

Shadow Report to the
U.N. Committee on the Elimination of All Forms of Racial Discrimination

**DEPORTATIONS FROM THE UNITED STATES TO HAITI:
A VIOLATION OF THE CONVENTION ON THE ELIMINATION OF ALL
FORMS OF RACIAL DISCRIMINATION (CERD)**

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A deportee's family in Miami, Florida mourns the absence of their beloved family member whom the U.S. sent back to Haiti.

UNITED STATES' HUMAN RIGHTS VIOLATIONS AGAINST HAITIAN DEPORTEES AND THEIR FAMILIES

The United States has a long history of targeting Haitian migrants in its immigration policy and practice, in a wide range of issues including detention and removal procedures, legislation concerning status adjustment and naturalization for various groups of immigrants, and the disparate application of temporary protections for refugees. The racial discrimination against Haitian refugees occurs through implementation of policies specifically targeting Haitians, neutral policies that leave too much discretion to immigration officials and allow the possibility of racially-based decisions, and preferential treatment for other nationality groups.

This joint shadow report is submitted by a coalition of non-governmental and academic organizations to address one manifestation of discrimination against people of Haitian descent in the United States: the U.S. Government's continuing practice of deporting individuals with criminal convictions to post-earthquake Haiti. This practice violates the following articles of the Convention on the Elimination of Race Discrimination (CERD): Art. 2 (general commitment to condemn and eradicate racial discrimination); Art. 5 (commitment to prohibit and to eliminate racial discrimination with respect to specific rights); Art. 6 (right to a remedy); and Art. 7 (adoption of immediate and effective measures to combat prejudices). As described herein, the United States has failed to fulfill its obligations under CERD to identify racially discriminatory practices and amend or nullify laws that have a racially discriminatory impact.

Background

On January 12, 2010, an earthquake struck Haiti that left nearly 300,000 dead and over 1.2 million displaced and homeless. Immediately following the earthquake, the United States halted deportations to Haiti from the United States, so as not to place an additional burden on the devastated country.¹ Some months later, the Obama administration offered temporary protected status (TPS) to Haitians in the United States. TPS allows certain Haitian nationals living in the United States who have no more than one misdemeanor conviction to remain temporarily in the country.

However, almost exactly one year after the earthquake, the United States resumed deportations of Haitian men and women with criminal convictions, tearing them away from their families and forcing them to return to Haiti, despite the continuing humanitarian crisis.

This crisis has become even more severe for deported Haitians due to the deadly cholera epidemic that began in 2010.² Cholera has killed over 8,000 people and sickened nearly 670,000—more than 6% of the Haitian population.³ Cholera continues to infect an additional 1,500 people in Haiti per week.⁴ Haiti's jails and detention centers, where Haitians are held

upon deportation from the United States, are breeding grounds for cholera. On January 20, 2011—the same day that the U.S. issued a travel warning advising U.S. citizens to avoid travel to Haiti due to the cholera outbreak and other concerns—the United States deported 26 Haitian nationals. One of them was Wildrick Guerrier, a Haitian man who was detained in a police holding cell in Haiti and died of cholera-like symptoms after his exposure to the horrific conditions.⁵ Recently, in an August 2013 travel warning, the United States cautioned of the “poor condition and inadequate” infrastructure in the country, emphasizing Haiti’s “particularly weak” medical facilities.⁶ Furthermore, free medical treatment that had been offered after the earthquake has since been suspended due to the departure of a number of relief organizations, “with the result that tens of thousands of people are denied access to quality care.”⁷ In addition to the impact of the earthquake and cholera epidemic, the effects of a barrage of tropical storms and political instability “continue to hinder the Haitian government’s efforts to meet the basic needs of its people and address long-standing human rights problems.”⁸ Law enforcement officials continue to disregard the rule of law and prison conditions remain deplorable.⁹ Violence in Haiti has resulted in over 1,000 civilian deaths between May 2012 and May 2013, and there were 972 recorded cases of sexual violence.¹⁰ In addition, a combination of disasters has increased food insecurity, causing a “severe impact on the poorest and most vulnerable” Haitians.¹¹

Despite the dire conditions in Haiti, the U.S. government continues to deport Haitian nationals with criminal records. Many of these men and women have lived outside of Haiti for most of their lives and have U.S. citizen and permanent resident family members residing in the United States. Upon being sent to Haiti, deportees face alarming conditions such as detention in facilities where cholera and other life-threatening diseases are rampant. Upon release, they face violence, severe discrimination, and social stigmatization; inability to access medicine and medical care; unemployment; sexual and gender-based violence; and cultural and language barriers, often with little or no family support in Haiti.¹²

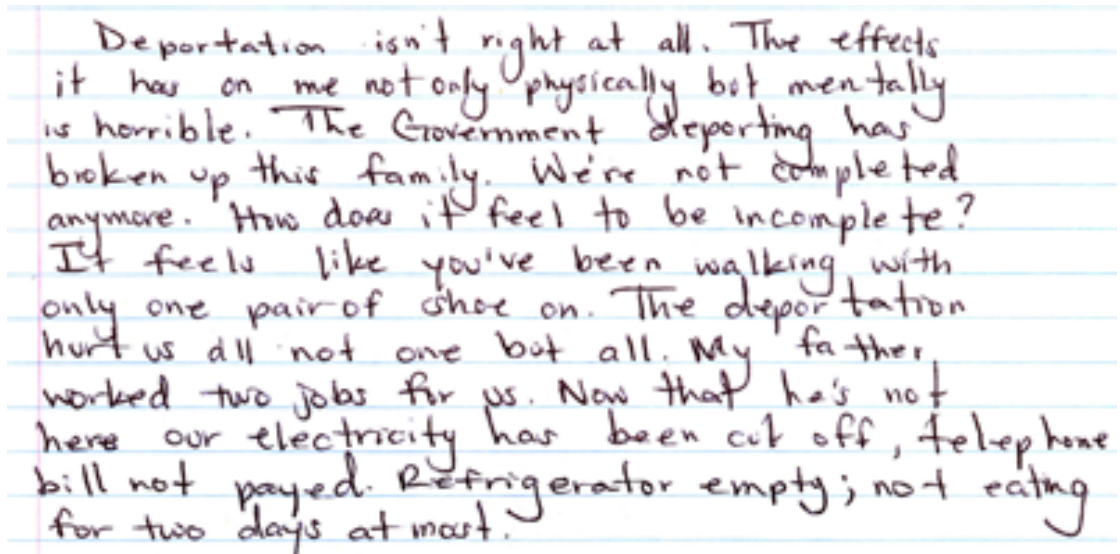
International Condemnation of Deportations to Haiti

International bodies have condemned deportations to post-earthquake Haiti as human rights violations. The United Nations Independent Expert on the Situation of Human Rights in Haiti has raised serious concerns about the deportation to Haiti of individuals with severe, life-threatening medical conditions—including HIV and diabetes—as well as serious mental health conditions, especially when they have no or a limited supply of medicine.¹³ The UN Independent Expert also criticized deporting Haitian nationals with U.S. citizen and lawful permanent resident children and spouses.¹⁴ The Inter-American Commission on Human Rights (IACHR) has also recognized that deportations to post-earthquake Haiti constitute a human rights violation and has urged the United States to refrain from deporting individuals to Haiti who have family ties in the U.S. or who are ill.¹⁵ In June 2011, the United Nations High

Commissioner for Refugees (UNHCR) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) issued a joint statement calling on all States to “refrain from conducting returns to Haiti” in light of the “humanitarian crisis.”¹⁶

U.S. Haiti Deportation Policy

On April 1, 2011, U.S. Immigration and Customs Enforcement (ICE) issued a new policy concerning deportations to Haiti. The policy stated that the U.S. would “resum[e] limited removal of convicted criminal Haitians with final orders of removal” in order to address “the public safety needs of both the United States and Haiti.”¹⁷ The policy requires ICE to weigh a number of “adverse factors,” including “the severity, number of convictions, and dates since convictions,” against an individual’s family ties, significant medical issues, and length of residence in the United States before deciding whether to prioritize an individual for deportation.¹⁸ Despite the balancing test laid out in this policy, ICE continues to deport people with non-violent and minor crimes, as well as people with serious medical conditions and mental illnesses, and close family ties in the United States. ICE has admitted that it has no established procedure to assess whether individuals should be deprioritized under this policy.¹⁹ Further, detainees cannot seek judicial review of decisions made under the April 2011 policy.²⁰ The United States continues to deport people to Haiti with a lack of regard for the humanitarian concerns of these deportees, as well as in violation of its own removal policy.



Deportation isn't right at all. The effects it has on me not only physically but mentally is horrible. The Government deporting has broken up this family. We're not completed anymore. How does it feel to be incomplete? It feels like you've been walking with only one pair of shoe on. The deportation hurt us all not one but all. My father worked two jobs for us. Now that he's not here our electricity has been cut off, telephone bill not payed. Refrigerator empty; not eating for two days at most.

Statement written by a Haitian deportee’s 15-year-old daughter who remains in the U.S. with her mother and four siblings.

Recommendations

In light of these alarming human rights concerns, we urge the CERD Committee:

- To call for the immediate suspension of U.S. deportations to Haiti. The United States should not resume removals until it is determined that conditions are safe and humane for individuals to be returned to Haiti.
- To ensure that ICE's practices comport with its April 2011 policy, wherein a balancing test is meaningfully employed before a person is deported to Haiti.
- To direct ICE to create a formal and transparent procedure for assessing whether individuals should be deprioritized for removal under the April 2011 policy.
- To direct ICE to provide for an appeals process and judicial review of negative decisions made under the April 2011 policy.

Respectfully Submitted,

University of Miami School of Law Human Rights Clinic

Caroline Bettinger-López

Kelleen Corrigan

clopez@law.miami.edu

kcorrigan@law.miami.edu

University of Miami School of Law Immigration Clinic

Rebecca Sharpless

Romy Lerner

rsharpless@law.miami.edu

rlerner@law.miami.edu

FANM/Haitian Women of Miami

Marleine Bastien

mbastien@fanm.org

Alternative Chance

Michelle Karshan

altchance@aol.com

Americans for Immigrant Justice (formerly FIAC)

Cheryl Little

clittle@aijustice.org

¹ Even after the halt of deportations of Haitians on U.S. soil, the United States continued to return Haitians who were

² TRANSNATIONAL DEV. CLINIC, PEACEKEEPING WITHOUT ACCOUNTABILITY: THE UNITED NATIONS' RESPONSIBILITY FOR THE HAITIAN CHOLERA EPIDEMIC 1 (2013), available at

http://www.law.yale.edu/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf.

³ Centers for Disease Control and Prevention, *Cholera in Haiti. What is the Current Situation?*

<http://wwwnc.cdc.gov/travel/notices/watch/haiti-cholera> (updated Sept. 4, 2013) (citing figure provided by Haiti's Ministère de la Santé Publique et de la Population (MSPP) as of August 4, 2013); see also *The United Nations' Duty in Haiti's Cholera Outbreak*, THE WASHINGTON POST (Aug. 11, 2013),

http://articles.washingtonpost.com/2013-08-11/opinions/41299675_1_u-n-peacekeepers-united-nations-artibonite-river.

⁴ Charanya Krishnaswami & Muneer Ahmad, *U.N. Hypocrisy in Haiti*, THE WASHINGTON POST (Mar. 21, 2013),

http://articles.washingtonpost.com/2013-03-21/opinions/37904120_1_cholera-outbreak-peacekeeping-force-avocats-internationaux.

⁵ Independent Expert on the Situation of Human Rights in Haiti, *Rep. on Forced Returns of Haitians by Third States*, Human Rights Council, ¶ 40, U.N. Doc. A/HRC/20/35/Add.1 (June 4, 2012) (by Michel Forst), [hereinafter Forst Report 2012], http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1_en.pdf.

⁶ Travel Warning, U.S. Dep't of State, Haiti (Aug. 13, 2013), http://travel.state.gov/travel/cis_pa_tw/tw/tw_5850.html.

⁷ Independent Expert on the Situation of Human Rights in Haiti, *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, Human Rights Council, ¶ 86, U.N. Doc. A/HRC/22/65 (Feb. 7, 2013) [hereinafter Forst Report 2013] (by Michel Forst),

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-65_EN.pdf.

⁸ HUMAN RIGHTS WATCH, *World Report 2013: Haiti*, <http://www.hrw.org/world-report/2013/country-chapters/haiti>.

⁹ Forst Report, *supra* note 7, at ¶¶ 31, 49.

¹⁰ *Violent Crime in Haiti Claims More Than 1,000 Lives*, AGENCE FRANCE-PRESSE (Jun. 19, 2013, 3:41 PM),

<http://www.globalpost.com/dispatch/news/afp/130619/violent-crime-haiti-claims-more-1000-lives>. Due to underreporting, this number is undeniably low.

¹¹ Forst Report 2013, *supra* note 7, at ¶ 79.

¹² Forst Report 2012, *supra* note 5, at ¶ 8.

¹³ *Id.* at ¶ 42.

¹⁴ *Id.* at ¶ 43.

¹⁵ *Case of Gary Resil, et al., and Other Similarly-situated Haitian Nationals Subject to Deportation by the United States, United States*, Case PM 05/11, Granting of Precautionary Measures, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II., doc. 69 (2011), <http://www.oas.org/en/iachr/decisions/precautionary.asp#5guion11>.

¹⁶ Joint UNHCR-OHCHR Return Advisory Update on Haiti, United Nations High Commissioner for Human Rights and United Nations High Commissioner for Refugees, June 9, 2011, <http://www.unhcr.org/4e0305666.html>.

¹⁷ Press Release, Immigration and Customs Enforcement, Policy for Resumed Removals to Haiti, ICE's Removal Policy for Haitian Deportation (Apr. 1, 2011), <http://www.ice.gov/news/releases/1104/110401washingtondc2.htm>.

¹⁸ *Id.*

¹⁹ Joint Statement by Non-Governmental Organizations Condemning the U.S. Government's Resumption of Deportations to Haiti from the American Civil Liberties Union to the Human Rights Council (June 16, 2011),

http://www.aclu.org/files/assets/haiti_joint_statement_final.pdf.

²⁰ Forst Report 2012, *supra* note 5, at ¶ 53.