

**Statement of the American Immigration Lawyers Association
In Opposition to the U.S. Government’s Resumption of Deportations to Haiti
and
Comments on the ICE Draft “Policy for Resumed Removals to Haiti”
March 11, 2011**

The American Immigration Lawyers Association (AILA) writes to express our deep disappointment with and opposition to the decision of the Obama Administration to resume deportations to Haiti. We are further disturbed by the lack of transparency that the Administration has demonstrated regarding its decision. The new draft policy that U.S. Immigration and Customs Enforcement (ICE) posted on March 7, 2011 fails to respond to the substantive issues previously raised by AILA and other advocates. This draft document is the first written policy the Administration has issued regarding the resumption of deportations to Haiti—it comes three months after DHS announced its plan to resume deportations and more than six weeks after deportations began. The brief comment period ICE provided for public feedback further indicates the Administration’s lack of commitment to meaningful public engagement.

In addition to submitting comments, AILA requests that the Administration immediately convene a joint meeting with AILA and other advocacy organizations that includes officials from the Department of Homeland Security (DHS), Department of State (DOS), and the National Security Council (NSC) to discuss this policy and other issues surrounding the deportation of Haitians. AILA urges the Administration to continue the suspension of deportations to Haiti. If deportations are to proceed, the meeting should address the following:

- (1) clarification of criteria ICE will use to determine who will be deported;
- (2) the screening process ICE will use to ensure that vulnerable individuals or those with humanitarian concerns are not deported;
- (3) full exploration of the use of alternatives to detention (ATDs) to mitigate public safety concerns;
- (4) specifics of a reintegration policy coordinated with the Haitian government that will ensure safe and humane repatriation;
- (5) protocols ICE can implement to minimize the length of detention in the U.S. and transfers to remote facilities.

A. NOW IS NOT THE TIME TO RESUME DEPORTATIONS TO HAITI

First and foremost, we urge the Administration to suspend deportations to Haiti until conditions in that country have substantially improved. AILA recognizes the importance of immigration enforcement and the value of ensuring public safety, particularly with respect to violent convicted criminals. However, the U.S. government should not be deporting people to a country where life-threatening conditions persist. The draft policy does not provide any guarantees that future deportees will not suffer the same fate as Mr. Wildrick Guerrier—who was among those deported in January. Mr. Guerrier died of cholera-like symptoms just days after arriving in Haiti. Nor has the U.S. government provided any explanation of the urgency to resume deportations at this time. It remains a puzzle as to why the Administration continues to move

forward with such a flawed policy and in the face of increasingly vocal opposition to the continuation of these deportations.

The earthquake that hit Haiti on January 12, 2010 was one of epic proportion. It killed an estimated 250,000 people, displaced 1.3 million people—over one-tenth of Haiti’s total population—and caused an estimated \$14 billion in economic damage. Haiti—long the poorest country in the region, wracked by decades of political and social unrest, and still trying to recover from recent hurricanes and tropical storms—was particularly ill-equipped to bear such a catastrophic event.

Since the earthquake, conditions in Haiti have shown little improvement—and by some measures have grown worse. A million Haitians remain homeless,¹ a virulent cholera epidemic has killed over 4,500 people and sickened more than 231,000,² sexual assault of girls and women by roving gangs of men is commonplace in the temporary camps set up after the earthquake,³ and disputed results from the November 28, 2010 presidential election have led to renewed violence and political uncertainty in the country.⁴ On December 9, 2010 and again on January 20, 2011, DOS issued a warning against travel to Haiti, referencing continuing high rates of violence, the cholera outbreak, and violent disturbances in Port-au-Prince, combined with limited police capacity and medical care.⁵

Although the Administration justified the resumption of deportations as the only means to ensure public safety in the U.S., the fact that many of those now slated for deportation have only minor or non-violent offenses belies the public safety rationale. No other plausible explanation has been provided. The death of one of the 27 Haitians deported and the fact that several others were also taken ill should give the Administration further pause for reflection.

The decision to resume deportations is even more perplexing in light of the extensive efforts the U.S. is putting into reconstruction efforts. Deportations are a distraction to the critical reconstruction work underway and a drain on resources that Haiti can ill-afford. Deportations create added burdens—many of those deported have no family remaining in Haiti and no ties to the country. If those slated for deportation are truly dangerous, Haiti has much less capacity to address public safety concerns than does the U.S.

¹ Jonathon M. Katz, *Haiti Mourn Quake Dead, Find Hope in Own Resiliency* (sic), Associated Press, January 12, 2011 available at http://news.yahoo.com/s/ap/cb_haiti_earthquake.

² *Haiti-Cholera*, Fact Sheet #20, Fiscal Year (FY) 2011, USAID, February 18, 2011 available at http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/haiti/template/fs_sr/fy2011/haiti_ch_fs20_02-18-2011.pdf.

³ *Aftershocks: Women Speak Out Against Sexual Violence in Haiti’s Camps*, Amnesty International, January 2011 available at <http://www.amnesty.org/en/library/asset/AMR36/001/2011/en/57237fad-f97b-45ce-8fdb-68cb457a304c/amr360012011en.pdf>.

⁴ Randal C. Archibold, *Haiti Weighs Move After Observers Reject Vote Result*, The New York Times, January 14, 2011 available at <http://www.nytimes.com/2011/01/15/world/americas/15haiti.html?scp=9&sq=haiti%20reconstruction&st=cse>; Jacqueline Charles and Trenton Daniel, *Preval Urges Calm as Electoral Violence Rocks Haiti*, The Miami Herald, December 8, 2010 available at <http://www.miamiherald.com/2010/12/08/1962659/manigat-celestin-may-be-in-runoff.html>.

⁵ *Travel Warning: Haiti*, U.S. Department of State Bureau of Consular Affairs, January 20, 2011 available at http://travel.state.gov/travel/cis_pa_tw/tw/tw_5239.html.

Further, the U.S. government has an obligation under U.S. and international law to carry-out deportations in a manner that ensures the safety and dignity of those returned. The tragic death of Mr. Guerrier and the issuance of precautionary measures by the Inter-American Commission on Human Rights (IACHR) shows in the starkest terms the failure of the U.S. government to live up to those obligations.⁶ We urge the Administration to cease all deportations to Haiti until safe and humane deportations can be ensured.

B. THE DRAFT POLICY IS VAGUE AND CONTRADICTS PREVIOUS DHS STATEMENTS

The draft policy does not address the concerns that have been raised repeatedly by immigration advocacy, humanitarian, and faith-based organizations since the decision to resume deportations was announced. The draft policy's lack of details, brevity, vagueness, and limited scope make it of little practical use. We urge the Administration to create a written policy that provides real guidance, meaningful oversight, accountability, and safeguards that will guarantee deportations occur in a safe and humane manner.

1. The Draft Policy Is Contradictory and Not Narrowly Tailored to Achieve Public Safety in the U.S.

The first paragraph of the policy states that the deportations to Haiti “focus on serious offenders such as violent felons.” The third paragraph begins with the assurance that “[t]his policy is limited to aliens with final orders of removal who pose a threat to the public safety given their previous serious criminal offense or history.” However, the policy goes on to list persons convicted of assault, larceny, the sale of marijuana, and the sale of cocaine as “violent felons”. Simple assault is a misdemeanor that generally does not render a person removable from the U.S. and is not typically considered a “serious crime.” Larceny, the sale of marijuana, and the sale of cocaine (as opposed to trafficking or smuggling of controlled substances) are generally low-level, non-violent offenses.

Furthermore, the draft policy fails to clarify who, among Haitians in the U.S. with criminal convictions and final removal orders, will be subject to deportation at this time. The crimes in the draft policy do not appear to be an exhaustive list of the convictions that would render someone deportable. For example, does “aggravated assault” also include “aggravated battery”? Also puzzling is why “sale of cocaine” and “sale of marijuana” are listed but not the sale of other controlled substances.

The contradictions within this draft policy mirror the contradictory information that has been provided to advocates since the change in policy was announced. At the first briefing, DHS stated that it would detain and deport Haitians with such serious criminal convictions that they pose a grave risk to public safety in the United States, giving the clear impression that the removals would be limited to the “worst of the worst,” namely “murderers, rapists, and child molesters.”

However, at future briefings, DHS began speaking in terms of plans to “balance planes” by removing individuals it believes pose a grave public safety risk together with those who do not.

⁶ <http://www.cidh.oas.org/Comunicados/English/2011/6-11eng.htm>

When pressed, DHS officials confirmed that the planned deportations actually encompass all Haitians in the U.S. with a final removal order and a criminal conviction, including those with nonviolent misdemeanors. The draft policy continues with these same contradictions—speaking of violent felons but listing crimes that are not violent or are not felonies, and explaining the policy as a matter of public safety, but making it so broad as to include individuals who pose no threat to public safety.

AILA requests that the Administration:

- Clarify the criteria that will be used to determine who will be deported.

2. Many Haitians Slated For Deportation Do Not Fall within the Draft Policy

The policy claims that it is limited to individuals “who pose a threat to the public safety.” However, many Haitians being held for deportation do not have convictions for crimes that constitute violent felonies and do not pose a threat to public safety. Many do not even have crimes that are among those enumerated in the draft policy. For example, Mr. Pierre Louis, a plaintiff in the IACHR petition and LPR, was ordered deported based on a conviction for a false claim to U.S. citizenship in connection with an application to vote.⁷ Although he also had a conviction for misdemeanor battery and stealing a book bag, it is likely that neither of those would have rendered him removable. Others slated for deportation have convictions for nonviolent drug possession or other nonviolent, drug-related crimes, nonviolent misdemeanors, and crimes for which they never served any time.

Moreover, ICE implementation of this policy appears to equate a criminal conviction with dangerousness, without regard to when the crime was committed, evidence of rehabilitation, or other individualized assessments. A criminal record, by itself, is an inaccurate and inadequate means for measuring risk to public safety. For example, in an informal survey of 52 Haitians detained in preparation for deportation, 19 percent reported that they had been released from jail or prison more than five years ago and had remained in the U.S. without further incident before they were picked up by ICE in the December sweeps. Of that same group, 58 percent were convicted of non-violent offenses, defined as crimes that did not involve bodily harm to another person. Nonetheless, they are all at risk of imminent deportation under a policy whose stated rationale is to ensure public safety.

C. THE ADMINISTRATION HAS NOT TAKEN ADEQUATE STEPS TO ENSURE SAFE REPATRIATION DESPITE THE REPEATED ASSURANCES IT HAS MADE SINCE DECEMBER 2010

The draft policy states that ICE is working in coordination with DOS and the Government of Haiti to ensure that removals are “safe” and “humane.” Notably, these same assurances were given in December during a conference call by officials from DHS, ICE, and DOS announcing

⁷ Request to the Inter-American Commission on Human Rights, Organization of American States for Precautionary Measures Against the United States of America on Behalf of Haitian Nationals Subject to Immediate Deportation, January 6, 2011, at 11 and Exhibit A1, *available at* <http://ccrjustice.org/files/InterAmerican%20Commission%20Petition%20for%20Haitians%20Facing%20Deportation.pdf>.

the decision to resume deportations to Haiti. Given Mr. Guerrier's death and the experiences of the others deported with him, it is patently obvious that mere statements that coordination is taking place and that deportation will be safe and humane lack credibility.

The safety of Haitian deportees is of particular concern due to the cholera epidemic and the Haitian government's policy of detaining criminal deportees from the U.S. in police holding cells upon their arrival in Haiti.⁸ They are released when a family member comes forward; those without family in Haiti are often held for weeks or months. Extortion attempts against detainees and their families abroad in exchange for release have been reported.⁹ Conditions in Haitian police holding cells are notoriously horrific.¹⁰ Detainees are not provided food, potable water, medicine, or medical care. Cells are overcrowded and unsanitary. The mentally ill or disabled are at severe risk of physical abuse or torture by their jailers. Although the practice of jailing returning citizens is illegal under Haitian law, it has continued for many years and is well-known to the U.S. government.

Following the January 20, 2011 deportation of 27 Haitians, it quickly became apparent that no plan had been put in place for the safe return and integration of the deportees. Upon their arrival, the 27 were taken to four separate jails. Deportees were held in "dungeon-like" cells "with just [a] bucket ... and no beds, just a dirty floor."¹¹ The Haitian police told several of the deportees: "This is what you came here for: to suffer."¹²

Days after arriving in Haiti, Mr. Guerrier began exhibiting severe symptoms consistent with cholera. Even though repeated requests were made for medical attention, it was not until his aunt arrived from the U.S. and convinced the guards to release him that he received any type of treatment.¹³ By then it was too late. Mr. Guerrier passed away on January 29, 2011, just two days after his release. He was 34 years-old.

Both ICE and DOS have disavowed any accountability for Mr. Guerrier's death.¹⁴ ICE has also refused to comment on the treatment of the deportees at the hands of the Haitian government.¹⁵

⁸ *Id.* at 18-22 and Exhibit A3.

⁹ 2009 *Human Rights Report: Haiti*, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, March 11, 2010 available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm>.

¹⁰ See *supra* n. 7 at 18-22 and Exhibit A3.

¹¹ *Deportees From US Struggle in Quake-Hit Haiti*, The Associated Press, March 1, 2011 available at <http://www.google.com/hostednews/ap/article/ALeqM5i5cKsiqnFIPMt93I7w8uL380eJvg?docId=1678bd2416124ec985f30c75ede9482c>.

¹² *Deportees From US Struggle in Quake-Hit Haiti*, The Associated Press, March 1, 2011 available at <http://www.google.com/hostednews/ap/article/ALeqM5i5cKsiqnFIPMt93I7w8uL380eJvg?docId=1678bd2416124ec985f30c75ede9482c>.

¹³ *Deportation, Detention and Death: The Results of the U.S. Decision to Resume Deportations to Haiti*, University of Miami Immigration and Human Rights Clinics, the Center for Constitutional Rights, Florida Immigrant Advocacy Center and Alternative Chance, February 23, 2011 available at <http://ccrjustice.org/files/Final%20Deportations%20Factsheet.pdf>.

¹⁴ Jennifer Kay, *Haitian Deportee Dies After Cholera-Like Symptoms*, The Miami Herald, February 1, 2011.

¹⁵ Mark Dow, *Stop These Inhumane Deportations to Haiti Now*, guardian.co.uk, February 8, 2011 available at <http://www.guardian.co.uk/commentisfree/cifamerica/2011/feb/08/haiti-usimmigration>.

Further, it is evident that the Haitian government only very reluctantly agreed to the deportations,¹⁶ and has refused to accept individual deportees ICE had intended to deport.

Finally, the conditions in Haiti and the facts in specific documented instances demonstrate that the U.S. government's deportations are likely in violation of U.S. and international law, including the principle of non-*refoulement* set forth in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to which the U.S. is a party.

AILA requests the Administration take the following steps:

- Develop and implement a reintegration plan for those persons being deported to Haiti that will ensure their safe and humane repatriation. Such a plan should include a guarantee from the Haitian government that deportees will not be detained upon their arrival in Haiti.
- Ensure that any plans for repatriation are done in coordination with the Haitian government.

D. MANY SUBSTANTIVE ISSUES ARE NOT ADDRESSED BY THE DRAFT POLICY

Beyond the issuance of a written policy on the deportations, AILA has also requested that ICE use ATDs in lieu of deportations, that it implement screening mechanisms to ensure no vulnerable individuals are harmed, and that it end the transfer of detained Haitians to remote jails. Additionally, AILA is increasingly concerned over the length of time Haitians picked up for deportation in December have now spent in detention. As of yet, the Administration has not responded to these concerns and requests.

1. The Use of Alternatives to Detention (ATD) in Lieu of Deportation

ICE has repeatedly stated that it was forced to choose between resuming deportations and releasing dangerous criminals into American communities. ICE has not explained why it has not explored the use of ATDs—such as intensive supervision and monitoring including electronic GPS devices—as a means for mitigating public safety concerns. AILA and other advocates have repeatedly asked the Administration to use ATDs in lieu of deportations. The U.S. for years has managed to balance public safety concerns and the release of individuals who cannot be deported. No explanation has been offered as to why this technology and expertise cannot now be applied to Haitians slated for deportation.

In fact, the Administration did release Haitians with criminal convictions on orders of supervision following its decision to suspend deportations to Haiti.¹⁷ Some of those released by ICE were among the individuals swept up in December and redetained for deportation, even though they had successfully complied with the terms of release and posed no danger to the community.

¹⁶ *Id.*

¹⁷ Although requested, ICE has not provided information on the levels of supervision these post-order Haitians were released under. Thus it is not clear whether these individuals were released simply on OSUPs or whether they were also subject to more rigorous levels of supervision.

Moreover, the January 2010 suspension of deportations was not the first time that deportations to Haiti have been halted. In 2008, the deportation of Haitians with criminal convictions ceased for several months following a series of hurricanes and tropical storms that struck Haiti. Again, Haitians with final order of removal were released from detention and placed on orders of supervision. Statements by the U.S. government that it must choose between public safety and deportations are simply untrue. For years, the U.S. has dealt with populations of noncitizens that it could not deport, either because it was unable to effectuate those deportations humanely or because political circumstances made those deportations impossible.

AILA recommends the following:

- Utilize secure alternatives to detention to avoid unnecessarily deporting individuals who would not pose a public safety risk while under such supervision and monitoring programs.

2. The Identification of Vulnerable Populations

AILA has also requested that ICE put in place a mechanism to identify vulnerable individuals or those with compelling, humanitarian circumstances.

AILA is aware that ICE has released and granted deferred action to some of the Haitians slated for deportation once those cases were brought to DHS's attention by advocates. Although AILA appreciates the attention given to those cases by DHS officials, this ad hoc review process is not enough. The burden to provide an individualized assessment for these Haitians should not fall on the shoulders of a handful of resource-strapped non-profit organizations or be limited to the few Haitians who can afford the services of a private attorney. DHS should implement a systematic screening protocol to protect vulnerable individuals.

Already one of the IACHR petitioners—Roland Joseph¹⁸—was deported before his request for a stay of deportation was reviewed. Unknown numbers of other Haitians who have equally meritorious cases may be deported simply because of a lack of resources. At the very least, there must be a mechanism in place to screen individuals with serious medical conditions or who suffer from mental illness, women, those with dependent family members, and those who have demonstrated rehabilitation. Special consideration must also be given to those with legal claims for reopening their immigration cases.

AILA recommends the following:

- Implement a screening process and oversight mechanisms to ensure that individuals who would be at particular risk in Haiti (those with serious medical or mental health conditions, women, individuals without family in Haiti) and those with humanitarian considerations (individuals with dependent family members who are U.S. citizens or LPRs or those who have demonstrated rehabilitation) are not deported at this time.

¹⁸ Mr. Joseph, formerly an LPR, was ordered removed for drug possession with intent to sell; he received a 6-month sentence. Mr. Joseph has four United States citizen or LPR children and, following the death of their mother in 2000, has been the family's sole financial provider. *See supra* n. 7 at 9 and Exhibit A1.

- Instruct Assistant Chief Counsels to join motions to reopen that have legal merit even though they are outside the normal timeframe or permitted number.

3. Prolonged Detention

In early December 2010, ICE arrested and detained 89 Haitians for deportation. Three months later, most of them remain in detention. Others were released but only after their attorneys were able to gather enough evidence to convince DHS that they should not be deported. Many of the Haitians rounded up had been released following the January 2010 suspension of deportations and had likely already spent six months in detention post order. ICE arrested the 89 Haitians in early December even though it had no plans to begin deportations until at least mid-January. Moreover, ICE detained these individuals before it had a working plan in place to deport them and before it had obtained the cooperation of the Haitian government. While ICE struggles to rectify this flawed policy, these and other Haitians languish in detention far from their families and communities.

AILA recommends the following:

- The immediate release Haitians in detention with final removal orders until safe and humane deportation to Haiti is possible. Going forward, ICE should not re-detain Haitians until their deportation is imminent.
- Once deportations can occur in a safe and humane manner, develop a plan for ensuring that those slated for deportation are not held in prolonged detention prior to their removal.
- Utilize secure alternatives to detention to avoid unnecessary and prolonged detention of individuals in U.S. facilities who are awaiting deportation.

4. Objection to Transfers of Haitians to Remote Facilities

Also objectionable was ICE's decision to transfer and detain Haitians slated for deportation to remote facilities in Louisiana, far from their families, attorneys, and communities. The majority of Haitians now detained in Louisiana are from the South Florida area where they have familial and community ties. In addition, the South Florida area has a large community of immigration attorneys and Haitian community groups, who can provide assistance and support. Thus while ICE has no screening mechanism in place to ensure that vulnerable individuals are not deported into a horrifically dangerous situation, it moved detainees to remote facilities far from attorneys who could have assisted with those assessments. Additionally, the now prolonged detention of Haitians in remote jails where phone communication is both limited and prohibitively expensive has resulted in undue and unnecessary hardship to detainees and their families alike.

CONCLUSION

Over the past three months, AILA has on several occasions raised its concerns about the decision to resume deportations to Haiti to officials in ICE, DHS and the White House. We would be deeply disappointed if this policy represented the culmination of those discussions. As written,

the draft policy would do little to ensure that deportations to Haiti are carried out in a safe and humane manner. Remarkably, the policy includes assurances that the Administration has already proven unable to keep.

Therefore, in addition to an immediate halt of deportations, AILA is also requesting meaningful engagement with the Administration and the development of a policy that provides the guidance, oversight, accountability, and safeguards that will guarantee future deportations occur in a safe and humane manner. We ask that a high-level meeting be arranged with the relevant government agencies, AILA, and others in the stakeholder community as soon as possible.

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