



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

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14 March 2011

11/LG/107

Sent via e-mail to haitipolicycomments@dhs.gov

Re: ICE Proposed Policy on Resumption of Deportations to Haiti

To Whom It May Concern:

As the United Nations High Commissioner for Refugees (UNHCR) Deputy Regional Representative for the United States and the Caribbean, I write in response to the proposed policy statement posted by the United States Immigration and Customs Enforcement (ICE) regarding the recent decision to resume deportations of Haitians with certain criminal convictions.

In the context of the United Nations (UN) response to the earthquake that struck Haiti on 12 January 2010, the Office of the United Nations High Commissioner for Human Rights (OHCHR) leads the United Nations Protection Cluster in Haiti and, in this endeavour, is supported by UNHCR. Since January 2010, UNHCR has played an operational role in the response to the crisis, maintaining emergency teams in Haiti, the Dominican Republic and along the border zone. As you are aware, on 18 February 2010, OHCHR and UNHCR jointly appealed to Governments to give favourable consideration to temporarily suspending all involuntary returns to Haiti. This appeal was prompted by the need for the Government of Haiti and humanitarian actors to better respond to the calamitous humanitarian conditions in Haiti in the aftermath of the devastating earthquake. We recognize with appreciation that the United States was among the States to implement a suspension of deportations to Haiti at that time, and commend the United States for establishing temporary protected status for certain Haitians in the United States at the time of the earthquake.

UNHCR wishes to highlight that despite the important efforts by the international community as a whole to respond to the crisis, the humanitarian situation in Haiti remains catastrophic. According to the most recent official statistics, approximately 999,880 Haitians remain internally displaced, with an estimated 808,000 of the displaced living in precarious settlements in and around Port-au-Prince and the remainder dispersed among the provinces. The graveness of the situation is aggravated by a number of factors, not the least of which are the on-going cholera epidemic, growing food insecurity, and recent – and possibly future – electoral tensions. The cholera epidemic, though diminishing, has affected all 10 departments of the country, and as of 25 February 2011, has resulted in at least 4,627 recorded deaths and 248,442 total reported infections. Reports also document considerable cholera infection and deaths among Haiti's imprisoned population. Furthermore, food insecurity could affect up to three million people by April or May 2011, particularly in rural, cholera-affected areas and poor neighborhoods in the Port au Prince area. Finally, following

the first round of national elections on 28 November 2010, and its contested results, Haiti saw instances of politically motivated violence. As the second round of national elections on 20 March 2011 approaches, and until the eventual installation of a stable and consolidated new Haitian government, there is heightened risk of instability and political violence, with the potential for generalized violence, in the country.

UNHCR recognizes the prerogative of States to return to their countries of origin persons convicted of certain violent crimes and understands the need to protect their citizens and other residents from criminal actions of such individuals. In light of the on-going humanitarian crisis in Haiti, however, UNHCR urges that any policy of deportation to Haiti must carefully and thoroughly weigh the interests of the Haitian population as a whole; the sustainability of current relief and reconstruction efforts of the Haitian government and international community; the destabilizing effect that deportation of individuals with certain criminal convictions could have; and the rights under international law of the individuals subject to such deportation.

On 28 December 2010, UNHCR submitted a letter to ICE Director John Morton, detailing concerns regarding the announced planned resumption of deportations to Haiti. The policy statement speaks to, though does not fully address, some of those queries and concerns.

UNHCR would still appreciate clarification on the reasons underlying the decision to resume deportations when the situation in Haiti remains so dire. The proposed policy suggests that ICE's legal obligation to release from detention those with deportation orders whose removal is not reasonably foreseeable may have played a role in this decision. However, UNHCR is not aware of any systemic recidivism among those released since the moratorium on deportations. Similarly, UNHCR has no information indicating the release arrangements that have been used, such as orders of supervision, have been ineffective in monitoring this population. UNHCR continues to request that this information be made known in order to fully understand and comment on the proposed policy.

The proposed policy states that 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." UNHCR strongly supports that a resumption of deportations requires just such inter-agency and inter-governmental coordination; yet the terms of this coordination have not been made known. Notably, it remains unclear whether any agreement was or will be reached with the Haitian authorities to ensure that the resumption of deportations to Haiti does not exacerbate the already precarious position of the Haitian people, and that those deported will not be subject to treatment or conditions in violation of their human rights. Moreover, it would be useful to know what monitoring mechanisms have been established to ensure compliance with such an agreement. Given the on-going humanitarian crisis in Haiti, as well as highly disconcerting accounts of the detention and inhumane treatment of those deported to Haiti on 20 January 2011, having such a mechanism in place and sharing information regarding this plan should occur before any further deportations are instituted.

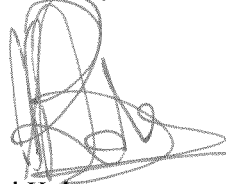
UNHCR appreciates that the proposed policy provides more information regarding the categories of persons subject to deportation to Haiti, including some of the types of criminal convictions underlying their removal orders. However, we are aware of a number of reports of individuals whose profiles do not necessarily indicate a pressing public safety threat in the United States. UNHCR urges that at this time, any decision to effectuate the deportation of a person to Haiti be individualized and that ICE carefully consider all relevant factors,

including but not limited to, a lack of recidivism, any mental and physical health conditions, and other compelling humanitarian concerns—particularly if such factors place them at risk of serious harm.

UNHCR welcomes that DHS has made this proposed policy open to public comment and appreciates the opportunity to participate in the comment period. UNHCR respectfully appeals to DHS to address the issues raised above with full transparency and effective engagement of stakeholders prior to conducting further deportations to Haiti. As part of that process, we request in particular that UNHCR be provided more detailed information on this policy and its implementation, including any efforts to ensure human rights safeguards are in place as well as any plans for monitoring the implementation of the policy.

UNHCR appreciates your consideration of our views on this important matter, and as always we are available for further communication with your agency on this and other issues of mutual concern.

Yours sincerely,



Buti Kale
Deputy Regional Representative

Cc: Kelly Ryan, Acting Deputy Asst. Sec. of Immigration & Border Security
U.S. Department of Homeland Security