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August 15, 2022

Tania Reneaum Panszi
Executive Secretary
Inter-American Commission on Human Rights
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Re: Request for Thematic Hearing on Deportations of Haitian Nationals from the United States to Haiti During the 185th Period of Sessions of the Inter-American Commission on Human Rights

Dear Secretary Tania Reneaum Panszi,

The representatives of the undersigned organizations write to respectfully request a thematic hearing concerning the **Deportation of Haitian Nationals from the United States to Haiti** during the 185th period of sessions, in accordance with Article 64 of the Rules of Procedure for the Inter-American Commission on Human Rights. In this hearing, we intend to offer information and updates concerning the United States' decision to deport people to Haiti.

On October 24, 2021, the Commission issued Resolution 2/2021, "Protection of Haitians in Human Mobility: Inter-American Solidarity," in which it noted the "recent exacerbation of the social, political, and institutional crisis, permeated by the grave context of structural poverty, which hinders the effective protection of the human rights

of the Haitian population,” and specifically with regard to deportations and other returns of Haitian nationals, the Commission noted, “the Haitian State is facing challenges when it comes to ensuring mechanisms of social inclusion for the returnees, and even for protecting their lives and integrity.” The Commission then set forth detailed recommendations, consistent with its authority under Article 106 of the Charter of the OAS, and in application of Article 41(b) of the American Convention and Article 18(b), which recommendations included the following:

14. In the context of the emergencies and crises faced by Haiti, States should implement coordinated actions to reduce risks and strengthen processes for receiving persons in mobility. Such actions should be guided by the principle of equality and non-discrimination, differentiated treatment, access to protection mechanisms, and the guarantee of nonrefoulement....

....

21. States should guarantee access to their territory and to fair and efficient procedures that guarantee an individualized evaluation of the differentiated protection needs for asylum seekers, refugees, stateless persons, people who require complementary protection, victims of human trafficking, and unaccompanied children or children separated from their families, among others. Public health measures adopted to respond to the COVID-19 pandemic should not result in the denial of an effective opportunity to seek asylum, or some other type of protection, or give rise to the direct or indirect refoulement. Likewise, the procedures that give rise to expulsions or deportations should also be evaluated individually, considering the circumstances of each person.

....

24. On evaluating requests for protection from Haitians, the states should consider:

- a. granting refugee status under the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol;
- b. applying the regional definition of refugee from the Cartagena Declaration on Refugees (1984) in keeping with the guidelines set out in Advisory Opinions OC-21/14 and OC25/18 of the Inter-American Court of Human Rights, domestic legislation, or state practice, as the case may be. To this end, consideration should be given to the humanitarian situation prevailing in the country and the serious impact on public order;
- c. granting complementary forms of protection, based on their domestic legislation or by direct application of the applicable international human rights treaties; or
- d. adopting and implementing special regularization programs, or granting facilities for obtaining immigration statutes provided for in the domestic legislation, for humanitarian reasons, family reunification, or other criteria.

25. The protection procedures should not discriminate based on nationality, color, race, gender, language, religion, political opinion, social origin, or any other condition. In addition, such mechanisms should observe certain minimal guarantees that derive directly from the principle of non-refoulement as a peremptory norm of international law (*jus cogens*).¹

The Commission's Resolution followed a Press Release in which the Commission and the UN Special Rapporteur on the Human Rights of Migrants condemned the excessive use of force and deportations of migrants at the southern border, and expressed particular concern about the treatment of Haitian migrants in Del Rio, Texas in September 2021. In that joint release, the Commission and UN Rapporteur stressed the United States' obligations to conduct individualized assessments of the protection needs of those subject to possible deportation, and urged the United States to "ensure the minimum standards for human safety and due process that are necessary to process and acknowledge the protection needs of all mobile individuals."²

It is against this backdrop and acting in direct contravention of the Commission's above recommendations, and its obligations of non-refoulement, that the United States persisted in its policy of forcible returns of Haitian nationals to Haiti. On February 17, 2022, the U.S. carried out the 20,000th expulsion/deportation to Haiti since President Biden took office.³ In May 2022, the United States carried out 36 deportation flights, expelling nearly 4,000 Haitian nationals back to Haiti.⁴ And those deportations and expulsions continue, despite the U.S. government recognizing the grave risks to Haitian nationals who might be returned by newly designating Haiti for Temporary Protected Status (TPS) on May 21, 2021.⁵ As has been brought to this Honorable Commission's attention in the past, however, TPS is a limited relief not available to those with a criminal record and not available to those who fall outside of certain date restrictions for registration. The exclusion of persons with criminal records has again reached a crisis point, in light of recent reports that Haiti has resumed its prior practice of automatically detaining individuals who have been returned with criminal records in the National Penitentiary and other jails.

¹ Inter-American Commission on Human Rights, Res. No. 2/2021, "Protection of Haitians in Human Mobility: Inter-American Solidarity" (Adopted by the IACHR on October 24, 2021), <https://www.oas.org/en/iachr/decisions/pdf/2021/Res-2-21-en.pdf>.

² Inter-American Commission on Human Rights, Press Release, "IACHR and UN's Special Rapporteur Condemn Excessive Use of Force and Deportations of Migrants from Haiti at the United States' Southern Border" (October 4, 2021), http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/260.asp.

³ Adam Isacson, "A tragic milestone: 20,000th migrant deported to Haiti since Biden inauguration," Washington Office on Latin America (WOLA), February 17, 2022, <https://www.wola.org/analysis/a-tragic-milestone-20000th-migrant-deported-to-haiti-since-biden-inauguration/>.

⁴ Eileen Sullivan, "U.S. Accelerated Expulsions of Haitian Migrants in May," NYTIMES, June 11, 2022, <https://www.nytimes.com/2022/06/09/us/politics/haiti-migrants-biden.html>.

⁵ See <https://www.federalregister.gov/documents/2021/08/03/2021-16481/designation-of-haiti-for-temporary-protected-status>.

The recently reported case of Patrick Julney is one such example. According to a recent report in northjersey.com, Mr. Julney, who was brought to the United States as a toddler and does not speak Haitian Creole, was immediately imprisoned in Port-au-Prince after getting off the plane in Haiti, and is being held at the Delmas 33 detention center for ransom (which is now set at \$6,000) alongside two other individuals deported from the United States.⁶ Michelle Karshan, executive director of Alternative Chance, which has provided assistance to Mr. Julney and others deported with criminal convictions, noted that the practice, which had largely ceased in 2012 or 2013, has resumed in the past four to six months.

The extreme nature of the jail conditions in Haiti cannot be over-stated. As the Commission is aware through a pending merits petition and previously granted Precautionary Measures,⁷ the United States deported people to Haiti in the aftermath of the devastating 2010 earthquake, knowing that they would be jailed in life-threatening conditions upon their arrival. On January 20, 2011, the United States forcibly deported 27 Haitian nationals. One man in the group, 34-year-old Wildrick T. Guerrier, fell ill and died as a result of the conditions in the jail. There was no place to sleep in the jail cell and it was so overcrowded that there was not enough space for people to lie down all at once. The mosquito-infested cells were covered with dirt, feces, vomit, and blood and had no food, functional toilet, or water for drinking or bathing. Over eleven years later, Mr. Julney complains of similar prison conditions: no place to sleep or access to food, drinking water, or medical services.

For the aforementioned reasons, we respectfully request a thematic hearing to address the human rights violations caused by the United States' decision to deport people to Haiti. We appreciate the Commission's ongoing interest in this issue and thank you for considering our request.

Respectfully submitted,



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⁶ Hannan Adely, "Being held for ransom": Deported NJ man now jailed in notorious Haitian prison," NorthJersey.com (July 20, 2022), <https://www.northjersey.com/story/news/2022/07/20/american-deportees-ransom-prison-haiti-ice-detainees-patrick-julney/65370742007/>.

⁷ See Mathurin et al. v. U.S., P-191/14, currently pending at the Admissibility Phase before the Commission (while several of the organizations represented herein are representatives in the pending petition, this hearing request is being made independent of the pending Petition to highlight the urgent and immediate situation facing Haitian nationals subject to deportation and exclusion from the United States); Matter of Gary Resil et al. regarding the United States of America, PM 5-11 (March 2, 2016), <https://www.oas.org/en/iachr/decisions/pdf/2016/MC5-11-En.pdf>.

Request for Thematic Hearing on Deportations of Haitian Nationals (United States)
185th Period of Sessions

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