Refugees, Washington Lawyers' Committee for Civil Rights, the Women's Commission for Refugee Women and Children and a number of Jewish groups.

26. Jody Benjamin, "U.S. panel to press Bush," *South Florida Sun-Sentinel* (June 22, 2002); Alfonso Chardy, "Agency to probe Haitians' detention," *The Miami Herald* (June 22, 2002).

27. A resolution passed by U.S. Mayors at a national conference in June 2003 also called for the fair treatment of Haitians. The Mayors, who met in Denver, unanimously approved a resolution that calls for an end to the detention policy. The City Commission of Key West, Florida has likewise passed a resolution urging President Bush to rescind its Haitian immigration policy. The Greater Miami Chamber of Commerce and Miami-Dade County's prestigious Beacon Council not only issued resolutions last summer calling for fair treatment of the Haitians but their leaders traveled to DC with Congressman Kendrick Meek to discuss their concerns with high-ranking government officials. Then in early June 2003, a delegation of over 40 community activists traveled to

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Washington, DC with Congressman Meek and Miami-Dade County elected officials, to protest the Haitians' treatment. See e.g., National Conference of Mayors, "A resolution urging President Bush to Rescind the Immigration Policies Against Haitian Immigrants and Calling for the Equal Treatment of All Immigrants," Adopted Resolution 71st Annual Meeting (June 2003); City Commission of the City of Key West, Florida, Resolution No. 03-228 (July 2, 2003); Resolution, "Haitian Immigration Issues," Greater Miami Chamber of Commerce (July 1, 2002); Resolution, "Support for Haitian Immigration Justice," Miami-Dade County Beacon Council (June 21, 2002); Frank Davies, "South Florida delegation pushes Haitian causes in D.C. mission," *The Miami Herald* (June 5, 2003); Jacqueline Charles, *The Miami Herald* (July 10, 2002).

28. "The Detention and Treatment of Haitian Asylum Seekers," U.S. Senate Judiciary Committee, Subcommittee on Immigration (October 1, 2002) (Testimony available on-line at: <http://judiciary.senate.gov/hearing.cfm?id=483>). Senator Kennedy also made a compelling case challenging the Haitian detention policy in early 2003. See remarks of Senator Edward M. Kennedy, Church World Service Conference on the Current Haitian Migration Crisis (February 5, 2003).

29. Briefing before the Subcommittee on International Operation and Human Rights (October 1, 2002).

30. Letter to James L. Cavallaro, Associate Director, Human Rights Program, Harvard Law School, from Santiago Canton, Executive Secretary, Organization of American States (March 22, 2004).

31. FIAC Press Release, "Groups Ask United Nations to Investigate US-Haitian Policy on Refugees" (April 2, 2004); Alan Elsner, "Groups Ask UN to Probe U.S. Treatment of Haitians," Reuters (April 2, 2004).

32. See e.g. Letter to Secretary Colin L. Powell from Reverend John L. McCullough, Executive Director and CEO, Church World Service (April 7, 2004); Media Advisory, "Miami-Dade Community Relations Board Calls for Temporary Halt to Return of Haitian Refugees (March 4, 2004); "Haiti: U.S. Return of Asylum Seekers is Illegal," Human Rights Watch (March 1, 2004); letter from Kathie A. Harting, Director, US Department of Justice, Executive Secretariat (February 27, 2004); Letters to Attorney General John Ashcroft from Cheryl Little, FIAC (February 24 and February 26, 2004); Abby Goodnough, "Island Chaos Casts a Pall Over Miami's Little Haiti," *The New York Times* (February 24, 2004).

33. See e.g. Letter to Tom Ridge, Secretary of the Department of Homeland Security, from Cheryl Little, FIAC (March 4, 2004); letter to President George Bush, from Senators Edward M. Kennedy, Patrick J. Leahy, and Richard J. Durbin (March 1, 2004); letter to Attorney General John Ashcroft, from Cheryl Little, FIAC (February 24, 2004).

34. See e.g., Refugee Council USA Press Release, "Refugee Groups Call for Humane Policy for Haitian Refugees" (March 3, 2004).

35. See e.g., Edwidge Danticat, "No Refuge," *Essence Magazine* (June 2003).

36. Letter from detained Haitian women seeking asylum at the Broward Transitional Center to

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Members of Congress (May 27, 2003).

37. "Refugee Policy Adrift, The United States and Dominican Republic Deny Haitians Protection," Women's Commission for Refugee Women & Children (January 2003). See also, Women's Commission for Refugee Women and Children Press Release, "Women's Commission Gravely Concerned About the Plight of Haitian Refugees" (October 31, 2002).

38. Ibid. pp. 29-30.

39. FIAC met with Rigmane a number of times during her detention in Florida and arranged for the Women's Commission to interview her upon her return.

40. Statement of Wendy Young, Director of Government Relations Women's Commission for Refugee Women and Children, Church World Service Conference on Haitian Refugees (February 5, 2003). Another asylum seeker told FIAC that she was incarcerated by the Haitian government in February 2004 upon her return and her family forced to pay \$500 U.S. dollars to obtain her release. Statement taken by Sarnia Michel, FIAC (February 2004).

41. Declaration of Cheryl Little, FIAC (March 14, 2002). See also, Jacqueline Charles and Jennifer Maloney, "Judge Denies Haitians' Asylum; First Setbacks Worry Activists," *The Miami Herald* (December 17, 2002); Tanya Weinberg, "Haitians plight protested," *South Florida Sun-Sentinel* (December 17, 2002); Letter to John Mata and Gail Padgett, Executive Office for Immigration Review, from Cheryl Little, FIAC (December 13, 2002); Alfonso Chardy, Jacqueline Charles and Andres Viglucci, "Legal groups meet with Haitian migrants," *The Miami Herald* (November 1, 2002); Letters to Cheryl Little, FIAC from Gail Padgett, Assistant Chief Immigration Judge (March 12 and March 27, 2002); Letter to Steven Lang, Executive Office for Immigration Review, from Mary Kramer, South Florida Chapter, American Immigration Lawyers Association (February 19, 2002); Letter to FIAC from Steven Lang, Executive Office for Immigration Review (February 13, 2002); Executive Office for Immigration Review Press Release, "Pro Bono Assistance Needed for Detained Individuals in South Florida" (February 13, 2002); Letter to Gail Padgett, Assistant Chief Immigration Judge, Executive Office for Immigration Review, from Cheryl Little, FIAC (February 12, 2002); "Unease grips rescued Haitians, Activists Decried Lack of Counsel," *The Miami Herald* (January 19, 2002); Letter to Steven Lang, Executive Office for Immigration Review, from Cheryl Little, FIAC (January 18, 2002); Jody A. Benjamin, "166 Haitians who arrived Dec. 3 face deportation, immigrant group says," *South Florida Sun-Sentinel* (December 20, 2001).

42. The Lawyers Committee For Human Rights has changed its name to Human Rights First.

43. See Lawyer's Committee for Human Rights, Brief of Amicus Curiae in Support of Petitioners' Appellants and Reversal of the District Court's Decision Motion (May 9, 2002) and United Nations High Commissioner for Refugees Advisory Opinion on Detention of Asylum Seekers (April 15, 2002).

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

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45. FIAC Press Release, “Haitian Asylum Seekers Denied Due Process” (December 16, 2002); Declaration of Cheryl Little, FIAC (March 14, 2002); see also Dana Canedy, “Haitian Detainees Being Treated Unfairly, Advocates Assert,” *New York Times* (December 18, 2002); Jacqueline Charles and Jennifer Maloney, “Judge Denies Haitians’ Asylum; First Setbacks Worry Activists,” *The Miami Herald* (December 17, 2002).

46. See Letter to Steven Lang, Executive Office of Immigration Review, from Mary Kramer, President, American Immigration Lawyers Association, South Florida Chapter, (February 19, 2002).

47. Also see, “In Liberty’s Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security,” Human Rights First (January 2004).

48. See American Bar Association Commission on Immigration Policy, Practice & Pro Bono, “Seeking Meaningful Review: Findings and Recommendations in Response to Dorsey & Whitney Study of Board of Immigration Appeals Procedural Reforms” (October 2003); and Attorney General Transcript, “News Conference – Administrative Change to Board of Immigration Appeals,” Department of Justice Conference Center (February 6, 2002).

49. Although INS officials have acknowledged they lack adequate space to meet the needs of attorneys and others trying to assist the Haitians at Krome, in February 2002, they restricted weekend and holiday visitation there to just four hours, between 7:00-11:00 am.

50. See e.g., Letter to John Mata and Gail Padgett, Executive Office of Immigration Review from Cheryl Little, FIAC (December 13, 2002); Letter to John Bulger, Acting District Director, Immigration and Naturalization Service, from Cheryl Little, FIAC (September 20, 2002); Letter to Daniel Vara, INS District Counsel, Cheryl Little, FIAC (August 2, 2002); Letter to John Bulger, Acting District Director, Immigration and Naturalization Service from Cheryl Little, FIAC (May 30, 2002); Letter to Steven Lang, Executive Office of Immigration Review from Mary Kramer, Esq. (February 19, 2002); Letter to Gail Padgett, Executive Office of Immigration Review, from Cheryl Little, FIAC (February 12, 2002).

51. See e.g., Letter to Donald Kerwin, Executive Director, Catholic Legal Immigration Network, Inc. and others from David Venturella, INS Assistant Deputy Executive Associate Commissioner, Office of Detention and Removal Operations (response to January 21, 2003 sign-on letter) (January 29, 2003); “Legal aid center folds Krome Office,” *The Miami Herald* (January 12, 2003); Sign-on Letter to Michael Garcia, INS Acting Commissioner from Catholic Legal Immigration Network, Inc. on behalf of 31 co-signers (January 9, 2003); Jim DeFede, “INS harasses legal-aid agencies,” *The Miami Herald* (January 9, 2003); Letter to Wesley Lee, INS Transition Field Coordinator, Headquarters Detention and Removal from FIAC (January 7, 2003); “Access Denied, Justice Denied,” *The Miami Herald* Editorial (January 6, 2003); “Ros-Lehtinen opposes closing of legal center at Krome,” *The Miami Herald* (January 6, 2003); “Graham backs immigrant rights advocate,” *The Miami Herald* (January 4, 2003); Alfonso Chardy, “Advocacy group for immigrants to leave Krome,” *The Miami Herald* (January 3, 2003); Letter to INS Acting Commissioner Garcia from Senator Graham (January 3, 2003); Letter to Wesley Lee, INS Transition Field Coordinator, Headquarters Detention and Removal from FIAC (January 2, 2003); Letter to Congresspersons and Steven Lang,

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Pro bono Coordinator, Executive Office of Immigration Review from FIAC (January 2, 2003); Letter to INS Acting Director Jack Bulger from Congresswoman Ileana Ros-Lehtinen (January 2, 2003).

52. “Congressman decries treatment of Haitians,” *The Miami Herald* (March 10, 2002).

53. “INS Detainees In Florida: A Double Standard Of Treatment, Supplement,” FIAC (January – April 2002); “INS Detainees In Florida: A Double Standard Of Treatment,” FIAC (December 2001). “Behind Locked Doors: Abuse of Refugee Women the Krome Detention Center,” Women’s Commission for Refugee Women and Children (October 2000). Only after its own internal investigation and pressure from the Miami community, local service providers such as FIAC, and national immigrant and refugee advocacy organizations to release the women or place them in an appropriate alternative to detention, did the INS agree to remove the women from Krome.

54. See e.g., Jody A. Benjamin, “Awaiting Asylum, ‘I Don’t Know Why I Am In Jail,’” *South Florida Sun-Sentinel* (April 22, 2002); “Haitians complain about U.S. prison,” Reuters (March 14, 2002); posted on CNN.com/WORLD.

55. See e.g., “Freedom Denied: Middle Eastern Asylum Seekers Caught Up in U.S. Immigration Sweep,” Women’s Commission for Refugee Women & Children (December 2001); “Innocents in Jail: INS Moves Refugee Women from Krome to Turner Guilford Knight Correctional Center, Miami,” Women’s Commission for Refugee Women & Children (June 2001).

56. See Cheryl Little and Charu Newhouse al-Sahli, “INS Detainees in Florida: A Double Standard of Treatment,” FIAC (December 2001), and Supplement (January-April 2002).

57. Testimony of Marie Jocelyn Ocean, before the Senate Judiciary, Subcommittee Immigration (October 1, 2002).

58. Statement on New Detention Facility in Broward County, Immigration and Naturalization Service (August 12, 2002). See also Jacqueline Charles, “INS Plans to Move Female Haitian Detainees,” *The Miami Herald* (August 16, 2002); José Dante Parra Herrera, “Detainees Will Move From Jail to Work Center,” *South Florida Sun-Sentinel* (August 16, 2002); “INS to Move Haitian Asylum Seekers,” Associated Press (August 16, 2002).

59. Statement of Violette Lincifor (March 11, 2003).

60. Ibid.

61. Interview with Marie (pseudonym) (July 3, 2003).

62. Susan Benesch, Refugee Advocate, Refugee Project, Amnesty International, USA, “Haitian Refugees Trapped by War on Terror,” *Amnesty Now* (Fall 2003); see also, letter to Charles J. McRay, Acting Director, Corrections and Rehabilitation Department, from Maria E. Roberts, Chairperson, Miami-Dade County Commission for Women (March 8, 2004).



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63. Statement of Haitian woman at the Broward Transitional Center (February 4, 2004). See also letter from Kerline Phelizor (April 27, 2003).

64. See e.g., Statement of Evens (April 26, 2002); Statement of Emmanuel (July 12, 2002); Statement of Robert (July 11, 2002); Statement of Loussaint (July 11, 2002); Statement of detained Haitian asylum seekers on hunger strike at Krome (July 9, 2002); Statement of Roland (April 30, 2002); Letter from detained Haitian asylum seekers at Krome (March 25, 2002).

65. Ibid.

66. Statement of Frantz (February 21, 2003).

67. Since mid-July 2003 certain detainees at the hotel have been bused to Krome to get fresh air and limited exercise. Detainees report they can't go to Krome unless they sign up to do so but they're not given details about how to sign-up. Only a limited number can be bused to Krome on any given day.

68. See e.g., Statement of Milia Auguste (April 10, 2003); Statement of Lormise Guillaume (April 3, 2003); Statement of Guilene Silien (February 14, 2003); Statement of Alfred Selmo (January 16, 2003); Statement of Yvrose (June 5, 2002); Statement of Laura (June 5, 2002); Statement of Linda (June 5, 2002); Statement of Livernie (June 5, 2002); Statement of Magda (June 5, 2002); Statement of Maryse (June 5, 2002). See also Letter to Marion Dillis, Acting Officer-in Charge, Krome Service Processing Center from Charu Newhouse al-Sahli, FIAC (March 7, 2003).

69. Statement of Lormise Guillaume (April 3, 2003).

70. In April 2002, the INS was holding 113 men, women and children at the Miami hotel. Following a visit there in February 2003 by Academy Award Winner Jonathan Demme, Congresswoman Carrie Meek, Congressman Kendrick Meek and prominent Haitians including radio journalist Michele Montas and author Edwidge Danticat, FIAC staff were told they could no longer visit clients there. About two weeks later the attorneys were let back in. FIAC was not allowed to give Know Your Rights presentations to the hotel detainees until early August 2003.

71. Letter from Cheryl Little, FIAC, to John M. Bulger, Immigration and Naturalization Service (May 30, 2002).

72. Memorandum from Charu Newhouse al-Sahli, FIAC (November 8, 2002). A number of Haitian women detained with their children at the hotel also had to go before an immigration judge without first speaking to an attorney. FIAC's initial requests to meet with these families were denied.

73. Letter to Marion Dillis, Acting Officer-in-Charge, Krome SPC from Cheryl Little, FIAC (November 15, 2002).

74. Statement of Claude (pseudonym) (January 16, 2003).

75. See Letter to Marion Dillis and Jim Shaver from Charu Newhouse al-Sahli (December 8, 2003);

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Letter to Jim Shaver, DHS Deputy Officer-in-Charge, Detention, from Charu Newhouse al-Sahli, FIAC (December 5, 2003).

76. Statement of Guilene Silien (February 14, 2003).

77. Interview with Charu Newhouse al-Sahli, FIAC (July 22, 2003).

78. See e.g., Letter to Deportation Officer Morales from Charu Newhouse al-Sahli, FIAC (April 11, 2003); Letter to Deportation Officer Morales from Jack Wallace, FIAC (April 9, 2003); Letter to Marion Dillis from Jack Wallace, FIAC (March 31, 2003); Letter to Marion Dillis from Charu Newhouse al-Sahli, FIAC (March 7, 2003).

79. Statement of Lormise Guillaume (April 3, 2003).

80. Jacqueline Charles, "Officials Release 3 Haitian Families," *The Miami Herald* (April 18, 2003); Jacqueline Charles, "Advocates for Haitians: Free boy, 2, from hotel," *The Miami Herald* (April 12, 2003).

81. Statement of Milia Auguste (April 10, 2003). As a result of adverse publicity about conditions of detention at the Miami Hotel, far fewer families are now being held there. For years the Department of Homeland Security rented all 30 rooms on the hotel's fifth floor to detain children and families and single adults when other facilities were overcrowded. By the end of March 2004, DHS was only renting half of the fifth floor. Marion Dillis, Acting Officer-in-Charge, Krome Service Processing Center, has worked to improve conditions at the Hotel and the treatment of detainees held there.

82. See e.g., Letter from detained Haitian women, Broward Transitional Center, to FIAC (February 18, 2004); FIAC Press Release "Haitian Women Seeking Asylum Engage in Hungerstrike to Protect Their Forced Return" (February 19, 2004); Letter to FIAC from Haitian asylum seekers detained at Krome (February 7, 2002); Statement of Jean Louis Emanuel (February 2002); "Justice for Haitians," statement of Haitians at Krome (April 2004). The Haitians who engaged in a hunger strike in April 2004 told FIAC that DHS officials informed them that if they didn't start eating within 48 hours they would be criminally prosecuted and transferred to other facilities, so they ended their hungerstrike. See also, David Brewster, "Haitians on Hunger Strike," *Trinidad and Tobago Express* (January 9, 2004) (referencing cases of four Haitian stowaways engaged in a hunger strike to draw attention to their horrible prison conditions; one of the four, 21-year-old Wolf Moises, attempted to take his life).

83. As of April 7, 2004, 86 of the Haitians who arrived on the October 29, 2002 boat had been released, including 53 who were granted asylum; approximately 113 deported; and 11 remained in detention (6 of the 11 were in federal custody based on smuggling charges).

84. See e.g., "National Briefing: Washington," *The New York Times* (August 12, 2003).

85. Statement of Alfred Selmo (January 16, 2003).

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86. See e.g., Tanya Weinberg, “Victory shallow for Haitians still detained,” *Sun-Sentinel* (January 3, 2004); Rachel L. Swarns, “Haitians are Held in U.S. Despite Grant of Asylum,” *New York Times* (July 25, 20003).
87. Alva James-Johnson and Tal Abbady, “Haitian refugee who sought asylum released after lengthy detention,” *South Florida Sun-Sentinel* (February 26, 2004).
88. Jody A. Benjamin, “Haitian mom yearns to see her family,” *South Florida Sun-Sentinel* (May 20, 2002); “U.S.: Detention of Haitian Asylum-Seeker Jesiclaire Clairmont,” Amnesty International Refugee Action (January 15, 2002).
89. The Board of Appeals (BIA) has ruled in favor of a number of Haitians granted asylum, forcing DHS to release them. In August 2003, for example, the BIA upheld an immigration judge’s asylum grant to Gabriel Joseph. Gabriel was kept in detention for several months following the judge’s favorable decision. The BIA has also reversed immigration judges’ denials of asylum to Haitians. In one such case, involving a 27-year-old who was detained at Krome for nine months following his arrival in October 2002, the BIA recognized that “Lavalas members [in Haiti] have terrorized and executed members of opposition parties.” *In re Dauphin Jacnel* (July 23, 2003) (unpublished).
90. Testimony of Randolph McGrorty, Catholic Charities Legal Services, before the U.S. Commission on Civil Rights (June 21, 2002); Jody A. Benjamin, “Haitian Mother Detained in Maximum Security Jail Has Little Contact with Children,” *South Florida Sun-Sentinel* (May 20, 2002).
91. See e.g., Testimony of Randolph McGrorty, Catholic Charities Legal Services, before the U.S. Commission on Civil Rights (June 21, 2002).
92. Recent press coverage addressed the plight of children in detention, including the Haitian children. See e.g., Bob Dart, “Rights Advocates decry conditions under which immigrant children held,” *The Atlantic Journal-Constitution* (June 19, 2003); Holly Hickman, “U.S. Handling of Young Immigrants Criticized,” *The Associated Press* (June 19, 2003).
93. Jody A. Benjamin, “Haitian mom yearns to see her family,” *Sun-Sentinel* (May 20, 2002).
94. *Ibid.*
95. FIAC interviews with Haitian asylum seekers (April 2003); Statements of Casimir (June 7 and 12, 2002).
96. Statements of Casimir (June 7 and 12, 2002).
97. Cheryl Little, “Inter-Group Coalitions and Immigration Politics: The Haitian Experience in Florida,” *The University of Miami Law Review* (July 1999).
98. Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1996) at ¶14 and ¶18, General Policy Favoring Release.

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99. This Haitian girl had been labeled “accompanied” by immigration officials while at the Miami hotel because she arrived with an 18-year-old sibling who was detained at Krome.

100. “Celebrate freedom for one Haitian teen,” *The Miami Herald* Editorial (January 9, 2004); Jacqueline Charles, “Advocates’ pressure frees Haitian teen from long detention,” *The Miami Herald* (January 7, 2004); “Cruelty masquerades as homeland security,” Our Opinion: “Use U.S. Resources to Help, Not Punish, Haitians,” *The Miami Herald* Editorial (November 23, 2003); Jacqueline Charles, “Haitian youth awaits work on fate,” *The Miami Herald* (October 4, 2003).

101. See e.g., Danielle Knight, “Waiting in limbo, their childhood lost,” *U.S. News & World Report* (March 15, 2004); Amnesty International Refugee Action, “Haitian Teenager, Detained for One Year, Loses Asylum Bid and Now Faces Another Year in Detention” (October 7 2003).

102. Amnesty International Take Action, “Rose Termitus, a 17-year-old Haitian Asylum Seeker Released!” (January 6, 2004).

103. It is unrealistic to expect families to quickly obtain authenticated birth certificates from the National Archives in Haiti, given the current political crisis there. Still, families are required to produce original birth certificates for the children seeking release. Other documents have to be notarized in Haiti, even though many of the children’s families live hours away from a notary. The Haitian Consul General acknowledged in July 2003 that, due to past corruption in Haiti, not all Haitian nationals had their birth certificates registered in the National Archives and that about 50,000 children who were abandoned by their parents in Haiti have never had their births registered. See also, Thalif Deen, “50 Million Children Lack Birth Certificates, Says UNICEF,” *Inter Press Service*, June 4, 2002.

104. See e.g., Letter to Carmel Clay Thompson, Office of Refugee Resettlement, and John Pogash, Office of Juvenile Affairs, from Cheryl Little, Lisa Frydman, Jack Wallace, and Charu N. al-Sahli, FIAC (March 17, 2003); Jacqueline Charles, “Haitians struggle to unite families,” *The Miami Herald*, December 12, 2002; Statement of Chimene Noel (December 3, 2002).

105. Statement of Chimene Noel (December 3, 2002); see also Jacqueline Charles, “Haitians struggle to unite families,” *The Miami Herald* (December 12, 2002).

106. See Letter to Carmel Clay Thompson from Cheryl Little (March 17, 2003).

107. “Christmas Present for Noel,” *Washington Post* (December 26, 2002); Alfonso Chardy, “Young Haitian migrant released,” *The Miami Herald* (December 25, 2002).

108. See e.g., Letter to Carmel Clay Thompson, Office of Refugee Resettlement, Department of Health and Human Services and John Pogash, Office of Juvenile Affairs from Cheryl Little (March 17, 2003).

109. “USA (Florida): Haitian Child Granted Asylum is Still in Detention,” Amnesty International Refugee Action (February 12, 2003).

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110. Interview with FIAC Attorney Lisa Frydman (January 15, 2003).

111. In 1998, the INS adopted guidelines for use in adjudicating children's claims that draw heavily on international law and standards to better protect children. The Immigration Policy Center's latest policy brief analyzes the treatment of unaccompanied children in the United States and concludes that the process by which decisions are rendered in the cases of unaccompanied migrant children is inefficient, slow, and utterly lacking in transparency. In general, children in detention do not know how long they will be detained, when their next hearing will be, whether or not they will be moved to different facilities, or when they will be able to contact family members or legal representatives. See the entire Policy Brief at

[http://www.aif.org/ipc/policy\\_reports\\_2004\\_CrossingBordersAlone.asp](http://www.aif.org/ipc/policy_reports_2004_CrossingBordersAlone.asp)

112. FIAC represents all of the unaccompanied minor children in immigration detention in Miami who need a lawyer. For an overview of the treatment of these children, see Charu Newhouse al-Sahli, Chris Kleiser, Cheryl Little, " 'I running out of hopely...' Profiles of Children in INS Detention in Florida," FIAC (October 2002).

113. Statement of Simon (February 6, 2003); see also Letter to Carmel Clay Thompson, Office of Refugee Resettlement and John Pogash, Office of Juvenile Affairs from Cheryl Little (March 17, 2003) (US citizen aunt of orphaned unaccompanied minor was eager to sponsor child but DHS' insistence that child's critically ill 94 year-old grandmother in Haiti provide notarized letter authorizing aunt to take custody indefinitely delayed child's release to aunt and child in desperation agreed to foster care placement).

114. In a recent report, Amnesty International noted that organizations have criticized the INS "for not following any set criteria or guidelines for determining whether a child should be placed in foster care and often do so on an ad hoc basis, usually following lengthy detention." Amnesty also noted that "[c]hildren should be confined and imprisoned only in exceptional circumstances or as a last resort, and then only for the shortest possible time." See "Why Am I Here?," Amnesty International (June 18, 2003).

115. Letter to Marion Dillis, Acting Officer-in-Charge from Jolie Justus, Shook, Hardy & Bacon (June 27, 2003).

116. "Free the Children from INS Custody, Abysmal Treatment," *The Miami Herald* Editorial (February 23, 2003).

117. Statement of Ovide Paul (December 13, 2002).

118. Letter to Marion Dillis, Acting Officer-in-Charge, Krome Processing Center from Jolie Justus, Esq., Shook, Hardy & Bacon (June 27, 2003).

119. Statement of Gilbert Alcenor (June 11, 2003).

120. The BIA affirmed the judge's decision in this case and Gilbert Alcenor faces imminent deportation.

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121. Two Haitian children, a girl and a boy who arrived by boat in October, 2002, were among a number of children initially categorized as adults based on dental exams. See Tanya Weinberg, "Haitian teen enjoys freedom after 7 months of detention," *Sun-Sentinel* (June 13, 2003); Letter to Carmel Clay Thompson from Cheryl Little (March 17, 2003).

122. Bob Dart, "Rights advocates decry conditions under which immigrant children held," *The Atlanta Journal-Constitution* (June 19, 2003); "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers," Physicians for Human Rights (June 2003); "Why am I here? Children in Immigration Detention," Amnesty International USA (June 2003).

123. Tanya Weinberg, "Critics say faulty INS procedure often lands children in adult jails," *South Florida Sun-Sentinel* (July 21, 2003). See also Tanya Weinberg, "Tests showed refugee to be an adult," *South Florida Sun-Sentinel* (May 24, 2003).

124. Ibid.

125. FIAC was also able to secure the help of attorneys at Catholic Charities in New Orleans, who represented Kenier in his asylum proceedings.

126. *Tima v. DHS*, No. 03-2520 c/w No. 03-2521 (Eastern District of Louisiana, December 3, 2003).

127. Ibid. The full transcript of this hearing is on file at FIAC.

128. See e.g., Joan Treadway, "Haitian refugee sent to juvenile center; Youth had stayed with adult detainees," *The New Orleans Times-Picayune* (January 06, 2004). See also, Amnesty International Refugee Action, "USA: Concern Over the Continued Detention of Two Haitian Children in a Louisiana Adult Prison," available at: <http://takeaction.amnestyusa.org/action/index.asp?step=2&item=10195>.

129. *Tima v. DHS*, No. 03-2520 c/w No. 03-2521 (Eastern District of Louisiana, December 3, 2003). See also, "Concern Over the Continued Detention of Two Haitian Children in a Louisiana Adult Prison," Amnesty International. <http://takeaction.amnestyusa.org/action/index.asp?step=2&item=10195>.

130. See e.g., Amnesty International, "Haitian Teenager Granted Asylum Is Still in Detention," Refugee Action (March 14, 2003); Teresa Descilo, Psychological Evaluation of Ernesto "Erns" Joseph (May 2, 2003); Tanya Weinberg, "Advocates Blast Teen's Detention," *South Florida Sun-Sentinel* (May 23, 2003); "Free Ernesto Joseph," LIRS Urgent Action, Newsletter of the Forgotten Refugees Campaign; FIAC Urgent Action, "Free Ernesto Joseph Now" (February 26, 2003).

131. Tanya Weinberg, "Haitian teen enjoys freedom after 7 months of detention," *South Florida Sun-Sentinel* (June 13, 2003).

132. "Cruel policy keeps children locked up," *The Miami Herald* Editorial (October 6, 2003); Jacqueline Charles, "Haitian teen gets 30 day reprieve," *The Miami Herald* (October 3, 2003); Toni Marshall, "Haitian teen gets deportation reprieve," *South Florida Sun-Sentinel* (October 3, 2003).

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133. FIAC Press Release, “A Bittersweet Week for Haitian Children”(January 8, 2004); Amnesty International, “USA (Florida): Haitian Teenager Locked up Alone,” Refugee Action (November 2003).

134. Letter to Cheryl Little, FIAC, from Teresa Descilo, Executive Director, Victim Services Center (October 22, 2003).

135. Statement of Ernso Joseph (October 9, 2003).

136. Letter to Asa Hutchinson, Under Secretary, Border & Transportation Security, Department of Homeland Security from Cheryl Little, FIAC (January 9, 2004); see also “Ernesto’s Inferno, DHS Should Release Haitian Teen So He Can Seek Status,” *The Miami Herald* (January 16, 2004).

137. Letter to Thomas Ridge, Secretary Department of Homeland Security from Congressman Kendrick Meek (November 12, 2003).

138. During the morning of January 16, 2004 Congressman Kendrick Meek was told by DHS officials in Washington, DC that Ernso Joseph would be released later that day, only to be told hours later that the earlier message was a mistake, a clerical error, and Ernso was going to be treated as an adult and remain detained at Krome. Only through Congressman Meek’s persistence did DHS finally agree to follow through on their original promise to release Ernso. See e.g. Jim DeFede, “Intervention wins fairness for Haitian teen,” *The Miami Herald* (February 1, 2004); Tanya Weinberg, “Haitian teen wins reprieve in battle for residency,” *South Florida Sun-Sentinel* (January 30, 2004); Jim DeFede, “U.S. government making example of Haitian child,” *The Miami Herald* (January 22, 2004); Congressman Kendrick Meek Announcement, “Rep. Meek Announces that Immigration has Released Ernesto Joseph today” (January 20, 2004); Tanya Weinberg, “Refugee Teen Savors Freedom,” *South Florida Sun-Sentinel* (January 18, 2004); Jacqueline Charles, “Haitian Teen freed amid inquiry,” *The Miami Herald* (January 17, 2004); Letter to Thomas Ridge, Secretary DHS, from Congressman Kendrick Meek (November 12, 2003); Amnesty International USA Refugee Action (April 3, 2003 and November 10, 2003); Letter to John A. Mata, Field Director, Bureau of Immigration and Customs Enforcement, from Congressman Kendrick Meek (November 6, 2003).

139. Letter to David Shahoulian, Holland & Knight LLP, from Lenard Koversly, DHS (January 28, 2004). See also Jacqueline Charles, “Haitian case moving to Juvenile Court,” *The Miami Herald* (January 30, 2004). Congress passed Special Immigrant Juvenile (SIJ) status into law in 1990 in order to protect abused, abandoned and neglected immigrant children. Eligible immigrant children are granted SIJ status and ultimately permanent residence. To be eligible, an immigrant child must be (1) found dependent on a juvenile court; (2) a victim of abuse, neglect and abandonment; (3) found eligible for long-term foster care because family reunification is not a viable option, and (4) determined it is not in the child's best interests to be returned to her native country but rather in her best interest to remain in the U.S..

140. Miami-Dade Legislative Item File Number 023546, "Release Detained Haitian Children" (December 17, 2003).

141. Rachel Swarns, “Haitians Are Held in U.S. Despite Grant of Asylum,” *New York Times* (July 25,

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2003).

142. "Deter, Detain and Return: The U.S. Immigration Policy for Haitian Refugees," TransAfrica Forum (2004).

143. Letter to Sister Jeanne O'Laughlin, Barry University, from Anthony S. Tangeman, Immigration and Naturalization Service, (September 30, 2002); Letter to Commissioner James Ziglar, Immigration and Naturalization Service, from Sister Jeanne O'Laughlin, Barry University (August 19, 2002); Jody Benjamin, "Barry U. Educator Wants to Lead Effort to Free Haitian Detainees," *South Florida Sun-Sentinel* (April 30, 2002); Elaine DeValle, "Haitian advocates, Rep. Meek meet to push for release of asylum seekers," *The Miami Herald* (April 30, 2002); Letter to Congresswoman Carrie Meek, U.S. House of Representatives from Sister Jeanne O'Laughlin, Barry University (April 26, 2002).

144. For a general overview of the treatment of Haitian children and families, see "INS Discriminatory Treatment of Haitian Children and Families: Backgrounder," FIAC (January 30, 2003); see also Tanya Weinberg, "Dozens Fast to Protest detention; Haitian Children Have Been Held Since Refugee Boat Arrived on October 29," *South Florida Sun-Sentinel* (December 17, 2002).

145. Alan Elsner, "Groups Ask UN to Probe U.S. Treatment of Haitians," Reuters (April 2, 2004); FIAC Press Release, "Groups Ask United Nations to Investigate US-Haitian Policy on Refugees" (April 2, 2004).

146. Rescue at sea does not necessitate repatriation. Just as maritime law requires boats to offer assistance to those in peril, refugee law requires that a country refrain from returning bona fide refugees to life threatening persecution. Article 33, Principle of *non-refoulement*, United Nations Convention Relating to the Status of Refugees, 189 UN Treaty Series 137 (opened for signature July 28, 1951); United Nations Protocol Relating to the Status of Refugees, 606 UN Treaty Series 267 (opened for signature January 31, 1967).

147. "Refugee Policy Adrift: The United States and Dominican Republic Deny Haitians Protection," Women's Commission for Refugee Women and Children (January 2003). Also see Bishop Thomas Wenski, "Learning to shout: The only way Haitians can seek asylum," *Orlando Sentinel* (March 14, 2004).

148. Michael Smith, "U.S. Coast Guard Boosts Patrols Off Haiti," Associated Press (March 7, 2004).

149. In December 2003, the U.S. State Department contacted about a dozen NGOs to ask for assistance with a detention camp that could accommodate up to 50,000 Haitians in the event of an exodus from Haiti. See e.g., Kathie Klarreich, "New Haitian exodus, Same old US treatment of refugees," *The Christian Science Monitor* (February 3, 2004). However, after weeks of an open policy of forcibly returning Haitian refugees in masse, it appears that Guantánamo is no longer even being seriously considered, at least in the short term. In March, 2004, DHS requested 6.2 million in their fiscal year 2005 budget for the Caribbean Regional Initiative, ostensibly to detain Haitians at Guantánamo. DHS 05 budget <http://www.house.gov/judiciary/dougherty022504.pdf> On February 25, 2004, a small boat of 14 Haitian men and women actually landed at the Guantánamo



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Bay Naval Station. All 12 Men and two women were quickly repatriated by the U.S. Coast Guard. Tal Abaddy, "Coast Guard repatriates 14 Haitian migrants caught on sailboat," *South Florida Sun-Sentinel* (March 1, 2004).

150. On November 15, 2002 President Bush issued an Executive Order allowing the Attorney General to maintain custody of any interdicted person at any location he deems appropriate, including Guantánamo Bay. See Executive Order, "Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region" (November 15, 2002). It allows the Attorney General to conduct any screening he considers suitable, including most importantly, absolutely no screening at all. It also authorizes third country resettlement. Human rights organizations decried this latest Administrative directive. See e.g., Amnesty International USA, "Bush Policy: All Refugees Are Not Created Equal," Analysis of President Bush's Nov. 15 Executive Order on Interdiction in the Caribbean Region, by Bill Frelick, Director, Refugee Program (December 2002); Women's Commission for Refugee Women and Children Press Release, "Latest Bush Executive Order Further Erodes Haitians' Ability to Gain Refugee Protection" (November 18, 2002).

151. Remarks by the President, "President Bush Welcomes Georgian President Saakashvili to White House," White House News Release/Transcript (February 25, 2004), available at: <http://www.whitehouse.gov/news/releases/2004/02/20040225-1.html> ; see also Thomas Omestad, "A Nation on the Brink," *U.S. News & World Report* (March 8, 2004); Tim Weiner and Lydia Polgree, "Facing New Crisis, Haiti Again Relies On U.S. Military to Keep Order" *AHP* (March 7, 2004).

152. See e.g., Michael Smith, "U.S. Coast Guard Boosts Patrols Off Haiti," Associated Press (March 7, 2004); Bill Frelick, "Denying Haiti's Refugees," *The Washington Post* (March 6, 2004).

153. Letter to Cheryl Little from J. L. Orsini, Acting Chief, Office of Law Enforcement, U.S. Coast Guard (April 12, 2004). Advocates expressed concern about conflicting numbers of interdicted Haitians provided by the U.S. Coast Guard in February 2004 as well as the repatriation process itself. See letter to Admiral Thomas H. Collins, Commandant, U.S. Coast Guard, from Cheryl Little and Charu Newhouse al-Sahli, FIAC (March 24, 2004); Letter to Secretary Thomas Ridge and Secretary Colin L. Powell from Cheryl Little and Charu Newhouse al-Sahli, FIAC (March 24, 2004).

154. See Michael Smith, "U.S. Coast Guard Boosts Patrols Off Haiti," Associated Press (March 7, 2004); Bill Frelick, "Denying Haiti's Refugees," *The Washington Post*, (March 6, 2004).

155. Michael Smith, "U.S. Coast Guard increases patrols off Haiti to halt any boat people," Associated Press (March 7, 2004).

156. Human Rights Watch Press Release, "Haiti: U.S. Return of Asylum Seekers Is Illegal" (March 2, 2004) available at <http://hrw.org/english/docs/2004/03/01/haiti7772.htm>. See also Letter to President George W. Bush from Mark Franken, Chair, Refugee Council USA (March 3, 2004); "UN fears for Haitian refugee plight," *BBC News* (February 28, 2004); UNHCR Press Release, "UNHCR urges international support for Haitians and right of asylum" (February 26, 2004); Wendy Young, "U.S. Should honor rights of Haitian refugees," *The Baltimore Sun* Op-Ed (February 16, 2004); Media Advisory, "Women's Commission for Refugee Women and Children and FIAC Call Upon Bush

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Administration to Protect Haitian Refugees” (February 9, 2004);

157. Inter-American Commission, Special Report on Haiti 1993, available at <http://www.cidh.oas.org/publi.eng.htm>

158. U.S. Coast Guard Seventh District Press Release, “Coast Guard Repatriates 651 Haitian Migrants” (April 27, 2004).

159. According to the U.S. Coast Guard on March 9, 2004, “surface patrols are currently being conducted by 110-foot Patrol Boats, 210 and 270-foot Medium Endurance Cutters, 225-foot Buoy Tenders and 378-foot High Endurance Cutters. Aerial surveillance is being provided by Coast Guard helicopters and airplanes as well as Immigration and Customs Enforcement P-3 long-range maritime patrol aircraft.” See Fact Sheet, “Homeland Security Haitian Operations, Joint Information Center Homeland Security Task Force Southeast (March 9, 2004) available at <https://www.piersystem.com/external/?fuseaction=external.docview&cid=698&pressID=31772>. The Coast Guard also informed Senator Kennedy’s office that there were at least 19 Coast Guard cutters and patrol boats patrolling the Windward Passage and surrounding waters of Haiti. See e-mail from Esther Olavarria to Charu Newhouse al-Sahli (March 4, 2004).

160. Ibid., Affidavit of Joan Maruskin, Washington Representative, Immigration and Refugee Program, Church World Service (April 19, 2004).

161. An April 19, 2004 affidavit states that U.S. forces are impeding Haitians from crossing the Dominican Republic border. See Affidavit of Joan Maruskin, Washington Representative, Church World Service, reporting on April 19, 2004 information from Haiti.

162. United States Coast Guard Press Release, “Coast Guard Repatriates 651 Haitian Migrants” (April 27, 2004), at <http://www.piersystem.com/external/index.cfm?cid=586&fuseaction=external.docview&pressid=37060>. (Press release claims that these were the first interdictions in two months and that the total number of Haitians repatriated since February 21, 2004 was 1,591).

163. Ibid.

164. Christopher Marquis, “Aristide Flees After a Shove From the U.S.” *The New York Times* (March 1, 2004).

165. The asylum office is considered by many advocates to be among the best-trained on human rights issues in the U.S. government. It is disturbing that the officers were not allowed to play any role in screening potential asylum applicants.

166. See generally, “Refugee Policy Adrift, The United States and Dominican Republic Deny Haitians Protection,” Women’s Commission for Refugee Women & Children (January 2003).

167. While the United States negotiates third country resettlement with potential receiving countries, the refugees remain housed at Guantánamo Bay. They are detained separately from the prisoners of

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war from the conflicts against Afghanistan and al-Qaeda, who are detained at Camp X-Ray. See generally, "Migrant Interdiction: Law and Practice," Yale Law School Allard K. Lowenstein International Human Rights Clinic (January 2004).

168. Letter to Santiago A. Canton, Executive Secretary, Inter-American Commission on Human Rights (March 16, 2004). See also FIAC Press Release, "OAS to Investigate Interdiction and Forced Return of Haitian Refugees" (March 25, 2004).

169. See Letter to James L. Cavallaro, Associate Director, Human Rights Program, Harvard Law School, from Santiago Canton, Executive Secretary, Organization of American States, Inter-American Commission on Human Rights (March 22, 2004).

170. Statement of Attorney General John Ashcroft regarding the Haiti Migrant Situation in Miami, Florida (October 30, 2002), available at <http://www.USDOJ.gov>.

171. Letter to Senator Bob Graham from Cheryl Little, FIAC (September 19, 2000); see also Cheryl Little, "Haitian Children Awaiting Visas: A Plea for Help," Florida Rural Legal Services (April 1994).

172. The Department of State responded to a congressional inquiry about the feasibility of in-country processing by stating: "We do not believe that the extraordinary remedy of an in-country refugee processing program for Haitians is appropriate at this time. Given the level of economic desperation in Haiti, an in-country program is likely to attract many more ineligible than eligible applicants. We believe that existing protection options for Haitians who may be at risk of persecution or torture are sufficient." "Responses to Congresswoman Ros-Lehtinen's Refugees," Submitted by Paul V. Kelly, Assistant Secretary for Legislative Affairs, U.S. Department of State (November 22, 2002).

173. See e.g., Sign-on Letter to Attorney General John Ashcroft and DHS Secretary Tom Ridge from Refugee Council USA, with 59 signatories (July 23, 2003); Sign-on Letter to Marcos Jimenéz from Refugee Council USA, with 43 signatories (May 29, 2003); Letter to Marcos Jimenéz, U.S. Attorney for the Southern District of Florida, from Cheryl Little, Esq., FIAC (March 14, 2003).

174. See e.g., Catherine Wilson, "Advocates challenge prosecution of Miami asylum seekers," Associated Press (August 3, 2003).

175. See e-mail from Charu N. al-Sahli to Cheryl Little (February 22, 2004).

176. See e.g., Letter to Marcos Jimenéz, U.S. Attorney for the Southern District of Florida, from Cheryl Little, Esq., FIAC (April 1, 2003); "Haiti's Prisons: Inside the Gates of Hell," *The Miami Herald* (March 25, 2001); Andy Kershaw, "Haiti's Desperate Deportees," *BBC News* (December 8, 2000); "Mother of Two, Deported to Haiti, Dies in Haitian Jail," *Haiti Progress*, Vol 18, No. 28 (September 27-October 3, 2000); Statement of Michelle Karchan, Executive Director of Alternative Chance, (August 30, 2000); Bureau of Democracy, Human Rights and Labor, U.S. Department of State, "Haiti Country Reports on Human Rights Practices 2000" (February 2001), available at <http://www.state.gov/gdrl/rls/hrrpt/2000/wha/index.htm>. The Board of Immigration Appeals has ruled that even though jailed Haitian deportees may be subjected to beatings, electric shock,

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burnings with cigarettes as well as lack of food and medical care, this does not constitute torture under the Convention Against Torture unless the Haitian government specifically intended to inflict torture on the detainee. *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002). The decision has been appealed.

177. See generally, “Refugee Policy Adrift: The United States and Dominican Republic Deny Haitians Protection,” Women’s Commission for Refugee Women and Children (January 2003).

178. Nancy San Martin, “Dominican Army Tightens Watch,” *The Miami Herald*, (November 25, 2002) (as many as 900 U.S. soldiers were reportedly rotated every 15 days as part of a joint military training experience with the Dominican Army). Recent reports suggest that the 20,000 M-16 assault rifles U.S. officials promised the Dominicans were never delivered. Amnesty International Press Release, “Haiti: Refugees and asylum seekers are not part of the conflict” (February 27, 2004).

179. “Four years after, the victims of the massacre of Guayubin still await justice,” Group with Support to Refugees and Repatriates (GARR) (February 6, 2004).

180. Amnesty International Press Release, “Haiti: Refugees and asylum seekers are not part of the conflict” (February 27, 2004). See also Kathie Klarreich, “Haiti: Opposition – and US – must step up to bat,” *The Christian Science Monitor* (March 01, 2004); Kathie Klarreich, “A Battle of Cannibals and Monsters,” *TIME Magazine* (February 23, 2004).

181. “Jamaica Can Help, USA Cannot,” posted by Oread Daily (April 5, 2004).

182. This section of the report in large part is taken from a Petition filed with the OAS by FIAC, Harvard Immigration and Refugee Clinic and Harvard Law Student Advocates for Human Rights (March 16, 2004).

183. See e.g., U.S. Embassy in Port-au-Prince, “Warden Message” (February 29, 2004); U.S. State Department, “Haiti: Travel Warning” (February 27, 2004).

184. Louis Jodel Chamblain turned himself in to police in Port-au-Prince on April 22, 2004. Chamblain was convicted in absentia for his role in the 1994 massacre in Raboteau and convicted of the assassination of pro-democracy activist, Antoine Izméry, in 1993. News Release issued by the International Secretariat of Amnesty International (April 23, 2004); Amnesty International Press Release, “Haiti: Convicted human rights violators must not be allowed power” (March 3, 2004).

185. Amnesty International Press Release, “Haiti: Convicted human rights violators must not be allowed power” (March 3, 2004).

186. Susan Nexmith, “Violence Flares at Rally for Aristide opponents,” *The Miami Herald* (March 8, 2004).

187. Rick Westhead, “Bodies Piled High in Haiti Morgue,” *The Toronto Star* (March 3, 2004); Human Rights Watch, “Haiti: U.S. Return of Asylum Seekers is Illegal” (March 2, 2004), available at <http://hrw.org/english/docs/2004/03/01/haiti7772.htm>.

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188. “Reprisal Killings” still frequently occur in Haiti, with victims often burned in the streets. The Haitian Lawyer’s Leadership Network recently stated that the director of the Port-au-Prince morgue reported over 1,000 bodies passing through since the uprising, most with hands tied behind their backs. Simon Gardner, “Political Reprisals Linger in Post-Aristide Haiti,” Reuters (April 1, 2004); Tom Griffin, “Hundreds of Corpses Fill Haiti Morgues,” *Democracy Now* (April 12, 2004). On April 12, 2004, an attorney delegation member reported that hundreds of corpses have been dumped in the morgues with plastic bags over their heads and hands tied behind their backs. Tom Griffin, “Hundreds of Corpses Fill Haiti Morgues,” Associated Press (April 12, 2004). In Les Cayes, Haiti, a band of about 20 civilians and some ex-soldiers from Haiti’s former army guard the town against attacks by armed groups loyal to Aristide known as “Chimere.” Stevenson Jacobs, “Lawlessness Underscores Haiti Challenge,” Associated Press (April 9, 2004). Pro-Aristide grassroots supporters have also been attacked and kidnapped in the poorer Port-au-Prince neighborhoods. Amnesty International Press Release, “Haiti: Armed Groups Still Active” (April 8, 2004).
189. Sandra Jontz, “Marines Deal With Haitian Gangs,” *Stars and Stripes* (April 13, 2004).
190. See Tom Griffin, “Hundreds of Corpses Fill Haiti Morgues,” *Democracy Now* (April 12, 2004).
191. Simon Gardner, “Political Reprisals Linger in Post-Aristide Haiti,” Reuters (April 1, 2004).
192. “U.S. Soldiers in Haiti Face Anger and Resentment,” Associated Press (April 12, 2004).
193. Stevenson Jacobs, “Lawlessness Underscores Haiti Challenge,” Associated Press (April 9, 2004).
194. “Haiti: U.S. Return of Asylum Seekers is Illegal,” Human Rights Watch (March 2, 2004).
195. See e.g., Rick Westhead, “Bodies Piled High in Haiti Morgue,” *The Toronto Star* (March 3, 2004); Christopher Anderson, “Heartbreak in the Tropics,” *U.S. News & World Report* (March 15, 2004).
196. “Haiti Toll May Soar,” *Sunday Mail*, March 7, 2004.
197. Ibon Vilelabeitia, “Haiti’s dead appear – and disappear again,” Reuters (March 15, 2004).
198. Jacqueline Charles, “Aristide’s ex-security chief held,” *The Miami Herald* (March 13, 2004). Caribbean Community and Common Market (CARICOM) and a number of US-based organizations have called for a UN investigation into the circumstances surrounding President Aristide’s departure from office. CARICOM member organizations include Antigua & Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts & Nevis, Saint Lucia, St. Vincent & the Grenadines, Trinidad & Tobago.
199. Susannah A. Nesmith, “Gunmen setting the rules in Gonaives,” *The Miami Herald* (March 13, 2004); Susan Milligan, “5 killed, 30 injured at Haitian rally,” *Chicago Tribune* (March 8, 2004).
200. “Haiti Remains Volatile, Crimes Rising, UN Reports,” Reuters (April 29, 2004).

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201. See L'Agence Haitienne de Presse Enligne, *AHP Haiti-Agence Haitienne de Presse* (April 21, 2004) <http://www.ahphaiti.org>
202. Michelle Faul, "Haiti fires 300 Aristide staff," Associated Press (April 27, 2004).
203. "Haiti Remains Volatile, Crime Rising, UN Reports," Reuters (April 29, 2004).
204. "US Soldiers in Haiti Face Anger and Resentment," Associated Press (April 12, 2004).
205. AHP *Haiti-Agence Haitienne de Presse* (April 26, 2004 10:20 AM) <http://www.ahphaiti.org>
206. AHP *Haiti-Agence Haitienne de Presse* (April 27, 2004 11:05 AM) <http://www.ahphaiti.org>
207. Paisley Dodds, "U.S. Marines kill at least two in Haiti," *The Miami Herald* (March 13, 2004).
208. Ibon Villeda, "Haiti's dead appear – and disappear again," Reuters (March 15, 2004); "U.S. Marine shot and wounded in Haiti," *CNN* (March 15, 2004).
209. "Street Children, Girl Servants Severely Affected by Haiti Violence," UN News Service (April 20, 2004).
210. Ibid.
211. Ibid.
212. Interim Prime Minister Gerard Latortue has issued a blacklist of dozens of Aristide supporters who are barred from leaving the country. See Simon Gardner, "Political Reprisals Linger in Post-Aristide Haiti," Reuters (April 1, 2004).
213. Amnesty International Press Release, "Haiti: Armed Groups Still Active" (April 8 2004).
214. Michael Christie, "Human Rights Organizations Alarm over Haiti's Prime Minister 'Unholy Alliance' with Rebels," Reuters (April 29, 2004).
215. In late March 2004, a Haitian deportee advised FIAC that information in her INS file was provided to Haitian police and that immediately upon her arrival at the Port-au-Prince airport four police officers demanded to know why she had spoken against Aristide while in the U.S. seeking asylum and threatened to jail her. Telephonic Statement of \_\_\_\_\_ provided to Sarnia Michel (March 22, 2004) (name withheld). Another Haitian woman deported in mid-late March 2004 described a similar experience to FIAC. According to a June 21, 2001 U.S. Department of Justice Memo, information contained in or pertaining to any asylum application should not be disclosed without the written consent of the applicant, absent exceptional circumstances.
216. Statement of Detained Haitian Women at the Broward Transitional Center (February 18, 2004).
217. Statement of Detained Haitian Women at the Broward Transitional Center (March 1, 2004).

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Rachel Swarns, "National Briefing: Washington," *The New York Times* (August 12, 2003).

218. Stevenson Jacobs, "Lawlessness Underscores Haiti Challenge, Associated Press (April 9, 2004). *The Miami Herald* reported that approximately 115 Haitians attempting to flee by boat were ambushed on the night of February 23, 2004, the majority of whom were massacred by thugs who shot them to death. According to the report, while a few witnesses survived, there has not been an investigation, and there is no functional judicial system operating in Haiti to bring the perpetrators to justice. See Joe Mozingo, "Fatal ambush cuts off voyage to escape slums," *The Miami Herald* (March 12, 2004).

219. See e.g., Nancy San Martin, "Turmoil Spreads In Haiti: Aristide foes stoke rebellion," *The Miami Herald* (August 9, 2002). Michael Norton, "Haitian Protesters take over City," *The Miami Herald* (August 6, 2002); Nancy San Martin, "Haitian Police Break Up Residents' Street Protest," *The Miami Herald* (August 6, 2002); "Protesters Seize Control of Haiti's Fourth-Largest City," CNN.com (August 6, 2002); "Thousands Protest in Haiti," Combined News Services (August 6, 2002); "Haitian City remains Tense After Jail Break," Reuters.com (August 6, 2002); Press Statement, U.S. Department of State (August 5, 2002).

220. Transcript of telephone message from Crismene St Fleurant to Sarnia Michel, FIAC (December 9, 2003).

221. Jeb Bush, "Haiti Needs Our Help," *Washington Post* Op Ed, (March 23, 2004). Haiti's neighbors in the Caribbean community and the African Union have called for an investigation into the forced departure of President Aristide and selection of Haiti's interim Prime Minister, Gerard Latortue. CARICOM has also brought the issue before the Organization of American States.

222. Coast Guard statistics show that they were routinely interdicting more than 300 Haitians a month at various times between 1997-2000 (for example, 395 in January 2000, 477 in October 1998, 428 in September 1998, and 421 in November 1997). Each of these monthly interdictions represented substantial increases over total interdictions from the preceding three months, yet no mass migration followed. U.S. Coast Guard, "Migrant Interdiction Statistics" (July 25, 2003), available on-line at: <http://www.uscg.mil/hq/g-o/g-opl/mle/amiostats1.htm>.

223. INS also claimed there was evidence of a "mass migration" because 264 Haitians were interdicted shortly after the October 2002 boat made it to shore, in November of 2002. They stated that whenever a boat successfully landed in the U.S. it encourages others to leave. Yet in December 2002, the month following the highly publicized announcement of President Bush's latest measures to deter Haitians from fleeing, the Coast Guard captured more Haitians than it did the previous month. *In re D-J -, I & N* Dec.572, 578 (A.G. 2003).

224. Coast Guard statistics show that as of March 5, 2004, 2053 Haitians were interdicted as compared to 2831 Dominicans in fiscal year 2004 U.S. Coast Guard, "Migrant Interdiction Statistics" (March 5, 2004) <http://www.uscg.mil/hq/g-o/g-opl/mle/FlowStats/FY.htm> In 2002, the last full year for which interdiction figures are available, Ecuador had become the single largest source of immigrants interdicted by the Coast Guard. "Migrant Interdiction & Law and

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Practice,” Yale Law School, Allard K. Lowenstein International Human Rights Clinic (January 2004). See also Associated Press, “Exodus of Dominicans forces extra U.S. deployments,” *CNN* (February 6, 2004).

225. United Nations High Commissioner for Refugees, “Request for Advisory Opinion on Detention of Asylum Seekers” (April 15, 2002); see also Article 31 (1) of the 1951 Convention Relating to the Status of Refugees and its 1962 Protocol, which the U.S. ratified in 1968.

226. Leaders in the Haitian community, immigrant advocates and local politicians in South Florida asked Florida Governor Jeb Bush to urge his brother in the White House to permit the Haitians’ release. See e.g., “Florida Governor urges fairer treatment,” *CNN* (October 30, 2002); Maya Bell, “Gov. Bush assures Haitians of fair and decent treatment,” *Orlando Sentinel* (October 30, 2002); Marjorie Valbrun, “Bush to Face Florida Protests Over Move to Detain Haitians,” *Wall Street Journal* (April 29, 2002); “Protecting Jeb?,” *The Wall Street Journal* (April 26, 2002). Advocacy efforts were later directed at Jeb Bush’s brother, President George W. Bush. See e.g. Peter Wallsten, Lesley Clark and Jacqueline Charles, “Governor pressured to ‘call brother’ for help,” *The Miami Herald* (October 31, 2002); Jody A. Benjamin, “Haitians protest immigration policy during President Bush’s Visit,” *South Florida Sun-Sentinel* (May 21, 2002); Liz Balmaseda, “Haitian refugees turn eyes to Bush,” *The Miami Herald* (May 20, 2002).

227. Alfonso Chardy, “Holding Haitians a security issue, INS brief details,” *The Miami Herald* (November 13, 2002); Andrea Elliott, Larry Lebaowitz and Jennifer Maloney, “INS appeals bonds, calls detained Haitian migrants threat to national security,” *The Miami Herald* (November 7, 2002).

228. See e.g., Brian Bandell, “INS Appeals Bond Issued to Haitians, Citing National Security Threat,” Associated Press (November 7, 2002); see also Alfonso Chardy, “Holding Haitians a Security Issue, INS Brief Details,” *The Miami Herald* (November 13, 2002); Andrea Elliott, Larry Lebowitz, and Jennifer Maloney, “INS Appeals Bonds, Calls Detained Haitians a Threat to National Security,” *The Miami Herald* (November 7, 2002). Countless groups criticized the policy of keeping the Haitians in detention for purposes of national security across the country. See e.g., Amnesty International Press Release, “Justice Department To Use Detention To Keep Refugees Out of Country, Amnesty International Charges” (November 13, 2002); FIAC and National Coalition for Haitian Rights Press Release, “Advocates Express Bitter Disappointment Over Latest INS Directive and Demand Fair Treatment of Haitians” (November 13, 2002); FIAC Press Release, “Parole the Haitians Now” (October 31, 2002); FIAC Press Release, “Immigration Judge Granted Haitians Bonds But INS Invokes National Security Rule To Keep Haitians Detained” (November 6, 2002).

229. The BIA specifically rejected as irrelevant the government’s argument that “the release on bond of additional alien passengers from [the October 29] vessel will cause a ‘surge’ in other aliens attempting to reach the United States by sea” and that “there are insufficient resources to adequately screen the passengers of these vessels, which may contain aliens seeking to threaten the homeland security of the United States.” *In re D-J-, I & N* Dec. 572 (A.G. 2003).

230. Asa Hutchinson, “Referral of Decision to Attorney General” (March 20, 2003). See also FIAC,



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Lawyers Committee for Human Rights and Women's Commission for Refugee Women and Children Press Release, "Recent Victory for Haitian Refugees Thwarted by DHS; Major Refugee Organizations Decry Decision" (March 21, 2003); Letter to Attorney General John Ashcroft from Cheryl Little, FIAC (January 28, 2002).

231. *In re D-J-*, 23 I&N Dec. 572 (A.G. 2003).

232. Ashcroft claims that he is "broadly authorized" to keep Haitians like David Joseph in detention without the detainees' having any right to parole or review by a judge, "based on any reasonable consideration." Indeed, Ashcroft has declared himself the final word on all immigration law. See e.g., Susan Benesch, "Haitians Trapped by 'War on Terrorism,'" Amnesty International (April 12, 2004); see also "Attorney General Ashcroft Calls for Blanket Detentions of Haitian Asylum Seekers; New Precedent Decision Portrays Haitians as Risks to National Security," Lawyers Committee for Human Rights (April 28, 2003). A number of articles critical of Ashcroft's decision were published in newspapers across the country. See e.g., Bishop Thomas Wenski, "Linking Terrorism to Haiti is 'ludicrous,'" *The Miami Herald* Op-Ed (May 15, 2003); "Security risks, real and imagined," *Chicago Tribune* (April 29, 2003); "An Excess of Security," *Washington Post* (April 28, 2003); "Undeserved Mistreatment," *The Miami Herald* (April 25, 2003); Cheryl Little, "Treat Haitian asylum seekers fairly, not Cubans worse," *The Miami Herald* Op-Ed (April 25, 2003); "Release Haitian Detainees," *The Miami Herald* (March 25, 2003).

233. The Coast Guard, the Department of State, and the Department of Defense submitted declarations to the immigration court arguing that Haitian migration constitutes a threat to national security. They based their position on: 1) concern that a mass migration from Haiti would require the diversion of Coast Guard and military resources away from national security to interdiction and detention efforts; 2) fear that the use of Guantánamo Bay to detain Haitians would undermine efforts to extract intelligence information from the al-Qaeda members held there; and 3) allegations that third country nationals, such as Palestinians and Pakistanis, might use Haiti as a staging point. See Declaration of Captain Kenneth Ward, U.S. Coast Guard; Memorandum to Stephen E. Biegun, National Security Council, from Maura Harty, Department of State; Declaration of Joseph J. Collins, Department of Defense. See also George Lardner Jr., "More Illegal Immigrants Can Be Held," *Washington Post* (April 25, 2003).

234. Michael Norton, "Haiti Rejects U.S. Gateway Allegations," Associated Press (April 30, 2003).

235. See e.g., Jacqueline Charles, "Migrant memo focused on Haiti," *The Miami Herald* (April 26, 2003); Jacqueline Charles, "Diplomats puzzled by claim migrants use Haiti to enter U.S.," *The Miami Herald* (April 25, 2003).

236. Ari Fleicher, White House Press Briefing (October 30, 2002).

237. "America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11," prepared by the Migration Policy Institute (June 30, 2003), available at <http://www.migrationpolicy.org/pubs/americaschallenges.pdf>.

238. Donald Kerwin, "Undermining Antiterrorism," *America Magazine* (June 23, 2003).

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239. As an Amnesty International official recently wrote, "It is hard to imagine a would-be terrorist heading for the United States on a Haitian boat -- since that would likely lead either to drowning or a face-to-face encounter with U.S. authorities. It is also hard to imagine U.S. officials unable to distinguish a Pakistani or Palestinian from a Haitian." Susan Benesch, Refugee Advocate, Refugee Project, Amnesty International, USA, "Haitian Refugees Trapped by War on Terror," *Amnesty Now* (Fall 2003).

240. Letter to Mary Gundrum, FIAC, from Louis F. Giles, Director of Policy, National Security Agency, Central Security Service (August 25, 2003).

241. Letter to Mary Gundrum, FIAC, from Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State (December 24, 2003).

242. Letter to Mary Gundrum, FIAC, from Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State (March 12, 2004).

243. Letter to Appeals Review Panel, U.S. State Department, from Mary Gundrum, FIAC (February 24, 2004); Letter to FOIA Appeal Authority, National Security Agency, from Mary Gundrum, FIAC Managing Attorney (October 24, 2003).

244. FIAC and the Women's Commission for Refugee Women and Children wrote to Secretary of State Colin Powell to ask that the Haitian detention policy be reconsidered in its entirety. See letter to Colin Powell, U.S. Secretary of State, from Ellen Jorgensen, Acting Director Women's Commission for Refugee Women and Children, and Cheryl Little, FIAC (January 13, 2004); see also letter to Cheryl Little, FIAC from David Lester, Director, Customer Assistance Office, U.S. Citizenship and Immigration Services (March 18, 2004).

245. Declaration of Peter Michael Becraft (March 18, 2002).

246. U.S. Coast Guard, "Migrant Interdiction Statistics" (July 25, 2003).

247. "Patterns of Global Terrorism," U.S. State Department (May 21, 2002).

248. Carol J. Williams, "Haitians Continue to Brave Seas Despite U.S. Barriers to Entry," *Los Angeles Times* (June 28, 2003).

249. See News Release, "Clarification of Eligibility for Permanent Residence Under the Cuban Adjustment Act," Immigration and Naturalization Service (April 26, 1999).

250. Lamar Smith (R-TX) has argued that many Nicaraguans and Cubans were granted the right to apply for amnesty in 1997 because they were allies in the Cold War fight against communism. This did not surprise attorneys who represent asylum applicants of different nationalities and are familiar with the differences in treatment accorded to Haitians and other fleeing brutal dictatorships compared to those from communist countries.

251. See "Proposed Refugee Admissions for Fiscal Year 2003: Report to Congress," submitted on

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Behalf of the President of the United States to the Committees of the Judiciary of the Senate and House of Representatives by the Departments of State, Justice, and Health and Human and Services (September 2002).

252. Office of the Inspector General, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks," U.S. Department of Justice (June 2003).

253. Testimony of Kerline Phelizor, Public Forum at the U.S. Senate, "Justice For All: Selective Enforcement in Post-911 America," (June 4, 2003); see also Julia Malone, "Immigrants tell of swift, harsh actions during anti-terror sweep," *Atlanta Journal-Constitution* (June 5, 2003).

254. "Who's Responsible for Unfair Policy on Haitian Refugees?" *The Miami Herald* (October 3, 2002); Written testimony of Senator Bob Graham, before the Senate Judiciary Subcommittee on Immigration (October 1, 2002).

255. Written testimony of Senator Bob Graham, before the Senate Judiciary Subcommittee on Immigration (October 1, 2002); see also Senator Bob Graham, "Who's responsible for unfair policy on Haitian refugees?" *The Miami Herald* (October 3, 2002).

256. White House Press Conference (November 7, 2002); President George W. Bush, "President Outlines Priorities," White House News Release (November 7, 2002); see also Alfonso Chardy and Jacqueline Charles, "President: Treat Haitians Just Like Other Immigrants," *The Miami Herald* (November 8, 2002).

257. "Notice Designating Aliens Subject to Expedited Removal under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act," Federal Register (Order No. 2243-02)(November 13, 2002); "INS Announces Notice Concerning Expedited Removal," U.S. Department of Justice (November 8, 2002). See also Dana Canedy, "Hopes for Speed Release of Haitian Refugees Fade," *The New York Times* (December 16, 2002).

258. A number of human rights organizations submitted written comments opposing the proposed notice designating aliens subject to expedited removal. See e.g., Comments to Director, Regulations and Forms, Services Division, INS from Bill Frelick, Director, Refugee Program, Amnesty International, USA (December 13, 2002); Comments to Director, Regulations and Forms, Services Division, INS from Guenet Guebre-Christos, United Nations High Commissioner for Refugees Regional Representative (December 2002); Comments to Director, Regulations and Forms, Services Division, INS from Cheryl Little, Executive Director, FIAC (December 13, 2002).

259. "Notice Designating Aliens Subject to Expedited Removal under Section 35(b)(1)(A)(iii) of the Immigration and Nationality Act," Federal Register (Order No. 2243-02)(November 13, 2002).

260. News Release, "U.S. Justice Department to Use Detention to Keep Refugees Out of Country, Amnesty International Charges," Amnesty International (November 13, 2002). See also "INS Announces Expedited Removal for Migrants Arriving By Sea," Media Alert, Lawyer's Committee for Human Rights (November 12, 2002).

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261. Office of the Federal Detention Trustee, "Statistics," U.S. Department of Justice (Fiscal Year 2002), available at <http://www.usdoj.gov/ofdt/statistics.htm>.

262. See e.g., "Cruelty masquerades as homeland security," Our Opinion: "Use U.S. Resources to Help, Not Punish, Haitians," *The Miami Herald* Editorial (November 23, 2003).

263. Susan Benesch, Refugee Advocate, Refugee Project, AIUSA, "Haitian Refugees Trapped by War on Terror," *Amnesty Now* (Fall 2003).

264. Jacqueline Charles, "Haitian gets another chance to stay in U.S.," *The Miami Herald* (August 12, 2003); Tanya Weinberg, "Haitian teens who landed in Biscayne Bay win review of asylum claims," *South Florida Sun-Sentinel* (August 12, 2003).

265. Statement of David Joseph (October 29, 2003).

266. See generally, Cheryl Little, "Inter-Group Coalitions and Immigration Politics: The Haitian Experience in Florida," *The University of Miami Law Review* (July 1999); Cheryl Little, "United States Haitian Policy: A History of Discrimination," *New York Law School Journal of Human Rights* Volume X, Part Two (Spring 1993).

267. *Haitian Refugee Center v. Civiletti*, 503 F. Supp. 442 at 532 (S.D.Fla.1980), *modified sub nom. Haitian Refugee Center v. Smith*, 676 F. 2d 1023 (5th Cir. 1982). Deportation hearings were processed at an unprecedented rate under the Haitian Program. Previously, only between one and ten hearings were conducted each day. During the program, three immigration judges held an average of 55 hearings a day. At the program's peak, the number of deportation hearings increased to as many as 80 a day.

268. *Haitian Refugee Center v. Smith*, 676 F. 2d at 1030.

269. *Haitian Refugee Center v. Civiletti*, 503 F. Supp. 442 at 519 (S.D.Fla.1980), *modified sub nom. Haitian Refugee Center v. Smith*, 676 F. 2d 1023 (5th Cir. 1982).

270. *Louis v. Nelson*, 544 F. Supp 973 (S.D. Fla. 1982). Unlike other asylum seekers, the Haitians indefinitely detained at Krome were improperly denied access to their attorneys (thirty Haitians at a time were ordered deported behind locked doors, while attorneys were prevented from entering the rooms to inform them of their rights), were subject to mass exclusion hearings behind closed doors, were found excludable in hearings in which translators failed to translate properly, and were deported in a manner INS itself admitted was faulty.

271. *Jean v. Nelson*, 711 F.2d 1455, 1462 (11Cir. 1983), dismissed in part & rev'd in part, 727 F.2d 957, 978-79 (1984) (en banc), *aff'd*, 472 U.S. 486 (1985).

272. *Molair v. Smith*, 743 F. Supp.839, 850 (S.D.Fla. 1990).

273. *Haitian Refugee Center v. Baker*, 953 F. 2d 1498 (11 Cir. 1992). For a more complete discussion of this case, see Cheryl Little, "Inter-Group Coalitions and Immigration Politics: The Haitian Experience in Florida," *The University of Miami Law Review* (July 1999).

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274. Harold Maass and Marjorie Valbrun, "Haiti Exodus Prediction Questioned," *The Miami Herald*, (January 31, 1992).

275. Three times the District Court judge in *HRC v. Baker* ruled in favor of the Haitians and each time the Eleventh Circuit Court of Appeals stayed or vacated the judge's orders. The Appeals Court found that the Haitians had no legally enforceable rights in the United States because they were outside United States territory. The "catch-22" nature of this finding was not lost on Judge Hatchett, the one African-American judge on the Appeals panel, who remarked in a dissenting opinion: "Haitians, unlike other aliens from anywhere in the world, are prevented from freely reaching the continental United States." *Haitian Refugee Center, Inc. v. Baker*, 953 F.2d 1498, 1520 (11th Cir. 1992) (J. Hatchett, dissenting).

276. Petition for Writ of Certiorari at 8, *Haitian Refugee Center v. Baker*, cert. denied; 112 S. Ct. 1245 (1992).

277. See Plaintiffs' Application to Stay the Mandates of the United States Court of Appeals for the Eleventh Circuit Pending Certiorari at 31-34, *Haitian Refugee Center v. Baker*, 949 F.2d 1109 (11<sup>th</sup> Cir.), cert. denied, 112 S. Ct. 1245 (1992). In denying attorneys for the Haitians access to Guantánamo and the Coast Guard cutters, the government also claimed that it would seriously interfere with military operations. However, the District Court judge, Judge Atkins, noted that the portions of the military base to which the attorneys sought access were not used for military purposes. Coast Guard Admiral William P. Leahy acknowledged in his deposition that press members, VIPs, and a host of other persons had access to Guantánamo and he admitted that family members of Coast Guard members periodically go on Coast Guard cutters, including his fourteen year old son who spent two weeks on a cutter during a law enforcement mission. Moreover, during 1994-1995, Guantánamo held over 30,000 Cubans and over 20,000 Haitians and United States officials claimed they could facilitate an endless number of arrivals.

278. *Haitian Refugee Center, Inc. v. Baker*, 112 S. Ct. 1245 (February 24, 1992); see also "Supreme Court Makes Short Shrift of Haitians' Certiorari Petition," *Interpreter Releases*, (February 24, 1992 ); "Supreme Court Lifts Ban on Forced Repatriation of Haitians," *Interpreter Releases*, p. 149 (February 3, 1992).

279. "Bush Orders Coast Guard to Return All Haitians," *Interpreter Releases*, p. 672 (June 1, 1992); President George Bush, Executive Order 12807 (May 24, 1992).

280. Testimony by a senior official of the U.S. General Accounting Office (GAO) before a House sub-committee revealed that the INS had lost at least 2500 files at Guantánamo, due to disorganization and disarray, mistook "screened-in" Haitians for "screened-out" Haitians, and apparently rescreened and even repatriated previously "screened-in" Haitians. Those erroneously returned included at least 38 unaccompanied children and a 16-year old girl, Marie Zette, who was killed in her bed by Tonton Macoutes the first night after her forced return. Memorandum from Ruth Ellen Wasem, Specialist in Social Legislation, to the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees (November 15, 1991) (on file with the New York Law School Journal of Human Rights). See also Ron Howell, "U.S. May Have Erred

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on Some Haitians,” *Newsday* (April 2, 1992), at 120.

281 See Plaintiffs’ Response to Defendants’ Memorandum in Opposition to Plaintiff’s Motions for Expedited Discovery, Exhibits 21, 24, *Haitian Refugee Center v. McNary*, No. 92-1258 (E.D. N.Y. 1992).

282. *An Interim Assessment of the Asylum Process of the Immigration and Naturalization Service*, (Nat’l Asylum Study Project, A Project of the Harvard Law School Immigration and Refugee Program on the Legal Profession, Cambridge, Mass.), (December 1992).

283. Immigration and Naturalization Service Deputy Commissioner Ricardo Inzunza, Remarks at the Fletcher School of Law and Diplomacy, Tufts University (January 1992).

284. Memorandum from Jan C. Ting, Director, Asylum Policy and Review Unit & Kristen A. Giuffreda, Assistant Director, Asylum Policy and Review Unit to Rex J. Ford, Associate Deputy Attorney General 3 (May 26, 1992) (on file with the *New York Law School Journal of Human Rights*).

285. For a comprehensive review of the discriminatory treatment of the Haitian children detained at Guantánamo, see Cheryl Little, “Not In Their Best Interest: A Report on the U.S. Government’s Forcible Repatriation of Guantánamo’s Unaccompanied Haitian Children,” Florida Rural Legal Services (May 1995) and Supplemental by Karla Percy and Cheryl Little, “Unaccompanied Haitian Children Repatriated from Guantánamo: Stories of Trauma and Despair,” FIAC (September 1996). See also Bob Herbert, “Suffering the Children,” *New York Times* Editorial (May 27, 1995).

286 U.S. Atlantic Command News Release (March 1, 1995).

287. Amnesty International USA Press Release (March 8, 1995). In a January 1992 report, Amnesty International said it had received reports of grave human rights violations after the coup. Amnesty stated they knew of “several cases in the past years where asylum-seekers who were refused asylum in the USA and returned to Haiti were imprisoned and in some cases ill-treated on their return.” “Haiti: The Human Rights Tragedy; Human Rights Violations Since the Coup 24, Amnesty International (January 1992).

288. Hollywood notables included, among others, Susan Sarandon, Julia Roberts, Harry Belafonte, Danny Glover, Michelle Pfeiffer, Jack Lemmon, Jonathan Demme, and Gregory Peck.

289. Many of the children who were forcibly returned to Haiti from Guantánamo were living on the streets in Haiti and at great risk. At least one young Haitian girl was brutally raped following her return. Attorney General Janet Reno eventually paroled five of these children into the United States, including the young rape victim.

290. The United States’ interdiction, detention and parole policies aptly call attention to the disparities between our treatment of Cuban and Haitian refugees. For years, Cubans constituted a migration stream far larger than Haitians yet Cubans are routinely paroled into the United States and freed from detention, while Haitians are not. While these Cubans are typically authorized to work

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and eventually obtain permanent resident status, Haitians are systematically detained and deported. The Cuban Adjustment Act (CAA) of 1966, which permits Cubans who are paroled or admitted to the United States to apply for permanent residency one year later, accounts in large measure for the stark difference in treatment between the two groups. Because Cubans are eligible for residency under the CAA, few have even needed to apply for asylum. Although in recent years the United States has begun interdicting and returning Cubans attempting to come to the United States by boat, shipboard screening procedures, while far from perfect, are in place for interdicted Cubans, while Haitians are automatically returned without screening. In addition, under an agreement with the Cuban government, at least 20,000 visas must be given to Cubans to come to the United States each year. Cubans are also exempt from the expedited removal provisions of the immigration law that passed in 1996 as well as from more recent restrictive measures targeting boat people which are discussed in this report.

291. Jim Loney, "Summer Exodus Shows Different Policies on Haitians Cubans," Reuters (June 4, 1992), available in LEXIS, NexisLibrary, Omni file.

292. Evelyn Cleare, "Freedom vs. bondage," *The Miami Herald* Letters to the Editor (June 1993); Lourdes Fernandez, "Haitian escapes deportation," *The Miami Herald*, July 13, 1991); Kimberly Crockett and Harold Maass, "Crew Puts Haitians In Chains and Cage," *The Miami Herald* (July 12, 1991).

293. See Memorandum from Ruth Ellen Wasem, Specialist in Social Legislation, to the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees (November 15, 1991) (on file with the New York Law School Journal of Human Rights). In early January 2000, Yvena Rhinvil was forcibly separated from her two young children, an 8 year-old daughter and 10 year-old son, when she was taken off a Coast Guard cutter and flown to a Miami hospital. Her two children were not brought to the United States with her but instead were forcibly repatriated. Upon her arrival in the U.S., Ms. Rhinvil had no idea what had happened to her children and begged authorities for help in finding them. The repatriated children didn't know what had happened to their mother and feared she was among the Haitians who reportedly died at sea during their voyage. FIAC worked closely with Congresswoman Carrie Meek and the children were eventually granted humanitarian parole for 90 days and able to join their mother. See e.g., FIAC letters to INS Commissioner Doris Meissner (January 5, 7, 10, 2000); Amy Driscoll and Sandra Marquez Garcia, "'A Day that God has made', After three weeks apart, mom welcomes her kids from Haiti," *The Miami Herald* (January 23, 2000); Amy Driscoll, "'My Children Are Coming,' Haitian Rejoices," *The Miami Herald* (January 15, 2000); Amy Driscoll, "2 Haitian children to join mom in Florida," *The Miami Herald* (January 14, 2000); Amy Driscoll, "Haitian Mom from Boat Pleads: Bring My Kids Back to U.S.," *The Miami Herald* (January 8, 2000); Sandra Marquez Garcia, "In Haiti, Kids Cry for Mom in Miami," *The Miami Herald* (January 7, 2000).

294. Ibid. In response to public criticism of what became known as the Alien Migrant Interdiction Operation and a legal challenge to permissibility of the Haitian Interdiction program under international law, the program was revised in January 1991 to better inform interdicted Haitians about their right to apply for asylum and to improve the pre-screening interviews conducted on Coast Guard cutters. See Immigration and Naturalization Service, Memorandum from Asylum

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Branch, "Procedural Changes in the INS Asylum Pre-Screening Component of the AMIO" (March 1, 1991; "INS Revises Policy for Screening Haitians Interdicted at Sea," *Interpreter Releases*, p. 793 (July 1, 1991).

295. In October 1990, seven human rights and refugee organizations filed a petition with the Organization of American States (OAS), asking the organization to affirm that the interdiction of Haitians at sea violates U.S. obligations under international law, and to call on the U.S. government to end its interdiction program. The petition charged that the U.S. program discriminates against Haitians, who are the group subject to such interdiction, and denies them a fair opportunity to present their claims of persecution. In mid-March 1993, the OAS issued a resolution declaring that the Haitian interdiction program violates international law. The OAS resolution further states that it is in possession of information leading it to conclude that "Haitians who are so returned to Haiti... very frequently suffer persecution at the hands of the Haitian authorities." Organization of American States Press Release, "OAS Human Rights Committee Calls Clinton Haitian Interdiction Policy a Violation of International Law," March 19, 1993, (citing Precautionary Measures Taken by the Inter-American Commission in Case No. 10.675 (United States) at 83d period of sessions).

296. Virtually all of the recommendations in this report first appeared in a report published by the Women's Commission for Refugee Women and Children, in collaboration with the Florida Immigrant Advocacy Center and the National Coalition for Haitian Rights. "Refugee Policy Adrift: The United States and Dominican Republic Deny Haitians Protection" (January 2003).