

**SUBMISSION IN PREPARATION FOR A
WORKING MEETING
BEFORE THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
ORGANIZATION OF AMERICAN STATES**

SATURDAY, MARCH 26, 2011

**RE: PRECAUTIONARY MEASURES NO. MC-5-11 (UNITED STATES)
GARY RESIL, HARRY MOCOMBE, ROLAND JOSEPH, EVEL CAMELIEN, PIERRE
LOUIS AND OTHER SIMILARLY-SITUATED HAITIAN NATIONALS SUBJECT TO
IMMEDIATE DEPORTATION BY THE USA**

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Petitioners submit these observations (1) in response to the United States' response to the Inter-American Commission on Human Rights in the above-referenced case (dated February 18, 2011; received by Petitioners' Representatives on March 7, 2011), and (2) in anticipation of the March 26, 2011 working meeting regarding the above-referenced case.

I. Case Summary & Factual Update

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

In light of the epic crisis in Haiti after the earthquake, the United States government stayed deportations of Haitians on humanitarian grounds. However, just before the one-year anniversary of the earthquake, the United States Immigration and Customs Enforcement (ICE) quietly announced it was lifting the stay and resuming deportations, while releasing no other public information about the planned removals. Upon learning of this change in policy, immigrants' rights advocates and members of the Haitian-American community implored the Obama administration not to resume deportations at this time. Doing so, they argued, would result in serious human rights violations against the deportees. Indeed, before the earthquake, the Haitian government would routinely detain deportees from the U.S. for indefinite periods of time in unsanitary, abusive, and overcrowded conditions, where disease runs rampant and where detainees are deprived of food, water, hygienic products, medical care, and medicine. Detainees in these conditions are forced to rely on relatives in Haiti (assuming such relatives exist) for their basic needs. This policy is well-known to the United States, having been the subject of numerous State Department reports and congressional hearings over the past decade. For many deportees, this situation is tantamount to a death sentence.

On January 6, 2011, University of Miami Human Rights Clinic, University of Miami Immigration Clinic, the Florida Immigrant Advocacy Center, Alternative Chance, the Center for Constitutional Rights, and the Loyola University New Orleans College of Law Stuart H. Smith Law Clinic and Center for Social Justice (collectively, "Petitioners' Representatives") submitted a petition to the Inter-American Commission on Human Rights (IACHR) seeking precautionary measures on behalf of five (5) named Petitioners – Gary Resil, Harry Mocombe, Roland Joseph, Evel Camélien, Pierre Louis – as well as "other similarly-situated Haitian nationals subject to immediate deportation by the USA." The petition argued that Petitioners faced imminent and irreparable harm as a result of their deportations, which would result in violations of their and their families' rights protected under the American Declaration on the Rights and Duties of Man, including: Articles I and XXVI (Right to Life; Security of Person; and Freedom from Cruel, Infamous or Unusual Punishment); Articles V, VI, and VII (Right to Family/Personal Life; Special Protections for Children); Articles XVII and XXVI (Rights to Fair Trial and Due Process). The petition included declarations from

several recognized experts, including Dr. Arthur M. Fournier, Professor and Vice Chairman Family Medicine and Community Health and Associate Dean for Community Health Affairs at the University of Miami, Miller School of Medicine, who warned that deporting people to Haiti at this time “constitutes, in my opinion, cruel and inhuman treatment of the deportees . . . expos[ing] [them] to serious and life-threatening conditions in the jail cells and holding facilities.”¹ Nearly 300 organizations and individuals signed onto a letter in support of the petition.

On January 14, 2011, the IACHR requested information from the U.S. government on the following three questions:

1. Whether the U.S. has received any assurances from the Haitian State on the possibility that the proposed beneficiaries would be able to obtain proper medical care, food and clean drinking water in the place of detention to which they could be sent.
2. The status of the deportations proceedings with respect to Gary Resil, Harry Mocombe, Roland Joseph, Evel Camélien, and Pierre Louis.
3. Whether there is a final resolution and a date set for the deportation of the proposed beneficiaries.

In the early morning hours of January 20, 2011, the United States deported twenty-seven (27) Haitian nationals – including Roland Joseph, a named Petitioner in the IACHR precautionary measures case – against their will to Haiti. Just a few days before these deportations, many of the Haitians, fearing for their lives should they be deported to Haiti, had participated in a hunger strike to protest their ICE detention and looming deportation. Tragically, the deportees’ worst fears came true. The 27 men were detained in horrific detention conditions upon arriving in Haiti. Just over a week after arriving, one deportee, Wildrick Guerrier, 34, died from cholera-like symptoms after being detained in a Haitian jail, where he was exposed to crowded and unsanitary conditions and denied medical treatment. Mr. Guerrier’s death was preventable and a direct result of the U.S. Government’s decision to resume deportations to Haiti. More broadly, the decision to resume deportations has had calamitous consequences for each one of these men and their families in the U.S. and Haiti. This point was underscored by numerous deportees during a fact-finding mission by Petitioners’ Representatives to Haiti in February 2011, where they interviewed 10 of the 27 deportees.

On February 4, 2011, the IACHR granted Petitioners’ request for precautionary measures and urged the U.S. government to cease deportations to Haiti immediately for persons with serious illnesses or U.S. family ties. Proceeding with the deportations of Haitians, the IACHR found, “could jeopardize [Haitians’] lives, considering the humanitarian crisis that persists in the country, especially the detention conditions in jails and prisons.” The IACHR specifically urged the U.S. not to deport the five named Petitioners, until: 1) Haiti is able to guarantee that detention conditions and access to medical care for persons in custody

¹ Decl. of Dr. Arthur Michael Fournier, M.D., in support of Petitioner’s Request for Precautionary Measures to the Inter-American Commission on Human Rights. H.R., (Jan. 5, 2011).

comply with applicable minimum standards, and 2) the U.S. is able to put procedures in place to decide upon and review the deportation of the five beneficiaries and adequately take into account their right to family life and their family ties in the U.S.

The United Nations Independent Expert on the Situation of Human Rights in Haiti, Michael Forst, has also signaled concern over deportations to Haiti. In a 2010 report, Forst recommended that all countries “refrain from expelling Haitians and continue to provide decent temporary arrangements for their protections on humanitarian grounds.”² He reaffirmed this recommendation after visiting Haiti in February 2011.

On February 18, 2011, the U.S. government responded to three requests from the IACHR dated Jan. 14, 2011 with the following information, in pertinent part³:

1. “The U.S. has not received assurances from the Haitian Government regarding the medical care or provisions that the proposed beneficiaries will be able to obtain upon their return.”
2. [Explanation of the status of the 5 named Petitioners; three (Gary Resil, Evel Camelien, Pierre Louis) are subject of a final order of removal and currently detained in Louisiana; one (Roland Joseph) has been deported; one (Harry Mocombe) is subject of a final order of removal and was released from detention].
3. “[T]he United States would note that it is working to develop a program to assist with the reintegration of returnees to Haiti. . . . Protection of human rights and vulnerable populations is a top priority within the U.S. Government. We will continue to work with the Government of Haiti and our international partners on a broad array of efforts to meet both the immediate needs of vulnerable populations and to reduce vulnerabilities over the long term. [Discussion of the millions/billions of dollars that the U.S. has given or will give Haiti in humanitarian relief assistance, recovery assistance, and future reconstruction funds].

On February 21, 2011, Petitioners’ Representative Caroline Bettinger-Lopez reported to the IACHR on the group’s recent fact-finding mission to Port-au-Prince, Haiti, where they had in-person meetings with 11 of the 27 individuals whom the U.S. deported on Jan. 20, 2011, including Roland Joseph, a named Petitioner in this case. Several of the deportees were deported for nonviolent drug offenses. Bettinger-Lopez noted: “The stories we heard confirmed all of the worst-case scenarios set forth in Petitioners’ request for precautionary measures filed on Jan. 6, 2011.” Amongst the highlights are the following:

² Report of U.N. Independent Expert on the Situation of Human Rights in Haiti, Michel Forst, Human Rights Council, 14th Sess., Agenda Item 10, at 10 ¶ 38, http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.44_fr.pdf; also available at <http://www2.ohchr.org/english/bodies/hrcouncil/14session/reports.htm>.

³ Petitioners’ Representatives received a copy of the U.S. Government’s response on March 7, 2011.

- At least five deportees fell seriously ill, and one (Wildrick Guerrier) died just more than a week after arriving in Haiti. Mr. Guerrier (whom the other deportees nicknamed “Black Jesus”) became ill and died after cleaning up another detainee who had just been tortured, helping an elderly detainee who was ill, and organizing the other deportees to clean the feces, vomit, and trash in the space where they were confined. Several deportees reported that when Mr. Guerrier became ill, the deportees pled with the police guards to get him medical care, but the police refused, making comments such as “you are here to die/suffer.”
- The deportees described a terrifying deportation process, culminating in the detention of 17 of the 27 deportees in the Direction Centrale de la Police Judiciaire (DCPJ) police station in Port-au-Prince, Haiti for nearly two weeks. The 10 remaining deportees were detained in two other police stations outside Port-au-Prince.
- At DCPJ the seventeen men were forced into a small cell, approximately 3 x 15 feet. The floors were covered with dirt, feces, vomit, and trash, and the walls were blood-stained. The cell was infested with mosquitoes.
- The police station did not provide the men with food, potable water, beds, hygienic products, or medical care. Those deportees with family members in Haiti were entirely dependent on their family members to provide these basic necessities. Those without family in Haiti had no one to provide for their needs and relied solely upon the generosity of other deportees and their families in Haiti. When a representative of the Red Cross came to visit the deportees, the police guards kept for themselves the supplies she distributed. When a counselor from Alternative Chance visited bringing hygiene products and cholera information flyers, the DCPJ inspector never shared these with the deportees detained there.
- The deportees reported witnessing severe abuse of other detainees by the police officers, including an officer clubbing an individual with the butt of a rifle for a prolonged period of time, including in the eye, to the point that the individual vomited and defecated on himself.
- Many of the deportees are strangers in a strange land in Haiti. Two were born in the Bahamas and had never before set foot in Haiti. Others left Haiti as small children. We met two deportees who are living in tent camps. One 28 year-old deportee has no family members in Haiti; he is living in the small tent of the cousin of another deportee.
- Many of the deportees are terrified to be in Haiti. They have received threats and have already experienced adverse social stigma based on their status as deportees. One deportee reported being physically and verbally harassed by police officers when he reported to the police station, which is required on a weekly basis. Many

report that they cannot find work because they have no identity papers (their birth certificates were confiscated in the deportation and never given to them).

- The deportees report great sorrow at their inability to see or have contact with family members in the U.S., and at the great financial hardship that their deportation has brought upon U.S.-based family members.

On February 16, 2011, when Caroline Bettinger-Lopez raised these concerns during a conference call/meeting with civil society advocates and the U.S. State Department concerning the UN Universal Periodic Review (UPR) process, the State Department representative simply responded: “we are in communication with the Inter-American Commission on Human Rights about this matter.” But when Bettinger-Lopez pressed as to whether and when the U.S. government would communicate with civil society and the Haitian-American community about the matter, the State Department representative stated, without explanation: “we’ll share information with the community in due course.” As Petitioners explained in their Feb. 21, 2011 submission to the IACHR, “[t]he lack of transparency is distressing, and this underscores the paramount importance of a hearing or working meeting before the Commission in March/April.”

On February 25-26, 2011, Petitioners’ representatives visited three detention facilities in Louisiana – La Salle Detention Center in Jena, Louisiana, Tensas Parish Detention Center in Waterproof, Louisiana, and South Louisiana Correctional Center in Basile, Louisiana – where Haitian nationals are being detained pending deportation to Haiti. These remote, isolated facilities are not only far from these individuals’ families, communities, and attorneys; the detention centers are located 3½ to 5 hours from major cities and from each other. Highlights from the factual findings of Petitioners’ representatives include the following:

- The men and women who are detained in Louisiana have already served any criminal sentence imposed in their cases; some, in fact, had been convicted of minor crimes that did not involve any prison sentences. Many had been living in the community under ICE supervision without incident during the past year or more.
- Most of the detainees had been lawfully residing in the United States for many years and have extensive family, property, and community ties here.
- When the government decided to resume deportations to Haiti in December, many of the detainees were rounded up, without warning, during routine supervision appointments or at their homes in the middle of the night, sometimes by immigration officers who gained entry under false pretenses.
- Many detainees have U.S. citizen and legal permanent resident children, spouses, parents, and siblings who are now suffering hardship due to this forced separation.

- Almost none in this group had been represented by attorneys in their removal proceedings.
- Some had come to the United States at a very young age, while others were born in the Bahamas and never set foot in Haiti.
- All were terrified of being deported, particularly in light of the prospect of being detained in a Haitian police holding station.
- Some of those facing deportation suffer from serious medical conditions that will place them at increased risk if deported to Haiti. These conditions include: HIV, various heart conditions, acute kidney illness, glaucoma, severe diabetes, schizophrenia and other serious mental health conditions.

On March 4, 2011, Roxie Bacon, the recently-resigned former Chief Counsel to U.S. Citizenship & Immigration Service (USCIS), published an article in *Arizona Attorney*, the state bar's law journal. In the article, Bacon reflected on her experience at USCIS and condemned U.S. immigration policy under the Obama Administration. Bacon expressed dismay that the Department of Homeland Security's agencies have gone "into overdrive to detain more people, remove more people, and exercise less discretion than at any time in our nation's modern history."⁴ She takes particular aim at the Administration's immigration policy *vis a vis* Haiti. Bacon chides USCIS and DHS for not upholding vows made in January 2010 to suspend deportations to Haiti and to treat requests for immigration benefits and relief "with a generous and open heart." She writes: "Well, somebody must have had a heart transplant, because very soon it was back to business as usual . . . [I]n the middle of January, in the midst of a cholera epidemic, deportations to Haiti resumed. Daily, we send hard-working people to Dante's hell, and no leader in the Administration even seems embarrassed, much less angry or sad."⁵

Nearly three months after ICE began rounding people up for resumed deportations to Haiti, and presumably in response to increasing public pressure, ICE posted the following notice on its website on Monday, March 7, along with a draft policy concerning Haitian deportations:

U.S. Immigration and Customs Enforcement (ICE) would like your input on its proposed Policy for Resumed Removals to Haiti. This is not a final policy and is disseminated solely to collect feedback. Please review the policy at the link below. Comments will be accepted from Monday, March 7 through Friday, March 11. Individuals can e-mail comments to haitipolicycomments@dhs.gov.⁶

⁴ Roxie Bacon, *My Year of Living Dangerously*, *Arizona Attorney*, (March 2011), available at: <http://www.azattorneymag-digital.com/azattorneymag/201103/#pg87>.

⁵ *Id.*

⁶ See: <http://www.ice.gov/news/library/policies/>.

At approximately 4:30 p.m. on the last day of this initial comment period, the deadline was quietly extended to Friday, March 18.⁷

The draft policy stated, in pertinent part:

Going forward, in coordination with the Government of Haiti and the U.S. Department of State, ICE is resuming limited removal of criminal aliens with a focus on serious offenders such as violent felons. . . . In most circumstances, ICE is legally required to remove detained aliens who are subject to final orders of removal or release them into U.S. communities if their repatriation or resettlement is not reasonably foreseeable. ICE is working in coordination with the Department of State and the Government of Haiti, to resume removals in as safe, humane, and minimally disruptive a manner as possible. . . . This policy is limited to aliens with a final order of removal who pose a threat to the public safety given their previous serious criminal offense or history. Haitian nationals facing removal over the coming year will be individuals convicted of a range of serious crimes such as homicide, rape, sexual assault, robbery, sex offense against children, aggravated assault, kidnapping, false imprisonment, sale of cocaine, smuggling cocaine, sale of marijuana, and larceny. The resumption of removals to Haiti takes place in a measured manner with a limited number of eligible aliens removed to Haiti each month, addressing the security needs of both the U.S. and Haiti. ICE carefully reviews each case to ensure that the alien qualifies for removal under the terms of this policy.⁸

Hundreds of organizations and individuals have submitted comments condemning the policy.⁹

The United States government has given no indication that deportations will cease; in fact, on several occasions, individuals from various divisions of the U.S. government have indicated to Petitioners' Representatives and our colleagues in private conversations that the deportations will resume in March 2011.

On March 16, the Orlando Sentinel reported that a new study, which will be published next week in the leading medical journal *Lancet*, indicates that the cholera epidemic in Haiti "now has the potential to spread the disease to nearly 800,000 people – twice the earlier estimate. . . . The study, conducted at the University of California, San Francisco and Harvard Medical School . . . predicts that Haiti's cholera epidemic could continue until

⁷ See ICE, News Releases-Enforcement & Removal, 1/8/2008–current, available at <http://www.ice.gov/news/releases/index.htm> (last visited March 18, 2011). See ICE Proposed Policy of Resumed Removals to Haiti, (March 2011), available at : <http://www.ice.gov/news/library/policies/> and <http://www.ice.gov/doclib/news/library/policies/haiti-policystatementproposed.pdf> (last visited March 18, 2011).

⁸ *Id.* Available at: <http://www.ice.gov/news/library/policies/>.

⁹ See Annex A: Comments Submitted to United States Immigration and Customs Enforcement (ICE) re Haitian Deportations Policy Comments on U.S. Draft Policy on Haitian Deportations, available at: <http://www.ccrjustice.org/ourcases/current-cases/iachr-haitian-removals>.

November and be far worse than the United Nations' projections of 400,000 cases."¹⁰ Indeed, the public health and humanitarian crisis in Haiti continues to grow to increasingly-epic proportions.

II. Petitioners' Concerns and Recommended Actions

In light of the above-mentioned factual backdrop, Petitioners have serious concerns about the life, health, safety, and family unity of the 26 recent deportees currently living in Haiti as well as the larger group of Haitian nationals with final orders of removal who are subject to immediate deportation by the U.S. government. Petitioners outline those concerns below, and request that the IACHR address them during the March 26 working meeting.

A. The Precautionary Measures in This Case Should Be Extended to All Haitian Nationals with Final Orders of Removal Who Are Subject to Immediate Deportation by the U.S. Government, Especially Those with Serious Illnesses and U.S. Family Ties.

In light of the above-mentioned facts and the serious, urgent and irreparable harm that all Haitian nationals with final orders of removal who are subject to immediate deportation by the U.S. currently face, the Commission should extend its precautionary measures order to apply to this larger class of beneficiaries. The Commission has already signaled its agreement with this principle. In the press release accompanying the precautionary measures order, the Commission urged the U.S. government to cease deportations to Haiti immediately for persons with serious illnesses or U.S. family ties. Proceeding with the deportations of Haitians, the IACHR found, "could jeopardize [Haitians'] lives, considering the humanitarian crisis that persists in the country, especially the detention conditions in jails and prisons."¹¹ Petitioners request that the Commission broaden the precautionary measures language itself to reflect the language of its press release. Specifically, Petitioners request that the Commission clarify that the precautionary measures apply to all Haitian nationals with final orders of removal who are subject to imminent deportation, especially those with serious illnesses or U.S. family ties.

Article 25 of the Inter-American Commission Rules of Procedure provides that "[i]n serious and urgent situations," the Commission may request that a State adopt precautionary measures "to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any petition or case."¹² Such measures "may be of a collective nature to prevent irreparable harm to persons due to their association with . . . a group, or a community with identified or identifiable members."¹³

¹⁰ Linda Shrieves, "Cholera cases in Haiti could be double U.N.'s estimates, study says," Orlando Sentinel, available at www.orlandosentinel.com/health/os-cholera-estimates-in-haiti-off-20110316.0.5736194.story

¹¹ Inter-American Commission on Human Rights, Press Release No. 6/11, "IACHR Urges United States to Suspend Deportations to Haiti," Feb. 4, 2011, available at <http://www.cidh.oas.org/Comunicados/English/2011/6-11eng.htm>.

¹² Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25(2).

¹³ Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25(3).

The present situation is precisely the type envisaged by Article 25(3) of the Rules of Procedure. Here, there is a clearly defined group of beneficiaries with identified or identifiable members: all Haitian nationals with final orders of removal who are subject to immediate deportation by the U.S. Many of these individuals are currently detained in four detention facilities in Louisiana. They are on notice that they could be deported to Haiti at any time. Others are on supervised release, but subject to deportation at a moment's notice. All are immediately identifiable by their final orders of removal. It is estimated that the size of this group is between 700 and 2,000.¹⁴

Granting the precautionary measures here is consistent with other Commission decisions in prior cases. The proposed class of beneficiaries in this case is akin to the class of beneficiaries in the recent precautionary measures order concerning gender-based violence in Haiti's internally displaced persons camps,¹⁵ and the cases of *Comunidades de paz San José de Apartadó y Curbaradó* ("*Comunidades de paz*") before the Inter-American Court of Human Rights.¹⁶ In the Haitian gender-based violence case, the Commission granted precautionary measures to the named 13 petitioners, as well as "Haitian girls and women who have experienced human rights violations or are under threat of such violations, living in 22 listed Port-au-Prince camps."¹⁷ Likewise, in the *Comunidades de paz* case, the Inter-American Court extended protective measures to both named individuals and "other people of the same community that may be in the same situation of vulnerability and risk."¹⁸ Thus, in *Comunidades de paz*, while the Court recognized specific individuals who were in danger, it also found a "general danger to the people of the said community and thus expand[ed] the beneficiaries of the measures."¹⁹

In both the gender-based violence and *Comunidades de paz* cases, the granting of emergency protective measures to unnamed individuals of an identifiable and definable group demonstrates the evolving notion of risk and harm in the Inter-American system, and the recognition that such risk and harm can exist at both the individual and collective level, as reflected in Article 25(3) of the Commission's new Rules of Procedure. An extension of the precautionary measures in this case to the larger, well-defined group of Haitian nationals with final orders of removal who are subject to immediate deportation by the U.S. is both logical, and indeed, increasingly critical, in light of the existing humanitarian

¹⁴ See <http://rjrnewsonline.com/news/regional/700-haitians-be-deported-us> (estimating the number at 700). Other commentators have estimated the number at 1,000-2,000.

¹⁵ Inter-American Commission on Human Rights, IACHR Expresses Concern Over Situation in Camps for Displaced Persons in Haiti (Nov. 18, 2010), available at <http://www.cidh.org/Comunicados/English/2010/115-10eng.htm>.

¹⁶ Peace Community of San José de Apartado Case, Order of the Court of October 9, 2000, Inter-Am. Ct. H.R. (Ser. E) (2000).

¹⁷ Inter-American Commission on Human Rights, IACHR Expresses Concern Over Situation in Camps for Displaced Persons in Haiti (Nov. 18, 2010), available at: <http://www.cidh.org/Comunicados/English/2010/115-10eng.htm>.

¹⁸ Peace Community of San José de Apartado Case, Order of the Court of October 9, 2000, Inter-Am. Ct. H.R. (Ser. E) (2000) at 6 (holding "the protective measures adopted by the State in compliance with the decisions issued by the Court or its President are expected to benefit other people of the same community that may be in the same situation of vulnerability and risk.")

¹⁹ *Id.*

crisis exacerbated by the cholera epidemic and the intransigent and reckless disregard for life exhibited by the U.S. Government's continued insistence on pursuing a policy of deportations to Haiti under these conditions.

B. The United States Government Should Rescind its Haitian Deportation Policy and Support a Transparent Process.

1. The United States Government Has Not Acted Consistently or With Transparency Concerning its Deportations Policy.

DHS's decision to commence deportations to Haiti has been clouded in secrecy. This policy was not publicly announced until Monday, March 7, 2011. It was communicated verbally in December 2010 only to a small group of organizations. This abrupt, yet quiet communication gave Petitioners and similarly-situated individuals, their families, and their communities virtually no opportunity to seek reversal of the decision to lift the deportation moratorium and no possibility of preparing for the serious consequences of deportation.

Moreover, the decision to deport the first 27 deportees was never communicated to the deportees' families, and in fact was only communicated to the deportees late in the night, before their plane left. This first plane to Haiti departed on January 20, 2011 with no public announcement and no notice to the deportees or their families. Only on March 7, more than three months after the policy was first mentioned off the record and more than two months after deportations began, did DHS issue a public policy statement. In light of this timeline, and the life-and-death consequences of this policy, permitting only four days for public comment, or eleven days under the short extension that was posted online on March 11, suggests that the United States Government is not engaging with the American public, and especially the affected individuals and families, with consistency, and is not pursuing this process in good faith. Such an approach runs counter to this Administration's stated commitment to government transparency and accountability.

The lack of transparency is particularly apparent in the inconsistencies in official statements regarding the Haiti policy. In its March 7 policy statement, ICE claims to be working "in coordination with the Department of State and the Government of Haiti, to resume removals in as safe, humane, and minimally disruptive a manner as possible."²⁰ By the United States' own admission, however, this is not the case. In its February 18 response to the IACHR, the Department of State acknowledged: "The United States has *not* received assurances from the Haitian Government regarding the medical care or provisions that the proposed beneficiaries will be able to obtain upon their return" (emphasis added).

As described above, advocates recently raised concerns about the resumption of deportations during a conference call/meeting with civil society advocates and the U.S. State Department concerning the UN Universal Periodic Review (UPR) process. The State Department representative simply responded to these concerns with a dismissive tone: "we are in communication with the Inter-American Commission on Human Rights about

²⁰ *Supra* note 11.

this matter.” But when pressed about whether the United States would communicate with civil society and the Haitian-American community, officials responded without explanation: “we’ll share information with the community in due course.” The lack of transparency is distressing and underscores the importance of a cessation of deportations until an open dialogue is possible.

2. Deportations to Haiti Are Unsafe and Inhumane, and Violate the United States’ International Legal Obligations.

International human rights law prohibits governments from deporting an individual to a country where there are substantial grounds for believing that he/she would be in danger of being subjected to torture or other cruel, inhuman, or degrading treatment or punishment.²¹ The U.S. Government’s policy runs counter to this foundational principle of *non-refoulement*.

The U.S. must halt deportations to Haiti as long as conditions in Haiti, including the current public health crisis, political instability, and violence, continue to threaten the lives, safety, and freedom of Haitian deportees. It is ironic that on December 9, 2010, the same day ICE lifted its ban on deportations, the U.S. State Department issued a travel warning discouraging any nonessential travel to Haiti on account of the situation of “continued high crime, the cholera outbreak, frequent disturbances in Port-au-Prince and in provincial cities, and limited police protection and access to medical care.”

In the past month, a fact-finding mission to Haiti, during which 10 of the 27 deportees were interviewed, confirms that the inhumane treatment of deportees to Haiti that was common practice before the earthquake has continued, and in fact, worsened since the earthquake.²² As described above, the deportees described a horrific deportation process, culminating in the detention of 17 individuals within a small (approximately 3x15 feet) Haitian jail holding cell. Deportees described the squalid jail as unbearable, and vividly recalled dirt, feces, vomit and trash-layered floors, blood-stained walls, and an infestation of mosquitoes. They were traumatized by witnessing severe abuse of other inmates by the police officers, including an officer clubbing an individual with the butt of a rifle for a prolonged period of time, including in the eye, to the point that the individual vomited and defecated on himself. Deportees described how their pleas for help and medical assistance fell on deaf ears, and were sometimes met with cavalier comments and indifference by police guards. For example, when Wildrick Guerrier began experiencing severe vomiting and diarrhea in the police holding cell, his fellow deportees pleaded with the police to provide him with medical care. One deportee reported that the police responded, “You are here to die.” The guard’s words foretold Guerrier’s tragic fate. Moreover, when representatives of the Red Cross and Alternative Chance, a local assistance organization for deportees, visited the

²¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), adopted Dec. 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (no. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 3; International Covenant on Civil and Political Rights, art. 7.

²² Interviews by Caroline Bettinger-López and Marleine Bastien with Haitian deportees, Haiti Fact-Finding Mission, (Feb. 2011).

facility, the police seized the hygienic supplies they wished to distribute and failed to pass flyers on cholera prevention along to deportees.

Deportees suffered in these conditions nearly two weeks. These unsafe and inhumane conditions were coupled with a complete lack of access to clean water, food, hygiene products or medical care – despite the risk of cholera and other diseases.²³ Deportees were entirely dependent on family members to bring them food, water, and hygienic items.²⁴ At least five deportees fell seriously ill, and one, Wildrick Guerrier, died two days after being released.

Medical doctors have condemned the deportations to Haiti. As noted above, Dr. Arthur M. Fournier from the University of Miami, Miller School of Medicine, has warned that deporting people to Haiti at this time "constitutes, in my opinion, cruel and inhuman treatment of the deportees . . . expos[ing] [them] to serious and life-threatening conditions in the jail cells and holding facilities."²⁵ These risks are perhaps worse than ever now, particularly in light of the brand new study in the medical journal *Lancet* that indicates that the cholera epidemic in Haiti may spread to nearly 800,000 people – twice the earlier estimate.

The United States' decision to resume deportations is out of step with international practice. As the ACLU has noted, "[i]nternational state practice is almost uniformly to the contrary, as all but a handful of countries continue to refrain from Haitian deportations."²⁶ Indeed, rather than leading the international community and setting an example of forbearance, the U.S. government has provided cover for thousands of deportations by Haiti's neighbor, the Dominican Republic, which began deporting Haitians in the midst of Haiti's cholera crisis after learning of ICE's plans.²⁷

Finally, the fact that the U.S. government has provided post-earthquake aid to Haiti – a point underscored in the U.S.'s Feb. 18 response brief – is irrelevant to the question of whether deporting Haitian nationals to Haiti at this time would violate their human rights. Moreover, some human rights groups have criticized the U.S. government for not providing enough support or aid to Haiti.

3. Deportees Suffer Great Stigma in Haiti, and No Viable Reintegration Programs Currently Exist to Help Them Reintegrate into Haitian Society.

The United States' February 18 submission to the IACHR states that "[T]he United States would note that it is working to develop a program to assist with the reintegration of

²³ *Id.*

²⁴ *Id.*

²⁵ Decl. of Dr. Arthur Michael Fournier, M.D., in support of Petitioner's Request for Precautionary Measures to the Inter-American Commission on Human Rights. H.R., (Jan. 5, 2011).

²⁶ *See, e.g.*, "Haitian man convicted here has nowhere to go." *Montreal Gazette* (Mar. 1, 2011) (Haitian convict in Canada "will likely be subject to a surveillance program [upon release because of] Canada's moratorium on deportations").

²⁷ "Dominican Republic resumes deportation of Haitians." *BBC News* (Jan. 6, 2011).

returnees to Haiti. . . . Protection of human rights and vulnerable populations is a top priority within the U.S. Government. We will continue to work with the Government of Haiti and our international partners on a broad array of efforts to meet both the immediate needs of vulnerable populations and to reduce vulnerabilities over the long term.” The U.S. government’s vague statements are inconsistent with its response provided to the IACHR and the realities on the ground in Haiti.

As described in detail in the petition in this case, there is indeed great stigma in Haiti against deportees from the U.S., and this population faces serious challenges with respect to reintegration. Presidential candidate Mirlande Manigat’s recent statements condemning the deportations on the basis that they bring crime to Haiti underscore this stigma.²⁸ During our fact-finding mission to Haiti in February, the deportees noted that they had been threatened and ridiculed on several occasions, and expressed serious apprehension about how they could survive in Haiti. This was especially pronounced for those deportees living in tent cities, with little physical security. If the U.S. is indeed developing a reintegration program for deportees in Haiti, there is no sign of its existence at this time.

These reintegration challenges are well-known to the U.S. government. The State Department has reported on them for years in their annual country-specific human rights reports,²⁹ and the Subcommittee of the Western Hemisphere of the House of Representatives’ Foreign Affairs Committee held a hearing and briefing on this very issue on July 24, 2007. At that hearing, Maureen Achieng, the International Organization for Migration’s Chief of Mission for Haiti, briefed the Subcommittee on the reintegration progress in 2007 for Haitian deportees from the U.S. under a pilot program for reintegration. Achieng reiterates many of the same problems that the 26 deportees from

²⁸ On March 7, Haitian presidential candidate Mirlande Manigat spoke out against the deportations, asserting that the United States’ resumption of criminal deportations would result in increased crimes in Haiti. “Haiti is poorly-equipped to welcome these young criminals whom the US prison system failed to rehabilitate, and it will lead to an increase in Haiti’s crime rate,” Manigat said. “Mirlande Manigat assails deportation of criminals to Haiti”, March 7, 2010, http://www.caricomnewsnetwork.com/index.php?option=com_content&view=article&id=2561&Itemid=514 ; <http://newsinfo.inquirer.net/breakingnews/world/view/20110305-323592/Manigat-seeks-to-stop-influx-of-criminals-to-Haiti>.

²⁹ See, e.g., U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2008 Country Reports on Human Rights Practices*, February 25, 2009 (“The government detained repatriated citizens upon their return for approximately two weeks if the citizen had a criminal record or if the crime committed abroad was considered minor. The authorities used the deportee’s time in detention to assess whether the citizen planned to participate in criminal activities and to locate local family members. Because of lack of available space in prisons and detention centers, the government made efforts to release the deportees quickly. Deportees, many of whom spent most of their lives abroad, alleged widespread discrimination and social abuse after returning home.”), available at <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119163.htm>; see also U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Country Reports on Human Rights Practices*, March 11, 2010, Available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm>; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2007 Country Reports on Human Rights Practices*, March 11, 2008, Available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100643.htm>; U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2006 Country Reports on Human Rights Practices*, March 6, 2007, Available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78895.htm>.

January 2011 are currently facing. Her testimony underscores that not much has changed since 2007. Achieng confirms that the stigma faced by the deportees remains one of the biggest hurdles for re-integration, and notes that deportees' lack of identification documents is a source of serious problems for them. She concedes that deportees suffer trauma from "deportation to a society that, for the most part, rejects them."³⁰ Achieng then enumerates "a number of needs that have yet to be met," including:

ID documents, as the lack of these are an obstacle to the deportee's ability to access services . . . temporary housing for the small number [of deportees] that lack family ties; a clear policy on incarceration and liberation of deportees upon arrival . . . pre-departure support to allow deportees to be able to contact family in Haiti prior to their return; ability to refer deportees to a range of medical services, including psychiatric care and drug rehabilitation . . . funding to enable the program to fully take root and be transferred to the relevant Government of Haiti entity which is the National Office For Migration.³¹

Unfortunately, this one year pilot program did not solve the reintegration dilemmas for deportees in Haiti. Not only do these dilemmas persist today; in fact, they are exacerbated by the current conditions in Haiti, in addition to the fact that this pilot program is no longer in existence. Moreover, even if such a pilot program existed, it would not necessarily resolve the indefinite jailing and mistreatment suffered by U.S. deportees with criminal records. Nor would it necessarily address the circumstances of deportees with specific medical needs.

4. The United States Can Stop Inhumane Deportations and Keep the Public Safe.

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

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

³⁰ House of Representatives Foreign Affairs Committee, Subcommittee of the Western Hemisphere, Statement Of Ms. Maureen Achieng, Chief of Mission for Haiti, International Organization for Migration (IOM), available at <http://foreignaffairs.house.gov/110/36988.pdf>, pp. 41-42; see also <http://www.america.gov/st/washfile-english/2007/August/200708031159511xeneerg0.9294702.html>.

³¹ *Id.* at 43.

ICE's description of the people they are deporting to Haiti is inaccurate and misleading. The Haitian men and women slated for deportation have already served any criminal sentences imposed on them. Many had been living in the community and complying with ICE supervision orders, and none has had a day in court to determine whether he or she would pose any current danger to society. As described above, Petitioners' Representatives recently traveled to three remote jails in Louisiana to meet with some of the detainees held for deportation. Far from being limited to "violent felons," the people slated for deportation include people with only nonviolent misdemeanor records and nonviolent drug offenses. Many have family members, including young children, who are United States citizens and who rely on them for support. Some of those facing deportation have significant health problems that cannot be adequately addressed by the Haitian healthcare system.

The nature of a deportee's criminal history, family, and health situation are precisely the types of factors identified by the Inter-American Commission in *Smith-Armenariz v. U.S.*³² and *Mortlock v. U.S.*³³ as needing to be balanced before an individual is deported. The Inter-American Commission, in its recent *Report on Immigration in the United States: Detention and Due Process* emphasized the importance of the *Mortlock* balancing test to protecting the due process rights of individuals facing deportation.³⁴ The Commission, in its report, also emphasized the principle established in *Smith-Armenariz* that "Article 8 of the American Convention on Human Rights 'establish[es] a baseline of due process to which all immigrants, whatever their situation, have a right.'"³⁵ Such a balancing of factors never took place for the 27 individuals who were already deported to Haiti, and such a balancing is not envisioned in ICE's proposed policy on deportations to Haiti.

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

C. Requested Action of the U.S. Government

Because deporting anyone to Haiti under current circumstances is inhumane, life-threatening, and undermines family unity and other humanitarian concerns, Petitioners hereby request that the IACHR (1) extend the precautionary measures order in this case to the larger group of all Haitian nationals with final orders of removal who are subject to immediate deportation by the U.S., and (2) order the U.S. Government, specifically DHS, to:

³² *Smith-Armenariz v. United States*, Case 12.561, Inter-Am. C.H.R. Report No. 81/10 (2010).

³³ *Mortlock v. United States*, Case 12.534, Inter-Am. C.H.R. Report No. 63/08 (2008).

³⁴ Inter-Am. C.H.R., *Report on Immigration in the United States: Detention and Due Process*, ¶156;

³⁵ *Id.*, citing *Wayne Smith*, United States, Report No. 56/06 (Admissibility), Case No. 125.62, ¶151 (July 20, 2006).

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

Dated: March 18, 2011

Respectfully Submitted,



Caroline Bettinger-López

On Behalf of Petitioners and Petitioners' Representatives

Annexes

- Annex A: Comments Submitted to United States Immigration and Customs Enforcement (ICE) re Haitian Deportations Policy
- Annex B: Media re Haitian Deportations post-earthquake
- Annex C: Fact Sheets re Haitian Deportations
- Annex D: Letter to IACHR in Support of Precautionary Measures to Stop Imminent Deportations of Haitians from the United States