1993

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UNITED STATES HAITIAN POLICY: A HISTORY OF DISCRIMINATION

Cheryl Little

"Give me your tired, your poor, your huddled masses yearning to breathe free; the wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door."\(^1\)

I. Introduction

While the United States has long been perceived as a mecca for refugees from all over the world, this is rapidly changing as many more refugees wish to come to the United States than this country safely feels it can admit. Poor economic conditions in the United States have increased the general public’s concern with the large number of aliens who are legally being admitted into this country every year. This concern of late has focused on those persons fleeing from Haiti to the United States.

The first boatload of Haitians claiming persecution in Haiti
arrived in the United States in September 1963.² Out of the twenty-five refugees in this group, all were denied political asylum and deported.³ In retrospect, this signaled the wave of rejection that was to come.⁴ Despite the well-documented political oppression in Haiti over the past two decades, refugees from Haiti, the world's first Black Republic,⁵ have been singled out for special discriminatory treatment. The fundamental principles of refugee protection have been abandoned time and again in favor of returning Haitians to a country where its people are routinely victimized.

**II. United States Immigration Legislation**

In 1965, Congress discarded favoritism by national origins in favor of the same immigration ceiling for every country.⁶ In October 1968, the United Nations Protocol Relating to the Status of Refugees was ratified by the United States Senate.⁷ The amended Protocol

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³ *Id.*
⁴ Haitians began entering the United States in significant numbers by plane in 1957, when Francois Duvalier ruled Haiti and terrorized the people with his dreaded Tonton Macoutes, a powerful paramilitary political force created by Duvalier. Tens of thousands of upper and middle class Haitians, mostly small businessmen and professionals, arrived in the United States in the 1960s and early 1970s on nonimmigrant visas. Distinguishable only because of their special tales of oppression and terror, these Haitians were rarely deported, although none were officially regarded as refugees. It was not until the mid to late 1970s that Haiti's rural and urban poor migrants took to their boats in any significant number and came to this country. Between 1980, when the U.S. government briefly relaxed its immigration policy, and September 1981, when the Haitian interdiction policy began, hundreds of boats loaded with Haitian refugees landed in South Florida. *See* Anemona Hartocollis, *Battling Ethnic, Racial Tags*, NEWSDAY, June 25, 1990, at 7.
⁵ A successful slave revolt from the French in 1804 made Haiti the first independent country in Latin America and the first state in the world established through the revolt of slaves. *Id.*
⁷ Linda Greenhouse, *Court Rules Narrowly in an Immigration Case*, N.Y. TIMES, June 6, 1984, at A23. "Exactly why the United States acceded to the Protocol is far from clear. The sparse legislative history suggests that it was primarily a symbolic gesture,
denied a State the right to expel a refugee if his life or freedom would be threatened on account of his political opinion, race, religion, nationality, or membership in a particular social group.

Equal treatment was further extended in 1980 when the United States redefined refugees as individuals fearing persecution not only from communist systems, as had been the case before, but from any regime. The Refugee Act of 1980 was meant to bring United States law into conformity with international treaty obligations and to establish a permanent, systematic procedure for meeting the humanitarian needs of refugees and those seeking asylum in the United States.


Refugees are a special sort of migrant because they stand outside the quota system, and because their chief qualification for admission into this country by definition is unrelated to their economic utility. The government has the unique ability to select refugees. U.S. law recognizes two types of refugees, with the distinction being how these individuals gained admittance into this country. The first type of refugees are interviewed abroad, either in a country that is providing them temporary asylum (a country of "first" asylum) or their country before they fled anywhere. The second group, known as asylum seekers, enter the United States in some fashion (legally with a visa or illegally) and then apply for political asylum. Each year, the President, after consulting with Congress, decides on a ceiling, a maximum number of refugees (not including asylum seekers) who will be admitted. Robert Pear, Bush Seeks Slight Increase in Number of Refugees, N.Y. Times, Sept. 12, 1989, at A12. See also John Scanlon, Immigration Law and the Illusion of Numerical Control, 36 U. Miami L. Rev. 819, 846 (1982).

See David M. Margolick, Suit by Six Haitian Aliens Testing Detention Policy, N.Y. Times, Dec. 4, 1981, at B1. This international treaty provided more protection to the refugee than did the Immigration Act since it extended protection to "excludable" as well as "deportable" aliens and since it made asylum a right, rather than a matter in the Attorney General's discretion. "Deportable" aliens have been expelled after entering the United States, whereas "excludable" aliens have been denied initial entry into the United States. The irony is that "deportable aliens," many of whom entered the country surreptitiously, have been given more rights under the law than "excludable" aliens who present themselves to immigration. Virtually all of the Haitians fleeing their country by boat or arriving by plane at the airport are "excludable" aliens.


See id.
Yet the new laws have not afforded the Haitians any meaningful relief; rather they have betrayed the very people they were meant to protect. In spite of the Refugee Act's attempt to establish objective criteria for determining refugee admissions and depoliticize refugee policy, the Act's provisions are easily circumvented by an executive branch with too much discretionary authority. The Act therefore creates the appearance of formal legal standards in the refugee admissions process, while diverting attention from the vast number of refugees who are admitted on a nonformal and nonlegal basis in furtherance of United States political objectives. Indeed, less than five percent of the refugee admissions in recent years have come from noncommunist areas such as Haiti.

The Haitians' quest for political asylum perhaps best illustrates the continuing bias in the implementation of United States immigration laws. Fewer than sixty Haitians were granted asylum between 1980 and 1991. Despite the bloody outcome of the aborted election in Haiti in 1987, not a single Haitian was granted asylum that year. In 1990, only two percent of Haitians whose cases were decided by the Immigration and Naturalization Service (INS) were approved, giving Haitians the lowest rate of asylum approval of any nationality. Even these figures are generous to the INS, since a

12 The year 1992 saw an approval rate of only 37% in United States asylum cases, compared to a rate of about 70% in Canada. Deborah Sontag, System for Political Asylum is Improving, N.Y. TIMES, Dec. 14, 1992, at A12. From June 1983 until March 1991, 74.5% of refugees from the former Soviet Union were granted asylum to the United States compared to 1.8% Haitians, 2.8% Salvadorans, and 2.0% Guatemalans. Id.

13 From 1981 until 1989, 94.4% of refugees admitted were from communist countries. With the addition of Iran and Iraq, the total reached 99.9%. See Voting With Their Feet, Their Trabants and Their Oars, THE ECONOMIST, Dec. 23, 1989, at 17. The asylum and parole process continues to purposefully divert persons from communist countries from the legal system, thereby ensuring that they will be admitted irrespective of the validity of their individual claims.

14 While roughly 2400 Haitian asylum applications were filed and processed between 1980-1991, only fifty-two Haitians were granted asylum, less than two percent. Immigration and Refugees, Hearings Before the House of Representatives Subcommittee on International Law, 102d Cong., 1st Sess., (Nov. 20, 1991) (statement of Arthur C. Helton, Director, Refugee Project, Lawyers Committee for Human Rights).

15 Jacquelyn Swearingen, Home Leader to Fight 'Harsh' Haitian Policy, MIAMI HERALD, June 9, 1989, at 4B.

16 Refugees Two Types of Treatment, MIAMI HERALD, Jan. 7, 1993, at 21A.
number of other Haitians who would have been in the program decided to opt out and forgo applying for asylum because the odds were so great against their claims being fairly considered.\textsuperscript{17}

### III. Haitian Immigration and the United States Courts

Haitian refugee advocates were forced to turn to the courts in attempting to put an end to the discriminatory practices of the United States government toward the Haitians.\textsuperscript{18} Two landmark cases were brought in the 1980s. The first, \textit{Haitian Refugee Center v. Civiletti},\textsuperscript{19} was filed in July 1980 on behalf of over 4000 Haitians requesting political asylum. The INS, through procedures in effect at that time, had denied the more than 4000 claims.\textsuperscript{20}

Indeed, the INS had adopted a special "Haitian Program" in 1978, designed specifically to adjudicate, and to deny, as quickly as possible the asylum claims of Haitians.\textsuperscript{21} This was the result of an


\textsuperscript{18} During the 1960s and early 1970s, an almost impossible burden of proof was placed on Haitians seeking asylum. Two major class action cases challenged this policy. In Pierre v. United States, 547 F.2d 1281 (5th Cir. 1977), it was decided that excludable aliens, such as the Haitians, who had not made an "entry" into the United States, neither enjoyed the protection of the U.S. Constitution, nor were vested with any substantive rights by the ratified Protocol period. \textit{Id.} at 1287. Justification for this ruling, which constituted a major stumbling block for Haitians seeking relief, was weak: "Clearly constitutional protections cannot be afforded to the entire population of the world, and some distinction is necessary." \textit{Id.} at 1290. The court in Sannon v. United States, 460 F. Supp. 458 (S.D. Fla. 1978), held the opposite result from Pierre. Both cases became moot when the INS promulgated a new rule which provided for an evidentiary hearing of asylum claims in exclusion proceedings. \textit{Id.} at 459. Even though the courts never settled the issue, these were significant cases in which the Haitians were able, through the judicial process, to force the INS to change its procedures in regard to exclusionary hearings.


\textsuperscript{20} \textit{Smith}, 676 F.2d at 1032.

\textsuperscript{21} One court noted:

[T]here was a program at work within INS to expel Haitians. Their asylum claims were prejudged, their rights to a hearing given second
"intentional" effort by United States government agencies to single out the Haitians for special discriminatory treatment.  

Rushed hearings, insufficient consideration of claims, and failure to allow the Haitians' attorneys time to properly assist their clients, all culminated in a program which "in its planning and executing [was] offensive to every notion of constitutional due process and equal protection." As the Civiletti court concluded:

Those Haitians who came to the United States seeking freedom and justice did not find it. Instead, they were confronted with an Immigration and Naturalization Service determined to deport them... A Program was set up to accomplish this goal. The Program resulted in wholesale violations of due

priority to the need for accelerated processing. . . . The violations [of due process] were discriminatory acts, part of a Program to expel Haitians. . . . The [INS] did not grant a single request for asylum . . . During that time, thousands of Haitians were processed. These denials were not case-by-case adjudication, but an intentional, class-wide summary denial.

Civiletti, 503 F. Supp. at 519.

22 An examination of State Department and INS records unequivocally confirmed that the Justice Department, INS, and the State Department had embarked on a plainly illegal program to deport Haitian boat people from the United States. This was done in violation of fundamental rights provided by U.S. and international law. Peter A. Schey, The Black Boat People, 9 MIGRATION TODAY 7, 9 (1981).

23 Civiletti, 503 F. Supp. at 532. Immigration judges refused to suspend the deportation hearings of Haitians who sought asylum, although judges had customarily granted suspensions before the initiation of the Haitian Program. The Haitians therefore were forced to admit their deportability before they could seek asylum. Immigration judges also infringed upon Haitians' Fifth Amendment right to remain silent by inferring an admission of deportability from their assertion of that right. And, acting without authority, they gave Haitians as little as ten days to file their asylum claims or have their claims dismissed for lack of prosecution. Such deadlines made adequate preparation of Haitian asylum claims impossible. The short length of the interviews, as well as the lack of knowledge of the interviewers, caused the decisions denying asylum to be based upon insufficient information. The use of form letter denials and the State Department's failure to fairly evaluate claims further deprived Haitians of a fair chance to seek asylum. Id. at 522, 532; Smith, 676 F.2d at 1031.
Moreover, the court found that the discriminatory treatment of Haitians was nothing new: "The court is . . . presented with a pattern of discrimination which began . . . in 1964. Over the past 17 years, Haitian claims for asylum and refuge have been systematically denied, while all others have been granted. The recent Haitian Program is but the largest-scale, most dramatic example of that pattern."  

24 Civiletti, 503 F. Supp. at 532. The Appeals Court made an interesting observation in regard to the tremendous backlog of cases that had accumulated in the INS Miami District office by the summer of 1978 (between 6000 and 7000 cases). The court claimed this backlog — which the government had argued constituted the reasons for instigating the Haitian Program — was not a result of a massive influx of Haitians to South Florida over a short period, but rather was primarily attributable to a slow trickle of Haitians over a ten-year period and to the confessed inaction of the INS in dealing with these aliens. Moreover, the court noted that INS Deputy Commissioner Noto, who visited the Miami office in August 1978, encouraged attorneys to point out "THE DIMENSIONS OF THE HAITIAN THREAT" and that "these are unusual cases dealing with individuals that are threatening the community's well-being — socially and economically." Smith, 676 F.2d at 1030 (quoting Plaintiffs' Exhibit 100 at 5).  

25 Civiletti, 503 F. Supp. at 519. The trial in this case lasted about one month and approximately 55 witnesses testified for the Haitians. Deportation hearings were processed at an unprecedented rate under the Haitian Program. Previously, only between one and ten hearings were conducted each day. During the program, three immigration judges held an average of 55 hearings a day. At the program's peak, the number of deportation hearings increased to as many as 80 a day. Only about 13 lawyers were available to represent all of the Haitians. Because of the number of Haitians undergoing processing, and the speed with which the processing advanced, attorneys were not provided sufficient time to prepare the cases. Adequate preparation of a Form I-598 (the form used to request asylum) requires between at least 10 to 40 hours of an attorney's time, often even more. During the period of the Haitian program, if each of the attorneys available to represent the Haitians did nothing during a 40 hour week except prepare Forms I-589, they would have been able to devote only about two hours to each client. Because of other demands on their time, however, the attorneys could not even spend all of their time on these applications. Asylum interviews were also being held in the INS district office at the rate of 40 per day. Immigration officers who formerly had worked at the airport were enlisted as hearing officers for those interviews. Prior to the program such interviews lasted up to an hour and a half; during the program the officers spent approximately 30 minutes interviewing each Haitian. As communication had to occur through Creole interpreters, only about 15 minutes of substantive dialogue actually took place. Hearings on asylum requests were conducted simultaneously at several different locations. It was not unusual for the few attorneys available to represent Haitians to have three hearings scheduled at the same hour in
The district court judge in *Civiletti*, Judge James Lawrence King, noted that persons deported from the United States back to Haiti faced a "substantial danger" of imprisonment, torture, or death upon return and he suggested that the uniform rejection of the Haitians' asylum claims demonstrated a profound ignorance, if not an intentional disregard, of the conditions in Haiti.\(^{26}\) Additionally, Judge King noted that Haiti's economic problems "are the manifestations of oppression" and that the economic stagnation in Haiti was "demonstrably an outgrowth of Duvalier politics."\(^{27}\) Many economists who have studied conditions in Haiti have so concluded, as have United States government studies.\(^{28}\)

Despite the federal court's absolute condemnation of the different buildings. While lawyers provided representation in one venue, Haitian clients were denied refugee protection or ordered deported in others. According to the United Nations High Commission on Refugees (UNHCR), which sent representatives to Miami during the mass processing period, only 45% of all Haitian asylum applicants even had interviews before their claims were denied. *Civiletti*, 503 F. Supp. at 522; Smith, 676 F.2d at 1031.

\(^{26}\) *Civiletti*, 503 F. Supp. at 482.

\(^{27}\) Id. at 508.

\(^{28}\) For example, a report issued by the Library of Congress concludes that the causes of Haiti's poverty are interwoven with its political problems, and particularly the oppressive rule of the Duvalier dynasty. Karen DeYoung, *Doubling of U.S. Aid to Haiti Questioned*, WASH. POST, Dec. 27, 1978, at A12. As S.L. Bauchman, an editorial writer with the San Jose Mercury News, recently wrote:

In Haiti, poverty is political repression. Haiti's rich minority controls the vast majority of resources, and makes almost no effort to distribute them more fairly with the grindingly poor majority. State violence, as cruel and oppressive as anything practiced by communist governments, has kept the poor poor, the rich rich, and dissent down. Anyone who flees leaves not only a nation of paupers, but also the repression of a political system that depends for survival on keeping people poor. Proof is the boat people numbers. During the nine months after the reformist Aristide was elected with huge support from poor voters, the flow of Haitian boat people heading for Florida dried up to a trickle. Haiti is an extreme case, but it's not unique in using state power to repress the kind of political dissent that could change the economic system. A new definition of refugee is needed.

S.L. Bauchman, *Post-Cold War, Who is a Refugee?*, SAN JOSE MERCURY NEWS, Apr. 14, 1992, at 5B.
United States government’s Haitian policy in Civiletti, Haitians continued to be dismissed solely as economic migrants and the government continued to demonstrate its bias against the Haitians through improper screening and arbitrary detention. In late May 1981, INS began to systematically detain Haitians entering the United States pending a hearing and status determination. This was a marked departure from the established policy of detaining only those aliens determined likely to abscond or who posed a threat to national security. Haitians suddenly found themselves detained at the Krome detention facility in Miami, Florida, regardless of whether the INS thought that they were likely to abscond or pose a public threat.

In July of 1981, the State of Florida brought an action against the Federal Government due to the overcrowded conditions at Krome. During litigation, the government promised that efforts would be made to keep the population at Krome at or under 1000 people. In order to abide by this representation, the INS transferred Haitians out of Krome whenever the population exceeded 1000. In July 1981, transfers occurred to other INS detention facilities throughout the country.

Advocates for the Haitian refugees again turned to the courts for help and again the courts blasted the INS’ callous disregard for the rights of Haitian refugees. One federal court characterized the

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29 In 1982, a federal district court ruled that the INS had violated the requirement of the Administrative Procedures Act (APA) by instituting the new detention rule without a formal announcement, thereby precluding public discussion of the policy change by concerned parties. Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. 1982). The INS thereafter published an interim rule in the July 1982 Federal Register formalizing the toughened detention policy in effect to this day.

30 In 1981 the INS revived the practice of detaining nondocumented migrants that had ended when Ellis Island was officially closed in 1954. While this new policy was in response to the influx of Cubans and Haitians to Florida, the Cubans were generally detained for processing purposes only while the Haitians were indefinitely detained. This new detention policy began about the same time as the Haitian interdiction program. Memorandum from Ruth Ellen Wasem, Specialist in Social Legislation, to the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees 4 (Nov. 15, 1991) (on file with the New York Law School Journal of Human Rights).


32 Id.

33 Id.

34 Id.
transfers as, "a human shell game in which the arbitrary Immigration and Naturalization Service has sought to scatter [Haitians] to locations that, with the exception of Brooklyn are all in desolate, remote, hostile, culturally diverse areas, containing a paucity of available legal support and few, if any, Creole interpreters."\(^{35}\)

Despite the court's order that INS stop the transfers, illegal transfers of Haitians to remote areas of the country continued. In May 1989, a federal judge in Miami blocked the forced transfer of dozens of Haitians, this time from Krome to Louisiana and Texas during a "lock down" of the INS facility.\(^{36}\) The judge found that the circumstances under which the transfers took place violated the Haitians of their due process rights.\(^{37}\) The INS therefore agreed to return all 146 Haitians to Miami.\(^{38}\)

55 Louis v. Meissner, 530 F. Supp. 924, 926 (S.D. Fla. 1981). The court, which enjoined the INS transfer policy in effect at the time, found that INS had singled out Haitians for transfers to detention facilities in remote locations in Kentucky, New York, Texas, and West Virginia, where it was impossible for them to get legal help. Id. at 929-30.

56 The judge in Michel v. Milhollan ordered the INS to give its detainees five days notice before transferring them out of state to other facilities. The Haitians who had been shipped to Louisiana had only been given a few hours notice of the move and had no access to their attorneys before being shipped out, as Krome was "locked down" and attorneys were not allowed in. Neither detainees nor their attorneys were allowed phone contact prior to the move. The INS agreed in Michel to improve the telephone and general communication systems at Krome to allow detainees better access to legal representation. Michel v. Milhollan, No. 89-1040 (S.D. Fla. May 18, 1989).

57 Id. Haitians transferred to remote areas of the country from Miami are routinely woken in the middle of the night and put on a bus in shackles and chains. The bus trips generally take two to three days. Officials in Louisiana and Texas have said they thought the Haitians were "big drug dealers," given their manner of arrival. Haitians have no access to telephones prior to transfers and often end up in local jails, along with convicted felons. The author knows of one case in which one Haitian woman illegally transferred to Louisiana in 1989 was so ill upon arrival there that she needed immediate surgery. She was chained to her hospital bed. Several months later, the woman was awarded political asylum.

58 Michel v. Milhollan, No. 89-1040 (S.D. Fla. May 18, 1989). The first cases that dealt with the problems of detention centered around the efforts of the federal government to provide adequate facilities for the more than 100,000 Cuban and Haitian refugees who entered the country after April 1980. See, e.g., Marquez-Colon v. Reagan, 668 F.2d 611 (1st Cir. 1981); Commonwealth of P.R. v. Muskie, 507 F. Supp. 1035 (D.P.R. 1981); Colon v. Carter, 507 F. Supp. 1026 (D.P.R.), vacated, 633 F.2d 964 (1st Cir. 1980). These cases came about shortly after the government, through President Carter, designated Fort Allen, Puerto Rico as one of the holding centers for
Inhumane transfers of large groups of Haitians continue to this day. A lawsuit filed in January 1993 charged that the continued transfer of Haitians to remote places where counsel was unavailable to represent them and Creole translators unavailable, violates the Haitians regulatory, statutory, and constitutional rights.

The new detention policy that was instituted in 1981 was also subject to a lawsuit on the basis that INS was employing tactics against those Haitians detained at Krome to deprive them of their right to pursue asylum claims. This suit, the second major lawsuit filed on behalf of the Haitians in the 1980s, resulted in a finding that the Haitians were "impacted to a greater degree by the new detention policy than aliens of any other nationality . . . ." Unlike other aliens, the Haitians indefinitely detained at Krome were improperly denied access to their attorneys, were subject to mass exclusion hearings behind closed doors, were found excludable in hearings in which translators failed to translate properly, and were deported in a manner INS itself admitted was faulty.

the refugees. The federal government ultimately agreed to operate Fort Allen in compliance with a number of requirements contained in a consent agreement with the Commonwealth of Puerto Rico. Marquez-Colon, 668 F.2d at 616.

In late 1992, the INS transferred over 130 Haitians to Laredo and Harlingen, Texas, over 30 Haitians to Louisiana, and about 300 Haitians to county jails in North Florida. Attorneys in these areas called upon INS to either release the Haitians or send them to the Krome Detention Center in Miami because they could not communicate with the Haitians and did not have the resources to effectively represent them. INS Denies Language Barrier Among Haitian Detainees, UPI, Dec. 16, 1992, available in LEXIS, Nexis Library, Omni File.

This case is pending in the federal district court in Miami. As of this writing, it appears the INS has agreed to bring the Haitians in North Florida to Miami for their hearings and to allow attorneys in Miami adequate time to prepare the Haitians’ cases.

While the INS is not required to house all illegal Haitians who arrive in Miami at the INS facility there, those in INS custody must be given an opportunity to obtain counsel. 8 U.S.C.A. § 1362 (West 1993).


Id. at 1000.

Thirty Haitians at a time were ordered deported behind locked doors, while attorneys were prevented from entering the rooms to inform them of their rights. INS eventually admitted that the hearings were in fact faulty and dozens of cases were remanded back to INS for new hearings. See Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. 1982); Louis v. Meissner, 532 F. Supp. 881 (S.D. Fla. 1982); Louis v. Meissner,
The district judge in *Louis v. Nelson*, Eugene Spellman, held that the new detention policy was discriminatory on its face and in its application.\(^{45}\) He also found that the Fifth Amendment did apply to excludable aliens such as Haitians.\(^{46}\) The detention policy was therefore found to be invalid and the court ordered the release of over 1000 Haitians, provided they were deemed neither a security risk nor likely to abscond.\(^{47}\) The court ensured that the Haitians would be provided pro bono counsel to represent them.\(^{48}\)

The government appealed the district court decision\(^{49}\) and on April 12, 1983, Appeals Court Judge Kravitch, in a historic 136 page decision, found that statistical evidence disclosed that the federal government had engaged in a "stark pattern" of discrimination against the Haitian asylum seekers in the United States.\(^{50}\) This was the first time in the history of American law that the federal government was found to discriminate on the basis of race or national origin under the Constitution in a non-employment context.\(^{51}\)

The government's claim in this case that there was a massive influx of Haitians coming into the United States was rejected by the


\(^{46}\) *Id.* at 998. *Louis* was the first decision in American legal history where excludable aliens, including those in detention, were found to be protected by the First Amendment as well as the equal protection guarantees of the Fifth Amendment, and it was the first decision to find that excludable aliens must be informed of their right to seek political asylum in the United States. Ira J. Kurzban, "Long and Perilous Journey": The Nelson Decision, 11 HUM. RTS. 41, 43 (Summer 1983).

\(^{47}\) *Nelson*, 544 F. Supp. at 1005-06.

\(^{48}\) *Id.* at 1004.

\(^{49}\) The Haitians cross-appealed, after the government petitioned to stay the court’s order, on the ground that the judge erred in not finding that the federal government intentionally discriminated against the Haitians in their incarceration policy. Jean v. Nelson, 711 F.2d 1455 (11th Cir. 1983).

\(^{50}\) *Id.* at 1487. Time and again the federal courts have admonished the U.S. government for their treatment of Haitian refugees. For over twenty years the government has engaged in discriminatory acts against the Haitian refugees. Virtually every issue raised by the Haitian Refugee Center in the lawsuit filed in January 1993 has been raised in previous suits, and the INS and other governmental agencies were found to have violated the law. See Haitian Refugee Ctr. v. Barr, No. 93-0080 (S.D. Fla. filed Jan. 15, 1993).

\(^{51}\) Ira J. Kurzban, "Long and Perilous Journey": The Nelson Decision, 11 HUM. RTS. 41, 42 (Summer 1983).
Appeals Court, which noted that Haitians represented no more than two percent of the illegal immigration flow into this country.\textsuperscript{52} The force of the \textit{Louis} decision has gone a long way to vindicate the claim by the Haitian community and others that the federal government for years engaged in a patently discriminatory policy against Haitians seeking freedom in this country.\textsuperscript{53}

\section*{IV. Haitians Held at Detention Centers in the United States are Denied Their Basic Rights}

Haitians continue to languish in INS detention centers while their cases for asylum are pending. According to INS officials, the number of Haitians in United States detention centers has annually ranged from a high of near 1800 during the 1980s to 400 as of 1993.\textsuperscript{54} The most well-known INS detention facility, Krome North

\textsuperscript{52} \textit{Jean}, 711 F.2d at 1493.

\textsuperscript{53} In 1988, a lawsuit was brought against the U.S. Government, challenging the routine denial of farmworkers' applications, most of which were Haitian. Haitian Refugee Ctr. v. Nelson, 694 F. Supp. 864 (S.D. Fla. 1988), aff'd, 872 F.2d 1555 (11th Cir. 1989). Through discovery, attorneys for the Haitians learned that immigration officials had developed a fraud profile which clearly singled out Haitians. Further, the government engaged in the "largest, most ambitious fraud investigation undertaken by the INS," formally charging mostly poor Haitian farmworkers of little education with committing fraud in their applications for residency under the amnesty program ("Operation Cucumber"). \textit{See Immigration Charges Dropped}, UPI, Apr. 21, 1988, available in LEXIS, Nexis Library, Omni File. The federal court judges hearing these cases criticized the government for bringing the charges and the INS was forced to dismiss all of the cases. Tina Montalvo, \textit{INS Amnesty Probe Falls Apart; All Cases Dropped}, \textit{Miami Herald}, Apr. 21, 1988, § 3, at 1. \textit{See also} Mark Kriegel \& Linda Robertson, \textit{Farm Worker Fraud Investigation Appears in Danger of Collapsing}, \textit{Miami Herald}, Apr. 5, 1988, at 8A. Miami immigration officials speaking to community groups about Haitian migrants have been publicly criticized for their lack of sensitivity in dealing with the Haitians. Dan Heating \& Lizette Alvarez, \textit{Forty-five Haitians Make Shore in North Key Largo}, \textit{Miami Herald}, Apr. 9, 1991, at 1B. \textit{See also} Tony Pugh, \textit{INS Official's Remarks Offend Task Force}, \textit{Miami Herald}, Apr. 1, 1992, at 1B (Broward).

Service Processing Center (Krome), is located in Miami, Florida. At any one time Krome’s population includes detainees from many different countries. During most of the time Krome has been open, however, Haitians have constituted the largest national group, comprising the majority of detainees. Most Haitians, because they were detained before having technically entered the country, have been placed in exclusion proceedings and are held for months without bond.

The prolonged detention of Haitians ultimately denies many their day in court. Few detained Haitians even have basic knowledge of their right to apply for asylum, and many are deported without ever having seen an attorney. Barriers to communication with legal representatives abound; many of these are conspicuously imposed by the INS. For example, efforts by Haitian refugee advocacy groups to distribute legal materials to the Haitians have continually been

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55 The Krome North Service Processing Center is a minimum-security facility located on the edge of the Everglades, west of Miami. It was opened as a temporary processing center facility in 1980 to handle the influx of Cuban refugees of the Mariel boatlift and Haitian boat refugees. It became a housing facility in 1981, when INS initiated a policy of detaining of Haitian asylum seekers. Currently it is one of seven "service processing centers" in the country run directly by INS. See generally Larry Rohter, 'Processing' for Haitians is Time in a Rural Prison, N.Y. TIMES, June 21, 1992, § 4, at 18.

56 On March 20, 1991, Krome held 510 detainees, 306 of them Haitians. On April 22, 1991, Krome held 559 detainees, including 283 Haitians, 90 Cubans, and 58 Chinese. In early January 1993, according to an INS official in Miami, Haitians comprised two thirds of the Krome population. Many Haitians have been detained at Krome for a year or more. Despite the large Haitian population at Krome, only about five percent of the personnel there speak Creole. See All Things Considered, Nat'l Public Radio, Jan. 5, 1993, available in LEXIS, Nexis Library, Omni File.

57 See Marvine Howe, Haitians Quietly Find Better Life in the City, Despite Their Fears, N.Y. TIMES, May 22, 1984, at B1.

58 Roughly 50 to 75 percent of Haitians at Krome are without legal representation. See Cheryl Little, Haitians Still Singled Out for Discrimination, MIAMI HERALD, Aug. 26, 1990, at 7F.

59 For those who remain at Krome, isolation from legal help is instrumental in their deportation. Krome itself is on the opposite side of the county from Little Haiti and inaccessible by public transportation. The time spent for an attorney traveling the 60 mile round trip and long waits – often hours – for prospective clients, is time lost from representation. Few attorneys are able to undertake pro bono or reduced rate representation under these circumstances.
Similarly, the list that INS is required to provide detainees of agencies that provide legal help is often not given to the Haitians, and when it is, it is so outdated as to be useless.

A lawsuit filed in January 1993 again challenged the INS' thwarted. Haitian refugee advocacy groups have been prevented from giving lectures or distributing guides in Creole advising the Haitians of their rights. They also cannot distribute intake sheets to the Haitians to determine who qualifies for their assistance so they can provide more timely assistance to the Haitians. This, combined with the lack of a meaningful law library and the difficulty attorneys have in accessing their Haitian clients by phone or in person, provides Haitian asylum seekers with little opportunity to pursue legal remedies to which they are entitled. Arthur C. Helton, About Immigration; It Was Better on Ellis Island, NEWSDAY, Sept. 14, 1990, at 66. On March 10, 1993, a federal district court judge in Miami issued a Temporary Restraining Order against the government, prohibiting them from denying Haitian Refugee Center lawyers from making "know your rights" presentations and distributing written "know your rights" materials to the Haitians at Krome. Haitian Refugee Ctr. v. Barr, No. 93-0080 (S.D. Fla. filed Jan. 15, 1993). That case is pending.

In Molaire v. Smith, 743 F. Supp. 839 (S.D. Fla. 1990), U.S. District Court Judge Eugene Spellman issued an opinion in the case of a Haitian asylum applicant, a minor, who was not informed by the INS that free legal services were available. Judge Spellman noted: "Repeatedly, this court and other federal courts have found that INS has engaged in illegal practices and policies with respect to Haitians," and has singled out Haitians for "special discriminatory treatment." Id. at 850.

The INS is not only required by its own regulations to provide to detainees lists of agencies that provide free legal help, but specifically agreed to do so after being sued in 1989. Michel v. Milhollan, No. 89-1040 (S.D. Fla. May 18, 1989). However, as a human rights group recently found, the list continues to be meaningless:

Phone calls that were placed to all the organizations on that list revealed, among other things, that of the 15 organizations listed, only three provided any services to Krome detainees; and one of these three could not accept collect calls (most phones at Krome are for collect calls only). One office was listed three times, under slightly modified names; one number belonged to a pregnancy counseling service; one number had been disconnected; and one person that was called said that she was insulted by the list because organizations on it, including her own, were not capable of helping Krome detainees. She said she had repeatedly made her concerns known to the INS and requested that her organization be taken off the list, with no results.

arbitrary denial to Haitian refugee advocates of access to their clients.\textsuperscript{63} The suit alleges that the INS continually engages in practices designed to harass and intimidate lawyers representing Haitians at Krome, attempts to undermine attorneys' credibility with their clients, and prevents the detainees from being informed of their legal rights.\textsuperscript{64}

Over the past several years there have been many reports of mistreatment of detainees at Krome, including verbal abuse, beatings, sexual harassment, and arbitrarily imposed harsh disciplinary measures.\textsuperscript{65}

The record speaks plainly: Haitians as a group, by government admission, are afforded "special" treatment unlike any other class of prospective refugees. Locked up and segregated from family or friends, they have suffered mysterious maladies, depression, suicidal urges. It's a damnable record for a nation of freedom-loving immigrants.\textsuperscript{66}

Since 1990, the facility of Krome has been under investigation by the Federal Bureau of Investigation (FBI) and the Justice

\textsuperscript{63} Haitian Refugee Ctr. v. Barr, No. 93-0080 (S.D. Fla. filed Jan. 15, 1993).

\textsuperscript{64} In their pleadings, attorneys for the Haitians point out that they are continually forced to litigate the same issues over and over, because INS fails to obey court orders. Attorneys for the Haitians stated: "In sum, the INS and Department of Justice have thumbed their nose at the judiciary and have continued upon a course of illegal conduct in the hope that plaintiff's resources are too meager, or their pro bono counsel too exhausted to challenge them one more time. They are wrong." Haitian Refugee Ctr. v. Barr, No. 93-0080 (S.D. Fla. filed Jan. 15, 1993).

\textsuperscript{65} See Larry Rohter, 'Processing' for Haitians is Time in a Rural Prison, N.Y. TIMES, June 21, 1992, § 4, at 18; Cheryl Little, Haitians Still Singled Out For Discrimination, MIAMI HERALD, Aug. 26, 1990, at 7F. INS District Director Richard Smith admitted in April 1990 that Krome was understaffed, the guards overworked, and that nearly half of them were temporary employees who had received no formal training. He said that the guards' pay is so low, it is "nearly impossible" to hire "the right type of quality person." Official Says Detention Center Lacks Qualified Guards, UPI, Apr. 18, 1990, available in LEXIS, Nexis Library, Omni File. Between 1988 and 1990, fifteen Krome guards were fired (roughly one-fifth of the guard population of the time), six of them for abusive or aggressive behavior. Id.

\textsuperscript{66} Pulitzer Prize Awarded to Herald for Editorials on Haitian Refugees, MIAMI HERALD, Apr. 19, 1983, at 1A (quoting a Miami Herald editorial).
Department. While officials suggested in March 1991 that the investigation was completed, the Justice Department has indicated it could take up to five years before a report issues. To date, no findings have been made public and the investigation has been used by officials to limit access to independent civil rights groups.

Haitian refugee advocates are most disturbed that despite the glare of publicity and the FBI investigation, INS abuses of the Haitians at Krome continue. Certain of those in supervisory

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67 Over 200 written and videotaped statements of Krome detainees, ex-detainees, former Krome employees, attorneys, and paralegals were collected by attorneys at the Haitian Refugee Center in Miami between 1989 and early 1991, painting a picture of cycles of humiliation and abuse directed in large part against the Haitians and more recently, Chinese detainees, at the whim of certain guards. In the spring of 1990, Florida Representative Dante Fascell, who headed the House Foreign Affairs Committee, called for a FBI investigation, labelling the documentation of wrongdoing against Haitians at Krome "disturbing and indicat[ing] that longstanding abuses at the center remain uncorrected." Mary T. Schmich, Haitians Say Terror Rules Refugee Center, CHI. TRIB., June 18, 1990, at 1. Less than a year later, a Haitian woman detained at Krome was allegedly raped by a guard. She remained in detention for another two months, claiming her attacker was still on the job, although the INS knew of her charges shortly after the incident in question. Lizette Alvarez, Guard Accused of Rape, MIAMI HERALD, Mar. 28, 1991, at 1B. See also Jeanne DeQuine, Critics Describe INS Center as a Bad 'Jail', USA TODAY, June 15, 1991, at 2A.

68 INS' reaction to the public airing of allegations of abusive treatment to the detainees in Krome was not encouraging. A teacher and a nurse who spoke to reporters about abuses in Krome were subsequently dismissed. Another teacher was let go after complaining to Miami INS officials about confiscation and disposal of Haitian detainees' belongings, including books. The INS District Director in Miami at the time of the FBI investigation said with respect to the allegations of abuse that "nothing has been done [at Krome] . . . I haven't changed a thing." He claimed that until the FBI investigation was formally completed, he was constrained from actually punishing the guards or changing the system. Lizette Alvarez & Debbie Sontag, Krome Haunted by Claims of Abuse; INS Chief Charges are 'Outlandish', MIAMI HERALD, Apr. 28, 1991, at 1A.

69 In November 1990, upon their arrival in Miami, the Minnesota Lawyers International Human Rights Committee was denied permission by the INS to interview detainees as part of an independent fact-finding mission at Krome, though permission had been given the day before. Reporters and various other groups have likewise been denied access to the detention center since the FBI investigation began. Lizette Alvarez, Rights Group Criticizes Krome for Isolating Detainees, MIAMI HERALD, Apr. 25, 1991, at 4B.

70 Two New York Times articles in June 1992 addressed the ongoing abuses directed against the Haitians at Krome. It was reported that "[d]uring a hunger strike . . . to protest the death of one such detainee, 185 Haitians interned at Krome charged that they had been beaten, harassed and deprived of medical care, of their Bibles, and of contact
positions at the INS detention facility appear insensitive to the abuses against the Haitian detainees in their care.\textsuperscript{71} Unfortunately for the Haitians, little at Krome has changed over the years.\textsuperscript{72}

Under our law, it is not a crime to flee political repression. Yet critics contend that conditions at Krome are inferior to those in

\textsuperscript{71} Mike Rozos, Krome's deputy administrator, had this to say about the detainees in a 1991 interview: "This is not the crème de la crème. You have got scumbuckets here." Jeanne DeQuine, \textit{Critics call for Closure of Immigration Center}, USA TODAY, June 14, 1991, at 6A. A report issued on Krome by a human rights group in 1991 concluded that "delegation members observed high-level INS officials making culturally insensitive and racially derogatory remarks about the detainees and their home countries while escorting the delegation around the facility. Other officials expressed hostility toward detainees' attorneys." \textit{Hidden From View: Human Rights Conditions in the Krome Detention Center}, (Minnesota Int'l Lawyers Human Rights Comm., Minneapolis, Minn.), Apr. 1991, at 50. Haitian refugee advocates have called for the establishment of an independent oversight committee to review charges of inhumane treatment at Krome. One of their concerns is that the Haitian detainees are not systematically informed of INS grievance procedures and often fear retribution for lodging complaints. \textit{See} Larry Rohter, \textit{‘Processing’ for Haitians is Time in a Rural Prison}, N.Y. TIMES, June 21, 1992, § 4, at 18.

\textsuperscript{72} A major problem linking most INS abuses of power is the lack of accountability. The Office of Inspector General (OIG), the arm of the Justice Department charged with investigating abuse of authority by Justice Department authorities, has proved itself unwilling to seriously investigate complaints of authority by INS officers. The OIG lacks a complaint form, lacks a systematized procedure for informing the public of its right to complain, does not provide notification of the status or disposition of complaints, has a low ratio of investigators, lacks an appeals process for unsustained allegations, and fails to compile and publish periodic statistics. A September 1990 Senate Subcommittee report found a "disturbing pattern of wrongdoing" by inspector generals. Citing 15 case studies in which they said inspector generals harassed whistle-blowers, failed to investigate charges, or bent rules, Senate investigators found that many inspector generals "lack objectivity and/or effectiveness in investigating whistle-blower complaints." \textit{‘Watchdog’ to ‘Lap dog’}, MIAMI HERALD, Sept. 15, 1990, at 22A. Senator Jim Sasser (D-Tenn.) the subcommittee chairperson, said the report confirmed his suspicion of an evolution from "Government watchdog[s]" to "political lap dog[s]" who engage "in damage control for their agencies" and are "knee-deep in the very abuses [that] they are supposed to prevent." \textit{Id.}
federal facilities for convicted felons. Former INS District Director Richard Smith has admitted that Krome is a "jail," not a processing center as its name suggests.

Efforts have been made to end the lengthy detention of Haitians at Krome. In late September 1992, Amnesty International USA criticized the lengthy detention of Haitians at Krome, claiming that governments should reveal legitimate grounds for any detention of asylum seekers. During the summer of 1992, Florida Senators Bob Graham and Connie Mack pushed for legislation to limit detention at Krome to ninety days. The United States Senate

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74 Smith stated: "Krome looks so much like a jail... because it is a jail. ... The sign outside may say it's a processing center, but that's just semantics." Larry Rohter, ‘Processing’ for Haitians is Time in a Rural Prison, N.Y. TIMES, June 21, 1992, § 4, at 18. Krome has, at times, held alien felons along with the facility's general population. In 1987, Congress passed legislation prohibiting the use of federal funds to detain alien felons at Krome unless the INS took measures to increase security by February 28, 1988. H.R.J. Res. 395, 100th Cong., 1st Sess. (1987). Thereafter, felons apparently were not housed in Krome for some time. In 1992, however, following Hurricane Andrew, federal prisoners were moved to Krome. Attorneys for the detainees complained and several weeks later the prisoners had all been moved out. To make room for the prisoners, the INS moved the male INS detainees into the cafeteria and the women into the medical clinic. According to attorneys, conditions at the Center at that time were deplorable. Andrea Viglucci, Prisoner Transfer Frees Up Krome for INS Use, MIAMI HERALD, Nov. 24, 1992, at 4B.

75 The Amnesty statement referred to the case of Vilvert Exume, a Haitian national with an excellent claim to protection of the United States, who was detained in Texas. "Only the fortunate, almost accidental encounter with an Amnesty International member spared him from deportation to physical abuse or death in Haiti," the September 24, 1992 letter from Amnesty International reads. See Laura Parker, Refugees in Florida: Rescue or Rejection, WASH. POST, May 26, 1991, at A5 (Exume was chained, shackled, and handcuffed by INS authorities). The long term detention of asylum seekers, Amnesty asserts, serves to punish those "oppressed of other nations" Congress sought to welcome under the Refugee Act of 1980. In January 1992, the Director of Amnesty International USA wrote U.S. officials requesting the immediate parole of all Haitians and other asylum seekers at Krome. Letter from Amnesty International USA to Gene McNary & William Barr (Jan. 13, 1993).

76 Lizette Alvarez, Graham Seeks 90-Day Limit on Krome Stays, MIAMI HERALD, July 30, 1991, at B1. The 90 day cap was to apply only to those who have family ties in the community, who could post a "reasonable" bond, who were likely to show up at their immigration hearing, and who were not considered a danger to the community. Id.
approved the measure in July 1991, but the bill did not pass the House, in large part because the Bush administration put up such a fight.  

The effect of the miserable conditions of confinement is to discourage Haitians from pursuing any legal rights they may have, and instead force them to "voluntarily" repatriate. Many Haitians, in fact, have chosen repatriation or attempted suicide rather than endure continued abuse at Krome.  

INS officials acknowledge the main purpose of detention is to deter Haitians from coming to the United States. Others maintain that detention as a deterrent is illegal, improperly discouraging bona fide refugees from exercising their right to apply for asylum. Moreover, it is far from clear that detention deters immigration at all. For Haitians, often already victims of repression at home, incarceration in the United States represents a second, cruel, blow.

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77 In 1981, the U.S. Attorney General and the INS Commissioner testified before Congress to the effect that Krome was not intended to be a long-term detention facility. Chiles v. Thornburgh, 865 F.2d 1197, 1201 (11th Cir. 1989).


81 Detention is also costly (the INS pays incarceration costs of well over $50 million per year). GAO Report, supra note 79, at iv. Tests of well-designed plans for release into the community, case-monitoring, and sponsorship have been successful in ensuring that applicants show up for asylum hearings. Such programs should replace detention. Absent these reforms, Congress should enact legislation such as that proposed by Senator Graham, limiting detention to 90 days. See generally Helton, supra note 80, at 369-72.

82 In a letter written by Haitian detainees at Krome after the September 1991 military coup in Haiti, they pleaded with INS officials to ensure that their asylum claims be fairly considered:
V. Cuban and Haitian Refugees: A Disparity in Treatment

In early January 1993, the Haitians at Krome engaged in a nine-day hunger strike, following the arrival of fifty-two Cubans who had "commandeered" a Cuban commuter flight from Havana to Varadero, Cuba, diverting it to Miami. All the Cubans were released from Krome within forty-eight hours. To the Haitians this was a painful reminder of the double standard. The Haitians were protesting their unfair treatment by guards at Krome and were asking to be paroled as the Cubans were. The strike, which was intended to send a message to the American people that Haitians were not here

Today we do not want to be demanding or to arouse anyone's anger, but we want to make known our patriotic thoughts, the testimony of our feelings concerning the loss of our relatives and our ancestors who are being abused and murdered by the recent events. Look at the life of the Haitian people; there is a law for all people: in the eyes of God they are all equal, and they all have the same liberty and the same privileges, which are owed to every one of them...

We wish to emphasize... that right now we are living in the most difficult and painful times of human life.... We prefer to die than to live in the uncertainty that drowns our thoughts.


53 Although the INS maintained that the hunger strike ended on day nine, dozens of Haitians continued the strike for eleven days. See Larry Rohter, Haitians Take Clinton at His Word, N.Y. TIMES, Jan. 10, 1993, § 4, at 2.


56 Cubans arriving in Miami who have stated they are economic immigrants are referred to by the INS as political refugees. Conversely, Haitians who are bona fide refugees are routinely dismissed as economic refugees. Id.

57 Most Haitian detainees have relatives in the U.S. willing to sponsor them upon their release. Miami Mayor Xavier Suarez, a Cuban American, has requested the closing of Krome, calling it an unnecessary burden on taxpayers and an insult to Haitian asylum seekers. Suarez said it would make more sense to release the Haitians from Krome into the custody of relatives or church groups, and allow them to work and support themselves. Suarez estimated the average cost of detaining 200 individuals for nine months to be about five million dollars. See Regional News in Florida, UPI, Jan. 6, 1993, available in LEXIS, Nexis Library, Omni File.
for food, but for political reasons, ended only after INS reportedly threatened the Haitians with bodily harm and transfers away from their families.  

The detention and parole policies aptly call attention to the great disparities in our treatment of Cuban and Haitian refugees. In many ways, immigration procedures towards Cubans and Haitians that seek entry into the United States represent the extremes of United States policy. Immigration policy towards Cuba tends to be generous and humanitarian; immigration policy towards Haiti tends to be stringent and inhumane.

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88 Harold Maass, Faster Sees Victory in Heightened Awareness, MIAMI HERALD, Jan. 14, 1993, at 1B.

89 Federal courts have not always ruled in favor of Haitians challenging the INS parole policy. In Betrand v. Sava, 684 F.2d 204 (2d Cir. 1981), the appeals court overturned the lower court’s finding that the District Director’s parole decisions in the Haitian cases were discriminatory on the basis of race and national origin, reasoning that the lower court had improperly substituted its own judgment for the judgment of the District Director. Id. at 214. More recently, however, a federal court judge in Miami found that the INS parole policy at Krome discriminated against the Haitians. Ray v. United States Dep’t of Justice, No. 89-239 (S.D. Fla. Nov. 5, 1989). A case currently pending before the district court in Miami again challenges that the INS’ parole policy is illegally based on race or national origin. Haitian Refugee Ctr. v. Barr, No. 93-0080 (S.D. Fla. filed Jan. 15, 1993).

90 Even when INS Commissioner Gene McNary implemented a more liberal parole policy in May 1990, the Haitians failed to benefit. “Nearly one month into the program no Haitians had been approved for parole in Miami even though Haitians constituted nearly 2/3 of those detained in the district,” reads a section of the report written by the Lawyers Committee for Human Rights in New York. The report concluded that the pilot parole project had demonstrated that detained refugees could be freed from incarceration while they pursue their claims for asylum without compromising legitimate government interests. Interim Report on the Pilot Parole Project of the Immigration and Naturalization Service, (Lawyers Comm. for Human Rights, New York, N.Y.), Nov. 1990.

91 In response to growing attacks by domestic black organizations on the government’s handling of the Haitian refugee problem, the White House announced in 1980 that approximately 15,000 Haitians who arrived in the late 1970s and 1980, along with at least 114,000 Cubans who arrived during the Mariel boatlift, would be classified as "enrants," a term not defined in law, and would be allowed to remain in the U.S. until January 1991. Haitian refugees who arrived in the U.S. before October 10, 1980, and established contact with the INS before that date, would be placed in the "entrant" category and the final status of the Haitian refugees would be left to Congress. See Refugees Granted Six-month Reprieve, Facts on File World News Digest, June 27, 1980, available in LEXIS, Nexis Library, Omni File; Peter A. Schey, The Black Boat People,
Since the 1920s, when the INS first collected such data, Cuban immigrants to the United States have constituted a migration stream that has been approximately three times that of Haitians. Yet while the Cubans are regularly "paroled" into the United States and freed from detention, Haitians are not. While the Cubans are authorized to work and eventually obtain permanent resident status, the Haitians are systematically detained and deported. Even when Haitians are released from detention, they are frequently denied work permits, which are routinely granted to Cubans released from


92 See INS Strongly Favors Cubans Over Haitians, MIAMI HERALD, Sept. 9, 1991, at 10A.

93 While Haitians largely are detained for violating immigration law, the Cubans in detention are overwhelmingly migrants from the Mariel Boatlift who have criminal records. Anne Rochell, Mariel's Hopes End Behind Bars on Two Shores; Many Deportees Still Imprisoned in Cuba, ATLANTA J. & CONST., Jan. 1, 1993, at A12. Indeed, since June 1992, Cubans arriving in the United States are no longer even detained for processing. See Jeanne DeQuine, Haitians Accuse U.S. of 'Double Standard', USA TODAY, June 3, 1991, at 7A.

In late February 1993, a Haitian commandeered a plane to West Palm Beach, claiming he was fleeing political oppression in Haiti. The man was met by a FBI swat team, arrested, and charged with air piracy. Joe Chrysdale, Missionary Plane Hijacked in Haiti, Diverted to Miami, UPI, Feb. 18, 1993, available in LEXIS, Nexis Library, Omni File. Federal public defenders argued that their Haitian client should be treated like Cuban nationals who are not prosecuted, even when they use force, kidnapping, and hijacking to find freedom in the United States. The Haitian was released on bond pending his trial. See Joanne Kenen, Missionaries Hijacked from Haiti, Land Safely in Florida, Reuters, Feb. 18, 1993, available in LEXIS, Nexis Library, Omni File; Rachel Swarns, Freed Haitian Hijacker Puts Faith in System, MIAMI HERALD, Feb. 26, 1993, at 1A.

94 Alan Elsner, U.S. Sends Back Haitian Boat People, Reuters, Nov. 18, 1991, available in LEXIS, Nexis Library, Omni File. The Administration has responded to the allegation of discrimination by pointing out the many difficulties encountered with the Castro government when they try to return people to Cuba. However, the Cubans are not eligible for residency in the U.S. until INS paroles or admits them to the United States. Moreover, just because Congress has ensured special protection for the Cubans does not relieve INS of its obligation to fully and fairly review the parole requests of Haitians and others detained in their care. Even if Congress passed legislation similar to the Cuban Adjustment Act (CAA) for the Haitians, the Haitians would still have to rely on the INS to parole them so they could be eligible to become residents.

95 The Haitian Refugee Center has successfully sued the INS to obtain work permits for Haitians, which are required by law to be given to paroled asylum seekers. See, e.g., Augustin v. Harrison, No. 86-882 (S.D. Fla. 1986).
detention.\textsuperscript{96}

Congress' actions in 1966 account in large measure for the blatant difference in treatment between the two groups. Under the Cuban Refugee Adjustment Act (CAA) of 1966, as amended, aliens from Cuba who arrive here who have not affected an "entry" into the United States, whether or not they seek asylum, can apply for lawful permanent resident status after one year of physical presence in the United States.\textsuperscript{97} What distinguishes the Cuban Adjustment Act from all other acts that adjust parolees and humanitarian residence to permanent residence is that it is open-ended and does not have a cut-off date.\textsuperscript{98}

Cubans generally are not subjected to any scrutiny as to the reasons they fled Cuba. Because they are eligible to adjust after one year, few Cubans even have to make political asylum applications. Still, in 1989, almost ten times more Cubans were granted political asylum than Haitians, despite the terribly oppressive military government in Haiti during that time.\textsuperscript{99} Additionally, Cubans are

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\item \textsuperscript{96} Bill Adair & Victor Junco, Stowaways 'Try Not Unusual, ST. PETERSBURG TIMES, Jan. 24, 1992, at 1B.
\item \textsuperscript{97} The alien must be eligible to receive an immigrant visa and be admissible to the United States as a permanent resident. Spouses and children accompanying the aliens who are applying for this adjustment are also covered by the provisions of this Act. Cuban Refugee Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966) (current version at 8 U.S.C. 1255 note (1988)).
\item \textsuperscript{99} INS Strongly Favors Cubans Over Haitians, MIAMI HERALD, Sept. 9, 1991, at 10A. Many of the Cuban immigrants have been characterized as humanitarian entrants, and Cuba ranked at the top of countries generating humanitarian entrants to the United States from 1946 to 1989. Although Haiti, along with Cuba, is among 12 countries in the world which generated more than 1000 people who sought asylum in the United States in the Fiscal Years 1981 to 1990, very few Haitians have received asylum. In 1989, 5245 Cuban refugees and asylees were granted residency, versus 27 Haitians. From
\end{itemize}
eligible to enter the United States as part of the Government-sponsored Refugee Resettlement Program, or through the sponsorship of the Cuban-American National Foundation. 100 No comparable programs exist for Haitians.101 United States immigration laws also provide annual ceilings for refugee admissions. While there have been 3000 slots for those in Latin America and the Caribbean,102 in practice it has been the Cubans who could be expected to benefit from these.103

Some critics argue that failure to give Haiti the same designation of "special humanitarian concern" given Cuba, considering Haiti's decades-long record of oppression, is racist.104 In response to such criticism, the Administration is reorganizing part of

1980 to 1989, more than 106,000 Cuban refugees and asylees were granted residency, compared to only 363 from other Caribbean countries, including Haiti. Id. See also Memorandum from Ruth Ellen Wasem, Specialist in Social Legislation, to the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees 4 (June 14, 1991) (on file with the New York Law School Journal of Human Rights).

100 Under the Refugee Resettlement Program, 1070 Cubans were admitted through the first eight months of fiscal 1991; under the Cuban-American National Foundation, 1734 Cubans had been admitted as of the end of May and more than 8500 since the programs' inception in 1988. See Alfonso Chardy, 450 Cubans to Get Visas, Foundation Says, MIAMI HERALD, May 20, 1992, at 3B.

101 The number of Cubans requesting nonimmigrant visas for travel to the United States has increased steadily in recent years. A total of 14,000 Cubans arrived in Florida by plane with tourist visas in 1990. The U.S. Immigration and Naturalization Service statistics show that 30 to 40% of these Cubans did not return to Cuba. Sandra Walewski, Up to 40,000 Cubans Will 'Overstay' Their Visas, L.A. TIMES, Aug. 25, 1991, at A3.


103 Although bona fide Haitian political refugees are generally denied asylum, many Haitians have become permanent residents through the Cuban/Haitian Entrant Adjustment and Legalization Provisions of the Immigration Reform and Control Act of 1986 (IRCA). Under the Act, Cubans and Haitians who entered the United States before July 1, 1982 were eligible for permanent resident status. 8 U.S.C. § 1255a (1988 & Supp. III 1991). They, in turn, have petitioned for their immediate relatives to obtain residency.

the INS and attempting to reduce the role of the State Department in
the asylum-seeking process, to make it more equitable and consistent
for all nationalities.\textsuperscript{105} But some argue that the Haitians continue to
receive unjust treatment even under the new process.\textsuperscript{106}

Incidents involving Miami city officials also illustrate the
disparity in treatment between Haitians and Cubans. For example,
shortly before Aristide was inaugurated, Miami officials told local
Haitians that they could celebrate the inauguration in a local park so
long as Fidel Castro was not invited to the event in Haiti.\textsuperscript{107} Haitian
leaders protested that such a policy violated the First Amendment.\textsuperscript{108}
Ultimately, Miami Mayor Xavier L. Suarez reversed the questionable
restriction on the Haitians' celebration.\textsuperscript{109}

\textsuperscript{105} When the government published the new asylum rules in 1990, it highlighted its
intent to create an asylum adjudication branch separate from INS enforcement branches,
employing a new corps of asylum officers under national supervision outside the usual
structure of local INS district offices to improve the quality and consistency of
decisionmaking. The regulations also established a documentation center to disseminate
to asylum officers credible human rights materials from governmental and non-
governmental sources, thereby limiting exclusive reliance on Department of State
materials that tended to reflect United States policy concerns. \textit{An Interim Assessment of
the Asylum Process of the Immigration and Naturalization Service}, (Nat'l Asylum Study
Project, A Project of the Harvard Law School Immigration and Refugee Program on the
interim regulations prior to 1990 received widespread criticism from governmental and
non-governmental agencies for doing little more than adopting the recommendation of the
Department of State, regardless of the merits of the case. For example, the General
Accounting Office found that INS examiners followed the recommendations of the
Department of State more than 95\% of the time. \textit{Id.} at 1.

\textsuperscript{106} \textit{Id.} at 3-4. Preliminary examples of ongoing special treatment of Haitian asylum
cases include expedited scheduling of these cases, special scrutiny of the asylum officer's
assessment, INS prejudgment of cases, over-reliance on Department of State in
decisionmaking, and compromise of confidentiality. \textit{Id.} at 3-4. \textit{See also INS Strongly
Favors Cubans Over Haitians}, MIAMI HERALD, Sept. 9, 1991, at 10A.

\textsuperscript{107} Nancy San Martin, \textit{Castro Clause on Inaugural Upsets City's Haitian Leaders},
MIAMI HERALD, Jan. 31, 1991, at 3B.

\textsuperscript{108} \textit{Id.}

\textsuperscript{109} Letter from Mayor Xavier L. Suarez to Sonia Casimir, Front for National Change
and Democracy et al. (Feb. 1, 1991) (on file with the \textit{New York Law School Journal of
Human Rights}).
VI. The United States-Haiti Interdiction Agreement

The dilemma posed in recent months, following the September 1991 military coup in Haiti,\(^{110}\) raises anew the controversies surrounding the migrant interdiction agreement between the United States and Haiti and United States Haitian policy in general.\(^{111}\) In September 1981, the Reagan Administration reacted to mass migration of Haitian asylum seekers arriving in boats by establishing a program to interdict Haitians.\(^{112}\) The Reagan Administration determined that the amount of undocumented Haitians coming to the United States had "threatened the welfare and safety of communities,"\(^{113}\) despite the fact that Haitians comprised less than two percent of the undocumented population of the United States at that time.\(^{114}\)

The interdiction agreement authorizes the United States Coast Guard to board and inspect private Haitian vessels on the high seas and to interrogate and return undocumented passengers to Haiti.\(^{115}\) Haiti is the only foreign government with which the United States has such an alien migrant interdiction agreement. The agreement, made

\(^{110}\) Jean Bertrand Aristide, Haiti's first democratically-elected president, was ousted in September 1991. Deborah Sharp, Haitian Refugees See Hope With a New Administration, USA TODAY, Nov. 27, 1992, at 3A.

\(^{111}\) The same Coast Guard that searches for Haitians also searches for Cubans. The difference is that regardless of the political conditions of those countries, and regardless of what the individual Cubans and Haitians have to say, the Coast Guard operates with the intention of returning Haitians to Haiti, and with the intention of bringing all the Cubans they find safely to the United States. In 1991, 2203 Cubans came to the United States on boats or rafts, and in 1992, 2205 did. Cuban Influx Highest Since Mariel Boatlift, Reuters, Oct. 29, 1992, available in LEXIS, Nexis Library, Omni File. The 1992 figure represents the largest number of Cuban boat people since the Cuban Mariel Exodus. Id.

\(^{112}\) Peter A. Schey & Todd Howland, Perspective on Haitian Refugees; No Haven for the Poor and Black, L.A. TIMES, Dec. 1, 1991, at M5.

\(^{113}\) Id.

\(^{114}\) Id. The Haitian refugees were termed "economic migrants" by U.S. authorities, despite the overwhelming evidence of gross violations of human rights under "Baby Doc" Duvalier, who assured the Reagan Administration that the returnees would not be penalized. See For Later Presidential Primaries; U.S. Can Alleviate Miseries of Haitians, N.Y. TIMES, Mar. 7, 1990, at A24.

with Haiti's dictator Jean-Claude ("Baby Doc") Duvalier,\textsuperscript{116} was entered into under United States threats to remove economic aid.\textsuperscript{117}

Since then, Coast Guard vessels have patrolled the waters of the Windward Passage between Molest Nicolas and the Guantanamo Province of Cuba -- 500 miles from United States shores -- in search of Haitian refugees.\textsuperscript{118} The purpose of these patrols is to prevent Haitians from reaching the United States, and it works. The Coast Guard believes it detects ninety percent of all Haitian boat refugees headed toward the United States.\textsuperscript{119} Those who do not make it to within twelve miles of United States shores are subject to interdiction.\textsuperscript{120}

The 1981 Interdiction agreement clearly specifies that bona fide refugees were not to be returned to Haiti.\textsuperscript{121} Yet of the over

\textsuperscript{116} Former Haitian President Prosper Avril has stated that he believes the interdiction agreement is illegal under Haitian law, since an exchange of diplomatic letters is not a proper method of entering into a bilateral agreement with another country. LAWYERS COMMITTEE FOR HUMAN RIGHTS, REFUGEE REFOULEMENT: THE FORCED RETURN OF HAITIANS UNDER THE U.S.-HAITIAN INTERDICTION AGREEMENT 13 (1990).

\textsuperscript{117} See Mimi Whitefield, Patching a Tattered Haiti, MIAMI HERALD, Dec. 5, 1988, at 21B. United States aid to the Haitian government was partially conditioned on Haitian cooperation with U.S. efforts to control illegal immigration. Following the aborted elections in Haiti in 1987, Haitian migrant interdiction operations continued to receive cooperation from the Haitian government, despite the cut off of other aid. See id.


\textsuperscript{119} Sandra Dibble, Haitian Odyssey Leaves Wake of Despair; 142 Suffer Peril at Sea -- and Fail, MIAMI HERALD, Feb. 6, 1989, at 1A.

\textsuperscript{120} Despite a December 1988 presidential proclamation extending the U.S. territorial waters from three to twelve miles, Haitians interdicted between that time and October 1992 had to make it to within the three mile limit. See U.S. Stops Haitian Refugees After 700-mile Voyage, CHI. TRIB., Mar. 26, 1989, at 24. On October 15, 1992, a rule amending the INS' definition of "external boundary" was published in the Federal Register, extending the territorial sea of the U.S. to twelve nautical miles for purposes of interception. The implementing rule was undertaken to help the federal government's anti-smuggling efforts. Changing Definition of External Boundary of the United States, 57 Fed. Reg. 47,257 (1992) (to be codified at 8 C.F.R. pt. 287). Shortly thereafter, a group of 70 Haitians intercepted ten miles from U.S. shores were allowed to come to the United States to pursue asylum claims. Larry Rohter, Policy on Haitian Refugees Blurs in Political Transition, N.Y. TIMES, Nov. 24, 1992, at A10.

\textsuperscript{121} The Interdiction Agreement states: "It is understood that under these arrangements the United States Government does not intend to return to Haiti any Haitian migrants whom the United States authorities determine to qualify for refugee
23,000 Haitians intercepted since the program's inception in 1981 until September 1991, INS determined that only twenty-eight were qualified to apply for asylum in the United States. Twenty of these were brought to the United States after INS instituted several changes.

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in the pre-screening interdiction process,¹²³ which was affected March 1, 1991, after President Aristide took power.¹²⁴ During the Duvalier regimes and the military governments that followed, Haitians sent back to their country were often persecuted.¹²⁵ Even the courts found that Haitians deported back to Haiti were sometimes subject to surveillance, arrest, questioning, jailing and beatings, all without due process of the law.¹²⁶

The Haitian interdiction program has proceeded in four phases.¹²⁷ The first phase lasted from September 1981 until the military coup that overthrew President Jean Bertrand Aristide in September 1991. With the coup began the second phase, which

¹²³ Under the enhanced interviews, Haitians asserting or hinting that they had reasons to fear being returned home were to receive a more in-depth interview with the INS officer (twenty minutes versus five). Notes of interviews were to be recorded and kept. Still, even after the enhanced interview process began, problems remained. For instance, the INS' opening statement to intercepted Haitians acknowledged that the Coast Guard cutter would be returning to Haiti where "most of you [Haitians] will be disembarked." Haitians were then told that their name, date, and place of birth would be given to Haitian authorities on their return. See Defendants' Description of Current Procedures for Interviewing Haitian Migrants, Haitian Refugee Ctr. v. Baker, No. 91-2653 (S.D. Fla. Dec. 10, 1991).

¹²⁴ The year 1990 saw the lowest level of interdictions in seven years. During Aristide's tenure, the number of refugees attempting to reach the United States dropped dramatically. The Coast Guard reported that during some months of Aristide's term, they did not encounter a single Haitian vessel. United States officials reportedly attributed this to the new hope Haitians had for improved conditions under the newly elected government. This supports other statistics indicating that the number of Haitians fleeing by boat reflects the political climate in Haiti. Ironically, almost three times more Haitians were deemed political refugees under a democratic government then during an entire decade marked by human rights abuses and tyranny. See Memorandum from Ruth Ellen Wasem, Specialist in Social Legislation, to the House Judiciary Committee, Subcommittee on International Law, Immigration, and Refugees 4 (Nov. 15, 1991) (on file with the New York Law School Journal of Human Rights).


¹²⁷ Coast Guard cutters which once figured so heavily in drug interdiction have been diverted to capture and return people fleeing one of the most dreaded tyrannies in the Caribbean. According to INS Interdiction Chief Leon Jennings, most of the boats intercepted by the Coast Guard are destroyed so other Haitians won't use them to leave. LAWYERS COMMITTEE FOR HUMAN RIGHTS, REFUGEE REPATEMENT: THE FORCED RETURN OF HAITIANS UNDER THE U.S.-HAITIAN INTERDCTION AGREEMENT 20 (1990).
lasted from September 30, 1991 until November 18, 1991. Due to the political violence in Haiti during this phase, the United States suspended repatriation of the Haitians when the democratically elected government of Haiti was toppled. The "screening" interviews of the Haitians by INS officials nonetheless continued.

128 Shortly before his death, Congressman Claude Pepper introduced a bill that would have directed the U.S. to bring Haitians ashore for asylum interviews. This bill called for interviewing intercepted Haitians on land in order to determine their reasons for fleeing. The Congressman died before his bill could be given full legislative consideration. David Hancock & Sandra Dibble, Haitians: We Want Respect, MIAMI HERALD, July 22, 1990, at 1A. Sometime after the late Claude Pepper drafted his Haitian bill, Miami Mayor Xavier Suarez distributed bumper stickers reading "Interdict Drugs, Not Haitians." Help for the Haitians and Florida, ST. PETERSBURG TIMES, Feb. 10, 1992, at 10A. At a September 17, 1991 press conference the mayor called for interviews of Haitians on land, at a minimum, before they are returned to Haiti. Miami Suarez Condemns Haitian Interdiction, MIAMI HERALD, Sept. 18, 1991, at 2B.

In October 1990, seven human rights and refugee organizations filed a petition with the Organization of American States (OAS), asking the organization to affirm that the interdiction of Haitians at sea violates U.S. obligations under international law, and to call on the U.S. government to end its interdiction program. The petition charged that the U.S. program discriminates against Haitians, who are the group subject to such interdiction, and denies them a fair opportunity to present their claims of persecution. In mid-March 1993, the OAS issued a resolution declaring that the Haitian interdiction program violates international law. The OAS resolution further states that it is in possession of information leading it to conclude that "Haitians who are so returned to Haiti ... very frequently suffer persecution at the hands of the Haitian authorities." Organization of American States Press Release, OAS Human Rights Committee Calls Clinton Haitian Interdiction Policy a Violation of International Law, Mar. 19, 1993, (citing Precautionary Measures Taken by the Inter-American Commission in Case No. 10.675 (United States) at 83d period of sessions).

129 Lizette Alvarez, High Court OKs Repatriations, MIAMI HERALD, Feb. 1, 1992, at 1A. The U.S. State Department agreed not to repatriate the Haitians in order to pursue a regional solution agreement. But their search for other Caribbean and South American countries to accept the Haitians failed. Unable to find a regional solution and unwilling to bring the Haitians to the United States, the U.S. government began forcibly repatriating the Haitians on November 18, 1991. Id.

130 Attorneys for the Haitians argued that many of the Haitians interdicted after the September coup were not headed to the United States in the first place. The government advanced no explanation, the attorneys said, as to their authority or justification in interfering with those Haitians attempting to escape political persecution in Haiti, let alone forcibly return them to Haiti. Haitians headed for the Bahamas, Cuba, and other destinations were routinely interdicted and detained by the Coast Guard. See Petition for Writ of Certiorari at App., Haitian Refugee Ctr. v. Baker, cert. denied, 112 S. Ct. 1245 (1992); Coast Guard Returns 137 Haitians, MIAMI HERALD, Apr. 17, 1989, at 2B.
VII. Recent United States Haitian Policy

Phase three of the interdiction program began on November 18, 1991, when the United States again commenced repatriating "screened out" Haitians who had not been found to have a credible fear of persecution upon return to Haiti. One day later the Haitian Refugee Center filed a class action complaint seeking to restrain the forced repatriations. At the time of the suit, the "screening" interviews of the Haitians were cursory and conducted by INS officials with virtually no knowledge of Haitian politics or culture. The Haitian Refugee Center did not challenge the interdiction program or ask the court to bring all interdicted Haitians to the United States. It simply asked that the Haitians receive fair screening interviews before repatriations continued. Following the filing of

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131 On November 18, 1991, 538 Haitians held on the Coast Guard cutters "Dallas" and "Confidence" were forcibly returned to Haiti. Barbara Crossette, 135 Feared Lost as Haitian Boat Sinks Off Cuba, N.Y. TIMES, Nov. 22, 1991, at A1.

132 The interviews, many of which had been conducted on board the Coast Guard cutters, often lasted no more than five minutes. Haitian Refugee Ctr. v. Baker, No. 91-2653 (S.D. Fla. Dec. 10, 1991). The INS officers, while interviewing Haitians fleeing persecution, could not name or recognize the following: the President and Prime Minister of the de facto regime, the General (Cedras) at the head of the military coup, the popular name for President Aristide, Ti-Legliz (church movement of President Aristide), Lafanmi Selavi (orphanage established by President Aristide), and many others. Leon Jennings, Chief of the Asylum Pre-Screening Unit based in Miami, who was sent to Guantanamo to oversee the interview process, did not know that the Haitian Red Cross was not a member of the International Red Cross — significant because the government turned repatriated Haitians over to the Haitian Red Cross. Id. at app. 3-42.

133 Haitian Refugee Ctr. v. Baker, 953 F.2d 1498, 1502-03 (11th Cir. 1992). At the time the Haitian Refugee Center filed suit, only about 50 of the more than 1800 Haitians interviewed had been screened in. Alan Elsner, U.S. Sends Back Haitian Boat People, Reuters, Nov. 18, 1991, available in LEXIS, Nexis Library, Omni File. Testimony revealed that the pre-screening interviews were a complete sham — a formal validation of a predetermined result. See Bill Frelick, The Haitian Boat People, CHRISTIAN SCI. MONITOR, Nov. 20, 1991, at 18. Most of the Haitians interviewed under the defective interview process were never given another chance to make their case for asylum. Ironically, Cubans who made it to the Guantanamo Naval Base in Cuba during this time were flown to the United States and paroled into the community. Cuban Influx Highest Since Mariel Boatlift, Reuters, Oct. 29, 1992, available in LEXIS, Nexis Library, Omni File.
the suit, the interview process improved dramatically: over 10,000 Haitians, most of whom were interviewed on land, were screened in and provisionally admitted to the United States to apply for political asylum between the time of the suit and the time repatriations began again.

Ultimately, however, the fight for the Haitian refugees in the Haitian Refugee Center case was lost. Although District Court Judge Atkins issued three separate restraining orders in favor of the Haitians, three times the Appeals Court for the Eleventh Circuit stayed or vacated the judge’s orders. The Appeals Court found

134 INS conducted 36,596 screening interviews at the U.S. Naval Base in Guantanamo, Cuba from October 1991 to June 1992 and screened in 10,319 people for a screen-in rate of 28%, according to official INS statistics. The screening rates, however, fluctuated widely despite the fact that political conditions did not significantly change during that period. In mid-January, for example, INS screened in 85% of the Haitians interviewed, but in February, only approximately 40%. Susan Beck, Cast Away, THE AM. LAW., Oct. 1992, at 51, 57. In April, well after the Court allowed repatriations to continue, the rate dropped to a record low of two percent, raising concerns in Congress. Only pressure from Haitian refugee advocates forced the rate back up to about 35%. Several interpreters at Guantanamo provided sworn statements detailing the heavy pressure placed on asylum officers by the U.S. Department of State to decrease the number of Haitians screened in. See Plaintiffs’ Response to Defendants’ Memorandum in Opposition to Plaintiff’s Motions for Expedited Discovery at Exhibits 21, 24, Haitian Refugee Ctr. v. McNary, No. 92-1258 (E.D.N.Y. 1992). According to lawyers for the Haitians, INS staff who refused to bow to this pressure were redeployed and those suspected of screening in too many Haitians closely scrutinized. The lawyers also maintain that after the Court permitted the return of the Haitians, Haitians already screened in but still waiting at Guantanamo were reinterviewed according to new, higher standards, and punished if they attempted to assert their legal rights. Id. at 11-21; see also Ruling Expected Monday in Haitian Refugee Case, UPI, Apr. 2, 1992, available in LEXIS, Nexis Library, Omni File.


136 Judge Atkin’s first Temporary Restraining Order (TRO) was based on Article 33 of the United Nations Protocol Relating to the Status of Refugees, which prohibits the forced return of persons to a country where they would be persecuted. Baker, 953 F.2d at 1503. His second TRO was based on the Administrative Procedures Act (APA), which subjects actions by agencies such as the INS to review and forbids them from
that the Haitians had no legally enforceable rights in the United States because they were outside United States territory. Only Judge Hatchett, the one African-American judge on the Appeals panel, remarked in a dissenting opinion: "Haitians, unlike other aliens from anywhere in the world, are prevented from freely reaching the continental United States." In a brief two sentence order without comment, issued on January 31, 1992, the Supreme Court ruled eight to one to lift the ban on repatriations.1 When repatriations began on February 1, 1992, more than 11,000 Haitians were held at Guantanamo Bay, Cuba. Amnesty International expressed outrage at the forced

abusing their discretion. Id. at 1504. His third TRO enjoined the government from forcibly returning the Haitians until it granted the Haitian Refugee Center attorneys access to them. Id.

Id. at 1510.

Id. at 1516 (emphasis added). A Miami Herald editorial stated:

If the president insists that interdicting the Haitians just outside our boundaries negates whatever rights they would acquire under U.S. law, then the interdiction program becomes a lawless device to deprive Haitians of the rights Congress conferred, not a lawful means to protect them from adversity on the high seas.


Haitian Refugee Ctr. v. Baker, 112 S. Ct. 1245 (1992). Justice Blackmun alone wrote: "If indeed the Haitians are to be returned to an uncertain future in their strife-torn homeland, that ruling should come from this Court after full and careful consideration of the merits of their claims." Id. at 1246. The decision by the high court not to review the case paved the way for further abuses of the Haitian refugees. Arguably, after the Supreme Court order, the INS was free to screen in all light-colored Haitians and screen out all dark-skinned Haitians, since this would not be subject to legal challenge. Yet many were surprised when President Bush issued his May 24, 1992 Executive Order stopping all Haitian interviews. Exec. Order No. 12,807, 57 Fed. Reg. 23,133 (1992).

Juan J. Walte & Marilyn Greene, Haitians Renew High Court Appeal; Returnees Persecuted, Lawyers Say, USA TODAY, Feb. 11, 1992, at 4A. Testimony by a senior official of the GAO before a House sub-committee revealed that the INS had lost at least 2500 files at Guantanamo, due to disorganization and disarray, mistook "screened-in" Haitians for "screened-out" Haitians, and apparently rescreened and even repatriated previously "screened-in" Haitians. Those erroneously returned included at least 38 unaccompanied children and a 16-year old girl, Marie Zette, who was killed in her bed
returns. The United Nations similarly condemned the repatriations, expressing fear that those returned would be exposed to real danger.

On May 24, 1992, President Bush issued an Executive Order from Kennebunkport, Maine, ordering INS to repatriate Haitians interdicted at sea without any investigation into the likelihood of their persecution in Haiti ("Kennebunkport Order"). Thus began the fourth phase of the interdiction program, which reversed a United States policy dating from 1981, under which refugees were interdicted in international waters and screened in to see if they had reasonable fears of persecution.


In a January 1992 report, Amnesty International said it had received reports of grave human rights violations after the coup. Amnesty stated they knew of "several cases in the past years where asylum-seekers who were refused asylum in the USA and returned to Haiti were imprisoned and in some cases ill-treated on their return." AMNESTY INTERNATIONAL, HAITI: THE HUMAN RIGHTS TRAGEDY; HUMAN RIGHTS VIOLATIONS SINCE THE COUP 24 (Jan. 1992).

Nancy Etzwiler, U.S. Should Give Haitians Temporary Refuge, Not Repatriation, STAR TRIB., Feb. 25, 1992, at 9A. Just before the January Supreme Court decision allowing repatriations to continue, the United Nations High Commissioner for Refugees (UNHCR) confirmed that dozens of Haitian refugees returned to Haiti due to faulty procedures were persecuted upon their return and forced to flee a second time. The UNHCR said that they and U.S. government officials had documents detailing the harassment, beating, torture, and murder of returned Haitians for the "crime" of having fled. Attorneys for the Haitians learned of this less than 56 hours before filing their petitions for writ of certiorari with the Supreme Court. The Haitians' attorneys claimed that the government precluded them from obtaining this information in a timely fashion. See Plaintiffs' Application to Stay the Mandates of the United States Court of Appeals for the Eleventh Circuit Pending Certiorari, Exhibit A, Declaration of James A. Rogers of Feb. 9, 1992, Haitian Refugee Ctr. v. Baker, 949 F.2d 1109 (11th Cir.), cert. denied, 112 S. Ct. 1245 (1992); Petition for Writ of Certiorari at 20, Haitian Refugee Ctr. v. Baker, cert. denied, 112 S. Ct. 1245 (1992). After the UNHCR publicly confirmed that they had evidence of returnees being persecuted, they were informed they could no longer conduct interviews of the Haitians at Guantanamo without a military presence. The UNHCR submitted an amicus brief in McNary v. Haitian Refugee Ctr., arguing that forced returns of Haitians who would face persecution upon return violates a U.N. treaty signed by Washington.

A federal appeals court in New York subsequently found that President Bush's Executive Order was illegal and in violation of United States international law on the treatment of refugees. Only Judge John Herbert Walker, a cousin of President Bush's, dissented. Although the case is now pending before the United States Supreme Court, the Court is allowing the government to continue with the repatriations until they make a decision on the merits of the case.

The United States government's response to the widespread condemnation of the Kennebunkport Order has been to claim that Haitians in fear for their lives can apply for United States asylum at the United States Embassy in Port-au-Prince. But for numerous reasons, this program offers no real protection at all. First, to expect Haitian refugees to openly approach the United States Embassy -- just a block away from the police station and surrounded by military personnel -- is preposterous, Haitian refugee advocates suggest.

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144 Haitian Ctrs. Council v. McNary, 969 F.2d 1350, 1367, (2d Cir.), cert. granted, 113 S. Ct. 52 (1992). The court found that the order violated § 243(h) of the Refugee Act of 1980 that prohibits the return of anyone who would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. McNary, 969 F.2d at 1367.

145 McNary, 969 F.2d at 1369.

146 While the Supreme Court summarily declined to review the Baker case, they did grant the government's petition for certiorari in the Haitian Centers Council case, after the Second Circuit found that President Bush's Kennebunkport order was illegal. McNary v. Haitian Centers Council, 113 S. Ct. 52 (1992). The Supreme Court initially gave the government a 48-hour reprieve before implementing the Second Circuit Court's decision, and then stayed the Second Circuit Court's order preventing the government from returning the Haitians. McNary v. Haitian Ctrs. Council, Inc., 113 S. Ct. 3 (1992). On November 30, 1992, the Supreme Court denied the request made by the Haitians' attorneys to delay the case until Bill Clinton took office. McNary v. Haitian Ctrs. Council, 113 S. Ct. 593 (1992).

147 In January 1992, the Administration announced the opening of an office in Haiti's capital to receive applications for admittance to the United States. Steve Marshall, U.S. Embassy Will Process Asylum-Seekers, USA TODAY, Jan. 31, 1992, at 3A. This marked the first time in history that Haitians have been accepted as refugees into the United States.

148 As one expert has noted:

The idea that people suffering repression and at risk of human rights violations, at risk of arbitrary detention, at risk of beating, at risk of torture, and perhaps even death . . . the idea that such people should
Further, those in the rural areas, where most of the severe repression is taking place, have absolutely no way of getting to the capital. There is also such a high threshold for approval and such extensive documentary proof required of Haitians, that very few can qualify. Accounts of refugee applicants who have been killed seeking proof of past persecution are documented. With President Bush’s Kennebunkport Order, even the pretense of fairness in dealing with the Haitian refugees disappeared.

But lawyers representing the Haitians say fairness had not been evident for some time. In their briefs to the Court in Haitian

Ian Martin, Secretary General Amnesty International USA, Address at the Annual Meeting of Amnesty International (June 26, 1992).

149 Haitians lucky enough to make it to the U.S. Embassy will probably be denied protection. Howard French, Haitian Dissident Loses Plea for U.S. Refugee Visa, N.Y. TIMES, Mar. 7, 1993, at A11. Of the over 5000 applications for refugee status submitted thus far, only 179 have been approved. Many Haitians who made it to the Embassy have already experienced arrests or mistreatment by military authorities. Nightline: Safety of Returned Haitians Not Being Monitored (ABC television broadcast, Feb. 24, 1992). Applicants often wait weeks for an appointment or for an answer, often living in hiding.

150 New Evidence of Reprisals Against Returned Refugees, HAITI INSIGHT (Nat’l. Coalition for Haitian Refugees, New York, N.Y.), Fall 1992, at 5. In March 1993, a soldier who had been granted refugee status in Haiti after he refused to carry out orders to kill those targeted as pro-Aristide was forcibly taken off an airplane in Port-au-Prince. Andres Viglucci, For Haitian Deserter, Odyssey Ends Happily, MIAMI HERALD, Mar. 25, 1993, at 1A. See also Deborah Sontag, Haiti Arrests Man on Way to Asylum in the U.S., N.Y. TIMES, Mar. 14, 1993, § 1, at 8.

151 According to many Haitian refugee advocates, in issuing the Kennebunkport Order and easing the economic embargo shortly thereafter, President Bush sent a clear message to Haiti’s de facto government that they could blatantly commit human rights abuses against the Haitian people and get away with it. Tragically, now that protection of bona fide Haitian refugees is more important than ever given the level of political persecution in Haiti, Haitians are being afforded no protection at all.

152 Lawyers for the Haitians in the Baker case maintain that the legal issues took a back seat to political maneuvering. The State Department and Bush Administration, they say, did an excellent job of diverting attention away from the legal issues and convincing the courts and the public that denying the Haitians their legal rights was in the best interest of everyone. Petition for Writ of Certiorari at 8, Haitian Refugee Ctr. v. Baker, cert. denied, 112 S. Ct. 1245 (1992).
Refugee Center v. Baker, the Haitians’ lawyers argued that government lawyers manufactured affidavits, rushed courts to judgment, and deliberately misled the courts with false claims of national emergency and military necessity. They point out that on January 28, 1992, the government filed an emergency petition for a stay of the ban on repatriations with the Eleventh Circuit, alleging that 20,000 Haitians “were massed” on the Haitian beaches and waiting to head for Guantanamo, and that the naval base could not accommodate such numbers. Three days later, and before the Eleventh Circuit had ruled, the government went to the Supreme Court with the same allegations. Attorneys for the Haitians argued that this was a "self created" crisis and that Guantanamo had a far greater capacity to hold people than the Administration claimed.

The Haitians’ attorneys also say that under sworn deposition, Undersecretary Bernard Aronson admitted that the term "massing" was ambiguous and retracted his use of the word. Contrary to his statements in his declaration to the Supreme Court, he admitted that he was quite unsure of the number of Haitians preparing to leave. Shortly after this incident, the Supreme Court lifted the ban on

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153 Id. at 18-22. The government sent Solicitor General Kenneth W. Starr to argue its position before the District Court in Miami, although Solicitor Generals usually appear in person only in particularly important U.S. Supreme Court cases.


157 Id.

158 Id.
repatriations.\textsuperscript{159} Notwithstanding the government’s claim that a mass exodus was about to begin in January 1992, independent observers, including the Coast Guard attache in Port-au-Prince who flew over the Haitian shores of La Gonave, the point of departure for many Haitians, concluded otherwise.\textsuperscript{160}

In denying attorneys for the Haitians access to Guantanamo and the Coast Guard cutters, the government claimed that it would seriously interfere with military operations.\textsuperscript{161} Judge Atkins noted, however, the portions of the military base to which the attorneys sought access were not used for military purposes.\textsuperscript{162} Furthermore, Coast Guard Admiral William P. Leahy acknowledged in his deposition that press members, VIPs, and a host of other persons had access to Guantanamo and he admitted that family members of Coast Guard members periodically go on Coast Guard cutters, including his fourteen year old son who spent two weeks on a cutter during a law enforcement mission.\textsuperscript{163}

\textsuperscript{159} Id. In their brief to the Supreme Court, lawyers for the Haitians referred to the government reliance on the declaration of Robert K. Wolthuis, whom the government presented as the Assistant Secretary Of Defense. Mr. Wolthuis, according to the Haitians’ lawyers, had assumed that position for one day only — the day he signed the declaration. Mr. Wolthuis readily admitted that most of the facts he swore to in his declaration were what the lawyers who had drafted it told him. The declaration was so defective that attorneys for the Haitians filed a separate memorandum concerning it. Petition for Writ of Certiorari at 19, Haitian Refugee Ctr. v. Baker, \textit{cert. denied}, 112 S. Ct. 1245 (1992).


\textsuperscript{163} Petition for Writ of Certiorari at 19-20, Haitian Refugee Ctr. v. Baker, \textit{cert. denied}, 112 S. Ct. 1245 (1992). This selective denial of access, based on the kind of message a visitor might bring, prevented those most likely to assist the Haitians from having access to them. As for the government’s claim that not returning the Haitians would cost millions of dollars, preclude use of Coast Guard cutters for other important tasks such as drug interdiction, and complicate relations with Cuba because using Guantanamo might violate the U.S. lease on the base, the District Court noted that much of the damage feared by the government could be avoided if they followed adequate
Lawyers working for the Haitians complained that politics, not the law, was ruling the day.\textsuperscript{164} If this is true, then grave concerns are raised relating to the administration of justice and the integrity of the judicial process.

Government officials claimed their effort to forcibly return the Haitians was inspired by the desire to save the lives of those who would otherwise be encouraged to take to the sea in unworthy vessels (the so-called "magnet" effect).\textsuperscript{165} But as Appeals Court Judge screening procedures, since it could then repatriate Haitians who did not have plausible claims. Baker, 789 F. Supp. at 1574.

\textsuperscript{164} Plaintiff's Response to Defendants' Memorandum in Opposition to Plaintiff's Motions for Temporary Restraining Order and Expedited Discovery, at 9-10, Haitian Ctr. Council v McNary, No. 92-1258 (E.D.N.Y. 1992). Perhaps the most bizarre of these practices involved the Eleventh Circuit Court. On January 31, 1992, it appeared that the Eleventh Circuit had issued an order overturning Judge Atkin's injunction and allowing the government to repatriate the Haitians. Four hours later, however, the court issued a second order saying the first order had been improperly issued because of a "clerical error." First Refugee Group Arrives Back in Haiti; Process Goes Smoothly, but Many Fearing Reprisals, ATLANTA J. & CONST., Feb. 3, 1992, at A1. The Haitians' lawyers were then given less than two hours to respond to the government's stay application to the Supreme Court (the government had stay applications pending before both the Circuit and the Supreme Court). Later that day, the Supreme Court voted eight to one to lift the ban on repatriations. Haitian Refugee Ctr. v. Baker, 112 S. Ct. 1245 (1992). The next day, the Circuit Court apparently changed its mind and informed the Haitians' attorneys that it had issued the order after all, and that there had been no clerical error. The Eleventh Circuit Court then dismissed the entire case five days later. Haitian Refugee Ctr. v. Baker, 953 F.2d 1498 (11th Cir. 1992). Lawyers also charged that summary dismissals on critical decisions were issued, affidavits not a part of the record were treated as if they were, and key parts of the record were ignored. At one point Judge Hatchett, the Eleventh Circuit's dissenting judge, felt compelled to claim that the panel majority was deciding the case under "some procedures here before unknown to the law" and that "[t]he majority's actions, rulings, and holdings . . . are inconsistent with its actions, holdings, and rulings of two days ago . . . ." Haitian Refugee Ctr. v. Baker, 950 F.2d 685, 687 (11th Cir. 1992) (Hatchett, J., dissenting).

\textsuperscript{165} Laurence Jolidon, Religious Holiday Gives Haitian Kids Short Break, USA TODAY, May 29, 1992, at 9A. From day one of the coup, U.S. government officials were predicting that hundreds of thousands of Haitians would leave their country for the United States. Once Governor Clinton was elected to office they began predicting the Haitian exodus would make the Cuban Mariel exodus "look like a picnic." Photos Show Haitians may be Preparing for Exodus, UPI, Nov. 14, 1992, available in LEXIS, Nexis Library, Omni File. But about 40,000 Haitians fled their country following the coup up until Bush's Kennebunkport order, eight months later. Elaine Scioli, Clinton Says U.S. Will Continue Ban on Haitian Exodus, N.Y. TIMES, Jan. 15, 1993, at A1. That is far less than the 125,000 Cubans who arrived in four months during the Mariel Boat
Hatchett pointed out: "The primary purpose of the [interdiction] program was, and has continued to be, to keep Haitians out of the United States."\(^{166}\)

A look at our treatment of those Haitians who tested positive for the HIV virus unfortunately supports the argument that we are not interested in saving the lives of Haitians. In late 1991, United States government officials began testing the Haitians at Guantanamo for the HIV virus.\(^{167}\) Prior to 1992, no person who applied at a border or in the United States was ever excluded from the asylum program for being HIV-positive.\(^{168}\) The 218 HIV-positive Haitians are being housed at Guantanamo in tin-roofed shacks surrounded by barbed wire, are denied adequate legal representation, and occasionally suffer punitive measures handed out without any procedural rights.\(^{169}\)

\(^{166}\) Haitian Refugee Ctr. v. Baker, 949 F.2d 1109, 1112 (11th Cir. 1992) (Hatchett, J., dissenting). The interdiction program began in 1981, long before the current immigration wave. Also, the U.S. government has never suggested that we must deter Cubans from fleeing in order to save their lives, even though according to Coast Guard officials and Cuban exile leaders, hundreds of rafters will die this year crossing from Cuba to Miami. Bruce Fein, Blockade of Haitians' Journey to Freedom, LEGAL TIMES, Feb. 1, 1993, at 32. And what of Haitians risking their lives at home, where very real threats to safety exist?


\(^{168}\) According to INS regulations, asylum seekers are not required to subject themselves to HIV testing until after they have been granted asylum and apply for residency in the U.S. one year later. Marvine Howe, Aliens Testing Positive for AIDS are Said to be Giving up on Legislation, N.Y. TIMES, Aug. 18, 1989, at B1. To this day, Cubans who are interdicted at the same time and literally in the same boat as Haitians are immediately transported to the United States and allowed to enter the asylum program without ever being medically screened for HIV or any other disease. Anne-Marie O'Connor & Mike Williams, Friends of Haitians Hail End of Immigration Ban, ATLANTA J. & CONST., Feb. 10, 1993, at C1.

\(^{169}\) Mike Doming, The American Way? For Haitian Refugees with HIV, Freedom is Still Miles Away, CHI. TRIB., Jan. 25, 1993, at 1. Visitors to the base have repeatedly confirmed the refugees' reports of military and INS abuses and a group at Guantanamo has repeatedly said they would rather die than return to Haiti under present political conditions. Recent suicide attempts are eloquent testimony of this. See Military
Most in this group have been incarcerated at Guantanamo for over a year. The INS itself acknowledges their claims of political persecution in Haiti to be credible.\textsuperscript{170} Furthermore, doctors from the Centers for Disease Control (CDC) warned the Navy last year that HIV-positive individuals should not be crowded together in a camp such as Guantanamo, since this facilitates the spread of tuberculosis to which they are particularly susceptible.\textsuperscript{171} In late January 1993, 265 "screened-in" Haitian refugees interred at Guantanamo because they or their family members are HIV-positive began a hunger strike, vowing to continue until death, despite their precarious state of health.\textsuperscript{172}

While President Clinton appeared to be moving to keep his campaign promise to lift the ban preventing the entry of immigrants who have tested positive for the HIV virus, the Senate voted overwhelmingly to stop the Administration from doing this.\textsuperscript{173} The seventy-six to twenty-three vote sent a very clear message that many

\textsuperscript{170} See Greg Henderson, \textit{Justices Direct Government to Reply to New Haitian Charge}, UPI, Feb. 11, 1992, available in LEXIS, Nexis Library, Omni File. Almost all those who have gone through refugee screening have met the INS standard for political asylum in the United States. Yet although the U.S. government has the legal authority to bring them into the country at any time, they remain in limbo and isolated from the outside world, with the possibility that they will leave Guantanamo only to go back to Haiti.

\textsuperscript{171} See Marlene Cimons \& Melissa Healy, \textit{Public Health Threat Cited in Isolation of Ill Haitians}, L.A. TIMES, Apr. 25, 1992, at A1. In 1990, the U.S. Food and Drug Administration banned Haitian nationals from donating blood in the U.S. Haitians were not listed as a high risk group for the HIV virus at the time and the ban was subsequently lifted. Charles Strouse, \textit{Haitians Protest Blood Ban}, MIAMI HERALD, Mar. 7, 1990, at 1B.


Haitian refugee advocates fear will lead to the President backing down on the issue. Still, President Clinton has the legal authority to parole the Guantanamo refugees into the United States regardless of whether the HIV restriction is lifted. Senior Health and Human Services Department officials, including former Secretary Sullivan, supported lifting the ban, as have international health authorities.

VIII. A Critique of United States Policy

The United States government’s response to the Haitian refugee crisis has been an exercise in political cynicism that flouts international refugee law. The forcible return of Haitians today not only places at risk many who face serious human rights violations, but threatens to undermine carefully crafted international arrangements for the protection of those who flee such violations.

The hypocrisy of such a policy is blatant. When President

174 Id.


177 Amnesty International summarized the double standard inherent in the U.S. policy:

The scandal of the U.S. Haitian interdiction policy is not only that this is being done, but that it is being done by the richest and most powerful nation on earth. What does this say to the poorer nations whose people are asked to help the rest of the world’s 17 million refugees camped on their doorstep? What does this say to Bangledeshees who currently provide refuge to over 200,000 Muslim refugees fleeing repression in Burma? To Kenyans who continue to allow in hundreds of Somalis and Sudanese fleeing civil war, adding to a refugee population to over 400,000? Or indeed, to Iranians who welcomed over a million Iraqi Kurds and Shiites after the Gulf War after they had already for years sheltered over 2 million Afghan refugees?

Ian Martin, Secretary General of Amnesty International USA, Address at the Annual Meeting of Amnesty International (June 26, 1992).
Aristide was overthrown in September 1991, United States officials referred to the outlaw regime in Haiti as a "pariah, without friends, without support and without a future." All United States citizens were warned not to travel to Haiti after the coup and all non-emergency governmental personnel were pulled out of Haiti. Even the United States Ambassador to Haiti, Alvin Adams, was recalled. Yet the United States insisted on sending the Haitians back. The message to many was clear -- the lives of Black Haitian refugees are expendable. They do not count.

A recent report issued by the Washington Office on Haiti concludes that there was a covert United States strategy to undo the Aristide Government. Indeed, once the threat of Haitians landing on our shores was realized, United States criticism of the coup faded. Promises by our government to ensure Aristide's return

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180 Adams was recalled shortly after Rene Theodore, the man nominated to be Haiti's next Prime Minister, was shot at and nearly killed during OAS talks in Port-au-Prince in January 1992. U.S. Recalls Envoy From Haiti After Weekend Attack, Reuters, Jan. 27, 1992, available in LEXIS, Nexis Library, Omni File. Adams, in fact, had earlier advised that "Haiti [was] on the verge of an emergency that could surpass any crisis in the country's recent history." Lee Hockstader, Envoy in Haiti Urges Americans to Leave; Embargo's Impact Awaited; Violence Feared, WASH. POST, Oct. 23, 1991, at A41.

181 The report stated that a strategy document written by a consultant to the U.S. embassy surfaced a few weeks after Aristide was overthrown. The document summarized a progression of steps to delay and eventually deny Aristide's return. It stated: "What is needed is a comprehensive, sustained and very discrete [sic] approach to U.S. policy-makers and the U.S. media. More information must be channeled to them and on a regular basis, and from sources that they will trust and that cannot be directly traced." Covert Strategy to Undo Aristide Government (Wash. Office on Haiti, Wash. D.C.), Feb. 8, 1993, at 1.

182 At a hearing held on October 31, 1991, by the House Subcommittee for Western Hemisphere Affairs, Assistant Secretary of State for Inter-American Affairs Bernard Aronson suggested that the government might be considering relaxing Haitian immigration policy. But he expressed concern that a policy shift might encourage large numbers of Haitians to attempt a dangerous journey that would lead to their death. Mike Clary, Haitians Held on Ship as U.S. Reviews Policy, L.A. TIMES, Nov. 6, 1991, at A17. Indeed, rather than relaxing the Haitian immigration policy in the months that followed, it was tightened to the point of cutting off all Haitians from relief. The Haitian immigration policy is worse now than ever. Haitians in genuine fear for their
carried less conviction as the economic embargo imposed by the Organization of American States (OAS) fell far short of accomplishing its goals, and returning the Haitians became the overriding objective. Critics of United States policy charge that the United States did not engage in a good-faith attempt to bring the international community into the forefront of the Haitian dilemma and failed to genuinely attempt to enforce the economic embargo imposed by the OAS. The Bush Administration, faced with the appearance of inconsistency for condemning the violence of the Haitian military while asserting that returnees were not facing persecution, reverted to the familiar refrain that most of the fleeing Haitians are simply lives cannot escape, not even to other islands in the Caribbean, because the U.S. Coast Guard will intercept them first.

They also charged that the U.S. should have frozen the bank accounts of the coup leaders and their cronies and denied them visas to come to the United States. Despite rumored reports that the U.S. planned to unilaterally lift its sanctions on Haiti, President Bush renewed the measures that would have expired on October 4. But still the trade embargo imposed by the OAS, which was to force the military to concede power, has been ignored and undermined at every step. According to a Haitian industrialist on the anniversary of the coup, "there has never been more gasoline available in Haiti." Edwige Balutansky, One Year After Coup, Haiti in Poverty, Political Stalemate, Reuters, Sept. 29, 1992, available in LEXIS, Nexis Library, Omni File. A September 21, 1992 report by the General Accounting Office revealed that there had been at least four petroleum shipments to Haiti between May 30 and September 3, in violation of the OAS embargo. These shipments originated from the Caribbean island of Aruba. See J.P. Slavi, Haiti Oil Load May Break Ban, NEWSDAY, Jan. 3, 1992, at 15. Trade has been so vigorous that U.S. Coast Guard cutters repatriating Haitians have at times found no room along the Port-au-Prince dock, and have had to bring the Haitians to shore in rubber rafts. Embargo, Talks Stall; Haiti's Agony Continues, HAITI INSIGHT (Nat'l. Coalition for Haitian Refugees, New York, N.Y.), Fall 1992, at 3.

While the Bush Administration did not respond to public and editorial pleas for humanitarian action towards those fleeing persecution and violence in Haiti, it did respond to the financial burdens of American businessmen with operations in Haiti. On February 4, 1992, the Bush Administration announced that it would unilaterally lift the embargo for assembly industries that import parts from the U.S. and re-export assembled goods to the U.S. Kenneth Freed, U.S. Eases Sanctions Against Haiti; Embargo: Bush Bows to Pressure from American Businesses, Angering OAS Leaders, L.A. TIMES, Feb. 5, 1992, at A6. This unilateral action upset members of the OAS, who had unanimously voted to enforce the embargo in October. Id. In Haiti, the lifting of the embargo was greeted with glee by those who supported the coup.
economic refugees.\textsuperscript{184} In June 1992, Americas Watch and the National Coalition for Haitian Refugees criticized the skewed United States monitoring of Haitians repatriated since the coup, alleging it had served a public relations purpose only and had utterly failed to discover whether repatriates encounter persecution.\textsuperscript{185} Even the 11,000 Haitians who have been "screened in" since the coup are in real danger of being denied asylum. Justice Department memorandum\textsuperscript{186} and public statements from high-ranking INS officials in recent months reveal a

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\textsuperscript{184} To bolster their case that the Haitians fleeing today are simply economic refugees, U.S. officials maintain that Haitians are not fleeing to the Dominican Republic. But the UNHCR and others have reported this is not the case. In fact, Haitians have fled to the Dominican Republic in large numbers since the coup, despite the large Macoute presence and the persecution of Haitians there. Between June and September 1991, authorities from the Dominican Republic summarily ousted as many as 6000 Haitians and Dominicans of Haitian origin. \textit{Report Criticizes D.R. Forced Labor, Deportations, HAITI INSIGHT} (Nat'l. Coalition for Haitian Refugees, New York, N.Y.), Fall 1992, at 6. Haitians have received scarce hospitality in the Dominican Republic, where the graffiti reads "Haitians Out." Human rights experts and refugee advocates estimate that 25,000 Haitians have crossed the border into the Dominican Republic since September 30, 1991. Michele Wucker, \textit{Refugees' Life in Hiding Just Across the Border}, \textit{NEWSDAY}, July 31, 1992, at 15.

\textsuperscript{185} AMERICAS WATCH & NATIONAL COALITION FOR HAITIAN REFUGEES, \textsc{half the story: the skewed U.S. monitoring of repatriated haitian refugees} (1992). Even as State Department spokesman Richard Boucher was announcing plans to close the Guantanamo camp, he admitted there had been renewed political repression in Haiti. Laurence Jolidon, \textit{Religious Holiday Gives Haitian Kids Short Break}, \textit{USA TODAY}, May 29, 1992, at 9A.

\textsuperscript{186} As reported in a 1992 National Asylum Study Project, the Justice Department's Asylum Policy and Review Unit (APRU) has taken special interest in the Haitians from Guantanamo. The preliminary assessments that each asylum officer sends to APRU included a special cover sheet, identifying them as Haitian cases from Guantanamo Bay. In 33 of the first 43 assessments, asylum officers recommended to grant asylum. APRU recommended reversal of 18 of these assessments to grant and reversal of only one assessment to deny. Special incentives were given to asylum officers to deny these cases. "INS could be encouraged to . . . [count] a completed denial as a double case completion and a completed grant as a simple case completion for purposes of their internal [illegible] and officer evaluation." Memorandum from Jan C. Ting, Director, Asylum Policy and Review Unit & Kristen A. Giuffreda, Assistant Director, Asylum Policy and Review Unit to Rex J. Ford, Associate Deputy Attorney General 3 (May 26, 1992) (on file with the \textit{New York Law School Journal of Human Rights}).
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vested interest in labelling these Haitians to be economic refugees. While there is no denying that Haiti is the poorest country in the Western hemisphere, or that almost every Haitian who comes to the United States will be exposed to a better standard of living, that alone does not mean Haitians are not politically persecuted in Haiti and therefore not entitled to asylum.

The Bush Administration's handling of the Haitian refugee crisis is a striking contrast to the Cuban freedom flotillas in the early 1960s and United States' handling of the Vietnamese in the 1970s. As recently as last year, the United States vehemently criticized the forced return by the British Hong Kong of the Vietnamese Boat People.

United States relations with Haiti over the years bears mention. There has been little or no opportunity for the development of democracy in Haiti, in large part due to American domination which was first established in 1915 when United States Marines began a nineteen year occupation of the country. During the Duvalier family era, the United States supported their rule.

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187 One high-ranking INS official made public statements that 90% of these Haitian cases would be denied. Immigration and Naturalization Service Deputy Commissioner Ricardo Inzunza, Remarks at the Fletcher School of Law and Diplomacy, Tufts University (Jan. 1992). This statement came before asylum officers had interviewed many applicants. Similar reports of comments from other high ranking officials have been made.


189 In 1979, President Carter asked Congress for $555 million for the resettlement of refugees, many fleeing from the Communist regime in Vietnam. See Juan de Onis, Policy Shift Urged by Refugee Official, N.Y. TIMES, Nov. 30, 1980, § 1, at 25.


192 Id. After Duvalier fled Haiti, lawyers in Miami filed a lawsuit against him and his sidekicks and a Federal District Court in Miami found that they had pilfered over $500 million in aid meant for the Haitian people. While this money to date has not been
"Money, weapons, and training flowed from Washington to the Haitian National Palace."193

Even with glaring evidence of abuses committed by the Duvaliers, United States economic support continued. One week after jailing almost every opponent of Jean Claude Duvalier's government, Haitian officials sat down with representatives from the United States and other Western countries which were the primary donors to the Duvalier coffers.194 Haiti continued to receive about 137 million dollars in multi-lateral and bi-lateral aid, and the United States remained by far the largest contributor to the Haitian budget.195 United States aid continued to flow despite the fact that the Haitian government violated every promise they made to the United States in accepting aid.196 Development experts state that the bottom line of

collected, the decision in this case indicates the extent to which U.S. financial support to Haiti was misused. See $500 Million Judgment Issued Against Duvaliers, CHI. TRIB., Jan. 21, 1988, at 4.

193 Peter A. Schey, The Black Boat People, 9 MIGRATION TODAY 7, 8 (1981); Clifford Krauss, In Policy Shift, U.S. Criticizes Haitian on Rights Abuses, N.Y. TIMES, Oct. 7, 1991, at A1. It is generally believed that support for the Duvalier regime had two purposes. First, foreign policy strategists were concerned that the Caribbean, traditionally an American stronghold, was being converted into a Marxist sea. This was viewed as important because more than half of America's oil imports travel the sea lanes past the Caribbean islands. Thus, the argument was to maintain close ties with the Duvalier regime and to avoid doing anything which might strain that relationship, thereby rejecting the asylum claims of Haitian refugees. Schey, supra, at 8. See also Carl J. Migdail, Powder Keg at Our Doorstep, U.S. NEWS & WORLD REP., May 19, 1980, at 21. Second, there was general concern over protection of U.S. investment in the Caribbean and Central America, which totalled billions. See Caribbean Chiefs Praise Trade Plan, N.Y. TIMES, Dec. 4, 1983, § 1, at 23.


196 See Art Harris, More Money for Public Relations; Polishing Paradise's Tarnished Image; Haiti, Pressed to Solve Social Problems, Spends to Polish Image, WASH. POST, Dec. 25, 1981, at A1. For decades, the United States has had a policy of appeasing Haitian leaders with poor human rights records. One commentator noted:

While [President] Kennedy wished to remove Duvalier or bring about radical improvements in his methods of rule, he feared
foreign assistance to Haiti has meant somewhat less hunger for the poor but above all more prosperity for the ruling families in the Duvalier dynasty.\textsuperscript{197}

Historically, Haitian refugees have had few powerful supporters in Washington. However, in light of the obvious harsh treatment meted out to the Haitians since the coup in Haiti, both Republicans and Democrats have spoken out on behalf of the Haitians.\textsuperscript{198} Still, not enough members of Congress were willing to

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creating a "second Cuba" in the Western Hemisphere. Hoping to ensure a stable, friendly government as a successor to Duvalier, the Kennedy administration, in the words of Secretary of State Dean Rusk, "used persuasion, aid, pressure and almost all techniques short of the landing of outside forces" to bring about changes in Haiti. Such pressures included nearly a total cut off of American economic and military aid, withdrawal of the American Ambassador from Port-au-Prince, and secret funding of Haitian exile groups; and there were ties between U.S. intelligence agencies and the exile groups that invaded Haiti in 1963. However, Duvalier was able to exploit his position as a military and political ally of the U.S. in a broadening hemispheric campaign against Castro to avert an open breach until the end of Kennedy's term. U.S. ostracism of Haiti therefore was short lived. President Johnson moderated the policy of economic and diplomatic sanctions of Haiti and adopted a less critical stance toward Duvalier. In the years that followed, official and unofficial support of the Haitian regime grew, though no evidence was presented that Duvalier had ceased his campaign of repression.

\textsuperscript{197} Peter A. Schey, \textit{The Black Boat People}, 9 \textit{Migration Today} 7, 10 (1981).

\textsuperscript{198} There have been two major hearings in Congress on the Haitian issue in the past few years, resulting in much criticism of the U.S. government's Haitian policy. Members of the Congressional Black Caucus, often referring to the Haitian policy as racist, have blasted the Administration. At the most recent hearing in November 1991 it was said:

\textbf{If we can spend $65 billion to free Kuwait, offer up a $1 billion aid package to feed the people of our former enemies in the Soviet Union, why can we not open our hearts and share the burden of the Haitian refugees? During the civil war in Nicaragua, we financed the Contras and accepted thousand of them onto our shores. We have accepted into this country, rightly, 20,000 Soviet Jews within the last year. Why can we not assist these, the most desperate people in our hemisphere?}
act in a timely fashion to effectively support Haitian refugees. Even with Republican backing they came up short. 199

Lacking the political clout of their Cuban counterparts, Haitian refugees and their advocates suffered one final blow under the 102d Congress in early October 1992, when legislation to reverse President Bush's Kennebunkport order failed to reach a vote of the full Congress. H.R. 5360, sponsored by Stephen Solarz (D-N.Y.) and co-sponsored by a handful of representatives including two Republicans, never got the needed widespread backing from the Democratically-controlled Congress that would have been necessary to challenge the Bush policies. 200

Even a bill supporting Temporary Protected Status (TPS) for Haitians did not pass. 201 Congress created TPS precisely to help refugees facing the kind of political crisis the Haitians are facing

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199 Florida Senator Connie Mack, a Republican, has been one of the most outspoken critics of the Administration's Haitian policy, calling it "morally wrong" and "a disgrace." Larry Rohter, Haven for Haitians Backed in Miami, N.Y. TIMES, Feb. 5, 1992, at A8. U.S. Representative Ileana Ros-Lehtinen at one point also called the nation's Haitian immigration policy an "unfair situation." Sharony Andrews, Lawmaker Joins Movement to Help Haitian Immigrants, MIAMI HERALD, Aug. 21, 1991, at 3B.

200 Given the failure of several broader Haiti-focused bills to progress during 1992, H.R. 5360 sought only to make explicit the U.S. obligation under international law not to forcibly return political refugees found at sea as well as within U.S. territory. H.R. 5360, 102d Cong., 2d Sess. (1992). President Bush had threatened to veto any bill protecting the Haitians that passed Congress. See Supreme Court Rejects Halt of Haitian Repatriation, STAR TRIB., Feb. 25, 1992, at 4A.

201 Christopher Marquis, Some Link Rise in Haitian Refugees to Anticipation of Clinton, MIAMI HERALD, Nov. 2, 1992, at 6A. The Attorney General is authorized to grant Temporary Protected Status (TPS) to nationals if "the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety . . . ." 8 U.S.C. § 1254a (b)(1)(C) (1988).
today. This status has been granted to numerous other refugee groups in recent months, including the Kuwaitis, Lebanese, Liberians, and Somalians. Before the Supreme Court gave the government permission to repatriate the Haitians from Guantanamo, the government argued there was no need for TPS for Haitians because a fair screening process was in place to ensure identification of bona fide refugees. Those in need of protection were being protected, they argued. This is clearly no longer the case. Without TPS, hundreds of thousands of Haitians will be returned to the danger of persecution and possibly death. Our failure to grant

202 See Bruce Fein, Blockade of Haitians' Journey to Freedom, LEGAL TIMES, Feb. 1, 1993, at 32.


204 Id.

205 Id.

206 Ashley Dunn, Thousands Apply for U.S. Haven as Deadline Nears, L.A. TIMES, Oct. 31, 1991, at B1. It has been suggested that on the one hand, the U.S. is a "beacon and a haven" for those less fortunate, but on the other hand, this nation cannot have a completely open-door policy. A bill that would temporarily suspend the repatriation of Haitians strikes a good balance between the two ideals. The concerns about such a bill having a magnet effect have an irrational foundation because any such bill has a cut-off point which would counteract that effect.


208 The situation today in Haiti is clearly worse than under the Duvaliers. The military is targeting anyone and anything that can give hope to the Haitians. See THE AILA HUMAN RIGHTS DELEGATION REPORT ON HAITI (Mar. 1993); AMNESTY INTERNATIONAL, HAITI, HUMAN RIGHTS HELD RANSOM (Aug. 1992); AMERICAS WATCH, RETURN TO THE DARKEST DAYS; HUMAN RIGHTS IN HAITI SINCE THE COUP (Dec. 30, 1991). One U.S. consular official remarked that each time he visited the morgue in Port-au-Prince it was filled to capacity and most of the bodies had bullet wounds. Even nuns have been arrested for carrying calendars that bear Aristide's picture. See AMERICAS WATCH, supra, at 13. A report issued by a United Nations investigator on February 25, 1993, found that "the human rights situation in Haiti has degenerated appreciably during 1992 and in Haiti today there is virtually no rule of law." Michael Tarr, Funeral for Drowned Haitians Becomes Protest Against Rule, WASH. POST, Feb. 26, 1993, at A26.

209 Sources in Port-au-Prince said detentions resumed in October 1992, largely due to the upturn in interdiction and the fact that there has been much less attention from the press. According to these sources, 164 Haitians repatriated in late October were put on two buses and brought to police headquarters. New Evidence of Reprisals Against Returned Refugees, HAITI INSIGHT (Nat'l. Coalition for Haitian Refugees, New York, N.Y.), Fall 1992, at 5. Under international law, the United States is the country of first
TPS to the Haitians prevents us from ever again insisting that other countries provide safe haven to fleeing refugees.210

Although in 1991 every major newspaper in the country condemned the Administration’s Haitian policy in editorials, one even calling the Bush policy "Operation Racist Shield,"211 recent polls suggest that a great percentage of Americans agree with the Administration’s policy of keeping Haitians out.212 Since Bill Clinton’s election as president and subsequent claims by the Bush Administration that there will be a mass exodus of Haitians to our country should the Haitian policy change, making Mariel "look like a picnic,"213 the perceived call for change in the treatment of Haitians has faded.214 Indeed, recent polls in Florida have shown people are

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210 Not surprisingly, Ethiopians, Black refugees not unlike the Haitians, have faced similar problems in obtaining TPS. The previous Administration sought to revoke Extended Voluntary Departure, the protected status in place before TPS, for Ethiopians with no explanation for the change in policy. Only through the bipartisan efforts of the Black Caucus were the Ethiopians able to retain that protection. Joanne Omang, Policy Change Will Let Exiled Ethiopians in U.S., WASH. POST, July 8, 1982, at A3.

211 Operation Racist Shield, MIAMI HERALD, Feb. 2, 1992, at 2C.

212 See Clinton’s Haitian Headache; India’s Abdication of Authority, U.S. NEWS & WORLD REP., Jan. 25, 1993, at 16 ("only 25% of Americans favor granting asylum to Haitian refugees.").

213 Photos Show Haitians May be Preparing for Exodus, UPI, Nov. 14, 1992, available in LEXIS, Nexis Library, Omni File. At the same time politicians in South Florida were screaming about the prospects of another Mariel and U.S. inability to handle any further crisis as a result of Hurricane Andrew, the Greater Miami Chamber of Commerce hosted a two-day conference, attended by federal, state, county, and city officials, to develop a working plan for absorbing hundreds of thousands of Cuban refugees should Castro fall. Miami Ready if Castro Falls, UPI, Jan. 8, 1993, available in LEXIS, Nexis Library, Omni File.

214 In July 1991, the Miami community protested the treatment of Haitian refugees. An old wooden boat overloaded with 161 Haitians came upon two Cubans bobbing on an inner tube raft. The Haitians rescued the Cubans and steered towards Miami. The U.S. Coast Guard stopped the boat, offering refuge to the two Cubans in Miami and returning the Haitians back to Haiti. Jim Loney, Summer Exodus Shows Different Policies on Haitians, Cubans, Reuters, June 4, 1992, available in LEXIS, Nexis Library, Omni File. Two days later, five Haitian "stowaways" arrived in Miami onboard a Honduran freighter. The captain, warned by INS that he would be responsible should the Haitians escape before the ship left, put the Haitians in chains and
now adamantly opposed to relaxing the Haitian policy.\textsuperscript{215}

While anti-immigrant and anti-refugee groups have not gained nearly as much strength in the United States as in other parts of the world,\textsuperscript{216} rising xenophobia here is a problem.\textsuperscript{217} The Haitians are clearly not welcome in the United States today.\textsuperscript{218} They are instead, in the words of the Reverend Jesse Jackson, "trapped between the tyranny at home and the abandonment and rejection of the American people."\textsuperscript{219}
IX. Conclusion

To no other people except the Haitians does the United States give not just its back, but the back of its hand. To no other people does the American political establishment say: "We have placed an economic embargo against those who usurped your government, but we will not let you flee its consequences." Although while running for office President Clinton strongly criticized President Bush's Haitian policy as illegal and inhumane, the extent of his commitment to bring about real change in Haiti has

After Clash with Police in 1990, MIAMI HERALD, Feb. 6, 1993, at 1A.

220 The INS and the State Department even cast doubts on the motives of Haitians who are now U.S. residents. Contrary to other resident aliens who might lose their residency documents when traveling outside of the U.S., Haitians are submitted to more demanding rules when they apply for a temporary "letter of transportation" that allows them back into the U.S. To obtain this letter, Haitians must show proof of their identity. Increasingly, the only proof that U.S. Consular officers will allow must come directly from the INS. Acquiring it can take months. INS' Bias Beat Goes On, MIAMI HERALD, June 12, 1991, at 22A. Similarly, Haitians applying in Port-au-Prince for U.S. visas on the basis of family preference are being denied entrance if their medical bills in the United States have not been completely paid, even if ongoing payment arrangements acceptable to care providers have been made. It appears that only Haitians are encountering this problem — of six U.S. consulates in Latin America that the Miami Herald was able to reach, all said they did not inquire about unpaid medical bills, or any kinds of debts. Lizette Alvarez, Hospital Bills Bar Haitians From U.S., Advocates Charge, MIAMI HERALD, July 14, 1991, at 1A. The U.S. embassy policy has split up families, torn U.S.-born children away from their homes, and placed additional financial burdens on relatives who remain here. Many of the Haitians being denied visas are women. Most have never accepted cash assistance in the past, and many have family willing to support them until they find jobs. William Booth, 'We're the Perfect Americans'; South Florida's Haitians Build Proud, Vigorous Community, WASH. POST, Feb. 8, 1992, at A1.

221 Stop Haitian Interdiction!, MIAMI HERALD, Nov. 20, 1991, at 18A.

222 On May 27, 1992, President Clinton stated: "I am appalled by the decision of the Bush Administration to pick up fleeing Haitians on the high seas and forcibly return them to Haiti before considering their claim to political asylum. This process must not stand." Anthony Lewis, Abroad at Home; The Two Clintons, N.Y. TIMES, Feb. 22, 1993, at A17. When the U.S. Court of Appeals for the Second Circuit held that the Bush policy violated the Refugee Act of 1980, Mr. Clinton said the court was "right" to overturn the "cruel policy of returning Haitian refugees to a brutal dictatorship without an asylum hearing." Id. On November 12, 1992, shortly after Mr. Clinton was elected president, he stated: "We should have a process in which these Haitians have a chance to make their case." Id.
been questioned.\textsuperscript{223} His failure upon taking office to rescind the Bush Administration's policy of returning Haitian boat people without any inquiry as to why they fled has disappointed many. Indeed, the Clinton Administration defended the Bush Policy before the Supreme Court. The United States Supreme Court heard oral argument on the legality of President Bush's order on March 8, 1993. The United States Government asked the Court to leave undisturbed the President's assertion of authority in this "sensitive area of military operations and foreign policy."\textsuperscript{224} A decision is expected by the summer.

However, it appears that President Clinton is making a greater effort to assure President Aristide's return than did President Bush. President Clinton and Secretary of State Warren Christopher recently raised the possibility of tightening sanctions against Haiti,\textsuperscript{225} although the President refused to set a date for Aristide's return, as Aristide requested.\textsuperscript{226} In mid-February 1993, a UN envoy stated that Haiti's army and military-based government agreed to the deployment of

\textsuperscript{223} The January 1993 announcement by the head of the U.S. Coast Guard of a virtual blockade around Haiti to keep refugee boats from reaching South Florida further unnerved many Haitian refugee advocates. At least 17 patrol boats and cutters and about a dozen airplanes and helicopters began guarding the 12 mile territorial limit of Haiti's western and northern coasts. Several Navy ships were expected to join the Coast Guard vessels. Andres Viglucci, \textit{U.S. Barricading Haiti Flotilla of Boats, Aircraft on Way}, MIAMI HERALD, Jan. 16, 1993, at 1A. Many cynically remark that while the U.S. was unable to enforce the economic embargo imposed on Haiti, they are confident the blockade of Black Haitian boat people will be effective.

\textsuperscript{224} Brief for Petitioner at 13, Haitian Centers Council v. McNary, 969 F.2d 1350 (2d Cir.), cert. granted, 113 S. Ct. 52 (1992) (No. 92-344).


\textsuperscript{226} President Clinton met with Jean-Bertrand Aristide on March 16, 1993, but refused to set a date by which Washington would demand Aristide's return to power. Gwen Ifill, \textit{Haitian is Offered Clinton's Support on an End to Exile}, N.Y. TIMES, Mar. 17, 1993, at A1.
international civilian observers in Haiti.227

While our borders cannot, of course, be open to everyone, they are meant to be open to people fleeing precisely the kind of political violence of which Haitians are now the victims. The way to insure the safety of Haitians is not to blockade them from leaving, but to provide a more secure departure mechanism for those who fear political persecution. As long as the political reality of Haiti does not change, we can expect desperate Haitians to attempt to escape.228 Ignoring the problem facing those in Haiti today will not make the problem disappear. Only a commitment to address Haiti’s real problems will.229

"Bondye Bon" (God is good) is a common Haitian saying.230 One can only hope that the Haitians’ implicit faith in goodness will one day be recognized and that the discriminatory treatment of Haitian refugees will finally end. As has recently been remarked of the Haitians: "These people are not our enemies; they do not deserve to be treated as such."231

227 Don Bohning, Haiti Observers; A Glimmer of Hope, MIAMI HERALD, Feb. 18, 1993, at 20A.

228 Despite public perception that those fleeing will drain our resources, various studies conducted in Florida have found that the Haitian community is amazingly self-sufficient. The Haitians generally do not apply for public benefits and given the opportunity, quickly become self-supporting. Julian L. Simon, Fleeing Haitians Deserve a Chance, CHI. TRIB., May 2, 1992, at 21.

229 According to Haitian refugee advocates, the new Administration must effectively communicate with President Aristide and intensify direct U.S. pressure to help restore Aristide’s democratically elected government. An invigorated U.N. effort to persuade Haiti’s military rulers to cede power is also necessary, they say, as is a tightening of the OAS’ embargo of Haiti. See Don Bohning, A Window of Opportunity Opens in Haiti, MIAMI HERALD, Jan. 24, 1993, at 22A; Andres Oppenheimer, Haiti’s Disappearing Forests, CHI. TRIB., July 1, 1992, at 8.

230 Haitians often use this particular saying when talking about their problems or explaining a difficult situation. It implies complete trust that if one tries hard, in the end good will prevail.