

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT**

In the Matter of: _____

YYY, XXX _____

In Removal Proceedings _____

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AFFIDAVIT OF

Elections in Haiti

1. As an OAS Election Observer, I observed the elections on voting day from the time the polls opened, usually around 6AM, until the votes had been counted, often in the early hours of the next morning. I reviewed the election laws, spoke with voters, election officials, candidates and party observers, observed election operations at dozens of voting centers, recorded complaints about the voting and vote counting, and filed reports with the OAS.
2. Haitians cast their ballots at decentralized voting centers called "*Bureaux de Vote*" ("BVs"). Each BV has a certain number of voters assigned to it, usually less than 1,000. The BV is run by a President, a Vice-President and two Secretaries, who are hired by the Electoral Council. Each political party with a candidate on the ballot is permitted to assign representatives, called *mandataires*, to each BV. The *mandataires* observe the BV's operations, to make sure there are no irregularities. They are entitled to observe the entire operation, including the vote count, and may file official protests or observations that go to the Electoral Council along with the BV vote results. *Mandataires* also sign the official results, and are each given a copy of the results signed by the BV officials and the other *mandataires*.
3. The theory behind the *mandataires* is that with all parties watching, no one will be able to engage in improper activities. In principle, each individual *mandataire* is strengthened by the fact that most of the others will join him or her in confronting irregularities. This system works less well in areas where one party particularly dominates. In those areas, other parties often do not have the organizational strength to vet *mandataires*, so the people they recruit as *mandataires* either support the dominant party or hesitate to confront the dominant party over irregularities. In those cases, irregularities often happen without anyone contesting them, or one or two *mandataires* are left challenging everyone else.

4. The issue of *mandataires* assisting voters has been a particular flashpoint for conflict. Illiteracy in Haiti is very high: over 50% overall, higher in rural areas and among older people. Although the ballots are designed to be usable to people who cannot read, in practice many people find them difficult to use. At every election, Haiti has an extremely high number of unmarked ballots and ballots that are voided because they are marked incorrectly. Help from a *mandataire* can reduce voter confusion and assure that the ballot is correctly marked. But an unscrupulous *mandataire* could also lead an illiterate voter to vote for a candidate that the *mandatiare*, not the voter, supports. As a result, *mandataires* often try to discourage cooperation between voters and other parties' *mandataires*, or maneuver to be the one giving assistance.
5. Haiti's elections have often spawned violence. Virtually every election cycle I have watched or studied in Haiti has led to politically-motivated killings. Although some of the violence has appeared to be organized on a national level, much of it is local- supporters of a party or candidate in one area attacking or intimidating a supporter of a rival candidate or party.
6. One cause of electoral violence in Haiti is the large stakes involved, especially at the local level. Haiti does not have a tradition of a civil service independent from elected politicians. Most government jobs are considered "political," in the sense that the person in the job is hired in part because of a connection with an elected official.
7. The lack of an independent civil service raises the election's stakes for supporters of a candidate or party. Haiti is a desperately poor country, where steady paying jobs are hard to come by. Having one's candidate elected provides the chance for a job, which can make the difference between children going to school or not, or a family member receiving life-saving medical treatment or not. The prospect of government jobs, therefore, gives elections an importance beyond the setting of government policies, and provides supporters and candidates an incentive to take extreme measures to ensure that they prevail.
8. Haiti's first free Presidential elections were held in December, 1990. Jean-Bertrand Aristide was elected. He was technically a member of the FNCD party, but a larger political movement, called *Lavalas* was the engine behind his victory. In January 1991, before Mr. Aristide was even inaugurated, a coup d'état was launched to prevent him from taking office. That attempt failed, but in September 1991, another coup d'état overthrew President Aristide, and ushered in a 3-year military dictatorship, commonly called the *de facto* regime. The dictatorship and its paramilitary allies, especially Front for the Advancement and Progress of Haiti (FRAPH) killed an estimated 5,000 people, beat or raped tens of thousands more, and forced hundreds of thousands into hiding in Haiti or abroad.
9. President Aristide was restored in 1994. The Haitian government ran elections for parliament and local officials in May, 1995, and Presidential elections in December 1995. René Préal, a prominent ally of incumbent President Aristide and Prime Minister under Aristide, was elected president. However, the May elections had to be re-run in some

places because of violence or irregularities, and runoffs were held in some tight races. Those elections did not experience nationwide violence, but there were incidents of attacks against voting centers, electoral officials and party officials. The largest block in parliament following the 1995 elections was the *Lavalas* Platform, a grouping of three political parties, including OPL, then called the “Lavalas Political Organization.” Within the *Lavalas* platform, OPL had the most seats.

10. Elections for several Senate seats were scheduled for April, 1997. These elections experienced minor, local violence, but a nationwide dispute over the method of calculating the percentages needed to avoid a runoff led to the annulment of the first round results. The dispute over the results was part of a larger dispute between the OPL, which soon renamed itself the *Organisation du Peuple en Lutte* (“Struggling People’s Organization”), and the rest of the *Lavalas* movement, which had re-organized under the *Fanmi Lavalas* (FL) party.
11. From the April 1997 elections to the present, OPL and FL have been bitter enemies. The rivalry has played out in campaigns, in disputes over electoral rules, in the local and international media, and sometimes, in violence. On March 20, 2001, several grassroots organizations that supported FL convened a demonstration outside the OPL headquarters. Several of the demonstrators threw rocks at the building, and videotape shows a man in the crowd throwing what appears to be a “Molotov cocktail”: a liquid-filled bottle stuffed with a burning rag. In response to the attack, people inside the OPL office fired shots. The OPL office was attacked again in July and December 2001; in both cases OPL blamed FL supporters.
12. In 2000, Haiti ran legislative and local elections in May. Once again, there was sporadic violence, including killings of local activists. Once again, there was a national dispute over the calculation of the percentages to avoid a runoff in senate races. The *Lavalas* party won most of the disputed seats. Most of the other parties, joined by the OAS, which had observed the elections, and many foreign countries, including the U.S., refused to recognize the results. Presidential and partial Senatorial elections were held in November 2000, and former President Aristide was re-elected, although most of the opposition parties had refused to participate.
13. The elections of 2000 led to a protracted political crisis that made Haiti difficult to govern for the following three years. A series of attempts to resolve the electoral dispute failed amongst increasing polarization and violence. Rebel soldiers who had been training across the border in the Dominican Republic launched several attacks against targets in Haiti, even capturing the National Palace briefly in December 17, 2001.
14. After the December 17 attack was repulsed, FL supporters party took to the streets and sought vengeance against opposition political leaders who they felt were involved in the attack, including OPL. Several parties had their buildings damaged; one leader was killed in the city of Gonaives.

15. Political unrest continued during 2002 and 2003. Haitian society in general became increasingly polarized. People who had tried to remain neutral were increasingly forced to choose a side- both camps adopted a “you are with us or you are against us” attitude. Large demonstrations were held both in support of and against the government. Often these demonstrations became violent, or were the targets of violent counter-demonstrations.
16. In February 2004, the insurgency began a major campaign, attacking and taking cities and towns in the north of Haiti. Eventually, the insurgents took over most of Haiti. On February 29, 2004, President Aristide left Haiti on board a U.S. government plane. President Aristide claimed he was forcibly removed, the U.S. government claimed he resigned and requested transport from Haiti. A few days later the constitutional government was replaced by the Interim Government of Haiti (IGH). The IGH and its allies unleashed a wave of repression against the *Lavalas* movement. In turn *Lavalas* supporters attacked and killed supporters of other parties.

February 2004 Coup d’Etat

17. Violence in Haiti during the two years following Haiti’s February 2004 coup d’etat has been well-documented, by Amnesty International, teams from Harvard and the University of Miami Law Schools, Refugees International, the Committee to Protect Journalists and the International Crisis Group, among others. Although some of this violence was non-political, all of the reports identify perceived engagement in political activity as a significant risk factor for becoming a victim of violence.
18. The political violence included mass killings. The Port-au-Prince morgue reported disposing of over 1000 bodies in March 2004 alone, many bearing signs of summary execution. The persecution included torture by both the insurgents, who often mutilated their victim’s bodies before killing them, and the police, who used torture as an interrogation technique.
19. A mortality study for Port-au-Prince published in the prestigious British medical journal *The Lancet* indicates the overall scale of the violence. The study calculated that over 8,000 people were killed in the first 22 months of the IGH (March 2004-December 2005), almost half of them for political reasons. The *Lancet* study found high levels of assault, especially sexual assault, and destruction of property.
20. The institutions that should have protected Haiti’s citizens from political violence were actually major contributors to the problem. *The Lancet* study calculated that police officers were responsible for 27% of the killings, and 20% of the assaults during the study period. Human rights groups like Amnesty International documented a pattern of illegal, politically-motivated arrests by the police.
21. The Haitian police force (*Police Nationale d’Haïti* or “HNP”) was sharply reduced after February 2004, because many officers considered loyal to the ousted constitutional government were killed or purged. The purged officers were replaced with an influx of

former soldiers, many of whom had participated in the rebellion. This replacement violated police regulations for recruitment and promotion. It also swelled the force with a large number of officers with no civilian police experience or training, who are less accountable to the official police hierarchy or rules.

22. Neither the police nor the judiciary effectively investigate or prosecute political killings. Although the government has made arrests in some high profile incidents, in most cases these arrests were illegal, and no evidence has been presented against the accused. In the one case where an adequate investigation was done- the August 2005 football game massacre- the police implicated in the killings were released. As a result, the justice system provides almost no deterrence to would-be political killers.
23. The court system has often been an instrument of repression instead of a protection against it. The IGH forced out many judges, and replaced them with hand-picked successors, willing to obey the government's whims rather than the rule of law. The most notorious example happened in December, 2005, when the Prime Minister fired five Supreme Court judges who had issued an unfavorable ruling, and replaced them with his own candidates. Such interference with judicial independence was as unconstitutional in Haiti as it would have been in the U.S.
24. An unprecedented level of violent non-political crime has accompanied Haiti's political violence since 2004. There has been a wave of kidnappings, murders, theft and violence, which the police have proven powerless to combat.
25. The common crime has two connections with the political violence. First, in some cases it is conducted by groups that originally armed themselves for political reasons. Second, the common crime can be a convenient cover for political crime. It would be easy to arrange for a political opponent to be killed, and disguise it as an ordinary murder.
26. In May 2006 an elected parliament was installed in Haiti and President Préval was inaugurated. Since then Haiti has not suffered any large-scale political violence, but it does continue to struggle with establishing democracy. Political instability, especially surrounding elections, continues to afflict the country, as does local political violence and sporadic civil unrest. The government struggles with restoring public safety institutions, especially an effective court system and police force.

2006 Elections

27. Haiti's Constitution set Presidential and legislative elections for November, 2005. Due to several problems, including violence, poor organization and political controversy, the elections were postponed several times. The first round of voting was finally held on February 7, 2006. A second round was held on April 21, 2006, and additional elections were held in December, 2006
28. The FL party announced, well before the elections, that it would not run candidates in the elections unless the political persecution in Haiti stopped. When the government refused

to free political prisoners or reign in police attacks against *Lavalas* activists, the party refused to participate. Some individual party leaders nonetheless registered as *Lavalas* candidates with the Electoral Council. The Council accepted these candidacies, and some of the candidates prevailed. As a result, there are a few members of Parliament who are officially listed as *Fanmi Lavalas* members.

29. At the very end of the registration period in 2005, former President René Préval, who had previously been associated with the *Lavalas* movement, announced his candidacy as a member of the newly-formed *Lespwa* (“Hope”) party. At the time of the registration, there was a great debate within Haitian society about the extent to which President Préval unofficially represented the interests or policies of the *Fanmi Lavalas* party. That debate continues to this day, including within the *Lavalas* movement. Some *Lavalas* members and leaders work for or with the current government, some work passionately against it. But it is clear that many *Fanmi Lavalas* activists, at the local and the national levels, supported President Préval and other *Lespwa* candidates in the 2006 elections. By all accounts President Préval received the lion’s share of the *Lavalas* vote, and it is likely that the successful *Lespwa* candidates in the Parliamentary elections received votes and other support from *Fanmi Lavalas* members, leaders and supporters.
30. As the February 7, 2006, election approached, Haiti once again experienced violence. The winning Presidential candidate, René Préval, was forced to cancel several events, including his final rally, because his events kept coming under violent attack.
31. According to press and human rights organization reports, OPL was subject to several violent attacks, especially at the local level. On May 17, 2005, OPL leaders in the north of Haiti protested political persecution against the organizations’ activists by the judicial system. On February 2, 2006, armed supporters of the KONBA party clashed with OPL supporters in the town of Ounaminthe. Sticks, stones and other projectiles were thrown, but there were no reports of injuries.
32. During the second round of voting for parliament on April 21, 2006, the OPL candidate for Deputy in the town of Lascahobas, Charlemagne Denaud, reported that he was threatened by partisans of the FUSION party. In the town of Plaisance, OPL *mandataires* reported that armed men took over the Bureau de Vote after it had closed and forced it to re-open. The police were called, but they were outgunned so they did not interrupt the illegal voting. When the election results in Plaisance were announced, armed men attacked several OPL supporters, one of whom was seriously injured. In the town of Grande Saline, OPL *mandataire* Bertin Desir was shot by a *mandataire* for another party. In the town of Desdunes, the OPL candidate for Deputy accused partisans of the FUSION party of mistreating his supporters and preventing them from voting.
33. In the leadup to the December 3, 2006 elections, several more OPL supporters and officials were reportedly attacked. In Delmas, a city adjacent to the capital, Port-au-Prince, OPL’s assistant coordinator for the city, Hercule Dorcelus, was killed. OPL accused a candidate for the *Lespwa* party of being responsible for the killing, although OPL has yet to present any evidence to justify that assertion. OPL also complained that

its candidates were subject to attacks in the towns of Maniche, Cite Soleil, Lavallee, and Carrefour.

Current Election Tensions

34. Haiti's Constitution required that elections be held for 1/3 of the Senate by the end of 2007. As of this date, the elections have not been held and the Provisional Electoral Council has not yet set a date for them. The delays are the result of fundamental disagreements within the electoral council and within Haitian politics. These disagreements are similar to the disagreements that led to the aborted elections of 1997, the contested elections of 2000, and the spiraling polarization and civil unrest that ultimately caused the 2004 coup d'état and massive political violence. The electoral council is "provisional" because twenty-one years after ratification of Haiti's 1987 Constitution, the steps to choose a Permanent Electoral Council have not been taken.
35. For now, Haiti's Senate is operating without twelve of its thirty members. Any four Senators can deprive the body of a quorum by leaving the building, which makes it difficult for the chamber to pass legislation. This will create a significant backlog of legislation, which will in turn increase political unrest and raise the stakes for the next elections.

Embattled Government

36. Haiti's current government is a weak one. No party won a majority of seats in Parliament in the 2006 elections, which forced the construction of a coalition government. The coalition includes members from four political parties, including OPL. The Ministers in the coalition government come from a variety of ideological perspectives, which has made the government inefficient at best, and often ineffective and contentious.
37. The coalition government became weaker on April 13, 2008, following a week of sometimes violent protests over food prices, the Senate adopted a vote of "no confidence" in the government, which led to the automatic resignation of the Prime Minister. The government ministers will remain in place to handle "current affairs" until a new Prime Minister is inaugurated.
38. The last time a government resigned in Haiti, in 1997, a new Prime Minister was not installed and ratified by the legislature for over three years. In the interim, the lack of a fully-functioning government has itself led to instability, as it did following the 1997 resignation.
39. President Préval has submitted three nominations to Parliament since April. Two have been rejected, one in May, one in June. A third candidate is currently under consideration. Under Haiti's Constitution, a Prime Minister and government are only installed if the nomination survives a total of four votes in Parliament. First, the House of Deputies and the Senate must each ratify the choice, by majority vote. After that, the

Prime Minister submits his or her cabinet (all the ministers) along with a declaration of general policies, which must also be approved by majority votes in both chambers.

40. President Préval's current nominee, Michele Pierre-Louis, was nominated on June 23. She is currently halfway through the process of the four parliamentary votes necessary for the creation of a new government. The House of Deputies approved her nomination on July 17, and the Senate ratified her nomination on July 31.

Kidnappings, killings and threats

41. Kidnappings in Haiti were traditionally rare, but started increasing in the late 1990s. Following the February 2004 coup d'état in Haiti, kidnappings rose precipitously. Although there have been occasional periods of diminished kidnappings since then, in general the level has been extremely high.
42. It is hard to ascertain the exact number of kidnappings per year in Haiti, because by all accounts many kidnappings go unreported. But it is safe to say that in most years over three hundred people are reported as kidnapped. Kidnappers typically threaten to kill their victim if the police are called in, and many, if not most, families obey the kidnappers' order, and negotiate a ransom directly.
43. The vast majority of kidnappings are done for the purpose of collecting a ransom. But many are done to intimidate, punish or eliminate political opponents. In at least two reported cases, the kidnappers initially acted as if they were seeking ransom, even though they had kidnapped a person involved in politics. But in the two cases, the ransom negotiations stopped. In the case of journalist Jacques Roche, kidnapped in 2005, his dead body was found. In another case, that of prospective FL Senate candidate Lovinsky Pierre-Antoine, no body has been found.
44. Threats of kidnappings have also been used to intimidate political opponents. In both the Roche and Pierre-Antoine cases, the abduction was preceded by threats.
45. Prominent political figures have been frequent targets of kidnappings, including OPL Senator Andris Riche, who was kidnapped on December 15, 2006, and FL leader Maryse Narcisse, kidnapped in October 2007. Both were eventually released.
46. Politically-motivated killings in Haiti have slowed down since a democratic government was restored in 2006, but they have not stopped. On June 27, 2008, two leaders in the National Popular Party, Prad Jean Vernet and Adrien Michel, were killed by a mob near the town of St. Raphael while they were visiting the town in the course of their political work. Although the circumstances of the killing are contested, the two men's families and supporters believe they were killed for political reasons.
47. In early November 2007, Guy Delva, a Haitian journalist who is a correspondent for Reuters and the BBC, fled the country following a series of death threats. He claimed that the threats were the result of his revelations that Senator Rudolph Boulos was ineligible

for the legislature because he has a foreign (U.S.) passport. Mr. Delva has since returned to Haiti.

48. Mr. YYY's account of the multiple death threats he received is credible based on my understanding of the human rights conditions in Haiti. The use of anonymous threats by telephone to intimidate political activists has been widespread in Haiti over the 13 years I have worked on Haitian issues. The threats are effective- in many cases, people reduce their political activity after receiving a threat. In several cases a threat that was not heeded has been followed by assassination.

Unreliability of the Police Force

49. Mr. YYY's claim that the HNP would not be willing or able to effectively protect him from being kidnapped and killed is equally credible. The Haitian police force remains highly unreliable, because of the former insurgents illegally integrated into the force under the IGH, and a high level of criminality within the force. The constitutional authorities have not systematically purged the former soldiers that the IGH illegally integrated into police ranks. The police force is sharply reduced already while common crime is very high, so the government is reluctant to take more police, even brutal or crooked ones, off the streets.
50. Police have also been implicated in common crime, including kidnapping. The police force's Director General, Mario Andresol, publicly conceded that a third of his officers might have been involved in criminal activities. The head of the Judicial Police, Haiti's main investigative unit, Michael Lucius, was fired and arrested in November 2006, for his involvement in kidnappings. He was released in December, 2007, against the protest of the judge who issued the original arrest order.
51. In February 2008, Human Rights Watch issued a report finding that "police lawlessness continues to contribute to overall insecurity. The HNP is largely ineffective in preventing and investigating crime. HNP members are responsible for arbitrary arrests, as well as excessive and indiscriminate use of force. They also face credible allegations of involvement in criminal activity, including drug trafficking, as indicated by the arrest of five HNP officers in a cocaine seizure in May. Although the HNP has participated in some training sessions, the police continue to suffer from severe shortages of personnel and equipment. Police perpetrate abuses with impunity."
52. On June 29, 2008, 13 prisoners escaped at once from Haiti's Carrefour prison. By mid-July, none of them had been re-arrested. Many analysts asserted that the escapees likely had help from prison officials.
53. On July 10, 2008, the head of the investigative police of the Northern Department of Haiti, Darnley Louis Jean, was arrested for participating in kidnappings in the area. An arrest warrant was issued for one of his subordinates as well.

54. On April 11, 2008, the U.S. State Department issued a travel warning recommending that Americans defer all unnecessary travel to Haiti. Travel to Haiti by U.S. officials has been restricted.