

# REQUEST FOR PRECAUTIONARY MEASURES BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

*On behalf of:* Gary Resil, Harry Mocombe, Roland Joseph, Evel Camelien, Pierre Louis *and* Other Similarly Situated Haitian Nationals Subject to Immediate Deportation by the United States

*Against:* the United States of America

*Filed on Jan. 6, 2011 by Advocates of the Petitioners:* University of Miami Human Rights Clinic, University of Miami Immigration Clinic, The Florida Immigrant Advocacy Center, Alternative Chance, The Center for Constitutional Rights, and Loyola Law Clinic & Center for Social Justice

## **Overview: Background and Historical, Legal, and Political Context**

After the devastating January 12, 2010 earthquake, the United States government stayed deportations to Haiti on humanitarian grounds. However, just before the one-year anniversary of the earthquake, the United States Immigration and Customs Enforcement (ICE) announced it was lifting the stay and resuming deportations, while releasing no other public information about the planned removals. Resuming deportations at this time would result in serious human rights violations. Haiti is still reeling from the aftermath of the earthquake and is now additionally facing a massive cholera epidemic, political unrest, and rampant street violence. If history is any guide, the Petitioners will likely be detained in Haitian police station holding cells in unsanitary, overcrowded conditions where cholera and other diseases run rampant. Additionally, the Haitian government does not generally provide food or medical care; thus the Petitioners need to rely on relatives, if available, for basic needs. For many deportees, this situation is tantamount to a death sentence.

## **The Five Named Petitioners, Their Families, and the Larger Group They Represent**

- **Gary Resil** – He is a 61-year-old, legal permanent resident of the U.S. since 1967, who has five U.S. citizen children of which he is the primary caretaker. He suffers from diabetes and other illnesses. His removal order was based on theft and racketeering offenses related to his business. He has no family in Haiti.
- **Harry Mocombe** – He is a 30-year-old, legal permanent resident since 1999, who has a U.S. citizen six-year-old son who suffers from a rare leukodystrophy disease, which has no cure. His removal order concerns convictions for burglary of an unoccupied dwelling and an offense involving theft. He lost his last remaining relatives in Haiti in the earthquake.
- **Roland Joseph** – He is a 43-year-old, legal permanent resident since 1999. He is the single father of four children and has two grandchildren, all of whom are legal permanent residents or U.S. citizens. His removal order is based on two counts of drug possession with the intent to sell, for which he completed a six-month jail sentence. He has no family in Haiti.
- **Evel Camelien** – He is a 53-year-old who came to the U.S. by boat in 1980. He has four children: three U.S. citizens and one legal permanent resident. He supports his young children, holds a steady job, and owns a house. His removal order is based on one drug conviction. His three other children in Haiti, his mother, his father, and sister-in-law all perished in the earthquake.
- **Pierre Louis** – He is a 27-year-old who has been a legal permanent resident since 2001. He is the sole support of his U.S. citizen son and legal permanent resident father. He suffers from schizophrenia and needs specific medical treatment. His removal order is based on a conviction for falsely claiming to be a U.S. citizen, when he tried to register to vote. His only relative in Haiti died in the earthquake.
- **Unnamed Petitioners** – These include men and women, individuals with acute and chronic illnesses, elderly, and former asylum seekers. The majority have lived as legal permanent residents for many years and possess extensive family, economic, and community ties to the United States.

## Petitioners Face Imminent and Irreparable Harm as a Result of their Deportations

Petitioners request *immediate* intervention of the Commission to order precautionary measures to stop deportations to Haiti. The standard for such measures is irreparable harm.

- *Right to Life; Security of Person; and Freedom from Cruel, Infamous or Unusual Punishment*
  - The deportation of the Petitioners to Haiti, where they will be placed in cholera-infested police station holding cells, exposes them to foreseeable risk of death. The extreme hardship of these conditions is contrary to the inherent dignity of human person and amounts to a death sentence. This is a violation of Articles I and XXVI of the American Declaration on the Rights and Duties of Man (American Declaration).
- *Right to family life; Special protections for children*
  - Taken together, Articles V, VI, “prohibit arbitrary or illegal interference with family life”<sup>1</sup> by the state. Additionally, the state must take “the best interests of the minor child ... into consideration in a parent’s removal proceeding.”<sup>2</sup> Petitioners and their families will be negatively impacted by deportation. In many cases primary breadwinners will lose their ability to financially provide for their families and communication will be compromised. The prospect of being torn apart by the deportations has created a sense of panic for the Petitioners and their families. Here, the removal violates the rights of the Petitioners and their families under Articles V, VI, and VII of the American Declaration.
- *Rights to fair trial and due process*
  - The failure of the U.S. government to provide Petitioners with the opportunity to present humanitarian defenses to deportation or to provide them with an opportunity to have their due process rights meaningfully considered prior to deportation violates their rights to due process and fair trial under Articles XVII and XXVI of the American Declaration.

### Relief Requested

- Continue the stay of deportations to prevent irreparable harm and release the petitioners.
- Grant “deferred action” status to all people facing removal.
- Publicly release information concerning the decision to lift the stay.
- Publicly engage with the Haitian-American community during this continuing crisis.

### Post-Filing Updates

January 14, 2011: The IACHR requested the following information from the U.S. government:

1. Whether the United States has received any assurances from the Haitian State regarding medical care, food and clean drinking water in the place of detention to which deportees could be sent;
2. The status of the deportation proceedings with respect to the named petitioners; and
3. If there is a final resolution and a date set for the deportation of the proposed beneficiaries.

January 15, 2011: Deportations commenced, including that of Roland Joseph and 26 other Haitian nationals. Roland Joseph’s whereabouts are still unknown. No information has been given as to where the deportees were taken in Haiti or whether there was an agreement between the Haitian and American governments regarding their processing and treatment. **On approximately Jan. 29, Wildrick Guerrier, one of the (unnamed) Petitioners died after being detained in a police station holding facility, after having presented cholera-like symptoms of vomiting, profuse diarrhea, and extreme weakness.**

January 24, 2011: The Petitioners’ advocates requested a hearing during the Commission’s late March period of sessions due to the serious and urgent nature of the situation. Petitioners will be notified in late February as to whether the hearing is granted.

### Media and Advocacy Coverage

- <http://www.nytimes.com/2010/12/20/nyregion/20haitians.html?ref=juliapreston>
- <http://www.npr.org/2011/01/13/132882265/U-S-To-Resume-Deporting-Haitians-With-Criminal-Records>
- <http://www.miamiherald.com/2011/01/20/v-fullstory/2025483/acquitted-haitian-in-liberty-city.html><http://www.nytimes.com/2010/12/20/nyregion/20haitians.html>
- <http://www.miamiherald.com/2011/02/01/2044410/haitian-deported-by-us-dies-in.html>
- <http://ccrjustice.org/files/IACHR%20Haitian%20Deportations%20FINAL%20Sign-on%20Ltr.pdf>
- <http://www.aclu.org/human-rights-immigrants-rights/us-resumes-deportations-haiti>
- <http://campaign.r20.constantcontact.com>

<sup>1</sup> Inter-Am. C.H.R., Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, OEA/Ser.L/V/II.106, ¶162, (2000); See also *Wayne Smith & Hugo Armendariz, et al. v. U.S.*, Case 12.562, Inter-Am. C.H.R., Report No. 81/10, ¶ 48. (July 12, 2010).

<sup>2</sup> *Wayne Smith & Hugo Armendariz, et al. v. U.S.*, Case 12.562, Inter-Am. C.H.R., Report No. 80/10, ¶ 56. (July 12, 2010).