



VANESSA MERTON
PROFESSOR OF LAW AND
FACULTY SUPERVISOR, IMMIGRATION JUSTICE CLINIC
vmerton@law.pace.edu

PACE UNIVERSITY SCHOOL OF LAW 78 NORTH BROADWAY
WHITE PLAINS, NEW YORK 10603
TELEPHONE: 914-422-4333
TELEFACSIMILE: 914-422-4391

March 10, 2011.

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

Re: Comment on ICE's Policy of Resumed Removals to Haiti

Dear Secretary Napolitano:

This comment is submitted about the Policy for Resumed Removals to Haiti ("Policy") posted on the website of Immigration and Customs Enforcement (ICE) on March 7, 2011. As a law professor for over three decades who has taught and supervised law students representing clients in various challenging areas of law practice, from domestic violence to workplace safety and health to prisoners' rights and more, I am shocked by the callousness of this Policy – and it takes quite a lot to shock me.

I implore you to immediately cease these deportations, acknowledging the horrendous situation in Haiti and the inevitability that those deported will be confined in grotesque and lawless jails where they face, among other horrors, deprivation of all fundamental necessities for survival, random brutal torment and abuse, and extortion of funds they are believed to have access to from American contacts. In particular, I ask you to reconsider this Policy as applied to potential deportees who suffer from severe, chronic, life-threatening disease, since for them there is no question that deportation WILL = death: in many cases, a hideous, lingering, painful, unmedicated death. Whatever their criminal infractions, they do not deserve that, and it is appalling that the United States of America, under your leadership, seems determined to subject them to this harsh and grossly disproportionate punishment.

As you well know, the January 12, 2010 earthquake which killed hundreds of thousands of Haitians and made more than a million homeless also destroyed Haiti's already frayed and minimal infrastructure: schools, hospitals and clinics, courts, government offices, prisons and jails, farms, roads, docks and marinas, communication networks, food and water purification and distribution systems – all are heavily damaged, inadequately resourced, dysfunctional or entirely nonfunctional. You know that Haiti is still suffering an almost unimaginable level of starvation, disease, and societal breakdown. You know that American deportees, when they arrive in Haiti, are confined, for no legitimate reason, to detention facilities where cholera is rampant and the conditions appalling. You know that at least one death has already resulted from this Policy; you must know that more deportees will die if you do not take responsibility for the consequences of your decisions and change this Policy.

Let me describe just one example of how cruel and foolish this Policy is: I represent a Haitian national who came, legally, to the United States when he was eight years old; became a Legal Permanent Resident in 1989, 22 years ago; and finished serving a sentence for what was essentially a bar fight six years ago. Because of that single low-level felony conviction, he is not eligible for Temporary Protected Status. Since his release from prison in 2005 – early, for good behavior and because he has no other criminal or disciplinary record – he has lived peacefully in Rochester, New York, just about always working full-time as a car salesman, despite the disadvantage of his

conviction, and supporting his wife and two US citizen children.

My client's immigration status has been closely examined and he has been granted deferral of removal twice: once by an Immigration Court Judge, a determination that was reversed at the behest of your Department of Homeland Security; and once by an ICE officer who had supervised him for years. That deferral will expire this summer, and he therefore faces removal under this Policy. Without his financial support, his wife will need at least some public assistance to provide for their children. Realistically, their father will no longer be in their lives; she could not afford, nor would she dare, to travel to Haiti with the children. After all, the United States Department of State issued a strongly worded travel advisory cautioning against exactly that, at the very time that this deplorable and ill-conceived Policy was suddenly put in place. So, for practical purposes, these children's father will be dead to them.

But that is not merely a metaphor in his case. My client suffers from intractable and profound Type-I diabetes. He tries very hard, so far successfully, to maintain his health so that he can work and discharge his family responsibilities. He requires twice-daily injections of medication as well as a strict diet and exercise regime. His condition is incurable, and without adequate medical attention it will only deteriorate and become ever more difficult to manage. Physicians have informed him that without proper medication and compliance with his strict diet and exercise regimen, he will almost certainly soon suffer the fatal effects of his illness.

If removed to Haiti, as a criminal deportee from the U.S., my client will be immediately and indefinitely detained. Because Haitian prison officials actively withhold medication from detainees, he will suffer rapid biological deterioration due to his untreated diabetes. Also, because his medication will be withheld or impossible to obtain, he will likely lose control of his physical and emotional behavior, rendering him incapable of quick conformity to the orders of prison officials, or clever navigation of their whims and demands. Because of this, the Haitian prison officials will most likely single him out for particularly harsh treatment, amounting to torture. Due to his physical deterioration and probable torture, my client will shortly die if removed from the U.S. and detained in Haiti.

Moreover, even if the Haitian Government did not detain him as a criminal deportee indefinitely, he will still be in grave danger due to his diabetes. The international medical NGO Médecins Sans Frontières/Doctors Without Borders (MSF) reported that the earthquake destroyed 60 percent of the existing health facilities in Haiti.¹ While international humanitarian groups, like MSF, have built primary health care clinics, the services offered at the clinics are rudimentary at best: the clinics offer basic consultations, vaccinations, or referrals to hospitals when necessary.²

For the over 300,000 Haitians already living with diabetes, these clinics are not remotely adequate to manage this serious chronic health condition. For example, at one clinic held in a one-room school in the town of Cabaret, north of Port-au-Prince, a doctor suspected that a 40-year-old grandmother had diabetes, yet he had no way to test her for the disease because his team had run out of blood-sugar test strips.³ In fact, The Haitian Foundation for Diabetes and Cardiovascular Diseases (FHADIMAC) has explained, "People in Haiti, in particular those with a chronic health condition like diabetes or hypertension, face a series of massive challenges: a dire lack of adequate food and housing, and despite reports to the contrary by some international humanitarian organizations, a lack of specialized health centres and essential drugs."⁴

¹ See Doctors Without Borders/ Médecins Sans Frontières (MSF), *Emergency Response After the Haiti Earthquake: Choices, Obstacles, Activities, and Finance* (July 2010).

² *Id.*

³ Martha Quillin, *In Haiti, Free Care Cures and Ails*, Miami Herald, May 8, 2010, available at <http://www.haitian-truth.org/in-haiti-free-care-cures-and-ails/>.

⁴ Nancy Larco & René Charles, *Solidarity with Haiti: The Global Diabetes Response*, 55 *DiabetesVoice* 47, 48 (June 2010) (discussing global response to the earthquake; without international efforts diabetes would have killed children and adults with insulin-treated diabetes who had survived the earthquake in a matter of days or weeks).

If my client returns to Haiti, he will be homeless as he has no family or friends there. He would be forced to join the nearly two million people who live in tents or informal housing in relief camps or abandoned buildings.⁵ While feebly making his way down unfamiliar pathways that were once streets, Port-au-Prince would look to him more like a war zone than a capital city. The stench of rotting bodies has been replaced by the stench of rotting mountains of garbage⁶ and clogged sewers full to overflowing.⁷ If my client could understand Creole, he might overhear horror stories from the camps, like toddlers falling into vats of boiling rice, or entire families poisoned by carbon monoxide as they cooked in their tents.⁸

If my client is fortunate enough to get a spot in a camp, it will almost certainly be devoid of electricity, running water, or sewage disposal. In the camps, the tents are falling apart, and hardly any transitional housing is available for anyone.⁹ There is no telling how long these camps will be the only option; even the best estimates suggest that it will take years to clear the rubble from the city, let alone begin large-scale rebuilding.¹⁰

The heat will be stifling; the average temperature in Haiti is 83 degrees Fahrenheit year-round. My client's body temperature will begin to rise, but his body is not able to regulate its internal temperature; diabetes impairs his body's ability to adjust to increased temperatures.¹¹ He will suffer tremendously in the heat. Compared to those without diabetes, he has a far higher risk of becoming dehydrated and dying of heat stroke from the extreme temperatures.¹²

Another major challenge for my client will be finding adequate food. He must adhere to a strict diet due to his diabetes; maintaining this diet in Haiti will be virtually impossible. First, he has to obtain food of any kind. That will be difficult in and of itself because approximately 52% of households and 69% of families living in camps suffer from food insecurity.¹³ Even if he is lucky enough to receive a food basket from the Worldwide Food Program, its contents of rice, beans, oil, sugar, and salt¹⁴ are not at all appropriate for a diabetic's diet.¹⁵

If my client is fortunate enough to achieve some semblance of an appropriate diet, finding water to remain hydrated will be even more difficult. One and a half million people lost access to safe

⁵ Elsadlg Elsheikh, *Haiti and The Broken Promises*, AlterNet, July 19, 2010, <http://blogs.alternet.org/speakeasy/2010/07/19/haiti-and-the-broken-promises/>.

⁶ Sue Montgomery, *Haiti's Camps of Despair*, *The Gazette*, July 3, 2010, available at <http://www.montrealgazette.com/business/money/Haiti+camps+despair/3230461/story.html>. See also *Doctors Without Borders/ Médecins Sans Frontières (MSF), Emergency Response After the Haiti Earthquake: Choices, Obstacles, Activities, and Finance* (July 2010).

⁷ See *Doctors Without Borders/ Médecins Sans Frontières (MSF), Emergency Response After the Haiti Earthquake: Choices, Obstacles, Activities, and Finance* (July 2010).

⁸ Sue Montgomery, *Haiti's Camps of Despair*, *The Gazette*, July 3, 2010, available at <http://www.montrealgazette.com/business/money/Haiti+camps+despair/3230461/story.html>.

⁹ *Id.* See Also *Still No Shelter*, *N.Y. Times*, June 9, 2010, at A24 (explaining that tent cities provide little protection from the storms and Haiti's government has no clear strategy to get them out of the camps into more secure shelter anytime soon).

¹⁰ Sue Montgomery, *Haiti's Camps of Despair*, *The Gazette*, July 3, 2010, available at <http://www.montrealgazette.com/business/money/Haiti+camps+despair/3230461/story.html> (according to Imogen Wall, from the UN's office for the Coordination of Humanitarian Affairs, it is impossible to say how long the tent camps will be in place).

¹¹ Anahad O'Connor, *Really?: The Claim: Diabetes Makes You Sensitive to Heat*, *The N.Y. Times*, June 29, 2010, at D5 (addressing the claim that diabetes makes one more sensitive to heat).

¹² *Id.* ("Research by the Mayo Clinic in Arizona shows that diabetic patients have higher rates of adverse events-like hospitalizations, dehydration and death-in the heat[.]").

¹³ See *United Nations, Haiti: 6 Months After... (July 2010)*

¹⁴ *World Food Programme, Haiti: Six Months On, (July 2010)*.

¹⁵ See *American Diabetes Association, Diabetes Meal Plans and a Healthy Diet*, available at <http://www.diabetes.org/food-and-fitness/food/planning-meals/diabetes-meal-plans-and-a-healthy-diet.html> (explaining that a diabetic's diet should include a variety of foods with an emphasis on vegetables, whole grains, fruits, lean meats, poultry, and fish).

drinking water after the earthquake.¹⁶ Six months after the disaster, the International Federation and Red Crescent Societies estimated that there had been NO improvement of water supply for about half of the directly affected population.¹⁷ The authorities, together with the international aid community, are still years away from meeting the overwhelming demand for safe drinking water.¹⁸ To manage his diabetes, my client must drink plenty of water; without access to adequate safe water, he will collapse and die.

Requested Action

While removing anyone to Haiti under current circumstances is inhumane, the undersigned requests that the Department of Homeland Security give special attention to the terrifying plight of potential deportees who suffer from chronic, severe, life-threatening health conditions that will shortly result in death if they are removed to Haiti. It would appear that to date, no thought whatsoever has been given to this predictable consequence of the Policy.

1. On humanitarian grounds, individuals in this category who can present satisfactory medical documentation should be granted deferred action and/or stays of removal.
2. Individuals in this category should not be subjected to arrest and detention in the United States, pending decisions on deferred action and/or stay of removal. Those in this category who are currently in United States custody should be released. Alternative methods of supervision and control have proven entirely adequate.
3. The Department of Homeland Security should extend the comment period on the Policy to solicit expert medical opinion and professional judgment about the predictable consequences of deporting to Haiti diabetics, cancer victims, and individuals with multiple sclerosis, muscular dystrophy, and other major chronic diseases and disabilities. At the same time, removal of those in this category should be suspended, so as to permit genuine and meaningful investigation of the merits of this life-and-death issue.

Sincerely,
Vanessa Merton
/s/ Vanessa Merton

¹⁶ International Federation of Red Cross and Red Crescent Societies, Haiti Six Months After the Quake, available at <http://www.alertnet.org/db/blogs/64397/2010/06/12-082526-1.htm>.

¹⁷ *Id.*

¹⁸ *Id.*