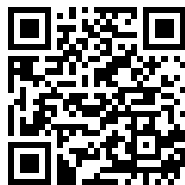
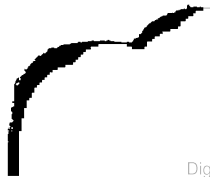

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HEARING
BEFORE THE
LEGISLATION AND NATIONAL
SECURITY SUBCOMMITTEE
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED SECOND CONGRESS
SECOND SESSION

APRIL 9, 1992

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U.S. HUMAN RIGHTS POLICY TOWARD HAITI

THURSDAY, APRIL 9, 1992

HOUSE OF REPRESENTATIVES,
LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2203, Rayburn House Office Building, Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Members present: Representatives John Conyers, Jr. and Glenn English.

Subcommittee staff present: Robert J. Kurz, deputy staff director and Rosalind Burke-Alexander, clerk.

Full committee staff present: Shirelle Ismail, associate counsel.

OPENING STATEMENT OF CHAIRMAN CONYERS

Mr. CONYERS. Good morning. The Subcommittee on Legislation and National Security will come to order.

We meet today to receive the preliminary results of our investigation into U.S. human rights policy on Haiti. This investigation grew out of a belief that the current United States approach on Haiti has been a failure. It is a failure because the Bush administration's efforts to restore democracy in Haiti seem to be a low priority, and because the administration has refused to grant a safe haven to Haitians who are fleeing violence and repression in that country.

There is no dispute that the military dictatorship in Haiti has effectively repressed the political opposition. Our State Department has accurately labeled the overthrow of Haitian President Aristide illegal. Yet the Bush administration continues repatriating Haitians back to the brutality and control of that illegal government.

Yesterday, 351 more Haitians were picked up at sea. This means that Haitians continue to be willing to risk their lives with the sharks of the sea rather than face the dictators of the military at home. The U.S. response to this bravery has been the largest shipment of individuals away from our shores in our history. This policy is a dark cloud over the bright light of freedom that normally shines from the Statue of Liberty.

In February, I asked congressional investigators from the General Accounting Office to conduct an investigation into this situation. I did so because I had doubts about that continual assurances from the administration that all Haitians with well-founded fears of persecution are being protected. I regret, but am not surprised, that we have found these assurances are hollow.

Our investigators have discovered that many Haitians with credible fears of persecution, people approved by our own government to stay here, have been sent back to Haiti because of the chaos of our immigration system.

We have exposed cases in which Haitians returned voluntarily to Haiti without knowing that they had been found to have credible claims. They never knew they had a right to stay in this country and were sent back.

We have uncovered clerical errors, failures to file decisions in a timely way, and repatriations that occurred before claims were investigated.

This is not a situation in which innocent errors can be corrected or small mistakes swept under the carpet. These are individuals who have been returned to Haiti to face the real potential of violence and death. How many more cases like this are there? What happened to these people?

This hearing is intended to get to the bottom of this situation. I want to know why this has happened, who is responsible for these mistakes, and what is going to be changed.

In February, I met with Attorney General William Barr and urged that he use the power under current law to grant temporary protective status to the Haitians. Regrettably, this has not come about. The United States has granted "save haven" to refugees in 20 instances over the last 32 years. The forced repatriation of Haitians is no different from any of those cases. I believe we should treat Haitians in the same manner we treat other democrats fleeing violence and persecution.

I hope that the information we receive today in the public will cause the President and the Attorney General to realize that the errors that they are making are creating life and death decisions for many thousands of people. I hope that the administration will be as dismayed as am I that Haitians are not being given the protection intended under our law.

With that, I would like to welcome my colleague from New York, the Honorable Charles Rangel, who has worked on this subject tirelessly and has been to Guantanamo and Haiti. And we would invite him to make his comments at this time.

Good morning, sir.

STATEMENT OF HON. CHARLES RANGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. RANGEL. Good morning, Mr. Chairman. Let me first thank you for the courtesy that you have extended to me, to apologize to the witnesses that have been scheduled, and promise all of you that I intend to be brief.

I think your opening statement pretty much covered the remarks I wanted to make. Of course, being the Chair, you have a higher degree of the need to be responsible in your statement than I, because there was an assumption, I think, in your statement that we were expecting to treat Haitians seeking political asylum or seeking freedom the same way that we treat all other people that were seeking the protection of the Statue of Liberty.

I think that most Americans agree that we have a different standard when it comes to the Haitians. And that is why my sym-

pathies go to the Immigration and Naturalization System because they are forced to do a political job and make it appear as though they're going through a process.

You know, when the Haitians were on the customs boat they had good-thinking immigration officers there. I don't know how many were trained in Creole, but when you find sick people on the high seas in shark-infested waters and you're asking them to state to you what their political activity was so you could determine whether or not they could come to the United States, I think it's abundantly clear that this is a heavy burden that you put on immigration officials.

Mr. CONYERS. Well, we're not talking about their good-hearted intentions. We're talking about clerical and administrative errors that have been committed in doing even what little can be done under the existing laws.

Mr. RANGEL. Well, if I'm allowed to complete my thought, my thought is that a political decision has been made in the White House that they don't want these people in the United States of America. It really doesn't make any difference what they try or try not to do. I doubt whether any of them are concerned with upward mobility that they're going to provide a way for the Haitians to get into the United States.

Mr. CONYERS. Well, my dear colleague, I don't think that the White House authorized the INS to be sloppy in their keeping of the records. I don't think anybody told them to lose files, and that's what we're going to hear about today.

Mr. RANGEL. Well, I think the Chair is misinterpreting the thrust of my message. I'm only trying to make an appeal to the INS to come forward and explain the political pressures that I believe that they have been working under.

The fact that they have been understaffed, the fact that they have received this mandate, the fact that the Justice Department would send into court the Solicitor General to overturn decisions that have been made in favor of decent conduct surrounding the treatment of these people would indicate the high political priority that the administration places, especially in this time of the political calendar, to keep the people out of the country.

And at the same time, I conclude by saying that in September during the time of the coup, the President of the United States, along with Secretary Baker, gave it top priority to make certain that we put embargoes in place and that we restore democracy and restore Aristide back to Haiti. The truth of the matter is that since then very little has been said by or heard from the President or the Secretary of State.

In addition to that, the normal pressures and things that we do in order for the political and economic power of the United States to be felt by countries that are opposed to our foreign policy has not been done. The embargo, in fact, has been partially withdrawn due to political pressures that have been placed on the U.S. Government by our business people.

In addition to that, Haitian military and business people who have supported the coup are allowed not only to enjoy having their assets sheltered in the United States of America but, in addition

to that, have not had their visas taken away. And we know who these people are.

Mr. CONYERS. I quite agree with you.

Mr. RANGEL. And so what I'm saying, Mr. Chairman, is I want to congratulate you. And I really made a very poor attempt to be sarcastic as it relates to the work that was being done by INS. But I think that you and I do agree about what has happened to these people who have been forced to return to their home in Haiti. The height of hypocrisy was demonstrated when the State Department indicated that they had no evidence that these people were being mistreated. The fact is that we had no way of ever knowing what the heck was happening to these people.

Mr. CONYERS. Right.

Mr. RANGEL. I know that from talking with the Haitians. I know that from going to our Embassy in Haiti. And I do know that the more attention that we focus on this problem that good people, Republican and Democrat, should move forward and let America be what it can be by treating these Haitians the same way we would, as you said in your opening statement, with the same caliber of humane treatment as we treat European and other refugees.

And I thank you for the time.

Mr. CONYERS. You're more than welcome. We know your continuing interest, and I hope that we can deal with the political issues that you have raised time and time again in every committee in the Congress. Thank you very much, Mr. Charlie Rangel.

Mr. RANGEL. Thank you, Mr. Chairman.

Mr. CONYERS. I have a statement of the ranking member of the subcommittee, Frank Horton of New York, which will be introduced into the record without objection.

[The prepared statement of Mr. Horton follows:]

Statement of
HON. FRANK HORTON
before the
Subcommittee on Legislation and National Security
April 9, 1992

Mr. Chairman, we have a very challenging task before us today as this subcommittee examines the policies and processes the Administration employs with regard to the thousands of Haitians who have fled their homeland and who continue to flee in large numbers.

Today we will hear very important testimony from General Accounting Office investigators who have done a tremendous job of examining the issues and responding to the concerns of this subcommittee. They spent time here in Washington, in Miami, in Guantanamo Bay and in Haiti giving close examination to immigration laws, processing procedures and claims of persecution. I look forward to their testimony and would like to thank them up front for their thorough and timely work.

The United States has had to react swiftly to the crisis in Haiti which began with the coup last September ousting President Aristide. Thousands upon thousands of Haitians have fled their country on rickety boats in the past six months. Just last week, nearly 500 Haitians were rescued at sea in an 18-hour period. Had they not been intercepted by the Coast Guard, chances are that only half would have survived the journey.

How does the Administration prepare for such massive surges in the number of fleeing refugees – especially when no one can predict how many might be fleeing tomorrow, or next month, or next year? Given a limited pool of resources, but an unlimited number of those needing them, what level of care, treatment, and due process can we demand of our system?

There is no doubt that our resources have been strained. The GAO found that mistakes were made in the processing and repatriation of these refugees. Could these mistakes have been avoided? What options are available to address the mistakes? How can we best be prepared to handle such crises in the future?

These are the questions we will be seeking answer to today.

Mr. CONYERS. Our first panel of witnesses is the Director for the Foreign Economic and Assistance Issues of the National Security and International Affairs Division, Mr. Jim Johnson. Mr. Johnson is accompanied by David Martin, Ms. Susan Gibbs, all of who are with the General Accounting Office. And we accept their testimony without objection into the record. Please raise your right hand as we administer the oath.

[Witnesses sworn.]

Mr. CONYERS. Thank you very much. I want to begin by commending the GAO for the incredibly fast turnaround time that they gave this matter. I think it flows from their recognition that life and death is involved in the findings that they are bringing to our attention.

And even with that importance I know of the hundreds of requests that are backed up in GAO, many from this committee itself, you were able to respond swiftly by making this a priority. Director Johnson, this committee is indebted to you, as probably is the country. And I'm sure the Haitian people are appreciative of the spotlight that we have thrown on this one particular part of the whole immigration process.

STATEMENT OF HAROLD J. JOHNSON, DIRECTOR, FOREIGN ECONOMIC AND ASSISTANCE ISSUES OF THE DIVISION OF NATIONAL SECURITY AND INTERNATIONAL AFFAIRS, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY DAVID MARTIN, ASSISTANT DIRECTOR; SUSAN GIBBS, ASSIGNMENT MANAGER; WYLIE NEAL, NED GEORGE, AND NINA FANTL, GENERAL COUNSEL'S OFFICE

Mr. JOHNSON. Thank you very much, Mr. Chairman. And I do appreciate your comments about the fact that we did have to put some of our ongoing work on hold and bring some staff to this particular assignment which we believe is important.

We are pleased to be here today to discuss the U.S. program of interdicting and screening Haitians seeking asylum in the United States. As you had indicated, on February 25, you asked us to examine several issues related to these activities. But as you requested, my remarks this morning will focus specifically on the screening and administrative processing problems we found at Guantanamo Bay. Information on the other issues included in your initial request will be provided in a subsequent report.

From 1981 through September 1991, approximately 24,600 Haitians were interdicted at sea en route to the United States by the U.S. Coast Guard. These asylum seekers were interviewed by INS officers aboard Coast Guard cutters, and 28 were found to have credible asylum claims and brought to the United States to have their claims adjudicated. The remainder were found not to have credible claims and were returned to Haiti.

Between September 30, 1991, the date of the military coup that ousted President Aristide, and April 7, 1992, just 2 day ago, Coast Guard records show that 18,095 Haitians were interdicted. Of these, the records show that 10,149 were returned to Port-au-Prince. INS records show that 4,301 were brought to the United States.

Based on these records, we calculated that 2,589 were at Guantanamo Bay awaiting transportation to the United States to pursue their asylum claims and another 646 were awaiting INS screening. Our calculations show that about 40 percent of the Haitians were found to have credible claims. I emphasize that this is what the records show; however, we cannot verify these numbers because the INS data base contains numerous inaccuracies.

Screening procedures for Haitians are unique in that this is the only situation where asylum seekers are screened for credible claims outside the United States before the formal adjudication takes place within the United States. At the Guantanamo Bay facility, INS officers conduct screening interviews and those determined to have credible claims are allowed to go to the United States to have their claims adjudicated. Those determined not to have credible claims are returned to Haiti.

There is one exception to this procedure. Haitians determined by INS officers to have credible claims but who have tested HIV-positive are interviewed a second time at Guantanamo Bay. U.S. law prohibits the entry of persons with incurable communicable diseases, like HIV, unless the Attorney General grants a waiver.

The second interview, which is similar to an asylum interview, is used to determine whether such a waiver is justified. In essence, the credibility of the Haitians' claims are assessed a second time against a more rigorous standard to establish a well-founded fear of persecution. If INS finds the Haitians to have a well-founded fear of persecution, a medical waiver may be granted and the Haitians permitted to enter the United States to pursue their asylum claims.

We reviewed the screening and processing procedures at Guantanamo Bay. We did not find specific weaknesses in the INS interviewing and screening procedures, but we found weaknesses in the administrative procedures that followed the interviews, including numerous errors in the INS computer data base, which is used in the processing of individuals for return to Haiti or on to the United States.

We found that because of these weaknesses at least 54 Haitians were apparently mistakenly repatriated. These were cases in which INS officials determined that the individuals had credible claims of having suffered persecution or a well-founded fear of persecution, or who for a family reunification purposes could have joined family members who had credible claims or were already in the United States.

At least seven others returned voluntarily without knowing that they had been found to have credible claims and could have traveled to the United States to have their cases adjudicated. We also found that at least 50 Haitians whose claims were found during the screening process not to be credible, were mistakenly sent to the United States.

Finally, we found that a group of Haitians, possibly about 100, were given reason to believe they would travel to the United States to have their cases adjudicated, but instead have been or soon will be returned to Haiti. This occurred because their claims were found at the time of their interviews not to be credible, but their paperwork was processed incorrectly and these people were treated ini-

tially as through they had been approved for processing in the United States.

While we identified specific cases where Haitian asylum seekers were erroneously either sent back to Haiti or to the United States, we believe that our numbers may be understated. At the time of our visit to Guantanamo on March 29, INS officers had not yet completed a reconciliation of their records. That process could identify others in the various categories that I've described.

We have asked INS to verify the status of all the affected individuals who we identified and to provide us accurate overall figures on the numbers in each category. As of today, we have not received that information.

The problems that we identified occurred for several reasons. First, INS made clerical errors in entering the screening decisions on its computer data base, and reports prepared from the computer data base were used to identify individuals for repatriation.

Second, family reunification decisions were not recorded in a Community Relations Service's data base in a timely manner. Consequently, some Haitians were repatriated rather than being permitted to accompany, or join, family members going to or already in the United States.

Third, some Haitians with family reunification claims were repatriated before their claims were investigated.

We think that one factor contributing to the processing problems was that several Federal agencies were involved in the operations at Guantanamo, but there was no designated lead agency responsible for the day-to-day operations. The agencies included INS and the Community Relations Service of the Department of Justice, Department of Defense of course, the Public Health Service Department of Health and Human Services, and, of course, the U.S. Coast Guard.

An interagency Policy Coordinating Committee in Washington, charged with coordinating United States policies for the Caribbean, had overall responsibility for the Haitian interdiction operation from a policy standpoint. The committee, chaired by Ambassador Gelbard, included representatives from State, Defense, the Joint Chiefs of Staff, Justice, INS, the Public Health Services, the Coast Guard, and the National Security Council.

This mechanism assured that consistent policy was applied, but it did not assure that day-to-day operations were conducted in a uniform and coordinated manner. For example, no single agency was responsible for designing and maintaining a controlled master data file to ensure timely and accurate updating of the status of each Haitian. As a consequence, on a daily basis, agencies could not be confident that their separately maintained computer files contained current and accurate information. Our review indicated these deficiencies led to some of the problems that we identified.

According to INS, involuntarily repatriated individuals with personal credible claims, as contrasted to family reunification cases, could be of primary concern, because if their claims are valid they could be in jeopardy in Haiti. According to the data we gathered, about half of the 54 repatriated individuals fall into this category.

It must be noted that the U.S. Embassy in Port-au-Prince has conducted, at the time of our review, over 500 investigations. Now

I understand that the State Department indicates up to 1,200 claims of persecution among repatriated Haitians who have been returned have been investigated and no substantiating evidence of these claims has been found. In fact, in some cases the Embassy obtained evidence to refute those claims. But, we do not know whether the investigations by the Embassy include any of those who are mistakenly repatriated.

I want to illustrate the types of cases involved by citing just two cases. In one case, a construction worker, who said he served as an election worker for the pro-Aristide political party during the election, stated that on October 1, two of his cousins were killed when the military went to his aunt's house, where he lived, to inquire as to his whereabouts. He said the military also went to his mother's home to look for him. He asserted that his family members were killed because the military knew of his involvement in pro-Aristide activities. The INS interviewing officer judged his claim to be "credible."

In another case, a mechanic stated that he feared for his safety if he returned to Haiti because he belonged to a pro-Aristide group, which I won't try to pronounce here today, and this was a group that organized rallies to support the return of Aristide. This individual stated that after the coup military troops came into his area, shooting and killing, looking for the people who supported Aristide and members of this group.

He said he was well known in his area by both the population in that region as well as the military. The INS interviewing officer concluded that this applicant's story was credible, with clear, consistent statements. Both of these individuals were repatriated.

The Guantanamo Bay processing center was closed to further INS screening interviews of interdicted Haitians on March 27. Since that time and until just a couple days ago, those interdicted have been interviewed again aboard Coast Guard cutters, and only those with credible claims taken to Guantanamo Bay for further processing. While this practice seems to be satisfactory when the volume of interdictions is low, it may not be if the numbers again increase significantly.

Limited private interview facilities aboard the cutters restrict the number of INS interview teams that can be put aboard. Each INS team can conduct only two to three full individual interviews per hour, and there is not sufficient space to separate those interviews from those awaiting interview and to shelter large numbers of Haitians. Therefore, when appreciable numbers of Haitians are interdicted, ship board interviews pose a problem.

While we found that living conditions at Guantanamo Bay were adequate to date, we were told that heat and weather conditions preclude the facility's continued use for screening proposes. Haitians are being housed in tents set on an old runway and water is provided through pipes that are laid on the surface. With the onset of hot weather and temperatures well over 100 degrees, we were told that the tents would become unbearable and the water virtually undrinkable. In addition, we were told that the temporary facilities could not withstand the hurricane conditions that sometimes hit Cuba.

The number of interdictions has declined significantly, from a high of over 6,000 in January, to a little over 1,100 in March; although it should be noted that of that 1,100, 745 were picked up during the last 4 days of the month. INS officials informed us, the day before yesterday, that as a result of recent increase in the number of interdictions, inductions and processing at Guantanamo Bay have temporarily resumed.

It is obviously very difficult to predict whether large numbers of Haitians will again attempt to leave their homeland; however, given the recent history of the situation in Haiti, that possibility should not be ruled out. Therefore, given conditions at Guantanamo, and in light of the limitations aboard the cutters for screening large numbers of Haitians who are interdicted, it seems to us that some contingency planning should be done rather quickly by the U.S. agencies involved to handle a resurgence of asylum seekers, should this occur.

Mr. Chairman, that concludes my remarks. My colleagues and I would be happy to respond to questions that you may have.

[The prepared statement of Mr. Johnson follows:]



United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Legislation and National Security,
Committee on Government Operations, House of
Representatives

For Release
on Delivery
Expected at
10:00 a.m. EDT
Thursday
April 9, 1992

REFUGEES

**U.S. Processing of Haitian
Asylum Seekers**

Statement of Harold J. Johnson, Director, Foreign Economic
Assistance Issues, National Security and International Affairs
Division



GAO/T-NSIAD-92-25

GAO Form 160 (12/91)
OFR:OIMC/PCC

Mr. Chairman, Members of the Subcommittee:

We are pleased to be here to discuss the U.S. program for interdicting and screening Haitians seeking asylum in the United States. On February 25, 1992, you asked that we examine several issues related to those activities. These include

- What was the basis for the administration's policy toward Haitians seeking entry to the United States?
- How many Haitians are attempting to enter the United States?
- What are the Immigration and Naturalization Service's screening procedures for these people?
- What are the living conditions for Haitians at the Guantanamo Bay, Cuba processing center?
- What is the State Department's assessment of human rights conditions in Haiti, and has the Department provided all relevant information to the U.S. courts for their deliberations?

My testimony this morning is based on the preliminary results of our review, but as you requested, my remarks will focus specifically on the screening and administrative processing problems we found at Guantanamo Bay. Information on the other issues included in your initial request will be provided in a subsequent report.

PROBLEMS WITH SCREENING AND PROCESSING PROCEDURES

From 1981 through September 1991, approximately 24,600 Haitians were interdicted at sea enroute to the United States by the U.S. Coast Guard. These asylum seekers were interviewed by INS officers aboard Coast Guard cutters, and 28 were found to have credible asylum claims and brought to the United States to have their claims adjudicated. The remainder were found not to have credible claims and were returned to Haiti.

Between September 30, 1991, the date of the military coup that ousted President Jean-Bertrand Aristide, and April 7, 1992, Coast Guard records show that 18,095 Haitians were interdicted. Of these, the records show that 10,149 were returned to Port au Prince. INS records show that 4,301 were brought to the United States. Based on these records, we calculated that 2,589 were at Guantanamo Bay awaiting transport to the United States to pursue their asylum claims and another 646 were awaiting INS screening. (410 were sent to other countries.) Our calculations show that about 40 percent of the Haitians were found to have credible claims. I emphasize that this is what the records show; however, we cannot verify these numbers because the INS data base contains numerous inaccuracies.

Screening procedures for Haitians are unique in that this is the only situation where asylum-seekers are screened for credible

claims outside the United States before the formal adjudication process takes place within the United States. At the Guantanamo Bay facility, INS officers conducted screening interviews and those determined to have credible claims are allowed to go to the United States to have their claims adjudicated. Those determined not to have credible claims are returned to Haiti.

There is one additional processing procedure at Guantanamo Bay. Haitians determined by INS officers to have credible claims and who have tested HIV positive are interviewed a second time at Guantanamo Bay. U.S. law prohibits the entry of persons with incurable communicable diseases, like HIV, unless the Attorney General grants a waiver. The second interview, which is similar to an asylum interview, is used to determine whether such a waiver is justified. In essence, the credibility of the Haitians' claims are assessed a second time against a more rigorous standard to establish a well-founded fear of persecution. If INS finds the Haitians to have a well founded fear of persecution, a medical waiver may be granted and the Haitians permitted to enter the United States to pursue their asylum claims.

We reviewed the screening and processing procedures at Guantanamo Bay. We did not find specific weaknesses in INS's interviewing and screening procedures, but we found weaknesses in the administrative procedures that followed the interviews, including numerous errors in the INS computer data base, which is used in the processing of

individuals for return to Haiti or on to the United States. We found that because of these weaknesses at least 54 Haitians were apparently mistakenly repatriated. These were cases in which INS officials determined that the individuals had credible claims of having suffered persecution or a well-founded fear of persecution, or who for family reunification purposes could have joined family members who had credible claims. At least 7 others returned voluntarily without knowing that they had been found to have credible claims and could travel to the United States to have their cases adjudicated. We also found that at least 50 Haitians whose claims were found during the screening process not to be credible, were mistakenly sent to the United States. Finally, we found that a group of Haitians, possibly about 100, were given reason to believe they would travel to the United States to have their cases adjudicated, but instead have been or soon will be returned to Haiti. This occurred because their claims were found at the time of their interviews not to be credible, but their paperwork was not processed correctly and these people were treated initially as though they had been approved for processing in the United States.

While we identified specific cases where Haitian asylum seekers were erroneously either sent back to Haiti or to the United States, we believe our numbers may understate the problem. At the time of our visit to Guantanamo on March 29, 1992, INS officials had not yet completed a reconciliation of their records. That process could identify others in the various categories I've described. We

have asked INS to verify the status of all the affected individuals we identified and to provide us accurate overall figures on the numbers affected in each category. We had not received this information as of April 7, 1992.

The problems we identified occurred for several reasons. First, INS made clerical errors in entering the screening decisions in its computer data base, and reports prepared from the computer data base were used to identify individuals for repatriation. Second, family reunification decisions were not recorded in a timely manner. Consequently, some Haitians were repatriated rather than being permitted to accompany, or join, family members going to or already in the United States. Third, some Haitians with family reunification claims were repatriated before their claims were investigated.

A factor contributing to the processing problems was that several federal agencies were involved in the operations at Guantanamo, but there was no designated lead agency responsible for the operation. The agencies included the Departments of Justice, Defense, and Health and Human Services; INS; and the U.S. Coast Guard. An interagency Policy Coordinating Committee in Washington, charged with coordinating U.S. policies for the Caribbean, had overall responsibility for the Haitian interdiction operation from a policy standpoint. The committee, chaired by Ambassador Robert S. Gelbard, Principal Deputy Assistant Secretary, Bureau of Inter-

American Affairs, includes representatives from State, Defense, the Joint Chiefs of Staff, Justice and INS, the Public Health Service, the U.S. Coast Guard, and the National Security Council. The United States Information Service and the Office of Management and Budget are also represented. While this mechanism assured that consistent policy was applied, it did not assure that day-to-day operations were conducted in a uniform and coordinated manner. For example, no agency was responsible for designing and maintaining a controlled master data file to ensure timely and accurate updating of the status of each Haitian. As a consequence, on a daily basis, agencies were not confident that their separately maintained computer data files contained current and accurate information. Our review indicated that this led to some of the problems we identified.

According to INS, the involuntarily repatriated individuals with personal credible asylum claims (as contrasted with family reunification cases) would be of primary concern, because if their claims are valid they could be in jeopardy in Haiti. According to the data we gathered, about half of the 54 repatriated individuals fall into this category. *11/11 repatriated*

It must be noted that the U.S. Embassy in Port au Prince has conducted over 500 investigations of claims of persecution among repatriated Haitians upon their return and has found no substantiating evidence of the claims. In fact, in some cases the

Embassy obtained evidence to refute such claims. However, we do not know if the investigations include any of those mistakenly repatriated.

To illustrate the types of cases involved in these mistaken repatriations, I will summarize the asylum claims of two such individuals.

In one case, a construction worker, who said he served as an election worker for the pro-Aristide political party during the election, stated that on October 1, 1991, two of his cousins were killed when the military went to his aunt's home (where he lived) to inquire as to his whereabouts. He said the military also went to his mother's home to look for him. He asserted that his family members were killed because the military knew of his involvement in pro-Aristide activities. The INS interviewing officer judged his claim to be "credible."

In another case, a mechanic stated that he feared for his safety if he returned to Haiti because he belonged to the "Konite Quartie," a group that organized rallies supporting the return of Aristide. This individual stated that after the coup, military troops came into his area shooting and killing, looking for the people who supported Aristide and members of the Konite Quartie. He said he was well known in his area by the people and the military. The INS

interviewing officer concluded that the applicant's story was credible, with clear, consistent statements.

CLOSURE OF THE GUANTANAMO PROCESSING CENTER

The Guantanamo Bay processing center was closed to further INS screening interviews of interdicted Haitians on March 27, 1992. Since that time those interdicted have been screened aboard Coast Guard cutters, and only those with credible claims taken to Guantanamo Bay for further processing. While this practice seems to be satisfactory when the volume of interdictions is relatively low, it may not be if the numbers again increase significantly. Limited private interview facilities aboard the cutters restrict the number of INS interview teams that can be put aboard, each INS team can conduct only 2 to 3 full individual interviews per hour, and there is not sufficient space to separate those interviewed from those awaiting interview and to shelter large numbers of Haitians. Therefore, if appreciable numbers of Haitians are interdicted, ship board interviews may again become a problem.

While we found that the Haitians' living conditions at Guantanamo Bay have been adequate to date, we were told that heat and weather conditions preclude the facility's continued use for screening purposes. Haitians are being housed in tents set on an old aircraft runway and water is provided through pipes laid on the surface. With the onset of hot weather, and temperatures well over

100 degrees, we were told that tents would become unbearable and the water virtually undrinkable. In addition, we were told that the temporary facilities would not withstand hurricane conditions that sometimes hit Cuba.

The number of interdictions has declined significantly, from a high of 6,653 in January 1992, to 1,150 in March 1992; although it should be noted that 745 of the March total were picked up during the last 4 days of the month. INS officials informed us on April 7, 1992, that as a result of recent increases in the number of interdictions, inductions and processing at Guantanamo Bay have temporarily resumed.

It is obviously very difficult to predict whether large numbers of Haitians will again attempt to leave their homeland; however, given the recent history of the situation in Haiti, that possibility should not be ruled out. Therefore, given conditions at Guantanamo, and in light of the limitations of shipboard screening procedures for large numbers of interdictions, it seems to us that some contingency planning should be done rather quickly by the U.S. agencies involved to handle a resurgence of asylum seekers should this occur.

Mr. Chairman, this concludes my prepared statement. My colleagues and I would be happy to respond to any questions you and other members of the subcommittee may have.

Mr. CONYERS. Thank you for a very important, timely, and quickly put together study that sheds new light on the problem and how we may be able to make it fair and more efficient. I thank you again, Mr. Johnson, Mr. Martin, and Ms. Gibbs.

Mr. Johnson, how did you discover that the Haitians whom the INS had determined to have credible claims of persecution or family reunification claims were sent back to Haiti?

Mr. JOHNSON. We asked INS to produce from their data base various lists of individuals who had been screened out but involuntarily repatriated. They had not done that.

Since Susan Gibbs was the individual that was at Guantanamo and sought those lists, I would like to have her describe that process. I think its very important that we understand fully how we went about doing this and the degree to which we believe that those numbers, at a very minimum, are quite accurate.

Mr. CONYERS. Ms. Gibbs.

Ms. GIBBS. Thank you. We were in Guantanamo on March 8 and on March 27. And on both of those days we had INS run some computer lists for us. On those lists, for example for the repatriated people, we had them print all the names of individuals who showed that they were screened in and repatriated to Haiti. This would indicate that there was a problem.

We then took the list to the military and had the military run it against its manifest list to ensure that these people were on the manifest.

Mr. CONYERS. Were these computer-derived lists that you're referring to?

Ms. GIBBS. Yes, they were. We just took two fields, repatriation and the screening status. And theoretically, there shouldn't be people "screened in" repatriated.

We took that list of individuals, ran it against the manifest list to ensure they were repatriated. We also went to CRS, Community Relations Services, had them check for family reunification documents on all these individuals. And we also attempted, through the INS, individual interview records to document the status. Through those three means we tried to document the status of every case. And we were able to find the majority of the cases.

Mr. CONYERS. Essentially, if your name showed up on one list it should not have shown up on another?

Ms. GIBBS. That's correct. You shouldn't have a "screened in" person involuntarily repatriated.

Mr. CONYERS. Right.

Ms. GIBBS. And then we documented to make sure, as I said, that people were on the ship, that there was a family reunification

Mr. CONYERS. Mr. Johnson, you indicate that there were 54 people that you could identify who suffered this fate but that there could have been more, that there were seven who agreed to go back without even knowing that they could come to the United States under our own rules. Do you have their names and case files?

Mr. JOHNSON. We do have their names, Mr. Chairman, in our work papers. We would prefer—in fact, we would be very reluctant to make those names public, because I think those people might be in danger.

Mr. CONYERS. Oh, I don't seek to do that. Absolutely.

Mr. JOHNSON. But we do have their names, yes.

Mr. CONYERS. Was the INS aware of this situation before you brought it to their attention?

Mr. JOHNSON. I don't believe they were. They had begun a reconciliation process a few days before we arrived initially.

Mr. CONYERS. Well, they heard you were coming?

Mr. JOHNSON. Well, that could possibly be.

Mr. CONYERS. Maybe. OK.

Mr. JOHNSON. But, no, they were unaware of this particular situation.

Mr. CONYERS. Right. Can you give us any further detail about what agency is responsible for the breakdown of the procedures? I'm assuming it's INS. Is there some part within INS?

Mr. JOHNSON. We believe that since there was such a large number of agencies involved, it would have been extremely helpful to have had a lead agency designated so that that lead agency would then have responsibility for making sure that the files, records, and data bases were consistent on a daily basis, because decisions were being made on daily basis, and people were either being allowed to enter the United States or being repatriated on a daily basis.

So those operating procedures really needed to be consistent. We don't have a particular position on who should have been the lead agency, but it does seem reasonable to us that INS would take the lead in that matter.

Mr. CONYERS. Well, all agencies are not born equal, you know that.

Mr. JOHNSON. That's true.

Mr. CONYERS. People maybe, but not agencies, and not even always—we have great problems even applying that rule to citizens. But it seems pretty obvious that the lead agency should have been INS. I can't imagine Community Relations Services calling in all the other agencies and setting up the protocol.

Mr. JOHNSON. I think that would be our conclusion, as well.

Mr. CONYERS. Now, what is very important at this hearing is that we understand the nature of the agreement that you have with INS for the further information, requests for detail that are necessary for you to continue to get the information to close down this part of the study.

Mr. JOHNSON. Yes, Mr. Chairman. From the outset of our work, we have attempted to work very closely with the INS, both at Guantanamo as well as here in Washington. And I must say that they have attempted to work with us as well. We have provided them the list of the individuals that were mistakenly handled in either direction and asked them to try to reconcile with their records and do a scrub of their records to make sure of the status of those individuals.

We have not made recommendations to them on what ought to be done when they finally resolve, positively, as we think we have done, the status of those individuals. But, clearly, they have all the information that we have, and they have had that information on an ongoing basis.

Mr. CONYERS. Well, I'm glad to hear that. When you get the further information, it's in all likelihood that this number of 54 that have been sent back mistakenly is going to rise.

Mr. JOHNSON. It's very possible. There were a total of, I believe—Susan has this number in her head—I believe it was 80 people that we had some question about, and in some cases the records were not quite adequate, so we scrubbed that down to a number of 54 that we are very confident of. But there's very likely to be additional individuals involved.

Mr. CONYERS. So that makes the information that you further need very critical to make sure that we get this number up.

Mr. JOHNSON. Sure.

Mr. CONYERS. I would like to work with you, in terms of what kind of solution we need to arrive at and what after-the-fact remedy we can apply for these people. I'd be happy to take any suggestions you may have now, if you have any.

Mr. JOHNSON. I would like to note that the INS has opened an office in Port-au-Prince, and that could be a possible solution to bring those individuals—since the names are known—try to locate those individuals and bring them to that office, and either adjudicate their cases there or bring them to the United States for adjudication. That would be a solution. It's not a GAO recommendation at this point, but it would be a possibility.

Mr. CONYERS. Commissioner McNary raises the possibility that some Haitians may have been sent back because they failed to make the credible claim in a second interview. Do you see that being much of a problem, or a little problem, or no problem at all?

Mr. JOHNSON. I don't believe that is a—that may have happened, but we don't believe that's the case. The information we have is that the benefit of the doubt was given, if there were two interviews, to the interview that indicated a screen in rather than a screen out. So we don't really see that as a large possibility.

Mr. CONYERS. Well, you've already pointed out the difficulties presented in the closing of Guantanamo and reverting back to the cutters for the location of the interviews. And there seems to be a current wave of larger numbers of Haitians coming here. We don't know if it's going to continue, increase, subside.

Mr. JOHNSON. The last few days it has been up.

Mr. CONYERS. It has been up?

Mr. JOHNSON. Yes.

Mr. CONYERS. And this has even caused INS to reopen Guantanamo, at least temporarily.

Mr. JOHNSON. That's our understanding. I think Dave has more information on that than I do.

Mr. MARTIN. Yes, sir, they have recently resumed the prior procedures where they would bring individuals off the cutters and into Guantanamo for processing and screening of their cases.

Mr. CONYERS. OK. Well, I thank you very much for your testimony, and I appreciate all the help you have been to this subject matter. This is a very sensitive area. In no time in history have we treated any fleeing citizens from a friendly country in this way, to send them back into a circumstance in which we refuse to recognize or acknowledge the legitimacy of the government that has driven out President Aristide.

So this work is the best that we can do to correct, I think, a very tragic situation. And you here have intervened in a very timely and effective way, and I owe you our deep thanks.

Mr. JOHNSON. Thank you.

Ms. GIBBS. Thank you.

Mr. CONYERS. We notice that Mr. Wylie Neal of GAO is also here and contributed to the very fine work of the General Accounting Office.

Mr. JOHNSON. Mr. Chairman, we brought other members of our team: Mr. Wylie Neal, Mr. Ned George, and Nina Fantl, who is also a member of our team from our general counsel's office.

Mr. CONYERS. Would you ask them to stand up and identify themselves?

Mr. NEAL. I'm Wylie Neal.

Mr. GEORGE. Ned George.

Ms. FANTL. Nina Fantl.

Mr. CONYERS. You have our deep thanks and gratitude for the excellent work you have done. Thank you very much.

Mr. JOHNSON. Thank you.

Mr. CONYERS. Our next panel of witnesses is the Commissioner of Immigration and Naturalization, Commissioner Gene McNary; also, the Director of Caribbean Affairs for the State Department, Mr. Joseph Becelia; and a third party, no doubt a government man, but unidentified at this moment—let's see, who are you, sir?

Mr. REES. I'm Grover Joseph Rees. I'm the general counsel of the INS.

Mr. CONYERS. OK. Gentlemen, will you raise your right hands to be administered the witness oath.

[Witnesses sworn.]

Mr. CONYERS. Thank you very much.

Commissioner McNary, we have your statement, and, without objection, your statement and all the statements of any other witnesses that follow you will be included in the record. We welcome you to this hearing. Thank you for your appearance. You may make any additional remarks or summary of your statement that you choose.

STATEMENT OF GENE McNARY, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY RICARDO INZUNZA, DEPUTY COMMISSIONER, AND GROVER J. REES III, GENERAL COUNSEL

Mr. McNary. Thank you, Mr. Chairman. I will just submit my statement and make brief summary remarks. I appreciate the opportunity to testify before this subcommittee and especially to address the concerns expressed by GAO and other observers.

As you know, Mr. Chairman, the alien migrant interdiction operation, which we call AMIO, is an interagency endeavor that dates from September 1981, and its purposes are these: First, to rescue persons leaving their countries in unseaworthy vessels. The Coast Guard does that. Secondly, to deter further attempts at illegal entry into the United States. Third, to interdict drugs and other goods otherwise being smuggled into the United States.

Our eagerness to respond to humanitarian emergencies is a defining characteristic of the American people, but we cannot be the sole haven for any and all comers from around the globe who may be in need of shelter, even if only temporary, from the tribulations

of a very complex world. Therefore, we, as a Nation, must find a way to select from among the many social emergencies that occur and to focus on those who are most in need of U.S. assistance.

We have chosen to offer help by opening the United States to refugees, people who cannot return to their own country because they have a well-founded fear that they will be persecuted there on account of race, religion, nationality, membership in a particular social group, or political opinion.

We must bear in mind that, up to this point, any alternative to AMIO would have permitted many thousands of people to enter the United States illegally and encouraged many thousands more to undertake dangerous and sometimes fatal sea crossings in an attempt to come ashore here. This is not an imaginary concern. AMIO has literally been as much a rescue as an interdiction operation.

People fleeing Haiti have typically done so in overloaded, often unseaworthy vessels, and many of these who were not encountered by AMIO have lost their lives. Even before the coup, INS was working assiduously to improve its migrant screening procedures. Shortly after the post-coup exodus began, we issued detailed instructions on the specific prescreening standard to be used, the "credible fear of persecution" standard.

The proof necessary to establish a credible fear is significantly less than that necessary to show a well-founded fear of persecution. The credible fear test is, therefore, a threshold question designed to identify those who have a chance of successfully pursuing an asylum claim if paroled into the United States. Many people who meet the credible fear standard may ultimately turn out not to be genuine refugees, but the test is designed to ensure that no refugee is repatriated to Haiti involuntarily.

GAO has expressed a concern that inadequacies in the information system at Guantanamo have led to resolutions in certain cases that were inconsistent with actual interview results; that is, some persons actually screened out may have been mistakenly paroled into the United States to pursue asylum claims, and some screened in, either in their own right or on the basis of a family relationship to someone else who was screened in, may have been mistakenly returned to Haiti.

We are in the process of trying to determine with certainty whether any such mistakes have taken place. GAO's concerns arise from having found information in the computer system at Guantanamo that was inconsistent with the information contained in the hard copies of the files the computer information was apparently meant to reflect.

There are a number of possible explanations for this. If we find mistakes have in fact been made, we will make every effort, as we have throughout this operation, to correct whatever mistakes we learn of and to prevent their repetition.

Mr. CONYERS. You say if you find mistakes, you haven't found any yet?

Mr. McNARY. No, sir.

Mr. CONYERS. You don't think those 54 people who appear on both lists could be a mistake?

Mr. MCNARY. We have recovered the files of 40 of the 54 and have found that those, too, were clerical errors. We're down to 14. We found out this morning about these two names because GAO included those names in their testimony, and we'll check those people out.

But in going through the files of those 54, so far, I'm told by my Deputy Commissioner, who has been in Guantanamo and just came back a couple days ago, that the 40 that we have found amounted to an error in recording a screened in that should have been a screened out, rather than anybody repatriated who should not have been.

Mr. CONYERS. Well, wait a minute, where is this person, your deputy; is he here?

Mr. MCNARY. Yes, sir.

Mr. CONYERS. Who is he?

Mr. MCNARY. Ricardo Inzunza is right here.

Mr. CONYERS. Well, don't you think we ought to have him up here at the desk, at the witness table?

Mr. MCNARY. If you wish, and there is sufficient room, we'll bring him up.

Mr. CONYERS. Well, the general counsel wasn't listed to be a witness and you brought him along.

Mr. MCNARY. The general counsel is here because there may be some legal questions.

Mr. CONYERS. You bet. But the reason that we're here is because of what your other deputy actually does. We're talking about the administrative process.

Would you give us your name, sir?

Mr. INZUNZA. My name is Ricardo Inzunza. I'm the Deputy Commissioner.

Mr. CONYERS. How do you spell the last name?

Mr. INZUNZA. I-n-z-u-n-z-a.

Mr. CONYERS. Would you raise your right hand?

[Witness sworn.]

Mr. CONYERS. Thank you very much, and thanks for joining us. I guess you didn't think you were going to get called on, did you?

Mr. INZUNZA. I was here in case I was going to be called, sir.

Mr. CONYERS. That's very cooperative.

All right. Please, Mr. Commissioner, continue.

Mr. MCNARY. I'm finished.

[The prepared statement of Mr. McNary follows:]

Testimony

of

**Gene McNary
Commissioner**

Immigration and Naturalization Service

before the

**Committee on Government Operations
Subcommittee on Legislation and National Security**

on

U.S. Human Rights Policy in Haiti

**Thursday, April 9, 1992
10 a.m.**

**Rayburn House Office Building
Room 2203**

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to testify before this Subcommittee. I am especially eager to speak to the preliminary findings of the General Accounting Office (GAO). GAO's findings concerning the interdiction, pre-screening, and further processing of Haitian migrants since the coup in late September 1991 ousted the President of Haiti, Jean-Bertrand Aristide, merit an immediate reply by the Administration. We are pleased to be able to address and to clarify many of the concerns expressed by GAO and other observers.

As you know, Mr. Chairman, the Alien Migrant Interdiction Operation (AMIO) dates from September 1981. Its purposes are:

- the rescue of persons leaving their countries in unseaworthy vessels;
- deterrence against further attempts at illegal entry into the U.S.; and
- the interdiction of drugs and other goods otherwise being smuggled into the U.S.

Since its inception, the program has been an inter-agency endeavor involving the Departments of State, Justice and Transportation. Since the massive exodus from Haiti following last fall's coup, the Department of Defense has joined this

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roster as well and has played a major role in the interdiction effort.

The Department of Justice directive dated October 2, 1981 defined INS operational responsibilities within AMIO:

- INS is charged with conducting interviews aboard Coast Guard cutters to determine whether those interdicted may have refugee characteristics;
- the Coast Guard is charged with actual interdiction and return of Haitians and other aliens;
- the State Department is charged with monitoring the human rights situation in Haiti and the situation of persons repatriated under the AMIO; and,
- the Department of Defense has contributed facilities and personnel at the Naval Base in Guantanamo Bay, Cuba.

United States Statutory Law and Executive Policy Direction

Until last fall's coup, the flow of Haitians toward the United States had been relatively constant. Until the end of September 1991, over 24,000 Haitians had been interdicted-- often rescued from rickety, unseaworthy vessels -- while seeking to enter the United States. The Service has provided assistance to Haitian nationals by admitting to the United States those who

demonstrate a "well-founded fear" of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion, if returned to Haiti. In addition to refugees, the U.S. admits approximately 12,000 Haitians as legal immigrants to this country every year.

We have taken steps from the very outset of the operation to ensure that no genuine refugees are returned to their countries of origin. INS was delegated the responsibility for screening interdicted persons who claim to fear returning to their countries of origin on account of race, religion, nationality, membership in a particular social group or political opinion. This has been and remains the only INS responsibility within the government's overall inter-agency operation. INS believes that AMIO generally has produced extraordinary success at preventing illegal migration without repatriating genuine refugees.

The Alien Migrant Interdiction Operation

During my tenure at INS, we have been responsive to the criticisms of those who said that pre-1990 procedures were inadequate to the task of ensuring that genuine refugees were not returned involuntarily to their countries of origin. We took these reports in hand and, beginning in the spring of 1990, started looking into our on-board interviewing policies and procedures. By the end of that year, we had developed several concrete recommendations, and in January 1991, we briefed key members of the Miami and advocacy communities on these

initiatives. The meeting, chaired by my Deputy, received positive responses from these groups. The new procedures produced almost immediate results. These new procedures included:

- providing a better introductory briefing to all interdicted aliens on the purpose of the individual INS interviews;
- conducting interviews in greater depth using an improved interview questionnaire;
- paroling into the United States any interdicted alien expressing a reasonable fear of persecution if returned home in order that he/she may pursue an asylum claim with the INS;
- adjudicating such claims in the U.S. by members of the Asylum Officer Corps established under the July 27, 1990 final asylum rule;
- providing additional specialized training in asylum law and in current country conditions for officers involved in this program;

- improving the reporting form used by the pre-screening officers to record the results of their interviews; and,

- establishing a quality control mechanism to review the documentation resulting from each set of interviews and to refine the conduct of future interview sessions.

Additional improvements were devised during the early months of 1991 to enhance and better define the procedures to be used in interdictions of large numbers of Haitians. These additional procedures included:

- working aboard the Coast Guard cutters, separating those already interviewed from those not yet interviewed;

- explaining to each person in an opening statement the purpose of the interview, its confidentiality, and standards to be used;

- using "long form" interview questionnaires, if no initial asylum claim is made, to determine whether the person being interviewed may nevertheless have refugee characteristics; and, obtaining immediate feedback from

the State Department on the various claims made during initial interviews.

AMIO and Pre-Screening Procedures Since the Coup

AMIO interviewing and processing procedures since the September 1991 coup have evolved even further. In October 1991, the Coast Guard and the rest of the Administration confirmed the continuation of AMIO, and the existing policies and procedures. We determined that interdictions and returns to Haiti under the 1981 agreements were still possible despite the changed circumstances posed by the coup. However, human rights groups reported considerable abuses not only immediately after the coup, but consistently since then. These reports, along with any other reliable information about country conditions that we could obtain, have been taken into consideration by our pre-screening officers.

Because of the sensitivity of INS's duty to interview Haitian migrants after the coup, INS decided to detail members of the new Asylum Officer Corps to Guantanamo to perform pre-screening interviews. Shortly after the post-coup exodus began, INS issued detailed instructions on the specific pre-screening standard to be used, the "credible fear of persecution" standard. The term "credible fear of persecution" means (1) that it is more probable than not that the statements made by the person in support of his or her asylum claim are true, and (2) that there is a significant possibility, in light of such statements and of

such other facts as are known to the officer about country conditions, that the person could establish eligibility as a refugee. The proof necessary to establish a "credible fear" is significantly less than that necessary to show a well-founded fear of persecution. The credible fear test is, therefore, a threshold question designed to identify those who have a chance of successfully pursuing an asylum claim if paroled into the United States. Many people who meet the credible fear standard may ultimately turn out not to be genuine refugees, but the test is designed to ensure that no refugee is repatriated to Haiti involuntarily. During their subsequent asylum interviews in the United States, those "screened in" under the credible fear standard are interviewed according to the "well-founded fear" standard required by statute.

At the same time, the INS Resource Information Center (RIC) began compiling a series of "Supplementary Informational Packets" on country conditions in Haiti. In compiling these packets, the RIC collected and collated human rights reporting from a variety of sources, which, in addition to the Department of State's Bureau for Human Rights and Humanitarian Affairs (BHRHA), included Amnesty International, Americas' Watch, the Lawyers' Committee for Human Rights, the National Coalition for Haitian Refugees, the Inter-American Foundation, and others.

When the Temporary Restraining Order in the HRC v. Baker litigation forced the Coast Guard to off-load interdicted Haitians at Guantanamo, INS began interviewing at Guantanamo

instead of on the Coast Guard cutters. At the same time, we made several land-based improvements to our procedures, including on-site quality control.

In-country Refugee Processing

The in-country processing of Priority 1 (P-1) Haitian refugees -- persons in immediate danger of loss of life or of compelling concern to the United States -- is provided for in the Presidential Determination which sets U.S. refugee admissions policy for Fiscal Year 1992. Under this authority, the United States began refugee interviews at the American Embassy in Port-au-Prince on February 20, 1992. To date, 26 cases have been interviewed, with 11 cases approved for refugee status.

Although limited in scope, the in-country processing of P-1 Haitians provides persons at risk with access to the U.S. refugee program. In Haiti, persons likely to meet the definition of refugee fall into Priority 1, which includes, but is not limited to, persons who fear persecution because they hold or held leadership positions in political and religious organizations, have held sensitive positions in the Aristide government or are prominent in fields that may be targets of persecution. Efforts have been made to ensure that individuals likely to be eligible for U.S. resettlement are aware of the program's availability.

The "Double-backers"

Recently, some observers have expressed considerable concern that a few involuntarily repatriated Haitians had suffered some harm upon their return. Tales of this mistreatment surfaced when INS began to interview persons who became known as "double-backers." These are Haitians who had been returned to Haiti only to leave and be interdicted again, and then brought (with all other interdicted persons) to Guantanamo Bay for pre-screening interviews. Forty-two "double-backers" established a credible fear of returning in their second interview at Guantanamo Bay. This result led many observers -- including the press -- to make the inference that they were screened in because of a fear of retaliation upon return to Haiti for having fled in the first place.

This inference is not correct. The "double-backers" in question were among the original 538 returned on November 18th and 19th. All screening decisions -- including those involving the "double-backers" -- were based on evidence of mistreatment or fear of mistreatment because of events that took place before their first departure from Haiti. To date, there is no credible evidence of systematic persecution of repatriates.

Repatriations

GAO has expressed concern that inadequacies in the information system at Guantanamo have led to resolutions in certain cases that were inconsistent with actual interview

results. That is, some persons actually screened out may have been mistakenly paroled into the United States to pursue asylum claims, and some screened in -- either in their own right or on the basis of a family relationship to someone else who was screened in -- may have been mistakenly returned to Haiti.

We are in the process of trying to learn with certainty whether any such mistakes have taken place. GAO's concerns arise from having found information in the computer system at Guantanamo that was inconsistent with the information contained in the hard copies of the files the computer information was apparently meant to reflect. There are a number of possible explanations for this.

One possibility is that the files that concern GAO are the records of first interviews of persons interviewed a second time, either because their first records were lost or because, as many at Guantanamo appear to have done, they deliberately masked their identity in order to obtain a second interview. Such persons may have failed to establish a credible fear of persecution in their second interview, and thus were properly repatriated on the basis of that second interview.

A second possibility is that these people were voluntarily repatriated. Any interdicted person is free to return to Haiti at any time, and some have chosen this option. A person could very possibly have been screened in but have opted instead to return to Haiti; the absence of documentary evidence of this

choice could have resulted from a hiatus in the records as easily as from a mistaken repatriation.

Another possibility we must face is that indeed there were mistaken paroles or repatriations. This possibility, if verified, leaves us with the task of determining the appropriate response for each of the three categories of mistaken outcomes posited by GAO.

The most troubling possibility is that a person found to have a credible fear of return was mistakenly repatriated. We have taken great pains to ensure that no person with a credible fear of return is repatriated to Haiti. We are now taking equally great pains to find out whether GAO's concerns are valid. If we find that they are, we will make every effort, as we have throughout this operation, to correct whatever mistakes we learn of and to prevent their repetition.

Again, Mr. Chairman and Members of the Subcommittee, thank you for providing me with this opportunity to speak and to address some of the issues raised by the GAO report today and by others in the past. We are confident that the current operation involving the continued interdiction of Haitians seeking entry into the United States is not only justified, but is also humane and consistent with our international commitments and domestic law.

Mr. CONYERS. You are telling us now that after they found out 54 glitches of names on both of them that everything you have found so far doesn't show that—there isn't even one person that has been improperly repatriated back to Haiti?

Mr. McNARY. So far, we have not found one person. Now, the two names that were mentioned this morning we will immediately try to locate those people. But of the original 54, I'm advised that we have recovered the files, and those, rather than being repatriating the wrong person or bringing the wrong person into this country, those were clerical errors where a mistake was made when it was put into the computer rather than a mistake in transporting the wrong person.

Mr. CONYERS. Well, have you communicated that information to the General Accounting Office?

Mr. McNARY. No, sir.

Mr. CONYERS. So they file a report—they conduct an investigation, find out that 54, maybe more—you check it out, don't tell them. We have a hearing. They come before the hearing and tell us what they found, and then you come behind them and tell them that you found no errors. And then you tell me you didn't tell them.

Mr. McNARY. That's correct.

Mr. CONYERS. Why?

Mr. McNARY. Because they were just in Guantanamo. We were just in Guantanamo. We just got their statement yesterday. We've had information given to us by GAO, and we immediately went to work to try to find where the inaccuracies were that they had cited. And the latest report from Mr. Inzunza, who just came from there, came to me yesterday.

Mr. CONYERS. Then you are willing, then, to meet with them and attempt to reconcile their figures against your findings?

Mr. McNARY. Absolutely. We have and we will.

Mr. CONYERS. Then that may cause another hearing for us to find out what finally happened.

Mr. McNARY. That will be up to you.

Mr. CONYERS. It sure will be. And you will cooperate, as you always do.

Mr. McNARY. As I am today.

Mr. CONYERS. Right. OK. Now, let's hear from your deputy, Mr. Inzunza.

Tell me what your duties and responsibilities in this whole interviewing, processing, and determination of the Haitians are.

Mr. INZUNZA. I just returned from Guantanamo yesterday, and my responsibilities while I was there were to be in charge of the INS operation as it pertains to prescreening migrants. When I arrived, we had been—I arrived on the 29th, I believe—

Mr. CONYERS. Of?

Mr. INZUNZA. Of March. And they had stopped processing—

Mr. CONYERS. This is March; this is last month?

Mr. INZUNZA. Mm-hmm. Yes, sir.

Mr. CONYERS. OK. Was there somebody in charge of this before you got there?

Mr. INZUNZA. Yes, Ms. Irma Rios was in charge.

Mr. CONYERS. Spell his name for me.

Mr. INZUNZA. Her name.

Mr. CONYERS. Her name.

Mr. INZUNZA. I-r-m-a; last name, R-i-o-s.

Mr. CONYERS. And you replaced her, or was she still there while you were discharging your duties?

Mr. INZUNZA. She had been called to Miami to give testimony, to be deposed for a court hearing, and I went to replace her while she was off.

Mr. CONYERS. I see. And now that she has returned, you have returned back to the States.

Mr. INZUNZA. Well, actually, she returned, and I stayed there a few extra days to make myself feel comfortable that things were going the way we wanted them to go.

Mr. CONYERS. She is now back in charge?

Mr. INZUNZA. Yes, sir.

Mr. McNARY. She reports to you.

Mr. INZUNZA. But she reports to me.

Mr. CONYERS. All right. Thank you. Now, tell us what you found there when you arrived, and what did you do?

Mr. INZUNZA. When I arrived, there were close to 1,000 Haitians on the Coast Guard cutters who were not being allowed to disembark at Guantanamo Bay. We were interviewing on the docks. The only place that we could interview was on the docks because the joint task force was pulling out of Guantanamo. As of March 27, they had taken the position that Haitians could not be disembarked at Guantanamo Bay unless they were in transit to the United States.

It was under those circumstances that we were trying to interview. Two days later, the joint task force received instructions that they were to disembark all the Haitians that night so that we could resume processing at Camp McCalla. The General Accounting Office mentioned that, that we had resumed processing.

Now, you must understand that when the Haitians are interdicted they are really under the custody and control of the Coast Guard. When they are on those vessels, the captain of the Coast Guard cutter is really in charge of the care and maintenance and everything, with the exception of the interview, which we do.

When they're disembarked at Guantanamo Bay, they go under the care and maintenance and security of the Department of Defense, or the joint task force, and they move the people and present them for interviews. And really all we do is to interview the individuals and determine whether or not any refugee characteristics are present.

We were doing that. It was an ad hoc operation on the dock. They were mixing screened with unscreened, because we didn't have anyplace to put them. When we downloaded everybody, there was some mixing of the unscreened and screened and screened ins, which we had to sort out after the sun rose the following day and everybody was in the camps.

We are now in full operation at Camp McCalla the way we were prior to March 27. There were some people who were interviewed for a few days who didn't get the regular ID numbers, who weren't photographed, who didn't go through the process that others did, so there are going to be some glitches or some gaps in the data

base, because these people won't have the ID numbers that others had.

Mr. CONYERS. Did the Immigration Service send any Haitians back as a result of mistakes discovered by GAO?

Mr. INZUNZA. Not to the best of my knowledge.

Mr. CONYERS. Were there any people that should have stayed that were repatriated? Did any of those come to your attention?

Mr. INZUNZA. We're not through going through that list yet, Mr. Chairman. There's 14 more cases that we have to find and confirm. But, to the best of my knowledge, no.

Mr. CONYERS. You are in the process of reviewing the information that has been brought to the committee by the GAO?

Mr. INZUNZA. Yes, sir. And as soon as we finish that we will inform the GAO of our findings.

Mr. CONYERS. Then you are not aware of 47 cases that were screened in but were eventually reconsidered and sent out?

Mr. INZUNZA. No—the number 47 doesn't ring a bell, sir.

Mr. CONYERS. OK. Let's turn to Mr. Becelia, Director of Caribbean Affairs in State.

We would be happy to receive your comments now in addition to your prepared statement or any summary of it.

STATEMENT OF JOSEPH BECELIA, DIRECTOR, OFFICE OF CARIBBEAN AFFAIRS, DEPARTMENT OF STATE

Mr. BECELIA. Thank you, Mr. Chairman. I will offer a brief summary of the statement that I have already submitted, touching on some of the points of most interest to my own office.

Let me say at the beginning that the administration remains committed, unequivocally, to the restoration of the democratic process and rule of law in Haiti and firm in our recognition of Jean-Bertrand Aristide as that country's legitimate president.

We continue to support the OAS resolutions of October 3 and October 8, 1991, which called for financial and commercial sanctions against the de facto regime in Haiti as the most effective means to press that regime to conclude a political settlement and restore the legitimate government. We are looking at ways, at this moment, to strengthen the sanctions we currently have in place, pursuant to those OAS resolutions.

We were encouraged by the agreement reached on February 23 of this year between President Aristide and leaders of the Haitian Parliament calling for the confirmation of President Aristide's nominee as the new prime minister and the formation of a government of national consensus. We continue strongly to support this agreement, and we regret that it has not been ratified by the Parliament of Haiti.

We continue to call on the Haitian Parliament and all Haitians interested in a just, democratic solution to press for prompt ratification and implementation of this accord, which we continue to believe is the best means of reaching a solution to the political crisis in that country.

On the issue of the boat people, which I know is of paramount interest today to this committee, Commissioner McNary has discussed already the processing of these individuals, from the standpoint of his agency. Let me add that, with respect to those who are

returned to Haiti, the Department of State has instructed our Embassy in Port-au-Prince to devote all available personnel to monitoring their postrepatriation situation.

The monitoring effort is twofold, consisting of spot checks around the country on the well-being of randomly selected returnees, plus direct, firsthand investigations into specific allegations of mistreatment that might be conveyed to the Embassy by the Department of State. To date, the Embassy has found no information to substantiate such claims of mistreatment. In all, the Embassy has reviewed the status of more than 1,500 repatriates and found no convincing evidence that they have been subject to persecution or other abuse.

As to the overall human rights situation in Haiti, it must be noted that an illegal, undemocratic regime holds power there. Incidents of violence and other abuses persist in some areas. Nonetheless, we have full confidence in our Embassy's ability to monitor and report reliably on the condition of those who are repatriated.

That concludes the summary of my opening statement, Mr. Chairman. Thank you.

[The prepared statement of Mr. Becelia follows:]

STATEMENT OF JOSEPH BECELIA
DIRECTOR, OFFICE OF CARIBBEAN AFFAIRS
DEPARTMENT OF STATE
BEFORE THE LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
APRIL 9, 1992

The Administration remains committed unequivocally to the restoration of the democratic process and rule of law in Haiti, and firm in recognizing Jean-Bertrand Aristide as that country's legitimate president. We continue to support the OAS resolutions of October 3 and October 8, 1991 which call for financial and commercial sanctions against the de facto regime, as the most effective means to press the regime to conclude a political settlement and restore the legitimate government. We are looking at ways to strengthen the sanctions we currently have in place pursuant to those resolutions.

We were encouraged by the agreement reached on February 23 between President Aristide and leaders of the Haitian parliament calling for the confirmation of his nominee as Prime Minister and the formation of a government of national consensus. The agreement included provisions that the Organization of American States would be invited to send a civilian mission to Haiti to support democratic institutions and monitor human rights. The United States has contributed \$1 million to the functioning of the OAS civilian mission, known as OEA-DEMOC, and is prepared to contribute more. We have also

approached other governments at high levels to urge support for the February 23 agreement and to urge that they contribute personnel and funds to OEA-DEMOC.

We strongly support this agreement and regret that it has not been ratified. We continue to call on the Haitian parliament and all Haitians interested in a just, democratic solution to press for prompt ratification and implementation of this accord.

On the issue of boat people, which I know is of interest to this committee, we continue to repatriate Haitian migrants who have not been found to have credible claims for asylum in the United States. As you know, every Haitian who is intercepted by the Coast Guard is interviewed and screened. Those who do establish a credible claim that they will be targeted for persecution if returned -- or a credible claim that the fear such persecution -- are not repatriated. To date, some 40 percent of those screened have qualified to pursue further asylum processing.

With respect to those who are returned to Haiti, the Department of State has instructed our Embassy in Port au Prince to devote all available personnel to monitoring their post-repatriation situation. The monitoring effort is two-fold, consisting of spot checks around the country on the well-being of randomly selected returnees and direct, first-hand investigations into specific allegations of mistreatment conveyed to the Embassy by the Department of State. To date the Embassy has found no information to substantiate such claims. In all, the Embassy has reviewed the status of more than 1200 repatriates and found no convincing

evidence that they have been subject to persecution or other abuse. We recognize fully that the human rights situation in Haiti is far from ideal. An illegal, undemocratic regime holds power. Incidents of violence and other abuses persist. Nonetheless, we believe that the overall human rights situation is improved since the period immediately after the September 30 coup. We have full confidence, moreover, in our Embassy's ability to monitor and report reliably on the condition of repatriates.

In addition to its own investigations of the status of returnees, the Embassy also has access to a network of contacts which permits it to learn of and to evaluate possible violations of human rights in Haiti. The Embassy's Haitian contacts include political figures at all levels and across the political spectrum, as well as business people, the clergy, educators, the media, health care workers and human rights activists. The Embassy also maintains close contact with the international community, including private voluntary organizations working throughout the country in such areas as agriculture, health care and education; missionary and other religious groups; representatives of international organizations such as the Red Cross and OAS; and the diplomatic corps. These contacts have proven useful and reliable sources of information about conditions throughout the country.

Finally, the Embassy has begun in-country processing of Haitians for admission to the United States as refugees. These operations will afford Haitians the opportunity to apply for refugee status and to have their applications adjudicated in their home country. This is expected to obviate the need for those with refugee qualifications to leave Haiti in order to

seek admission to the United States.

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Mr. CONYERS. Thank you very much.

Let me go back to you, Mr. Deputy Commissioner. I notice you have a portable phone there on the table. That means you're in constant touch with the person that's doing the screening back at Guantanamo and on the cutters?

Mr. INZUNZA. It's turned off right now, sir.

Mr. CONYERS. Oh, it is. OK. Let me ask you—let's just go over what the GAO said, so that when you meet with them to reconcile these different findings and figures, we'll get to the bottom of this as efficiently as possible. Here is GAO, page 4 of their testimony, "There were cases in which INS officials determined that the individuals had credible claims of having suffered persecution or well-founded fear of persecution, or who, for family reunification purposes, could have joined family members who had credible claims." Do you know about any such cases?

Mr. INZUNZA. Not specifically, but there certainly are—I mean, when the people come in, the families are split up, and sometimes you don't find out the family memberships until later. And when you do that, when we find those situations, we try and correct them as quickly as we can.

Mr. CONYERS. Well, in other words then, if I were to arrange, or you facilitate yourself, a meeting with GAO to determine which cases they are talking, would that be OK with you, Mr. Commissioner?

Mr. McNARY. To work with GAO on—

Mr. CONYERS. Yes.

Mr. McNARY. Yes, and we are doing that.

Mr. CONYERS. Yes, because if he doesn't know which cases they are referring to, that is what the purpose of the hearing is about.

And then, the next sentence is, "At least seven others returned voluntarily without knowing that they had been found to have credible claims and could travel to the United States to have their cases adjudicated."

Do you know which seven they are referring to there?

Mr. INZUNZA. Not by name. No, sir.

Mr. CONYERS. OK. Would it be helpful to you if you met with them and determined which seven they are talking about?

Mr. INZUNZA. Yes, sir. We plan to do that as soon as our—

Mr. CONYERS. As soon as this hearing is over, and you get Congress out of the way? OK, fine. Thank you.

"We also found," GAO says, "that at least 50 Haitians whose claims were found during the screening process not to be credible were mistakenly sent to the United States.

"Finally, we found that a group of Haitians, possibly about 100, were given reason to believe they would travel to the United States to have their cases adjudicated, but instead, have been or soon will be returned to Haiti. This occurred because their claims were found at the time of their interviews not to be credible but their paperwork was not processed correctly, and these people were treated initially as though they had been approved for processing in the United States."

So, here are two other classes, aren't there? A class of 50 and possibly 100, those two categories. I will make this all available to you. So, we would like to get this reconciled. I am sorry it had not

been done before the hearing, because that is really what this hearing is all about.

Mr. McNARY. Well, the 50, Mr. Chairman, the 50 that were screened in who shouldn't have been will still go through an asylum hearing, so that is not at the top of our list of corrections or procedures that we want to adjust, because that will take care of itself. The 100 is not really anything that we can do about unless we know who these people are.

There is a question, and Mr. Inzunza can go into this more specifically, but the way people are separated, depending on where they are going to go, is not easy, and some people may have thought that they were going one place when they weren't going to that place, and the way I read this, they believed that they would travel to the United States to have their cases adjudicated, but were returned to Haiti.

That is something of a subjective state of mind which we don't know why they would have thought that, except that they might have been located with some other people who were going to be screened in or screened out, and assumed that they were going to go to the same place.

Mr. Conyers. Well, there was a briefing between GAO and INS last week. I mean, what did you talk about? I mean, we are all acting like we all met here today, and we are just getting together on this subject. There was a briefing last Friday. Why wasn't it worked out then? You have been talking with GAO almost every day, somebody in INS.

Mr. Rees. Mr. Chairman, I was at that briefing, and we did raise some of these possibilities with GAO. We raised four or five different ways that you could possibly be on two lists, one of having been repatriated, the other of having been screened in, without it actually being the worst case scenario, and we asked them about those possibilities.

And one of the GAO representatives said he was pretty sure that that wasn't what had happened, and that he thought they had some specific instances, and I think that may boil down to these two cases.

As far as I know, that's the first we know about these two particular cases, but what we promised to do and have been doing is to go check out with the information we did have and try to find the hard copies, the actual interview sheets on every one of those people, and we have been doing this. I don't think there has been a breach of faith on either side, Mr. Chairman. We have been doing our best, and so have they.

Mr. Conyers. Well, I am greatly relieved to hear you say that, Mr. Counsel. What we are trying to do now, and you realize that this is potentially a matter of life and death, so we are not talking about clerical errors or, you know, a computer mistake.

We are talking about a person being taken into custody. They take pictures, I've been told, as soon as you are repatriated back. And your house can get burned down, or a house that they even think you might be in can get burned down. So, it is a pretty serious matter, and I would appreciate if all these parties would go back into counsel and help us really come up with where we're at.

Now, with reference to the two examples, those were two out of many. They just said, we will give you two examples that raise some questions as to the processing. That suggested to me that there were probably others in addition to that that you would want to consider.

Mr. MCNARY. Well, they haven't indicated that to us, and I am sure had they had other specific names, they would have given them to us. GAO has no interest in sitting on names that possibly we could check out and correct the situation.

Mr. CONYERS. Well, that is what they said under oath to me. I don't know what they said to you not under oath. They said to me, they said they had at least two, and they would give this example. That suggests to me that there may be others. I don't know why they have not been forthcoming, or even whether they have or have not.

Well, let me turn to the representative for the State Department. Do you mean to tell us here in your testimony that the State Department has no evidence of political retaliation against returnees?

Mr. BECELIA. Mr. Chairman, the cases, the 1,500 cases which have been investigated by our Embassy personnel have not turned up convincing evidence of persecution or abuse against these individuals.

Mr. CONYERS. All 1,500?

Mr. BECELIA. That's correct, sir.

Mr. CONYERS. And who makes that determination?

Mr. BECELIA. The Embassy staff. Virtually all of them are called upon or are subject to being called upon at one time or another to participate in these interviews and investigation. There are some 17 Embassy officers who are devoting most of their time or more time than the rest of the staff to this process, consular officers, political officers, others who go out into the field and conduct these interviews.

Mr. CONYERS. And you haven't come across even one case?

Mr. BECELIA. The Embassy has not come across any convincing case of persecution or retaliation against these individuals.

Mr. CONYERS. Now, have you heard the claims that have been made by other organizations that have made counterassertions?

Mr. BECELIA. Yes, we have.

Mr. CONYERS. Will you be able to remain here today to hear any testimony that may be coming forward on this subject in the next panel?

Mr. BECELIA. Yes, I will.

Mr. CONYERS. And would you be willing to stay in touch with myself through my staff here as we continue to reexamine this matter?

Mr. BECELIA. I would be happy to, yes.

Mr. CONYERS. Well, I appreciate that. Would you tell us, if you can, Mr. Becelia, how the current political repression of the opposition in Haiti is being implemented and managed?

Mr. BECELIA. I'm sorry. Do you mean the repression by the regime?

Mr. CONYERS. Yes.

Mr. BECELIA. Is being implemented and managed?

Mr. CONYERS. Yes. How are they operating down there? Do you have any information on that? We do have a presence there still.

Mr. BECELIA. We do have a diplomatic presence, yes. Yes. As I said in my opening testimony, this is a regime which we regard as illicit, illegal, seized power illegally, unconstitutionally. We do not recognize it as the legitimate authority in Haiti. We do not regard it as fully subject to the constitutional safeguards and the rule of law in that country. And consequently, we fully accept that there have been abuses of power since that regime took office.

As I said in my statement, there are incidents that continue to be reported in parts of the country of violence and other abuses against certain individuals.

Mr. CONYERS. Well, I may need to contact you for further amplification of this subject matter through questions in written form.

Mr. BECELIA. Of course.

Mr. CONYERS. Now, it has been asserted by lawyers for the Haitian refugees that there have been some 2,500 records lost. Are you aware of that, Mr. Becelia?

Mr. BECELIA. These would be records in whose custody, sir? I'm sorry. No, I don't identify with those cases.

Mr. CONYERS. Oh, I'm sorry. This would go to the Commissioner, Mr. McNary.

Mr. McNARY. That is inaccurate, Mr. Chairman. The source for that contention is that when we first started, and we had boatfuls of people like we had never had before, there was a very difficult situation of matching up people who came in rapidly. There were different lists, and there might be a difference in spelling, for example, same person, but since the name was recorded twice it was spelled differently.

Some people destroyed the bracelet that had been given them because they felt as though they might get a reinterview if they did. We were down to a few hundred that we couldn't account for, and those, as well as everybody else, was reinterviewed. We interviewed more people than ever came to Guantanamo.

So, we are satisfied that everybody who should have been interviewed was interviewed and a fair adjudication was had.

Mr. CONYERS. Well, I don't know what I am going to—let me put it this way. Can I stay in touch with you about this particular claim, because I want to make sure that we resolve this matter, since life and death is involved. We are not just talking about administrative effectiveness. I would like to keep our line of communication open so that we can continue a discussion of this matter.

Mr. McNARY. That is fine.

Mr. CONYERS. Thank you. Now, in your statement, Mr. Commissioner, I heard one thing, and in your comments here they seem to have gotten a lot harder. Here is what you submitted for the record.

The most troubling possibility is that a person found to have a credible fear of return was mistakenly repatriated. We have taken great pains to ensure that no person with a credible fear of return is repatriated to Haiti. We are now taking equally great pains to find out whether GAO's concerns are valid. If we find that they are, we will make every effort, as we have throughout this operation, to correct whatever mistakes we learn of and to prevent their repetition.

Now, have I heard you correctly today that you say there is absolutely no basis for the errors, the mistakes, the administrative confusion that has been reported here by GAO?

Mr. MCNARY. No, sir. I haven't said that. To the contrary, I am satisfied with the GAO report. I think that they have speculated in some places, but that doesn't bother us. We treat it as a valuable working document. They came down. They have identified some places in our administrative process that can be improved. We are following up on those.

We believe—and the two we just heard about, those are the only two names that we have, that we can go back, send somebody to Port-au-Prince or to Haiti and try to find those people to correct the situation.

Other than that, everything that we have followed up on, that they have brought to our attention—and we will continue to follow up, and there may be more that will come to our attention, but we want to make sure that nobody is repatriated that should not be repatriated.

And, Mr. Chairman, let's put this in perspective. We have interviewed 18,000 people. We have had 20 teams of adjudicators down there for 6 months. There has been a humanitarian effort beyond belief. We have screened in 6,668 people into this country. We have 4,149 that are already here.

For anybody to say that we want to—or were careless, even, is just—is a mistake.

Mr. CONYERS. That's what they said. Let's put that in perspective.

Mr. MCNARY. We should put it in perspective, and even the administrative errors are less than 0.3 of 1 percent. I would put that up against any Federal agency, even Congress.

Mr. CONYERS. Well, let me just go back over this, then. You say there are two cases that just came to your attention today that they mentioned. That means that everything that they have said here you don't agree with.

Mr. MCNARY. No, it doesn't, and I have said twice——

Mr. CONYERS. Then you do agree with it.

Mr. MCNARY. As a matter of fact, I said that we had no problem with their report.

Mr. CONYERS. Well, wait a minute.

Mr. MCNARY. And we will follow up. We are continuing to follow up on any name that we know about.

Mr. CONYERS. Well, you are saying, then, that you don't disagree that they may be in error, but you don't concede that they are right on any of these other matters?

Mr. MCNARY. We don't know.

Mr. CONYERS. You don't know. OK. And you have been meeting every day, somebody in INS. You had a big meeting Friday. And we come here today, and you tell me that you are cooperating fully, but all of the numbers and the circumstances that they have brought forward in their testimony, you concede none of it to be valid, but you are not sure, and you are going to check? Is that right?

Mr. MCNARY. Well, you again have to put it in perspective. I am talking about——

Mr. CONYERS. I am putting it in perspective. You said, "Let's get real," and that is what I want to do.

Mr. McNARY. But I am not sure you are. We are down to 54 people who could possibly be in jeopardy. We have run down 40 of those 54. Somebody who mistakenly was brought into this country is not in jeopardy.

Mr. CONYERS. In other words, 40 of the 54, there was no basis for them being in that number to begin with?

Mr. McNARY. Yes, we found it to be an administrative error rather than someone who was repatriated.

Mr. CONYERS. Does GAO know about it, the 40?

Mr. McNARY. They don't know about those 40. We are going to continue to try to reconcile the other 14. That was what they brought it to our attention for. I mean, there is good faith all around here.

Mr. CONYERS. All right. Well, I can tell you, this committee isn't going anywhere soon that I know about, so we will give you—all the parties—as much time as we need to get this into reconciliation.

Now, Mr. Becelia, you said that nobody is being involuntarily returned to Haiti. Did you not say that?

Mr. BECELIA. No, sir, I don't believe I said that.

Mr. CONYERS. I was hoping you didn't say that. Well, I won't then proceed with that line of questions.

Can you describe, sir, how many people are currently assigned to the U.S. Embassy in Haiti?

Mr. BECELIA. That is kind of a moving target, in that we are sending people now back who were brought out of Haiti shortly after the crisis of last year, but there are now, I believe, about 60 American staff in the Embassy.

Mr. CONYERS. Do you have a breakdown that would indicate how many are assigned to monitor human rights conditions?

Mr. BECELIA. The Embassy provided me with a little information on that, Mr. Chairman, and gave me the number of 17 mission officers who have been most directly involved in this. There have also been five INS officers down at the Embassy who have participated—or in Port-au-Prince who have participated in this at one time or another.

Mr. CONYERS. Yes. Who is in charge? Is there 1 of the 17 in charge?

Mr. BECELIA. Well, all of them would take direction from the Ambassador. I am not aware beyond that who would be in charge of the specific process, but the Ambassador obviously gives overall direction to the Embassy.

Mr. CONYERS. Well, I can't imagine the Ambassador taking care of these 17 and they are all reporting to him. But could you make that list available to me, and try to also find out who is in charge of the 17?

Mr. BECELIA. Could I elaborate on that answer, Mr. Chairman?

Mr. CONYERS. Sure.

Mr. BECELIA. The consul general would be the officer under the Ambassador's immediate jurisdiction who would be most actively involved in supervising this process.

Mr. CONYERS. Yes, that's better. OK. How can you have full confidence in the Embassy's ability to monitor a report reliably on the condition of some 11,000 repatriates?

Mr. BECELIA. Mr. Chairman, they have not undertaken to assess the condition of all of the repatriates. The number, the latest number they have provided of the actual cases investigated is about 1,500. That is the number they have actually scrutinized to date.

Mr. CONYERS. Is that in a report somewhere, or is that discussion discrete in some identifiable way?

Mr. BECELIA. The subjects of the various investigations are reported to us on an ongoing basis in formal channels.

Mr. CONYERS. So, what we are talking about is maybe about 10 percent of these repatriates have had some kind of contact or interview with our Embassy people there?

Mr. BECELIA. Something over that, but in that general area. Yes, sir.

Mr. CONYERS. Now, let me turn quickly to the trade embargo. Tell me how the trade embargo is working, in your judgment, at the present moment.

Mr. BECELIA. The trade embargo has not, by any means, been foolproof. There have been a number of gaps in the trade embargo. The biggest that we have been able to identify is that in permitting fuel into Haiti. That is probably the most critical single commodity necessary to sustain that economy and thereby sustain the regime. And there have been several deliveries of fuel that have managed to provide that sustenance to the country.

Mr. CONYERS. Well, what about the effectiveness of the trade embargo?

Mr. BECELIA. Well, that is what I was alluding to before. The ability to bring fuel into the country is, to a large extent, the result of the fact that not all countries in the world are participating in the embargo.

The Europeans, for example, the European Community has not subscribed to the embargo, and consequently there is no mechanism whereby those governments can sanction shippers of fuel or would have the obligation to sanction shippers of fuel into Haiti. Therefore, the shipments continue.

Mr. CONYERS. So what is the effectiveness of the trade embargo as viewed by yourself and the Department of State?

Mr. BECELIA. We believe the trade embargo has had an impact on the Haitian economy. It has not had as full an impact as desired or that we would have hoped would be the case, for the reasons that I mentioned.

Mr. CONYERS. Have there been any other exceptions to the trade embargo?

Mr. BECELIA. We have strong reason to believe that there are other violations, that goods are being brought into Haiti, contravening the embargo, overland from the Dominican Republic, by other vessels that go in and out of Haiti, by air. There is no foolproof means of enforcing the embargo in an absolute sense, and there are items which do go in, we are quite certain, on a continuing basis.

Mr. CONYERS. Has a former State Department official, Elliott Abrams, played a role in seeking some of the exceptions to the trade embargo?

Mr. BECELIA. Mr. Chairman, I am, frankly, not aware of Mr. Abrams' involvement in that at all.

Mr. CONYERS. You are not aware of it? Are you familiar with the name Elliott Abrams?

Mr. BECELIA. Yes, I am.

Mr. CONYERS. Have you ever met him?

Mr. BECELIA. Yes, I have.

Mr. CONYERS. You know he is no longer with the State Department?

Mr. BECELIA. That is correct.

Mr. CONYERS. Do you know that he played a role in seeking exceptions to the trade embargo?

Mr. BECELIA. Mr. Chairman, I am not familiar with his role in that context, no.

Mr. CONYERS. Well, let me ask you, is there any expectation that we will take action against the financial backers of the coup?

Mr. BECELIA. That is one of the steps that we have under consideration at this moment. Yes, there is a possibility of that, Mr. Chairman.

Mr. CONYERS. Would you be in a position to advocate that such action be taken, that as much action as possible be taken against these financial backers, since, without that sanction, we have the people that are backing it not even being subjected to whatever penalties or attention that could be brought to their role in this matter?

Mr. BECELIA. Yes, I think we should give fullest possible consideration to bringing increased sanctions against these individuals. Yes.

Mr. CONYERS. Has there been consideration about freezing their assets?

Mr. BECELIA. That is one of the aspects under consideration, yes.

Mr. CONYERS. And suspending their visas?

Mr. BECELIA. Yes, sir.

Mr. CONYERS. There are, I understand, other airlines other than American airlines that regularly communicate from Haiti to the United States.

Mr. BECELIA. That is right.

Mr. CONYERS. Could there be something done in terms of a travel embargo?

Mr. BECELIA. I would have to defer to legal experts on that, Mr. Chairman. I prefer not to venture a guess on that.

Mr. CONYERS. If there were no legal impediments, would that be an additional consideration?

Mr. BECELIA. It sounds to me like a valid consideration, yes.

Mr. CONYERS. Right, and general counsel, do you have any views, if this has been in your purview, about this subject?

Mr. REES. I couldn't give you a legal opinion on it, Mr. Chairman. It is not something that we deal with in Immigration. You mean the airlines, whether we could stop that? I would have to defer to the Department of Transportation. I'm sorry.

Mr. CONYERS. From 1981 to September 1991, the INS determined that only 28 people of 24,000 asylum seekers were found to have credible claims of persecution. That was pretty low. Is there any particular reason why that was so low?

Mr. McNARY. Yes, sir. It was before I came on board, and at that time, the interview on the cutters was a short interview. I think it was an interview in good faith, but it really didn't probe for an accurate determination as to well-founded fear of persecution.

Usually, the person would be asked, "Why are you coming to the United States?" Usually, the answer was, "To get a job." And a few other—"Are you afraid to go back to Haiti?" "No." And they would be returned.

When I became Commissioner, I had talked to enough groups to believe that the interview process should be expanded. We did expand the process, as well as we have gone to trained adjudicators, who are the people that are at Guantanamo now, but have been a part of the AMIO program, so that they are better trained in country conditions as well as how to probe for the facts, so we think that the percentages went up for that reason.

Mr. CONYERS. Well, I want to commend you for the process reforms that you have instituted, and I hope you will be sensitive to any further recommendations that may be brought forward, from this committee or from anywhere else, for that matter.

Mr. McNARY. Yes, sir.

Mr. CONYERS. Did the Haitian Refugee Center lawsuit assist in focusing your attention on this subject?

Mr. McNARY. It focused our attention because the numbers went up when it happened. I've got our general counsel here. I'm not sure what you are referring to.

Mr. CONYERS. Well, wasn't the lawsuit brought around that subject, of the way the interviews were going?

Mr. McNARY. Well, the lawsuit—let me start out. The lawsuit was brought because the numbers—our procedures were really designed to handle smaller numbers of people. We could do that on the cutters. When the numbers went up, it put a strain on our interviews, and it was about that time that a lawsuit was filed, but I think almost at the same time we made arrangements for Guantanamo, which solved the problem.

Mr. CONYERS. Look, you know, I am a great believer in progress and improvement. Who needs a lawsuit anyway, I mean, if you are doing the right thing, and you are moving the situation along? We don't know how these forces interacted.

Mr. McNARY. Well, we didn't need the lawsuit, and we don't welcome them now, because it sends out a false hope to people.

Mr. CONYERS. You don't go out looking for lawsuits?

Mr. McNARY. No. We didn't do anything to justify that lawsuit, and, as a matter of fact, we were upheld by the Supreme Court, so I don't know that anything can be gained from it.

Mr. CONYERS. Well, you weren't upheld at the lower court.

Mr. McNARY. Well, no, there was a judge who had his own personal opinions, in my judgment.

Mr. CONYERS. Yes. OK. So, in other words, this would have happened without the lawsuit? I mean, they jumped the gun a little bit? Well, OK. You don't have to answer that. Would you invite me to come down to Guantanamo to review this situation, because I think that it would be important that I see what is going on down there.

Mr. MCNARY. Everybody else has been there. I am surprised you haven't been there already.

Mr. CONYERS. Well, I didn't get an invitation.

Mr. MCNARY. We didn't send out many invitations. As a matter of fact, we are trying to keep the guest list to a minimum.

Mr. CONYERS. Well, if a Member of Congress, a chairman of a committee, sought an invitation, would you send one out?

Mr. MCNARY. I am telling you right now, you are welcome to come to Guantanamo.

Mr. CONYERS. Well, I am happy that you invited me, Mr. Commissioner. This is wonderful. I will change my schedule to accommodate this invitation. This is really good. I didn't want to just go barging around there and, you know, land there, and, "What is he doing down there?" I want to exchange the notices, and let you know what I am looking for.

Mr. MCNARY. I think you would be impressed, Mr. Chairman. The Defense Department is to be commended. They have been humanitarian beyond belief. The medical attention, the shelter, the way people have been treated is excellent.

Mr. CONYERS. Good. I will remember you told me that, because I will be coming down to take a look. I am sure you would have—

Mr. MCNARY. There will probably be a nice tent there for you to move into.

Mr. CONYERS. Well, the tents, that's a good question. Yes. As a matter of fact, you know, there are a lot of African-Americans that consider that except for where that boat landed coming from Africa, they might be Haitians themselves, so there is a great feeling of mutuality of circumstance about the plight of Haitians and the historical plight of African-Americans.

Mr. MCNARY. Some of our adjudicators are Haitian.

Mr. CONYERS. Well, that is very helpful. Any concluding statements, gentlemen? Thank you very much. I appreciate your presence here today.

We will move to the final panel. We have the deputy of the New York City Office of the Lawyers Committee for Human Rights, legal counsel for the Haitian Refugee Center in Miami, professor of Yale University School of Law. You are all welcome to the committee. Thank you for your preparation.

We thank you all for the great amount of work that you have been doing. I know that much of it is uncompensated, and some of it is additionally at great cost to you in addition to being uncompensated.

We would like to start with the Lawyers Committee for Human Rights, attorney William O'Neill. Welcome.

[Witnesses sworn.]

STATEMENT OF WILLIAM O'NEILL, DEPUTY DIRECTOR, LAWYERS COMMITTEE FOR HUMAN RIGHTS, NEW YORK, NY

Mr. O'NEILL. Thank you, Mr. Chairman, and thank you for holding these hearings. I would just like to briefly summarize some points made in my written statement.

First, Haiti is a human rights nightmare. As deputy director of the Lawyers Committee, I am charged with following human rights conditions in a number of countries around the world, and the situ-

ation in Haiti is among the worst I have ever seen. It is a human rights lawyer's nightmare.

We see extrajudicial executions, torture, arbitrary arrests, a vicious clampdown on the press, prohibition of meetings, and a general situation of lawlessness where people who commit these violations act with impunity.

The people who are committing the violations are the Haitian military and their civilian allies, the Ton Ton Macoutes, who have resurfaced, and the section chiefs, who are rural policemen in the countryside but who are, in effect, part of the military hierarchy.

The objects of their attention, the victims of these violations, are virtually the entire Haitian population, but at particular risk is anyone who is a known or suspected supporter of President Aristide, and that narrows it down to about 67 percent of the population, which is the percent of the vote that he received in the only free and fair elections Haiti has ever had.

My second point is that U.S. policy up to this point has been a failure, and we can see that nearly 6 months after the coup, the military is still in charge. Our courts so far have failed the Haitian asylum seekers.

Our administration, with its weakening of the embargo, sent a terrible and a horrendous signal at a crucial time. And the embargo has never really been an embargo. As has been mentioned already, the Dominican border is porous. Boats come in from all over the world, including one tanker that was seized last week in San Juan, Puerto Rico, that had some United States connections.

What should the United States do now? I would like to focus on that for a second. We believe that the embargo should be tightened, and not only the OAS embargo, but we believe that the administration should instruct its ambassador to the United Nations at the Security Council to sponsor a resolution condemning the human rights violations in Haiti and calling for a universal embargo.

That way, we will avoid the current situation, where tankers, planes, and other goods come from Europe or Africa or Asia because they are, by definition, not bound by the OAS embargo.

We also believe that the U.N. Secretary General should appoint a special emissary to investigate the human rights situation in Haiti, and that human rights monitors from the United Nations should be sent to Haiti. This is in line with the recommendation that was made by the Special Rapporteur on Iraq at the most recently concluded session of the United Nations Human Rights Commission in Geneva.

And we think that a similar exercise should be undertaken in Haiti. The U.S. delegation in Geneva voted for this resolution regarding Iraq. We think Haiti deserves at least as much effort from the United Nations, that even up until now the United Nations has been treating Haiti as a second-class citizen.

I would also like to briefly bring up some factual issues with regard to the asylum situation, and also with regard to human rights. I have interviewed many Haitian asylum applicants, so I was a little disturbed when I heard this morning that interviews are now going at the pace of two or three an hour.

I find that in friendly circumstances and surroundings it takes at least 2 or 3 hours to properly interview a Haitian asylum appli-

cant. Twenty minutes per interview, including time for interpreting, is a cursory interview, at best. Also, interviews done on cutters, where a refugee is surrounded by uniformed personnel—and think of a Haitian for a moment. Any time anybody in a uniform has been near a Haitian, it has usually been an unhappy experience.

The conditions are not conducive to the Haitian asylum applicant revealing his true story. That is a very important point. And I think that even though there have been reforms made, and we should commend those reforms, just by definition, an interview on a cutter is probably not going to get right to the story.

I think also that we need to understand the investigation of what is happening to those who are forced to return to Haiti—and the statement made that there has been no evidence uncovering anyone who has suffered persecution after being returned. I have been to Haiti many times on human rights monitoring missions, fact-finding missions. I have been to the Haitian countryside.

It is extremely difficult to get this information, even in the best of times, let alone now, when the section chiefs are back in charge. They rule as petty tyrants in their rural areas. And I just don't think it's plausible, no matter the best intentions, for someone from the Embassy or anywhere else to go out to the countryside to ask very difficult and potentially life-threatening questions. That person leaves, the investigator leaves, and the person who has been responding to the questions is faced with the section chief. So, it is very difficult to get this information.

Point 2. The current de facto prime minister of Haiti is a former human rights militant. He knows the interdiction program. I have to say, my organization and many other human rights organizations worked closely with this man before he took up his present position. He knows what people are looking for. He knows the kind of information that would completely disrupt his program.

So, you can bet that he will take every step to give instructions to the military, to the section chiefs to make sure that the information that is precisely the information that we are all seeking is going to be as difficult as possible to get.

I would just like to conclude by saying that I think the international community owes a lot to Haiti. The elections in 1990 probably never would have happened as they did without the full support of the OAS and other member states and the election monitors who worked so hard. We cannot now walk away after the government that emerged from those elections is overthrown.

And that is why we would like to emphasize a strong multilateral response immediately to this crisis, not only by the OAS but, as I said, by the United Nations.

Thank you very much.

[The prepared statement of Mr. O'Neill follows:]



**PREPARED STATEMENT OF William G. O'Neill
Lawyers Committee for Human Rights**

**before the
Subcommittee on Legislation and National Security**

**of the Committee on Government Operations
U.S. House of Representatives**

Washington, D.C.

April 9, 1992

Chairman Conyers, I want to thank you for convening this hearing and for inviting the Lawyers Committee for Human Rights to testify. Since 1978 the Lawyers Committee has monitored human rights in all regions of the world. The Committee works to promote international human rights and refugee protection. The Committee's work is impartial; we hold every government to the same standards as enunciated in international law, especially the major international human rights treaties.

I am a lawyer and the Deputy Director of the Lawyers Committee for Human Rights. One of my principal tasks at the Lawyers Committee is to monitor the human rights situation in Haiti. I have followed events in Haiti closely for the last eight years. I have visited Haiti six times during the past five years. During my visits I have interviewed ministers of justice, a former prime minister, judges, lawyers, journalists, academics, church workers, peasants, and people from a variety of professions. I am the co-author of a 250-page report on human rights and the Haitian justice system called *Paper Laws, Steel Bayonets: Breakdown of the Rule of Law in Haiti (December 1990)*. I have written numerous articles on human rights in Haiti, testified before Congress, given formal briefings to Congressional staff members, taught human rights law courses in Haiti and have spoken in numerous public fora on human rights and the Haitian justice system.

Since the military coup d'état on September 29, 1991, the extent and frequency of gross human rights violations have reached levels not seen since the deadliest days under the Duvaliers. Extrajudicial executions, torture, arbitrary arrests, "disappearances," prohibition of meetings and demonstrations and crackdowns on freedoms of opinion and the press have become daily fare. Last month the United Nations Commission on Human Rights passed a resolution severely condemning human rights violations committed since the September coup by the military and its civilian allies. No one has been prosecuted for a human rights violation since the start of the coup. The Haitian military is once again acting as it has always done, with impunity and with contempt for human rights.

I am in daily contact with human rights groups, human rights monitors and journalists currently working in Haiti. These extremely reliable sources report severe and systematic human rights violations. Violations tend to increase in direct proportion to political tensions. For example, on December 10, 1991, rumors began to circulate that President Aristide would return to Haiti before Christmas. On December 13 and 14 spokespersons for two important voting blocs in the Haitian Parliament wrote to President Aristide saying they were willing to ratify his choice of a new Prime Minister assuming certain conditions were met, including a guarantee of their personal security from the Organization of American States.

The Haitian armed forces and the recently restored rural section chiefs proceeded to conduct sweeps through neighborhoods and rural regions known as Aristide strongholds and arrested and beat people. On the nights of December 16 and 17, soldiers searched cars and houses in the Bel-Air, Bolosse, Martissant, Saint Martin and Carrefour-Feuilles sections of Port-au-Prince; soldiers stole goods and beat numerous young people.

National Assembly member Astral Charles was executed by a recently restored section chief and his deputies in his home in the northern village of Pignon on December 15. Mr. Charles was a known supporter of President Aristide. Assembly member Samuel Milord had signed public letters to President Aristide outlining criteria for choosing a new Prime Minister. Armed men went to his

home but Mr. Milord was not there. Soldiers killed two people in his house and wounded and beat several others. Mr. Milord is in hiding. Also on December 15 soldiers burned down the house of another Representative in the National Assembly who is a strong Aristide supporter, Mr. Jean Mandenave.

Félix Lamy, a journalist for Radio Galaxie, was abducted at 8:00 p.m. on December 10 by armed soldiers who also ransacked the station after it had broadcast news of a rumored split in the army. Mr. Lamy's whereabouts are currently unknown and the Lawyers Committee fears he has been executed. Two other radio stations that had broadcast similar news received threats from the armed forces and have been forced off the air. Independent radio stations still on the air are forced to exercise suffocating self-censorship.

A list of approximately 200 names was read over state-run radio on December 15 by people who identified themselves as being members of the *Volontaires de la Sécurité Nationale* ("VSN"), the official name for the infamous *Tontons Macoutes*. Those reading the names also gave addresses and phone numbers of individuals and the time and place of meetings of the organizations on the list and urged that the people on the list be executed wherever and whenever found. This list was read several times subsequently over an FM radio station called the "Voice of the VSN." The Lawyers Committee fears for the life of every person on the list, all of whom are known Aristide supporters.

Similarly, in the days surrounding the first anniversary of President Aristide's inauguration on February 7, 1991, the military increased its repression, prohibiting or disrupting pro-Aristide demonstrations, conducting sweeps and arresting many young men in the poor districts of Port-au-Prince. On February 7 at 8:00 a.m., soldiers abducted four young men from the Bel-Air district of Port-au-Prince. The parents of one of the young men found the body of their son and his three companions the next day in the morgue. All had been executed as evidenced by their bullet wounds. Other violations in February included:

-on Saturday, February 29, two young men in downtown Port-au-Prince were discussing the army and some of its recent actions when several soldiers overheard them. The soldiers immediately started to beat the young men viciously according to eyewitnesses. They were thrown bleeding into the back of a pick-up truck and taken to an unknown destination. They have not been seen since;

-On February 12, 1992 in downtown Port-au-Prince, four armed men in civilian clothing stopped Jean Mandenave, a pro-Aristide member of Parliament, and forced him to get out of his car. One of the men fired his gun at Mr. Mandenave's head, fortunately missing him.

-on February 5, Jean Rémi Azor, a leader of a peasant organization in the Artibonite Valley, was arrested after living in hiding since the coup in September. Mr. Azor had secretly returned to his home village of Verrettes to seek emergency medical attention. His whereabouts are presently unknown;

-on February 10, Ibs Bastien was arrested in the village of Darbonne near Léogane. The section chief beat him 100 times with his baton and Bastien had to be hospitalized. When questioned, the section chief said he had hit Bastien "only" 25 times;

-two armed civilians arrested Jacquelin Louis on January 28. Mr. Louis was a member of a local community group in the La Fossette section of Port-au-Prince. The armed civilians beat Mr. Louis violently while arresting him and beatings continued in prison. He later died as a result of this inhuman treatment;

-Section chief Jean Marie Voltaire burned down 121 houses in Borgne after local residents refused to pay an illegal tax he tried to impose after resuming his post at the end of January. 57 soldiers and 157 armed "assistants" participated in this attack;

-on February 14, a meeting at the Holiday Inn in downtown Port-au-Prince of two pro-Aristide groups was broken up by a contingent of heavily armed soldiers who surrounded the hotel. Several foreign embassies were contacted and after their intervention the soldiers allowed the participants to leave the hotel. Port-au-Prince mayor Evans Paul, who was at the meeting, declared that the military was clearly out to intimidate those attending who included such major political figures as Turneb Delpé, Jean-Claude Bajeux, Micha Gaillard and Victor Benoit.

These incidents demonstrate that those suspected of being Aristide supporters are precisely the people now most at risk in Haiti. The list of people targeted for execution on radio broadcasts by self-proclaimed *Tontons Macoutes* includes bishops, priests, students, journalists, grass-roots organizers and simple citizens who have supported the return of President Aristide.

The recent restoration of rural section chiefs, particularly individuals who have been gross violators of human rights, is an extremely alarming development. Section chiefs have traditionally ruled as petty tyrants in the remote countryside, taxing, arresting, beating and imprisoning as they pleased. There are approximately 535 rural sections in Haiti and each is ruled by a section chief. They are members of the military and report to the nearest district commander. President Aristide abolished the position; the *de facto* government has reinstated section chiefs thus reversing one of President Aristide's most important human rights reforms. The section chiefs have also enlisted numerous assistants who constitute virtual private armies; they arrest, torture, kill and extort with impunity. The section chiefs and their assistants lie entirely outside civilian control and are answerable only to the military. The Haitian countryside, home to 75% of Haiti's population, is once again under the thumb of ruthless individuals who operate beyond the control of civilian authorities.

Urban and rural grass-roots development and literacy groups have been targeted for government persecution. The armed forces have burned down hundreds of homes of suspected Aristide supporters. For example, the Peasants Movement of Papeye (MPP) is a peasant self-help group that has been active in development projects in the Central Plateau area of Haiti. The military has targeted the MPP on numerous occasions during the past few years. The military cracked down severely on the MPP after the September coup and its leaders are currently in hiding. The MPP issued a detailed report in late January 1992 confirming information that we had received previously about systematic and targeted attacks on Aristide supporters in the Haitian countryside. This report also reinforces repatriated asylum-seekers' accounts of soldiers conducting house searches looking for members of pro-Aristide groups. Many of the asylum-seekers forcibly returned by the U.S. come from rural areas, including the MPP's home region near Hinche. The repression described in the report is the norm in rural Haiti since the September 1991 coup.

The lives of those who have been forced to return to Haiti are also at risk. Their attempt to

flee marks them as enemies of the military. For example, in mid-December 1991 the representative of the United Nations High Commissioner for Refugees ("UNHCR") reported that all 73 people recently returned from Venezuela were immediately arrested by the Haitian military and detained. Some were reportedly released after thorough questioning to determine whether or not they were supporters of President Aristide. Soldiers confiscated the money for resettlement given to the returnees by the UNHCR.

In early February 1992 the UNHCR's representatives in Guantanamo Bay interviewed 41 Haitians who had been forcibly repatriated in early November after being interdicted by the U.S. Coast Guard and found to have no colorable claim for asylum following interviews with Immigration and Naturalization Service officials. These Haitians suffered severe persecution on their forced return to Haiti and were once again able to escape by boat, only to be interdicted once again by the Coast Guard. These Haitians, during their second interview, told how soldiers had come to their houses looking for them; some were arrested, beaten and put in prison. One told of how soldiers said they would kill him.

Conditions for doing adequate follow-up work on the treatment of returnees, always difficult in Haiti, are even more problematic given the military's tight control since the coup. According to telephone interviews I have had in the past few weeks with Haitian human rights workers and international journalists based in Haiti, many of those being forcibly repatriated by the U.S. immediately go into hiding after being photographed and finger-printed at the wharf by Haitian security forces. Even their families do not know where they are. For example, one group of 20 young men reportedly had to flee to the hills near Anse d'Ainault after being repatriated on February 3, 1992. The level of fear and terror has made it impossible for human rights groups, let alone researchers from the General Accounting Office, to monitor what has happened or might happen to those asylum-seekers forced to return.

Those attempting to investigate the returnees' fate and human rights conditions are also at risk. On February 12, 1992, two journalists, Alan Tomlinson, a reporter for the BBC and National Public Radio, and Nathaniel Sheppard, a reporter for the *Chicago Tribune*, were illegally arrested and detained overnight in a small village in northern Haiti by section chief Yvon Dieudonné. They were investigating human rights violations in the area and the treatment of forced returnees. The section chief and his deputies severely beat the reporters' Haitian interpreters and threatened to kill the reporters. It was only on the intervention of soldiers from Cap-Haitien that the section chief agreed to release the reporters.

Danger lurks long after disembarkation. The United Nations High Commissioner for Refugees has publicly admitted that it is not in a position to monitor the safety of those being returned and the U.S. embassy, whose staff has been reduced to 28 because of the danger of living in Haiti these days, is in no position to help. As a veteran of numerous fact-finding trips to the Haitian countryside, I know how difficult it is to get information about abuses. People are understandably terrified and reluctant to tell strangers who suddenly appear and just as suddenly leave information that is critical of the very people who control the returnees' fate.

The Haitian Red Cross is in charge of resettlement; it is not an independent entity and is not a member of the International Committee of the Red Cross. The Haitian Red Cross has blocked every effort by Haitian human rights groups who have sought to meet and interview those forcibly repatriated. Several independent human rights groups approached the Haitian Red Cross and asked to

interview those who were forcibly repatriated during the week of November 18. The Haitian Red Cross refused to cooperate, saying only that "everyone has gone home." The Red Cross rejected subsequent requests for information. The current head of the Red Cross was appointed by the *de facto* government and the organization is not impartial. Moreover, the Haitian Red Cross failed to respond to calls for help in at least two incidents when the army had beaten and arrested young people in Port-au-Prince. A young man was shot and killed by a soldier in the courtyard of the Red Cross headquarters on November 8, 1991.

The U.S. Supreme Court's decision allowing the forced repatriation of Haitian asylum-seekers combined with the Bush Administration's actions to weaken the trade embargo on Haiti has had a devastating impact, much greater than the embargo, on the very people in Haiti that the U.S. claims to support: the poor, human rights monitors, church groups, peasant organizations and all those favoring the restoration of President Aristide and constitutional government. These decisions by the U.S. judiciary and executive strengthen the position of the soldiers and members of Haiti's financial elite who are responsible for the executions, torture, arbitrary arrests and illegal detentions.

The Bush Administration unilaterally decided to weaken the embargo imposed by the Organization of American States (OAS), claiming that the embargo has caused widespread suffering, particularly among Haiti's poor. Yet it is precisely Haiti's poor who support the embargo and the restoration of democracy. The embargo has caused suffering, but Haitians already live on the edge of survival, barely subsisting from one day to the next. Malnutrition, high infant mortality and diseases long eradicated in the rest of the hemisphere mark life in Port-au-Prince's teeming slums and the denuded countryside. Their residents have faced a *de facto* embargo their whole lives.

The problem is not that the embargo has not worked but rather there has never really been an embargo in place. All kinds of goods have arrived in Haiti by sea, air and across the porous border with the Dominican Republic. Oil tankers have sailed into Port-au-Prince from Europe, Africa and even other countries in the Americas bound by the OAS embargo; one tanker came from Colombia, whose former Foreign Minister is leading the OAS-sponsored negotiations seeking the return of President Aristide. While we applaud the recent seizure by U.S. Customs officials of an oil tanker in San Juan, Puerto Rico that had just delivered 250,000 gallons of diesel fuel to Haiti, the incident underscores the weakness of the OAS embargo.

Moreover, Haiti's smugglers and drug-traffickers have flourished during this period of haphazard enforcement, capitalizing on a surge in prices due to feared shortages. Instead of creating exceptions to the embargo, largely at the behest of certain U.S. investors in low-wage assembly plants in Haiti, the U.S. should strengthen and extend the embargo.

The Bush Administration says it is considering freezing the assets of the financial backers of the coup. This surgical strike against people who provide cash, food and jeeps to the army comes months too late. Bernard Aronson, Assistant Secretary for Inter-American Affairs, testified on October 31, 1991 before the House Sub-Committee on Western Hemisphere Affairs that the Treasury Department was examining a list of names of alleged financiers of the coup sent by U.S. Ambassador Alvin Adams. Over five months later, the Administration has still not acted. Yet the Bush Administration's Treasury Department seemingly faced few "legal impediments" last week when it froze the American assets of 46 multinational firms allegedly under the ultimate control of the Libyan government.

Haitians have understandably lost all faith that the outside world will help them. It has always been up to the Haitians to resolve their own problems, but the U.S. has special obligations as the dominant power in the region. Our courts and executive branch have failed them miserably. Congress can counter these blows by immediately passing the bipartisan bill introduced last week by Senator Kennedy to help fund a civilian OAS mission to restore democracy and monitor human rights abuses.

Congress should also grant Haitian asylum-seekers under the custody or control of the United States, including those in Guantanamo or aboard Coast Guard cutters, temporary protected status and suspend all forcible repatriations until Haiti's democratically-elected government is back in power. The refusal by parliamentarians opposed to any return to constitutional government to allow a vote on the February Protocol between President Aristide and representatives of Parliament and the Haitian Supreme Court's recent ruling that the February Protocol is unconstitutional have contributed to a recent upsurge in Haitians fleeing their country. Most have given up hope that Aristide will ever return and refuse to live through another brutal dictatorship.

The Administration should press the United Nations Security Council to resume its consideration of the situation in Haiti, in view of the continuing threats to international peace and security it poses, particularly with regard to the flow of Haitian refugees to the U.S., Cuba, the Bahamas, Jamaica and the Dominican Republic. The U.S. should sponsor a Security Council resolution calling for an immediate and universal embargo on all trade, including arms and oil, with Haiti that is binding on all UN member-states. In an analogous situation, the United Kingdom and France led a successful effort resulting in a Security Council resolution calling for an embargo on all trade with Yugoslavia after it became clear that European Community sanctions alone were inadequate.

The absence of order in Haiti precludes any respect for human rights and the rule of law in that country. The human rights situation is so bleak precisely because an illegitimate military government, backed by the section chiefs and Ton Ton Macoutes, now exercises total control of the country. In this situation, the U.S. should urge that the government be called upon (i) to allow full access immediately to international humanitarian organizations and (ii) to consent to the sending of a team of United Nations-sponsored human rights workers who would remain there until the human rights situation has drastically improved. The latter proposal was originally advocated with respect to Iraq, by Mr. Max van der Stoep, the UN's Special Rapporteur on Iraq, and supported by the U.S. delegation to the Commission on Human Rights. Last month the Commission on Human Rights, in a resolution also supported by the U.S. delegation, expressed its deep concern over the flagrant human rights violations committed by the illegal government in Haiti. The U.S. government should now publicly declare its support for a similar UN human rights monitoring presence in Haiti.

The reaction in Haiti will be the best gauge of the correctness of these measures: it will be the military and their civilian allies' turn to feel despondent and isolated.

Mr. CONYERS. We are very indebted to you for that very concise but important report.

Attorney Kurzban, welcome to the hearing.

STATEMENT OF IRA KURZBAN, LEGAL COUNSEL, HAITIAN REFUGEE CENTER, MIAMI, FL

Mr. KURZBAN. Thank you, Mr. Chairman, and thank you for giving me the opportunity to speak here today.

The facts found in *Haitian Refugee Center v. Baker* support the factual findings of the GAO. The records that the Immigration Service kept, particularly in the early days of the interdiction program concerning the Haitians, were in a state of chaos.

In fact, by November 12, 1991, and we are talking about a population here of 3,000, the chief asylum officer of the United States told his superiors to stop processing any Haitians because they had no idea who was being screened in and who was being screened out, because the situation was so chaotic.

The Commissioner today says he is proud of the record of the 0.3 of 1 percent error, but the truth is, we haven't addressed here today the first 3,000 people who were sent back under not only chaotic conditions concerning the records, but under what are clearly faulty procedures.

The asylum officers, although well-intentioned, who interviewed these first 3,000 people, all of whom have been sent back, were people who had no information concerning the political conditions in Haiti. The officers' deposition testimony that we took under oath indicated that they were not even given evidence concerning the conditions in Haiti, and although they are trained asylum officers, they had no training with respect to Haiti.

They interviewed the first 3,000 people without any information concerning the political conditions in Haiti. We interviewed the supervisors of these officers. They did not know who the President of Haiti was. They did not know who the Prime Minister of Haiti was. They did not know who General Cedras was. They did not know any of the names of the organizations that Haitians were involved in supporting President Aristide.

So, when a Haitian said to an asylum officer in early November, "I am a member of the Ti Legliz," or, "I am a member of the FNCD," and showed them their card, they might as well have been showing them an American Express card, because the officer had no idea what the significance of that information was.

Those 3,000 people, not 0.3 of 1 percent, those 3,000 people have been sent back to Haiti. Among those, Mr. Chairman, and I would like to read briefly from some of their testimony that was elicited by us on Guantanamo when we were able to speak to the Haitians on Guantanamo, was Golbert Miracle who said the following.

He was questioned. "You said your mother was killed. How was she killed?" Answer: "When the military man came, no one would open the door. He forced himself in. They broke down the gates and they went in. My brother, younger brother and my sister, they found out where I was, and once they found out where I was, they are the ones to tell me that my mother was killed, was shot, that my aunt was arrested, and one of my sisters was also arrested."

The testimony of Emanuel Saintil, a member of the movement of the young of city Soleil: "My father went out to get some food to put on the table. As he was coming home, there were some soldiers in the neighborhood who knew me as a militant. Because they lived in the neighborhood, they pointed the finger at my father to other soldiers, and they had my father killed. They shot my father in front of the Church of the Immaculate Conception in City Soleil."

Question: "You say you went out to look at your father's body. Did you see your father's body? Yes or no?" "Yes, I had time to see the body."

These are some of the people who have been sent back to Haiti under the faulty procedures that were used by the Immigration and Naturalization Service. In addition, one cannot help but notice the gross inconsistency between our policy as expressed by our State Department and the claims that no one is injured, no one is persecuted upon their return to Haiti.

Amnesty International, in a report dated January 22, said the following:

Since October, Amnesty International has continued to receive reports of grave human rights violations. Hundreds of people have been extrajudicially executed or detained without warrant and tortured.

Many others have been brutally beaten in the streets. Freedom of the press has been severely curtailed, and property is being destroyed by members of the military and police forces. The military has systematically targeted President Aristide's political supporters. Even children have not been spared the violence in Haiti.

Our State Department tells us even today, Mr. Chairman, that there is violence in Haiti. The President of the United States has said, on the record, that Haiti is moving toward a totalitarian dictatorship. Our ambassador, during the events in question here, was called. U.S. citizens are given advisories not to go to Haiti.

In the face of all that, we are told today that there is no "convincing evidence," of persecution. Mr. Chairman, I am a student of politics, and I pay very careful attention to when our government speaks and uses language like "no convincing evidence." I want to know what that means. Does that mean that an officer at the Embassy says, "I have not been convinced beyond a reasonable doubt. I have not been convinced by clear and convincing evidence. I have evidence here but I can't fully support it"?

As Mr. O'Neill, has pointed out here quite adequately, the absurdity of sending three or four officers into a small village at one time and questioning people in the context of a government which everyone, including our State Department, admits is a government that has been brutal to its own citizens, shows the absurdity of the process of trying to make that investigation.

We know, and the National Coalition for Haitian Refugees and other organizations which have recently come back from Haiti have investigated, and they have found many, many people who are in hiding, in the hundreds, in Haiti. Many of these people are people who were returned from Guantanamo.

One of the questions we certainly have is, what has the State Department done to investigate those cases? Are they saying that they have no convincing evidence because those people have not come forward, because they are in hiding? The question of what interviews are being conducted, how are they being conducted, and

why hasn't the government released, at least to this committee or to the public, those interviews.

I have had an opportunity to read some of those interviews that the State Department has said demonstrate that there is no convincing evidence. And I can tell you, Mr. Chairman, that they are less than satisfactory examples of good investigatory work. There are cases where it is clear that leads are not followed up; it is clear that information which is readily available is ignored.

So, I think it is important, before we just simply accept on face value what, "There is no convincing evidence" means, that someone take a very careful look at those investigatory reports, and make some determinations as to what standard is being used and whether or not the officers are really doing a sufficient job to investigate the problem.

Just let me turn, finally, to the question of the embargo. Mr. Becelia, I think, candidly admitted to you, Mr. Chairman, that the embargo has been less than a success. Two things that he has not said today that are, I think, quite odd, are, No. 1, 5 months ago the State Department announced that they were going to freeze the assets of persons who were supporters of the coup. That is an unusual step in terms of this area, and it is an area that I know quite a bit about from the technical side of it.

The U.S. Government has never announced before freezing the assets of any group that they are going to do that. The obvious reason for that is, Mr. Chairman, that if you announce it, and you give people 5 months to get their assets out of the United States, they are going to do it.

So, I think one question that must be raised is, why would we announce it 5 months in advance if we were serious about having the assets of those who support the coup frozen in the United States?

Mr. Becelia has also pointed out the fact that in some sense there is a problem with the European allies shipping oil or other goods. That is a serious problem. What he has not said today is that a matter that has been under discussion for months, and that have brought to the State Department's attention, is the tightening of the embargo by seizing any ship that violates the terms of the embargo, whether it is a U.S. ship or not, if it is in U.S. territorial waters.

That is the easiest and simplest way to make this embargo effective, and the reason why that has not been done can only be speculated upon. European shippers call the Office of Foreign Assets Control on a regular basis and say, "Can I deliver oil to Haiti?" And when they are told that there is no sanction that the United States can impose against them, then, obviously, there is no impediment to them doing so.

Mr. CONYERS. There is no international law that would prohibit the United States from acting in the fashion you recommend in their own waters?

Mr. KURZBAN. Absolutely not. Not if it is within the jurisdiction of the United States. If that ship comes into the jurisdiction of the United States, we have a right to seize it, in violation of our own laws. We do it with narcotics all the time.

Mr. CONYERS. Would the United States have a responsibility to announce that to the world, or to those who may be coming in?

Mr. KURZBAN. Well, we would normally announce it, as they have last week in other matters, by publishing regulations in the Federal Register. But the sanction alone would be enough to stop oil flowing to Haiti, because these shippers do not want to risk the potential loss of their boats. Remember, that is just one shipment. We are talking about people who have ongoing shipping concerns around the world.

They are not going to risk shipping oil to Haiti and whatever profit they can make in the short run with the possibility of their ship being seized if it came to the United States 1 week, 1 month, or 6 months from now. So it sends a clear signal to them that it is not profitable for them to do business, and I would submit to you, Mr. Chairman, that if we had done that in October, as was suggested, that President Aristide would have been returned to Haiti by November. Thank you.

[The prepared statement of Mr. Kurzban follows:]

**TESTIMONY OF IRA J. KURZBAN
GENERAL COUNSEL FOR THE HAITIAN REFUGEE CENTER, INC.**

**BEFORE THE LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES**

Mr. Conyers and Members of the Committee, thank you for giving me the opportunity to speak with you today. Your determination to ferret out the truth concerning the troubling treatment accorded Haitian refugees is commendable. The Haitian community recognizes the importance of your actions today, and for future generations.

On February 24, 1992 by a vote of 8-1 the United States Supreme Court denied a writ of certiorari in Haitian Refugee Center, Inc. v. Baker to stop the forcible return of Haitians to Haiti.¹ The Justices also denied a request for a stay of the lower court's order pending appeal. These acts temporarily ended the Haitians' efforts to prevent their return to a country described by the State Department as "violent" and by the President as moving toward "totalitarian dictatorship."

While recalling our Ambassador due to the violence in Haiti, while maintaining an embargo against the military junta and denouncing its actions in cutting off democracy, and while advising United States citizens not to go to Haiti, the Department of State and the White House have repeatedly said that Haitians have no fear of returning to their country. The depths of that fear, however, were demonstrated by the testimony taken under oath of Haitians on Guantanamo, who described in great detail the murders of their family members and friends as the military hunted down persons who had supported President Aristide or who had been in any way associated with the Aristide movement.

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I have attached a chronology of events concerning the Haitian exodus since October, 1991.

For example, Petitioner Golbert Miracle, a member and organizer for the Lavalas and the FNCD (both pro-Aristide groups) testified that he fled Haiti to escape the military after his mother had been killed and his aunt and one of his sisters arrested:

QUESTION: You said your mother was killed. How was she killed?

ANSWER: When the military man came, no one would open the door. He forced himself in. They broke down the gates and they went in. ... My brother, younger brother, and my sister, they found out where I was and once they found out where I was, they are the ones to tell me that my mother was killed, was shot, that my aunt was arrested and one of my sisters was also arrested.

Petitioner Emanuel Saintil, a founding member of a pro-Aristide youth group, Movement of the Young of Cite Soleil, saw his father shot dead in front of a church because of his political affiliations:

A. ... My father went out to get some food to put on the table. As he was coming home, there were some soldiers in the neighborhood who know me as a militant for MGSS. Because they live in the neighborhood, they pointed the finger at my father to other soldiers, and they had my father killed. They shot my father in front of the Church of the Immaculate Conception in Cite Soleil.

Q. You say you went out to look at your father's body. Did you see your father's body? Yes or no.

A. Yes, I had time to see the body.

Deposition of Emanuel Saintil.

The Immigration and Naturalization Service also screened out other persons who had very strong claims for political asylum. Petitioner Condanser Joseph, founding member of a group which

performed political theatre in support of the FNCD (a pro-Aristide organization), testified that soldiers looking for him shot up his house, killing his younger brother. Deposition of Condanser Joseph. Eric Pierre, a member of the FNCD, fled his home after the military showered his home with bullets, killing his father. Deposition of Eric Pierre. Rolande Providence, a long-time Aristide supporter, was also required to flee after the military shot up his house looking for him. Deposition of Rolande Providence. Raymond Edme, a member of a group called the AJN that was working on development projects in Haiti, had to flee Haiti because the military were rounding up persons supportive of President Aristide who had engaged in development work. Deposition of Raymond Edme. Rolande Jean, a member of the Komite Ti Legliz (the Aristide church organization), fled Haiti after the police shot up his house and arrested his father, who was a known Aristide supporter. Deposition of Rolande Jean. Leger Pierre Frantz was a member and candidate of Lavalas (the political party of President Aristide), who fled Haiti after he escaped the military. Deposition of Leger Pierre Frantz. Moise Charles was also forced to flee his house because the military came to arrest him as an organizer and supporter of President Aristide's political party. Deposition of Moise Charles. Even persons who were listening to the Voice of America after the military coup were arrested and beaten by the military. Testimony of Jean Michel Mario Pavilus.

As a result of the military's efforts to eradicate all support for President Aristide and all opposition to itself, it has summarily executed over 2,000 persons and has tortured thousands more. Haitians, such as the Plaintiffs in Haitian Refugee Center v. Baker, began fleeing in record numbers. Notwithstanding public perception, Haitians not only fled to the United States, but simply fled Haiti for any destination. Many of the Haitians interdicted since the September 30 coup were not headed to the United States in the first place. Gaston Jalicoeur, a lawful permanent resident aboard one of the boats, said his boat was headed to the Bahamas when it was picked up by INS officers. John Baker and James Schneider, INS officers on Guantanamo, acknowledged that there were Haitians at Guantanamo who were headed to Cuba but were picked up by the Coast Guard. The government offered no explanation as to their authority or justification for interfering with these Haitians' attempt to escape persecution, let alone the authority to forcibly return them to Haiti.

The nature and purpose of the case, due to the complex factual and legal issues, was often lost in the press. This was not a case about challenging the interdiction program or the right of the President to have an interdiction program. Although we believe such a program is morally reprehensible and discriminatory, we understood the difficulty in challenging the President's authority to establish such a program. Instead, we challenged the screening procedure used by the Immigration and

Naturalization Service to determine which Haitians would be allowed to enter the United States to seek asylum and which would be forced back to Haiti.

This challenge, in fact, was consistent with the President's Executive Order of 1981, which stated that while the United States Government would interdict Haitians, it would also assure that no persons who were refugees would be returned to Haiti. This promise was also incorporated into the Exchange of Letters and Agreement with the Government of Haiti. That Agreement specifically recognized the United Nations Convention and Protocol and international law as a source to protect refugees.

The evidence that we found in regard to the Immigration and Naturalization Service's screening process was shocking. The Government was using procedures, as the District Court found, that were wholly arbitrary. The INS interviews of Haitians was in chaos. INS officers readily admitted that they had interviewed hundreds of Haitians without receiving any information about the political conditions in Haiti. Depositions of John Baker and James Schneider. They also candidly acknowledged that they had received no training on interviewing Haitian asylum applicants, and were literally interviewing them in a political vacuum. Id.

On November 18, 1991, the day before the Haitian Refugee Center filed suit, the government forcibly returned to Port-au-Prince 535 Haitians held on the Coast Guard cutters Dallas and Confidence. The testimony elicited from government officers

indicated that the persons interviewing the Haitians had virtually no knowledge of the political conditions in Haiti, had received no information concerning the political conditions in Haiti until five days after these Haitians were deported, and had received no training whatsoever concerning interviewing Haitian asylum applicants. Deposition of Leon C. Jennings, James Schneider and John Baker. This lack of knowledge extended to such issues as not knowing who the President and Prime Minister of Haiti were, not knowing who General Cedras was, and not knowing any of the organizations that were supportive of President Aristide. Deposition of Leon C. Jennings.

Immigration officers were also applying incorrect standards. One officer could not even name all the grounds necessary to obtain asylum. Deposition of James Schneider. Another officer admitted that she had applied an incorrect legal standard, and that those persons were not re-interviewed. Deposition of Christina Tilbury.

In addition, record keeping was so poor and chaotic that the INS did not know who they had agreed to screen in or screen out and send back to Haiti. The conditions were so chaotic that the Chief Asylum Officer of the United States concluded in a memo on November 12, 1991 that the interview process should be suspended. He found the interviews were "increasingly inconclusive" and "also of rapidly decreasing validity." A superior to the Officer returned his memo to him, did not discuss it, and through a

subordinate instructed him to "file it." Promptly thereafter his supervisor relieved him of his pre-screening responsibilities at Guantanamo. Deposition of Gregg Beyer.

The Haitians during this process were often subjected to interviews that lasted only several minutes, and were never informed of the purpose for the interview or given an opportunity to explain their case. In Mr. Miracle's case, mentioned above, he was told by the INS interviewer that "whatever you do, you are going to be sent back. Whatever you do."

In short, the testimony in Haitian Refugee Center v. Baker revealed that the pre-screening procedures were, either purposely or through indifference, a complete and utter sham -- a "formal" validation of a predetermined result. The District Court found that "all [of] the individual plaintiffs described below were interdicted at sea and, despite having substantial political asylum claims, were 'screened out', i.e., marked for forcible return to Haiti."

The government, of course, did not argue the factual merits of the case as the factual record was overwhelming. Instead, they took the position that Haitians who were outside of the United States simply had no rights whatsoever. In effect, they asserted that whatever totally arbitrary procedure used and devised by the government was simply not the concern of the courts.

The Haitian Refugee Center and the Haitians themselves argued that they had rights under a number of different provisions. First, they argued that they had rights under Article 33 of the United Nations Convention and Protocol Relating to the Status of Refugees, which is an international treaty signed by the United States. Article 33 explicitly prevents persons from being forcibly returned to a country where their life or freedom would be threatened. The language of Article 33 is in absolute terms and provides that no state may send someone back to a country where their life or freedom would be threatened. The Haitian Refugee Center and the Haitian Plaintiffs also argued that they had rights under the President's Executive Order 12324 (September 29, 1981), which provided for protection of refugees in establishing the interdiction program and rights under the Immigration and Nationality Act, and particularly the Administrative Procedure Act.

The issue of the Haitians' treatment, however, was only one issue in the case. After the Haitian Refugee Center's counsel had been given access to Guantanamo by court ordered discovery, and after they discovered the facts discussed above, the INS refused counsel for the Plaintiffs any access to their clients after that date. The position of the Government was that counsel for the Haitians in the case had no right to visit their clients and had no right to speak with them, meet with them or to counsel them. At the same time, the Government allowed the press, ministers of religion and even other lawyers not representing the

Haitians to visit Guantanamo. The case therefore posed two other important issues. First, could the Government when they are a defendant in a lawsuit prevent counsel for the plaintiffs the right to speak with or to meet with their clients. Second, could the Government, consistent with the First Amendment to the United States Constitution, selectively deny to attorneys and advocacy groups such as the Haitian Refugee Center -- while granting to the press, the clergy, lawyers not of record and others -- access to meet and consult with Haitian members of a certified class of litigants who are their clients. The government was actively involved in determining the content of speech that United States citizen lawyers and organizations may provide to Haitians on Guantanamo. INS officials candidly admitted under oath that they did not want the Haitian Refugee Center's lawyers, or any lawyers, on Guantanamo because they would advise the Haitians "as to the process" and thus infect it. Deposition of John Cummings.

In a shocking per curiam (2-1) decision, the Eleventh Circuit said that since the Haitians had no rights under any international agreement or domestic law, as we argued, that it would be "nonsensical" to allow lawyers to speak with or meet with them. Judge Hatchett issued a dissenting opinion. Recognizing that counsel for the Haitians could advise them of a whole series of rights, not only with respect to their INS proceedings but with other matters as well, Judge Hatchett noted that the panel majority's conclusions were reached by ignoring existing, binding en banc precedent, by alleging facts

"unsupported by the record before the Court," and by flouting "a recognized canon of the legal profession [that] [l]awyers must have access to their clients so they may advise them of potential rights and causes of action in American courts." Finding also that "the record reveals that the government has, indeed, discriminated against Haitian Refugee Center based on the content of its speech," and that "it has denied such access to the Haitian Refugee Center lawyers who seek to assist the Haitians in understanding and navigating through the predicament in which our government placed them," he would have ordered the respondents to grant such access subject to reasonable time, place and manner restrictions.

Notwithstanding these serious issues, the Supreme Court on February 1, 1992 granted a stay to the Government which had the effect of permitting them to deport Haitians to Haiti and on February 24, 1992 denied the petition for certiorari.

The nature of this case from beginning to end was extraordinarily political. For the third time in United States legal history, the Solicitor General of the United States argued the case on behalf of the Executive Branch in a United States District Court, as well as in the Court of Appeals and the Supreme Court. Only in the Steel Seizure Case and perhaps one other case since then has the Solicitor General of the United States argued in a United States District Court.

In addition, the policy decisions concerning the case were not made by the INS or even the Department of State. The issues were directed from the National Security Council and the White House. President Bush, apparently concerned about attacks by the right wing extremists of his party, Buchanan and Duke, used the Haitians, in an election year, to show how tough he could be on immigration policy. The Congress appeared only slightly more concerned. George Mitchell, the titular head of the Democratic Party and a former federal judge, applauded the Supreme Court's decision on February 1, 1992 to grant a stay to the Government (thereby allowing the Government to forcibly return the Haitians), notwithstanding the fact that Plaintiffs' counsel were given only an hour and a half to answer the Government's petition and the Court ruled three hours later. Indeed, Justice Thomas, no supporter of the Haitians or the issues in the case, was so upset by the Supreme Court's rush to judgment on February 1, that he dissented from the granting of the stay.

The week of February 24, 1992, when the United States Supreme Court denied certiorari in this case, marked the 50th Anniversary of the first incarceration of Japanese-Americans. This case and Korematsu -- the decision upholding the internment of Japanese-Americans -- have striking parallels. In both cases the Government used grossly inflated and ultimately false information to persuade the courts that this was a matter of great national security. In both cases, the courts instead of performing the historic role of protecting insular minorities,

simply, as Judge Hatchett noted in his dissent, "rolled over." The collapse of the courts, and even of some members of Congress, in the face of concerns over black refugees entering the United States is a shameful reminder of how little we have progressed in the fifty years since the Japanese internment cases and the return of Jewish refugees aboard the St. Louis on the voyage of the damned.

THE GAO REPORT

The recent GAO Report confirms a number of our own findings and those of the District Court. The Report, after investigation, concluded that inadequate processing of Haitians on Guantanamo resulted in persons with credible claims being mistakenly repatriated. This finding is consistent with the chaotic circumstances evidenced by INS' own statements, as well as the statements of Haitians subjected to INS procedures.

Other findings of the GAO, however, are more open to question. Its claim, for example, that screening and living conditions for the Haitians are adequate is contradicted by the evidence in both Haitian Refugee Center v. Baker and Haitian Centers Council, Inc. v. McNary. The screening procedures used by INS during October and most of November, 1991, when over 3,000 Haitians were "screened out" was found by the District Court to be wholly "arbitrary." Although on paper the procedures may appear to be adequate, in practice they were quite different. INS officers interviewed Haitians with no training or knowledge about Haitian politics or culture, and in some cases without even



knowing the proper standard to apply. Haitians were subjected to interviews that amounted to no more than 5-7 minutes and were never asked any relevant questions about organizations that they were involved in. Although the lawsuit prompted better training and a higher rate of screened in persons, once the litigation ended the INS reverted, as they have today, to screening persons on Coast Guard cutters.

The conclusions of the GAO concerning interview conditions may have been reached when there were few people remaining at Guantanamo to be screened. However, at the start of the litigation, and today, Haitians remain on Coast Guard cutters where screening cannot be seriously conducted.

Similarly, the living conditions, which are described as adequate by the GAO; were likely based upon conditions at Guantanamo. However, at the initiation of the litigation and at the present time Haitians are being kept on Coast Guard cutters. Haitians were crammed on decks of Coast Guard cutters, exposed to the elements day after day, with no space, no available sanitary conditions and no ability to have meaningful interviews. Haitian psychologist Claude Charles, who interviewed Haitians on Coast Guard cutters in late November, 1991, stated the following:

All of those restrained individuals are living in very hard daily conditions such as using limited rough and problematic sanitary accommodations, eating food they were not familiar with back home which is rendering many of them sick, congregating and sleeping on the deck floor over a laid blanket, often exposed to unpleasant circumstances aggravated by lack of decent living space.

Dr. Charles concluded after interviewing Haitians on the Courageous and the U.S. Tortuga that "many individuals are presenting serious signs of delusional thought because of too harsh confinement after their traumatic experience in Haiti and at sea." Today, the government has reverted back to keeping Haitians on Coast Guard cutters and interviewing them on the cutters instead of at Guantanamo. The same conditions remain and the GAO Report does not address those conditions.

The GAO also concluded that the Department of State did not withhold key information from the courts. This statement is clearly inaccurate in several respects. First, the Department of State officials, in their affidavits which were submitted to the Court of Appeals and the Supreme Court in a successful effort to obtain a stay which allowed the government to repatriate Haitians, made significant material misrepresentations. For example, one State Department official said that there were "credible reports" which suggest "that perhaps as many as 20,000 more Haitians are massing on one of Haiti's coasts preparing to depart by sea for the United States." In fact, there was no massing at all. When his deposition was taken, the State Department official admitted that he was not certain and retracted the use of the term "massing". What he really meant to say was that "there were significant and large numbers of Haitians who were preparing to leave, not that they were gathered in some huge group." Deposition of Bernard Aronson. Contrary to the statements made in his affidavit, which were presented to the

United States Supreme Court and the Eleventh Circuit Court of Appeals, he was quite unsure as to the number of Haitians, how prepared they were, when they were supposed to come, and indeed, whether or not they were going to come at all.

The affidavit used by the State Department official also contained other speculative information in the form of "credible reports," which were never disclosed to persons representing the Haitians, or even to the Court en camera. The mass exodus, of course, never occurred, nor was there any proof that the Haitian military junta was using the refugees as a "lever of manipulation" as the State Department official suggested.

In the same manner, the State Department misled the Court by claiming that there was no credible evidence that Haitians were persecuted upon their return. They did not state, either to the Court or to the American public, that no formal investigation had been conducted from 1985 until February, 1992. The investigations conducted subsequent to that time never asked the question whether someone would be persecuted because of their political views. Instead, the investigation addressed only the question of whether Haitians would be persecuted because they were sent back to Haiti. The actual investigations have never been revealed to the public. However, at least some of those investigations indicate that they were poorly done and were not designed to fully investigate the claims. This includes the so-called investigation of the 42 people who were reintroduced after having fled Haiti a second time.

Similarly, another State Department officer's claim that the border with the Dominican Republic is wide open and can be used to allow Haitians to flee from Haiti and that there is a relationship between the down turn in economic conditions in Haiti and people leaving by boat, are both seriously in error. Affidavit of Robert Gelbard. First, the Dominican government has not opened its border to Haitians fleeing Haiti, and in fact, has recently prevented news reports supportive of President Aristide from being broadcast on Dominican radio into Haiti. The claim that there is a correlation between a down turn in economic conditions and Haitians fleeing by boat is clearly belied by the events of the last year. The lowest number of Haitians interdicted in the last ten years came during the seven month period of President Jean Bertrand Aristide's democratically elected government. As soon as that government was overthrown the numbers of refugees soared. For anyone who has studied Haiti for a prolonged period of time, the notion that "worsening" economic conditions would have an effect on persons leaving is simply absurd.

Moreover, this State Department official also claimed that there is a relationship between Haitians leaving and the embargo. However, this conclusion ignores the fact that the first boatloads of Haitians left Haiti at the very beginning of October, 1991 -- before the embargo was even in effect -- and that small numbers of Haitians are currently leaving Haiti.

The GAO's findings also ignore other types of evidence that were misrepresented or withheld from the Court. For example, the so-called "credible reports" or "investigatory reports" were never provided to the Courts en camera or otherwise. Nor did the Department of State provide to the Court, when it submitted its affidavits, information that 42 people had fled Haiti a second time, although that was in their possession for a substantial period of time before the affidavits were submitted. It was only because the information was publicly released another way that the Department of State admitted their existence.

In addition, the GAO Report ignores all the other misrepresentations that were made by other government agencies to the United States Supreme Court and the lower courts. Other affidavits were submitted to the Court which were not even part of the record in the case, and were either a sham or wholly disingenuous. For example, the government relied on a declaration by Robert K. Wolthuis. Mr. Wolthuis' affidavit, however, was a sham. He was presented as acting in the capacity of the Assistant Secretary of Defense in his declaration, when his deposition revealed that he had assumed that position for one day, and one day only -- the day he signed the declaration. Wolthuis' Deposition at 5-6. Mr. Wolthuis admitted that he had never served in that capacity before, he resigned it after the signing, and has not acted in that capacity since. Wolthuis' Deposition at 6. Moreover, although he stated in his declaration that he "has been closely and regularly involved in the

formulation and implementation of U.S. policy concerning the Republic of Haiti," he stated in his deposition that he had only a vague understanding as to what the policy was, was not involved in formulating the policy, was aware of no written or other formal memorialization of any such policy, and was only involved in the matters to which he swore for part of one day. Wolthuis' Deposition at 10-13. Wolthuis, in fact, simply signed a declaration which was handed to him and prepared for him by the government's lawyers, readily admitting that the sole basis for most of the facts that he swore to in his declaration were what the lawyers who had drafted it told him. Wolthuis' Deposition at 31-34. The declaration was so defective and based upon fraudulent assumptions that the plaintiffs filed a separate memorandum concerning the declaration.

The government also relied on the affidavit of Admiral Leahy, which asserted that allowing a representative from the Haitian Refugee Center on Coast Guard cutters "would seriously interfere with the performance of [its] missions, and also create substantial threats to the safety of all involved." Leahy declaration of January 29, 1992. This statement was repeated by the Court of Appeals in its decision to deny HRC access to the Coast Guard cutters. Mr. Leahy, in his deposition however, acknowledged that family members of Coast Guard members periodically go on Coast Guard cutters, and that his 14 year old son was on a Coast Guard cutter (that was on a law enforcement mission while maintaining defense readiness) for a two-week

period. Leahy Deposition at 43. In addition, Leahy acknowledged that press members, VIPs and other persons were taken on Coast Guard cutters during the interdictions after the Aristide overthrow, while Haitian Refugee Center was being denied access. Leahy Deposition at 41.

The GAO also found that while all parties agree that political opposition has been effectively repressed in Haiti, that there are no credible reports of repatriated persons being persecuted and that the claims of persecution appear to be based on unverified testimony. First, it is difficult to understand how the GAO can separate the fact of total repression in Haiti and the ability to conduct a meaningful investigation. The State Department, of course, has not conducted an investigation into whether or not persons who are returned are persecuted because of their political beliefs. Rather, it has only conducted an investigation into whether persons are persecuted because they are returned from Guantanamo. Second, there is continual evidence of mass graves of political opponents of the military junta in Haiti, as well as continual repression of persons who are even perceived to be Aristide supporters. The ability to accurately determine whether or not a particular individual has been persecuted upon return in an environment where there are continuous summary executions and torture, is highly questionable. The evidence that exists, from the only sources that could testify are from those in church organizations in

Haiti who have consistently reported to ABC News, National Public Radio and to persons in the United States who have reported that retaliation and persecution against persons who fled does exist.

The GAO's Report that "no credible claims," (a term used by the State Department) as opposed to no verifiable claims exist, is more than a semantic difference. As the Department of State conducted no investigations for eight years, it is not surprising that they would not have information or serious contacts to verify such claims. The mere fact of their inability to verify does not suggest that the claims are not credible.

Moreover, all human rights organizations investigating Haiti indicate that the political repression is rampant in Haiti. On January 22, 1992 Amnesty International issued their report concerning the current situation in Haiti and stated:

Since October Amnesty International has continued to receive reports of grave human rights violations. Hundreds of people have been extra-judicially executed, or detained without warrant and tortured. Many others have been brutally beaten in the streets. Freedom of the press has been severely curtailed and property is being destroyed by members of the military and police forces or by civilians operating in conjunction with them. The military has systematically targeted President Aristide's political supporters ... grass roots organizations, which had flourished during the seven months of President Aristide's government, have been virtually eradicated, their equipment and premises destroyed, and most of their activists in hiding; women's groups, peasant development groups, trade unions, church groups and youth movements have all been the victim of severe repression. Even children have not been spared the violence in Haiti. Thousands of people have been forced into hiding.

The report goes on to talk about widespread torture in Haiti and other forms of repression. Similarly, National Public Radio has reported villages razed to the ground by section chiefs and military personnel. The Senate Immigration and Refugee Subcommittee's investigation also revealed similar repression. In these circumstances, it is difficult to understand how the government can conclude that people would not be persecuted upon their return.

Most recently, the National Coalition for Haitian Refugees has documented numerous instances of persons forcibly returned to Haiti from Guantanamo who are in hiding as a result of the continuing repression in Haiti. The Coalition has also documented continuing widespread political repression, torture, summary executions, and illegal detentions in Haiti.

I hope this testimony has been of some assistance to the Committee. I will be happy to answer any questions.

**Summary Chronology
of Haitian Refugees
on Guantanamo**

September 30, 1991	Father Aristide is overthrown by a brutal military junta.
October 3, 1991	First Haitians fleeing Cedras' military arrive in Miami by boat.
October 28, 1991	First Haitian boat is interdicted by the Coast Guard.
November 10, 1991	Coast Guard cutters begin mooring at Guantanamo because of the number of Haitians fleeing Haiti.
November 18, 1991	538 Haitians are forcibly repatriated to Haiti aboard the Coast Guard cutters Dallas and Confidence after being interviewed by INS officers who were not given any information on the political conditions in Haiti prior to the Haitians' forced return.
November 19, 1991	Haitian Refugee Center, Inc. files a verified complaint and temporary restraining order in the United States District Court, Southern District of Florida, and the Honorable Donald Graham enters an order temporarily restraining the Coast Guard from returning Haitians.
November 21, 1991	Court of Appeals denies the Government's attempt to vacate the TRO and to block any discovery.
November 28, 1991	Defense Department decides to establish a tent city at Guantanamo and places structure up with 3 days.
November 30 and December 1, 1991	Lawyers are granted court ordered discovery on Guantanamo after INS refuses to bring witnesses to U.S. Discovery reveals that Haitians are fleeing Haiti because of military brutality. Seventeen Haitians on Guantanamo are named in the lawsuit, as well as a class of all others not screened in by INS. HRC and its lawyers are thereafter barred from Guantanamo

although the press, ministers and other lawyers, not representing the Haitians, are permitted.

- December 3, 1991 The Honorable C. Clyde Atkins of the United States District Court, Southern District of Florida, based upon Article 33 of the U.N. Protocol and the First Amendment, issues an injunction against repatriation until the Government provides adequate screening or until a trial on the merits.
- December 17, 1991 In a 2-1 per curiam opinion, the Court of Appeals reverses the December 3, 1991 preliminary injunction on Article 33 grounds (as not self-executing), while refusing to consider other issues. The Court of Appeals issues its mandate forthwith.
- (6:00pm)
- (10:00pm) TRO is granted by District Court on the APA issues. Hearing on preliminary injunction is set for December 20, 1991.
- December 18, 1991 The Government appeals from the TRO, seeks stay, summary reversal and mandamus.
- December 19, 1991 The Court of Appeals (2-1) declares the TRO a preliminary injunction and stays it pending appeal.
- December 20, 1991 The District Court enters a preliminary injunction on First Amendment grounds consistent with the December 15, 1991 holding of the Court of Appeals.
- December 23, 1991 The District Court enters a preliminary injunction on the APA claim which it stays simultaneously with its issuance pending appeal.
- December 27, 1991 Plaintiffs HRC and class members seek en banc review of December 17, 1991 Panel Article 33 Order. The Court of Appeals consolidates all other appeals and sets an expedited briefing schedule with all briefs due by December 31, 1991.
- January 22, 1992 Oral argument is heard on the consolidated appeals.

- January 27, 1992 While the appeals are sub judice, the Government "supplements" its stay motion in the Court of Appeals with new affidavits not presented below.
- January 29, 1992 The Government submits four more extra-record affidavits to the Court of Appeals.
- January 30, 1992 The Government seeks a stay of the December 20, 1991 District Court Order in the Supreme Court, while a stay motion is pending in the Court of Appeals.
- January 31, 1992 (11:00am) The Court of Appeals issues a stay of all District Court Orders pending appeal, thus mootng the Government's stay application in the Supreme Court.
- (3:10pm) The Court of Appeals announces that its 11:00am stay order was issued by "clerical error" and is rescinded.
- (3:40pm) Counsel for HRC are informed that they must submit responsive papers to the Government's Supreme Court stay application in less than two hours, by 5:30pm. Certain responsive papers are filed.
- (8:00pm) The Supreme Court (6-3) grants the Government's application for a stay of the District Court's injunction of December 20, 1991, pending discussion of the Court of Appeals. This permits the Government to begin to forcibly return Haitians to Haiti.
- February 1, 1992 The Court of Appeals announces a second "clerical error" and rescinds its 3:30pm order rescinding its 11:00am order, thus reinstating its stay.
- February 1, 1992 The Government begins forcibly returning Haitians to Haiti. The military junta fingerprints and photographs each Haitian as they arrived in Port-au-Prince.
- February 4, 1992 The Court of Appeals issues a (2-1) per curiam opinion reversing the District Court's injunction on First Amendment

- and APA grounds. The Court of Appeals orders the District Court to dismiss the case and issues its mandate immediately.
- February 10, 1992 HRC files a petition for writ of certiorari in the United States Supreme Court and an application to stay the per curiam decision of the Court of Appeals to prevent Haitians from continuing to be deported.
- February 24, 1992 The United States Supreme Court denies certiorari and denies HRC's application for a stay.
- March 17, 1992 By this date the U.S. Government had interdicted 16,464 Haitians and forcibly returned 9,542 to Port-au-Prince. Approximately 3,300 Haitians who were suppose to be brought to the United States as "screened in" remained on Guantanamo.
- March 17, 1992 Plaintiffs "screened in" on Guantanamo and organizations in New York City file a complaint in the Eastern District of New York and request emergency relief to insure that Haitians on Guantanamo have a right to consult with their counsel and to prevent their deportation.
- April 7, 1992 Judge enters order granting preliminary injunction.

Mr. CONYERS. Thank you very much.
Professor Koh.

STATEMENT OF HAROLD H. KOH, PROFESSOR, SCHOOL OF LAW, YALE UNIVERSITY, NEW HAVEN, CT, ACCOMPANIED BY SARAH CLEVELAND, STUDENT

Mr. KOH. Thank you for inviting me today, Mr. Chairman.

Mr. CONYERS. Even though you are from Yale University, I want you to know in advance that it will not be held against you in any respect whatsoever.

Mr. KOH. That is gracious of you, sir.

Mr. CONYERS. I am kidding.

Mr. KOH. I am a professor at Yale University. I am the faculty advisor of the Lowenstein International Human Rights Clinic, which is the cocounsel in the case of *Haitian Centers Council v. McNary*, which is currently on appeal before the U.S. Court of Appeal for the Second Circuit.

With me here today is one of my students, Sarah Cleveland. She is a third-year student at Yale Law School. She is a Rhodes Scholar. She is a member of our clinic, and she just returned from Guantanamo.

The Commissioner said that everyone has been invited down to Guantanamo. I know at least three people who haven't been: Mr. Kurzban, myself, and Ms. Cleveland. We had to get court orders to go down.

I would like to do three things today: First, describe our lawsuit; second, underscore the concerns that are expressed in the GAO report about administrative weaknesses in the procedures applied on Guantanamo and with regard to the Haitians; and third, to strongly challenge the assertions that have been made by the Commissioner that, "The current operation of the continued interdiction of Haitians seeking entry into the United States is not only justified, but is also humane and consistent with our international commitments and domestic law."

I am a law professor. Based upon the factual and legal findings that have been made thus far in our lawsuit, we are, unfortunately, convinced that the current operation of the program is neither humane nor lawful.

Ms. Cleveland, who has just come back from Guantanamo, and has spoken to 10 of our clients in Guantanamo, can speak about the conditions there. I will address the illegality and inhumanity of sending back to Haiti people who potentially face political persecution and death, and I would like to do it by describing the plight of 14 particular individuals who have been targeted for persecution.

Ms. Cleveland and I have a common message: That the story of this detention program is not a bureaucratic story. It is not a story of computer error and glitches and broken rules. It is a story of broken lives. It is a story with a tragically human face, of at least 54 people who had credible claims of political asylum, but who were sent back by mistake.

Moreover, it is the story of our country, 50 years after the internment of the Japanese-Americans, again running an internment camp, which a Federal district judge has now called, "a world isolated from the world and treated in a manner worse than the treat-

ment that would be afforded to a criminal defendant, defenseless against any abuse, exploitation, or neglect to which the officials at Guantanamo may subject them.”

Those are the words of Judge Sterling Johnson in the case which we brought in the Eastern District of New York.

Let me quickly explain our lawsuit. The *McNary* suit involves the fate of 3,200 refugees who are currently on Guantanamo. They have been “screened in,” in that they have been determined to have a credible fear of political persecution.

In February 1992, when Mr. Kurzban asked the Supreme Court to hear the *Baker* case, the Justice Department told the Supreme Court in their brief: “Any aliens who satisfy the threshold standard for screening in are to be brought to the United States so that they can file an application for asylum.”

The Supreme Court then refused to hear the case. The Justices didn’t uphold the program. They refused to hear the case. Five days later, the INS changed its policy in a memorandum by Mr. Rees, who was before you a moment ago, and announced that certain of the detainees would be screened for asylum on Guantanamo, with one important difference.

If they were brought to the United States, they would have procedural safeguards. They would have a lawyer at their own expense. They would have a right to appeal an adverse ruling to an immigration judge. On Guantanamo, they have none of these.

Now, we were very disturbed and so we brought a lawsuit. Nobody wants to bring a lawsuit. We have other things to do. It has cost us quite a bit of money. We brought the lawsuit on behalf of three legal services organizations and several classes, and we made several simple arguments:

First, that the first amendment of the Constitution allows lawyers to talk to their clients. Second, that people on Guantanamo who are in custody have rights to lawyers. Third, that executive officials must obey the law, and should not return people to places where they are going to be subject to political persecution. And finally, that executive officials should not discriminate against people based on their race and national origin.

On March 27, Judge Johnson, of the Eastern District of New York, accepted our position and granted a temporary restraining order against the government, requiring that the government gives lawyers access temporarily to our clients on Guantanamo based on that order, we sent a team down, which included Ms. Cleveland.

The most immediate impact of Judge Johnson’s order was that 34 people who would have been sent back after having been screened in were not sent back. Just 3 days ago, on April 6, Judge Johnson granted a preliminary injunction which reaffirmed his order. He also proceeded to make a series of detailed findings of fact. Just yesterday he denied a request for a stay from the government and found that we had a substantial likelihood of success on the merits.

The evidence that we found only confirms what the GAO has found and reported on today. INS officials on Guantanamo have conceded in depositions that they have lost through computer errors more than 2,500 files. In the end, they say over 1,000 files

have been lost. They have misidentified as "screened out" at least 54 and probably more people.

Most frightening, we learned from our own interviews of Haitian refugees arriving in Miami that, "It was common knowledge that if a boat returning to Haiti from Guantanamo was not full enough, or if the camps were becoming too full, the INS would reinterview large numbers of Haitians in order to send more people back."

Despite the defendant's earlier assurance that all people who were screened in would come to the United States for their asylum applications, 64 people have now undergone second evaluations on Guantanamo. This includes small children. These people have no right to counsel. They are incommunicado. They are subjected to essentially a different asylum process from everybody else.

Mr. Chairman, we now have a two-track system. There is the asylum process that everybody else gets, and there is the asylum process that black Haitians get. That process is separate and unequal.

Our view is that lawyers are absolutely crucial to helping Haitian refugees make out their asylum claims. The one position that the government has held to is that these people have no rights to talk to lawyers. Yet they can give no reason for this, because they are allowing onto the base piano tuners, priests, doctors, Jacques-Yves Cousteau, Benjamin Hooks, everybody except lawyers who might help them make out their claims.

Ms. Cleveland can tell you more about her experiences on Guantanamo. Let me speak to two other issues. The situation of people who are being sent back to Haiti. Mr. Becelia has said today that they have reviewed 1,200 repatriates and found no convincing evidence that they have been subject to persecution. I would like to quote from the deposition that we took of Mr. Becelia last week in Washington, DC.

Our volunteer attorney said, "Do you know how these interviews were conducted?" He said, "No, I don't specifically, beyond the description in this telegram. I don't know how they were conducted." "Do you have any idea whether military officers were present while they took place?" "No, I don't know if that was the case." "I take it you don't know who was present at the interviews beyond the description in the telegram." "No, I don't know who was present."

"I take it you don't know whether the individuals who were interviewed had any fears with regard to what they could or could not disclose to the INS interviewers." "No, I have no way of knowing."

Later on, "Do you know how other interviews were conducted?" "No, I don't." "Do you know who else other than Haitian repatriates and interviewers were present?" "No." "Do you know way or the other whether Haitian police or military officers were present at those interviews?" "Unless there is some further description of that in this telegram, which I would be glad to review, I would not have an awareness of that issue."

That is the official who has just confidently told you about 1,200 repatriates being perfectly safe. I should also point out that we have done our own calculations. Between March 4 and 13, supposedly, 309 interviews were conducted in seven regions. That meant that the people were moving, without any travel time, that

they were conducting interviews at roughly the rate of 20 minutes per interview. That is with translation.

And you might well ask, Mr. Chairman, if you had just been sent back to Haiti by someone from the U.S. Government, would you tell them the truth about what was going on with you?

Now, what about the GAO reports? We had an interesting colloquy up here a moment ago, where you were told that the GAO had learned about the 54 lost files, but it was only recently we took a deposition of an INS official, Ms. Irma Rios, in Miami.

The question was asked to her, "Was this issue ever raised with your headquarters?" The answer, "The GAO representative that screened before raised it to the headquarters." "And approximately when did that occur?" "Let me think. Somewhere in the beginning of March, the 8th and the 9th, and then again this weekend." In other words, more than a month ago. More than a month ago. And what has come of it, I am not sure.

Let me now turn to the question of specific harm to particular repatriates. In our testimony we have appended an exhibit, exhibit D, which lists the stories of 14 people who, through our own investigation in our lawsuit, we have discovered have been specifically harmed as a result of being returned to Haiti.

I should point out that Mr. Becelia says that he has found no evidence that people who are screened out have been harmed. Our clients have been screened in. That means they have a credible fear of persecution and they are particularly subject to danger.

One of our affidavits is from a man named Luma Dukens. He says, "I have fled Haiti twice. After being returned, I was attacked and beaten by the military as an example to others who may want to flee."

The most terrible story, Mr. Chairman—it is reproduced in an affidavit in our documents—is about a woman named Marie Zette. It was told to us by a Haitian political asylum applicant who we interviewed in Miami. In a sworn affidavit, this is what we were told:

Marie Zette told me that if she were sent back to Haiti she would be killed. She also told the immigration officials this fact. At the beginning of February she was called to be sent back to Haiti even though she had been screened in. She was a short girl who was round. She had long, black hair and was very beautiful.

Before she was sent back to Haiti, she sang a song to us to show us her feelings. She sang that she regretted having to go back to Haiti because she feared for her life. She was sent back to Haiti. The next day, the guards called her name to be sent to Miami. It was too late. She had already been sent away.

In mid-February, a new group of Haitians arrived at Guantanamo that contained many relatives of Marie Zette. They said she had been murdered by Macoutes immediately upon returning to Haiti. Her relatives said that the military police came at night and killed her while she slept.

Let's put this into perspective. This is not just computer records. It is not just misplaced files. This is not a "humanitarian effort beyond belief." This is only one of the 14 stories in the appendix. As lawyers and citizens, Mr. Chairman, we urge you as strongly as we can to look behind INS's numbers and look behind its bureaucratic jargon.

The time is growing very late, but we think there is still time for Congress to act and to speak out to protect these defenseless people.

And I would urge you, Mr. Chairman, to ask some questions to my colleague, Ms. Cleveland. She has stories to tell about what conditions are really like on Guantanamo.

[The prepared statement of Mr. Koh follows:]

Statement of

HAROLD HONGJU KOH

Professor of Law, Yale University

On

U.S. HUMAN RIGHTS POLICY ON HAITI

Before the

SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

COMMITTEE ON GOVERNMENT OPERATIONS

U.S. HOUSE OF REPRESENTATIVES

April 9, 1992

Testimony of Professor Harold Hongju Koh, Yale Law School,
Before the House Government Operations Committee,
Sub-Committee on Legislation and Foreign Affairs.

Thursday, April 9, 1992

- Exhibit A: Temporary Restraining Order, HCC v. McNary, March 27, 1992.
- Exhibit B: Preliminary Injunction Order, HCC v. McNary, April 6, 1992.
- Exhibit C: Testimony of Sarah Cleveland, Allard K. Lowenstein Human Rights Clinic, Yale Law School. April 9, 1992.
- Exhibit D: Memorandum: Plaintiffs' Evidence in HCC v. McNary: Harm to Forcibly Repatriated Haitians.

Mr. Chairman and members of the Subcommittee:

Thank you for inviting me here to discuss the current U.S. human rights policy toward Haiti and the current procedures being employed by the Immigration and Naturalization Service (INS) for processing the asylum claims of Haitian refugees. I am a Professor of Law at Yale Law School, specializing in International Law and the Constitution and Foreign Affairs. In my capacity as instructor of the Lowenstein International Human Rights Clinic at Yale Law School,¹ I am currently co-counsel (along with Michael Ratner of the Center for Constitutional Rights of New York, N.Y.²) for the plaintiffs in the case of Haitian Centers Council, Inc. v. McNary, Civ. No. 92-1258 (E.D.N.Y. 1992), which is currently on appeal before the United States Court of Appeals for the Second Circuit. I appear here today with Sarah H. Cleveland, a third-year Yale law student and member of our clinic, who has just returned from the Haitian detention camps at Guantanamo, who is prepared to answer questions regarding the conditions under which Haitians are currently being held there.

In my testimony, I will first describe our lawsuit; second, underscore the concerns expressed in the report submitted to you today by the General Accounting Office (GAO)

¹The Lowenstein Clinic was organized in 1991 under the auspices of the Allard K. Lowenstein International Human Rights Project, a ten-year old student-run organization that seeks to educate and inspire law students, scholars, practicing attorneys, and policymakers in the defense of international human rights. The Clinic's interest in Haiti began in 1991, when its members filed a suit under the Alien Tort Claims Act against former Haitian dictator Lt. Gen. Prosper Avril, Evans Paul, et al. v. Prosper Avril, No. 91-0399 (S.D. Fla. filed Feb. 28, 1991), seeking damages for his torture, arbitrary detention, and cruel, inhuman or degrading treatment of Haitian citizens.

²The Center for Constitutional Rights (CCR) is a tax-exempt litigation organization devoted to enforcing the U.S. Bill of Rights and the International Bill of Rights. It has been counsel of record in numerous cases involving international human rights and U.S. foreign policy, including the landmark decisions in Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) (awarding Paraguayan victims \$ 10.4 million in damages for torture by Paraguayan official); Dellums v. Bush, 752 F. Supp. 1141, 1149 (D.D.C. 1990) (declaring that "in principle, an injunction may issue at the request of Members of Congress to prevent the conduct of a war which is about to be carried on without congressional authorization . . .").

regarding the "weaknesses in the administrative procedures" being employed by the INS with regard to Haitian detainees;³ and third, strongly challenge the assertions made by Commissioner McNary of the Immigration and Naturalization Service (INS) that the "current operation involving the continued interdiction of Haitians seeking entry into the United States is not only justified, but is also humane and consistent with our international commitments and domestic law."⁴ Based upon the factual and legal findings made thus far in our lawsuit, we are convinced that the current operation of our Haitian interdiction and detention program is neither humane nor lawful.

Ms. Cleveland will address the illegality and inhumanity of the conditions currently being imposed upon ten of our clients at the detention camps in Guantanamo, from which she has just returned. I will address the illegality and inhumanity of sending Haitians back to Haiti, where they potentially face political persecution and death, by briefly describing the plight of fourteen identifiable Haitians who have been targeted for persecution upon their return to Haiti.

Our common message is that the story of the Haitian detention program is not just a bureaucratic tale of mishandled government operations. It is a story that has a tragically human face. By all accounts, this program has led to the disastrous mistaken repatriation of at least 54 Haitians who had established credible claims of political asylum. Moreover it has created the deeply troubling spectacle of our nation running an internment camp, fifty years after our disastrous internment of Japanese-Americans during World War II, in which bona fide asylum-seekers are, in the words of a federal district judge, "isolated from the world and treated in a

³Statement of Harold J. Johnson, Director, Foreign Economic Assistance Issues, National Security and International Affairs Division, U.S. General Accounting Office, regarding Refugees: U.S. Processing of Haitian Asylum Seekers, before the Subcommittee on Legislation and National Security, Committee on Government Operations, U.S. House of Representatives, April 9, 1992 ("GAO Report").

⁴Testimony of Gene McNary, Commissioner, Immigration and Naturalization Service before the Subcommittee on Legislation and National Security, Committee on Government Operations, U.S. House of Representatives, April 9, 1992 ("McNary Testimony") at 12.

manner worse than the treatment that . . . would be afforded to a criminal defendant . . . [.] defenseless against any abuse exploitation or neglect to which the officials at Guantanamo may subject them." HCC v. McNary, Opinion Granting Preliminary Injunction at 28-29 (E.D.N.Y. April 6, 1992).

I. Haitian Centers Council, Inc. v. McNary

The McNary suit involves the fate of some 3200 Haitian refugees who are currently being detained on the U.S. Naval Base at Guantanamo Bay. As you know, since last September, when a military junta toppled the democratically elected Haitian government of President Jean-Bertrand Aristide, more than 18,000 Haitians have fled from Haiti by sea, been interdicted by the U.S. Coast Guard, and interviewed or "screened" by the INS. Of that number, nearly 10,000 have been "screued-out" -- that is, found not to have credible claims of asylum and therefore forcibly returned to Haiti without further proceedings. (P.E. 50 at 7). Another 6600 or so have been "screened-in" by the INS, that is, determined after a brief interview to have a "credible" fear of political persecution if forcibly returned to Haiti. Of those 6600 "screened-in", more than half have now been brought to the United States for full-fledged asylum processing. But the remaining 3200 linger on Guantanamo in a legal limbo.

Unlike the 10,000 "screened-out" Haitian plaintiffs in the case of HRC v. Baker, 953 F.2d 1498 (11th Cir. 1992), cert. denied, __ U.S. __, 60 U.S.L.W. 3577 (Feb. 24, 1992), which Mr. Kurzban has described, these 3200 have been determined to have a credible fear of political persecution in Haiti. On February 14, 1992, when Mr. Kurzban asked the Supreme Court to hear the Baker case, the Justice Department told the Court that "any aliens who satisfy the threshold standard [for screening in] are to be brought to the United States so that they can file an application for asylum," Opp. Cert. at 3, HRC v. Baker, __ U.S. __ (1992). But only five days after the Supreme Court declined to hear the Baker case, the INS changed its policy and

announced that it would begin rescreening certain Haitian detainees on Guantanamo in what is, in essence, an asylum hearing conducted without any of the procedural safeguards normally provided asylum-seekers: most prominently, the right to have a lawyer at one's own expense and the right to appeal an adverse ruling to an immigration judge.

Based on these disturbing reports, we brought the McNary case on March 17, 1992 in the federal district court in Brooklyn, New York, seeking to prevent the U.S. government from re-screening Haitian detainees who had already been screened in on Guantanamo without respecting their right to counsel. We sued on behalf of three Haitian legal service organizations, one based in Brooklyn, who had been specifically retained by detained individuals on Guantanamo, and several classes of detained plaintiffs.⁵

We made four simple legal arguments. First, the First Amendment to our Constitution protects the rights of lawyers to talk to their clients. Second, that people involuntarily held in government custody on Guantanamo have statutory and constitutional rights to talk to their chosen lawyers before they face proceedings that may lead to the loss of their life or liberty. Third, that executive officials must act fairly and follow binding law, including the President's own orders directing that refugees have an enforceable right not to be returned to countries where they face death and political persecution. And fourth and finally, that executive officials may not discriminate against a group because of its race and national origin.

On March 27, U.S. District Judge Sterling Johnson, Jr. of the Eastern District of New York provisionally accepted our position, issuing a temporary restraining order enjoining defendants INS, the Attorney General, the Secretary of State, the Coast Guard, and the

⁵In particular, we sued on behalf of those Haitians who had been "screened-in," and found to have credible claims of asylum, those Haitians who had retained or intended to retain our service organizations as their lawyers, and the immediate relatives of those being detained on Guantanamo.

Commander of the U.S. Naval Base at Guantanamo from denying our Haitian legal service organization clients access to their 3200 screened-in Haitian clients, for the purpose of providing them legal counsel, advocacy and representation.⁶ Judge Johnson also enjoined defendants from interviewing, screening, or subjecting to exclusion or asylum proceedings any Haitian citizen currently being detained on Guantanamo. The most immediate impact of Judge Johnson's temporary restraining order was to prevent thirty-four persons from being sent back to Haiti. These 34 had been initially been screened and found to have credible claims of political asylum in this country, but had later been re-screened without lawyers present and told that they would be sent back to Haiti.

Just three days ago, on Monday, April 6, Judge Johnson granted a preliminary injunction that both reiterated and strengthened the terms of the Temporary Restraining Order.⁷ Not only did that opinion make detailed findings of fact regarding the inadequacies of the Government's detention program, PI Op. at 4-12, the judge further enjoined the INS from forcibly repatriating any Haitian detained on Guantanamo who had demonstrated a credible fear of persecution and who has been denied the opportunity to communicate with counsel. Yesterday afternoon, Judge Johnson rejected the Government's request that he stay execution of his ruling, concluding as a legal matter, that our clients had established a substantial likelihood of success on their First Amendment and right to counsel claims. Late yesterday, defendants announced that they would seek a stay and expedited appeal of the preliminary injunction from the U.S. Court of Appeals for

⁶With your permission, I would like to submit for the record Judge Johnson's opinion granting the Temporary Restraining Order ("TRO Op."), as Appendix A to this statement.

⁷With your permission, I would like to submit for the record Judge Johnson's opinion granting the Preliminary Injunction ("PI Op."), as Appendix B to this statement.

the Second Circuit.⁸

II. Weaknesses in INS Administrative Procedures

In compiling the evidence that now constitutes the exhibits in our case, we have learned that defendants have conducted the screening process in a sadly arbitrary and capricious manner. INS Asylum Officers on Guantanamo concede having lost, through computer error, more than 2500 files of previously screened persons. Plaintiffs' Exhibit in HCC v. McNary ("P.E.") 68 at 40. Furthermore, defendants concede that they have lost 1,080 records of Haitian refugees on Guantanamo, (P.E. 39 at 66, 70; Defendants' Exhibit ("D.E.") 133), including many who had been screened-in. They concede that they have mis-identified as screened-out at least 50 Haitians who had actually been screened-in. (See, e.g., P.E. 68 at 40, 63, 67-76). As a result, many refugees screened-in as having a credible fear of political persecution were repatriated to Haiti and others were almost repatriated by mistake. (P.E. 39 at 66, 70; P.E. 38 at 18; P.E. 43; P.E. 68 at 40, 63, 70-76; P.E. 54; P.E. 55; P.E. 40, 43, 46, 48, 49, 51, 52, 53, 56). Most frightening, we learned from interviewing Haitian refugees who had recently arrived in Miami that

It was common knowledge on Guantanamo that if a boat returning to Haiti was not full enough, or if the camps were becoming too full, the INS would reinterview large numbers of Haitians in order to send more people back. I know of many individuals who had already been screened-in and, based on this procedure, were screened-out and returned to Haiti.

Affirmation of Michelle J. Anderson, P.E. 6 (recounting sworn statement of Haitian refugee she had interviewed on Guantanamo).

Despite defendants' earlier assurances that all screened-in Haitian refugees would be brought to the United States for asylum processing, defendants in fact are requiring some detainees, particularly those whom they suspect have the HIV virus, to undergo a second

⁸Judge Johnson specifically reserved judgment on a number of our other legal claims. See PI Op. (App. B) at 29. Thus, regardless of the result of the Government's appeal, Judge Johnson remains free to reinstate the preliminary injunction on other legal grounds.

evaluation of their asylum claim on Guantanamo. Sixty-four such asylum interviews have already occurred on Guantanamo. (P.E. 39 at 20-21).

This policy of holding purportedly HIV-positive Haitians on Guantanamo for asylum processing was implemented in March 1992, after the HRC v. Baker litigation had ended (P.E. 1; P.E. 38 at 19-21; P.E. 50 at 40; P.E. 68 at 113; P.E. 39 at 20). This second proceeding – or "rescreening" – is identical in form and substance to an asylum proceeding in the mainland United States and is conducted by an Asylum Officer, but lacks any of the crucial accompanying statutory or regulatory safeguards.⁹

The asylum applicants on Guantanamo are not granted rights of access to counsel, to present witnesses, submit affidits, or obtain administrative and judicial review, or other rights of asylum applicants granted in the mainland United States. (P.E. 39 at 39-43, 48; P.E. 50 at 34; P.E. 68 at 81-83).

Defendants have conceded that this rescreening process is "extrastatutory," (P.E. 50 at 54), that is, implemented without any statutory authorization or rulemaking whatsoever. Moreover, our evidence shows that Public Health Service ("PHS") officials have no confidence that HIV testing on Guantanamo is reliable. (P.E. 39 at 18-19) and that defendants' medical records are inconsistent. (P.E. 43 at ¶ 15-16).

Although Congress passed the Refugee Act of 1980 with the plain intent to establish a uniform asylum process without regard to race or national origin, and to limit executive discretion to engage in discriminatory asylum determinations. See, e.g., S. Rep. No. 590, 96th Cong., 2d Sess. 20 (1980); H.R. Rep. No. 608, 96th Cong., 2d Sess. 9 (1980); 126 Cong. Rec. 4,499 (1980); 126

⁹The purpose of this proceeding is to determine whether or not the Haitian refugee has a "well-founded fear of persecution," a "finding identical to that required to grant asylum...." (P.E. 1 at 2; P.E. 50 at 36, 56; P.E. 39 at 44; P.E. 68 at 120-121). INS officers are to use "usual standards and techniques for asylum interviews." (P.E. 1 at 2; P.E. 42; P.E. 50 at 51-53; P.E. 68 at 120-121; P.E. 39 at 33-35; D.E. 136).

Cong. Rec. 4,507 (1980), it is clear that we now have a two-track asylum process, a "unique program" applied only to Haitians, (P.E. 38 at 100; P.E. 50 at 30-31) and another asylum program that applies to everyone else. This "separate but unequal" asylum process denies Haitian refugees only the rights to consult with their counsel; to submit additional evidence, including documentation, affidavits and statements of witnesses; to receive a notice of intent to deny the applicant's claim; to submit a rebuttal to such notice; and to obtain judicial review of unsuccessful asylum determinations. We know of no United States asylum program other than the one directed at Haitians in which refugees who have established a credible fear of return were not brought to the United States. (P.E. 67 at 30).

Defendants commonly refuse to inform, and/or make incomplete or incorrect representations to, Haitian detainees about their legal status and rights. (P.E. 40, 43, 45, 46, 47, 48). The named plaintiffs in this case and a large number of other Haitian detainees on Guantanamo have made repeated efforts to obtain and communicate with legal counsel, whom they view as crucial in identifying and asserting their rights. (P.E. 8, 26, 40, 41, 42, 43, 44, 45, 46, 47, 48, 53, 58, 59, 66; Walls Test. at 164-165). Furthermore, as I have already mentioned, thirty-four Haitians who had established a "credible" fear of return but who failed this second asylum process would have been sent back to Haiti, without ever having benefit of counsel, but for the temporary restraining order and now the preliminary injunction issued by Judge Johnson (P.E. 63; P.E. 39 at 11, 20-21; P.E. 40 at ¶ 1).

In our view, lawyers are absolutely crucial to helping a refugee make his or her case for asylum. A recent GAO Report found that aliens are three times as likely to succeed in receiving political asylum in exclusion proceedings and two times as likely to succeed in receiving political asylum in asylum proceedings when provided with access to counsel. (GAO Report, 1987, Appendix I). Access to counsel would assist plaintiffs in asserting successful asylum claims,

protect against arbitrary, capricious and/or negligent conduct that causes irreparable injury to plaintiffs, advise plaintiffs of their rights regarding medical testing, "voluntary" departure, any waiver of excludability hurdles, rights deriving from status of family members and other legal rights and options. Far from denying this, defendants' own asylum officers concede that attorneys would be quite useful to plaintiffs, (P.E. 69 at 141-144); that having attorneys in the interview process in the United States does not interfere with the process, and that having attorneys present during the interviews on Guantanamo Bay would also not interfere and would be feasible. (P.E. 68 at 129-130; P.E. 69 at 124-131).

III. Danger to Detainees on Guantanamo and to Repatriated Haitians

The statement of Sarah Cleveland, which is appended to this statement as Appendix C, speaks specifically to the unlawful and arbitrary treatment of the Haitians being held on Guantanamo. In her statement, Ms. Cleveland addresses the incommunicado detention of Haitian refugees, the rescreening of Haitians on Guantanamo without due process or counsel, the denial of access to medical records or counsel, the punishment and intimidation of refugees for asserting legal rights, and the pervasive chaos in the administration of the refugee program. See Statement of Sarah H. Cleveland, before the Subcommittee on Legislation and National Security, Committee on Government Operations, U.S. House of Representatives, April 9, 1992, Appendix C to this testimony ("Cleveland Testimony").

Equally disturbing, as a result of arbitrary and capricious actions of defendants described above, (see, e.g., P.E. 68 at 71-76), some 54 Haitians who had been screened-in as having a credible fear were forcibly repatriated to Haiti where they face persecution and even death. Contrary to the INS and State Department claims, our evidence clearly shows that repatriated Haitians face political persecution and even death on their return. (P.E. 28, 36, 52). Even screened-out Haitians experience persecution on return. (P.E. 6). Many repatriated Haitians fled

Haiti again and were screened-in by the INS after having already been forcibly returned once before. (P.E. 50 at 66-67). The INS General Counsel himself testified that INS officers found these reports of persecution to be "credible," and that he found them to be "quite impressive." (P.E. 50 at 66-67).

In Appendix D to this statement, I have attached the stories of some fourteen identifiable Haitians who have been persecuted or threatened upon repatriation from Guantanamo. One Haitian refugee, Luma Dukens, recounts that "I have fled Haiti twice... After being returned, I was attacked and beaten by the military as an example to others who may want to flee." (P.E. 28). Perhaps the most terrible story is the one told about Marie Zette by a Haitian political asylum applicant whom we interviewed in Miami. In a sworn affidavit, we were told:

[Marie Zette] told me that if she was sent back to Haiti she would be killed. She also told the immigration officials this fact. At the beginning of February, she was called to be sent back to Haiti, even though she had been screened in. She was a short girl, who was round. She had long black hair and was very beautiful. Before she was sent back to Haiti, she sang a song to us to show us her feelings. She sang . . . that she regretted having to go back to Haiti because . . . she feared for her life. She was sent back to Haiti. The next day, the guards called her name to be sent to Miami. It was too late; she had already been sent away. In mid-February, a new group of Haitians arrived at Guantanamo . . . [that] contained many relatives of Marie Zette. They said that she had been murdered by Macoutes [Haitian military police] immediately upon returning to Haiti. The relatives said that the military police came at night and killed her while she slept and that is why they fled.

Affirmation of Marcus Antoine, P.E. 52 at 2-3 (emphasis added)

Members of the Subcommittee, we simply cannot afford to be responsible for any more cases like Marie Zette's. Unless this Congress acts, and soon, to grant the Haitian detainees temporary protected status, the human tragedy on Guantanamo and Haiti will continue. As lawyers and citizens, we urge you, as strongly as we can, to look behind the numbers and the bureaucratic jargon that we have just heard from the Government to stare at the tragic human face of our current Haiti policy. Although the time is growing very late, there is still time for the

Congress to act, and to speak out, to protect these defenseless people.

Thank you very much. Ms. Cleveland and I now stand ready to answer any questions that you might have about our findings.

Johnson, District Judge:

This cause of action arises on the application of the following (hereinafter: "the Plaintiffs"): Haitian Centers Council, Inc., National Coalition for Haitian Refugees, Inc., Immigration Law Clinic of the Jerome N. Frank Legal Services Organization, (the "Haitian Service Organizations"), Dr. Frantz Guerrier, Pascal Henry, Lauriton Guneaau, Medilieu Sorel St. Fleur, Diau Renel, Milot Baptiste, Jean Doe, and Roges Noel on behalf of themselves and all others similarly situated (the "Screened In Plaintiffs")¹; A. Iris Vilnor on behalf of herself and all others similarly situated (the "Screened Out Plaintiffs"); and Mireille Berger, Yross Pierre and Mathieu Noel on behalf of themselves and all other similarly situated (the "Immediate Relative Plaintiffs") for a Temporary Restraining Order pursuant to F.R.C.P. 65. The defendants in this action

¹ Throughout this opinion, reference will be made to so-called "screened in" and "screened out" Haitian aliens. For purposes of this opinion, "screened in" individuals include Haitian aliens who satisfy the threshold standard for refugee status and are to be brought to the United States so that they may file an application for asylum under the Immigration and Nationality Act ("INA") and "screened out" individuals include Haitian aliens who do not meet the threshold standard for refugee status and who will be repatriated to Haiti.

are Gene McNary, Commissioner, Immigration and Naturalization Service; William P. Barr, Attorney General; Immigration and Naturalization Service; James Baker, III, Secretary of State; Rear Admiral Robert Kranek and Admiral Kime, Commandants, United States Coast Guard; and Commander, U.S. Naval Base, Guantanamo Bay (collectively, the "Defendants" or the "Government"). Plaintiffs seek to restrain the Defendants from:

1) denying plaintiff Haitian Service Organizations access to their clients for the purpose of providing such clients legal counsel, advocacy, and representation;

2) interviewing, screening, or subjecting to exclusion or asylum proceedings any Haitian citizen currently being detained on Guantanamo, on Coast Guard cutters, or in territory subject to United States jurisdiction who is being denied or has been denied his or her right to communicate with counsel; and

3) returning to Haiti any Haitian citizen currently detained at Guantanamo, on the Coast Guard cutters, or in territory subject to U.S. jurisdiction, who has been "screened-out" without the benefit or

advice of counsel.

BACKGROUND

In December 1990, the country of Haiti held its first fully democratic elections in over 200 years and elected Jean Bertrand Aristide as President. On September 30, 1991, President Aristide was overthrown in a military coup and thousands of Haitians attempted to escape the country's upheaval by fleeing onto the high seas in boats. The United States Coast Guard began interdicting an increasing number of vessels carrying Haitian refugees on the open seas.³ The United States temporarily suspended its program of repatriation of interdicted Haitians. On November 18, 1991, the United States announced it had begun the

³ On September 23, 1981, Haiti and the United States entered into a cooperative agreement (the "Agreement") to prevent the illegal migration of aliens without visas from entering the United States. Interdiction Agreement, Sept. 23, 1981, United States-Haiti, T.I.A.S. No. 10241. Under the Agreement, the United States may board Haitian flag vessels on the high seas for the purpose of making inquiries relating to the condition and destination of the vessels and the status on board. If a violation of United States or Haitian law is ascertained, the vessel and its passengers may be returned to Haiti. The Agreement also explicitly provides that it is "understood that . . . the United States does not intend to return to Haiti any Haitian migrants whom the United States authorities determine to qualify for refugee status."

forced return of refugees who were "screened out" by the Immigration and Naturalization Service ("INS") had determined not to be entitled to political asylum.³

a. The Baker Litigation

The following day, the Haitian Refugee Center (hereinafter "HRC") and individual Haitian refugees (hereinafter "Named Haitian Plaintiffs") on behalf of themselves and all others similarly situated filed a complaint (Haitian Refugee Center v. Baker, Dkt. No. CV-91-2635, S.D. Fla.) (hereinafter "Baker") for Declaratory Judgment and Injunctive Relief, and an Application for Temporary Restraining Order (the "First TRO") in the United States District Court for the Southern District of Florida. The defendants named therein were James Baker, III, Secretary of State; Rear

³ According to the Defendants, as of March 19, 1992, the disposition of the interdiction and repatriation program is as follows:

- 16,464 Haitians have been interdicted
- 9,542 Haitians have been repatriated to Port-au-Prince
- 3,446 Haitians are ashore at Guantanamo Bay Naval Base
- 2,822 Haitians have been brought to the United States to pursue asylum claims
- 233 Haitians have been transported to third countries
- 0 Haitians are aboard Coast Guard cutters.

C

Admiral Robert Kramer and Admiral Kier, Commandants, United States Coast Guard; Gene McNary, Commissioner, Immigration and Naturalization Service; The United States Department of Justice; Immigration and Naturalization Service; and The United States of America.

Following a ~~ex parte~~ hearing on November 19, 1991 the Florida district court issued the First TRO which directed the defendants to restrain "from continuing to repatriate Haitians currently on board U.S.-flagged vessels and Haitians currently being held on land under United States' control and at Guantanamo Bay, Cuba." On December 3, 1991, the district court issued an order granting preliminary injunctive relief specifically enjoining the defendants from "forcefully repatriating the individual plaintiffs or class members in their custody either until the merits of the underlying action are resolved or until defendants implement and follow procedural safeguards adequate to ensure that Haitians with bona fide claims of political persecution are not forcefully returned to Haiti."⁶

⁶ Haitian Refugee Center v. Baker, No. 91 CV 2635 Order Granting Preliminary Injunctive Relief and Supporting Memorandum Opinion (S.D.Fla. December 3,

The court found that the plaintiffs were likely to succeed on the merits of two judicially enforceable claims: 1) ERC's First Amendment right of association and to counsel; and 2) the Named Haitian Plaintiffs' right of non-retoulement⁵ which arises under Article 33 of the 1967 United Nations Protocol Relating to the Status of Refugees. The court also issued an order stating the action could be maintained as a class action without holding a hearing or altering the class definition. In their Memorandum in Support of Motion for Class Action Certification ("ERC Mem."), the Baker plaintiffs defined the class as follows:

The individual plaintiffs are all Haitian

 1991).

⁵ Article 33.1 of the Convention provides:

no contracting State shall expel or return ('rerouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

T.I.A.S. No. 6577 (1968).

emigres who were intercepted by the United States Coast Guard pursuant to a "program of interdiction" that permits interception and repatriation of undocumented aliens. They are presently being held on Coast Guard cutters and at the U.S. Naval base in Guantanamo. They have all been 'screened out' and thus are injured by the failure of the INS to observe rules and procedures designed to ensure that no person who is a political refugee will be returned without his consent. *Id.* at 2 (emphasis added).

In other words, the class of plaintiffs involved in they Baker litigation were limited to individuals who had already been screened out by INS.

The Eleventh Circuit dissolved this injunction on December 17, 1991 ("Baker App. I") and remanded the case with instructions that the Article 33 claim be dismissed on the merits. In Baker App. I, the Court of Appeals found that 1) the injunction was overbroad; 2) the relief granted did not address the right of access asserted by the Haitian Refugee Center; and 3) Article 33 of the 1976 United Nations Protocol Relating to Status of Refugees is not self-executing, and thus provides no enforceable rights to Haitians who had not reached United States territory. Haitian Refugee Center v. Baker, 949 F.2d 1109 (11th Cir. 1991).

The district court subsequently issued another TRO (the "Second TRO") on the plaintiffs' claim that

defendants failed to follow the procedural requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. § 555(b), 557, 558 and 70^r. On December 19, 1991, the Eleventh Circuit deemed the Second TRO a preliminary injunction and stayed it pending appeal on the ground that it was likely that the government would prevail on the merits of the APA claim ("Baker App. II").⁶

The following day, the district court entered a preliminary injunction ordering defendants to grant plaintiffs' lawyers access to the interdicted class members. On December 20, 1991, the court entered a second preliminary injunction on the ground that the plaintiffs were likely to succeed on the merits of their APA claim and simultaneously stayed its enforcement pursuant to the Eleventh Circuit's decision in Baker App. II.

The Eleventh Circuit Court of Appeals issued a (2-1) per curiam opinion on February 4, 1992 ("Baker App. III") reversing the District Court's injunction on First Amendment and APA grounds, vacating all District Court orders, and remanding the case with instructions

⁶ Haitian Refugee Center v. Baker, 950 F.2d 685 (11th Cir. 1991) ("Baker App. II").

to dismiss because the complaint failed to state a claim upon which relief could be granted.⁷ The plaintiffs filed a petition for a writ of certiorari and an accompanying application for a stay of the Eleventh Circuit's mandate in Baker App. III. On February 24, 1992, the Supreme Court denied certiorari and petitioners' application for a stay of the Baker App. III mandate. Haitian Refugee Center v. Baker, 60 U.S.L.W. 2513 (1992).

Five days after the Supreme Court denied plaintiffs' petition for certiorari in Baker App. III, the General Counsel of the INS, Grover Joseph Reas, circulated a memorandum setting forth policy to interview "any person 'screened in' as a possible refugee who has been determined to have a communicable disease that is not curable . . . to determine whether he or she is a refugee." On March 2, 1992, six

⁷ The Court of Appeals ruled that aliens who had been interdicted on the high seas and had not presented themselves at United States' borders had no right to judicial review under the Administrative Procedure Act; 2) the executive order providing for interdiction of aliens did not create a private right of action in favor of aliens improperly returned; and 3) Haitian Refugee Center had no First Amendment right to access to aliens lawfully interdicted and detained. Haitian Refugee Center v. Baker, 953 F.2d. 1498 (11th Cir. 1992) ("Baker App. III").

Screened In Plaintiffs contacted one of the Haitian Service Organizations seeking legal assistance. Nine days later, counsel to the Haitian Service Organizations wrote to the Commissioner of the INS and the Commander of the Guantanamo Naval Base, requesting immediate access to their clients on Guantanamo Bay and Coast Guard cutters off Guantanamo.⁸ On or about March 10, 1992, approximately 20 asylum officers arrived at Guantanamo to decide the asylum claims of some of the "screened in" Haitians who have been denied access to counsel and who are now members of the plaintiff class in the instant action.

b. The Present Action

On March 17, 1992, the plaintiffs filed an order to show cause with supporting affirmations as an "emergency matter" on this court's Miscellaneous docket which was subsequently referred to the Civil docket and assigned, by random selection, to this court. That same afternoon, this court heard oral argument from both plaintiffs' and defendants' counsel on plaintiffs'

⁸ According to the plaintiffs, the Haitian Service Organizations have yet to receive a response. See discussion infra.

application for a temporary restraining order (the "TRO") and their demand for expedited discovery. The following morning, this court heard more oral argument and the plaintiffs filed a complaint seeking declaratory and injunctive relief. During oral argument, the defendants asserted that plaintiffs were wholly precluded from bringing this suit by the prior litigation in *Baker*.

This court took the matter under advisement and requested that the parties brief certain issues related to the TRO. The Defendants filed their Memorandum in Opposition to Plaintiffs' Motion for a Temporary Restraining Order, a Motion to Dismiss pursuant to F.R.C.P. 12(b)(6) for failure to state a claim, and a Motion for Rule 11 Sanctions on March 20, 1992.⁹ Plaintiffs filed reply papers on March 23, 1992. After reviewing the papers, the court finds that the plaintiffs' papers raise sufficient questions of law and fact to conclude that the *Baker* litigation does not

⁹ For the purposes of this TRO, the court will not address Defendants' Motion to Dismiss and Motion for Rule 11 sanctions as they are premature. In the event that Plaintiffs prevail in the preliminary injunction hearing, the court will then address the merits of these motions by the Defendants.

entirely preclude the present action. As set forth below, the court finds that some of the plaintiffs meet the standards for the immediate issuance of a TRO.

DISCUSSION

a. Res Judicata

I. New Parties

The doctrine of res judicata bars relitigation of any claim between two parties where a court has previously entered a final judgment on the merits.

Allen v. McCurry, 449 U.S. 90 (1980); Milltex Industries Corp. v. Jacquard Lace Co., Ltd., 922 F.2d 164 (2d Cir. 1991). Where the subsequent litigation involves new parties and new claims, the action is not barred by res judicata. Nonetheless, the doctrine of collateral estoppel precludes litigation of any issue of law or fact that was necessary to the court's judgment in a prior action involving the same party.

Allen v. McCurry, 449 U.S. at 94.

Based on my understanding of the complaint, plaintiff A. Iris Vilnor, who sues on behalf of herself and all others similarly situated, is seeking relief for herself and other Haitians who were "scrambled out"

prior to the Baker litigation and who are bound by its outcome. As the complaint's description of this class fails to state whether these individuals were ever screened in, it appears that these class members are not new parties.¹⁰ Thus, Baker precludes their claims herein.

Of the remaining plaintiffs in the present action, all of the Haitian Service Organizations are new and two of the three plaintiff classes are new parties. The immediate relatives of "screened in" Haitians and all those similarly situated make up an entirely new plaintiff class which was not a party to the Baker litigation. In addition, the Haitian plaintiffs in the present action consist of a new "screened in" class of refugees who were not included in the Baker class. Finally, the Haitian Service Organizations in this action differ from the plaintiff organization (Haitian

¹⁰ If Plaintiffs are able to establish at the preliminary injunction hearing that this class includes Haitians who were "screened in" prior to and during the Baker litigation and therefore were not parties to Baker, and since that time have been "screened out," then this court will reconsider its initial conclusion that Baker bars them from litigating their claims in this action.

Refugee Center) in Baker.¹¹ Therefore, it appears that res judicata is inapplicable to the Haitian Service Organizations, the Screened In Plaintiffs and the Immediate Relative Plaintiffs.

II. Subsequent and Changed Conduct

Res judicata is also inapplicable where neither conduct complained of nor the claim had not arisen at the time of the first suit. Prime Management Co., Inc. v. Steingard, 904 F.2d 811 (2d Cir. 1990); N.L.R.B. v. United Technologies Corp., 706 F.2d 1254 (2d Cir. 1983); see generally Wright, Miller & Cooper, 16 Federal Practice and Procedure § 4409 (West 1981). That certainly appears to be true in present action. Plaintiffs' complaint is based upon new circumstances or conduct that occurred after the Baker litigation and it is such conduct that gives rise to a new cause of action. Specifically, the present complaint alleges

¹¹ The government argues that privity should bar the Haitian Service Organizations from bringing this action. On the face of the complaint, this court fails to see any privity relationship or anything which conclusively establishes the existence of privity. If the Government is able to raise an issue of fact as to privity at the hearing on the preliminary injunction, this court will resolve this issue at that time.

that during the Baker litigation the defendants represented:

Under current practice, any aliens who satisfy the threshold standard are to be brought to the United States so that they can file an application for asylum under Section 208.02 of the Immigration and Nationality Act (INA), 80 SI sec. 135(a). These 'screened in' individuals then have the opportunity for a full adjudicatory determination of whether they satisfy the statutory standard of being a 'refugee' and otherwise qualify for the discretionary relief of asylum. Complaint ¶ 34(f) (citing Opposition to Certiorari, Baker App. III, at 3.).

Five days after the Supreme Court denied certiorari, the INS began implementing procedures to interview or screen individuals who had been "screened in."

Plaintiffs allege that the Screened In Plaintiffs contacted the Haitian Service Organizations seeking legal assistance on March 2, 1992. Plaintiffs learned on March 10th that asylum officers arrived in Guantanamo to begin adjudicating asylum claims of the some of the "screened in." The next day, counsel to the Haitian Service Organizations wrote to defendant McFary and the Commanding Officer of the U.S. Naval Air Station, Guantanamo Bay, requesting access to the Screened In Plaintiffs and the Screened Out Plaintiffs by March 16, 1992. To date, Plaintiffs' counsel has

received no response.

Plaintiffs allege that the Government is re-screening and adjudicating asylum claims not only for HIV positive refugees as the government contends but many if not all the "screened in" Haitians on Guantanamo. These re-screenings and adjudications are allegedly being conducted without providing the refugees the opportunity to obtain and communicate with counsel. Presuming the complaint true for present purposes -- specifically, that the Government's conduct began subsequent to the Bakur litigation -- it appears that this conduct gives rise to new claims, making res judicata inapplicable.

b. Issuance of a Temporary Restraining Order

A court may issue an temporary restraining order upon a showing of irreparable harm and for the purpose of preserving the status quo long enough to hold a hearing. Warner Bros. Inc. v. Dan Rim Trading Inc., 877 F.2d 1120 (2d Cir. 1989), citing Grandy Goods Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423 (1974).

Here, the plaintiffs have made a showing of

irreparable harm by a preponderance of the evidence. According to the plaintiffs, aliens are three times more likely to receive asylum in an exclusion or deportation hearing, and twice as likely to succeed in an affirmative asylum claim when represented by counsel. If the Screened In Plaintiffs on Guantanamo are not afforded asylum, are "screened out" and are ultimately repatriated to Haiti, they face irreparable injury to life and liberty.

Since the military overthrow of President Jean Bertrand Aristide on September 30, 1991, reportedly over fifteen hundred Haitians, many of them supporters of Aristide, have been killed, tortured, or subjected to violence and the destruction of their property because of their political beliefs. Hundreds of people have been detained without warrant or executed extrajudicially. Thousands of people have been forced into hiding.

There are reports that Haitians who have been repatriated since November 1991 are interviewed, fingerprinted and photographed upon their arrival in Port-au-Prince. Apparently, over 200 Haitians who were repatriated from Guantanamo have been imprisoned. The

are approximately forty repatriated Haitians who have fled for a second time (also known as "Double-Backers") and are currently being detained on Guantanamo. The Double-Backers lend further credence to reports of the widespread violence that is occurring. *See, Some Haitians Assert Abuse Forced Second Flight*, N. Y. Times, Feb. 10, 1992 at A1.¹²

¹² Although the court believes that the only factor that must be satisfied for a TRO is irreparable harm, *see* F.R.Civ.P. 65(b), the court notes that one district court has applied a more stringent standard when a TRO is issued on notice: 1) a showing of irreparable harm and 2) sufficiently serious questions going to the merits making them fair ground for litigation and balance of hardship tipping in favor of the moving party. *See Binchester City School District v. Borgna*, No. 90 CV 1360, 1991 WL 29985 at *4 (N.D.N.Y. March 6, 1991). This court finds no Second Circuit or Supreme Court precedent for the application of this higher standard to this TRO issued on notice.

Were this court obligated to inquire into the second factor, however, it finds that the second prong of such standard has been satisfied. Specifically, although this TRO may increase the government's financial burden, when this cost is balance against the irreparable harm to life and liberty the plaintiffs may face if they lose their bid for asylum and are repatriated, the court concludes that the balance of hardships tip in favor of the plaintiffs. Finally, as to any potential "magnet effect," I find that, at this time, the relief afforded herein is so temporary in nature and narrowly drawn that it should not encourage more Haitians to take to the high seas. In addition, as is discussed more fully in the text above, the court also finds that there are serious questions going to the merits to make them fair ground for litigation.

Given that at a preliminary injunction hearing the Plaintiffs are likely to prove their assertions that there are new parties and/or new claims in the instant action, the merits of this action will need to be addressed. Serious questions going to such merits are raised by the papers and oral argument so far presented to this court. In particular, I am quite disturbed that the Government asserts that the court lacks the power to restrain conduct by United States officials that is arbitrary, capricious and perhaps even cruel. (See Hearing Transcript at p.39) when such conduct occurs on territory that is subject to United States jurisdiction.¹³ Worse yet, the Government asserts that this court must sit mute when Congress mandated:

In any exclusion or deportation proceedings before a special inquiry officer..., the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.

8 U.S.C.A. §1362. Additionally, INS's regulations specifically provides that an alien "shall be advised of his right to representation by counsel of his choice

¹³ Guantanamo Bay, Cuba is subject to United States jurisdiction. See Treaty Between the United States of America and Cuba, Feb 16, 1903.

at no expense to the Government." 8 C.F.R. §242.1(c) (1990). In light of the foregoing, serious issues are raised which warrant the issuance of the TRO herein granted and, moreover, a fuller exploration of the merits of this action at a preliminary injunction hearing.

c. Security

Defendants demands that plaintiffs to post a \$10,000,000 bond as security. In light of the Government's failure to substantiate its demand for a \$10 million bond, the plaintiffs' indigence, and the important questions raised in this case, the court will exercise its discretion and waive the bond. See United States v. Bedford Associates, 618 F.2d 904, 916-17 n. 23 (2d Cir. 1980).

CONCLUSION

For the foregoing reasons, it is hereby:

ORDERED, that sufficient reason having been shown therefore, pending the hearing for the plaintiffs' application for a preliminary injunction, pursuant to Federal Rule 65, defendants are temporarily restrained

and enjoined from:

a) denying plaintiff service organizations access to their clients for the purpose of providing them legal counsel, advocacy, and representation;

b) interviewing, screening, or subjecting to exclusion or asylum proceedings any Haitian citizen currently being detained on Guantanamo, or in any other territory subject to U.S. jurisdiction (i) who has been screened in or who was screened in prior to the Baker litigation and has since been screened out and (ii) who is being denied or has been denied his or her right to communicate with counsel; and it is further

ORDERED that expedited discovery be granted, thereby in accordance with the following scheduling order:

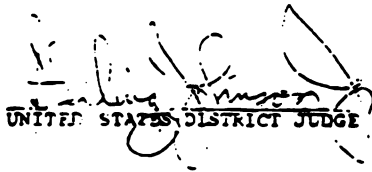
(i) defendants' must produce documents for inspection and copying on or before March 31, 1992; and

(ii) plaintiffs are granted leave to serve and depose Defendants on or before April 1, 1992 at 9:00 a.m.; and it is further

ORDERED, that the defendants or their attorneys show cause before The Honorable Starling Johnson, Jr., United States District Judge, at the United States

Courthouse in the Eastern District of New York, 225
Cadman Plaza, Brooklyn, New York, in Courtroom 14 at
9:00 a.m. on April 1, 1992, why an order should not be
entered granting Plaintiffs' request for Preliminary
Injunction pursuant to Federal Rule of Civil Procedure
65 thereby in accordance with the terms of the TRO
issued herein or as otherwise may be deemed just and
proper.

So ordered.



UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York
March 27, 1992

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

HAITIAN CENTERS COUNCIL, INC., NATIONAL :
 COALITION FOR HAITIAN REFUGEES, INC., :
 IMMIGRATION LAW CLINIC OF THE JEROME M. :
 FRANK LEGAL SERVICES ORGANIZATION, OF :
 NEW HAVEN CONNECTICUT; DR. FRANTZ :
 GUERRIER, PASCAL HENRY, LAURITON GUNEAU, : MEMORANDUM
 MEDILIEU SOREL ST. FLEUR, DIEU RENEL, : AND ORDER
 MILOT BAPTISTE, JEAN DOE, AND ROGES NOEL :
 ON BEHALF OF THEMSELVES AND ALL OTHER : 92 CV 1256
 SIMILARLY SITUATED; A. IRIS VILNOR ON :
 BEHALF OF HERSELF AND ALL OTHERS :
 SIMILARLY SITUATED; MIREILLE BERGER, :
 YVROSE PIERRE AND MATHIEU NOEL ON BEHALF :
 OF THEMSELVES AND ALL OTHERS SIMILARLY :
 SITUATED, :

Plaintiff, :

- against - :

GENE McNARY, COMMISSIONER, IMMIGRATION :
 AND NATURALIZATION SERVICE, WILLIAM P. :
 BARR, ATTORNEY GENERAL; IMMIGRATION AND :
 NATURALIZATION SERVICE; JAMES BAKER, III, :
 SECRETARY OF STATE; REAR ADMIRAL ROBERT :
 KRAMEK AND ADMIRAL KIME, COMMANDANTS, :
 UNITED STATES COAST GUARD; AND COMMANDER, :
 U.S. NAVAL BASE, GUANTANAMO BAY, :

Defendant. :

-----X
A P P E A R A N C E S :

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3

LAURI STEVEN FILPPU
Deputy Director
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Washington, D.C. 20044

Johnson, District Judge:

I. FINDINGS OF FACT

1. The defendants in this action are Gene McNary, Commissioner, Immigration and Naturalization Service; William P. Barr, Attorney General; Immigration and Naturalization Service; James Baker, III, Secretary of State; Rear Admiral Robert Kramek and Admiral Kine, Commandants, United States Coast Guard; and Commander, U.S. Naval Base, Guantanamo Bay (the "Government").

2. The plaintiffs are the Haitian Centers Council, Inc., the National Coalition for Haitian Refugees, Inc., the Immigration Law Clinic of the Jerome N. Frank Legal Services Organization ("Haitian Service Organisations"); Dr. Frantz Guerrier, Pascal Henry, Lauriton Guneau, Medilieu Sorel St. Fleur, Dieu Ranel, Milot Baptiste, Jean Doe, and Roges Noel on behalf of themselves and all others similarly situated ("Screened In Plaintiffs"); A. Iris Vilnor on behalf of herself and all others similarly situated ("Screened Out Plaintiffs"); and Mireille Berger, Yrose Pierre and Mathieu Noel on behalf of themselves and all others similarly situated ("Immediate Relative Plaintiffs").

3. The Haitian Service Organizations were neither

parties to the Haitian Refugee Center v. Baker ("Baker") litigation nor privies of the Haitian Refugee Center.¹ The Immediate Relative Plaintiffs were not parties to the Baker litigation.

4. On September 29, 1981, President Ronald Reagan ordered the Secretary of State "to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea." Executive Order No. 12324, 46 F.R. 48109 (1981) reprinted in 8 U.S.C.A. § 1182 note (1982) ("Executive Order").

5. Under the cooperative agreement (the "Agreement") entered into by the United States and Haiti, the United States may board Haitian flagged vessels on the high seas for the purpose of making inquiries relating to the condition and destination of the vessel and the status of those on board. Interdiction Agreement, Sept. 23, 1981, United States-Haiti, T.I.A.S. No. 10241. If a violation of United

¹ For a detailed discussion of the Baker litigation, see Haitian Centers Council, Inc. v. McNary, et. al., No. 92-1258, Memorandum and Order dated March 27, 1992.

States or Haitian law is ascertained, the vessel and its passengers may be returned to Haiti. The Agreement also explicitly provides that it is "understood that . . . the United States does not intend to return to Haiti any Haitian migrants whom the United States authorities determine to qualify for refugee status."

6. On September 30, 1991, President Jean Bertrand Aristide was overthrown in a military coup. In the wake of the overthrow, hundreds of Haitians have been killed, tortured, detained without a warrant, or subjected to violence and the destruction of their property because of their political beliefs. Thousands have been forced into hiding. Plaintiffs' Exhibit ("Pl. Ex.") 30.

7. To escape the country's political upheaval, thousands of Haitians began to flee onto the high seas. The United States Coast Guard began interdicting an increasing number of vessels carrying Haitian aliens.

8. As of March 19, 1992, the United States Coast Guard has interdicted 16,464 Haitians and has repatriated 9,542 Haitians to Port-au-Prince.

9. The United States Naval Base at Guantanamo Bay, Cuba is subject to a lease agreement between the

United States and Cuba which states that:

during the period of occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas.

Agreement for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations. February 16, 1903.

10. The U.S. Naval Base at Guantanamo is a "relatively open base" to which non-military personnel such as military dependents, foreign nationals, contractor employees providing support services, civilian government employees are allowed access. ("Pl.Ex.") 38 at 89-91. The facilities include schools, bars, restaurants, a McDonalds, and a Baskin-Robbins.

11. The United States Coast Guard take Haitian aliens who are interdicted on the high seas into custody and transport them to Guantanamo where they are held incommunicado. Approximately 3,300 Haitian aliens are currently in the custody of the United States at Guantanamo. The Haitians live in camps surrounded by razor barbed wire fences. Haitian detainees who are accused of committing an "infraction" are placed into a

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separate camp known as "Camp 7." No detainees in custody is free to go to any country other than Haiti even at their own expense. (Preliminary Injunction Hearing Transcript, "P.I." Transcript, at 165. Nor are they permitted to make telephone calls. Although, the military has provided the Haitian aliens with various services including schools, medical care and religious services, it has denied them access to legal services.

12. Under the interdiction program, INS asylum officers at some point interview interdicted Haitians to determine whether they have a "credible" fear of political persecution if returned to Haiti. Those found to have a "credible" fear are screened in. Those found not to have a "credible" fear are screened out. Haitians who are screened in are to be brought to the United States so that they may pursue asylum claims. To date approximately 2,800 Haitians have been brought to the United States. Haitians who are screened out are repatriated to Haiti.

13. During the Baker litigation, the United States government represented that:

Under current practice, any aliens who satisfy the threshold standard are to be

brought to the United States so that they can file an application for asylum under Section 208.02 of the Immigration and Nationality Act (INA), 80 SL sec.ILJ8(a). These 'screened in' individuals then have the opportunity for a full adjudicatory determination of whether they satisfy the statutory standard of being a 'refugee' and otherwise qualify for the discretionary relief of asylum.

Compliant § 34(f).

14. Five days after the Supreme Court denied certiorari in Haitian Refugee Center v. Baker, 60 U.S.L.W. 2513 (1992) the Government changed this practice. On February 29, 1992, the General Counsel of the INS, Grover Joseph Rees, circulated a memorandum setting forth policy to conduct second interviews of all screened in Haitians who have been found to have a communicable disease.

15. The Government requires that all Haitian aliens who have been screened in by INS asylum officers to undergo medical testing to determine whether they carry the HIV virus.

16. Approximately 200-400 Haitian aliens are suspected of carrying the HIV virus. Screened in Haitians who test positive for the HIV virus must undergo a second INS interview to determine whether they have a "well-founded" fear of political

persecution if returned to Haiti. Approximately 200-400 Haitian aliens are suspected of carrying the HIV virus.

17. According to INS policy, the second interviews are intended to be "identical in form and substance, or as nearly so possible, to those conducted by asylum officers to determine whether asylum should be granted to an applicant already in the United States." Pl. Ex. 1.

18. The INS has directed asylum officers to use the usual standards and techniques for asylum interviews as set forth in the INS procedures and operations manuals.

19. The "well-founded" fear standard used by INS asylum officers when conducting second interviews of screened in Haitians is identical to that required to grant asylum or refugee status to an individual physically present in the mainland United States.

20. While asylum applicants in the United States may have attorneys present during their asylum interviews, asylum applicants being held in custody on Guantanamo are not permitted to have access to an attorney during their second INS interview.

21. When INS began conducting second asylum interviews, the Haitian aliens including the Screened In Plaintiffs began seeking the assistance of counsel. P.I. Transcript at 159, 164-5.

22. By INS officials' own admission, the presence of attorneys during asylum interviews on Guantanamo would be useful, feasible, and would not interfere with the interview process. (Pl. Ex. 68 at 129-30; Pl. ex. 69 at 124-131).

23. INS asylum officers have conducted sixty-four second asylum interviews. Thirty-four Haitians who had established a credible fear of persecution, tested positive for the HIV virus and failed to establish a well founded fear of persecution if returned to Haiti during a second INS interview would have been repatriated absent the temporary restraining order ("TRO") issued by this court on March 27, 1992.

24. Repatriated Haitians face political persecution and even death on their return. Approximately forty repatriated Haitians (also known as "Double Backers") have fled Haiti for a second time and have been screened in by the INS.

25. The Government has managed to accommodate the

requests of congressmen, clergymen, church groups, and members of the press seeking access to the Haitians being held in custody on Guantanamo.

26. The Government has denied attorneys, the Haitian Service Organizations, and the Immediate Relative Plaintiffs access to the Haitians detained at Guantanamo apart from the access ordered by the TRO issued by this court and the Florida district court in Baker.

27. INS officials on Guantanamo lost approximately 1,080 records of Haitian aliens who consequently had to be recreated.

28. The evidence presented by the Government is inconclusive as to any "magnet effect" resulting from the issuance of this court's TRO.

II. CONCLUSIONS OF LAW

A. RES JUDICATA

1. The doctrine of res judicata bars relitigation of any claim between two parties where a court has previously entered a final judgment on the merits. Allen v. McGurry, 449 U.S. 90 (1980); Milltex Industries Corp. v. Jacquard Lace Co. Ltd., 922 F.2d

164 (2d Cir. 1991). Where the subsequent litigation involves new parties and new claims, the action is not barred by res judicata.

2. The Government asserts that the outcome in the Baker litigation binds the Screened In Plaintiffs and bars them from litigating this action. If the Government's argument that the Baker class were taken to its logical conclusion, all Haitians who have been interdicted, or who will ever be interdicted by the United States Coast Guard are forever bound by Baker. I find it inconceivable that the Florida district court intended to bind all interdicted Haitians forever when it simply maintained the class for the purposes of issuing the preliminary injunction and permitting the action to proceed. The district court granted plaintiffs' motion for class certification without holding a hearing or amending the class definition in any way. The Haitians received neither notice nor an opportunity to opt out.

3. Where the class definition is so overbroad that it fails to satisfy due process, it cannot have a res judicata effect. See Finnan v. L.F. Rothschild & Co., Inc., 726 F. Supp. 460 (S.D.N.Y. 1989) (finding

that the plaintiffs suggested an "overbroad time span" for class and modifying the class accordingly); see generally Wright, Miller & Cooper, 7B Federal Practice and Procedure § 1789 (West 1981). It seems particularly unfair to bind the Screened In Plaintiffs by the outcome in Baker when their cause of action arises from Government conduct occurring after the conclusion of the Baker litigation.

4. The class of Haitian plaintiffs in Baker were "screened out" according to plaintiffs' description in their Memorandum in Support of Motion for Class Action Certification ("HRC Mem.")² Therefore, plaintiff A. Iris Vilnor, who sues on behalf of herself and all others similarly situated and seeks relief for herself and other Haitians who were "screened out" is not a new

² The memorandum states:

The individual plaintiffs are all Haitian emigres who were intercepted by the United States Coast Guard pursuant to a "program of interdiction" that permits interception and repatriation of undocumented aliens. They are presently being held on Coast Guard cutters and at the U.S. Naval base in Guantanamo. They have all been 'screened out'

HRC Mem. at 2 (emphasis added).

plaintiff nor is the class that she purports to represent.

5. I find, however, that the Screened In Plaintiffs are a new class which is not bound by the outcome in Baker.

6. The immediate relatives of "screened in" Haitians and all those similarly situated also make up an entirely new plaintiff class which was not a party to the Baker litigation.

7. Moreover, the Haitian Service Organizations in this action differ from the plaintiff organization (Haitian Refugee Center) in Baker. After having the opportunity to take discovery on the existence of a privity relationship between the Haitian Service Organizations and the Haitian Refugee Center, the Government has conceded that the organizations are different.

8. Therefore, res judicata is inapplicable to the Screened In Plaintiffs, Immediate Relative Plaintiffs, and the Haitian Service Organizations.

9. Res judicata is also inapplicable where neither the conduct complained of nor the claim had not arisen at the time of the first suit. Prima Management

Co., Inc. v. Steinegger, 904 F.2d 811 (2d Cir. 1990); N.L.R.B. v. United Technologies Corp., 706 F.2d 1254 (2d Cir. 1983); see generally Wright, Miller & Cooper, 18 Federal Practice and Procedure § 4409 (West 1981). Plaintiffs' complaint is based upon new circumstances. The INS policy of conducting second interviews to determine whether Haitians carrying the HIV virus have a well founded fear of persecution was developed after the Baker litigation ended. Only recently have the Haitian aliens sought the assistance of counsel. These new circumstances give rise to a new cause of action and make res judicata inapplicable.

10. The Screened In, Immediate Relatives and Haitian Service Organizations Plaintiffs' complaint raises new claims which were not litigated in Baker. For example, the Screened In Plaintiffs' statutory right of counsel, First Amendment and Fifth Amendment Due Process and Equal Protection claims are entirely new claims. As the Haitian Service Organizations are new parties and their cause of action arises from the Government's post Baker subsequent conduct; the First Amendment claim is also new. Because the Immediate Relative Plaintiffs are a new class, all of their

claims are new.

B. PRELIMINARY INJUNCTION

11. For a court to issue a preliminary injunction, the moving party must demonstrate (1) irreparable harm should the injunction not be granted, and (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the party seeking injunctive relief. Resolution Trust Corp. v. Elman, 949 F.2d 624 (2d Cir. 1991).

1. Irreparable Harm

12. By a preponderance of the evidence, the Screened In Plaintiffs and Haitian Service Organizations have made a showing that irreparable harm is likely to result if this preliminary injunction were issued. Specifically, the Haitian Service Organizations have shown that they may suffer content-based denials of their First Amendment right to provide counseling, advocacy and representation to their clients on Guantanamo. The Screened In Plaintiffs may face torture death if they lack access to counsel, fail in their bid to receive asylum, and are repatriated to

Haiti.

ii. Serious Questions Going to the Merits

(a) Haitian Service Organizations' First Amendment Claim

13. The Haitian Service Organizations claim that the Government has violated their first amendment right to free speech and to associate for the purpose of providing legal counsel by denying them access to the Screened In Plaintiffs being detained on Guantanamo.

14. According to the Government, the Haitian Service Organizations have no First Amendment right of access to an alien in the custody of the United States. As authority for this assertion, the Government cites Ukrainian-American Bar Association v. Baker, 893 F.2d 1374 (D.C. Cir. 1990). This case however is distinguishable from the facts present in the instant litigation. In Ukrainian-American Bar Association v. Baker, the plaintiff brought suit alleging that the government violated their First Amendment right of access to a potential asylee in United States custody who had neither retained the plaintiff as counsel nor asserted a right to speak with counsel.

15. By contrast, the Screened In Plaintiffs have retained the Haitian Service Organizations as counsel

and have asserted their right to speak with their attorneys. Even if the Haitian aliens lack the right to speak with an attorney, the Haitian Service Organizations would have a right to impart information to them. See Procunier v. Martinez, 416 U.S. 396, 408-09 (1974).

16. I am also unpersuaded by the Government's argument that Kliendienst v. Mandel, 408 U.S. 753 (1972), is controlling. In Mandel, the Supreme Court held that 1) that an unadmitted alien had no constitutional right of entry into the United States and 2) when the executive branch exercised its power to determine the admittance of an alien into the country on the basis of a facially legitimate and bona fide reason, the courts will not test its discretion by balancing its justification against the First Amendment rights of citizens seeking to communicate with the alien.

17. Here, the Screened In Plaintiffs are not asserting that they have a constitutional right to enter the United States. Instead, the Haitian Service Organizations are merely asserting that their First Amendment rights are being violated by the Government's

refusal to allow them to have access to their clients subject to reasonable time, place, and manner restrictions.

18. The Supreme Court has held that legal and political advocacy organizations' right to associate and to advise people of their legal rights are modes of expression protected by the First Amendment. In re Primus, 436 U.S. 412 (1978); NAACP v. Button, 371 U.S. 415 (1963).

19. Although Guantanamo Naval Base is located in Guantanamo Bay, Cuba, it is subject to the exclusive jurisdiction of the United States pursuant to a lease and treaty agreement. Therefore, the First Amendment is applicable to United States conduct on Guantanamo. See generally, Flower v. U.S., 407 U.S. 197, 198-99 (1972) (First Amendment applicable to U.S. conduct on a military base); Lamont v. Woods, 948 F.2d 825 (2d. Cir. 1991) (Establishment Clause of the First Amendment applies extraterritorially).

20. Despite the Government's extremely broad discretion to restrict access by civilians to military bases, it may not impose content-based restrictions upon speech. Perry Education Ass'n v. Perry Local

Educators' Ass'n, 460 U.S. 37 (1983). The Government may regulate speech in areas not traditionally designated as public forums so long as these restrictions are reasonable as to time, place and manner, and are not an effort to suppress expression merely because public officials oppose the speaker's views. *Id.* at 46.

21. In the context of the First Amendment, Guantanamo Naval Base appears to be a non-public forum. However, plaintiffs have presented evidence and the Government concedes that it is granting access to others -- reporters, priests, doctors, congressmen -- while denying access to lawyers. The only justification that the Government offers for its ban on lawyers is that they have an absolute right to determine the admittance of civilians. As the.

22. As the Government's denial of access to the Haitian Service Organization appears to be a content based restriction on speech, I conclude that the Haitian Service Organizations have made a showing of serious questions going to the merits of their claim under the First Amendment.

(B) Screened In Plaintiffs' Claims

(1) Statutory Claim

16. The standard for review of an applicant's asylum claim is whether the applicant has a well-founded fear of persecution if returned to his or her own country. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207 (1987). Asylum officers on Guantanamo are using the same standard when conducting second interviews of Haitian aliens in United States custody. But these aliens are being the procedural protections such as the right to counsel that they would be afforded if they were being held in custody in the United States.

23. Under INS regulations, applicants for asylum have a right to counsel, to present witnesses, to submit affidavits, and to present any relevant evidence during an asylum interview conducted by an asylum officer. 8 C.F.R. § 208.9 (1991). Detained asylum applicants also have a right to receive a list of persons or private agencies that can assist them in their application for asylum. *Id.* at § 208.5.

24. If an alien's claim is rejected by an Asylum

Officer, his "application for asylum or withholding of deportation may be renewed before an Immigration Judge in exclusion or deportation hearings." 8 C.F.R. § 208.18 (b) (1991). In any such hearing, plaintiffs have the right to be represented by counsel. 8 U.S.C.A. § 1362.

25. Even though I believe that the Haitian aliens are de facto asylees,³ I must find as a matter of law that their statutory claim fails because the Immigration and Naturalization Act ("INA") expressly states that "[t]he term 'United States, except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.'" 8 U.S.C. 1101 (a)(38). As the statute fails to specifically identify Guantanamo Bay Naval Base as being within the jurisdiction of the United States for the purposes of the INA and INS regulations, I must conclude that the

³ The Government suggests that the Haitians on Guantanamo are like refugees seeking asylum at the United States embassy in Moscow. However, the record in this case belies this analogy. A Russian refugee is free to walk out of the embassy if denied asylum. The Haitian aliens on Guantanamo are held in custody behind barbed wired fences.

statutory right to counsel under 8 U.S.C.A. § 1362 and 8 C.F.R. § 208.9 does not extend to the Haitian aliens currently in custody on Guantanamo.

(2) Constitutional Claims

26. Although the Screened In Plaintiffs' INA claim must fail, there are sufficiently serious questions going to the merits of their Due Process claim to make such claim fair ground for litigation. Congress may circumscribe the parameters of United States territory for purposes of the immigration laws, but such definition is not applicable to the U.S. Constitution unless the applicable provision of the Constitution itself limits the definition of "United States." See Downes v. Bidwell, 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed. 1088 (1901). And, just as the defendants aver that the question of whether certain domestic legislation covers activities at Guantanamo is separate from the issue of whether the criminal laws of the United States are applicable thereto, so too, the question of whether the First and Fifth Amendments apply to the screened in plaintiffs is a distinct issue.

27. Neither the due process nor equal protection

clauses of the Fifth Amendment provides a circumscribed definition of the United States. Guantanamo is within United States territory subject to the exclusive control and jurisdiction of the United States pursuant to a lease and treaty. United States v. Verdugo-Urquidez, __ U.S. __, 110 S.Ct. 1056 (1990) is therefore not dispositive of the rights of the screened in plaintiffs under the Fifth Amendment, even by way of analogy, because Verdugo Urquidez holds that a nonresident alien may not assert a violation of the Fourth Amendment where such violation occurred on foreign soil. The Court has expressly stated that it believes that the Fourth Amendment operates in a different manner than the Fifth Amendment. Verdugo Urquidez, 110 S.Ct. at 1060.

28. In terms of the viability of the Screened In Plaintiffs constitutional claims, this court recognizes that aliens are not necessarily afforded the same rights as citizens and that immigration laws are the province of the legislative and executive branches. The Supreme Court has stated, however, that aliens within the jurisdiction of the United States enjoy the protections of the Fifth Amendment from deprivation of

life, liberty, or property without due process of law. Mathews v. Diaz, 426, U.S. 67, 78, 96 S.Ct. 1883, 1890, 48 L.Ed.2d 478 citing Wong Yang Sung v. McGrath, 339 U.S. 33, 48-51, 70 S.Ct. 445, 453-55, 94 L.Ed. 616, 627-29 (1950); Wong Wing v. United States, 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896). "Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection. Id. at 78, 96 S. Ct. at 1890 (citing cases).

29. Courts have also recognized that, under certain circumstances, a non-resident, non-hostile alien may enjoy the benefits of certain constitutional limitations imposed on United States actions. See Cardenas v. Smith, 733 F.2d 909, 915 (D.C.Cir. 1984); United States v. Toscanino, 800 F.2d 267 reh'g denied, 804 F.2d 1380 (2d Cir. 1974); Porter v. United States, 496 F.2d 583, 591 (Ct.Cl. 1974), cert denied, 420 U.S. 1004, 95 S.Ct. 1446, 43 L.Ed.2d 761 (1975); compare Johnson v. Eisenstrauer, 70 S.Ct. 936, 94 L.Ed. 1255 (1950) (holding that an alien enemy had no right to writ of habeas corpus to challenge their detention by the United States military in Germany).

30. Whatever their status under the immigration laws, the Screened In Plaintiffs certainly are "persons," and therefore entitled to the protections of the Fifth Amendment. Compare Plyler v. Doe, 457 U.S. 189, 211, 102 S.Ct. 2382, 2391, 72 L.Ed.2d 786 (1982) (holding that an alien is a "person" within the meaning of the equal protection clause of the Fourteenth Amendment).

31. In the instant case, the screened in plaintiffs were forcibly taken from the high seas and they have been held in custody for roughly five months. Their access to the outside world, whether by telephone, mail or otherwise has been completely restricted. They are confined in a camp surrounded by razor wire and are not free to leave, even if they have the financial capability to do so, to go to another part of the world (that is, to any country but Haiti from which they flee for fear of political persecution, torture and even death). With respect to any complaints of mistreatment or otherwise, the only recourse that the screened in plaintiffs have is to military officials on Guantanamo who apparently have complete discretion as to whether and how to respond to

any such complaints. Although it is formal governmental policy to treat such aliens in a humanitarian way, if the government's argument is taken to its logical conclusion, it would, of necessity, provide the aliens with no recourse even if the conduct of a U.S. official is arbitrary, capricious, and perhaps even cruel. (See TRO Hearing Transcript at 39). That argument is simply untenable.

32. Admittedly, Congress and the Executive branch may restrict immigration, but that is not the issue herein. Instead, the issue before this court is whether the screened in plaintiffs may challenge the U.S. government's conduct insofar as such governmental conduct has deprived them of their liberty. The screened in plaintiffs are non-hostile individuals who were brought to Guantanamo forcibly, and who are "in custody," and incommunicado. They are unable to move about freely and choose to leave Guantanamo at their own risk to non-United States territory (see P.I. Hearing Transcript at 165), and cannot even make a telephone call at their own expense. They are isolated from the world and treated in a manner worse than the treatment that which would be afforded to a criminal

defendant. They are defenseless against any abuse, exploitation or neglect to which the officials at Guantanamo may subject them. Given this scenario, such individuals, albeit aliens, are entitled, at the very least, to challenge such restrictions and the related conduct of U.S. officials. Indeed, the nature and circumstances surrounding the connection between the Screened In Plaintiffs and the United States warrants a finding that they are entitled to cloak themselves in the protections of the due process clause. See Mathews v. Diaz, supra. Based on the foregoing, I conclude that there are serious questions going to the merits of the Screened Plaintiffs due process claim. See Mathews v. Diaz, supra.

(c) Other Claims

33. In light of the importance of the issues raised and the need for further consideration, I will reserve judgment on all other claims not addressed herein and I will issue a decision with respect thereto at a later date and, if appropriate after argument is heard on Defendants' Motion to Dismiss under 12(b)(6).

iii. Balance of the Hardships

34. The Government argues that the issuance of a preliminary injunction will create a "magnet effect" drawing more Haitians to the high seas and will increase the Government's financial burden. After carefully weighing the hardships, I find that the balance tips decidedly in favor of the Plaintiffs. Moreover, I find that the any burden placed on the Government in permitting attorneys access to their clients for the purpose of interviewing would be minimal.

C. BOND

35. The Government has repeatedly asked the court to impose a bond on the Plaintiffs. Under particular circumstances, a court may exercise its discretion and waive the bond required under F.R.C.P. 65(c). See United States v. Bedford Associates, 618 F.2d 904, 916-17 n. 23 (2d Cir. 1980). After considering the non-profit status of the Haitian Service Organizations and the indigence of the Screened In Plaintiffs, the Plaintiffs are ordered to post a bond in the amount of \$5,000.

D. Plaintiffs' Application for an Order Preventing Harassment

36. Plaintiffs have failed to put forth sufficient evidence to support their claim that the Government is harassing them because of their involvement in this lawsuit. Therefore, this court will not exercise its authority to issue an order.

E. Class Certification

F.R.Civ.P. 23 is given liberal construction and the court must take the allegations of the merits of the case, as set forth in the complaint, to be true. It is the party who seeks to utilize Rule 23 that bears the burden of establishing that the requirements of that rule are satisfied. Cruz v. Robert Abbey, Inc., 778 F.Supp. 605, 612 (E.D.N.Y. 1991). The Screened In Plaintiff's have satisfied the basic requirements of Rule 23(b)(2) and, as such, they are entitled to maintain this action as a class action. Although the Screened In Plaintiff's motion for class certification is granted at this time, because the defendant challenges certain of plaintiff's factual allegations, I will permit them to conduct discovery and then this court will hold a hearing to ascertain whether the

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class certification herein granted should be modified. The court has chosen not to address the certification of the Immediate Relative Plaintiff's motion for class certification in this Memorandum and Order.

III. RELIEF

For the reasons stated above, it is hereby:

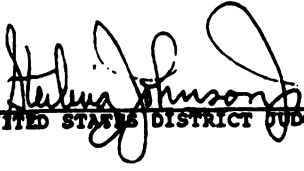
ORDERED, that the defendants are preliminarily enjoined pursuant to F.R.C.P. 65 from:

a) denying plaintiff service organizations access to their clients for the purpose of providing them legal counsel, advocacy, and representation when scheduled for interviews;

b) interviewing, screening, or subjecting to exclusion or asylum proceedings any Haitian citizen currently being detained on Guantanamo (I) who has been screened in and (II) who is being detained or has been denied an opportunity to communicate with counsel; and

c) repatriating any Haitian alien being detained on Guantanamo (I) who had been screened in and (II) who has been denied the opportunity to communicate with counsel.

So ordered.


UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York
April 6, 1992

EXHIBIT C

Statement of

SARAH H. CLEVELAND

J.D. Candidate, Yale Law School

On

Yale Team Findings Regarding the Treatment of Haitian Refugees

Detained on the Guantanamo Naval Base

Before The

House Government Operations Committee

Subcommittee on Legislation and National Security

April 9, 1992

Mr. Chairman and Members of the Subcommittee:

Thank you for allowing me to attend the hearings on U.S. Human Rights Policy in Haiti. I am a third year law student at Yale Law School, expecting to receive my J.D. in May of this year. I hold a B.A. from Brown University and a masters in history from Oxford University, which I attended as a Rhodes Scholar. Two summers ago I served as a legal intern to the United Nations High Commissioner for Refugees in Geneva, Switzerland, and I currently am a member of the Lowenstein International Human Rights Clinic at Yale Law School which recently filed the lawsuit of HCC v. McNary challenging the treatment of screened in Haitian refugees on Guantanamo.

Today the GAO has testified regarding the initial screening process for interdicted Haitians, about errors in the Guantanamo administrative and record keeping process, and about the limitations of the current arrangements on Guantanamo for meeting the ongoing needs of the Haitian refugees. Last week, as a result of the Temporary Restraining Order granted by Judge Sterling Johnson in HCC v. McNary, I personally observed the conditions on the U.S. Naval Base at Guantanamo and counselled clients currently being detained under those conditions. The findings of the Yale team suggest that the GAO report is incomplete in several respects.

When we were on Guantanamo, we gathered invaluable evidence regarding the general policies and treatment of Haitians on Guantanamo. In this statement, I describe the circumstances surrounding the Yale mission to Guantanamo, and present the specific findings of our team regarding five aspects of conditions on Guantanamo. These include: 1) incommunicado detention of Haitian refugees, 2) new rescreening practices, 3) lack of medical counselling and information, 4) coercion of refugees from asserting their rights and the pervasive climate of fear on Guantanamo, and 5) chaos and disorder in refugee administration. After discussing the Yale

mission to Guantanamo, I will address each of these categories in turn.

A. Conditions Surrounding the Yale Mission to Guantanamo

The Yale Law School team travelled to Guantanamo on Monday, March 30, 1992 pursuant to Judge Sterling Johnson's order granting us expedited discovery and access to counsel our clients. The group of twelve included immigration law attorneys, Haitian creole interpreters, court reporters, and two fellow law students. Our purpose was to provide legal counselling to the named plaintiffs to the lawsuit who are being detained incommunicado on Guantanamo, and to conduct limited discovery regarding their treatment and conditions. During the 32 hours that we were on Guantanamo, I helped interview our ten client refugees and assisted in taking their declarations.

Our time on Guantanamo was limited both by the extremely brief discovery period granted by the Court and by logistical obstructions raised by the defendants. Although Judge Johnson granted us access to Guantanamo, the government refused to allow us to enter or view the refugee camps themselves and instead confined our movement to the corner of the base where the airstrip was located, an hour long ferry ride away from the refugees on the other side of the base. In order to meet with us, therefore, the refugees had to board a ferry for the long trip across the Bay. Due to the ongoing harassment of refugees on Guantanamo and the general atmosphere of misinformation, terror and fear that pervades the camps, seven of our client refugees were too frightened to make the trip to see us, even after several overtures by the military and the delivery of a letter in Creole from us. Even when defendants finally did allow one interpreter from our group to meet with the Haitians to try to convince them to come, the refugees insisted on receiving confirmation from Father Jacques, one of our contacts on the base,

that they would be in safe hands. Thus, although we arrived at Guantanamo at 7:00 a.m. on Monday, March 30, we were unable to see seven (7) of our ten (10) named clients until 8:30 p.m. that evening, thirteen hours later. We worked through the night with the group of ten clients until 3:30 p.m. on Tuesday. At that point we boarded a plane just in time to return to New York for our hearing before Judge Johnson the next day.

B. Specific Findings Regarding Conditions of Refugee Detention on Guantanamo

1) Incommunicado Detention of Haitian Refugees

- Haitian refugees on Guantanamo are detained wholly incommunicado. They are confined under constant guard in camps behind razor-edged barbed wire. They have no access to telephones or to mail, even at their own expense. The only "unofficial" information our refugee clients received from the outside world was through a small transistor radio secreted away in one of the camps. They feared that even that outlet would be taken from them if discovered.
- Refugees repeatedly have requested access to the international press and to attorneys. These requests consistently are denied.
 - We have been contacted a number of occasions by refugees on Guantanamo seeking legal advice. While we were on Guantanamo, we learned of a number of refugees to whom we were not granted access under Judge Johnson's order, but who nevertheless expressed a strong desire to see us. Two Haitians to whom we were not granted access actually insisted on accompanying our named plaintiffs on the ferry and spent the entire day in the basement of the airplane hangar in a fruitless attempt to see us. Eventually they were forced to return to the camps.
- Refugees are not allowed to leave Guantanamo to go to any third country, even under their own volition and expense. By the government's own admission, they are allowed to return only to Haiti, the country they had fled.
- Refugees have no means of communicating with relatives, nor are relatives in the U.S. able to communicate with spouses, siblings, or even their minor children who are being held on Guantanamo.
 - One U.S. citizen who is a plaintiff relative in the lawsuit only learned his brother was being held on Guantanamo through the report of a friend of the brother who had been repatriated to Haiti.
 - Another plaintiff relative's only request was that our team bring back some indication that her 16 year old daughter believed to be detained on Guantanamo

was alive. Since the Guantanamo authorities were unable to locate Ms. Pierre's daughter, unfortunately we were unable to bring back even that minimal confirmation.

- The refugees are subjected to extreme deprivations of liberty, despite the fact that the Joint Task Force itself acknowledges that "these are good people in difficult circumstances."

2) Rescreenings of Haitians on Guantanamo

- Our communication with our clients confirms the finding of the GAO that INS has begun rescreening, and in many cases repatriating, Haitians who already have been found to have a "credible fear" of political persecution.
- As indicated by the GAO, these second screenings mirror ordinary asylum proceedings. They are conducted by asylum officers according to the standard of a "well-founded fear of persecution," and, according to the INS, are conducted using the "usual standards and practices" of asylum proceedings in the United States.
- Refugees rescreened on Guantanamo, however, are not provided any of the ordinary procedural protections, including the right to counsel, to present witnesses or rebut or appeal decisions, that accompany asylum proceedings in the U.S.
- Decisions on second "screenings" are made in Washington, not on Guantanamo, by officials who never see the asylum applicant.
- In contrast to the GAO finding that only refugees found to be HIV positive are being rescreened on Guantanamo, the government has admitted that refugees whose records or identification bracelets have been lost are being rescreened as well. [HIV + records?]
- These rescreenings flatly contradict the government's own representations to the Supreme Court this February in HRC v. Baker that all Haitians who were screened in as having credible asylum claims would be brought to the United States for ordinary asylum processing.
- Prior to Judge Johnson's TRO, 63 refugees submitted to second interviews, including 5 children. Of these, 34 were screened out and would have been repatriated to Haiti to probable persecution or even death, in the absence of the Judge's temporary restraining order.
- Our interviews with our clients have revealed, however, that over 100 refugees on Guantanamo refused to submit to these second interviews without counsel or other protections.
- One client whom I interviewed on Guantanamo, Mr. Kennedy Augustin, wrote a letter of protest to the asylum officer who attempted to rescreen him:

"Here in Guantanamo, I have no guarantee, no attorney . . . I am living in a climate of fear. I do not feel at ease. I have been here for five months. I do not eat well, I do not sleep well. From where I am writing weapons make noise. I am afraid. It is not good."

The asylum officer, however, instructed Mr. Augustin that participating in a second screening was the only chance he had of reaching the United States.

- Refugees are given false and contradictory information regarding their legal rights in the second screening. Those that requested attorneys to assist in advancing their asylum claims were told that this was not possible, that the question already had been decided.
- A government-printed flyer distributed in the camps in late March stated the following:

IF YOU DO NOT COME FORWARD WHEN CALLED AND THE CAMP COMMANDERS MUST COME AND FIND YOU, YOU WILL BE ALLOWED 48 HOURS TO DECIDE IF YOU WILL PARTICIPATE IN THE INTERVIEW WHICH IS NECESSARY TO DETERMINE IF YOU ARE ELIGIBLE TO COME TO THE UNITED STATES. IF YOU DO NOT COME FORWARD AND PARTICIPATE IN THE INTERVIEW WITH IMMIGRATION, WE WILL CONCLUDE THAT YOU DO NOT WISH TO PURSUE AN APPLICATION FOR ASYLUM IN THE UNITED STATES. YOU MAY THEN BE REQUIRED TO RETURN TO HAITI.

3) Denial of Access to Medical Records or Counseling

- One source of extreme concern to all the refugees we interviewed, and which has been neglected in both the GAO and McNary testimony presented today, is the refugees' access to their medical records, to medical counseling, and to legal counseling concerning their medical rights.
- All screened in Haitians are required to submit to an initial blood test without being informed of the nature or purpose of the procedure and without their consent.
- None of the refugees whom we counseled ever received official notice of the results of their tests. Some of our clients learned through the camp newspaper, Sa K'pase, that their camp was reserved for refugees who tested positive for HIV, while others only learned of their condition by confronting the camp commander.
- One of our clients, Mr. Frantz Guerrier, only learned he was HIV positive when we examined his medical files in the course of interviewing him on Guantanamo last Monday night.
- Those who were informed that they were HIV positive are not allowed access to their medical records. Though terrified and desperate to understand more about the disease, the refugees are not informed of the nature of the HIV virus or their personal prognosis,

nor are they provided with any counseling regarding their medical condition or legal rights.

- Paranoia regarding the disease is heightened by significant administrative confusion as to which Haitians exactly has tested HIV positive. One man, Kennedy Augustin, reported that his name appeared on one list but not on another.
- Currently, Haitians whom the government reports are HIV positive are required to submit to second blood tests as part of the rescreening procedure. Refugees who have resisted this second blood test, have been held down by Military Police (MPs) and physically forced to submit to having their blood drawn. (See below).

4) Refugees Are Punished and Intimidated for Asserting Their Legal Rights

- Our interviews with the Haitian refugees revealed widespread evidence of harassment and coercion of refugees who assert their legal rights. In particular, Haitians who have refused to submit to second screening interviews in the absence of counsel and those who have refused a second blood test have been singled out for harassment and abuse.
- According to our clients and our interpreter who visited the camps, housing in Camp Bulkeley, where HIV-positive Haitians are currently isolated, is divided into separate and unequal facilities. Those who have submitted to a second screening interview live in brick houses with tin roofs. Those who have refused to submit are housed in tents in a dusty section of the camp.
- Several of the refugees with whom we met had been threatened with physical abuse for refusing to submit to a second interview. Five refugees, including two of our clients, were arrested, taken away in handcuffs and detained in Camp 7, the disciplinary camp, for refusing the second interview.
- Camp McCalla 7, the "prison" camp on Guantanamo, is notorious for its substandard conditions. In contrast to the other camps, which at a minimum have mess halls and tents with mattresses, refugees in Camp 7 are only provided military Meals-Ready-to-Eat (MRE's). They sleep on mats on the ground, are only allowed the clothes they are wearing, and have their luggage and belongings taken away.
- Reports of individuals being threatened for refusing to accept a second blood test, or even being physically forced to submit to the test, also are widespread. Dr. Guerrier, a dentist and Aristide activist who fled Port-au-Prince after soldiers burned his clinic and murdered his wife, child, and mother, resisted the second blood test. As a result, two MPs pinned down his arms while a medical technician drew his blood.
- Another client, Examine Pierre, reported that when he demanded to see his medical records to confirm that he was HIV positive and refused to submit to a second blood test, a Captain called two MPs:

The two MP's took me to the office of Captain Shy. When I sat down, Captain

Shy left and came back with a paper. He said I would have to either sign the paper or submit to a blood test. When I replied again that I would do neither Captain Shy became very angry. He grabbed my wrist, thrust a pen between my fingers, put the paper on the desk in front of me and pushed my hand downward. However, I pushed the paper away from me so that the pen did not mark on it. The captain thereupon tore the paper into pieces and threw it away.

The captain refused to allow Pierre to read the paper and threatened to have him sent to Camp 7.

I replied that Camp Number 7 was for troublemakers and not for people like me. Two more MP's appeared and stood [over] me in a menacing way, but I was determined not to yield. The MP's each had one of my arms. When I again said I would not sign the paper Captain Shy pulled the bill of the cap I was wearing down and pushed his hand onto my forehead, causing a slapping sound.

Pierre filed a report to complain about the incident, but never received a response.

- Milot Baptiste also related that he had been "grabbed" by the shoulders, "squeezed," and "flung" to the ground by the military police for refusing to submit to a second screening and blood test. He and a number of other refugees were given extra latrine duty and were forced to go three days with no food or water.
- The refugees formed an Association of Haitian Political Refugees on Guantanamo early this year to combat "the abuse and mistreatment of many detainees by the INS and military authorities." Complaints registered by the association regarding camp conditions, however, have met no response. Several members of the Association also have sought out our organizational clients for specific legal representation and advice.
- The refugees suffer these extreme deprivations of liberty despite the Joint Task Force's own admission that "basically these are good people in difficult circumstances."

5. Haitians are detained in an atmosphere of chaos, disinformation, and misrepresentation.

- Haitians are not informed of the asylum rights that derive from having relatives in the U.S.. Nor are they told how having a communicable disease will affect their immigration status, nor of opportunities to seek waivers or to appeal.
- Tremendous confusion exists concerning who is screened in or screened out. Refugees often do not know when their name is called whether they are being sent to Haiti or the United States.
- One client, Kennedy Augustin, was screened in but then nearly repatriated in early February, three months after arriving:

I was physically moved to a different location on the base where they were preparing a ship to go back to Haiti. The officials were stamping "Haiti" on

peoples' papers. Desperate, I grabbed an officer and explained that I had been screened in and that my wife [who also had been screened in] was still present. Finally, the officers called the INS, checked my record, and at the last minute discovered I was telling the truth. I do know, however, that screened in people have been sent back forcibly by mistake on several other occasions."

- Another Haitian we met with on Guantanamo, Medilieu Sorel St. Fleur, was called to go to Miami in December, but was subsequently told that he could not go because his file had been lost.
- There is significant confusion surrounding the list Haitians who have tested positive for HIV. Kennedy Augustine was called before an asylum officer for a second interview, only to find that his name was not on the HIV-positive list. When the officer checked with the camp captain, he discovered that the refugee was included on another HIV-positive list.
- News of our pending arrival on Guantanamo provoked great anxiety for the leaders of the Association of Haitian Political Refugees. Although they had contacted us seeking counsel, five of their members recently had been called away, ostensibly for second interviews, and then thrown into detention in Camp 7 for seven days. "We were terrified that those five would be sent back to Haiti, and so when the Captain announced that some of us had to come out to meet the lawyers, we feared another trick," they reported. That night the posting of many more MP's than normal outside the camp only heightened the refugees' concern.
- When we arrived at Guantanamo, seven refugees from the Association refused to leave the camps to see us, fearful that in leaving the camp they would be sent back to Haiti. Instead, they sent us a note:

Mrs. lawyers. We say hello to you all and the name of Jesus Christ. But we [are] very sorry about your visite. We very Please to meet your. Reason why we don't want feel like to come so we're afraid to trust those people Because about two [weeks] ago the che[if] was call some of people [saying] they need to talk to them in they sending them to jail we please to do us a favor to call the judge see if they could give your chance to come [in] the camp to talk to us as your come to defend us. thanks your. I hope your know our position. God blest your. Please do your best for us.

In sum, then, the Haitian clients we visited on Guantanamo are suffering massive injury on several levels. Despite the fact that they all have been found to have credible asylum claims and even the U.S. military acknowledges that at the most they are "good people caught in unfortunate circumstances," their liberty is almost completely circumscribed. They have no means of communicating with the outside world or of receiving information regarding their most

fundamental legal and medical rights. They exist, behind razor-edged wire, in an enclosed and constantly shifting world of fear and uncertainty. Whether by design or by accident, all of them face the constant fear that this day their name will be called, and that they will be sent back, without any intervening defense, to the political terror in Haiti which they only recently risked their lives to flee.

As Judge Johnson stated in his April 6 order:

In the instant case, the screened in plaintiffs were forcibly taken from the high seas and they have been held in custody for roughly five month[s]. Their access to the outside world, whether by telephone, mail or otherwise has been completely restricted. They are confined in a camp surrounded by razor wire and are not free to leave, even if they have the financial capability to do so, to go to another part of the world (that is, to any country but Haiti from which they flee for fear of political persecution, torture and even death). With respect to any complaints of mistreatment or otherwise, the only recourse that the screened in plaintiffs have is to military officials on Guantanamo who apparently have complete discretion as to whether and how to respond to any such complaint. Although it is formal government policy to treat such aliens in a humanitarian way, if the government's argument is taken to its logical conclusion, it would, of necessity, provide the aliens with no recourse even if the conduct of a U.S. official is arbitrary, capricious, and perhaps even cruel. (Cite omitted). That argument is simply untenable . . . They are isolated from the world and treated in a manner worse than the treatment that which would be afforded to a criminal defendant. They are defenseless against any abuse, exploitation or neglect to which the officials at Guantanamo may subject them.

Remarkably, none of the severest deprivations which characterize the refugee experience on Guantanamo would be experienced by a Haitian alien in detention in the United States. In contrast to the terror and ignorance that pervade Guantanamo, Haitian detainees at the Krome Detention Center near Miami are permitted to make and receive telephone calls and to meet privately with family, lawyers, or other visitors. Detainees at Krome are also handed a list of local legal service organizations and telephone numbers when they arrive. These are very simple and fundamental rights. But our brief experience on Guantanamo strongly attests to how much difference the right to communicate -- and the right to a lawyer -- can make.

I thank you for accepting my statement and would be happy to respond to any questions.

EXHIBIT D

APPENDIX D
PLAINTIFF' EVIDENCE IN HAITIAN CENTERS COUNCIL V. McNARY
RE: HARM TO FORCIBLY REPATRIATED HAITIANS

Gene McNary, Commissioner of the Immigration and Naturalization Service, alleges that the INS has found no credible evidence of persecution of Haitian refugees forcibly repatriated to Haiti. The GAO reports that its findings regarding the treatment of forcibly returned refugees is inconclusive. Here we attach specific evidence from documents, depositions and affidavits submitted and/or gathered for HCC v. McNary, that attests to harm to 14 people who the INS forcibly repatriated. We also attach copies of some of the exhibits entered in that lawsuit that describe this persecution in further detail.

EXECUTIVE SUMMARY

1. Luma Dukens was repatriated to Haiti on November 20, 1991. Upon his return, he was tortured by soldiers. The military told him they would counter the efforts of people escaping Haiti by beating, imprisoning, and killing returnees, and disposing of their bodies so that no one would know what happened to them. (P.E. 28, Affidavit of Luma Dukens)
2. Marie Zette was a young Haitian woman who had fled Haiti, had been screened-in, and who was forcibly repatriated by the INS. The day after she was sent back to Haiti, her name was called to go to Miami for asylum processing. About two weeks later, relatives of Marie Zette arrived in Guantanamo. They said she had been killed by Tonton Macoutes while she slept, the very first night of her forced return to Haiti. (P.E. 52, Affidavit of Marcus Antoine)
3. Jeanette Bousico was a woman repatriated to Haiti by the INS. Upon her arrival she was murdered by the military. Her story was reported on Radio Soleil on or about February 15, 1992. (Declaration of Kate Ramsey)
- 4-7. Harold Fremont, Eugene Miclis, Yvela Fremont and Jocelyn Clairemont are four cousins who were repatriated on March 27, 1992. All four of these people were "mandateurs," Aristides's official election observers. Mandateurs are now primary candidates for persecution by the Haitian military. The cousins had been put into Camp 3, a camp for screened-in people. Also, their three cousins, who had similar experiences in Haiti, were put in Camp 3 and now are in the U.S. for asylum proceedings. The four repatriated cousins are currently in hiding in Haiti. (See P.E. 54, Affidavit of Jerry Salut et al.; Declaration of Kate Ramsey; Affirmation #2 of Jordan Levine; P.E. 49, Affidavit of Anne Fuller and Manifest)

- 8-9. Ernest Belisere and Jean-Michel Pavaluce were repatriated to Haiti in February, 1992, after being screened-out. Rather than go back to stay with his wife and seven children in Port-au-Prince, Ernest Belisere is in hiding because he is too well known as a painter of political murals in his home town. His neighbors tell him that the police are looking for him as a result of these murals. His brother-in-law, Jean-Michel Pavaluce is in hiding with him because his name appears on a death list. (National Public Radio's Morning Edition, February 11, 1992).
10. Harold Laurent was a Lavalas supporter who only had five minutes to tell his story on Guantanamo before he was repatriated. He planned on going into hiding because otherwise he would be killed. (See P.E. 61, "Toronto Star" article).
- 11-12. Elie Rocher and Direst August were sent back to Haiti three days before their names were called as people boarding a plane for the U.S. (See Affirmation #1 of Jordan Levine, in which Elie Rocher's name is misspelled as "Elie Roche.")
- 13-14. Louissara Merzier and Rodrigue Jacinthe were both people held in Camp 3, a camp for screened-in refugees. They were sent back to Haiti on March 27th. (See P.E. 55, Affirmation of Jeannie Su, P.E. 49, Affidavit of Anne Fuller and Manifest).

For additional accounts of harm suffered by people forcibly repatriated to Haiti, see e.g. the January 23, 1992 memo from Scott Busby to Gregg Beyer and the Deposition of Grover Rees, General Counsel, INS. (P.E. 50 at 66-67).¹

¹The cites that appear at the end of each narrative refer to some of the 70 Plaintiffs Exhibits filed in HCC v. McNary. Please reference these materials for a more detailed description of each story.

PERSECUTION OF REPATRIATES

The following are detailed accounts of the harm that befell Luma Dukens, Marie Zette and others who were repatriated to Haiti by the INS. Some of these people fled Haiti once, only to be returned and persecuted. They fled again. Others never had the opportunity to flee a second time because they were killed by the military upon their return.

1. LUMA DUKENS

Luma Dukens was a member of his local peasant group, called Mouvement Peyizan Papaye (MPP). Groups such as his cropped up all over Haiti in the wake of Aristide's election, and its members were avid Aristide supporters. He worked with his group, cleaning up his community and running literacy programs. After the coup that ousted Aristide, Luma Dukens participated in demonstrations against the military in the streets of his neighborhood. On the day after the coup, he broke his leg while fleeing from the military, but he was too afraid to go to the hospital and get medical care. He hid in the bush for a while, and then he finally decided to flee with a group of others. His friends carried him to the boat because he was unable to walk on his broken leg.

Luma Dukens was picked up by a Coast Guard cutter soon after he fled. He was subjected to a short interview aboard the cutter. The interviewer and interpreter did not identify themselves, and he was very frightened during the interview. In addition, the interviewer did not inquire about Luma Dukens's specific political involvement. He was very frustrated during the interview and felt that he was being continually cut off. After the interview he was taken off of the cutter briefly in order to have his leg put in a cast. Then he was returned to Haiti.

Upon his return, he was greeted by the Haitian Red Cross (which is not a member of the International Red Cross). He also met a sea of cameras. He was fearful that Tonton Macoutes were taking his photograph, and that if they had his picture, they would identify him as a member of Aristide's movement, and would come after him. The Haitian Red Cross provided him with bus fare and a van ride to the bus terminal. Before the van left, soldiers stopped it and asked for his parents' names, his address, age, and how he broke his leg. He told them the truth because he was not sure whether or not his file from the Coast Guard cutter, which contained the actual information, had made it into the hands of the military.

Luma Dukens traveled only as far as his cousin's house in Cite Soleil because he did not have enough money to go all the way to his mother's house in Cap Haitien. His cousin gave him money to continue his journey, and the next morning he left in search of transportation. As he struggled to walk, he was stopped by members of the military. These soldiers asked him who he supported in the election. He lied, because he was fearful for his life, and said that he

supported Marc Bezin, and that members of Lavales, Aristide's party, had broken his leg. They forced him to walk with them, on his broken leg, to a house, where they pressed him further. They forced him to lie on his stomach, and they beat him with a stick on the left side of his body -- the same side as his broken leg. He refused to change his story and continued to pretend that he hated members of Lavales. They did not believe him and persisted in the beating. After they finished, they let him go because, they said, they wanted others to see him and to know that this is what would happen to them if they left Haiti. One soldier told him, "[T]hose of you who are leaving, you are causing trouble to Haiti." They told him the military would counter the efforts of these people, and that they would beat, imprison and kill returnees, and dispose of their bodies so that no one would know what had happened.

Luma Dukens does not know how these soldiers found him, or knew that he had just returned to Haiti. He suspects that they followed him from the dock.

After the beating, Luma Dukens continued on to his mother's house in Cap Heiten. When he arrived in town, neighbors warned him not to go home because there had been soldiers at his house regularly, trying to find him. His friends hid him in the countryside, and his mother would come and sneak him food. She told him to leave Haiti because the military had come back and searched the house. On December 2, his friends found another boat leaving Haiti, and Luma Dukens fled a second time.

He was picked up again on December 3, 1992 by a Coast Guard cutter. This time he was interviewed by immigration officials on land. He was also able to sleep and bathe before his interview, which lasted significantly longer than his first interview. This time he was screened-in to the United States, and he has since been brought to the United States to pursue his asylum claim.

2. MARIE ZETTE

Marie Zette's story was related to us in Miami by a refugee named Marcus Antoine. Marie Zette was his friend, and he described her in detail. She was a young woman, about sixteen or seventeen years-old. She was short and round and had long black hair. She used to sing to her friends on Guantanamo about her fears of returning to Haiti. She had told her friends, as well as immigration, that she would be killed if she were sent back to Haiti. Nonetheless, in early February her name was called out over the microphone in her camp, and she was told she was to be repatriated. The very next day her name was announced again, only this time she was called to go to Miami. It was too late. She had already been sent back to Haiti.

In mid-February, about two weeks after she had left, a new group of refugees were brought to Guantanamo. Among them were relatives of Marie Zette. They said that she had been killed by Tonton Macoutes while she slept the first night after she arrived in Haiti. Her murder led her relatives to flee for their

lives. Marie Zette's life was lost because of an administrative error on Guantanamo.

3. JEANETTE BOUSICO

Jeanette Bousico was a woman who was forcibly repatriated to Haiti. Upon her arrival in Port-au-Prince, she was murdered by members of the military. The account of her death was broadcast on the air of Radio Soleil on or about February 15, 1992. Haitians on Guantanamo heard this broadcast. Among them was Jeanette's brother, who was held in Camp 4(a).

4-7. HAROLD FREMONT, EUGENE MICLIS, YVELA FREMONT AND JOCELYN CLAIREMONT

The following story of four "mandateurs" who were wrongfully sent back to Haiti was sworn to by their three cousins Jerry Salut, Ken Ramone, and Marty Abel. Their names are Harold Fremont, Eugene Miclis, Yvela Fremont, and Jocelyn Clairemont. Their names appeared on the manifest of the boat the went back to Haiti on March 27th, 1992. All four of the returned cousins were "mandateurs" (Aristide's official election observers) for the December 16, 1990 election, making them the first targets of persecution after the September 30, 1991 coup. These four men had also worked to organize public meetings in support of Aristide in their home town of Bayader. They all made speeches at these rallies. As a result of this activity, as well as their positions as mandateurs, they had problems with the local Section Chief.

The four mandateurs and their three cousins (also mandateurs) were held in Camp 3 on Guantanamo. They had similar stories and all seven believed they had been screened in. On Thursday March 26, however, only the three cousins, in a group of about sixty-two Haitians, were moved to Camp 5 to begin their process of leaving for Miami. The four mandateurs, though, were included in a group of about twenty-seven other people from Camp 3 who were taken to Camp 1, the camp for people being sent back to Haiti. A man named Joseph Fricher knew Harold Fremont and, in addition to the three cousins, he watched as Harold was taken to the boat.

Since arriving in New York this past week, one of the cousins of these four mandateurs spoke to his sister in Port-au-Prince to see whether or not she had heard any news from them. She said that she had not, but that she was not surprised because she knew they could not go back to their house for fear they would be killed. She herself was afraid to talk on the phone, but indicated that things were getting worse for her and that she was thinking of fleeing Haiti herself.

8-9. ERNEST BELISERE AND JEAN-MICHEL PAVALUCE

These two brothers-in-law fled together from Haiti on November 23, and they were picked up by the Coast Guard two days later and taken to Guantanamo. Both were pro-Aristide activists. Belisere was well-known in his neighborhood as an artist who painted murals of Aristide and of the red rooster that is Aristide's symbol. Pavaluce's name was on a death list in the possession of the military. In February, these two men were repatriated together to Haiti after being screened-out by the INS.

They are now in hiding at the home of relatives outside of Port-au-Prince. Belisere has stated that he is afraid to return to his wife and seven children in Port-au-Prince because his neighbors tell him that the police have been looking for him. Pavaluce knows that his life is in danger because his name remains on the death list.

Alan Tomlinson reported the story of these two men for National Public Radio, and confirmed the story with Belisere's neighbors. He did not make inquiries to the military regarding the death list because he did not want to alert them to Pavaluce's presence in Haiti.

10. HAROLD LAURENT

Harold Laurent was a supporter of Levalas and had worked as a body guard for Aristide when he visited his hometown of St. Marc. After the coup, two of his friends were killed by soldiers. When he was brought to Guantanamo, he only had five minutes to tell his story. His claim was rejected and he was returned. He planned to go into hiding after being sent back to Haiti, because otherwise he would be killed.

11-12. ELIE ROCHER AND DIREST AUGUST

Bertha Hilaire, a fifteen year old refugee, knew these two people both in Heiti and in Guantanamo. She heard their names called on a Saturday for repatriation, and again heard their names called the following Monday for the same flight that brought her to Miami, but they did not appear for the plane. The name of Elie Rocher appears on the manifest of the ship sent back to Port-au-Prince on March 27th, 1992.

13-14. LOUISSE MERZIER AND RODRIGUE JACINTHE

Louissera Merzier and Rodrigue Jacinthe were part of a group of 22 refugees who had stayed in Camp 3, a screened-in camp, who were forcibly repatriated on

March 27th. Their name was called over the microphone, and they were told to line up. They did not know what specifically was happening to them. On March 30th, friends of these two people were interviewed at Church World Service in Miami, and they explained that these two people were screened-in and should have been brought to Miami. Their names are on the manifest of the boat that went to Port-au-Prince on March 27th.

STATEMENT OF LUMA DUKENS
A71-893-957

I have fled Haiti twice. I fled in November 1991 after the coup because the military had attacked many of those that belonged to the same peasant organization that I belonged to. I was returned to Haiti by the Coast Guard on November 20, 1991. After being returned, I was attacked and beaten by the military as an example to others who may want to flee. After being released I hid in the countryside and fled Haiti again on December 02, 1991. I was brought to the United States in mid-January from Guantanamo.

I was born in Bazin, Acul du Nord, Haiti. I attended school but have very little formal education. After school I worked as a fisherman and farmer in Bazin. When Jean Bertrand Aristide was elected President of Haiti I joined the Mouvement Peyizan Papaye ("MPP"). The leader of MPP in Port-au-Prince was Chavan Jean-Baptist. The leader, and my boss, in my area was Pierre Doudou. We met often where we could speak freely. Through MPP we worked together to keep the community clean, build restrooms, provide literacy programs for children, and formed a treasury for those who fell ill. During the months President Aristide was in power, we told the Tonton Macoutes we would welcome them if they would change.

Immediately after the coup, I was involved in a large demonstration in Bazin. We were in the streets screaming "Give us our President Back" and "We won't let this happen again" and "Macoutes give us a chance." There were so many in the streets I

would have been unable to count them all. While we were in the streets we heard on the Radio that people were being shot in the streets. The Radio station told us to stay off the streets. We all fled the streets. After we fled, I know that the military came and arrested some of the MPP members. These people disappeared. Because of this treatment we couldn't bring the sick and injured to the hospital because we would have been caught. We refused to attend church for regular services or hold baptisms or weddings because the military would have come and arrested us. The military was working to track us down so I went into hiding in the bush.

While I was hiding from the military, who were running after us, I broke my leg. This was on the day after the coup, I believe. I could hear the soldiers shooting at us. Because no one could take me to the hospital for fear they would be caught, I could not get medical attention. And my family was too scared that I could be killed if they took me to a hospital for my broken leg. After some time in the bush, a group of us decided to leave. There were about 115 of us on our boat. Some friends carried me to a boat and we sailed away from Haiti. After a short time we were picked up by the Coast Guard.

I was held on the Coast guard boat and asked questions about why I left Haiti. They didn't spend much time questioning me. They didn't ask me the important questions I wanted to address. The people questioning me didn't identify themselves. There was a white person doing the interviewing and a Haitian doing the

interpreting. I was afraid during the interview because they didn't ask me those important questions and I was afraid they were going to return me to Haiti. They asked me about my house, where I lived, my mother's name, where she lived, where I was born, that kind of thing, and then why I left Haiti. To the question why did I leave Haiti, I said I left Haiti because of political problems. I told them how dangerous it was for people like me there in Haiti and how my leg got broken fleeing from the military. I wanted to tell them more details, for example about what political groups I was a member of and why politics caused me to leave Haiti and why I was not able to go back now. I was cut off by this man interviewing me or by the Haitian interpreter, I don't recall which, from telling these things. Before the interview I had not had much to eat and I was weak and not feeling well. I was also tired and my leg was hurting. I was only taken off the Coast Guard boat to have a cast put on my broken leg. I was then returned to Haiti.

At Port-au-Prince upon my return I was asked questions by the Red Cross and given \$10 for bus fare. The Red Cross also made me sign something but they didn't tell me what I was signing so I don't know. Because I had a broken leg, a Red Cross van drove me from the boat terminal in Port-au-Prince to a bus station. Because I had a broken leg when I was sent back to Haiti, I don't know what happened to the others sent back with me, because I didn't go the same route as the others.

When I was in the Red Cross van, before the van started moving from the dock area, a group of soldiers was lined up outside the van. They sent one of the soldiers to the van and he asked me a number of questions. The van at that point wasn't too far from the greeting point on the dock. The soldier asked me for my mother's name, my father's name and where I lived, my age and how I broke my leg. I lied about how I broke my leg, told the soldier that it happened before the coup, but I told him the truth about the other questions because I didn't know whether they returned me to Haiti with my file (which had my real name, address etc). I was afraid and felt the situation when we got off the Coast Guard boat didn't make sense because I was photographed many times when I got off the Coast Guard boat in Haiti at the port. And I didn't know who were the photographers, whether they were the Tonton Macoutes or the government. I think maybe some journalists took pictures of us too, when we got off the boat but I was afraid of the Macoutes taking my picture, not of the journalists. I was afraid the Macoutes were taking my picture because once they knew I was in the struggle they would come to my house to kill me. Once they have my picture they can recognize me and know I was in the struggle.

The Red Cross then dropped me off at the bus station. Because I would have needed \$18 to travel to my family's house in Cap Haitian and the Red Cross only gave me \$10, I could only travel to my cousin's house in Cite Soleil where he gave me food and money. So after I ate at my cousin's house, on the day I was sent back to

Haiti, on November 20 or 21, 1991 I left my cousin's house on foot to get transportation to get to my mother's home in Bazin which is in Cap Haitien. But shortly after I left my cousin's house, I was stopped by a group of soldiers. This was still in Cite Soleil. I hadn't walked very far because my leg was in a cast, I was limping. These soldiers who stopped me were in blue uniforms and they were carrying guns, small pistols were attached to their belts and some had long guns too. I think maybe they belong to a section of the military called the Cafeteria. These soldiers asked me who I supported in the election. I lied and told them that I had supported Marc Bazin. Then they asked me why I left Haiti. I lied again and told them that Lavalas members had broken my leg. They did not believe me. They made me walk on my broken leg to a house where they detained me. I don't know if there was anyone else who saw the soldiers questioning me, I was so anxious I don't remember.

The house where the soldiers took me wasn't too far from where they questioned me. It was in Cite Soleil. Besides me, I only saw soldiers in this house.

Once I was in this house, the soldiers ordered me to lie flat on the floor, on my stomach. Then they hit me with a stick on my behind on my left side, the same side as my broken leg. They hit me I'm sure at least fifteen times. But I never changed my story.

I was out of myself with pain, from the beating. The soldiers were saying to me "you're going to have to tell us the truth." I

knew if I told them the truth about my political involvement I would be killed. I pretended I didn't know anything about Lavalas, that I hated that group. The soldiers kept me in that house for a while, long enough to beat me.

After they beat me, before the soldiers let me go, they told me that they could hurt me more but would not because they wanted people to see me and for me to tell others what can happen to Haitians who take boats and leave Haiti. They told me that they want me to be an example to others so they do not try to escape Haiti. One soldier told me "those of you who are leaving, you are causing trouble to Haiti." The soldiers told me that people like me who are risking their lives to leave the country by boat are making more problems for the country, particularly people like me with a broken leg, and that we were carrying misleading reports about Haiti. The soldiers told me that the military was willing to counter these people with measures, that people who left the country like me could be arrested, beaten, killed and their bodies disposed of outside of anybody's awareness. The soldiers also said about the Haitians who left by boat, "You people have weapons and you're part of a group of Macoutes that Aristide hired, the same way Duvalier had." But we don't have weapons and all we want is fairness and justice and no more terrorising of the people.

These soldiers may have followed me from the dock to my cousin's house, I don't know. I wouldn't be able to recognize the soldiers in Haiti because you don't look at soldiers straight in

the face in Haiti.

After I was released from the house the soldiers made me go to, I used some of the money my cousin gave me to go to Gonaives and then on to Cap Haitien. Actually, after I left the soldiers' house someone gave me a ride to the bus station. The person who gave me a ride to the bus station waved at me, I guess because he saw me limping, and asked where I was going. But he waved at me so that's why I was less hesitant to let him give me a ride. And I was having trouble walking and wanted to get out of the area with the soldiers who'd just beat me. I think he was probably sympathetic to the people's movement because he tried to help me, but I was afraid to talk to him about what had happened to me since I didn't know whether he was a good samaritan or not. I thought too he might have been a journalist because we trust the journalists, they've helped us before. It cost me \$6 to go to Gonaives and then another \$6 to go to Cap Haitien.

When I arrived in Cap Haitien, my mother and the people in my neighborhood told me that I could not go home because the military had been by my home regularly to try to find me. Some people saw me after I had been beaten by the soldiers in Haiti. For example, Leveston Bolivar, Jean Arelex Noel, Roger Bolivar, members of my group in hiding with me, saw how I had been beaten. So my friends hid me in the countryside and would come to check on me. I was in hiding with a judge we had supported in the elections, from the Camp Louise section, Jean Jacques Septiste. I knew him because I

voted for him and we voted out a bad judge. He was on the same boat with me when I left Haiti a second time after the coup.

I stayed in hiding with this judge and my mother would sometimes visit me at night to sneak me food. She told me on one of her visits that the military had searched my house and told me to leave Haiti and never to return while these military people were there. My mother was very upset. At this point my friends found me another boat and I fled again on December 2, 1991. On December 3, 1991 I was picked up by the Coast Guard.

This time I was taken to Guantanamo where I explained that this was the second time that I had fled Haiti. I was very scared and shaken up since this was the second time; I was afraid that I would be sent back automatically, since immigration officials did not believe me the first time I left Haiti.

But the second time I was interviewed after leaving my country I was asked many more questions and I had the opportunity to say much more about why I left Haiti again. I didn't get interviewed the same day the Coast Guard picked us up. I know I had slept and showered before they questioned me. Also I was questioned not on the boat, but on land.

But at the time of my interview I was still very worried because I knew what had happened the first time and they still sent me back to Haiti and I was afraid they would do that again and I knew that my photographs had been seen in Haiti and that I would die if they sent me back. But this time it was a much, much, much

longer interview. And when I was interviewed I told the persons questioning me what happened when I was returned to Haiti and how they were angry with people like me who had left the country. I was asked important questions about what happened to me after I was returned to Haiti and I had time to tell my story. That made me think of Haiti and to appreciate democracy a little more. And I was questioned more than once about what happened to me when I was returned to Haiti, even the soldiers were asking me questions.

A friend that I met at the hospital on Guantanamo, Pierre, gave me a newspaper article where I was pictured being carried by two individuals back to the Haitian authorities, this was when I was first sent back to Haiti after the coup [New York Times article, 11/21/91]. But some in the military at Guantanamo didn't seem to want the information I was giving. For example, when I received the newspaper with my picture I wanted to give it to the Immigration. But there was a military officer, a Major I think, in charge of the camp who grabbed the newspaper photo away from me and placed me in a small uncovered detention pen behind barbed wire. The major told me my signature was on this paper and I couldn't have it. I was out in the sun for about 3 hours until the Major came back and touched my head to see how hot I was. When he realized how hot I was he released me.

I had family members who were also in Guantanamo but I wasn't allowed to go to see them. I thought I wasn't allowed visiting rights by the military because they had the photograph of me in the

newspaper and they knew I wanted to send the photo and letter to Immigration. I had written a letter in French to give to Immigration and handed it to a reporter so they would take it to Immigration. I made sure no soldiers saw me when I did that. I was afraid of the soldiers for two reasons: (1) I was obsessed with seeing soldiers in Haiti and that brings you lots of fear and terror because you feel like you are about to live through the same thing again and (2) I thought they would turn me back to Haiti again.

Right now, I have three cousins, who were in the MPP with me, hiding in the countryside in Haiti because they are afraid they will be killed by the military. I am certain that if I am returned to Haiti again, I will be recognized and killed. I would rather take my own life than be returned to a certain death.

There is no safe area in Haiti for me to return to. I was photographed several times after my return in Port-au-Prince and I'm sure I'd be killed.

It wasn't my idea to come back here, to leave Haiti, but because I was sent back to Haiti the first time, I had to leave again. I was looking to go to some area like Cuba. All of this is because I'm afraid I'll be killed in Haiti. As long as we have the kind of regime we have in Haiti now I can't go back. The army would have to be under control and the constitutional rights of the people respected.

I wasn't involved in politics before Aristide. Only during

Aristide's time I saw what benefit people could have with government, then I got involved.

I am going to school full time now in Miami, to learn English. I love school. I go to classes at the Notre Dame Church here. My teacher is Roger. I really want to learn. If you don't go to school you can do drugs and bad things and I don't want that.

I hereby swear under penalty of perjury that the foregoing is true and correct.

LUMA DUKENS
LUMA DUKENS

SWORN TO AND SUBSCRIBED BEFORE ME on this 23rd day of March, 1992.

M. J. [Signature]
NOTARY PUBLIC

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES SEPT 28, 1992
BONDED UNDER GENERAL B.O. 1062

AFFIDAVIT OF MARCUS ANTOINE

I, Marcus Antoine, swear under the penalty of perjury that the following is a true and correct statement to the best of my knowledge:

1. On December 27, 1991, I left Haiti. On December 28, 1991, I was picked up by the Coast Guard and sent to Guantanamo. On December 29, 1991, I was interviewed by Immigration officials and sent to Camp 4. About March 10, I was sent to Camp 3.
2. When we were picked up by the Coast Guard, we were told that we had to throw out everything that we owned. We were promised that we would be given plenty of new clothes. I threw all my clothes away. All the military gave me was one pair of pants. Now that is all I own.
3. We had a very bad life in the camps. There were many problems. For instance, when we went to take showers, the water was too hot and it burned us. Also, we were only allowed to drink hot water. We were not given cold water. Every month we were issued thongs for our feet. They were very thin and flimsy and were worn through within a week. And yet, we were only issued them once a month. One Sunday, we were in line to get our thongs and at about 2:00 pm they ran out. Many of us did not receive new thongs.
4. The cover of the tent where we slept was very bad. When it rained, rain would fall through the roof. Also, when it was windy outside, large amounts of dust would fall through the roof and into our food. A lot of dust and germs got in our food and there was nothing we could do. Many people became sick. When people started coughing from the dust, they were not given medicine; they were just told to drink the hot water.
5. I had a fever and was sick for 22 days and was sent to the hospital. I could not breathe well. I was never given any medicine or cold water to drink. A doctor told me that I was alright, but I knew that I was very sick. The doctors kept telling me that they had no medicine and no ice and that I should just go drink some hot water. They never gave me cold water.
6. If we wanted to smoke one cigarette, we had to pick up garbage all around the area in order to smoke.
7. The military police wanted to know what we were saying at all times. Even if we were starting to play around with our friends, they would put pressure on us to tell them what we were saying. If we did not tell them what we were saying, they said we were troublemakers and could be sent to Camp 7.
8. Some journalists that came to Guantanamo started to cry when

they saw the conditions.

9. We could not protest the bad conditions, because if we did, we were sent to Camp 7. I wanted to protest these bad conditions, but I did not want them to put me in the jail of Camp 7. We were told that troublemakers were sent to Camp 7. Many times I saw guards arrest Haitians, shackle them, and send them to Camp 7. We were told that in Camp 7, people had to sleep on rocks. There were no beds, no mattresses, and no cots.

10. The military officials played games with us. They would tell us that we were going to the US, and then deny they had ever spoken to us. On February 2, 1992, I was supposed to have left for Miami. I know this because the officer called my name. We were told to pack our things to go. Then a lower military official crossed some of the names off the list, including mine. I went up to him, saw my name crossed out, and asked him why he crossed my name off. He asked "What is your birthday?" I saw that my birthday was listed next to my name. I told him my birthday. He said "This person is not you."

11. Many people were re-screened and sent back to Haiti. Some people were told to pack their bags because they were going to be sent to Miami. Those people were then sent to Haiti.

12. In the middle of Feb., I heard stories on the radio about people who had been sent to Haiti from Guantanamo. I heard the same story at 8:00 am on Voice of America and then again on Radio Soleil. That story was about men who had told officials on Guantanamo that they would be killed if they were sent back. When they were sent back, they were killed. Both of the reports mentioned that the bodies were draped in white sheets. I was familiar with the face of one of those men, but I did not know his name.

13. I knew one girl named Marie Zette. She was a friend of mine. She told me that if she was sent back to Haiti she would be killed. She also told the immigration officials this fact. At the beginning of February, she was called to be sent back to Haiti, even though she had been screened in. She was a short girl, who was round. She had long, black hair and was very beautiful. Before she was sent back to Haiti, she sang a song to us to show us her feelings. She sang about hurting and that she regretted having to go back to Haiti because that she feared for her life.

14. She was sent back to Haiti. The next day, the guards called her name to be sent to Miami. It was too late; she had already been sent away.

15. In mid-February, a new group of Haitians arrived at Guantanamo. That boat contained many relatives of Marie Zette. They said that she had been murdered by Macoutes (Haitian military police) immediately upon returning to Haiti. The relatives said that the military police came at night and killed her while she

slept and that is why they fled.

16. Also in mid Feb., a friend of mine by the name of Mireille was called to be sent to Haiti even though she had been screened in. The day after they took her away, the guards called her name to be sent to Miami.

17. I believe that being sent to Camp 1 to go back to Haiti is a promise of death.

18. One white officer by the name of Officer Perry, who worked in Camp 4, broke two men's arms right in front of me while I stood in line to get food.

19. The way they treated us in Guantanamo, they did not hurt us, but it was almost the same way they treated us in Haiti.

I, Marcus Antoine, do swear under penalty of perjury that the foregoing is a true and accurate description of my experiences.
--Pseudonym of Haitian Refugee (I direct the judge to review the confidential affidavit confirming my use of a pseudonym.)

I, Michelle J. Anderson, do swear under penalty of perjury that I witnessed the foregoing statement.


Preparer of Affidavit

Mr. CONYERS. Why don't you take a few minutes and describe anything you want us to have in the record about what you saw and experienced there?

Ms. CLEVELAND. Thank you, Mr. Chairman. First of all, I would like to say that even when we were granted a court order and given access to Guantanamo, we were down there only 32 hours. Our access to Guantanamo was extremely limited. We were restricted, essentially, to the corner of the base where the airstrip is. We were not granted access to the refugee camps.

The only access to our clients that we were given was when they were asked to board an hour-long ferry to cross to the other side of the base to see us. This, as I will explain later, was, in itself, a source of great trauma to them.

When we were down there, we found five things that I would like to address. The first is that the people being held on Guantanamo are completely incommunicado. They have no access to telephones, to mail. They cannot contact their relatives. They have requested access to the press and to attorneys, all of which have been denied.

One plaintiff of ours who is a permanent resident in the United States asked us—she has information that her 16-year-old daughter is being held on Guantanamo—and her one request was that we go down there and bring her back a note indicating to her that her daughter is alive. We went down, but the INS was unable to locate her daughter in the camps, so we were unable to bring that information back to her.

The second issue is the question of rescreening. The testimony today from the GAO addressed the adequacy of the initial screening process. It is quite clear from the plaintiffs that we interviewed on Guantanamo that a number of Haitian refugees, not simply those that are HIV-positive, are being rescreened after they have already been found to have a credible asylum claim. They are being rescreened on Guantanamo against the standard for asylum applicants in the United States.

Although they are being tested to find out whether or not they have a well-founded fear of persecution, they aren't given any of the process asylum applicants have in the United States. They have no access to attorneys. They are not allowed to present witnesses. They cannot appeal the decisions. They cannot rebut adverse decisions. All of this is granted to people who apply for asylum in Miami, for example.

The result of the rescreening policy on Guantanamo, over 100 Haitian refugees have refused to submit to this rescreening. One of our clients, when he was called for a second screening, protested and wrote a letter to the asylum officer, instead of submitting to the rescreening hearing.

He wrote, "Here in Guantanamo I have no guarantee, no attorney. I am living in a climate of fear. I do not feel at ease. I have been here for 5 months. I do not eat well. I do not sleep well. From where I am writing, weapons make noise. I am afraid."

He had been screened in. His position was that he had been told, as the Supreme Court was told, that these people would be brought to the United States and allowed to apply for asylum. He simply wanted that right.

The third issue is medical counseling, and access to medical records. When Haitian refugees are screened in, they are all subjected to a blood test. They are not asked for their consent. They are not told what the purpose is. Subsequently, none of our clients were informed of the result of their blood test or whether or not they were HIV-positive. They were not given access to their medical records.

Some of them surmised, based on what camp they were placed in, as to whether or not they were HIV-positive. One of our clients only found out from us last Monday night in Guantanamo, when we were reading his medical records, that he was, in fact, HIV-positive. We believe at a minimum that these people should be allowed access to their medical records, given medical counseling, which none of them have received, and given legal counseling regarding their rights relating to their medical condition.

Fourth, a number of our clients have testified that people are being harassed on Guantanamo when they do try to assert their legal rights. People who have refused second blood tests have been forced to submit to second blood tests. We have reports from our clients that people who have refused to submit to a second screening are being kept in separate housing in the camp from those who have submitted to a second screening. In other words, if you are on Guantanamo, if you submit to a second asylum interview, you are put in a brick house with a tin roof. If you refuse, you are put in a tent in a dusty area of the camp.

One of our clients refused to submit to a second blood test, and he reported that when he refused, the captain called two military policemen. He says, "The two MPs took me to the Office of Captain Shy. When I sat down, Captain Shy left and came back with a paper. He said I would have to either sign the paper or submit to a blood test.

"When I replied again that I would do neither, Captain Shy became very angry. He grabbed my wrist, thrust a pen between my fingers, put the paper on the desk in front of me, and pushed my hand downward. However, I pushed the paper away from me, so the pen did not mark on it. The captain thereupon tore the paper into pieces and threw it away."

The captain refused to let Pierre, our client, read the paper, and threatened to have him sent to camp 7, which is known as the prison, the detention camp for people who cause disturbances on Guantanamo.

Pierre replied, he says, "I replied that camp No. 7 was for troublemakers and not for people like me. Two more MPs appeared and stood over me in a menacing way. But I was determined not to yield. The MPs each had one of my arms. When I again said I would not sign the paper, Captain Shy pulled the bill of my cap I was wearing down and pushed his hand onto my forehead, causing a slapping sound."

Another one of our clients related that he was grabbed by the shoulders, squeezed, and flung to the ground by the military police for refusing to submit to a second blood test.

Finally, there is substantial evidence on Guantanamo to confirm the GAO's reports that administrative chaos is rampant on Guan-

tanamo. Files are lost. People are called and told they are going to be sent to Miami, and then they are left waiting for months.

One of our clients, Kennedy Augustine, was nearly put on a boat to be sent back to Haiti. He protested and said that he had been screened in and caused enough disturbance that the INS officials finally checked it out, confirmed that he was right, and kept him off the boat.

All of this—the misinformation, the lack of information, the incommunicado detention—has created an atmosphere of pervasive fear among the refugees, fear so great that when we went down to Guantanamo to see our clients, people who had contacted us in the United States and asked us to represent them, they were too afraid to get on the ferry to come see us. Three clients came. The other seven refused.

The military went back to them a number of times and explained that their attorneys were here to see them, and wouldn't they come on the ferry. They said, "No, we are afraid. Either you will make us go through another interview or maybe you will just put us on a boat and send us back to Haiti. We won't come."

We sent them a letter in Creole explaining who we were. They still refused to come. Finally, the government allowed one of our interpreters himself to go over to the camp to speak to them. Only when a priest who knew our interpreter could identify who the interpreter was and confirm to the refugees that we were, in fact, who we claimed to be, did they agree to come.

In the meantime, the refugees had written us a letter, and I would just like to read it to you. They said, "Monsieur Lawyers"—it is not grammatical, but you can get the gist of it. "Monsieur Lawyers, We say hello to you in the name of Jesus Christ, but we are very sorry about your visit. We very pleased to meet you. The reason why we don't feel like come is because we are afraid to trust those people, because about 2 weeks ago the chief was call some of our people saying they need to talk to them, and they sending them to jail."

It's a reference to five of the protesters that were sent to camp 7 and detained there for a week.

"We please do us a favor to call the judge, see if they could give you a chance to come to the camp to talk to us, as you came to defend us. Thank you. I hope you know our position. God bless you. Please do your best for us."

These are people who, if they were in Krome Detention Center in Miami, would have rights to lawyers, they would have rights to phone calls, they would have rights to visit their relatives. They are also people that the military commander on Guantanamo himself has said, "The Haitian migrants are not enemy prisoners of war, nor are they in any way a threat to us. In the main, they are good people caught in a bad situation, and they must be treated with fairness, dignity, and respect."

I don't believe, from the evidence we gathered on Guantanamo, that they are being treated with fairness, dignity, or respect, and we would ask you to try to take steps to ensure that they be treated in such a way in the future. Thank you.

Mr. CONYERS. Thank you very much. This situation is even worse than I had suspected, and I did not have much optimism to begin with. Do any of you have any closing or final comments?

Mr. KURZBAN. Mr. Chairman, I just wanted to point out one thing, because it was mentioned to you about processing at the American Embassy. Sister Rose Gallagher is here, who has just come back from Haiti, and has provided me detailed information. She went with a group of seven other people. That processing is substantially flawed, and she has given me cases.

We would rather, obviously, not mention the names publicly, but she has provided information indicating, for example, someone who went to the Embassy on February 28. It is now almost the mid-point of April. He has been required to go back to the Embassy twice. He is in fear of his life. He is in hiding. And the Embassy has still not told him whether or not they will give him safe passage to the United States.

And apparently, there are a number of cases like that, and obviously, there is some question about whether or not people would be wise, even, to go to the American Embassy under those circumstances. Thank you.

Mr. KOH. Mr. Chairman, I have a closing comment. There are three stories here. The first and the most tragic story is the plight of the Haitian detainees. The second story is the story about the government operations, which is the appropriate subject of this committee. But the third story, which I think is a very serious one, is the way in which government officials have tried to silence those who would criticize or even seek to investigate the program.

Mr. Kurzban brought a lawsuit. He litigated it for several months. I am sure he received no money for it. At the end, the government moved against him for a substantial bond. He is still in the process, I understand, of litigating that question. He can correct me if I am wrong.

We brought a lawsuit, not because we wanted to cause trouble, but because we thought that something was going wrong. They moved against us for a \$10 million bond, which is the largest bond ever requested in the history of the second circuit. It is 10 times the size of the bond in the Texaco-Penzoil suit. This is against a law professor and his law students.

They moved for sanctions against me personally, which now makes it impossible for me to take out a loan, again, for doing something which I thought was right. When we went for a preliminary injunction, they again reinstated their request for a bond, and after the court had already waived the bond.

When the court gave us an order permitting us to go down to Guantanamo, they offered to let us fly in a military transport plane, and that night I was called and told that unless I gave a personal written authorization for \$24,000 they would not let our people onto the plane.

Now, as you can imagine, your honor, I am not a rich man. This has not made me every eager to pursue this litigation. However, I have, as have my students, because we think we are right. We also think that it is part of the tradition in this country that people who see illegal or inhumane activities going on should be able to chal-

lence it without being chilled and having their first amendment rights chilled.

We think that the sun shining in exposes a lot of problems, and cleans a lot of things out. And we hope that the Congress will use its investigative powers to make sure that even if people like us are chilled, that what is going on in Guantanamo is not kept hidden from the public scrutiny. Thank you.

Mr. CONYERS. Thank you. Mr. O'Neill.

Mr. O'NEILL. Yes, Mr. Chairman. Thank you, yes. I would also like to mention that among those who have not received invitations to Guantanamo is the Lawyers Committee for Human Rights, and moreover, Amnesty International has requested and been refused a number of times authorization to go to Guantanamo.

Second, in terms of the hemisphere, I'd like to point out that Haiti had a coup in September. Venezuela had a near coup last month. Peru had a coup on Sunday, and apparently the President of Bolivia has taken to lecturing his parliament, "Watch out. I will do what Fujimori just did if you don't get more 'efficient'."

I remember my grandfather telling me he remembered how "efficiency" worked in Mussolini's Italy. So I think we are seeing a disturbing trend in the hemisphere, and unless the situation is resolved quickly in Haiti, other countries may face the same fate. Thank you.

Mr. CONYERS. Well, you have increased the burden that is now on this committee and, by extension, the whole Congress, to make sure America does better than this. This is shameful and disgraceful. It is not in keeping with the standards to which we aspire and declare, and I am extremely proud of all of you for setting the kind of exemplary example that can lead to hopefully making this country a true democracy, and I am going to increase my resolve to work in this area.

I thought I was doing something until I found out what you are doing, and I am going to do a lot more, and I think I can bring dozens more into this struggle from the legislative branch of government, and that we will inevitably, as the political process works, have to mobilize millions of Americans to understand that this goes beyond whether you are a friend of the Haitians or not, that this goes to the whole question of what kind of nation we are.

So, I thank you all very much for being here, and declare this hearing to be at an end.

[Whereupon, at 12:35 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

U.S. OFFICE OF INSURANCE
U.S. DEPARTMENT OF JUSTICE
STEPHEN J. HENNING
GERALD B. KLECKA
CAROLINE E. HANCOCK
RAY THORNTON
COLLEEN E. HANCOCK

ONE HUNDRED SECOND CONGRESS

Congress of the United States House of Representatives

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
8-373 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20518

FRANK J. SUTHERLAND
JON L. HILL
DIRECTOR OF INSURANCE
STEVEN J. HANCOCK
JEN 375-2147
FAX 307 225-2273

April 14, 1992

Commissioner Gene McNary
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington D.C. 20536

Dear Commissioner McNary:

I am deeply concerned that you may have misinformed the Subcommittee about the fate of the 54 Haitians who the General Accounting Office believes were mistakenly repatriated. This is an extremely serious matter which must be resolved immediately.

At the Subcommittee's hearing on April 9, 1992, concerning Haitian refugees, the GAO testified that at least 54 Haitian asylum-seekers had been mistakenly repatriated to Haiti. You testified that a review of 40 of the 54 files by Deputy Commissioner Ricardo Inzunza showed "an error in recording a screened-in that should have been a screened-out, rather than anybody repatriated who should not have been."

Since the hearing, I asked for a review of the GAO's evidence and documentation of this investigation. As you may know, the GAO investigators have examined and copied Immigration and Nationalization Service's (INS) documents which show case summaries on the basis of which INS determined that Haitians had credible claims of persecution. This documentation includes a box which was checked off by the INS official that indicated INS' conclusion that the individual had established a credible claim of persecution and thus, had been "screened in." INS documents also identify cases where INS had screened in individuals on the basis of the Community Relations Service's recommendation that the individuals were eligible under the family reunification laws. These INS documents confirm GAO's testimony that the 54 Haitians had been screened in and would appear to refute the possibility that individuals were erroneously screened in due to clerical error. GAO investigators also have INS documents which show that all 54 Haitians were sent back to Haiti.

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Commissioner Gene McNary
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 April 14, 1992

In view of the fact that documents from INS' own files support GAO's claims, I want you to meet again with the GAO investigators to get to the bottom of this dispute.

Because Haitians mistakenly repatriated as a result of administrative foul-ups may face a death sentence, I strongly urge you to take immediate steps to correct the deficiencies detailed in GAO's testimony. Specifically,

- INS should immediately complete the review of its screening documents and computer data base at Guantanamo Bay, identify and verify the status of all those Haitians affected by INS' or other organizations' procedural errors.
- INS should work with the Department of State to locate the mistakenly repatriated Haitians and offer them interviews in Port au Prince. Those individuals who could have joined family members sent or scheduled for transfer to the United States should be located and offered the opportunity to do so at U.S. government expense. INS should expedite the interviewing of such individuals to minimize the duration of family separations.
- INS should provide the Subcommittee with an explanation of the circumstances and corrective actions taken for all individuals with credible asylum claims who were mistakenly repatriated to Haiti.
- To preclude further mistaken repatriations or admission of unqualified Haitians to the United States, INS should immediately review and strengthen its administrative procedures for processing screening results into the INS computer data base (including 100 percent verifications of data entry), assure the timely integration of INS' and other organizations' processing data to ensure that accurate dispositions can be made, and establish adequate controls to assure that no repatriation or transfers to the United States are made until all processing procedures have been completed and verified. In addition, physical copies of all individual's screening reports should accompany them through the repatriation process and should be attached to the departure manifests.

Commissioner Gene McNary
Page 3
April 14, 1992

-- INS should develop plans to identify a location for future Haitian processing given the weather complications at Guantanamo and the unacceptable limitation of shipboard screening.

In conclusion, let me again stress how serious I consider this situation. I hope you share this view and will respond accordingly.

Sincerely,



John Conyers, Jr.
Chairman



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 Eye Street N.W.
Washington, D.C. 20536

CO 703.604

The Honorable John Conyers, Jr.
Chairman
Subcommittee on Legislation
and National Security
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

JUN - 8 1992

Dear Chairman Conyers:

This is a further response to your recent letter, concerning the Immigration and Naturalization Service (INS) review of the findings of the General Accounting Office (GAO) on the matter of Haitians inappropriately repatriated after asylum pre-screening at the Guantanamo Bay Naval Base. I wanted to provide you with the enclosed additional information which we have developed and shared with the GAO.

As a result of the GAO findings and our discussion at your hearing on April 9, the INS, along with the other Federal agencies at Guantanamo, instituted new procedures to ensure that further erroneous repatriations would not recur. These are noted in the enclosed letter. We have had the full cooperation of the Department of Defense, the Coast Guard and the Community Relations Service in this regard.

With the assistance of the United States Embassy in Port-au-Prince, we are endeavoring to locate those Haitians who were erroneously repatriated earlier this year. We will offer those whom we locate refugee interviews in Haiti, if they still desire protection in the United States.

We would be glad to meet with you or your staff to discuss the results of our review of the Guantanamo Haitian data base and the interview records.

I am appreciative of your continuing interest in this area of Service operations.

Sincerely,


Gene McNary
Commissioner

Enclosure



U.S. Department of Justice

Immigration and Naturalization Service

425 Eye Street N.W.
Washington, D.C. 20536

JUN 2 1992

Mr. David R. Martin
Assistant Director
Foreign Economic Assistance Issues
General Accounting Office
Washington, DC 20548

Dear Mr. Martin:

This responds to your letter of May 11 requesting additional information related to your inspection of Immigration and Naturalization Service operations in Guantanamo Bay. I apologize for the delay in providing this response, but, as we discussed, we wished to ensure that we provided the most complete account possible of the questions that you raised.

Let me first address our review of statistics related to Haitian nationals who appear to have been repatriated, even though U.S. Government records indicate that they were "screened in," and should have been brought to the United States. In response to the inquiries by the General Accounting Office on April 30, our Guantanamo Asylum Pre-Screening Officer (GITMO/AFSO) computer staff developed a list of 178 records as possible inappropriate repatriations. This listing used the criteria of a "screened-in interview" and the designation of Involuntary Repatriation as existing in data fields.

Working from this list, a team of AFPOs began a review of the cases. Each officer identified a case; determined the adjudication of the case from primary records and noted any discrepancies from the computer listing. If no discrepancy existed, the officer initialed the case to show that a review and verification had been completed.

The tally below reflects our review of all cases combining the codes, "screened in" and "repatriated." All cases for which no record could be physically found were noted as "no record."

Total cases reviewed	178
Cases found to be adjudicated "out"	20
Cases found to be adjudicated "in"	86
Cases where no record could be found	72

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From this list 41 records reflect that the person is either on a camp roster or in the U.S. Obviously, this information conflicts with the notion of the migrant being involuntarily repatriated to Haiti. To date, we have located two of these individuals at the Guantanamo camp, and are including the names of others in continued searches.

For those cases which appear to be "screened in" or for which no physical record can be located, INS has prepared a listing, by date of alleged repatriation, for the U.S. Embassy to compare with manifests previously given to the Embassy by the Coast Guard.

An INS officer travelled to Port au Prince in May with a full listing of all "screened in" repatriation cases, and copies of the original interview sheets, where available. In conjunction with the U.S. Embassy and the Haitian Red Cross, U.S. officials will attempt to contact each individual on the list and, upon locating them and verifying proper identity, will conduct a refugee interview in Haiti. If the applicants qualify for admission, we will coordinate medical processing and movement to the United States should they agree to it.

We do not have firm records of those who were recorded as "screened out" as a result of interviews but nevertheless were allowed into the United States. We know that GAO found several of these cases in its search of Government records at Guantanamo, but we do not consider these people to be endangered. They will have full opportunity to present their asylum claims in the United States.

When GAO submitted this request for information to us, 42 Haitians who had been repatriated had returned to the camp at Guantanamo. These "doublebackers" were considered a likely source of valid information about the continuing possibility of persecution in Haiti. The Administration described procedures for addressing the claims of reinterdictees in its brief submitted to the Supreme Court in Haitian Refugee Center v. Baker, at pages 26-28. Since that case was heard, the Government has continued to monitor conditions in Haiti.

Haitian nationals who are interdicted more than once give accounts of persecution to the AFSOs, and the INS forwards this information to the Department of State for further investigation. State Department personnel conduct extensive investigations of these reports, including visits to specific locations identified by the reinterdictees, and interview a range of persons who might have relevant knowledge of the reported events, including persons who had ostensibly been arrested or had disappeared following repatriation. Such specific investigations are only part of the State Department's efforts to monitor repatriations and ensure that they do not result in reprisals.

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Embassy personnel in Port-Au-Prince closely observe the arrival of all repatriates, make spot checks on the well-being of repatriates around the country, and investigate specific allegations of mistreatment. In addition to its own personnel, the State Department also calls on a wide network of contacts within Haiti. Based on these investigations, State Department officials have concluded that several of the stories told by these reinterdictees are not true. Indeed, State Department officials found that these accounts were unreliable, and several of them were outright false in very material respects. On the basis of all such information available, the Administration has continued its policy of repatriating those Haitians not found to have articulated a credible claim for asylum based on individual circumstances. (This applies only to persons who were interdicted prior to the May 24 Executive Order. Persons interdicted subsequent to that order are not in the custody of INS).

Let me now respond to GAO's findings of procedural and management information problems that might have resulted in improper repatriations. The GAO team traveled to Guantanamo Bay on two separate occasions in March 1992. INS officials ran the master data base at the request of GAO officials during both visits and developed listings of people who had been "screened in," under the standard of being able to articulate a "credible fear of return to Haiti, and who had then been repatriated. The numbers were different each time the system was run and served as an indicator that, with changes being made on an ongoing basis, the numbers could potentially be changing all the time. As a result of several discussions between INS and GAO at the staff level, INS decided to repeat the same computer run. This was done on April 30, with 178 names being printed as possible problem cases as discussed in question #1.

INS acknowledges that there were problems establishing sound management information system procedures at Guantanamo Bay. No computer system was developed for the operation until December, and efforts to develop and improve operational systems seldom benefitted from cooperation by those detained. The numbers of people interdicted increased rapidly and unpredictably, and it was impossible for INS as well as the other agencies involved to establish stable and consistent systems.

In an effort to guard against any future erroneous repatriations, Federal agencies involved in Guantanamo operations have amended procedures. INS now conducts a systematic review of all data entry activities at the end of each day to correct any clerical errors that we might be able to detect. Our procedures now ensure that no records of completed interviews are released to

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any other agency until all quality control activities are complete. Responsibility for the preparation of any repatriation manifesto is now the exclusive responsibility of the INS, and this duty is not shared with any other agency. INS personnel now monitor the loading of busses transporting Haitians from the camps to the ships for repatriation. We have assigned a full-time automated data systems manager to our Guantanamo operation, and are supporting that position with necessary assistance from staff and consultants.

Recent events have resulted in acknowledgement by all Federal agencies involved in this situation (DOD, DOJ, HHS) that there is no alternative but to develop a management information system which, when installed, will provide all agencies involved the ability effectively and efficiently to monitor and control all aspects of the process. The catalyst for the development of this system was a meeting held the week of May 5-9 at CINCLANT Headquarters, Norfolk, Virginia. Representatives of all affected agencies met and discussed the process, the problems associated with the process, and the planning required to resolve any issues surrounding these operations. This system is currently under development.

Thank you for allowing us the time to prepare a thorough response, and I am available to address any additional questions that you might have on this subject.

Sincerely,


Edward J. Lynch
Director
Office of Strategic Planning



**AMNESTY
INTERNATIONAL
USA**

304 Pennsylvania Ave SE Washington, DC 20003
Phone: (202) 544-0200 / Fax: (202) 546-7142

9 APRIL 1992

**STATEMENT ON U.S. GOVERNMENT POLICY TOWARDS HAITIAN REFUGEES
AND ONGOING HUMAN RIGHTS VIOLATIONS IN HAITI**

Amnesty International continues to call on the U.S. government to cease the policy of interdicting Haitian asylum-seekers on international waters and forcibly returning them to Haiti before each asylum-seeker has had an opportunity to have the merits of his/her claim examined in a procedure that conforms to international standards; this includes an opportunity to have appropriate legal advice and an effective review of a negative decision. As far as Amnesty International is aware, the procedures used at Guantanamo Bay Naval Base do not conform to such standards.

Amnesty International continues to call upon the U.S. government to allow it access to Guantanamo Bay Naval Base. Since December of last year, Amnesty International has been trying to obtain permission to go to Guantanamo to document the cases of Haitian asylum-seekers there and to investigate the screening process. It is a travesty that Amnesty International may be denied the possibility of carrying out its recognized work on behalf of human rights. Very few governments of the world deny entry to Amnesty International and it is deplorable that the US government is headed in that direction.

Amnesty International maintains that human rights violations continue in Haiti. Killings have subsided but nonetheless torture, arbitrary arrests, beatings continue to be suffered by the Haitian people at the hands of the Haitian military. The human rights violations did not stop after the first few days of the coup but are ongoing. The recently documented cases that follow are an example of this ongoing tragedy in Haiti:

Dully Oxeva and Derosé Exanor, two peasant activists from the area of Thomonde, Central Department, were arrested in Mirebalais where they had been in hiding and severely beaten by the military on Saturday, 21 March, 1992, on account of their membership in the Mouvement Paysan de Papaye (MPP), a long-term target of human rights violations. The offices of the MPP were ransacked by the Haitian military after the coup and several of its members have been arrested and ill-treated since then.

Amnesty International is an independent worldwide movement working impartially for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture and executions. It is funded by donations from its members and supporters throughout the world.

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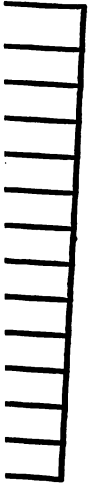
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