

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

In the Matter of:

ALL HAITIAN RESPONDENTS

Currently in Removal Proceedings

OMNIBUS MOTION TO ADMINSTRATIVELY CLOSE ALL CASES
INVOLVING HAITIAN RESPONDENTS

I. Introduction

1. In the interest of justice and overwhelming humanitarian concerns, the undersigned attorneys, volunteer legal service providers, and human rights organizations, hereby move that this Court exercise its authority to administratively close all cases now pending in which the respondent is a qualified Haitian citizen or national, an alien having no nationality who last habitually resided in Haiti, or who otherwise faces removal to the country of Haiti.

2. Respondents seek relief from this Honorable Court because the United States Department of Homeland Security (“DHS”) has failed to grant Temporary Protective Status (“TPS”) to Haitians subject to removal. The DHS has failed to act despite full awareness of the horrors being suffered by the civilian population in Haiti. Current circumstances -- including devastating natural disasters with ongoing repercussions, brutal civil strife, documented bloody political conflict, indisputable

country-wide insecurity, and proven inability of the Haitian state (even with the help of international troops) to protect its own people -- warrant the extraordinary relief requested.

3. In Haiti, the majority of the population now teeters on the brink of death from hunger, disease, and displacement. Without TPS, nationals of Haiti are subject to forced repatriation into a country where the government cannot prevent immediate threats to their lives, freedom, and welfare. Because the DHS has failed to designate Haiti for TPS, this Court should administratively close the proceedings in these cases to protect the lives and freedom of innocent children, women, and men.

4. Compounding the consequences of its refusal to grant TPS to the most desperate and deserving. The DHS, together with the State Department and others, has cut off legal emigration by:

(i) unlawfully interdicting and returning Haitian refugees on the high seas, and automatically detaining those that reach our shores alive;¹ and

ii) by refusing to process visas for beneficiaries of approved immigrant and non-immigrant petitions.²

¹ President Bush, anticipating by four days the violent ouster of elected President Aristide and the rush of refugees certain to follow, said "I have made it clear to the Coast Guard that we will turn back any refugee [who] attempts to reach our shore. And that message needs to be very clear, as well, to the Haitian people." Remarks by the President at White House photo opportunity with Georgian President Saakashvili, February 25, 2004, *available at* <http://www.whitehouse.gov/news/releases/2004/02/20040225-1.html>. Additionally, in April 2003, U.S. Attorney General Ashcroft, attempting to support his "detention of Haitians" policy, claimed that our national security was being threatened by them. He used "9/11" fear (and references to "Palestinians" and "Pakistanis") to make his point. *See Matter of D-J-*, 233 I&N Dec. 572 (A.G. 2003). Mr. Ashcroft, himself, admitted that this policy violates international refugee standards, but refused to weigh those standards in the balance. *See id.* at 584-85 & n. 8; *see also Haitian Refugee Center v. Baker*, 953 F. 2d 1498, 1520 (11th Cir. 1992) (J. Hatchett, dissenting) ("Haitians, unlike aliens from anywhere in the world, are prevented from freely reaching the continental United States."). Nevertheless, Haitian have been, literally, dying to reach our shores. In recent weeks Haitian bodies have been washing up on Florida's beaches. *See* n. 53, *infra*.

² The consular section of the U.S. Embassy in Port-au-Prince has been closed since June 26, 2005, for all but emergency visa services. There is no scheduled date to reopen. United States Department of State, Warden Message #19, June 26, 2005, *available at* <http://usembassy.state.gov/haiti/wwwwardenmessage19.doc>.

5. Therefore, in an effort to reduce the human tragedy, to mitigate the spread of suffering, and to save lives, on behalf of all Haitian respondents, the undersigned respectfully request that this Court administratively close these cases until such time as a freely- and fairly-elected democratic government takes office and justice, peace, and stability return to Haiti.

II. Statement of Facts

In support of this motion, the undersigned aver the following facts:

1. On October 14, 2005, the United Nations Haiti Mission Chief for Human Rights described the human rights conditions in Haiti as “catastrophic.”³ Acknowledging the failure of the interim government of Haiti (“IGH”) to insure security and to protect its citizens, the Chief of the Human Rights Section of the United Nations Stabilization Mission in Haiti (“MINUSTAH”), Thierry Fagart, called on the IGH to cease its rampant human rights abuses including: (a) police joining with machete-wielding gangs to attack residents of poor neighborhoods, (b) summary executions by the police, (c) torture of detainees by police and prison guards, and (d) warehousing of 1600 prisoners, in a prison built for only 800, under sub-human conditions, without due process and no prospect of trial or release.⁴

³ The UN Human Rights Chief, Thierry Fagart, said: “The situation is catastrophic. It is so catastrophic that it needs to be corrected rapidly . . . [D]efenseless people were being hacked and burned to death by mobs that sometimes acted with the connivance of the police.” Press Release, Notes de point de presse de la MINUSTAH, United Nations, Oct. 14, 2005, available in French at <http://www.minustah.org/ppress/pb141005.pdf> (Unofficial translation).

⁴ Id.; see also Affidavit of Attorney Thomas M. Griffin, attached as Exhibit C (detailing Haiti prison conditions for deportees, including the fact that less than 60 of the 1,600 detainees have been convicted of a crime).

2. Foreshadowing that United Nations ("UN") declaration, in July 2005, the Inter-American Commission on Human Rights ("IACHR") of the Organization of American States ("OAS") proclaimed that the human rights situation in Haiti was as grave as any the commissioners had seen in 30 years of monitoring:

The IACHR reiterates its grave concern over the consistently escalating violence in Haiti . . . The Commission's concern is especially urgent because, over more than 30 years of monitoring the situation of human rights in Haiti, the Commission has rarely witnessed the situation deteriorate to the current state, where residents in some parts of Port-au-Prince have effectively been held hostage to the unrestrained intimidation and violence of armed gangs with no effective protection from the State or the international community.

IACHR press release No. 29/05, July 22, 2005.⁵

3. Just one month earlier, on June 29, 2005, Jean-Marie Guéhenno, the Under-Secretary-General for the United Nations Peacekeeping Operations in Haiti, declared that the humanitarian and human rights crises for the internally displaced in Haiti is "in [a] worse situation than . . . in Darfur (Sudan)."⁶

4. Elections for national and local offices in Haiti, first promised by the IGH for October 2005 and postponed four times already, are currently scheduled for January 8, 2006, to be followed by a runoff on February 15, 2006.⁷ The widely acknowledged deteriorating human rights conditions in Haiti have not only delayed the registration and campaign process, but have raised serious questions about the legitimacy of the proposed

⁵ Available at <http://www.cidh.org/comunicados/english/2005/29.05eng.htm>.

⁶ Heinlan, Peter, "UN Peacekeeping Chief: Haiti Worse than Darfur," *Voice of America News*, June 28, 2005, available at <http://www.voanews.com/english/archive/2005-06/2005-06-28-voa63.cfm>.

⁷ Conseil Electoral Provisoire Republique d'Haiti, <http://www.cep-ht.org/informelec.html>; "Haiti Again Postpones first Elections Since Ouster of Aristide," Associated Press, available at http://seattlepi.nwsource.com/national/1102AP_Haiti_Elections.html. But see, "Prime Minister Vows December Vote," *Miami Herald Wire Service*, Oct. 22, 2005, available at <http://www.miami.com/mld/miamiherald/news/world/americas/12966569.htm>; Thompson, Ginger, "Bitterly Divided Haiti is Lurching Toward an Election," *New York Times*, Oct. 30, 2005.

elections.⁸ As the scheduled election date approaches, the violence and recklessness of the government and of uncontrolled sectors of society is certain to increase. Furthermore, because the elections are already viewed as excluding major portions of Haitian society, the violence and brutality in Haiti has yet to crescendo.⁹ An immediate decision by this Court in favor of protecting Haitians from forced return is imperative.

5. Underlying the current humanitarian, social, and political crises is one of the most fragile foundations of human community on Earth, all brought into stark relief by its proximity (some 550 miles) to the United States. Haiti, by all indices, is the poorest country in the Western Hemisphere.¹⁰ Social and economic indicators reveal the poor standard of living and dismal quality of life for Haiti's 8.1 million people:

- 45% of the Haitian population is undernourished;
- life expectancy is 53;
- nearly half the population is illiterate;

⁸ See generally, Birns, Larry & Kozyn, John, "Haiti – And You Call This an Election?" Memorandum To The Press, Council on Hemispheric Affairs, October 11, 2005, *available at* http://www.coha.org/NEW_PRESS_RELEASES/New_Press_Releases_2005/05.106_Haiti_and_you_call_this_an_election.html; Update Briefing, "Can Haiti Hold Elections in 2005," International Crisis Group, Aug. 3, 2005, *available at* <http://www.crisisgroup.org/home/index.cfm?id=3602&l=1>; "Haiti Election Supervisors Quit," BBC News, Nov. 8, 2005, *available at* <http://news.bbc.co.uk/2/hi/americas/4416900.stm>; Bogdanich, Walt & Nordberg, Jenny, "A Haitian Slum's Anger Imperils Election Hopes," New York Times, Aug. 29, 2005, *available at* <http://www.globalpolicy.org/security/issues/haiti/2005/0829slumanger.htm>; Harding, James, "In Haiti, the Vote Isn't Nearly Powerful Enough," Washington Post, Oct. 16, 2005 *available at* http://www.washingtonpost.com/wp-dyn/content/article/2005/10/15/AR2005101500093_pf.html. On December 10, 2005 interim Prime Minister, Gerard Latortue, fired half of the Haitian Supreme Court apparently stemming from a dispute over whether a U.S. citizen can be a candidate for president of Haiti. Marshall, Claire, "Haiti Sacks Supreme Court Judges," BBC News, *available at* <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/americas/4515870.stm>.

⁹ Weisbrot, Mark, "Undermining Haiti," The Nation, Dec. 12, 2005, *available at* <http://www.thenation.com/doc/prem.mhtml?i=20051212&s=weisbrot>; Mozingo, Joe, "Nov. 20 election in Haiti unlikely," Miami Herald, Oct. 4, 2005 *available at* <http://www.miami.com/mld/miamiherald/news/world/haiti/12399739.htm>.

¹⁰ "Haiti Country Overview," World Bank, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/HAITIEXTN/0,contentMDK:20226261~pagePK:141137~piPK:141127~theSitePK:338165,00.html> (hereinafter "Haiti Country Overview").

- only half the population has access to clean drinking water;
- 65% of the population lives under the poverty line;
- the under-five mortality rate is 123 out of 1,000;
- the 2005 estimate is that there will have been 67 deaths per 1,000 live births;
- there is only one doctor for every 10,000 people.¹¹

6. Haiti has struggled for over 200 years -- since staging the only successful slave revolution in the world, and then giving birth to the world's first Black republic in 1804 -- against diplomatic and economic embargoes, occupation, foreign invasion, exploitation of its natural resources and farmland, dictatorships, and massive foreign debt that has crippled the growth of its economic, social, and democratic institutions. See Statement of Professor Irwin P. Stotzky to the Inter-American Commission of Human Rights, Organization of American States, March 4, 2005, attached hereto as Exhibit A.

7. Tragically, the brutalization of Haiti continues to this very moment.¹² Among other things, in 2001 and 2002, the U.S. Government, with the concurrence of the European Union and international banks, interdicted the Inter-American Development Bank's ("IDB") disbursement of humanitarian aid loans to Haiti, further crippling Haiti's ability to aid the population with planned infrastructure projects for clean water, roads,

¹¹ "The State of Food Insecurity in the World," United Nations Food & Agriculture Organization (2004), available at http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/007/y5650e/y5650e00.htm; "Haiti Country Overview," supra n. 10; Haiti, World Factbook, Central Intelligence Agency, Oct. 4, 2006, available at <http://www.cia.gov/cia/publications/factbook/geos/ha.html>; Luxner, Larry, "Haiti to Mark 200th Anniversary Amid Worsening Poverty," Washington Diplomat, January 2004, available at http://www.washdiplomat.com/04-01/a2_04_01.html; "Background Note," United States Department of State, Bureau of Western Hemisphere Affairs, Haiti (Feb. 2005), available at <http://www.state.gov/r/pa/ei/bgn/1982.htm> (hereinafter "Background Note").

¹² See generally, "Background Note," supra n. 11; Farmer, Paul, The Uses of Haiti, Common Courage Press, Third Edition (2005); Douglass, Frederick, "Lecture on Haiti," Delivered at the Chicago World's Fair, January 2, 1893, available at <http://haitiforever.com/windowsonhaiti/fdouglass1.shtml> (recognizing the historical conflicts with, and brutality against Haiti).

schools, healthcare, and basic nutrition.¹³ Compounding this economic blow, Haiti, nevertheless, was forced to pay a \$185,238.75 “credit commission” on never-dispersed loans.¹⁴ Even more insulting to the poor of Haiti is the fact that in July 2003 the Haitian government sent more than 90% of its foreign reserves to the IDB in Washington, D.C.¹⁵ In addition, Haiti’s foreign debt has grown from \$302 million in 1980 to \$1.134 billion in 2005.¹⁶ Much of this debt constituted arrearage dating to the 1957-1986 Duvalier family dictatorships which were responsible for removing over \$500 million from the Haitian treasury.¹⁷

8. On November 26, 2000, Jean-Bertrand Aristide, of the Fanmi Lavalas Party, was elected President of Haiti by 91.8% of the electorate with 62% of registered voters casting ballots.¹⁸ On February 29, 2004, the democratically elected government of Haiti was ousted, and a cadre of top U.S. Embassy officials, with a contingent of U.S. Marines, brought President Aristide to an awaiting U.S. Government airplane, under threat of an ensuing “bloodbath” if he did not comply.¹⁹ After being taken to, and held

¹³ Stockman, Farah, “Before Fall of Aristide, Haiti Hit by Aid Cutoff,” Boston Globe, March 7, 2004; Farmer Paul, “Haiti: short and bitter lives,” Le Monde Diplomatique (July 2003), *available at* <http://mondediplo.com/2003/07/11farmer>; Farmer, Paul, The Uses of Haiti, *supra* n. 12, at pp 358-366.

¹⁴ Farmer, The Uses of Haiti, *supra* n. 12 at 383-385; *see also*, Norton, Michael, “Haiti Clamors for Release of Blocked Loans That Might Take Years to Disburse”, Associated Press, March 11, 2002.

¹⁵ Farmer, The Uses of Haiti, *supra* n. 12 at 383-385.

¹⁶ Id.

¹⁷ Id.; Farmer, Paul, “Haiti: Short and Bitter Lives,” Le Monde Diplomatique, (July 2003), *available at* <http://mondediplo.com/2003/07/11farmer>.

¹⁸ <http://www.cnn.com/WORLD/election.watch/americas/haiti1.html>

¹⁹ U.S. Officials forced President Aristide to write a “resignation letter” on the way to the airport in Port-au-Prince, and then, without prior knowledge or consent of the President, forcibly took him to the former French slave colony of the Central African Republic. *See* Aristide’s Resignation Letter *available at* <http://www.cnn.com/2004/WORLD/americas/03/01/aristide.letter/>; *see, generally*, Kurzban, Ira, “The February 29th Coup d’Etat Against President Jean-Bertrand Aristide and the Role of the United States in the Coup,” Haiti Progres, March 17 and 24, 2004, *available at* <http://www.haitiprogres.com/2004/sm040317/eng03-17.html> and

under guard in the Central African Republic, South African President Thabo Mbeki later invited President Aristide and his family to live and work in his country.²⁰

9. Perhaps even more devastating to Haitian democracy than even the ouster of its elected President, some 7,000 elected local and national officials nationwide -- virtually the entire government -- were thrown or chased out of office, and those not killed, were forced into exile or hiding within Haiti.²¹

10. Upon the ouster of the elected Government, the human rights situation in Haiti, and the prospect for continued democracy, took an abrupt turn toward the catastrophic conditions to which the UN admitted in October. Haiti's catastrophic free-fall can thus be traced to, among other things:

i) the March 2004 appointment of the U.S.-selected interim government, led by Florida resident Gerard Latortue as Prime Minister, and a group of U.S. educated/trained officials in the Justice Ministry and Haitian National Police who have failed to secure legitimacy or authority in the eyes of their people;²²

<http://www.haitiprogres.com/2004/sm040324/eng03-24.html>; Farmer, Paul, "Who Removed Aristide?", *London Review of Books*, April 15, 2005 *available at* http://www.lrb.co.uk/v26/no8/print/farm01_.html. For details of Aristide's forced departure and exile, *see* Flashpoints Radio, "Aristide Details Last Moments In Haiti, Calls For Stop To Bloodshed In First Address To Haitian People From Exile" *available at* http://criticalconcern.com/aristide_details_last_moments_in.htm.

²⁰ Robinson, Hazel Ross, "Forced into exile: Madame Mildred Aristide," *Essence*, October 2005. Adams, Sheena, "Aristide, Wife Not Paid Salaries," *Pretoria News*, Sept. 11, 2004, *available at* <http://www.unisa.ac.za/cmsys/staff/contents/news/newsclips/docs/PtaNews09112004.pdf>. President Aristide is currently living in Pretoria, South Africa (at the expense of the South African government) with his wife and children, where he is a Research Fellow at the University of South Africa. *See id.*

²¹ *See* Cohn, Majorie, "U.S. Pulls Strings in Haiti," *Truthout.org*, *available at* http://www.truthout.org/docs_2005/092905I.shtml; Fenton, Anthony, "Were Canadians Involved in a Haitian Massacre," *The Republic* (Vancouver), No. 94, 8/5/04, *available at* http://republic-news.org/archive/94-repub/94_fenton.htm; "Stop the War Against the Haitian People: International Declaration of Support for the Haitian People," *San Francisco Bay View*, Sept. 28, 2005, *available at* <http://www.sfbayview.com/092805/stopthewar092805.shtml>; Griffin, Thomas, "Summary Report of Human Rights Delegation -- March 29 to April 5, 2004," *National Lawyers Guild*, *available at* <http://www.nlg.org/news/delegations.htm>; *see also*, n. 8, *supra*.

²² *A New Chance for Haiti?*, ICG Latin America/Caribbean Report No. 10, International Crisis Group, Nov. 18, 2004, pp11-12 *available at* http://www.crisisgroup.org/library/documents/latin_america/10%20A%20New%20Chance%20for%20Haiti.pdf.

ii) the “cleansing” of the high command of the Haitian National Police and the replacement with members of the disbanded Haitian Army;²³

iii) the unauthorized return of the former Haitian Army soldiers, which began patrolling the streets with high-powered weapons;²⁴

iv) the mass displacement and/or wrenching apart of families because former government employees, including policemen, clerks, and elected officials, have fled into the mountains from cities, or into the capital from the mountains, to avoid death by mobs and the new official forces;²⁵

v) the occupation by UN forces, including over 7,500 soldiers and policemen, under the leadership of Brazil, and the subsequent breakdown of their mandate which has led to UN violence against and repression of those in the poorest neighborhoods, which the de facto government considers as “pro-Aristide” or Lavalas strongholds;²⁶

vi) the arrests and ongoing detention of prominent members of the elected government, outspoken democracy supporters, and the leading Lavalas presidential candidate in violation of the Constitutional right to free speech and association, and its protections against arbitrary and warrantless arrests.²⁷

²³ See Keeping the Peace in Haiti, Harvard Law Students for Human Rights, March 2005 (hereinafter Harvard Report) *available at* http://www.law.harvard.edu/programs/hrp/CAP/Text/Haiti_English_Final.pdf. (President Aristide, upon his 1994 return after a 1991 violent military coup, disbanded the Haitian Army due to its repeated abuses of the civilian population and proclivity for *coupes d'état*.); see also, Delva, Joseph, “Haiti Police Absorbs Army and Stokes Rights Fears,” Reuters, March 16, 2005.

²⁴ Griffin, Thomas, Haiti Human Rights Investigation November 11-21, 2005, Center for the Study of Human Rights at the University of Miami Law School, Jan. 14, 2005, (hereinafter U.Miami Report) p. 13, *available at* <http://www.law.miami.edu/cshr/>.

²⁵ “Human Rights Violations in Haiti: February – May 2004,” Institute for Justice and Democracy in Haiti, July 19, 2004, *available at* http://www.ijdh.org/articles/article_ijdh-human-rights-violations.html.

²⁶ See Harvard Report, *supra* n. 23; Podur, Justin, “Two Faced in Haiti”, ZMag.org, Oct. 01, 2005, *available at* http://www.zmag.org/content/print_article.cfm?itemID=8850§ionID=1.

²⁷ Among those who have been arrested and remain in prison at this writing without being tried include the elected government’s Prime Minister Yvonne Neptune, the elected government’s Interior Minister Joclyerme Privert, celebrated 65-year-old female folk singer Anne “So An” Auguste, and the recently arrested Father Gerard Jean-Juste, a Catholic priest and long-time refugee advocate who had become the leading Presidential candidate of the Famni Lavalas party in the currently-proposed elections. “Imprisoned Without Charge: Yvon Neptune and Haiti’s Political Prisoners,” Memorandum to the Press, Council on Hemispheric Affairs, March 14, 2005, *available at* http://www.coha.org/NEW_PRESS_RELEASES/New_Press_Releases_2005/05.30%20Haiti%20Neptune%20the%20one.htm; Hunter, Aina, “Haiti Under U.S. Pressure to Release Neptune But no mention of Jean-Juste or Annette August,” Village Voice, Aug. 15, 2005 *available at* http://www.villagevoice.com/generic/show_print.php?id=66886&page=hunter3&issue=0533&pri

vii) the targeting of journalists sympathetic to Aristide and the Lavalas party after the President's ouster.²⁸ See Statement of Brian Concannon to the Inter-American Commission of Human Rights, Organization of American States, March 4, 2005, attached hereto as Exhibit B.

viii) the proliferation of weapons, the bulk of which are from the United States, without a functioning disarmament program.²⁹

11. Deadly natural and environmental disasters have added to the social, political, and economic strife in Haiti since the fall of the elected government. They have resulted in deaths of hundreds and displacement of hundreds of thousands, because in a rural economy where the land is denuded of vegetation, and the soil washes into the sea, Haiti's people have never been far behind.³⁰

12. The devastating exploitation by foreign merchants and corporatized agriculture, combined with the poor majority's pressing need, today, for charcoal -- due to lack of cooking fuel and electricity -- has reduced this once lush country to a mere 1%

ntcde=MzQwMDMxNDM3OA==&refpage=L25ld3MvaW5kZXgucGhwP2lzc3VlPTA1MzMmcGFnZTlodW50ZXIzJmlkPTY2ODg2; Inter-American Commission on Human Rights, Press Release N° 19/05, "IACHR Expresses Concern Over The Situation Of Yvon Neptune," *available at* <http://www.cidh.org/Comunicados/English/2005/19.05.htm>. The IACHR has recently declared admissible a complaint filed on Prime Minister Neptune's behalf, against the IGH. IACHR, Report N° 64/05, Petition 445/2005, Oct. 12, 2005, *available at* http://www.ijdh.org/articles/article_yvon_neptune11-16-05.htm.

²⁸ "Attacks on the Press 2004," Committee to Protect Journalists, *available at* <http://www.cpj.org/attacks04/americas04/haiti.html> and http://www.cpj.org/cases04/americas_cases04/haiti.html; see also, Haiti Human Rights Report, presented to the International Association of Democratic Lawyers by Professor Bill Quigley, Loyola University School of Law, 2005, *available at* <http://www.law.loyno.edu/~quigley/haiti%20report%20engl%20final1.pdf>.

²⁹ According to the Small Arms Survey, in 2005 \$1.9 million in weapons, including 300 military style, 500 shotguns, and 3500 revolvers and pistols went to Haiti from Washington, D.C. The Small Arms Survey, a Geneva-based research institution, also states that 4,735 military-style weapons, 700 MP5 rifles, 5,133 non-military-style weapons (e.g., pistols, revolvers, shotguns) and one million rounds of ammunition worth \$6.95 million are alleged to have gone to the interim government's Haitian National Police in 2004 via the U.S.-based company, Roman Associates. The State Department, however, denies this. Muggah, Robert, "Securing Haiti's Transition: Reviewing Human Insecurity and the Prospects for Disarmament, Demobilization, and Reintegration," Small Arms Survey, Oct. 2005.

³⁰ See infra nn. 32-34 and accompanying text.

in forest coverage. The lack of trees has allowed the fertile topsoil to wash into the ocean, and to silt up canals, streams, and lakes, making it almost impossible for Haitians to find fish. The lack of forestation has greatly reduced the rainfall cycle, further contributing to the consequences of drought. But most of all, when hurricanes hit Haiti, there is nothing to hold back entire mountainsides from cascading over communities, washing away miles of dusty, unpaved roads, and drowning people and houses under mud.³¹

13. Since the fall of the elected government, three such natural disasters have devastated densely populated and impoverished communities:

i) on May 26, 2004, in the area around the Haiti-Dominican Republic border suffered devastating floods caused by heavy rains that left as many as 2,665 dead, at least 1,484 missing and presumed dead, and an estimated 300,000 displaced or homeless. Insecurity has impeded any substantial relief efforts;³²

ii) in September 2004, Tropical Storm Jeanne struck the mountains overlooking the historic northern city of Gonaives, rendering it a total disaster, killing at least 1,500, leaving thousands more of its poorest city-side slum dwellers displaced, and burying almost the entire city under mud.³³

³¹ Farmer, Paul, *The Uses of Haiti*, supra n. 12, at p. 374; James Cox, "Economy in Haiti on Life Support" *USA TODAY*, Feb. 29, 2004 *available at* http://www.usatoday.com/money/world/2004-02-26-haitiecon_x.htm; Braken, Amy, "Deforestation Exacerbates Haiti Floods," *Associated Press*, Sep. 23, 2004 *available at* <http://forests.org/articles/reader.asp?linkid=35159>.

³² "Death Toll Rises in Haiti," Press Release Haiti 23904, *UN Office for the Coordination of Humanitarian Affairs*, *available at* <http://ochaonline.un.org/DocView.asp?DocID=1929>; Braken, Amy, "Number Of Dead From Haiti Floods Tops 1,070, With 1,250 Others Missing," *Associated Press*, Sept. 28, 2004, *available at* <http://www.forests.org/articles/print.asp?linkid=352830>; *see also* "Temporary Protected Status Option for Haitians," *Congressional Research Memorandum*, Oct. 18, 2004 *available at* <http://www.immigrationforum.org/documents/CRS/CRS-HaitianTPS2004.pdf>.

³³ "World Food Program Rushes Aid to Haiti Flood Victims," *available at* http://www.wfp.org/newsroom/in_brief/americas/haiti/040921_haitistorm.html; United Nations, "Tropical Storm Jeanne Devastates Haiti," Sept. 2004 *available at* <http://www.un.org/av/photo/subjects/minustah0904.htm>; McKinley, Jr. John C. "Floodwaters Recede From Haitian City, but Hunger Does Not," *New York Times*, Sept. 25, 2005, *available at* <http://www.latinamericanstudies.org/haiti/recede.htm>.

iii) mudslides were triggered once again in October 2005, as hurricane Wilma attacked the island killing as many as ten.³⁴

14. Each natural disaster has been made worse by the cumulative effect of each prior crisis, including the current social and political instability. Despite the growing seriousness and intensity surrounding the events in Haiti and the publication of the human rights reports, some of which have even included graphic photographs of:

- massacred boys, and men and women shot by the UN and the Haitian National Police;
- overstuffed prison cells;
- UN tank operations in poor crowded neighborhoods;
- heavily armed rogue military units on patrol; and
- rotting bodies of young men piled in the state morgue;³⁵

the devastation against the lives, security, and any sense of justice the population may have had, continues to erode as the crisis escalates with impunity. For example, among other things:

i) on December 1, 2004, a massacre of a reported 100 unarmed prisoners took place at the National Penitentiary, and neither the government nor the United Nations has yet released their official reports;³⁶

ii) Father Gerard Jean-Juste was beaten by a crowd and re-arrested in public, during a funeral ceremony on July 21, 2005.³⁷ He remains

³⁴ "Hurricane Wilma strengthens, Turns deadly in Haiti," *Reuters*, available at http://www.caribbean-online.com/hurricanes/archives/2005/10/hurricane_wilma_1.html.

³⁵ See *U.Miami Report*, *supra* n. 24.

³⁶ *Rapport sur le massacre du 1er décembre 2004 au Pénitencier National d'Haïti*, Institute for Justice and Democracy in Haiti, Dec. 23, 2004, available at http://www.ijdh.org/pdf/Rapport_sur_le%20massacre_du_dec.pdf

³⁷ "Haiti Jails Ex-Miami Priest in Journalist's Kidnap-Murder," *Associated Press*, July 27, 2005; Quigley, Prof. Bill, "Haitian Priest Assaulted by Mob at Funeral and Arrested for Murder," *Common Dreams News Center*, available at <http://www.commondreams.org/headlines05/0722-08.htm>.

imprisoned without trial, and has been named a prisoner of conscience by Amnesty International;³⁸

iii) on May 3, 2005, the Supreme Court, which rules over a system that has not known to have held a single trial since the ouster of President Aristide in February 2004, overturned all guilty verdicts in the 2000 Raboteau Massacre trial – a trial which had been heralded by world-wide observers as the most judicious in Haiti's history;³⁹

iv) kidnappings, by both criminal gangs and police officers, for money and for terror, have become a regular occurrence where the targets have frequently been citizens with ties to the United States and which conclude with ransom paid by a relative residing in the United States, or violence;⁴⁰

v) on August 20, 2005, in the middle of a USAID-sponsored "Play for Peace" soccer game attended by some 4,000, spectators in the impoverished neighborhood of Gran Ravine, Martissant, uniformed and masked Haitian National Police, accompanied by a machete-wielding band of attachés, attacked the crowd, killing at least 12, all while United Nations forces guarded the stadium; the following day, police and their attachés returned to the neighborhood to finish the job, burning houses and seeking out targets to kill;⁴¹

³⁸ <http://web.amnesty.org/library/Index/ENGAMR360082005?open&of=ENG-HTI>.

³⁹ News Release, Amnesty International UK, Haiti: Obliterating Justice Supreme Court Overturning Sentences for Roboteau Massacre is Huge Step Backwards (May 26, 2005), *available at* <http://www.amnesty.org.uk/news/press/16126.shtml>.

⁴⁰ Thompson, Ginger, "New Scourge in Haiti: A wave of Kidnapping," International Herald Tribune, June 7, 2005, *available at* <http://www.iht.com/articles/2005/06/06/news/haiti.php>; "Kidnapped Haitian Political Leader Released After 4 Days," Associated Press, Dec. 7, 2005, *available at* <http://news.morningstar.com/news/DJ/M12/D07/200512071747DOWJONESDJONLINE001137.html>; Delva, Joseph Guyler, "Eleven Haitian School Children Kidnapped, Released," Reuters, Dec. 1, 2005, *available at* <http://today.reuters.com/News/CrisesArticle.aspx?storyId=NASUC0101>; "Star Haitian journalist murdered," BBC NEWS, July 14, 2005, *available at* <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/4684697.stm>; "Gunmen Release Kidnapped Haitian Journalist After Reporters Pay Ransom," Dec 3, 2005, Associated Press, *available at* http://news.yahoo.com/s/cpress/20051204/ca_pr_on_wo/haiti_kidnappings;_ylt=Arp6kO1QFLR4Tplp2GtTIY4lkMEF;_ylu=X3oDMTBidHQxYjh2BHNlYwN5bnN0b3J5.

⁴¹ Lindsay, Reed, "Massacre Erupts at USAID Game," Washington Times, Aug. 30, 2005, *available at* <http://www.washingtontimes.com/world/20050829-100803-6942r.htm>; Delva, Joseph Guyler, "UN to Investigate Haiti Slum Lynchings," Reuters, Aug. 24, 2005 *available at* <http://www.globalpolicy.org/security/issues/haiti/2005/0824investigation.htm>; Mozingo, Joe, "Alleged Attacks By Police, Gangs Investigated in Haiti," Miami Herald, Sept. 1, 2005 *available at* http://www.ijdh.org/articles/article_grande_ravine_9-6-05.htm; Coicou, Gessy, "Rapport d'enquête: Intervention de la Police Nationale d'Haïti au Parc Sainte Bernadette (Martissant) le 20 août 2005," Nov. 6, 2005, *available at* <http://www.tnh.ht/actua/politique/rapportenque.htm> (Investigative report from Haitian National Police Chief of Internal Affairs the office of the Inspector General admitting police involvement in planning the operation that led to the massacre).

vi) on September 10, 2005, Haitian National Police, accompanied by machete-wielding civilian attaches, attacked the Bel Air neighborhood, a popular Aristide base, killing untold numbers, an event which Reuters captured on film, including the machete-castration of a just-killed young man.⁴²

vii) deportees who have already served their full sentences for crimes committed in the U.S., continue to be taken directly from the airport to the National Penitentiary, where they exist in sub-human conditions that even the United States Court of Appeals has been likened to those on a slave ship, for indefinite periods, without access to lawyers, the courts, or family. Matter of J-E, 23 I&N Dec. 291 (BIA 2002); Auguste v. Ridge, 395 F.3d 123 (3rd Cir. 2005). Indeed, as of November 2005, some deportees will have completed a full year in the prison.⁴³

15. In addition to specific atrocities committed by, or with the acquiescence of, or uncontrolled by, the IGH and the United Nations forces, the general economic and social conditions in Haiti continue to decline. Due to rampant insecurity and a shattering of institutions, many schools and medical clinics are closed; prices of staples such as millet and rice have increased to such an extent that it is almost impossible for the majority to meet any basic nutritional requirements. Electricity is scarce and arbitrarily provided. Furthermore, the basic food, education, and healthcare assistance long-necessary and long-provided for by international organizations, private NGO's, and thousands of international volunteers has trickled down to almost nothing. Many organizations, just like the

⁴² This film footage was viewed by attorney Thomas M. Griffin, who was in Haiti October 6-11, 2005, as a member of the Commission of Inquiry chosen by the International Tribunal on Haiti, and led by former U.S. Attorney General Ramsey Clark.

⁴³ A list of imprisoned deportees dated October 8, 2005, obtained at the National Penitentiary by Attorney Thomas Griffin is attached as Exhibit D. Attorney Griffin, undersigned here, entered and inspected the National Penitentiary, including the deportee section on October 8, 2005. Among other things, he received and documented reports of beatings, lack of medical care for the sick and dying, a paralyzed deportee who lies in the dark 24 hours a day, as well as a naked psychotic prisoner caged in a miniature cell. Affidavit of Thomas M. Griffin attached as Exhibit C.

U.S. Embassy, have evacuated their staffs.⁴⁴ International volunteers, the sole lifeblood for a substantial percentage of Haitians who depend exclusively on them for basic substance, health, and education, now indefinitely postpone their once regular trips to Haiti.

III. Argument

Although this Court cannot suppress the human rights/humanitarian/environmental fire burning out of control in Haiti today, it has the legal and moral authority to immediately stop adding human fuel to it. This Court may administratively close any cases in “appropriate” situations. See Matter of Gutierrez, 21 I&N Dec. 479 (BIA 1996). Now is the appropriate time for this Court to administratively close all proceedings against Haitians until there is substantial and probative evidence that conditions in Haiti will not pose an immediate threat to their lives or freedom if forcibly removed from the United States.

If it cannot so grant *omnibus* administrative closure, this Court has several alternatives, any one of which could ensure the protection of thousands of children, women, and men who would otherwise face immediate danger to their lives and freedom if forced to return to Haiti:

- (1) this Court should indefinitely continue all Haitian cases;
- (2) this Court should issue a blanket stay of removal in all Haitian cases; or
- (3) this Court should certify to the Board of Immigration Appeals the question of an *omnibus* administrative closure;

⁴⁴ Supra n. 2; See, e.g., Press Release, “Peace Corps Suspends Programs in Haiti,” Feb. 21, 2004, *available at* http://www.usafreedomcorps.gov/content/about_usafc/newsroom/announcements_dynamic.asp?ID=478).

all until such time as the realities in Haiti no longer present grave risks to those forced to return through this Court.

a. This Court Should Administratively Close All Haitian Cases as if the DHS Had Not Forsaken Its Authority to Designate Haiti for Temporary Protected Status.

This Court can administratively close any case when the situation is “appropriate.” Matter of Gutierrez, 21 I&N Dec. 479 (BIA 1996); see also Matter of Lopez-Barrios, 20 I&N Dec. 203 (BIA 1990); Matter of Amico, 19 I&N Dec. 652, 654, n. 1 (BIA 1988). The “appropriate” time is now, because the DHS has ignored the suffering in Haiti and will not grant TPS.

Historically, the Attorney General, for whom this Court is the agent in direct control of removal matters, has had the sole authority to designate a country for TPS. See INA § 244. However, the Homeland Security Act of 2002 (effective March 1, 2003) stripped away this authority from the Attorney General and transferred it to the newly-created Department of Homeland Security. See Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2178.⁴⁵ Curiously, despite the diverse global humanitarian crises since the effective date of the Homeland Security Act, the DHS has never designated any country for TPS – a refusal that appears to reflect political strategies rather than enduring concern for innocent lives.⁴⁶ Because this Court is independent of

⁴⁵ It is noted that the Immigration and Nationality Act has yet to be amended to reflect this change. See INA § 244 et seq. Despite the change, the Attorney General remains the sole authority for making any controlling determinations involving questions of law under the immigration statutes. See INA § 103(a)(1), as amended by Homeland Security Act of 2002 Amendments, Division L of Pub. L. No. 108-7, § 105(a)(1), 117 Stat. 531 (2003).

⁴⁶ At most, the DHS has merely extended the designation for countries the Attorney General had long-ago recognized. See, infra n. 47.

the Department of Homeland Security, it need not, nor should not, sit by idly in the face of this massive tragedy and thereby ratify the DHS's refusal to designate Haiti as a TPS nation. It is the appropriate time for this Court to take immediate action to protect our Haitian brothers and sisters.

The DHS, as the Attorney General had rightfully done before, may designate a country for TPS based on any one of three grounds which jeopardize the lives, freedom, and safety of potential returnees: (i) internal armed conflict, (ii) consequences of overwhelming natural disaster, or (iii) extraordinary and temporary conditions preventing safe return of nationals. See INA § 244(b)(1)(A), (B), & (C). But the DHS has refused TPS for Haiti despite overwhelming evidence to substantiate a designation under any of the three grounds.

Shamefully, in the face of overwhelming need for TPS -- from the devastation and displacement by floods and hurricanes in May 2004 and September 2004, to the ongoing killing and jailing of thousands of Lavalas supporters, to the prison massacre in December 2004, to the release of convicted human rights abusers, to the ongoing police and UN onslaught in the poorest neighborhoods, to the police-led machete massacre at the soccer match in August 2005, to the washing ashore of three dead Haitian woman in Pompano Beach, Florida just days ago -- the DHS has obstructed, rather than welcomed refugees, and has done nothing to stop deporting Haitians.

Currently, Burundi, El Salvador, Honduras, Liberia, Nicaragua, Somalia, and the Sudan, have TPS designation.⁴⁷ But, with perhaps the exception of Somalia, none of

⁴⁷ The Attorney General designated Burundi a TPS nation on November 4, 1997, due to "ongoing armed conflict" and "temporary and extraordinary conditions," and multiple extensions have followed. Fed. Reg. Vol. 62, No. 213, p. 59735. El Salvadorans have benefited from TPS since March 9, 2001, based on a

these countries face the sizzling combination of country-wide violence, insecurity, hunger, and consequences of natural disaster that has suffocated the Haitian people for the last 22 months.

As detailed above, Haiti has long been the most destitute nation on this half of the Earth. Now it is crumbling fast into its second year of a human rights debacle whose horrors show now sign of abating. Evidence reveals, too, that the interim government of Haiti (“IGH” or “de facto government”) cannot or will not protect the safety of its own people, let alone the safe return of its nationals forcibly repatriated through this Court. Proof of this is the de facto government’s miserable failure to provide conditions for safe, free and fair, inclusive elections by October 2005, as promised, despite international financing and the ubiquitous presence of the UN peacekeeping force.

Due directly to a lack of any popular democratic mandate from the Haitian citizenry, the IGH lacks any motivation to serve and protect its own people. The government has summoned all its energies to appear legitimate and, with no constituency, looks only to appease the powerbrokers within its domestic elite, the U.S. Embassy, and the interested foreign powers for direction. Although the unnatural conflux of a de facto regime, a militarized foreign occupying force, and man-made consequences of

series of three earthquakes” and its redesignation in 2005 was due to the country’s inability to safely handle “adequately” the return of its nationals. Fed. Reg. Vol. 66, No. 47, p. 14214; USCIS Fact sheet, 9/9/05. Honduras and Nicaragua have each had TPS since January 5, 1999, due to the effects of Hurricane Mitch, and “extraordinary and temporary conditions” that the hurricane created which prevented the safe return of nationals. Fed. Reg. Vol. 64, No. 2, p. 524-526. Liberia received its original TPS designation from the Attorney General on March 27, 1991 due to “armed conflict.” In 2004, the DHS redesignated, and since has extended TPS, due to “extraordinary and temporary conditions” that prevent the safe return of Liberian nationals. Fed. Reg. Vol. 70, No. 157, p. 48176. The Attorney General designated Somalia for TPS in 1991 based on “extraordinary and temporary conditions.” The designation continued until 2001 when it was extended for the same reasons, and has been extended three more times. Fed. Reg. Vol. 70, No. 145, p.43895. Sudan has had TPS since November 4, 1997, due to “ongoing armed conflict” and extraordinary and temporary conditions.” Fed. Reg. Vol. 62, No. 213, p. 59737.

environmental disaster affect all sectors of Haitian society, their momentum presses most heavily against the vulnerable, hungry majority.

Evidence reveals that the IGH cannot, or will not, enforce the Haitian constitution. With no consent of the governed, public debate quashed, and dialogue eschewed, multiple credible sources have shown that the de facto government has repeatedly used its police force to violently crush dissent in the streets.⁴⁸ To this end, too, as detailed in the Harvard University report,⁴⁹ the Haitian government and its elite supporters -- historically apprehensive of government by majority -- have co-opted the UN forces away from their peacekeeping, and dialogue-fomenting mandate, and converted them into a customized private army.⁵⁰

Undisputed evidence reveals that the IGH has locked hundreds of democratic leaders in jail, including the leading political candidates, while allowing convicted criminals and human rights violators to go free because they had opposed the now ousted, elected government.⁵¹ The government continues to imprison criminal deportees -- in violation of the constitution and in hellish conditions -- to further deflect blame for the nationwide insecurity onto the poor, disaffected, and disenfranchised.

⁴⁸ See Podur, Justin, supra, n. 26; Harvard Report, supra n. 23; UMiami Report, supra, n. 24.

⁴⁹ See supra n. 23.

⁵⁰ See id.

⁵¹ "Haiti: Few Reasons for Optimism but Many for Despair," Council On Hemispheric Affairs, May, 3, 2005, *available at* http://www.coha.org/NEW_PRESS_RELEASES/New_Press_Releases_2005/05.51_Haiti_Few_Reasons_f_or_Optimism_the_one.htm; News Release, "Haiti: Obliterating Justice Supreme Court Overturning Sentences for Roboteau Massacre is Huge Step Backwards," Amnesty International UK, May 26, 2005, *available at* <http://www.amnesty.org.uk/news/press/16126.shtml>; "Haiti: Perpetrators of Past Abuses Threaten Human Rights and the Reestablishment of the Rule of Law," Amnesty International, March 4, 2004, *available at* <http://web.amnesty.org/library/index/engamr360132004>.

The enormity of the tragedy that Haiti has become screams that no one be forced to return there. Indeed, what the UN has recently declared to be “catastrophic” conditions in Haiti demands that this Court should temporarily, administratively close all Haitian cases.

The BIA has ruled that this Court may close removal proceedings in appropriate situations. See Gutierrez, Lopez-Barrios, and Amico, supra. Ensuring that innocent , children, women, and men are not forcibly placed into conditions that the UN has described as “catastrophic” is certainly an appropriate use of administrative closure under controlling law.

b. As An Alternative to *Omnibus* Administrative Closure, This Court Should Grant Indefinite Continuances in All Haitian Cases Until Such Time As the Haitian Government Proves Itself Capable Of Ensuring Safe Return of Deportees.

This Court has the authority to grant continuances upon a motion for “good cause shown.” See 8 C.F.R. §1003.28; Matter of Perez-Andrade, 19 I&N Dec. 433 (BIA 1987); see also 8 C.F.R. 1240.6. It also has the authority to schedule cases, including making postponements in the date, time, and place of hearings. See 8 C.F.R. § 1003.18. The undersigned submit that the foregoing facts provide ample good cause to continue all Haitian cases, with the consent of the individual respondents. This Court should, therefore, exercise its authority to continue Haitian cases, and to re-calendar them only at such time as substantial and probative evidence establishes that the Haitian government can provide for the safe return of deportees.

c. As A Further Alternative, This Court Should Grant *Omnibus* Stays of Removal For All Respondents Ordered Removed to Haiti.

This Court has the authority to grant stays of the execution of deportation, removal, and exclusion orders whenever removal is not practicable or proper. See 8 C.F.R. §§ 1003.6(b), 1003.23(a), 1003.23(b)(1)(v); see also INA § 241(c)(2). Under the long-controlling law in most U.S. Court of Appeals, a stay of removal should be granted if (i) there is a likelihood of success on the merits; (ii) irreparable harm will come to the alien if the stay is not granted; (iii) the U.S government is not harmed by the stay; and (iv) grant of the stay is in the public interest. See Douglas v. Reno, 374 F.3d 230, 233 (3rd Cir. 2004); Arevalo v. Ashcroft, 344 F.3d 1, 7-8 (1st Cir. 2003); Mohammed v. Reno, 309 F.3d 95, 100 (2nd Cir. 2002); Bejjani v. INS, 271 F.3d 670, 688-89 (6th Cir. 2001); Andrieu v. Ashcroft, 253 F.3d 477, 483 (9th Cir. 2001) (collapsing 4-part test into 2 prong test). But see Wang v. Attorney General, 291 F.3d 1289, 1290-91 (requiring “clear and convincing evidence” that execution of removal order is prohibited by law).

This *omnibus* motion does not, and cannot, address the merits of any individual Haitian case. However, the foregoing argument that human rights conditions in Haiti are catastrophic and a threat to the lives and freedom of any forcibly returned Haitian national is meritorious on its face and uncontroverted by any credible source.

Furthermore, with the U.S. Embassy consular section closed, and the “return all refugees” policy in place, there is no safe, legal, way for any immigrant or non-immigrant Haitian to return to the United States, even if she has an approved visa petition.⁵²

The U.S. government will not be harmed by any of the proposed relief requests. Administrative closure, indefinite continuance, and stay of removal are each temporary,

⁵² See supra nn. 1 & 2.

as are the current grants of TPS to our neighboring countries, such as El Salvador, Honduras, and Nicaragua.

They apply only to Haitians already in the United States.

None of these temporary remedies result in the change or adjustment of status of any Haitian respondent.

They do not toll unlawful presence.

They do not include any benefits such as the issuance of an employment identification card.

In essence, these remedies merely freeze the relevant respondents in their current status to save lives. Inherent in each proposed relief grant is a safe return to Haiti when conditions so provide.

Finally, a stay of removal is in the public interest. The citizens of the United States -- and especially in communities where Haitians live, work, and attend school -- should not have to abide our government forcibly returning Haitians into a fire of chaos and violence that they did not start, they cannot prevent, and from which they cannot safely and lawfully escape. Four dead Haitian women have washed up on Florida's beaches in the past month because the risk of drowning was better than remaining in Haiti.⁵³ The shame of this tragedy is on all of us, and it is in the public interest to prevent this from ever happening again.

⁵³ Haas, Brian, "Three Bodies Wash Ashore, Five Survivors Held in Suspected Human-Smuggling Case," South Florida Sun Sentinel, Nov. 6, 2005, *available at* <http://www.sun-sentinel.com/news/local/southflorida/sfl-chaitians06nov06,0,119983.story?coll=sfla-wbzl-shared> (Refugees are now willing to take even more desperate measures to reach relative safety because "deportation can mean a death sentence if you're in the wrong political party in Haiti...The U.S. has deported people and they are found a few days later cut to death."); Gilkin, Rochelle, "Haitian Woman Found Dead in Manalapan Surf," Palm Beach Post, Nov. 29, 2005, *available at* http://www.palmbeachpost.com/search/content/local_news/epaper/2005/11/29/s1b_drowned_1129.html

d. Finally, If This Court Will Not Exercise Any of The Foregoing Powers, It Should Certify the Question of *Omnibus* Procedural Protection to the Board Of Immigration Appeals.

If this Court does not take any of the foregoing actions to (a) administratively close all Haitian cases, (b) indefinitely continue the cases, or (c) stay the removal to Haiti of respondents, with consent of the individual respondents, this Court should certify the question of *omnibus* procedural protection to Haitian respondents to the Board of Immigration Appeals. See 8 C.F.R. § 1003.1(c) (providing authority to certify questions in deportation, removal, or exclusion proceedings); see also Matter of Sano, 19 I&N Dec. 299 (BIA 1985); Matter of Vrettakos, 14 I&N Dec. 593 (BIA 1973, 1974). It is the very least that this Court can do.

IV. Conclusion

The abysmal human rights, rule of law, and environmental conditions in Haiti today are as uncontroverted as they are inhumane. The case against the forced return of Haitians via the machinery of our immigration courts is clear.

We, the undersigned, on behalf of Haitian respondents, assert that the granting of this motion by this Court, no matter how unprecedented, is not a radical decision but a judicious one.

This motion does not call upon this Court for unprecedented compassion.

It does not ask this Court to stand apart with unprecedented courage.

(“The seas were rough, really sloppy at that time. The winds were heavy. [Smugglers] leave them to their own design to get from the boat to shore. It's a desperate person [who] tries to enter this country that way.”); Little, Cheryl “Haitian Refugees: A People in Search of Hope,” Florida Immigrant Advocacy Center, May 1, 2004, *available at* <http://www.fiacfla.org/fiacpublications.php#23>.

For the honor that comes to all Americans, who bear the burden of upholding democracy and the rule of law in our hemisphere, this motion simply and respectfully requests that this Court do justice.

WHEREFORE, the undersigned respectfully request that this Court administratively close, with consent of the respondents, all cases involving Haitian citizens and nationals. In the alternative, the undersigned respectfully request either an indefinite continuance of the Haitian cases, a stay or removal, or a certification by this Court of the question of *omnibus* prevention of forcible return of Haitians via the Board of Immigration Appeals and the United States Attorney General.

Respectfully submitted,

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

In the Matter of:

ALL HAITIAN RESPONDENTS

Currently in Removal Proceedings

ORDER

AND NOW this day of , 2005, it is hereby

ORDERED and **DECREED** that upon consideration of the *Omnibus* Motion to
Administratively Close Haitian Cases, all such a cases are hereby administratively closed.

Alternate Relief:

BY THE COURT:

Immigration Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ of _____, 2005, I caused to be served the:

**OMNIBUS MOTION TO ADMINSTRATIVELY CLOSE ALL CASES
INVOLVING HAITIAN RESPONDENTS**

- _____ by placing a true copy thereof in a sealed envelope, with postage thereon fully prepaid and causing the same to be mailed by first class mail to the person at the address set forth below.
- _____ by causing to be personally delivered a true copy thereof to the person at the address set forth below.
- _____ by FEDERAL EXPRESS: AIRBORNE EXPRESS to the person at the address set forth below.
- _____ by certified mail-return receipt requested to the person to the address set forth below.
- _____ by telefaxing with acknowledgment of receipt to the person at the address set forth below

ADDRESS OF PERSON BEING SERVED

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, 2005.

EXHIBIT A

STATEMENT OF PROFESSOR IRWIN P. STOTZKY, FOR PETITIONERS, TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ON MATTERS RELATING TO THE GENERAL SITUATION OF HUMAN RIGHTS IN HAITI, FRIDAY, MARCH 4, 2005, 122ND PERIOD OF SESSIONS.

My name is Irwin Paul Stotzky. I live in Coral Gables, Florida, and I am a Professor of Law at the University of Miami School of Law. I received my J.D. from the University of Chicago Law School in 1974. I began teaching at the University of Miami School of Law directly after graduation. I have been teaching law for over thirty years. I have published approximately two-dozen articles and a book on Haiti. The book, entitled SILENCING THE GUNS IN HAITI: THE PROMISE OF DELIBERATIVE DEMOCRACY, was published in 1998 by the University of Chicago Press. The publications cover a wide range of issues and topics, including the political conditions and the current crisis in Haiti as well as Haiti's history and culture. Additionally, there are discussions in these writings about theories of democracy, and about theories of economic, social, and political development and how these theories may be applied to Haiti. I have also spoken about the conditions in Haiti at the United Nations, and at different universities throughout the world, including Hebrew University in Israel, University of London, Oxford University, University of Paris, Tel Aviv University in Israel, and at numerous law schools and international studies departments in this country, such as Berkeley, Cornell, Dartmouth, Florida International University, Princeton, the State University of New York at Buffalo, the University of Chicago, the University of Miami, the University of Michigan, and Yale.

My knowledge of the current conditions in Haiti is based on personal research, on human rights reports and similar papers, on personal interviews with United Nations, United States and Haitian officials and other sources that I have in Haiti, which I cannot reveal. In addition, since 1994 I have regularly traveled to Haiti. Indeed, there were periods in which I spent several days a week in Haiti.

My knowledge of Haiti also stems from my extensive experience there. Between 1994 and 1997, I organized a group of international lawyers and directed the investigations into the massive human rights violations, including the murders of approximately 5000 people committed in Haiti during the illegal military regime's reign, between 1991 and 1994. This effort led to the first convictions for human rights crimes in the 200-year history of Haiti. From 2000 to 2003, I served as Chairman of an international Haitian Presidential Commission to help Haiti confront its drug problems. The former United States Drug Czar and the former United States Customs Commissioner, now serving as the Police Commissioner of New York City, also served on the Commission.

Currently in Haiti, there is a great deal of violence perpetrated mostly by the former military officials. According to my sources, including United Nations officials, Haitian army members (FADH) cached approximately 250,000 automatic weapons when

the United States helped restore the Aristide regime. As a result, when Aristide abolished the army, the displaced military personnel, some of whom were former henchmen for the dictators, formed criminal gangs and essentially took over the drug trade. These thugs have successfully disrupted the attempt to create a democratic government by attacking Parliament with grenades, killing a number of senators and other political figures, randomly assassinating many of the non-political poor and attacking the newly trained Haitian National Police, which is beset with problems of its own. Indeed, Haiti is an unstable environment, in which political violence often occurs, sometimes systematically and sometimes randomly. While there certainly has been some violence by a variety of factions, the most serious and sustained violence comes from the former military types who are now aligned with the de facto government. The violence by factions other than these former military forces has often been in response to attacks by the former military members who have attempted to reassert their power. Peaceful responses by those who deeply desire to adhere to the rule of law and to democratic principles cannot take place unless and until the de facto government stops its factions from perpetrating violent actions. Indeed, these so-called “rebel forces” (formerly military personnel) led the uprising that caused the violent overthrow of the democratically elected government of Jean-Bertrand Aristide. Aristide was forced to flee the country on February 29, 2004.

These brutal violations of human rights are an unfortunate continuation of Haitian history. Indeed, the history of Haiti is a tragic tale of political corruption and military violence. With the singular exception of one regime lasting from 1818 to 1843, Haiti has been marked by ceaseless coups, assassinations, and massive violations of human rights. The only period of relative stability was between 1915 and 1934, when the United States Marines occupied the country to ensure American commercial privileges.

Any notion of “stability” after the departure of United States troops was achieved through dictatorships. The most powerful and successful dictator was François “Papa Doc” Duvalier, who ruled between 1957 and his death in 1971 with an iron fist and the aid of a maniacal private security force known as the Tonton Macoutes. Duvalier consolidated his power quickly and ruthlessly. He eviscerated individual liberties and political opposition with equal dispatch; indeed, more than 40,000 Haitians reportedly lost their lives as victims of official brutality. Duvalier stole more than \$500 million in foreign aid and taxes and put the money into personal accounts in Haiti and abroad. Officials at all levels of government, taking their cue from Duvalier, took part in similar acts of corruption.

Duvalier remained in power for more than fourteen years, and in order to ensure a legacy of Duvalier control over the country, organized a fraudulent referendum on January 31, 1971, in which so-called voters approved his nineteen-year old son, Jean-Claude “Baby Doc” Duvalier, as successor. When his father died, Jean-Claude became “President for Life.” He ruled in a manner as repressive as his father. In 1986, however, when the levels of economic disparities and political corruption reached ungovernable proportions, “Baby Doc” fled Haiti for exile in France.

Following the Duvaliers came a series of political regimes that owed their survival to a large military caste operating with the indefatigable support of a small upper class. None of these regimes, however, had the support of the Haitian people. Each ruled

through the power of the gun. The popular will was finally given formal expression in the elections of 1990.

The 1990 election of Jean-Bertrand Aristide – the first fully democratic election to take place in Haiti in nearly two hundred years – represented a unique opportunity for democracy to take root in Haiti. Popular support for Aristide was overwhelming; he received two-thirds of the vote, giving him an unprecedented mandate for reform.

This peaceful election soon gave way to violence. After several unsuccessful coup attempts, the military finally overthrew Aristide in September 1991. The coup attempt not only was successful, but also resulted in a widely publicized reign of terror in Haiti.

During its short tenure, however, the Aristide government took important steps to create a democracy by improving the rule of law in Haiti. In one of his first official acts, President Aristide announced the retirement of senior military officials who had either been involved in past human rights violations or who had failed to punish those responsible for such abuses. He also appointed several new public prosecutors and removed corrupt officials linked to the military. Simultaneously, Aristide announced the creation of a human rights commission charged with investigating some of the most notorious human rights abuses committed in the past.

But these reforms did not last long. The overthrow of the Aristide government resulted in the death and torture of thousands of innocent people that continued into Aristide's reinstatement to power in 1994. Moreover, after the overthrow of Aristide, the military rapidly took steps to consolidate power. They named a civilian government, including an interim president, to complicate the return of Aristide. They reversed each of the systemic changes made by the Aristide government and created a society ruled by fear and terror.

In September 1994, after years of serious but frustratingly unsuccessful international efforts to negotiate the restoration of the democratically elected Aristide government, President Bill Clinton made a televised address bluntly informing the Haitian military that it must relinquish power or it would be forced out. In a last-ditch effort to avoid an invasion, Clinton asked former President Jimmy Carter, Senator Sam Nunn, and General Colin Powell to go to Haiti to negotiate the peaceful departure of the military. On September 18, 1994, the Carter delegation reached an agreement with the Haitian military leaders.

On October 15, 1994, after three years of forced exile, Aristide triumphantly returned to Haiti. He thus became the first democratically elected president overthrown by a coup d'état to be returned to power by the international community and to replace the very same dictators who overthrew him.

In 1995, the Haitian people elected René Preval as President to succeed Aristide. This was the first time in the nearly 200-year history of Haiti in which one democratically elected president passed power on to another democratically elected president. In 2000, Aristide ran for and was elected President for the second time. Again, this was a milestone in Haitian history. Since his return to power in 2000, there has been a systematic attempt to overthrow his administration by violent means.

In the early 1990's, FRAPH (the Front for the Advancement and Progress in Haiti) took over the ugly jobs of assassinating those opposed to the dictators and running part of the drug trade. Its lineage can be traced to the Macoutes. Indeed, the Macoutes are a sort of nefarious group of people that consists of both older and younger people who are called attaches (FRAPH members) or rebels today. It also includes heavily armed former military personnel, who form part of the drug trade, and who continue to assassinate people systematically. Many of the current members of the rebel army were members of FRAPH and were involved in assassinations and intimidations and have resumed the murderous ways of the dictatorships.

The motivation behind the assassinations is in part to show the world that it cannot do business without dealing with these people, and in part to show that these people are always around and will, at some point, regain power. I believe their major function is to maintain some semblance of power and also to continue to disrupt any hope of creating a well-functioning democratic government.

Unfortunately, the Haitian National Police is in its infancy, and thus its ability and efforts to contain violence by former military and FRAPH members is limited. It does a relatively good job with the training it has had, but it certainly does not have the weapons or expertise to protect people in Haiti. In fact, a number of policemen have been reportedly involved in the drug trade themselves. Hence, it is unlikely that the police can control violence by the rebels because the rebels are better trained, are militarily more efficient, have better weapons, and have been in existence for a much longer time. Indeed, on February 6, 2005, four police officers were killed, allegedly by former soldiers.

Politically motivated murders are increasingly common in Haiti. Aristide supporters, former Aristide government officials, and members of Aristide's party, the Fanmi Lavalas Party, are the most frequent targets for this violence. It is imperative to add that once a person in Haiti participates in an event that identifies him as a supporter of Aristide or a member of the Fanmi Lavalas Party, that person is forever seen as a supporter of that group and will be subject to political persecution as long as the current de facto government and its rebel army remains in power.

In the past year, human rights in Haiti have taken a giant step backwards. On February 29, 2004, President Jean-Bertrand Aristide, whose Lavalas movement has won every democratic election in Haiti by a landslide, was forced out of the country by an alliance of paramilitary gangs and Haitian aristocrats. The United States installed a de facto government, but the gangs still control much of the country. Both the new government and the gangs are hunting down democracy supporters and officials of the elected government, illegally arresting the permanent ones and simply eliminating activists in poor neighborhoods.

The paramilitary gangs of the so-called "rebel army," that now control as much as ninety-five percent of Haiti, are comprised of soldiers from Haiti's disbanded army and FRAPH members, reinforced with drug dealers and other criminals. Even United States Secretary of State Colin Powell called them Haitian "thugs and murderers." Many of their leaders have been convicted of mass murders during Haiti's last dictatorship, from 1991-1994. Two of the top gang leaders, Jean Tatoune and Louis Jodel Chamblain, were

convicted of murder in Haiti's most successful human rights prosecution - the trial of the 1994 Raboteau massacre. During the recent revolt, the gangs attacked and emptied all of Haiti's prisons, releasing thousands of criminals. One of the men released, former military dictator Prosper Avril, has a \$41 million judgment against him in the United States for torture and other human rights violations, and has been indicted for murder in Haiti.

The paramilitaries are systematically targeting pro-democracy activists, as many of them did during the 1991-1994 dictatorship. Over 1,000 people have been executed since late February 2004, including police officers, grassroots activists and members of the Lavalas movement. The rebel gangs have illegally arrested scores of others without any judicial proceedings, and often place the prisoners in illegal or clandestine facilities. Thousands of democracy activists have been forced into hiding. Although Amnesty International and many other organizations have condemned the gangs' actions, United States or French troops took no action to arrest them or disarm them. The current United Nations forces have also failed to take action against "rebel army" forces.

The de facto government has systematically persecuted democracy supporters, especially Lavalas officials and activists. Former Prime Minister Yvon Neptune was forced into hiding and then imprisoned without legal justification. He remains incarcerated. Annette Auguste, a 68-year old grandmother, folk singer and Lavalas activist, was arrested illegally by a United States Marine Commando raid on her home at midnight. No weapons or other illegalities were found in the raid, and although there is no formal complaint against her, Ms. August remains in prison. The Minister of Justice, Bernard Gousse, instead of trying to stop this persecution, is directing it. He personally led an illegal raid to arrest the former Minister of the Interior, who has now been in jail since April 2004. The government has also arrested independent journalists, shut down the radio and television stations that criticized it, and illegally seized the assets of Lavalas supporters.

In contrast, the de facto government has taken no action to stop the killing by paramilitary gangs, or to arrest members convicted or implicated in human rights violations. In fact, Prime Minister Latortue publicly hailed convicted murderer Jean Tatoune as a "hero" in a speech he delivered in March 2004. When convicted murderer Louis Jodel Chamblain turned himself in to police, Justice Minister Gousse negotiated with him first, then declared that Chamblain "had nothing to worry about" from the Haitian justice system. He also suggested that Chamblain might be pardoned for his great services to the nation as a leader of the anti-Aristide rebellion in February 2004.

The interim de facto government appears to be paving the way for the return of the former military and its human rights abusers. The interim government is also increasing its interaction with the illegal heavily armed groups which helped overthrow the democratically-elected Aristide government in February 2004, and in some cases, has actively courted and engaged former leaders of the defunct Armed Forces of Haiti (FADH). These concerns are heightened in the context of the farcical "retrial" and acquittals of former FRAPH leader, Louis Jodel Chamblain, and former Anti-Gang head, Jackson Joanis, and the recent mobilization of former soldiers in Port-Au-Prince, Les Cayes, the Central Plateau, and other parts of the country.

The interim government appointed Winter Etienne as the new director of the National Port Authority in Gonaives. Etienne, along with fugitive from justice and

former FRAPH member, Jean Tatoune, led the armed uprising in Gonaives in late 2003 and early 2004. He is currently coordinator of the new political party, the National Reconstruction Front, headed by former army officer and police commissioner – not to mention coup plotter – Guy Philippe.

At the Ministry of Interior, former Army chief, ex-General Herard Abraham, is continuing to integrate former high-level officers from the Haitian Army into his staff. One of the new appointees is former Colonel Williams Regala, once the right-hand man of dictator Henri Namphy, and allegedly the principal instigator of the massacre of voters that took place on November 29, 1987. That same year, Regala, then Namphy's Minister of the Interior, told the New York Times that the Army was "the guardian of a way of life, of the integrity of the nation." Adding that when political institutions begin to collapse, "the Army has a duty to take over."

Regala joins a host of other former high command officers at the Ministry of Interior. One of the most notorious of these is former Colonel Henri-Robert Marc-Charles. In September 1991, Marc-Charles joined General Raoul Cedras in forming a military junta to overthrow the elected government. At present, he is a top advisor to Abraham despite the existence of a judicial order requiring his imprisonment pending trial for his involvement in the March 12 1990 Piatre peasant massacre. Moreover, under Herard Abraham, the Ministry of Interior is actively recruiting former soldiers into the National Police Force, and preparing to pay ten years' back pay and pensions to all members of the Army that Aristide disbanded in 1995—\$29 million to approximately 6000 former soldiers.

Meanwhile, in the Central Plateau region, former Army Colonel, Remissainthe Ravix, claims to lead some 1,800 re-armed soldiers, and has ridiculed the interim government's "suggestion" that they disarm. His intent seemed to be demonstrated when, on August 17, 2004, five riot squad (CIMO) officers returned to their base in the capital from a mission to the Central Plateau claiming that they had been attacked and dispossessed of their arms and vehicle by men wearing military uniforms. Radio Kiskeya reports that their colleagues at the CIMO allege that the attack was planned by the government-appointed director of the National Police Administration, Destorel Germain, a former soldier allied with the demobilized soldiers. Currently, the self-proclaimed "General Ravix" has relocated to Pétionville with 300 heavily armed soldiers and apparently runs military-style operations from there. He threatens even the Latortue government. The irregular Army is standing by in Pétionville until they receive official authority to provide security to Port-au-Prince. The new FADH has also established substantial bases all over the country, including in Ounaminthe, Cap Haïtien, Fort Liberté, Jérémie, Petit Goave, and Jacmel.

The FADH has reasserted itself and is murdering people with impunity. In particular, FADH is hunting down Lavalas members and ghetto sympathizers. The de facto government is complicit in much of the violence and has organized a campaign to persecute Lavalas members and members of Aristide's government.

Flagrant violations of human rights continue within Haiti, repeating the all too tragic historical patterns. Now that a year has passed since the coup d'état, it is obvious that Lavalas members, Aristide government officials, perceived sympathizers and innocent bystanders are being persecuted by the de facto regime and the resurrected army. Prime Minister Yvon Neptune remains imprisoned without legal justification.

Annette Auguste was arrested and imprisoned illegally. Former Interior Minister, Jocelerme Privert, remains in prison on charges that he organized a massacre of Aristide's political opponents in spite of the fact that there is no evidence that any such massacre ever occurred.

Haiti is a newsreel in reverse: foreign occupation, an illegitimate puppet government, and a resurrected armed forces. This has led to unacceptable violence, including the murders of hundreds of innocent, law abiding citizens. Until all factions are disarmed and democratic elections are held leading to democratically elected officials, this cycle of needless violence will continue unabated. The international community has a heavy obligation to help restore democracy to Haiti and to return the hope of a better life to millions of suffering people.

EXHIBIT B

Inter-American Commission on Human Rights
General Situation of Human Rights in Haiti Hearing
March 4, 2005
Brian Concannon Jr., Director
Institute for Justice & Democracy in Haiti

Attacks Against the Press In Haiti

Politically-motivated attacks against the press in Haiti have been widespread and well-documented since the Interim Government of Haiti's (IGH) installation in March 2004. Perpetrators of the attacks include IGH officials, the former soldiers who control large areas of the country, and armed gangs. Journalists have been shot, abducted, arrested, beaten and intimidated, radio and television stations have been closed down by the government. To our knowledge, not a single person has been arrested, nor a single government official disciplined for attacks against the press during this period.

A. Physical Attacks

On February 4, 2005, Raoul Saint-Louis, co-host of Radio Mégastar's "Point Final" program, was shot in the arm in front of the station's studios in Port-au-Prince. Saint-Louis' program often criticizes the government, and in the days preceding the attack, government and police officials had spoken out against Mégastar for providing IGH opponents a mouthpiece.

January 14, 2005, was particularly difficult day for journalists. Haitian police shot and killed radio journalist Abdias Jean, who was wearing a press badge and covering a Haitian police operation in Cité de Dieu, a poor neighborhood of Port-au-Prince. According to several witnesses, about an hour after Jean observed the police execute two people, officers searched for Jean, located him and shot him several times. There have been no arrests for this killing, nor any reported disciplinary action. There has been no autopsy or forensic examination of Mr. Jean's corpse, despite a formal request by Mr. Jean's mother and her lawyer on January 25, 2005. UNESCO Director-General Koïchiro Matsuura called the killing an "intolerable attack on democracy and rule of law."

The police confiscated the camera of another journalist covering the same police operation, cameraman Harry Francillon of "Télé Ginen." Police later returned the camera, but not the videotape that was in it. Also on January 14 in Port-au-Prince, Claude Bernard Serant and Jonel Juste, two reporters from the newspaper, *Le Nouvelliste*, were beaten and their lives were threatened by people claiming to support the former government.

Throughout 2004, reporters for Radio Solidarité, the most prominent critic of the IGH's human rights record among Haitian media, suffered attacks. The station closed down from March 1 to April 6 because of telephone death threats. On March 30, Lyonel Lizarre, a correspondent for Radio Solidarité and the Agence Haïtienne de Presse in Jacmel, was abducted by a group of soldiers. He was beaten and forced to disclose the location of a correspondent for another station that had criticized the IGH, Jacky Jean-Baptiste of Radio Ginen, who was forced into hiding. On April 16th Jeanty André Omilert, correspondent for Radio Solidarité and a reporter for Radio Excelsior in Mirebalais was abducted from in front of the radio station by a group of former soldiers and illegally detained at the local police station. Omilert was held for three days, then released.

On August 30, 2004, a gang alleged to support the ousted constitutional government attacked Lyonel Louis, a photographer with the *Haiti en Marche* newspaper with rocks.

On May 15, Charles Prosper, a correspondent for Radio Tropic FM in Mirebalais, was abducted by a group of rebels and detained in a police station for two days. He had received several threats in the weeks before the abduction, accusing him of supporting the Lavalas party.

B. Official Harassment of Radio Stations

The IGH illegally closed Radio TiMoun and TéléTimoun, both based at the Aristide Foundation for Democracy, on May 18. Neither has been allowed to broadcast since. The IGH alleges in public that the stations were involved in financial impropriety, but it has not justified this claim in the court file. Although a judge was present at the original closing, he acted pursuant to an oral order by the Minister of Education, who has no authority in the matter. The legal procedures for revoking a station's license have not been followed.

On May 28, police arrested Arens Laguerre, a cameraman for TéléTimoun, without a warrant. The police claimed he had bullets in his pockets, but no proof was ever presented. Laguerre was finally released in June, after the Committee to Protect Journalists issued a protest.

On June 11, Jean-Michel Boisrond, the General Director of the National Telecommunications Council (CONATEL), informed Radio Solidarité that it was required to change its frequency. Only one other station was required to make a similar change. No stations that are members of the pro-government National Association of Haitian Media were required to change their frequencies. Changing frequencies would be an immense financial burden on Radio Solidarité- its management has said that it will be forced to close down. Singling Radio Solidarité out, in light of its prominence as a critic of the IGH's human rights record, is a thinly veiled attempt to eliminate a dissident voice. The station has been given a slight extension to comply with the change order, but the IGH insists that the change must be made.

On October 2, 2004, Haitian police forcibly entered Haiti's Radio Caraïbes and arrested two Senators, Yvon Feuillé and Gerard Gilles, and former Deputy Rudy Hérivaux, who had criticized the Interim Government during a radio debate on violence. The warrantless arrests were illegal and a clear violation of the detainees' freedom of association and of expression, and of Radio Caraïbes' right to broadcast a debate. When the station manager refused to allow the police entry into the station, a Justice of the Peace instructed the police to cut the locks and make the arrests. No evidence of criminal activity by the arrestees was ever presented, even though two of them spent three months in jail.

Exhibit C

AFFIDAVIT OF THOMAS M. GRIFFIN, ESQ.

I write this affidavit to describe the prison conditions for those Haitian men who are deported from the United States and detained in Haiti at the National Penitentiary in Port-au-Prince. This statement does not include my findings regarding the conditions for prisoners currently held apart from the deportees. I can report, however, that when I visited the prison in 2002, the deportees were kept in a different section of the prison from where they are now.

In addition to my full-time work as an immigration lawyer, I am an experienced human rights investigator and reporter, with a recent focus on Haiti. My work, which has included four trips and three investigations since the ouster of the elected government in Haiti on February 29, 2004, has been published by the National Lawyers Guild and the Center for the Study of Human Rights at the University of Miami School of Law. Internet versions of each report can be found, respectively, at www.nlg.org/programs/international/Haiti_delegation.reportI.pdf and www.law.miami.edu/cshr. Additionally, the University of Miami report has been copyrighted and is on file at the Library of Congress. A third report, based on my investigation as part of the Commission of Inquiry, led by former Attorney General Ramsey Clark, on behalf of the International Tribunal of Haiti, is currently in progress.

In addition to the investigations and reports, due to the escalating political and social crisis, I have appeared to report and testify on the human rights situation in Haiti before the Department of Homeland Security, the President's Office on Faith-Based Initiatives, the State Department, and the National Security Council, as well as in several House and Senate briefings, and before the Congressional Black Caucus. In March 2005, I was part of a team of lawyers from Harvard University, the University of Miami, and others who presented evidence against the interim Haitian government and the United Nations troops before the Inter-American Commission for Human Rights at the Organization of American States. I also presented my findings in the Canadian Parliament in Ottawa before a group of parliamentarians, diplomats, and community members.

Most recently, I was selected by the International Tribunal on Haiti to be a member of the Commission of Inquiry, a group of human rights investigators that is led by former U.S. Attorney General Ramsey Clark. I was with the Commission in Haiti October 6-11, 2005.

During my latest investigation in Haiti, I gained access to the National Penitentiary in Port-au-Prince on October 8, 2005. I have yet to formally publish my findings. However, in the prison I was able to tour most of the facility and I entered the

area designated for deportees from the United States. At the time of my investigation, the official count of deportees from the United States in Haitian prisons was 111, less five who were listed as escapees.⁵⁴ According to the listing in the director's office, 86 of the deportees were in the National Penitentiary, and 21 were in another prison in the town of Archaie. I have since received information that female deportees are detained at the prison in Petionville.

The director of the prison, though clearly in charge, of every aspect of the prison, and keeping the main office inside the gates on the first floor, refused to give his name to me.

I can report that the prisoners are held indefinitely. There is no formal release program or release schedule. The director and his staff are aware of this and cite it as an additional problem in the prison that is unjust and oppressive, and that they admit contributes to a powder keg of frustrations and abuse that they fear may lead to a prisoner rebellion at any time. At the time of my investigation, some deportees had already been in the prison for 11 months solely on the basis of their deportee status.

I attach a list of the deportees which was kept by the prison director on the day of my visit, and which he stated was true, correct, and up-to-date. It contains the arrival date for deportees into the penitentiary.

As further background, on the day of my investigation, the official daily roster for the prison, kept on a chalkboard in the prison director's office, included 1603 men, of whom only 62 had been convicted. According to the director, the prison was built to hold only 800 men.

The following information was gained from observing the deportee section, walking through it, observing the deportees in small groups, and talking to several prisoners in a group setting. The investigation at the prison was controlled, and limited in time and scope for various reasons.

The deportees are housed separately from other prisoners. They have a small "compound"-like space within the high cement walls of the antiquated prison. This "compound" includes open space where detainees wash and hang their laundry, bathe, use the "toilet," and where a small cement container of water is kept. In the center of the compound are two cement barn-like structures, approximately 25 feet long and 15 feet wide, and 12 to 15 feet tall, where the men sleep -- so close that they a touch each other. Some have thin mats, others sleep on the cement floor. The men are locked in these structures from 5 p.m. each day until 9 a.m. the next morning. The "barns" have no electricity, no water, and no toilets. They are simply four-walled cement structures with

⁵⁴ They are categorized as "evade" in official roster. I cannot confirm if the listed escapees actually escaped. I know that on December 1, 2004, there was a large-scale massacre perpetrated by guards against the prisoners, and a planned invasion/escape on February 19, 2005. There has been no official accounting for the dead or the escapees.

barred windows. I observed the kindling and ashes of small fires in the center of the floor that the men light at night to reduce mosquito infestation. The men pointed to the ceiling rafters in the barn structure and told me that rats crawl along them during the night and frequently fall on the sleeping men and bite them. Some of the men showed me the rat bites on the backs of the lower legs.

In order to urinate or defecate during the daily 16-hour locked-down period, the men use plastic bags and throw them out one of the few windows. They then clean up the bags in the morning. When not locked down, there is a water-less, trough-like structure that is used as a toilet. This is just outside a main window. According to the men, the stench of the outdoor waste blows through the window throughout the night, making them sick.

In addition to the single toilet-trough in the outside area, there is a trough of water that is used for bathing and for drinking, and for taking water to wash clothes. The water is not potable for Americans, but is the typical parasite-infested water generally available to the poor majority of Haitians at public spigots.

The prison does not provide soap, shampoo, toothpaste, or toilet paper to the men. If they have such items at all, family members provide them. However, it appears that family visits are rare and extremely short in duration. It also appeared that few men have family in the area who can visit the prison.

The men are inconsistently fed once or twice per day when large communal bowls of rice, or rice and beans, are brought into the compound.

According to the men, there is no medicine or medical care at the prison, except for the occasional provision of anti-diarrhea medication. Men who have high blood pressure, diabetes, or other chronic conditions that require medication are forced to go without it. In the two cement barn structures, I observed approximately six men who were too sick to stand or speak. I observed one man, who had reportedly lost over 100 pounds since arrival, shivering under a sheet. Others reported that this man had not moved in three weeks. Another prisoner who had arrived paralyzed on the right side of his body from head to toe had been lying on the ground in the barn since his arrival at the prison (February 28, 2005), with no treatment. He was unable to move or talk to me.

The men indicated that there is a “dispensary” or medical room at the prison, but stated that they avoid it because prisoners return from there with worsened conditions and infections. Though not during this investigation, I have previously observed this room, and found that it had a nauseating stench. Prisoners with tuberculosis and other readily communicable infections were lying next to “patients” without infections. I also found apparently “rich” prisoners, not U.S. deportees, and not in need of any medical treatment, in the dispensary beds. I learned that these “privileged” prisoners bribe staff because the dispensary room has the only beds in the entire prison.

There is no treatment or medication for mentally ill prisoners. One prisoner told me, "They get no help. They lie naked in the hot sun all day because they're crazy." Although one prison official told me that the mentally ill prisoners, including U.S. deportees, go to a different jail, I found this not to be true.

I personally observed one severely mentally ill man in the deportee section who followed me around during my investigation. He told me that he receives no medication, though he regularly took several medications daily to control the symptoms of his disorder when living in New Jersey prior to his deportation. He appeared unable to explain or understand his current situation. Other prisoners told me that this man had never received any medication or special attention.

Just outside the deportee area, in an alleyway within the prison, I found an obviously schizophrenic man locked in a special, tiny, makeshift cell tucked under a four-foot tall stairway with two other prisoners. The cell is too small to stand in and prisoners can only squat or lie down. He was naked and screaming the words to a song. A guard told me that they keep "the dangerous ones" there. He said by dangerous he meant dangerous to others or in danger of being harmed by others.

I found that many men had skin infections, which the men told me came from dirty water and poor diets. I have repeatedly observed these skin infections over the years in the poorest urban and rural areas of Haiti.

The men told me guards beat prisoners who speak out or complain. Prisoners are beaten openly in order to set an example for others. The weapons used are metal and wooden rods. I spoke with one man, with visible wounds on his back, who stated he had been beaten on his back 156 times with a metal rod and the guards counted each strike out loud. One man who was beaten was larger and more muscular than the other prisoners. It appears to me he was beaten to send a special message of control and shame. I also observed a man with a broken and dislocated wrist, an injury which he said a guard had inflicted as punishment by smashing him with a metal rod.

The men told me that the guards routinely chastise them as being worthless because they are deportees from the United States, not true Haitians. Some men told me that the family visits last only three minutes, once per week, and the visiting family members are berated and discouraged from ever returning to the prison.

There are no telephones for prisoners, although they are commonplace in government offices and in the community. One young deportee, who had been detained there since April 2004, told me to contact his mother to tell her that he was alive.

Based on what I observed, if a someone from the United States is deported to Haiti based on a crime committed in the United States, I have no doubt that he will be imprisoned for an indefinite period of time. It has come to my knowledge that a special U.S. Department of Justice airplane transports criminal deportees to Haiti. Therefore, they are known on arrival. The grouping of arrival dates on the attached list also supports

this official transport policy. I have also learned, however, that other U.S. deportees arrive in the prison from other, commercial flights from the United States.

Based on my observations and inquiry, prisoners with mental illnesses will never receive medication, treatment or counseling to address or ameliorate the symptoms. There will be no special therapeutic programming for any mentally ill detainee. It is also my conclusion, based on observation of sick, and probably dying prisoners, and an immobile, paralyzed prisoner, that they will not obtain medical care. Any medical care that may be provided at the dispensary is inadequate, rationed, is provided on a discriminatory basis, and is probably life threatening.

If a mentally ill prisoner becomes boisterous or loses capacity to control his behavior for lack of medication, he may be placed in the miniature cell tucked under a stairway where he cannot even stand. If any prisoner, whether mentally ill or not, speaks out or annoys a guard, he will most likely be beaten with metal or wooden rods. Mentally ill prisoners will be dependent on other prisoners to control their behavior and to help them to avoid the wrath of guards.

Because the men sleep in extremely close quarters and are locked in with each other for 16 hours every day, mentally ill prisoners will be in added danger if they cannot control themselves. Although I have no evidence of any prisoner-to-prisoner violence, it is likely that a disruptive prisoner would be taken away and placed in the miniature cell if he is disruptive to the other men.

Additionally, I know that there was a large-scale massacre at the prison conducted by guards on December 1, 2004. Reports state that from 10 to 100 unarmed prisoners were shot and killed by guards using automatic weapons. There was also a large-scale escape which initiated with a break into the prison by unnamed individuals on February 19, 2005. Neither the interim government of Haiti, nor the United Nations mission in Haiti -- which occupies the country and has supervisory security authority -- has published its investigative reports of these incidents. I have never seen any information that shows that guards or prison officials were ever disciplined for these incidents.

I believe, therefore, that any prisoner could be subject to uncontrolled violence, committed with impunity, at any point during his detention. My observations and research since the ouster of the elected government in February 2004, reveal that the interim government of Haiti cannot or will not protect the safety and security of its own citizens. Despite the presence of a multinational United Nations force, the risk of violent lethal force by government and UN officials, or by others whom official forces cannot or will not control, is greatest among the poorest and most marginalized in Port-au-Prince. This is also especially true for prisoners during the ongoing violent political upheaval transpiring in Haiti during the past 22 months.

Because I have spent significant time in other public and government facilities in Haiti, including the National Palace, the Ministry of Justice, the Directorate of the Haitian National Police, the national airport, the State morgue, and the State hospital, it is my

opinion that the inhumane conditions in the National Penitentiary reflect a deliberate choice by the Haitian government. My research shows that millions of dollars have been received from the international community to support the interim government of Haiti, but there is no evidence that any of these millions were allocated by the interim government to humanize, or in any way upgrade, the conditions in the prison.

As an attorney, I am familiar with the major Convention Against Torture cases that appear today to be the controlling law on the Haitian deportee issue, including Matter of J-E, 23 I&N Dec. 291 (BIA 2002) and the federal case that relies on Matter of J-E's Haitian prison-condition facts, Auguste v. Ridge, 395 F.3d 123 (3rd Cir. 2005). I know that the analyses in these cases were limited to conditions as they existed in Haitian prisons in 2000 and 2002.⁵⁵ However, both the democratically elected government and the conditions in the prisons have dramatically changed since that time.

Most significantly, the democratically elected government of Haiti has suffered a coup. Some 7,000 democratically elected officials throughout the country were removed beginning on February 29, 2004. As a result, no democratically elected officials are currently running the Haitian government that oversees the prisons. The government is an interim, appointed government. Evidence reveals that it has actively participated in a worsening of the conditions in the prisons and the conditions have deteriorated sharply as a result of the undemocratic authority.

I further note that the Auguste Court specifically admitted that its fact-based conclusion is subject to change based on improved, up-to-date information on Haiti's prison conditions. Stated the Court, "We caution that we are not adopting a per se rule that brutal and deplorable prison conditions can never constitute torture . . . Perhaps, as evidence is further developed on conditions in Haiti, the BIA may arrive at a different conclusion in the future." Auguste, 395 F.3d at 154.

As indicated in the above-cited human rights investigative reports, I have authored, as well as widely available information, including from the UN Human Rights Chief of the Haiti mission, the human rights conditions in Haiti have risen to a "catastrophic" level in recent months, and this specifically includes the inhumane, indefinite detention of deportees in the National Penitentiary. See Press Release, United Nations, Notes de point de press de la MINUSTAH (Oct. 14, 2005), available at <http://www.minustah.org/ppress/pb141005.pdf>. Indeed with over 1600 men in the prison designed for 800 men, and only a few dozen of them convicted, the Auguste Court's reliance on J-E's rationale that "although lacking in resources and effective management,

⁵⁵ It is clear that the "prison conditions" section of the Auguste decision is primarily based on the Matter of J-E prison condition facts. In Matter of J-E, the facts came from the 2000 U.S. State Department "Country Report on Human Rights Practices, issued on February 23, 2001, and a "Letter of William E. Dilday," then Director of the State Department's Country Reports Office, dated April 12, 2001. In Auguste, the Court would not allow the 2003 Country Report into evidence, concluding that they were not before the trial court, and that the 2002 report was substantively identical. The Auguste Court, however, relied chiefly upon an adoption of the prison conditions in 2000 as it repeatedly referred to, and generally adopted, the factual analysis in Matter of J-E.

the Haitian Government is attempting to improve its prison systems” currently has no factual foundation due to Haiti’s catastrophic realities.

Furthermore, it was solely from the State Department report that the J-E Board and the Auguste Court drew the conclusion that the horrific conditions arise solely from overall impoverished economic conditions in Haiti. There was no citation to any independent source for this information. Today, there is no substantial evidence to support that conclusion, and the facts are dramatically in contrast.

Additionally, the J-E decision relied heavily upon the letter of the State Department’s Mr. Dilday. The Dilday letter concluded that the U.S. deportees are held in “police lock-ups” in various areas of the country, not in the National Penitentiary, and that the horrible conditions in the penitentiary, therefore, may not apply to deportees at all. I can report that this, even if true in the past, is no longer the case. I have repeatedly visited many police station “holding cells” since early 2004, and have never observed any deportee in one. Furthermore, the director of the National Penitentiary told me on October 8, 2005, that all U.S. deportees are detained in the National Penitentiary, with a small percentage held in the prison at Archaie.

I know also that the Auguste Court, relied on the J-E Board’s conclusion that this mandatory detention does not implicate the Convention Against Torture because it is a “lawful sanction” in Haiti. There is lawful authority for it today. Indeed, what is “lawful authority” in Haiti today is a grave question. I know that arbitrary detention, detention not pursuant to a lawful warrant, detention that is not the result of being apprehended in flagrante delicto, and detention lasting more than 48 hours without a magistrate’s release hearing, all violate the Haitian laws and Constitution, as well as the American Convention to which Haiti is a signatory nation.

The information I have gathered in investigations reveals that the Haitian government does, indeed, have the resources to ensure that basic sanitary, nutritional, drinking water, health, and medicinal needs are met. This conclusion is bolstered by both my knowledge of the many funds that have poured into the Haitian interim government from the international community since the ouster of the elected government in February 2004, and from the accommodations I have observed in other government buildings and institutions.

Furthermore, I know that placing deportees into such inhuman conditions is deliberate and intentional in Haiti. There is no reasonable or defensible need, nor any constitutional authority in Haiti, for the detention, let alone indefinite detention, of deportees. In fact, there is a current IGH and UN supported media campaign that seeks to blame Haiti’s appalling security conditions on “bandi,” a derogatory term literally meaning “bandit” in Haitian Creole, but applied generally to poor male youth in Haiti. This is consistent even with the 2000 Country Report in where Haitian prosecutor August Brutus is quoted as supporting deportee detention as a “preventative measure” to stop “bandits” from contributing to Haiti’s insecurity. And it is consistent with Mr. Dilday’s 1991 statement, quoted in J-E-, that deportees are held indefinitely “as a warning and

deterrent not to commit crimes in Haiti,” Matter of J-E, 23 I&N at 300, foreshadowing today’s conditions in Haiti.

That is, in violation of the Convention Against Torture, the detention of deportees today is not solely to keep them out of the community, but to punish them so severely with mental, and sometimes physical, pain that, when released, they will be frightened into docility, too paralyzed to dissent, regardless of any widespread government oppression of, or inability to protect, its own people.

I believe that merely placing human beings into the conditions in the National Penitentiary, as well as the beatings by guards, rise to the level of torture, and that such torture is intentional simply because the Haitian government has the ability to eliminate the deportee detention policy, and to free its deportee detainees.

I believe that placing a man into such mental and physical suffering is intentional torture just as it was torture in medieval times to tie a man’s hands and feet to “the rack” and turn the stretching wheel. The wheel is turning against detainees in Haiti because of generalized poverty, demonization of so-called “bandit” deportees, and targeted and purposeful misallocation of the will, the skills, the resources, and the funds to other government facilities and actors who could provide prisoners with food, medicine, potable water, humane housing units, and sanitation.

When IGH officials place a U.S. deportee into the National Penitentiary, they are intentionally tying his hands and his legs to this rack. Haitian prison officials cannot now step back and say there is no “intentional” torture simply because no single individual on the prison staff is, himself alone, cranking the stretching wheel as he looks into a prisoner’s eyes. Current conditions will be intentional torture until the limbs are no longer tied to the rack by mandatory detention, or until prison conditions are drastically changed into humane ones so that the rack’s wheel stops turning.

As my and other reports since the ouster of the elected government reveal, Haiti’s justice institutions, including the police and the courts, are incapable of and unwilling to provide minimum constitutional and human rights protections in the country. Even rank and file government employees are afraid of the country’s de facto leadership, and this is evidenced by even the prison director’s refusal to give his name. The government has no popular mandate, so the will to change this appears ephemeral.

Detention of deportees under the described conditions, with no reasonable or lawful basis, for an indefinite period, is horrendous, intentional punishment designed to send a message to the deportees, and to their families, and to warn others in the United States and Haiti that doing anything that violates the law, or appears to challenge the government’s authority will result in a hellish, life-threatening, situation. For U.S. deportees in the National Penitentiary, months and months of the routine of intolerable, unending mental and physical anguish may be broken only by acts of intense violence, including massacre and deadly episodes of escape.

Signed under the pains and penalties of perjury this _____ day of December,
2005.

Thomas M. Griffin, Esq.

EXHIBIT D

Liste des déportés en prison (Actualisée au 6 juin 2005)

No.	Nom et Prénom	Date d'arrivée	Infraction reprochée
1-	ANTOINE Dieuseul	15/11/04	Viol mineur
2-	CASIMY Fito (évadé)	15/11/04	Viol, agression sexuelle
3-	CENATUS Hector (évadé)	15/11/04	Possession de cocaïne
4-	PAUL Jean François (évadé)	15/11/04	Vol à mains armées
5-	SAINVIL Alan	15/11/04	Possession de cocaïne
6-	YASINTH Wesley (évadé)	15/11/04	Vol de véhicule/ agression armée
7-	PHILIPPE Donald	29/11/04	Vol à mains armées
8-	ARISTHOMENE Enold	13/12/04	Cambriolage armé
9-	COLBERT Antoine	13/12/04	Possession de Marijuana
10-	SAINT-JEAN Yves	13/12/04	Homicide involontaire
11-	CHARLES Gérald	27/12/04	Vente de cocaïne
12-	METELLUS Reland Raymond (évadé)	10/01/05	Vol à mains armées
13-	NICOLAS Jorisilien	10/01/05	Vente de cocaïne
14-	NOPE Mark	10/01/05	Vente de cocaïne
15-	SAINVIL Jean François	10/01/05	Possession de cocaïne
16-	SIMEON Nesly	10/01/05	Trafic de cocaïne
17-	ALEXIS Paulson	24/01/05	Vol
18-	AUGUSTE Joseph	24/01/05	Possession de cocaïne
19-	BENJAMIN Thimothé	24/01/05	Possession de cocaïne
20-	LOUIMA Junior	24/01/05	Vol de véhicule
21-	SIRIUS Wangles	24/01/05	Poss. de cocaïne, abus sexuel sur mineure
22-	ABOUZEIDE Jackson	10/02/05	Possession de faux chèques, conduite avec licence périmée
23-	ALTUMEAU Anel	10/02/05	Vol
24-	EMILE Dutène	10/02/05	Vente de cocaïne, mauvaise conduite avec véhicule
26-	JOSEPH Patrick	10/02/05	Possession de cocaïne

No.	Nom et Prénom	Date d'arrivée	Infraction reprochée
27-	DARRIS Dejanel	28/02/05	Possession de cocaïne
28-	DORMILUS Wivens	28/02/05	Consommation de drogue et substance dangereuse
29-	MAGLOIRE Auguste	28/02/05	Possession de cocaïne, conspiration
30-	NEUS Volney	28/02/05	Vol à mains armées, agression, félonie, violence, trafic de cocaïne, tentative d'assassinat
31-	PHARISIEN Anniel	28/02/05	Possession de drogue
32-	REGIS Stanley	28/02/05	Possession de cocaïne
33-	GEORGES Wilson	28/02/05	Possession de marijuana
34-	COLON Joseph	14/03/05	Vente de cocaïne
35-	DABADY Darly	14/03/05	Possession de marijuana
36-	FIFI Jefferson	14/03/05	Cambriolage, possession de cocaïne
37-	JOSEPH Norilien	14/03/05	Vol, meurtre
38-	ULYSSE Gabriel	14/03/05	Consommation et possession de cocaïne
39-	ALEXANDRE Edy	28/03/05	Possession de cocaïne
40-	CHACHA Jean Adilé	28/03/05	Possession de cocaïne
41-	LOUIS Bernard	28/03/05	Possession de cocaïne, licence suspendue
42-	LOUIS Jean Idovick	28/03/05	Meurtre 2 ^{ème} degré
43-	PAUYO Herby	28/03/05	Possession de cocaïne
44-	VALVIL Carline	28/03/05	Trafic de cocaïne
45-	ALUSMA Jean Julex	11/04/05	Kidnapping, vol à mains armées
46-	BOISROND Livois	11/04/05	Violence domestique et possession de cocaïne
47-	BRAVE Jacques	11/04/05	Vente de cocaïne
48-	CADET Jean James	11/04/05	Vente de cocaïne, vol
49-	JOSEPH Evans	11/04/05	Conspiration de cocaïne et possession d'arme à feu
50-	HENRY Fritzner	11/04/05	Possession de cocaïne, de marijuana
51-	HENRY Marc Arthur	11/04/05	Vol 2 ^{ème} degré
52-	JOSEPH Fontain	11/04/05	Possession de cocaïne, agression grave
53-	JOSEPH Alexander	11/04/05	Vol à mains armées

No.	Nom et Prénom	Date d'arrivée	Infraction reprochée
54-	KNAGGS Hilaime	11/04/05	Possession et vente de cocaïne
55-	MONDESIR Patrick	11/04/05	Trafic de cocaïne, narcotiques
56-	ONNETTE Jumeau	11/04/05	Homicide
57-	PIERRE Steeve Jackson	11/04/05	Vol à mains armées
58-	ROCHE Junior Michael	11/04/05	Possession de cocaïne
59-	SEYMOUR Gregory	11/04/05	Possession et vente de cocaïne
60-	SIMILIEN Henry Charles	11/04/05	Vol
61-	THERMIDOR Jackson	11/04/05	Agression, possession de cocaïne
62-	VALENTIN Wilson	11/04/05	Vente de cocaïne
63-	VASSOR Charles	11/04/05	Agression sexuelle sur mineure, possession de cocaïne
64-	VERDIEU Arold	11/04/05	Se battre avec arme au poing
65-	VERSAILLES Donald	11/04/05	Attentat aux bonnes mœurs
66-	JEAN-AIME Yves Namaar	11/04/05	Vol, violation de probation, possession de cocaïne, cambriolage
67-	BAIN Pascal	16/05/05	Vente d'une substance contrôlée 3 ^{ème} degré
68-	BOUZY Archange Jr.	16/05/05	(Grand) larcin 4 ^{ème} degré
69-	CAYEMITTE Gérald Jr.	16/05/05	Possession de cocaïne
70-	CHRISPIN Joseph Gérald	16/05/05	Traffic de drogue, poss. illégale de permis de conduire, larcin, fraude
71-	CLAIREVOYANT Vernet	16/05/05	Possession avec intention de distribuer de la cocaïne
72-	CONTENT Gene James	16/05/05	Conspiration possession de cocaïne avec intention de distribuer
73-	ELMA Paul Emile	16/05/05	Possession de cocaïne, possession illégale d'arme, vol
74-	GUSTIN Jean Luc	16/05/05	Agression grave avec arme
75-	JULES Enave	16/05/05	Possession avec intention de distribuer de la cocaïne
76-	LAPOMMERAY Antoine	16/05/05	Possession de cocaïne
77-	LECLERC Joseph	16/05/05	Possession de cocaïne, séjour illégal
78-	PASCAL Aléancine	16/05/05	Conspiration possession de cocaïne
79-	PIERRE Frantz	16/05/05	Vente de cocaïne
80-	PIERRE CHARLES Gary	16/05/05	Drogue

No.	Nom et Prénom	Date d'arrivée	Infraction reprochée
81-	ROMAIN Jeannot	16/05/05	Possession avec intention de délivrer de la cocaïne
82-	ST CYR Pierre Kénol	16/05/05	Viol (enlèvement majeure de sa femme)
83-	ST FRERE Laguerre	16/05/05	Drogue (dossier à voir)
84-	SILVERT Vilhomme	16/05/05	Drogue, vol
85-	SIMON Hygenson	16/05/05	Homicide, voie de fait grave
86-	VALBRUN Jhonny	16/05/05	Grand larcin au 4 ^{ème} degré, possession de marijuana
87-	CHARLES Yves (Saint Soir)	06/06/05	Arme, possession de cocaïne
88-	DESRAMEAUX Lavius	06/06/05	Vente de cocaïne, ré-entrée illégale
89-	DIEUBON Waller	06/06/05	Agression, harcèlement, possession de marijuana
90-	DIEUDONNE Garry	06/06/05	Possession de cocaïne, arme
91-	EMMANUEL Philippe	06/06/05	Conspiration, importation de cocaïne (5 kilos)
92-	FENELUS Arousse	06/06/05	Possession de marijuana (fumeur)
93-	JEAN Joseph Olkine	06/06/05	Possession de cocaïne (7 ^{ème} degré)
94-	JEAN PIERRE Andrice	06/06/05	Conspiration avec intention de distribuer de la cocaïne
95-	JEROME Berlin	06/06/05	Agression armée avec intention de tuer
96-	JOSEPH Jean Rigaud	06/06/05	Cambriolage
97-	JOSEPH Frantzy	06/06/05	Possession avec intention de distribuer du crack
98-	JULIEN Prosper	06/06/05	Conspiration, distribution de la cocaïne
99-	LEONARD Benisoit	06/06/05	Distribution de la cocaïne
100-	LOUIS Ernst Junior	06/06/05	Viol 1er degré, sodomie, tentative de meurtre 2 ^{ème} degré
101-	MARCEUS Josué	06/06/05	Possession avec intention de distribuer de la cocaïne
102-	MARTIN Nicholas F.	06/06/05	Agression, voie de fait, possession de narcotiques
103-	MORIVAL Holly	06/06/05	Tentative d'agression 2 ^{ème} degré, possession d'arme
104-	PETIT Phanel	06/06/05	Possession d'arme 2 ^{ème} degré, vol, grand larcin 4 ^{ème} degré
105-	PIERRE David	06/06/05	Vente et possession de cocaïne

No.	Nom et Prénom	Date d'arrivée	Infraction reprochée
106-	ROSEMOND Jean Ricot	06/06/05	Possession de marijuana 5 ^{ème} degré
107-	SAINT VAL Wilner	06/06/05	Conspiration, distribution de la cocaïne
108-	SAINT VICTOR Samy	06/06/05	Kidnapping 1er degree
109-	THEOPHIN Gérard Fils	06/06/05	Tentative de vol, possession de cocaïne
110-	THOMAS Evens	06/06/05	Importation de cocaïne

III.1 Constant Le Renot 06/06/05 Vol de véhicule