

IMMIGRANT RIGHTS CLINIC
WASHINGTON SQUARE LEGAL SERVICES, INC.
NEW YORK UNIVERSITY SCHOOL OF LAW
245 SULLIVAN STREET, 5TH FLOOR
NEW YORK, NEW YORK 10012
TEL: 212-998-6430
FAX: 212-995-4031

NANCY MORAWETZ
ALINA DAS
Supervising Attorneys

ALBA VILLA
BENJAMIN LOCKE
COLLEEN DUFFY
JOSH OCCHIOGROSSO-
SCHWARTZ
RUBEN LOYO
Student Advocates

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Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Re: Comments on ICE's Proposed Policy for Resumed Removals to Haiti

Dear Secretary Napolitano:

On behalf of the Immigrant Rights Clinic at NYU School of Law, we submit this letter to comment on Immigration and Customs Enforcement's ("ICE") proposed Policy for Resumed Removals to Haiti and to strongly urge the Department of Homeland Security ("DHS") to halt all deportations to Haiti. For over a decade, the Immigrant Rights Clinic has represented immigrant communities in the greater New York City area, including the city's Haitian community. We believe that resuming deportations to Haiti is inhumane and potentially life-threatening. Further, we believe that halting deportations will serve to enhance – rather than compromise – the safety of our communities.

We urge ICE to halt all deportations to Haiti for the following three reasons:

- (1) **Due to deplorable detention conditions and discriminatory treatment, Haitian nationals subject to removal under the proposed policy face the risk of death or extreme hardship in Haiti.**

Targeted abuse of deportees in Haiti is well documented. Deportees in Haiti are detained upon arrival under inhumane conditions and are subject to persecution and discrimination if released. Deportees with criminal convictions – even those deemed by United States authorities

to pose no danger to the community – are uniformly detained merely because of their status as “criminal deportees.” They are subjected to barbaric prisons conditions, deprived of food, water and access to basic medical care, and are routinely kept in dangerously filthy and overcrowded cells littered with blood, vomit, and feces.¹ In many cases, detention under these conditions continues indefinitely, with release determinations sometimes left to the discretion of low-level officers.² Furthermore, those with ties to the United States are often asked to pay bribes to secure their release.³

In addition, many individuals who have been and will be deported back to Haiti as a result of the proposed policy lack family ties to that country, as they have been legal residents of the United States for years. Because the Haitian government does not provide food, potable water, medical supplies, and hygienic products in prisons, deportees are wholly dependent on family in Haiti to survive.⁴ In light of the country’s ongoing humanitarian crises, deportees without strong family ties to Haiti are even more vulnerable to starvation, malnourishment and death in an environment where deadly illnesses like cholera are already rampant.

(2) Instability stemming from myriad ongoing humanitarian crises and political upheaval in Haiti makes removal to that country at this time a death sentence.

Conditions across Haiti have worsened in the wake of the devastating earthquake of January 2010, ongoing political turmoil including violence after the recent election, and the deadly cholera epidemic that has already claimed thousands of lives.⁵ Yet despite the continued devastation, on January 20, 2011, ICE announced that it had removed 27 of approximately 700 Haitian nationals awaiting deportation to that country.⁶ Just over a week after this first group of deportations to Haiti, the *Miami Herald* reported that among the group of 27 deportees, Wildrick Guerrier, a 34-year old man, died of cholera-like symptoms after being subjected to Haiti’s detention process for only eight days.⁷ All of the 27 deportees confirmed the horrific prison conditions and continue to struggle for survival in Haiti, far from their families and communities in the United States.⁸

¹ University of Miami Immigration Clinic et al., Request for Precautionary Measures to the Inter-American Commission on Human Rights, No. MC-5-11 US at 16-19, 30-31 (Jan. 6, 2011).

² UNIVERSITY OF MIAMI IMMIGRATION CLINIC ET AL., DEPORTATIONS, DETENTION, AND DEATH: THE RESULTS OF THE U.S. DECISION TO RESUME DEPORTATIONS TO HAITI (Mar. 1, 2011), <http://ccrjustice.org/files/Final%20Deportations%20Factsheet.pdf> (Feb. 23, 2011 version); Michelle Karshan, *Being Deported to Post-Earthquake Haiti? Life-Threatening, Illegal and Inhuman Detention Conditions Will Make Newly Deported the Latest Victims of Deadly Cholera Epidemic*, Dec. 15, 2010, www.alternativechance.org.

³ Andy Kershaw, *Haiti’s Desperate Deportees*, BBC NEWS, Jan. 10, 2002, http://news.bbc.co.uk/2/hi/programmes/crossing_continents/americas/1057930.stm.

⁴ *Id.*; see also Karshan, *supra* note 2. These horrific conditions are further described in the letter submitted by the Center for Constitutional Rights et al., to which we are a signatory, in response to this policy.

⁵ DEPORTATIONS, DETENTION, AND DEATH, *supra* note 2.

⁶ See Tom Brown, *U.S. Resumes Deportations to Quake-Ravaged Haiti*, REUTERS, Jan. 20, 2011.

⁷ Melissa Sanchez and Marina Giovannelli, *Activists Urge Halt to U.S. Deportations to Haiti*, MIAMI HERALD, Feb. 3, 2011.

⁸ DEPORTATIONS, DETENTION, AND DEATH, *supra* note 2.

In response to the news of Mr. Guerrier's tragic death and the continued advocacy of NGOs, the Inter-American Commission on Human Rights ("IACHR") of the Organization of American States issued precautionary measures urging the United States to suspend deportations to Haiti. The IACHR urged that such a moratorium must be in place until the Haitian detention system "adequately take[s] into account the right to family life of those subject to the deportation process, as well as their family ties in the United States" and "until Haiti is able to guarantee that detention conditions and access to medical care comply with applicable minimum standards."⁹

Even those deportees who are not treated as "criminal deportees" or are otherwise fortunate enough to be released from Haiti's brutal detention system must still contend with devastating conditions in post-earthquake Haiti. Haiti remains a country in ruins, and deportees will be faced with homelessness, unemployment, hunger and disease.¹⁰ Because of this, we urge that the United States implement the moratorium advocated by the IACHR and extend it to all Haitians who might be considered for removal under the proposed policy or future policies.

(3) Halting deportations to Haiti will enhance rather than compromise public safety in our communities.

Halting deportations to Haiti will contribute to greater public safety in the United States. Many of the Haitians who face deportation are longtime residents of the United States. They are caretakers and wage-earners for American families. Our communities rely on their continued presence and support here in the United States. Tearing families apart serves to destabilize, rather than protect, our communities. Furthermore, framing the resumption of deportations as a solution to a public safety problem only distorts the facts. All individuals to whom the policy would apply, regardless of the level of their past convictions, have already been judged for those crimes, served their sentences, and released pursuant to the standards of our criminal justice system. A noncitizen Haitian convicted of a crime who has paid his or her debt to society according to our criminal laws poses no greater safety risk to society than a United States citizen in an identical situation.

Furthermore, because deportations were already suspended for almost a year, ICE already has mechanisms in place for managing an extension of that suspension. In fact, ICE has had great success with alternatives to detention coupled with supervision. The agency has demonstrated the capacity to implement a range of risk assessment tools to provide for appropriate conditions of release. Halting inhumane deportations to Haiti could serve as an opportunity for the agency to expand these practices and reduce the burden on an already overcrowded detention system. The community is willing to work with ICE to ensure the success of these programs.

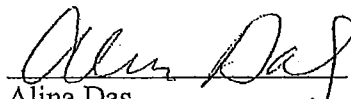
The spirit of American immigration law cannot sanction the deportation of individuals to face the certain torture and possible death that they will experience in Haiti. In light of Haiti's horrific detention system and current humanitarian crises, we implore DHS to permanently

⁹ Inter-Am. C.H.R., IACHR Precautionary Measure 05/11 (Feb. 1, 2011), <http://www.cidh.oas.org/medidas/2011.eng.htm>.

¹⁰ Deborah Sontag, *A Year Later, Haiti Struggles Back*, NY TIMES, Jan. 3, 2011, http://www.nytimes.com/2011/01/04/world/americas/04haiti.html?_r=1&ref=haiti.

abandon the proposed Policy for Resumed Removals to Haiti. We urge DHS to consider the opportunity to reach out to the community to develop alternatives to deportation that reflect the spirit of fairness and dignity that undergirds our system of justice, and that will ultimately enhance the integrity of our communities and public safety in the United States.

Sincerely,



Alina Das
Nancy Morawetz
Supervising Attorneys

Alba Villa
Benjamin Locke
Colleen Duffy
Josh Occhiogrosso-Schwartz
Ruben Loyo
Student Advocates

Immigrant Rights Clinic
Washington Square Legal
Services, Inc.
New York University School
of Law
245 Sullivan St., 5th Fl
New York, NY 10012
Tel: (212) 998-6430
Fax: (212) 995-4031

Email: alina.das@nyu.edu,
colleen.duffy@nyu.edu,
jos222@nyu.edu