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Introduction

¹ The testimony was prepared with the substantial assistance of Katherine Ashworth Chamblee and Brian Concannon

Thank you for inviting me to testify today before the Congressional Black Caucus. I have spent virtually my entire legal career working with Haitian refugees and the Haitian government. For over thirty years, I have represented Haitians seeking asylum in the United States and I was privileged on more than one occasion to take their cases to the United States Supreme Court. In those years we established the law of political asylum not only for Haitian refugees but for all refugees in this country.

In 1991, I was asked to represent the first democratically elected Haitian government after President Aristide won a landslide victory by 67% of the vote in a multiparty election. I continued to represent the government of Haiti for 13 years during the two Aristide and first Préval administrations. Because of these experiences, I have been in a unique position, as a United States citizen, to understand the inner working of the government of Haiti, the aspirations of the Haitian people, and the challenges that the Haitian people face in going, as President Aristide has said, from “misery to poverty with dignity.”

The earthquake that has devastated Port-au-Prince, Léogane, and other parts of Haiti, has posed new and more complex challenges for the Haitian people and its government. Our government’s response to this crisis needs to be immediate, generous, and sensitive to the needs of the vast majority of the Haitian people who often get ignored in the process of development.

Over six months have passed since the January 12 earthquake that killed an estimated 300,000 people and displaced 1.5 million. Though the international and donor communities responded with an outpouring of aid, the survivors’ struggles continue, and have developed into new and more severe challenges as time goes on. Those displaced by the earthquake remain

scattered throughout 1,340 tent cities.² Among the displaced, only 28,000—less than 2 percent of the 1.5 million who lost their homes in the earthquake—have moved into new homes.³ Survivors have settled in for the long haul. They have added cement and rock footing around the bases of their tent houses. They have added doors with locks. *The Miami Herald* described how survivors reinforced their tents with scraps of metal and concrete from ruined buildings, and covered them with gray plastic tarps imprinted with “From the American people.”⁴ Irish Minister for Overseas Development Peter Power said of the Place de la Paix camp in Port-au-Prince: “you really wouldn’t put a dog in there.”⁵

It is our humanitarian responsibility to help our neighbors who are only a little over 600 miles from Miami, and to ensure that this disaster is, as President Clinton has suggested, “an opportunity” to rebuild, not a platform for the entrenchment of further poverty and instability. It is also in our self-interest to do so. Historically, internal displacement camps become permanent and they become breeding grounds for crime⁶, drug and arms trafficking, and terrorism. They create instability where unity and stability are needed for progress. We have never had “tent-

² *1.5 Million in Tents*, CHI. TRIBUNE, July 15, 2010 at 12.

³ Deborah Sontag, *Haiti’s Displaced Left Clinging to the Edge*, New York Times, July 11, 2010, at A1.

⁴ Fred Grimm, *Six Months After the Earthquake: In Haiti’s Tent cities, a Return to Normalcy is Unimaginable*, MIAMI HERALD, July 13, 2010, available at 2010 WLNR 13986419.

⁵ *Power Sees First-hand the Suffering of Haitians in Crowded, Makeshift camps in Port-au-Prince*, IRISH TIMES, July 7, 2010 at 12.

⁶ See e.g. “*Our Bodies Are Still Trembling*,” Haitian Women’s Fight Against Rape (July 2010), a joint-report regarding violence toward women in the tent cities published by the Institute for Justice and Democracy in Haiti, *Bureau des Avocats Internationaux*, Madre, University of Minnesota Human Rights Clinic, University of Virginia School of Law and TransAfrica Forum [tracking over 230 incidents of rape in just 15 camps in Port-au-Prince including 68 cases of rape in the month of April, 2010].

cities” of this magnitude so close to the United States. We, therefore, need to move forward generously, immediately, and in a manner that helps the people in the tent cities and Haiti’s poor.

Today I would like to discuss four strategies that the United States should employ to further Haiti’s reconstruction. First, President Obama and Homeland Security Secretary Napolitano should enact a broad and organized program of humanitarian parole to bring Haitians into the United States whose immigrant petitions are pending or have already been approved, who need medical care, and who are orphans or young children with their parents who are living in tent cities or on the streets of Haiti. Second, Secretary Napolitano should make Haitians who arrived in the United States shortly after the January 12th earthquake eligible for Temporary Protected Status by moving the eligibility cut-off date from January 12th to May 15, 2010. Third, we should focus our development efforts on grassroots initiatives that directly engage Haitian civil society rather than filtering our efforts through Haiti’s elite and foreign NGOs. Finally, we should support political stability in Haiti by supporting free and fair elections that include Fanmi Lavalas and the return of its leader, former President Jean-Bertrand Aristide.

I. Humanitarian Parole

President Obama and Secretary of Homeland Security Napolitano can grant immediate relief to Haiti by admitting earthquake survivors through humanitarian parole. Parole allows foreign nationals admission to the United States for compelling humanitarian reasons that can include natural disasters like this one or political conflict, like a civil war. An organized and generous parole program should be this government’s first priority, not only for humanitarian reasons—though there are many—but because it is absolutely the best thing we could do to help Haiti rebuild.

A. Historical Use of the Parole Power

The humanitarian parole power has been used in times of emergency for as long as it has been available to the Executive. In 1956, President Eisenhower used the parole power to admit 21,500 Hungarians who were fleeing Soviet invasion.⁷ From 1962 to May 1979, over 690,000 Cubans entered the United States under the Attorney General’s parole authority—“the largest number of refugees from a single nationality ever accepted into the United States.”⁸

Between 1975 and mid-1980, the Attorney General approved ten parole programs for Indochinese refugees, each time expanding the parole criteria to respond to the growing crisis in that region. As a result, over 360,000 refugees from Vietnam, Laos and Cambodia entered the United States within that five-year period.⁹ In late 1979, the Attorney General paroled in 12,000 refugees from the Soviet Union and other Eastern European countries, and in 1979, 25,000 more were admitted.¹⁰

This massive influx of refugees spurred some discomfort in Congress over the wisdom of allowing the Executive such broad discretion in granting parole. Thus, in 1980, Congress passed the Refugee Act, which mandated that parole status only be given where there are “compelling reasons in the public interest” and when the determination is made on a case-by-case basis “with

⁷ See Heidi H. Boas, *The New Face of Refugees, African Refugee Resettlement to the United States*, 21 GEO. IMMIGR. L. J. 431, 439 n.33 (2007) (citations omitted); Joyce A. Hughes, *Flight from Cuba*, Symposium: National Meeting of Six Regional People of Color Legal Scholarship Conferences, 36 CAL. W. L. REV. 39, 53 n.120 (1999) (citations omitted).

⁸ CONG. RESEARCH SERV., REVIEW OF U.S. REFUGEE RESETTLEMENT PROGRAMS AND POLICIES 13 (Comm. Print 1980).

⁹ *Id.* At 13-14.

¹⁰ *Id.*

respect to that particular” person.¹¹ However, parole has been used even after this Act, though it is now more applicable to foreign nationals like the Haitian earthquake survivors who need to leave their home countries because of emergent, perilous situations, but are not strictly-speaking refugees within the meaning of the 1980 Act.

The somewhat redefined parole power was tested only months after the 1980 Refugee Act was passed. When an economic crisis in Cuba spurred a political one, President Carter used parole authority during the Mariel boatlift to respond to the arrival of 127,000 Cubans on Florida’s shores.¹² Shortly afterwards, parole was again employed for Indochinese and Soviet aliens—between 1989 and 1997, more than 83,000 persons from the former Soviet Union or Southeast Asia were paroled into the United States.¹³

Courts have confirmed what these Executive uses of parole suggest: as the Second Circuit put it, parole power is “unusually broad,” allowing the Executive to exercise it quickly without any bureaucratic barriers in emergency situations like this one.¹⁴

This brief history of the parole power paints a clear picture. Over 1.2 million people have been admitted into this country via humanitarian parole—and not one of them in circumstances more dire and more urgent than the situation in Haiti.¹⁵

¹¹ Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified at 8 U.S.C. § 1182(d)(5)(B)).

¹² Adam B. Cox & Cristina M. Rodriguez, *The President and Immigration Law*, 119 YALE L.J. 458, 502, 507-08 (2009).

¹³ United States Citizens & Immigration Services, Report to Congress, Use of the Attorney General’s Parole Authority Under the Immigration and Nationality Act (1997), *available at* <http://www.uscis.gov/files/article/parole9697.pdf>.

¹⁴ *Bertrand v. Sava*, 684 F.2d 204, 212 (2d. Cir. 1982).

An orderly and expansive parole program is not only both ethical and backed by historical precedent; it is good public policy both for Haiti and for the United States. For Haiti, admitting refugees through humanitarian parole would relieve pressure from the already overburdened tent cities. Moreover, Haitians living and working in the United States could be an enormous boon to Haiti's ailing economy. The World Bank has called remittances "key to earthquake recovery," and estimated a 20% spike merely from the Haitians who have already been granted temporary protective status and authorized to work in the U.S. ¹⁶

For the United States, an organized means by which we can stabilize our neighbor nation and bring Haitians to safety on our shores will prevent both an explosive political crisis nearby and a chaotic influx of refugees. To illustrate, let's compare the United States' treatment of two different crises in Cuba—the Camarioca airlift and the Mariel boatlift. In September 1965, Fidel Castro unexpectedly opened the Cuban port of Camarioca for anyone who wished to go to the United States. Thousands gathered at the port ready to leave for America by boat. In response, the United States arranged airlifts to safely transport the refugees. The result was a massive—over 260,000 Cubans-- but orderly exodus from Cuba to the United States in circumstances far less dire than today. A decade later, the United States failed to follow its own example when the Cuban government opened the Mariel port in April, 1980 to those who wished to flee in response to an economic downturn and accompanying political protest. This time, the United States government stalled. Six months passed before anything was done to address the thousands of

¹⁵ In addition, the U.S. admitted over 1.3 million refugees following the devastation caused by World War II *supra* Note 7.

¹⁶ THE WORLD BANK, *Haiti Remittances Key to Earthquake Recovery*, NEWS & BROADCAST, May 17, 2010, <http://web.worldbank.org/WB-SITE/EXTERNAL/NEWS/0,,contentMDK:22582923~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

Cuban refugees flocking to our shores in boats. By the time the United States finally made arrangements with Cuba to boatlift refugees from Mariel, 127,000 Cubans had already arrived in Florida. Unlike the Camarioca incident a decade prior, this exodus was chaotic and unstructured.

However, it is worth noting that in spite of this enormous and disorganized influx of refugees, there is no evidence that the Cubans who arrived *en masse* caused any detrimental effect on the Miami economy. Wages for Caucasian, African Americans, and Hispanics all remained stable in spite of the seven percent increase in workers in the Miami labor market because the Cuban refugees assisted in the creation of new jobs.¹⁷ This illustration clearly shows that we have absolutely nothing to fear from admitting Haitians into this country—but that this is especially true if we do so in an organized fashion.

B. Grant Parole To Haitian Citizens With Approved and Pending Petitions

At a minimum, the United States should grant parole to the 55,000 Haitians whose immigration petitions were approved before the earthquake but who face years of waiting before they can gain entry. Without a grant of parole, adult children of lawful permanent residents will wait six years if they are single¹⁸ and if their parent is a U.S. citizen nine years if they are married.¹⁹ Siblings of citizens must wait 11 years to enter.²⁰ Spouses and minor children of legal

¹⁷ David Card, *The Impact of the Mariel Boatlift on the Miami Labor Market*, 43 INDUS. LABOR RELATIONS REV.245 (1990).

¹⁸ Department of State, Visa Bulletin, August 2010.

¹⁹ *Id.*

²⁰ *Id.*

permanent residents who hold green cards face a 16 month wait.²¹ We should also grant parole, given these long waits, to all of those persons whose petitions are pending with USCIS.

Senators Robert Menendez and Kristin Gillibrand and Representative Yvette Clarke introduced the Haitian Emergency Life Protection Act of 2010 (the HELP Act), which would allow those Haitians with approved petitions to join their relatives in the United States while they wait for their green cards. We need not wait for the legislation, however. President Obama or Secretary Napolitano can and should grant this group of 55,000 earthquake survivors admission to the United States immediately. There is strong public support for this measure. On March 8, leading Democrats and four Republicans urged Secretary Napolitano parole in these 55,000 Haitians.²² On March 12, 75 organizations and individuals including the American Immigration Lawyers Association, the American Jewish Committee, Human Rights First, the International Rescue Committee, the Society of American Law Teachers petitioned Secretary Napolitano for the same. The Los Angeles Times, the Washington Post, the Boston Globe, the Miami Herald and the Philadelphia Inquirer have all called in editorials for this bare minimum of relief.²³ North

²¹ *Id.*

²² Posting of Stephen Forester to Ctr. for Econ. & Pol’y Research Blog, *Urge DHS to Parole in 55,000 Approved Beneficiaries to Reunite Families and Spur Haiti’s Recovery*, <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/get-your-free-poster-and-urge-dhs-to-parole-in-55000-approved-beneficiaries-to-reunite-families-and-spur-haitis-recovery> (July 2, 2010, 12:17 EST).

²³ See Editorial, *Government Can Do More to Aid Stricken Country*, MIAMI HERALD, Mar. 22, 2010, available at 2010 WLNR 5925309; Editorial, *Haiti: Expedite Visas for Family Members*, BOSTON GLOBE, July 17, 2010 at 10; Editorial, *Helping the Haitians*, PHILA. INQUIRER, July 2, 2010, available at http://www.philly.com/inquirer/opinion/20100702_Editorial__Helping_the_Haitians.html; Editorial, *Helping Haitians Help Themselves*, L.A. TIMES, July 21, 2010, available at <http://articles.latimes.com/2010/jul/21/opinion/la-ed-haitians-20100721>; Editorial, *U.S. Should welcome Haitians In*, WASH. POST, Jan. 29, 2010, available at <http://www.washingtonpost.com/wpdyn/content/article/2010/01/28/AR2010012803513.html>.

Miami Mayor Andre Pierre has personally invited these 55,000 to settle in that city.²⁴ President Obama and Secretary Napolitano should act on this resounding cry and parole in this group of 55,000 Haitians immediately.

Moreover, allowing Haitians to enter in this manner is neither novel, nor poses a substantial burden to the United States. Under the Cuban Family Reunification Parole Program we currently provide a “discretionary grant of parole to come to the United States rather than remain in Cuba to apply for lawful permanent resident status” to Cubans who are the “beneficiaries of approved family-based immigrant visa petitions.”²⁵ Thousands of Cubans have entered the U.S. under the parole program since 2007.

C. Paroling in Those Needing Medical Care

In addition to admitting the 55,000 Haitians whose visas have already been approved, the United States should parole in medically endangered earthquake survivors with life threatening conditions who are unable to receive medical care or protection from gender based violence in Haiti.²⁶

It is well documented that the medical care available in Haiti is rudimentary and largely unavailable. Thousands have died because they were unable to receive proper medical care. This problem has only worsened with the passage of time. The floods of medical volunteers to Haiti have stopped, and the initial donations have largely dried up. As a result, hospitals—even those

²⁴ See Audra D.S. Burch & Nadege Charles, *North Miami Mayor on the Front Lines in Haiti*, MIAMI HERALD, July 15, 2010, available at <http://www.miamiherald.com/2010/07/15/1732910/north-miami-mayor-on-the-front.html>.

²⁵ 72 Fed. Reg. 65588 (Nov. 21 2007).

²⁶ See e.g. Note 5 regarding the *reported* cases of rape of over 230 women in 15 camps in Port-au-Prince.

open before the earthquake— are closing around Haiti.²⁷ Dr. Sanjay Gupta of CNN reported that the General Hospital— the largest public hospital in the area—was a “ghost town.”²⁸

Waning medical supplies are accompanied by worsening medical conditions among the survivor population. The close and unsanitary conditions in which survivors have been subsisting in tent cities for the past six months bring the threat of disease, such as dysentery.²⁹ Meanwhile, thousands of victims need follow up surgeries, often to correct the rudimentary emergency care they received immediately after the earthquake struck. Doctors from the U.S. Navy hospital ship the Comfort referred to this as the “second wave” of treatment for earthquake-related injuries. As an example, the doctors described how in the aftermath of the quake, victims’ bones had been set with external pins in tent hospitals without X-rays. Now those injuries need to be reset to give the patients functional limbs.³⁰

Some survivors are suffering due to pre-existing medical problems. Dr. Sanjay Gupta described a small child who had received the care she needed after the earthquake, but could not get the antibiotics she needed when the shunt in her brain became infected. If she had them, she would survive. Instead, there was nothing that could be done for her.³¹ Another survivor, Michelline Phillips, who was crushed by the roof of her house during the earthquake, is nineteen,

²⁷ *House Call with Dr. Sanjay Gupta: Haiti Earthquake: Six Months Later* (CNN television broadcast July 17, 2010).

²⁸ *Id.*

²⁹ Ron Cassie, *Frederick Doctor, Mission Ryan Partner Returning to Haiti*, FREDERICK NEWS-POST (Frederick, MD), Feb. 16, 2010, available at 2010 WLNR 3278366.

³⁰ Robert Little, *U.S. Considers Ending Mission*, BALT. SUN, Mar. 3, 2010, at 1A.

³¹ *House Call with Dr. Sanjay Gupta: Haiti Earthquake: Six Months Later* (CNN television broadcast July 17, 2010).

paralyzed, and eight months pregnant.³² Without humanitarian parole for these children and teenagers, and thousands of others like them, there is not hope to fight long-term diseases or attempt to recover from injuries as local hospitals close down and medical supplies run out. Unless they are brought to the U.S. they have no chance of surviving in Haiti. Although the U.S. government has admirably granted humanitarian parole to a large number of Haitian citizens who had emergency medical problems, much more can and should be done.

The tent-cities have also become breeding grounds for gender-based violence. Many of the victims “are Haitian girls under the age of eighteen; medical services are overwhelmed and unable to meet healthcare needs stemming from the assaults. As a result, survivors suffer from depression and are at risk for suicide.”³³

D. Paroling Children and Their Parents

Finally, the United States should grant admission to Haitian children and their families who are living in tent-cities in Haiti. On January 18, Secretary Napolitano announced a program that would allow Haitian orphans who have already been approved for adoption by American families to be paroled into the United States.³⁴ However, thousands of children in Haiti continue to live in deplorable conditions. Paul Weisenfield, the Haiti Task Team Coordinator for USAID estimates there are over 100,000 children who were seriously wounded in the earthquake, that

³² *News Hour with Jim Lehrer* (PBS television broadcast July 15, 2010), *available at* 2010 WLNR 14276068.

³³ *Supra* Note 5, *Haitian Women’s Fight Against Rape* (July 2010) at p. 6.

³⁴ Press Release, Department of Homeland Security, Fact Sheet: Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans (Jan. 18, 2010), *available at* http://www.dhs.gov/ynews/releases/pr_1263861907258.shtm.

124,000 lost one of their parents, and that 7,000 lost both of their parents.³⁵ One volunteer described a group of children from a destroyed orphanage who did not even have tents and were sleeping on tarps on the ground.³⁶ Many children are understandably severely traumatized by their experiences. But children like Daphne Joseph, who watched her mother's body be dumped out of a wheelbarrow, have no access to the psychological care they sorely need.³⁷ These children and their parents should be granted access to the United States.

Paroling in children and their parents in these tent-cities will mean an extensive airlift. We have the means and ability to do it. We just need to summon the moral and political courage to do it. If the President in 1966 could airlift 260,000 people from Camarioca, Cuba who were not facing immediate violence and death, then certainly, forty-four years later we have the technology capability to airlift Haitians living in deplorable and near-death conditions. In 2010, we have substantial Haitian-American communities in South Florida from Miami to Orlando, in New York City, in Boston, and in Chicago. We have the ability to airlift and relocate a large number of Haitians to these communities which would extend their hearts and hands to help. As a civilized nation, this is the minimum effort that we should make.

II. Temporary Protected Status

³⁵ State Dep't Doc., *U.S. Relief Efforts in Haiti Six Months After Earthquake: USAID Coordinator Updates Reporters on Ongoing Humanitarian Efforts*, July 19, 2010, available at 2010 WLNR 14485506.

³⁶ See Tony Leys, *Pella couple revisits Haitian orphanage Damages by Quake*, DES MOINES REGISTER, July 23, 2010, available at <http://www.desmoinesregister.com/article/20100723/NEWS/7230362/-1/NEWS04/Pella-couple-revisits-Haitian-orphanage-damaged-by-quake>.

³⁷ Deborah Sontag, *Haiti's Children Adrift in World of Chaos*, N.Y. Times, Jan. 26, 2010, available at http://www.ny-times.com/2010/01/27/world/americas/27children.html?ref=deborah_sontag.

The second measure the United States should adopt is to change the eligibility date for Temporary Protected Status. Temporary Protected Status, or “TPS,” is a temporary immigration status granted to undocumented foreign nationals who are temporarily unable to return to their home countries due to armed conflict, environmental disaster or some other extraordinary and temporary situation. In the past two decades, TPS status has been extended to Kuwait, Liberia, Somalia, Sudan, Rwanda, Montserrat, Sierra Leone, Lebanon Nicaragua, El Salvador and Honduras.³⁸ After extensive calls to do so from the political and activist communities, on January 21, 2010, Secretary Napolitano announced that the Department of Homeland Security would grant Temporary Protected Status to all Haitians who have continuously resided in the United States since January 12, 2010—the date the earthquake occurred. Under the conditions outlined by the Department of Homeland Security, Haitians who were eligible for TPS were required to register within 180 days. TPS would then apply for 18 months. However, the January 12 eligibility date means that no Haitian nationals who came to the United States in reaction to the earthquake will receive TPS; instead, it will apply only to those Haitians who were already in the United States when the earthquake happened.

As a result of the January 12 cut-off, the main effect of TPS has been to provide education, work, and healthcare opportunities to undocumented Haitians already in the United States, many of whom had been living here for years. And while this might help Haiti’s circumstances now by increasing remittances, it does little to address the needs of actual earthquake survivors or relieve Haiti of the pressures of its massive, ailing population.

³⁸ See Sharon E. Jacks, *Bound by Past Policy: The Scope of Executive Discretion in Political Asylum*, 15 *HAMLIN L. REV.* 389, 400 n.73 (1992); Susan Martin, Andy Schoenholtz & Deborah Waller Meyers, *Temporary Protection: Towards a New Regional and Domestic Framework*, 12 *GEO. IMMIGR. L.J.* 543, 550 (1998).

Historically, this is exactly how TPS has typically functioned. It specifies a date by which applicants must have entered the United States—usually on or before the date of the disaster at issue—and has thus provided protection only to people who are already in the United States when the disaster occurred.

However, though uncommon, there is precedent for extending the cut-off date for TPS eligibility to include some foreign nationals who have sought refuge to the United States. In 1997, the Attorney General “re-designated” TPS in order to protect individuals who fled the civil war in Liberia, allowing individuals who had arrived after the original cut-off date to participate in the program.³⁹

In making the decision to re-designate TPS for Liberia, the Immigration and Nationalization Service interpreted the statutory authority for TPS to “explicitly contemplate[] more than one designation.” INS elaborated that while the intensification of civil strife weighed in favor of re-designation, the decision must be weighed against the potential for the re-designation to create a “magnet effect,” enticing more nationals of the country under consideration to flee to the United States.⁴⁰ In the case of Haiti, a re-designation to May 15, 2010 to capture the immigrants who traveled here in medical emergency after the earthquake would pose no such risk, since it still requires proof of presence in the United States before a certain date.

³⁹ Susan Martin, Andy Schoenholtz & Deborah Waller Meyers, *Temporary Protection: Towards a New Regional and Domestic Framework*, 12 GEO. IMMIGR. L.J. 543 n.27 (1998) (citing Notices, Department of Justice, Immigration and Naturalization Service, *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program*, Apr. 7, 1997, available at 1997 WL 156444 (FR)).

⁴⁰ Notices, Department of Justice, Immigration and Naturalization Service, *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program*, Apr. 7, 1997, available at 1997 WL 156444 (FR).

The United States Citizenship and Immigration Services has indicated that it is considering extending the benefit to Haitians who arrived shortly after January 12th in light of the earthquake's unprecedented and devastating effects.⁴¹ USCIS has done an admirable job in extending the filing deadline and it encouraging Haitians who are eligible to come forward. The agency has worked long and hard to assist Haitians in the TPS process and to get as many persons registered as possible who are for the benefit. Our government, however, *should* take the next crucial step. Changing the TPS cut-off date would address the needs of the hundreds of critically injured Haitians who arrived in the days, weeks and months after the earthquake. The Haitians that emerged off of the evacuation flights that followed the quake were given a motley assortment of immigration statuses. Some were given humanitarian paroles, but others arrived on B-1/B-2 tourist visas, which now makes them ineligible to work, receive medical benefits, or stay for an extended period in the U.S.⁴²

The story of Jacky Delva provides an example of how cruel the January 12 TPS cut-off can be for the lucky earthquake victims who were able to leave Haiti to receive the advanced medical treatment. After being discovered under his home with a crushed skull, 3-year-old Jacky was eventually transferred to a U.S. Navy hospital ship, where a team of doctors from Charlotte, North Carolina recognized that he needed critical surgery that could not be performed in Haiti. Transporting him proved a bureaucratic nightmare—it required approval from the U.S. Department of Homeland Security, the U.S. Embassy in Port-au-Prince and the Haitian

⁴¹ Trenton Daniel, *Haitians Reminded About TPS Extension*, MIAMI HERALD, July 20, 2010, *available at* 2010 WLNR 14458934.

⁴² Press Release, Fla. Dep't of Children and Families, Refugee Services Program, Deferred Action for Haitian Earthquake Victims with B-1/B-2 Nonimmigrant Status (July 9, 2010) (on file with author).

government. The Haitian Minister of the Interior had to meet Jacky at the airport to stamp his final paperwork. Jacky successfully made it through the surgery in Charlotte. But now that the surgery is over, Jacky's immigration status requires that he return home when he has sufficiently recovered. On July 19, Jacky was flown back to Haiti where he will complete his recovery in a tent—just as hurricane season is approaching.⁴³

Re-designating the TPS eligibility date to May 15, 2010 would allow earthquake victims like Jacky who arrived in the United States in need of immediate care to recover instead of returning to a country that has no capacity to accommodate them.

III. The Re-building Process

A third step that the United States and its partner NGOs and international organizations must take for Haiti is to refocus the rebuilding effort so that recovery takes place from the ground up. The consensus among grassroots organizations and government officials alike is that the recovery in Haiti must be "Haitian-led." Because of my involvement in the return of President Aristide in 1994 to Haiti and the subsequent assistance to the Haitian government, I am acutely aware of the limitations that top down development may have in Haiti. As Secretary of State Hillary Rodham Clinton explained, "[A]id has never saved a country. Our goal must be the empowerment of the Haitian people. They are the ones who will carry on the work of rebuilding Haiti long after our involvement has ended. ... [Haiti] needs the people of Haiti to be given the

⁴³ Mark Washburn, *3-year old Haiti Quake Victim Recovering After Charlotte Surgery*, Charlotte Observer, July 18, 2010, available at 2010 WLNR 143287.

tools to be able to deliver on the promise of their own future.⁴⁴ However, there has *not* been consensus about what a Haitian-led effort must look like.

In order to ensure a recovery that is truly Haitian led, the effort should focus on four key things: First, the effort must more closely engage with Haiti's grassroots organizations. Second, the recovery effort must be de-centralized from Port-au-Prince. Third, recovery must be transparent. And finally, the recovery effort must create as many jobs as possible for the Haitian people as the nation rebuilds.

A. Grassroots Participation

The Interim Haiti Recovery Commission (CIRH), jointly chaired by President Clinton and Haitian Prime Minister Jean-Max Bellerive is focused on the Haitian government, which is in structural and political disarray, and international NGOs who lack knowledge of and more importantly, the trust of the Haitian people. The recovery effort and the organizations that spearhead it should include Haitians involved in grassroots efforts. Haitians themselves have asked for increased engagement with grassroots organizations, in particular women who have been shut out of the rebuilding process to date. On March 25, the United Nations Office of Special Envoy for Haiti, InterAction and the European Union convened a Consultation with the Global NGO Community on Building Back Better in Haiti. Three representatives of Haitian grassroots organizations emphasized that Haitian civil society has been too often excluded from

⁴⁴ Hillary Rodham Clinton, *Remarks After the Haiti Donor Conference* (Mar. 31, 2010), available at <http://www.state.gov/sec-retary/rm/2010/03/139336.htm>.

the rebuilding process, and that the Government of Haiti should ally with them as it reconstructs the country.⁴⁵

Operating through the Haitian government is admirable in theory but difficult in practice—28 out of 29 government ministries were wholly or partially destroyed in the earthquake, and the government lost over 10 percent of its civil servants.⁴⁶ Haiti has had no functioning Parliament since May 2010, when the terms of 1/3 of the Senators and all members of the House of Deputies expired without elections having been run for the seats- elections that Haiti's Constitution scheduled for November and December 2009. Half of the remaining Senators won their seats in elections in June that were boycotted by most Haitian voters after the *Fanmi Lavalas* party was improperly excluded.

The executive branch is operating under a State of Emergency that is itself controversial in Haiti. Haitians across the political spectrum contend that the law, which gives the President exceptional powers and excuses him from financial accountability laws for 18 months, grants the President too much power for too long, and was passed by a parliament with a questionable mandate.⁴⁷

⁴⁵ OFFICE OF THE SPECIAL ENVOY FOR HAITI, *Consultation with the Global NGO Community on Building Back Better in Haiti, Meeting Notes* (Mar. 25, 2010), http://www.haitispecialenvoy.org/relief_and_recovery/consultation_with_global_ngo_community.

⁴⁶ *Talk of the Nation, Haiti, Six Months After the Earthquake* (NPR radio broadcast, July 8, 2010).

⁴⁷ The original State of Emergency declared by President Préval was in place for a month -- January 16 to February 14, 2010, the maximum allowed by law without legislative approval. The law extending the emergency for 18 months was voted on April 17, so it extended a state of emergency that had already lapsed two months earlier. The legislature's mandate was itself controversial: the terms of all Deputies and 1/3 of the Senators had been set to expire on January 11, 2010, but on May 11, 2009, Parliament extended those terms to May 2010, in apparent violation of the Constitution's prohibition against extension of legislative terms.

The Haitian people also lack trust in the CIRH itself, for two principal reasons. First, although the legislation creating the Commission does not clearly set forth the CIRH's powers, Haitians fear that in practice it has granted extensive powers to the executive branch and to foreign entities (with executive branch oversight). Haitians recognize that foreign donors should have input into how the money they donate is spent, but fear that the CIRH will effectively make sovereign decisions that citizens of any country believe should be made by officials accountable to the citizenry. Second, as with the State of Emergency legislation that created the CIRH, Haitians feel the Commission is the result of an unfair and unconstitutional process.

There are widespread claims from Haitian grassroots organizations that CIRH directors do not reflect their interests. Half of the Directors are non-Haitian, and of the thirteen Haitian directors, six are from the executive branch, two each from the legislature and local government, one from the judicial branch, one from the business sector and one from the unions. Many Haitians claim that some of the members of the CIRH come from the families that own the open land needed to build new houses, and therefore blame them for the fact that so few people have been relocated.⁴⁸ The CIRH needs to include a substantial number of community based and grassroots organizations to properly and accurately reflect the needs of the Haitian people.

There have been multiple suggestions for how better partnerships with Haitian grassroots organizations might be structured. The representatives of Haitian community organizations at the Consultation proposed the creation of an independent, multi-lateral agency that includes

⁴⁸ Kim Ives, *Six months later: Land Ownership as the Cruz of Haiti's Stalled Reconstruction*, HAITI LIBERTE, July 16, 2010.

representatives from Haitian civil society.⁴⁹ Along those lines, a letter from 300 NGOs who convened at the Donors' Conference on Haiti on March 31 proposed a multi-donor fund that would incorporate the Government of Haiti, representatives of Haitian civil society, and community based organizations.⁵⁰ Advocates from Refugees International suggest that the UN humanitarian coordination office dedicate liaison officers to facilitate the relationships between Haitian organizations, the Haitian government, and the international NGO community. Meanwhile, logistical obstacles must be overcome. Many small grassroots organizations cannot access centralized efforts by UN agencies and international NGOs in Port-au-Prince. Even if they had the capacity to travel to these meetings, they lack photo-IDs needed to access them or never learn of the meetings in the first place.⁵¹

However this coordination is ultimately effected, it is fundamental to successful reconstruction in Haiti. As anthropologist Jennie Smith and numerous Haitian scholars have noted, Haiti's culture is one of working together collectively.⁵² Only by doing so can the rebuilding process be truly Haitian owned.

B. Decentralization

⁴⁹ OFFICE OF THE SPECIAL ENVOY FOR HAITI, *Consultation with the Global NGO Community on Building Back Better in Haiti, Meeting Notes* (Mar. 25, 2010), http://www.haitispecialenvoy.org/relief_and_recovery/consultation_with_global_ngo_community.

⁵⁰ Letter: NGOs Urge that Human Rights Drive Haiti Aid Efforts (Mar. 18, 2010), *available at* <http://ijdh.org/archives/10415>.

⁵¹ Patrick Duplat & Emilie Parry, *Haiti: From the Ground Up*, REFUGEES INTERNATIONAL, Mar. 2, 2010, <http://www.refugeesinternational.org/policy/field-report/haiti-ground>.

⁵² Mark Schuller, *Starfish and Seawalls: Responding to Haiti's Earthquake, Now and in the Long-Term*, COMMON DREAMS, Jan. 15, 2010, <http://www.commondreams.org/view/2010/01/15-11>

Support for decentralization in Haiti is also an imperative step for the successful rebuilding of the country. After the earthquake, more than half a million Haitians fled Port-au-Prince for other parts of the country. However, the centralization of aid resources in Port-au-Prince –and the neglect of survivors in outlying provinces—is already resulting in a rapidly increasing migration back to the city.⁵³ Intense population concentration in Port-au-Prince will only worsen the severe water, sanitation and security challenges that already plague the city.

The United States and its partners should structure aid in ways that lure people out of Port-au-Prince, not back into it. The more survivors who leave for less cramped quarters, the greater the relief for the overflowing capitol.

UN Deputy Special Envoy for Haiti Dr. Paul Farmer urges that decentralization be undertaken by building both infrastructure and jobs outside of Port-au-Prince.⁵⁴ Farming and light industry should be supported in the provinces so that Haitians feel they have other options that to flock to the city. Meanwhile, aid organizations should ensure that they are covering the entire country to prevent those who do not wish to return to Port-au-Prince from doing so because they feel they must in order to get food, water, and shelter. For example, attention should be paid to mass exodus of refugees into Haiti’s remaining homes. In Papaye, in Haiti’s central valley there are on average 26 people living in each cramped home.⁵⁵

⁵³ Timi Gerson, *3 Things Washington Needs to Remember in Haiti*, CHANGE.ORG, June 30, 2010, http://globalpoverty.change.org/blog/view/3_things_washington_needs_to_remember_in_haiti.

⁵⁴ OFFICE OF THE SPECIAL ENVOY FOR HAITI, *Consultation with the Global NGO Community on Building Back Better in Haiti, Meeting Notes* (Mar. 25, 2010), http://www.haitispecialenvoy.org/relief_and_recovery/consultation_with_global_ngo_community.

⁵⁵ Patrick Duplat & Emilie Parry, *Haiti: From the Ground Up*, REFUGEES INTERNATIONAL, Mar. 2, 2010, <http://www.refugees-international.org/policy/field-report/haiti-ground>.

C. Transparency

The rebuilding effort in Haiti should also be made more transparent to facilitate Haitian ownership of and participation in the process, as well as to build Haitian trust in the rebuilding effort. The use of funds should be publicly reported. More importantly, there should be some mechanism devised to deliver information to the Haitian refugees in the tent cities and elsewhere. Further, there should be a complaint procedure available to the Haitian people by which they can make those leading the relief effort aware of implementation problems.

D. Job Creation

Finally, the rebuilding effort should emphasize job creation. An Oxfam survey of 1700 Haitians found that jobs were the number one priority for most Haitians, outranking even food, water and shelter.⁵⁶ Thus, local procurement should be emphasized in the rebuilding effort wherever possible. Haitians are currently suspicious that corruption has clouded the Haitian government's commitment to local job growth. For example, many were incensed when President Préval sold Haiti's telephone network to a Vietnamese company in a bid that passed up two Haitian companies.⁵⁷

Another avenue toward job creation is the use of USAID and other donors' funds to purchase food grown in Haiti. Supporting local food production, by purchasing domestically grown food, creates jobs in Haiti, ensures that the funds are circulated within the Haitian

⁵⁶ Press Release, Oxfam, Survey of Over 1700 Haitians Shows Top Reconstruction Needs are Jobs and Schools, available at <http://www.oxfam.org/en/pressroom/pressrelease/2010-04-12/survey-haiti-reconstruction-jobs>.

⁵⁷ Guy Adams, *Minus the Smell, Nothing Has Changed in Six Months*, INDEPENDENT (U.K.), July 13, 2010, available at 2010 WLNR 13985407.

economy, and builds critical infrastructure within the Haitian agricultural sector which comprises the majority of employment within the country.

IV. Political Legitimacy

Whatever the specific relief and reconstruction measures undertaken, Haiti's future success depends on the presence of a legitimate democracy that has the confidence of the Haitian people. Aside from the devastation the Haitian government faces to its physical infrastructure, the Haitian government has suffered from limited legitimacy since the removal of its democratically-elected President Jean Bertrand Aristide in 2004.

Haiti's political problems have long and complex roots. On December 16, 1990, the first free and fair elections in Haiti's history yielded victory for Jean-Bertrand Aristide, who won 67 percent of the vote. A year later, he was overthrown in a violent military coup. Aristide returned to Haiti in 1994 with the help of a UN-sponsored U.S. military intervention and completed his term as President, which ended in 1996. Because he was constitutionally prevented from serving consecutive terms, Aristide stepped down and Haiti's current president, René Préval, who had been an ally of Aristide's, won the position by an overwhelming vote. That same year, Aristide formed a new party—Fanmi Lavalas, and in 2000, Aristide and Fanmi Lavalas again won the presidency and the legislature by overwhelming majorities. In 2004, however, another violent coup occurred, and Aristide was kidnapped, taken to the Central African Republic, and eventually temporarily settled in South Africa at the invitation of that government, where he has since resided. While in forced exile, Aristide has remained extremely popular with Haitians and is still seen as a hero for the poor.

President Aristide has requested the Haitian government to provide him with a diplomatic passport – his has expired -- so he could return to the country, but the government has not responded to the request. Hours after the earthquake occurred, President Aristide announced his desire to return to Haiti to aid in its recovery. The Haitian people have demanded his return.⁵⁸

The return of President Aristide to Haiti would send a powerful signal to the Haitian people that democracy is being restored and respected in Haiti; that Haitians are willing to put political differences aside and unite for the benefit of the country; and that the people will have a voice in their own future. President Aristide has always been the voice of the poor and oppressed in Haiti and that voice is needed now more than ever to motivate and empower the people of Haiti to rebuild their country. He has specifically stated that his goal in returning to Haiti is to assist the country and not to run for office or hold public office.

President Aristide's return is particularly important because he is the head of the Fanmi Lavalas Party. The Provisional Electoral Council prevented Fanmi Lavalas from registering candidates for the last two scheduled elections because President Aristide was not physically present. Although the Council's requirement has no basis in Haitian law, it demonstrates that fair elections cannot be held unless President Aristide is allowed to return.

⁵⁸ There is massive popular support for Aristide's return. Since 2004, there have been numerous demonstrations, some extinguished by force from United Nations troops in Haiti, demanding President Aristide's return. *See, e.g.,* Yves Engler, *West Still 'Undermining Haiti,'* ALJAZEERA.NET, July 12, 2010, <http://english.aljazeera.net/focus/2010/07/201071283334294195.html>. A petition circulating among Haitian women has now gathered over 20,000 signatures calling for his return. Meanwhile, there are no legal obstacles to his return. Article 41 of Haiti's Constitution declares that "no individual of Haitian nationality can be deported or forced to leave the country for any reason whatsoever" and Article 41-1 states that "no Haitian needs a visa to leave the country or return to it." 1987 CONSTITUTION OF HAITI, *available at* <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>.

Presidential and Parliamentary elections are scheduled to take place in Haiti on November 28, 2010. In a report to the U.S. Senate Foreign Relations Committee, Senator Richard Lugar called upon President Préval to restructure the Provisional Electoral Council and ensure the participation of opposition parties, including Fanmi Lavalas. Without this, Lugar argued, the November elections will lack credibility. Lugar warned, “The absence of democratically elected successors could potentially plunge the country into chaos.”⁵⁹

Senator Lugar’s insistence on restructuring the Provisional Electoral Council echoes calls by political parties and grassroots activists across Haiti’s political spectrum, who contend that the Council’s past actions and current controversies demonstrate an unwillingness and inability to conduct fair, inclusive elections. A predecessor Council excluded *Fanmi Lavalas* from elections for 1/3 of the Senate in April and June of 2009, and the current Council excluded Fanmi Lavalas and 14 other parties from elections originally scheduled for February 2010 for the entire House of Deputies and a third of the Senate. Those elections were postponed after the earthquake, but the Electoral Council announced last week that it would not accept any new registrations for the legislative elections in November.

Fair, inclusive elections- that include the participation of Fanmi Lavalas and other legitimate political parties and respect for the right of all exiles to return, including President Aristide, are essential for establishing a Haitian government with the legitimacy and capacity to effectively manage the country’s reconstruction. Settling for elections that are less than fair and inclusive might seem expedient in the short term, but in the mid and long term accepting flawed elections will ensure civil strife and political controversy, and will imperil international

⁵⁹ SEN. REP. NO. 111-50, at v (2010).

community investments in Haiti while leaving the country vulnerable to the next natural, economic or political disaster.

Conclusion

I have been honored to have represented Haitian refugees, Presidents Aristide and Préval, and the Haitian government during the past 30 years. I am deeply pained by the suffering of the Haitian people whose fortitude and consciousness I have always admired. Although many countries have said they will offer assistance, few have provided the substantial assistance that is needed to help Haiti during this terrible tragedy. The people of the United States have always been generous when they are told the true facts about the suffering of others, and in the case of Haiti they have opened their heart and their pockets to the Haitian people. We now need our government to summon the same moral courage and initiate bold action to bring to the United States, through the parole power, a substantial number of Haitians living in tents and squalor in Haiti. We have the means and ability to do it. We just need the moral and political courage to make it happen. If the President will not act, then Congress should pass legislation to redress the situation. We also need to recognize as a nation that the Haitian people want and demand the return of Jean Bertrand Aristide to Haiti as a signal that their democracy is being restored. We can and must urge the Haitian government to take that bold action in the spirit of unity and democracy.