



STATEMENT OF LUTHERAN IMMIGRATION AND REFUGEE SERVICE
IN OPPOSITION TO THE U.S. GOVERNMENT'S RESUMPTION OF DEPORTATIONS TO HAITI
AND
COMMENTS ON THE ICE DRAFT "POLICY FROM RESUMED REMOVALS TO HAITI"
MARCH 17, 2011

Lutheran Immigration and Refugee Service (LIRS) is troubled by the decision to resume deportations to Haiti and asks the administration to live up to our nation's moral and legal obligations to protect the human rights of all people within our borders. Furthermore, LIRS opposes the arbitrary detention of Haitian nationals with final orders of removal in the absence of a transparent articulation of the government's need to restrict their individual right to liberty.

As of February 25, 2011, the Ministry of Health in Haiti has reported 248,442 cholera cases and 4,627 deaths.¹ Imagine 17 men huddled into a small 3 feet by 15 feet cell while one of them suffers the symptoms of cholera, vomiting and diarrhea. A deportee, Mr. Guerrier, lay dying in a Haitian prison cell where he had organized his cellmates to clean the cell and share food with one another until he, too, was infected with cholera. The floors were covered with dirt, feces, vomit, and trash, and the walls were blood-stained. The cell was infested with mosquitoes. Because the toilet did not flush, the detainees had to discard their excrement in trash bags, which littered the floors of the cell and the bathroom.² Mr. Guerrier, the fiancé of a U.S. lawful permanent resident, died within days.

As an organization compelled to preserve justice for the sojourner and protect the most vulnerable migrants who fear return to their countries of origin, LIRS stands with its partner organizations to hold our nation to a higher standard in order to uphold our moral authority within and without our borders. LIRS urges the government to *do no harm* and halt deportations to Haiti until the recovery in Haiti can support the safe return of its nationals.

A. The United States Must Develop Policies Consistent with Established International Principles

Through its immigration laws, the U.S. provides two critical protections rooted in international law that prohibits the government from returning an individual to his or her country of origin where the individual's life or freedom may be threatened³ or where the individual would likely be subjected to torture.⁴ These obligations flow from the principle of non-refoulement which is upheld as a widely-

¹ Pan American Health organization update (Mar. 7, 2011), available at http://new.paho.org/hq/images/Atlas_IHR/CholeraHispaniola/notesPDF.pdf

² University of Miami Immigration and Human Rights Clinics et al., "Deportations, Detention and Death: The Results of the U.S. Decision to Resume Deportations to Haiti." (Mar. 1, 2011).

³ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force Apr. 22, 1954, art. 33; Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967.

⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), adopted Dec. 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (no. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 3; International Covenant on Civil and Political Rights, art. 7.

accepted international norm. They are embraced by our nation as an embodiment of our collective commitment to welcome strangers who seek safety from oppression.

No individual should be expelled from our borders if the expulsion will place the person's life in jeopardy. There is arguably a gap in international legal protections for people whose lives are jeopardized by natural disaster or epidemics rather than acts committed by or with the acquiescence of the government. LIRS agrees with the comment by the American Civil Liberties Union:

ICE's policy runs counter to this bedrock principle [of non-refoulement]. Moreover, to the extent that some Haitians may not qualify under current U.S. law for refugee status or related types of protection afforded under international human rights and refugee law, U.S. policy ought to be consistent with international law and should provide complementary forms of protection.¹⁷ This protection must include the halt of all deportations as long as Haitian conditions, including the current health crisis as well as political instability and violence, continue to threaten the lives, safety, and freedom of Haitian deportees.⁵

The current issue of removal to Haiti blurs the lines between the legal and moral underpinnings of our nation's obligations towards Haiti nationals within the U.S. The government and the people can argue in courts about whether removals to Haiti are lawful in the first instance. Technical legal arguments that skirt the established principles of non-refoulement do not advance this nation's interests. A proud defense of the legality of this policy does nothing more than pollute our nation's moral reputation. The government must stand down from the policy to resume deportations to Haiti or risk losing an already weakened moral authority.

Indeed, the United Nations High Commissioner for Refugees and the U.N. Independent Expert on the Situation of Human Rights in Haiti recommended that all countries "refrain from expelling Haitians and continue to provide decent temporary arrangements for their protections on humanitarian grounds." The willful change of policy to resume deportations sends a cold and troubling message internationally without any consistent, transparent, and evidence-based justification for the need to resume deportations.

B. The United States Must Avoid Arbitrary Restrictions of Liberty

Our nation's commitment to promote the rule of law must not be compromised by the desires to lock-up the unwanted arbitrarily and to expel them without regard to their safety or right to life. In early December 2010, ICE arrested and detained 89 Haitians for purposes of removal but prior to the development of a plan for removal. Three months later, most of them remain in detention.

The power of sovereign nations to control the movement of non-citizens and to deport them is not without restrictions. The rights of government trigger equally awesome responsibilities to wield the power in a way that respects the human rights of each individual. Thus, no individual may have his or her liberty restricted – by detention or any alternatives to detention – without a demonstrated need to restrict the individual's liberty in order to meet a government interest *and* a showing of both reasonableness and proportionality of the restriction balanced against the government's interest. Detention or other restrictions of liberty (i.e. alternatives to detention) without an individualized assessment of these factors is arbitrary. International principles prohibit arbitrary detention in diverse contexts, including administrative detention of migrants for purposes of removal.⁶ The Supreme Court has also set limits on

⁵ American Civil Liberties Union, *Comments in response to U.S. Immigration and Customs Enforcement (ICE) proposed Policy for Resumed Removals to Haiti (3/7/11)*, Accessed at <http://www.aclu.org/human-rights-immigrants-rights/ice-should-halt-deportations-haiti-says-aclu>

⁶ Article 9 of the International Covenant on Civil and Political Rights (ICCPR) available at <http://www2.ohchr.org/english/law/ccpr.htm>; and the Executive Committee of the United Nations High

the government's authority to detain non-citizens even when the individual has a final order of removal that the government wishes to effectuate.⁷

The policy regarding the resumption of deportations to Haiti fails to explain why a period of detention, or any other restriction of liberty, is necessary on an individual basis in order to effectuate the removal of particular Haitian nationals. Yet its first act after deciding to resume deportations was to remove Haitian nationals from their families in the U.S. and lock them into detention facilities while starting to plan their removal. The ongoing detention of Haitian nationals, who are either fighting their removal or awaiting removal, as a matter of policy, rather than a result of individualized assessments, is an arbitrary exercise of government power.

C. This Historic Moment Defines Our Nation's Moral Compass

The U.S. government must decide whether to portray this nation as a sophisticated democracy that nimbly balances the interests of public safety with respect for individual rights globally or an isolated state that only demands respect for human rights when convenient. The cold policy cloaked in secrecy for months and defended with rancor exposes the government's practice of treating ex-offenders as a sub-class with fewer humanitarian rights. The same government that recognizes the dire needs in Haiti by sending aid is now taking action to round-up Haitians with criminal records and place them in harm's way.

Maintaining a moratorium on deportations would do no harm. The 27 individuals who were most recently deported to Haiti were living peacefully in our communities. They may have done harm to our communities in the past, but had fully paid their debt to society. There was no need to remove them because they posed no imminent threat in the U.S. Policies seeking to minimize the risk of recidivism by removing non-citizens with criminal records – including those with the most violent convictions - may stand-up to scrutiny when the removal will not create a threat to the non-citizen's life. But when the removal endangers the individual's life, the policy shocks the conscience. Halting deportations eliminates the harm to the non-citizens facing removal to Haiti and eliminates the harmful impact on recovering communities in Haiti who have no resources to absorb deportees. In the context of Haiti, it is imperative that the U.S. government policies do no harm.

Commissioner of Refugee, 'Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers' (1999).

⁷ See *Zadvydas v. Davis*, 533 U.S. 678 (2001).