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Senate Foreign Relations Committee Hearing on the

"Success and Challenges of United States policy to Haiti"

July 15, 2003

Senators, there are Haitian-Americans in Indianapolis, Minneapolis and all of your states. They are decent, hardworking people with families and are concerned about their people and homeland.

Our detention policy is draconian. There are constructive alternatives which better serve our need to deter illegal emigration from Haiti. My testimony discusses each of these in turn: the Haiti Economic Recovery Act (HERO), S. 489, H.R. 1031; meaningful in-country and regional refugee and immigrant processing; and a guest worker program. We need to adopt all of these measures.

But I begin with an issue which has received far too little attention recently[1]: the ongoing and imminent deportations of the long-resident parents of U. S.-born American children who don't speak Creole and have never been to Haiti.

The Need for a Bill to Remedy Defects in the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) [2]

[1] Not so in the past. See e.g., "Haitian Immigrants in U. S. Face a Wrenching Choice," New York Times (top of front page), March 29, 2000; "No room for 5,000 Elians", San Francisco Chronicle lead editorial, April 3, 2000; NBC Nightly New with Tom Brokaw, April 6, 2000; ABC Evening News, July 4, 2000; ABC's Nightline with Ted Koppel (full program entitled "Equal Justice?"), May 25, 2000; ABC's Nightline with Ted Koppel (segment during Miami townhall meeting on Elian), April 7, 2000; "A cruel choice for Haitian parents", Tampa Tribune editorial, April 10, 2000; "Elian's Case Should Shed New Light on Haitians' Plight", op-ed by nationally syndicated columnist Mike Harden, Columbus Dispatch, April 12, 2000; "Haitian parents facing deportation fearful for US-born children", Sun-Sentinel (front page of local section), April 16, 2000; Tavis Smiley show, Black Entertainment Television (full hour), April 24, 2000; "Haitian Parents of U. S. Kids Deserve to Remain Here Together," Miami Herald lead editorial, May 4, 2000; "Protect 5,000 American Children, Don't Deport Parents", op-ed, Miami Herald, May 5, 2000.

[2] P. L. 105-277.

To begin I must go back to an earlier time, perhaps exemplified by something which occurred during a June 15, 1994 hearing of the House Judiciary Committee's Subcommittee on International Law, Immigration, and Refugees. The hearing concerned how well – or poorly -- we were screening Haitians for refugee status. Representative Nadler of New York, a subcommittee member, had set up on display an extremely explicit graphic which he used to cross-examine our government officials who testified. It spoke a thousand words.

It was the photo of the mutilated face of a young Haitian youth leader, Omann Desanges, whose case had been well-documented.[3]

Omann's fate is extremely relevant to the tragic dilemma faced by hundreds of wonderful American families. Permit me to explain.

Like hundreds of thousands of his compatriots, Omann had been ecstatic during the brief period leading up to the December 1990 elections and until the September 1991 coup which ousted President Aristide. Like him or not – virtuous or flawed – Aristide back then was adored by literally millions of Haitians, kind of like JFK, to use a very inexact analogy. Haitians all over the country – illiterate or not – plastered their homes with his photograph; young people everywhere formed youth groups. They met regularly, discussing excitedly all kinds of desired local projects, like building roads, etc., things which for lack of funds rarely came to fruition. Exiled Haitians love to talk politics, but those in Haiti had never been able to speak freely; now, for the first time in their lives, euphoric, they could, and they "came out of the woodwork" in support of Aristide's candidacy and then during those few months of hope before the coup.

It was grassroots democracy in action.

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[3] "How U. S. error sent Haitian to his death," Miami Herald, April 18, 1994.

And then came the coup. The military had been there, waiting in the wings, and they knew exactly who to target, everywhere, all over the country. No one knows how many they killed; some said 3,000, some said more. But there was lots of blood. Repression by the Tonton Macoutes under Duvalier, and by their various incarnations – "Zenglendo" was one – under the military dictators who followed him in the late 1980's, Namphy and Avril, had always been bad; historically Haiti had been a kleptocracy, a government by thieves, and the Macoutes and their followers, in exchange for supporting the current dictator, had always had carte blance to steal, rape and kill vendors and other common poor people when they hadn't gotten their way.

But the post-coup repression was, quite literally, systematic, because the military knew exactly who to go after. Thousands of people went into hiding and fled <u>any way they could.</u>

Omann Desanges was one of them. From 1981 to mid-1994, the U. S. Coast Guard had been interdicting and repatriating virtually every boat person, with the brief exception of the immediate post-coup period, and even then it returned two-thirds of them.[4] Desanges, a simple youth leader in his twenties, had managed to get to Guantanamo during that brief period, but we erroneously sent him back to Haiti, where

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[4] "Between 1981 and 1991, the U. S. Coast Guard interdicted and forcibly returned only Haitians. During those 10 years, out of 24,558 interdicted Haitians, INS shipboard screeners allowed only 28 persons to pursue their asylum claims in the United States. … Those Haitians who managed to register asylum claims during the 1980s (the time of Duvalier and other dictators) had the lowest asylum approval rate of any nationality, 1.8 percent. By contrast, Soviet asylum approvals at that time were 74.5 percent.

"In May 1992, for the first time in our history, the United States began forcibly returning interdicted asylum seekers with no screening whatsoever – Haitians only. ….

"[In contrast,] from the 1960s to the present, hundreds of thousands of Cubans have been paroled in and, after a year, allowed to adjust automatically to permanent resident status. … the 'Guantanamo Cubans' were paroled in under much more favorable conditions that the Haitians [and] the Haitians not the Cubans – were required to pass a 'credible fear' screening before being paroled from Guantanamo and … two-thirds were returned to Haiti. …"

Bill Frelick, Senior Policy Analyst, U. S. Committee for Refugees, "Most Favored Refugees?," <u>Washington Post</u>, April 20, 1998.

after hiding for nearly two years, he was found, arrested, tortured and killed in the most extreme manner imaginable.

Now for the relevance of his story. Since at least 1981, when President Reagan initiated our Coast Guard interdiction and repatriation policy, Haitians had been fleeing by air to avoid it. Since dictators don't give travel papers to those they want to repress, they were obliged to get false papers as the only way to get on the airplane. This manner of exit is well recognized in asylum and international law and tradition; one of the few persons we made an honorary U. S. citizen is Raoul Wallenberg, for helping Jews escape Nazi-occupied Hungary with phony identity papers.

When the Haitians who fled this way arrived at Miami International Airport, they invariably gave their real names, disclaimed the document and indicated their need for asylum. They were promptly paroled into the community, where they got work and formed families, and their exclusion and asylum hearings proceeded apace, much like their boat person compatriots who, unlike Omann Desanges, had managed to get here.

Ironically, it is the more bona fide refugee -- the soldier sought by the military for refusing to shoot unarmed demonstrators, the union member shot by the military, the sister of activists slain when soldiers invaded their common home – who was forced to flee this way: the more real and bona fide the threat of repression, the more suicidal it would have been for the person to flee by boat, since the Coast Guard, even during the worst periods of repression, was continuing to promptly sail interdicted boat persons back

to Port au-Prince, handing them over on the docks to uniformed and armed soldiers of the Haitian military regime we were simultaneously so roundly condemning.[5]

Another irony: if Omann had been brought here instead of being repatriated, he would eventually have been covered by HRIFA; it is only his "airplane refugee" compatriots, who fled by air to avoid such a fate as his, who tragically have been excluded from coverage by an ironic, unintended error.

It is on their behalf – on behalf of their U. S.-born children, their families, and on behalf of their extended families in Haiti who rely on the remittances they've been sending to them for years – that I appeal to this august Committee to support a "HRIFA fix-it" bill to prevent the deportation of these parents and the destruction of these families.

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[5] In 1994 President Clinton accurately said, "They're chopping people's faces off, killing and mutilating innocent civilians, people not even directly involved in politics." He referred to them in his September 1994 television address justifying U. S. intervention. Secretary of State Christopher on July 10, 1994 said Haiti's military was raping the wives of Aristide supporters, and respected human rights groups documented the regime's use of rape as an instrument of political terror. Assistant Secretary of State John Shattuck wrote:

> Beginning last summer, politically motivated killings in Port-au-Prince rose sharply, ….
>
> Human rights abuses have qualitatively and quantitatively worsened in recent months. Soldiers and armed thugs **stage almost nightly raids** on neighborhoods where many Aristide supporters, live, **raping the wives and children of political activists and critics of the regime, abducting young people, and disfiguring victims' faces**.
>
> Raids have been conducted on clergy, fires set in private homes, and the bodies of men shot with their hands tied behind their backs are appearing on the streets of Port-au-Prince, part of a new practice **designed to terrorize the people**.
>
> A delegation from the IACHR [Inter-American Commission on Human Rights] has identified **133 cases of extrajudicial killings between February and May alone, and attributed full responsibility for those and other atrocities to the de facto authorities**, i.e. the military and their supporters. **The US government fully shares this conclusion**.
>
> Haiti today presents a picture of brutality and lawlessness – in the unaccountability of the regime and its wide scale violations of human rights….

"Human rights abuses in Haiti worsen," op-ed, Miami Herald, July 14, 1994 (emphases added).

As HRIFA's champion and your colleague, Senator Bob Graham of Florida, said about their plight:

> I was pleased to read your May 4 editorial "Haitian parents of U. S. kids," about a problem that threatens to tear apart innocent families. … We shouldn't punish Haitians who fled tyranny and came here seeking refuge, freedom, and justice. To ensure that they have the opportunity to embrace these protections, Congress passed HRIFA in 1998. … We should do everything possible to fulfill our commitment and keep families from being torn apart.

Senator Graham, letter to the editor, Miami Herald, May 13, 2000.[6]

In South Florida today, they are facing deportation; some have already been deported, leaving behind forfeit houses and devastated families. An immediate administrative deportation halt is needed to protect them pending enactment of a solution to their plight in a HRIFA "fix-it" bill.

These otherwise-HRIFA-eligible "airplane refugees" have been here for at least eight years, and most for an average of ten to fifteen years. They own houses and businesses, work and pay taxes, send remittances to Haiti, and love and support their families.

What are their U. S.-born American-citizen children to do if their parents are deported? These children are the promise and future of their communities. They've never been to Haiti and don't speak Creole very well if at all; they are going to school here and pursuing their young lives. Are they to waive goodbye as their beloved parents are deported so that they may remain behind to pursue their birthright to the American dream? Or should they voluntarily move to Haiti to join their families, forfeiting that

[6] Indeed, HRIFA's intent and purpose was to end "two decades of discrimination against the Haitians," as others of your colleagues stated, 144 Cong. Rec. S 13003 (Nov. 12, 1998), and to finally provide a semblance of equal treatment to Haitians, following the enactment a year earlier, in 1997, of the Nicaraguan Adjustment and Central American Relief Act ("NACARA"), from which Haitians had been excluded.

birthright and dream, so as to be able to grow up with their mothers and fathers? What would each of us do faced with such a wrenching and un-American dilemma?

There is another irony about the airplane people, namely that their exclusion from HRIFA was an unintentional consequence of trying to treat Haitians like the Nicaraguans who had benefited a year earlier from the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA). What happened was that a "one-size fits all" approach left the Haitian airplane people "in the lurch."

The Nicaraguans had fled Haiti surreptitiously over land borders; they hadn't needed to have any papers, so exclusory language in NACARA for persons using such papers never mattered to them and has never been an issue for them. But the identical exclusion grafted onto HRIFA in an attempt to treat the two groups the same has had this devastating consequence because of the completely dissimilar geography and Coast Guard policies which faced these Haitians back during the coup years and earlier.[7]

The deportation of these persons, and the devastation of the lives of their children, unless HRIFA's vitiated purpose is restored in a HRIFA "fix-it" bill, should haunt us. And it will destabilize Haiti, adding more mouths for that country to feed, and depriving many extended families of the remittances on which so many rely for subsistence.

Deserving Children "Aging Out" of HRIFA for whom a "fix-it" bill is also needed.

HRIFA provides for the adjustment to legal permanent resident status of the children under age 21 of approved HRIFA applicants. But according to the GAO, only

[7] NACARA granted residence to Nicaraguans present in the U. S. before December 1995. HRIFA restricted eligibility to those paroled in, or who had filed for asylum, in both cases before 1996. All of the otherwise-eligible Haitian "airplane refugees" therefore by definition fled Haiti before that date, the vast majority ten to fifteen years ago.

9,555 of 37,295 HRIFA applications had been approved as of March 31, 2003 – three years after HRIFA's March 31, 2000 filing deadline for principal applicants.[8]

This means that nearly three quarters or 28,000 of the applications still remain unadjudicated today, since very few have been finally denied, a fact of enormous significance for the minor children of eventually successful applicants.

At that rate, it will take nearly another decade for all of the applications to be adjudicated. Hundreds of deserving minor children have already reached the age of 21 and therefore "aged out" as a result of this tardy processing – some have already been placed in removal proceedings and all are so threatened[9] -- and many hundreds if not a few thousand more will "age out" and face removal proceedings and deportation to Haiti long before their parents' HRIFA applications are eventually approved some years from now, unless the problem is remedied legislatively.

These delays are only the latest which contributed to this problem: HRIFA did not become law until October 1998, a full year after NACARA; applicants had to wait nine months more, to mid-1999, before they could begin applying; and final HRIFA rules were not published until literally the week before the March 31, 2000 HRIFA filing deadline.

Unless fixed, the converse of the "airplane refugee" dilemma will occur: the parents will have obtained legal permanent residence under HRIFA, but their "aged out" children tragically will be deported.

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[8] U. S. General Accounting Office, Subject: Immigration Benefits: Ninth Report Required by the Haitian Refugee Immigration Fairness Act of 1998, April 21, 2003.

[9] Conversations with attorney Michael Ray, Esq., other attorneys, and an immigration official, Miami, Florida, July 2003.

There are ways to fix this problem. The Child Status Protection Act fixed "aging out" problems in other contexts, but not in this one; a second reason a HRIFA "fix-it" bill is needed is to fix the problem in this context.

Now I wish to turn to the plight of current Haitian migrants and refugees.

Current Unprecedentedly Harsh Indefinite Detention Policies

Our security is disserved by unprecedented and harsh policies which waste our resources, divide our communities and demean our values as a people.

Discrimination against Haitian refugees is nothing new.[10] But today's detention policies violate internationally accepted legal norms. And they are unnecessary, given meaningful alternatives – the Haiti Economic Recovery Act, "in-country" and regional refugee and immigrant processing, a guestworker program – each of which would deter illegal emigration.

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[10] See footnote 4, supra. Between 1977 and 1991 at least ten federal court decisions in class actions described our violations of their rights. Haitians were unlawfully denied their statutory and treaty rights to a hearing before an immigration judge in exclusion proceedings on their claims for political asylum. Sannon v. United States, 427 F. Supp. 1270 (S.D.Fla. 1977) vacated and remanded on other grounds, 566 F.2d 104 (5th Cir. 1978). They were unlawfully denied their right to notice of the procedures that the government intended to use against them in exclusion proceedings. Sannon v. United States, 460 F. Supp. 458 (S.D.Fla. 1978). They were unlawfully denied the right to work during the pendency of their asylum claims. National Council of Churches v. Egan, No. 79-2959-Civ-WMH (S.D.Fla. 1979). They were unlawfully denied access to information to support their asylum claims. National Council of Churches v. INS, No. 78-5163-Civ-JLK (S.D.Fla. 1979). They were unlawfully denied the right to be heard on their asylum claims and subjected to a special "Haitian Program" designed to expeditiously deport them in violation of their basic rights. Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D.Fla. 1980), aff'd as modified sub nom. Haitian Refugee Center v. Smith, 676 F.2d 1023 (5th Cir. Unit B 1982). They were unlawfully denied their right to counsel and to fair process in their exclusion hearings by being shipped like cattle to remote areas of the country and subjected to a "human shell game." Louis v. Meissner, 530 F.Supp. 924, 926 (S.D.Fla. 1981). They were singled out and discriminated against in their incarceration where they remained for over one year while being subjected to physical abuse and substandard medical care that resulted in the suicide of a named plaintiff; a panel opinion described that discrimination as "as stark as that in Gomillion…or Yick Wo." Jean v. Nelson, 711 F.2d 1455, 1489 (11th Cir. 1983). Although the Court of Appeals en banc later vacated this decision on the ground that Haitians had no constitutional rights, it never disturbed the panel's factual findings. Haitians were denied the right to a "meaningful opportunity to be heard" in the amnesty program. Haitian Refugee Center v. Nelson, 694 F.Supp. 864, 879 (S.D.Fla. 1988), affirmed sub. nom. McNary v. Haitian Refugee Center, Inc., 498 U. S. 479 (1991). See also Haitian Refugee Center, Inc. v. Baker, 789 F.Supp. 1552 (S.D.Fla. 1991), vacated on jurisdictional grounds, 949 F.2d 1109 (11th Cir. 1992).

The Attorney General cites "national security" to justify the practices described below. But Haitian migrants fit no terrorist profile, nor is there any substantiated evidence of terrorists in Haiti. He argues that Pakistani or other terrorists might try to sneak into the U. S. by joining groups of fleeing Haitian boatpersons, but the two groups are entirely dissimilar and easily distinguishable, and a former CIA head of counter-terrorism has said that Haiti is not a favorable environment for suspected terrorists.[11]

Ironically Cuba, whose refugees have always received better treatment,[12] is one of only seven countries our government lists as a state sponsor of terrorism, but we detain no Cubans and all Haitians – indefinitely -- although Haiti isn't on that list.

Even without the alternatives discussed below, there was no mass outflow from Haiti in the late 1990's, when detention of Haitians was much less severe; and there is no such outflow from Cuba, whose nationals we do not detain.

Haitian asylum seekers in the Miami District have been discriminated against and routinely denied release from detention since December 2001.[13]

We indefinitely detain at great expense (at the inappropriately-named "Comfort Suites Hotel") Haitian infants and children and their mothers. For example three-year old Cherlande and her mother, Zilia Mileus, and Cherlande's 14-year old sister were detained for six long months. Children under six years old like Cherlande and adults over 18 remain confined in their rooms with no access to recreation, activities, fresh air or sunshine. There have been as many as six persons per room, and the detainees have had

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[11] As here, this section relies in part on Florida Immigrant Advocacy Center, "Detention of Haitian Asylum Seekers," late May, 2003.

[12] See footnote 4, supra.

[13] Prolonged detention is accompanied by another extreme policy, the summary return by the U. S. Coast Guard of interdicted Haitians with no routine screening of their asylum claims unless a person loudly and explicitly expresses a fear of return (the "shout test"); while Creole interpreters are rare, this is not so for interdicted Cubans and Chinese, who are informed of their rights in their native languages.

to go weeks or even months without haircut, change of underclothes, and deodorant. Medical care has been inadequate, interpreters often unavailable.

For the first time we are detaining Haitians even after immigration judges have granted them political asylum, while the government is appealing their grants.

When immigration judges last Fall granted bonds to detained Haitians after ruling that the person was neither a flight risk[14] nor a threat to the community, the government refused to release any of them, appealing every case; when the Board of Immigration Appeals ruled favorably this Spring in the lead case, that of 18-year old David Joseph, that the government must release those Haitians for whom bonds had been set, the Attorney General on April 17, 2003 intervened, overruled his own tribunals, and ruled across-the-board that no Haitian may bond out of detention, even while conceding that David posed no security risk. All of this was unprecedented; months later all of these persons remain locked up.[15]

Our practices in South Florida vis-à-vis current Haitian airplane refugees are similarly new, and they imperil lives. Haitians have been arriving by air with altered documents since at least 1981, when President Reagan initiated our Coast Guard interdiction and repatriation policy. As indicated earlier, on arrival at Miami International Airport they invariably give their real names, disclaim the document, and indicate they want asylum, and until last Fall they were not detained but rather promptly paroled into the community, where their chances in their asylum hearings were similar to those of their boat-person compatriots.

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[14] Recent Executive Office of Immigration Review (EOIR) statistics in the Miami district indicate that Haitians have a higher than average court appearance rate. See footnote 11, supra.

[15] See "Illegal Aliens Can Be Held Indefinitely, Ashcroft Says," New York Times, April 26, 2003; "More Illegal Immigrants Can Be Held," Washington Post, April 25, 2003.

Last Fall in South Florida we began not only detaining but criminally prosecuting them, wasting the resources of federal detention officers, federal prosecutors, federal public defenders, and federal court personnel. Such detentions and prosecutions jeopardize their chances of winning asylum and insure that, on deportation to Haiti -- now with a "criminal alien" label -- they will be imprisoned in the abysmal and life-threatening conditions which characterize Haiti's prisons – and where prisoners may languish indefinitely and die.

Our indefinite detention policy entails expedited political asylum hearings with little or no access to counsel, jeopardizing basic legal rights and norms; last December at the Krome detention facility outside Miami, a few dozen Haitians were denied asylum and ordered deported without counsel in shortened, expedited hearings. It is well documented that one's chances of prevailing are vastly better with competent counsel able to prepare the case, and many might have won if so represented.[16]

Trauma and despair are common. There have been at least two Haitian suicide attempts at Krome since June of last year. Many of the Haitian women detained at the Broward Transitional Center have become anxious and despondent.

When facilities like Krome, which primarily houses non-Haitian criminal aliens, are overcrowded, the efforts of pro bono legal service providers are rendered more difficult. Overcrowding has resulted in regular transfers of asylum seekers to out-of-state county jails far from South Florida, where many have family. For example, a Haitian woman and her infant child were transferred to rural Pennsylvania after arriving by boat in December 2002, where they have been unable to secure pro bono legal representation.

[16] Of about 214 Haitian boat persons caught October 29, 2002 off Key Biscayne in Florida, about fifty-three (53) – about one in four – have won their asylum claims, an unprecedentedly high rate, indicating the importance of counsel in these cases.

This increases feelings of hopelessness and jeopardizes the Haitians' rights to claim asylum and to counsel.

Thus detaining asylum seekers jeopardizes their rights to counsel and to a meaningful hearing on their claims. Their detention as a deterrent is illegal under international law: there must be an individualized analysis of the need to detain a particular individual; when detention is used as a general deterrent, as currently, it is not based on such an individualized analysis and violates these principles.[17]

Indicative of misguided priorities re Haitians, recently costly state-of-the-art isolation cells were completed at Krome, but no funds apparently are available to increase the number of attorney-client visitation booths to facilitate the right to counsel, as has been often requested. During busy periods attorneys have sometimes had to wait hours to see their clients.

Detention, as indicated earlier, is of questionable efficacy as a deterrent. By nationality, more Ecuadorans were interdicted than Haitians in fiscal year 2002, and as of about June 1, 2003, the Coast Guard had caught more Dominicans than Haitians. Only 1486 Haitians were interdicted in fiscal year 2002, which was slightly higher than the 1391 Haitians interdicted in fiscal year 2001. In January and February 2002, no Haitians were interdicted, although the indefinite detention policy had not yet then been made public; between March and July 2002, just after it became public, 628 Haitians were interdicted.

Now I will discuss three alternatives to the detention policy, alternatives which serve our national security goals as well as our values.

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[17] Advisory Opinion, United Nations High Commissioner for Refugees, April 15, 2002.

Alternatives: The Haiti Economic Recovery Act

Improving conditions in Haiti creates hope, alleviates despair, and decreases the likelihood of illegal emigration and the concomitant diversion of Coast Guard, Border Patrol and detention resources needed to fight terror.

Haiti is the poorest country in the Americas. 80% live in abject poverty, 70% have no formal employment. More than half of her 8.2 million people are illiterate. Infant mortality is the highest in our hemisphere: one in four children under age five are malnourished.

The trade bill would correct an oversight in U.S. trade law that recognized the special needs of Africa's least developed countries but not those of our hemiphere's poorest land – Haiti.

The US generally promotes free trade but maintains very high tariffs and restrictions on apparel and textiles. Although the garment industry is an ideal "stepping stone" industry for undeveloped countries – because it is not capital intensive -- current U.S. law requires Haiti's manufacturers to use cloth – and even yarn – made and spun in the U.S. to avoid these prohibitive duties. HERO would relax these restrictions, which have impeded the development of Haiti's apparel sector and kept factories idle and Haitians unemployed.

Specifically, HERO would amend the "Trade and Development Act of 2000" to grant duty-free status to Haitian garments made of fabrics or yarns from countries with which the US has a free trade or regional agreement. It is not a "handout" and would enable Haiti to become a garment production center, create jobs, improve conditions, and discourage emigration.

HERO would have minimal impact on US jobs and actually encourage job transfer from Asia to our hemisphere, including the US, because most Haitian foreign exchange earnings, unlike in the Far East, are used to buy US products.

Haitian apparel accounts for only 0.38% of all apparel imports into the U.S., and the bill would cap duty-free imports made of fabrics or yarns from the designated countries at 1.5 percent growing modestly over time to 3.5 percent. The "Trade and Development Act of 2000" already includes strong safeguards against transshipment of garments produced in non-beneficiary countries.

Since the cap begins at 1.5 percent of all such imports, Haitian imports could increase about four-fold to take up the full initial quota. Since the cap increases to 3.5 percent, for this number to be reached in the future Haitian exports could have to increase ten-fold, representing increases in exports from the 2002 value of $216 million to an ultimate $2.16 billion, which was the extent of Dominican Republic exports to the U. S. in 2002. Expressed differently, employment could increase to over 200,000 or approximately 5% of persons of the working age in Haiti.

On the basis expressed by Haitian observers that one formal job in Haiti feeds 6 mouths, such employment could conceivably support over 15% of the entire population.

Haiti has the capacity to reach these caps. The quality of such enterprises is high; there exists good US-educated management with a style readily conducive to the formation and continuation of business with a few major US companies. The availability of under- and unemployed labor combined with the fact that Haitians are hard-working and easily trainable means that that there are workers to produce more.

HERO is a small measure which could lead to important improvements in Haitians' lives, giving them hope and decreasing the desperation which contributes to illegal emigration. This kind of market-based, private sector development is also crucial to promote the growth of the Haitian middle class of entrepreneurs, a key ingredient to democratic political development.

Alternatives: In-Country and Regional Refugee and Immigrant Processing

We do not detain arriving Cubans, yet there is no mass outflow from that country. One deterrent is the U. S.-Cuba Migration Accord, under which up to 20,000 Cubans annually since 1994 have been resettled in the U. S. We should have something similar for Haiti.

A meaningful program in Haiti and regionally would act as a "safety valve" against illegal emigration, thereby preserving our resources; and it would learn from the processing lessons of the past and present.

"In-country" processing in Haiti in the early 1990's was poorly conceived and understaffed. From February 1992 to mid-1994 it rejected 98% of applicants, denying 76% of them even an interview. A requirement that the would-be refugee be "high profile" blocked most applicants from consideration and ignored the systematic repression of non-prominent dissidents. Applying was dangerous, especially in the program's early days, when the only processing site was located across the street from the national headquarters of the Haitian police, easily observable by soldiers and paramilitary, who monitored and frequently harassed persons seeking access to the processing office.

But it did offer protection to about 1,500 refugees who were allowed to proceed to the U. S. with the help of voluntary agencies with expertise in resettlement.

More effective in-country and regional processing of Haitian refugees and of the beneficiaries of immigrant petitions would offer an alternative to risky illegal sea voyages. It would also facilitate our ability to meet the target goal of 50,000 refugee admissions in FY 2003, a goal that is currently eluding the resettlement system in the face of security issues and other concerns. Inherent in resettlement are thorough security clearances before one may proceed to the U. S.

Many Haitians are in the Dominican Republic and the Bahamas. Both countries have expressed concerns about Haitians there, and regional processing would alleviate some of these pressures and possibly increase the tolerance of their authorities and public for hosting some Haitians.

There is no meaningful refugee protection in either country. In the Dominican Republic, Haitians are vulnerable to police harassment; children are typically deprived of an education; and families often end up homeless and living on the streets of Santo Domingo.

Past in-country processing in Haiti was hindered by requiring multiple in-person interviews in Port-au-Prince and the completion in writing of complex application forms, which rendered illiterate Haitians virtually ineligible for resettlement. Once a person was identified as eligible, there were often long delays before the person's actual transfer to the U. S.

The process was significantly improved when U.S. resettlement agencies, known as Joint Voluntary Agencies (JVAs), were used to identify potential resettlement

candidates and assist in their processing. These included the U.S. Conference of Catholic Bishops and World Relief. The International Organization for Migration facilitated processing in Port-au-Prince.

Such agencies conducted initial screenings and intakes; assisted Haitians in preparing for their actual refugee interviews; helped Haitians complete asylum applications (I-589s); and arranged travel for those Haitians accepted for resettlement.

Since that experience, several successful initiatives have facilitated resettlement in other parts of the world that build upon the expertise of international and local NGOs. In Pakistan, the International Rescue Committee has partnered with local NGOs in an effort to discreetly identify those Afghan refugees most in need of resettlement. In Nairobi, the Hebrew Immigrant Aid Society is working with UNHCR, relief agencies and others to identify refugees in the region appropriate for resettlement. Working with local NGOs and others alleviates the risk of overburdening the system with clearly ineligible applicants. Such efforts have precedents in Haiti, where the JVAs frequently took referrals from local rights groups.

Processing sites should be located not only in Port-au-Prince but in outlying areas. In the 1990s, processing sites eventually set up by the JVAs in Cap Haitien and Les Cayes alleviated the need for applicants to make the arduous and often risky trip to the capital to access resettlement processing.

Processing and interview sites might be located in facilities where other activities are also taking place and in various locations away from government offices.

A resettlement program in Haiti could take advantage of pilots implemented in places such as Pakistan under which Afghan refugees are referred for resettlement through NGOs working at the community level.

Efforts should be made to limit the number of times an applicant must appear in-person. In the 1990s about four appearances were required before an applicant was accepted or rejected. This was quite burdensome to applicants who had to travel each time to the processing site.

To facilitate quick transfer to the U. S., refugee security clearances of approved applicants should be prioritized and conducted quickly.

Many of these recommendations would also apply to regional resettlement initiatives.

Significant groundwork has been laid in Africa and other program sites through the use of biometric data to address concerns about fraud. This can be replicated in Haiti.

In-country refugee and immigrant processing is available in Cuba, not Haiti, although it would act as a significant deterrent to illegal emigration from that country. We should implement a meaningful, effective and thoughtful program which in a controlled and regulated way will simultaneously protect refugees, ease the path of qualified beneficiares of immigrant petitions, diminish the incentives for people to flee illegally, preserve our Coast Guard and other resources and heal community divisiveness by establishing more equal treatment between Haitians and Cubans.

But even if resettlement becomes available, identifying refugees interdicted at sea should be facilitated through the assignment of Creole speaking officers on Coast Guard vessels that are patrolling off Haiti. The officers should at minimum inquire as to

whether an interdicted Haitian has concerns about returning to Haiti and should whenever possible interview each person individually rather than in groups, so that a refugee can more comfortably raise concerns about returning home. And interdicted Haitians should be informed about the availability of in-country processing if they are repatriated.[18]

Alternatives: Include Haitians in a Guestworker Program

Our vibrant market economy is of course a magnet for desperate people seeking economic opportunity. We need not fear this. The pages of our history are filled with the stories of ambitious immigrants coming here in search of a better life. In turn, their dynamism, hard work and fresh perspectives have largely drive our own prosperity and freedom. Historically, immigration to the United States has been a tremendously successful anti-poverty program – one grounded in freedom and opportunity, not handouts and dependency.

Many Haitians don't wish to immigrate but rather wish to work here temporarily to help their families at home and save money for their return. This too is good for our country; it is a win-win situation while they are here and helps to export our values when they leave. Those who return do so with a strong education in how free markets and democratic governance work and higher expectations for self-government at home.

I am encouraged by guest worker legislation currently being discussed, particularly Senator John Cornyn's Border Security and Immigration Reform Act of 2003 (S. 1387) in the Senate and Congressman Jim Kolbe, Jeff Flake and Sylvestre Reyes's Land Border Security and Immigration Improvement Act in the House. These bills would deflect major portions of the flow of illegal entrants and bring millions of

[18] Thanks to the Women's Commission for Refugee Women and Children for specific ideas regarding appropriate refugee processing.

undocumented workers out from underground and into the legal market. Such measures would be humane and economically beneficial and would enhance our national security and respect for the rule of law.

I would urge the members of the Committee to follow the progress of these bills and ensure that Haitians are included in them.

Conclusion

There is an urgent need to introduce and enact a HRIFA "fix-it" bill to protect deserving individuals and families, including U. S.-born children, and to prevent the destruction of families. Our current detention policy is unprecedentedly harsh and unnecessary, given its lack of efficacy and the existence of appropriate measures which would more effectively serve our security goals: HERO, in-country and regional refugee and immigrant processing, and a guest worker program.

Biographical Information on Steven David Forester, Esq.

Steven David Forester is an attorney admitted to the Bar in Florida and California. He served at the Haitian Refugee Center in Miami, Florida as attorney (1979-1985), board member (1986-1992) and Supervising Attorney (1992-1995), and played a key role in championing the Haitian Refugee Immigration Fairness Act of 1998. He is the author of various articles including "Haitian Asylum Advocacy: Questions to Ask Applicants and Notes on Interviewing and Representation," New York Law School Journal of Human Rights, Vol. X Part Two (Spring 1993) and has lectured widely on this subject. Mr. Forester has received various honors including Stetson University College of Law's 2000 Wm. Reece Smith, Jr. Public Service Award for his Haitian refugee advocacy. He is now serving as Senior Policy Advocate for the organization, Haitian Women of Miami.