



U.S. Commission on Civil Rights

Briefing on Haitian Asylum Seekers and U.S. Immigration Policy

Miami, Florida

June 21, 2002

Executive Summary

OVERVIEW

On June 21, 2002, several organizations, including the American Civil Liberties Union (ACLU) of Florida and the Florida Immigrant Advocacy Center (FIAC), held an “Informal Briefing on the Haitian Asylum in South Florida for the U.S. Commission on Civil Rights.” Howard Simon, executive director of the American Civil Liberties Union of Florida, and Cheryl Little, executive director of the Florida Immigrant Advocacy Center, co-hosted the meeting and welcomed Commission Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, and Commissioners Christopher Edley, Peter Kirsanow, and Elsie Meeks.

The ACLU and FIAC assembled three panels with a focus on immigration policies that have been applied unfairly to Haitians. The panelists specifically discussed the December 3, 2001, change in Immigration and Naturalization Service (INS) policy that has led to the indefinite detention of Haitian refugees and asylum seekers in INS facilities, private hotels, and criminal correctional institutions in the United States.

The first panel included a group of six immigration experts from the local community: Cheryl Little and Rebecca Sharpless with the Florida Immigrant Advocacy Center; Clarel Cyriaque, past president of the Haitian Lawyers Association; Randy McGroty, Catholic Charities Legal Services; Anwen Hughes, Lawyers for Civil Rights; and Merrie Archer, National Coalition for Haitian Rights. The second panel consisted of three former Haitian nationals: Marie Jocelyn Ocean, a former detainee at the Turner Guilford Knight Correctional Center (TGK); Jean Robert LaFortune, chair of the Haitian American Grassroots Coalition; and Sidney Charles, Haitian community leader and staff member of the Republican Party of Florida. The third panel was composed of civil and human right leaders from the community: Jose Basulto, president of Brothers to the Rescue; Audrey King, executive committee member of the Miami-Dade branch of the NAACP; Sister

Jeanne O’Laughlin, president of Barry University; Marie E. Roberts, chairperson of the Miami-Dade County Commission for Women; and Lida Rodriguez-Taseff, president of the Greater Miami chapter of the American Civil Liberties Union

IMMIGRATION EXPERTS

The immigration experts spoke generally about the change in the INS policy that has resulted in what has been described as the grossly unfair treatment of Haitian refugees seeking asylum.

Cheryl Little, executive director for the Florida Immigrant Advocacy Center, noted that the INS has instituted a “no-release” policy only with respect to Haitian refugees. She noted that 187 Haitians fled Haiti on a 31-foot-long sailboat, the “Simapvivetz.” The boat was discovered floundering in shallow waters off the coast of Miami on December 3, 2001. The interdiction of these Haitian asylum seekers led to an immediate change in INS policy that was not admitted until March 2002. Ms. Little remarked that Haitian refugees who arrived in South Florida by water have now been placed in a state of indefinite detention in three major holding areas: Krome Detention Center, an INS facility; Turner Guilford Knight Correctional Center, a Miami-Dade County maximum-security prison; and a private hotel. She insisted that the Haitian-only detention policy violates international laws to which the United States is a party, and encouraged the U.S. Commission on Civil Rights to engage the authorities within the administration who are responsible for the policy and have the power to change it.

Rebecca Sharpless, an attorney for FIAC, talked of her involvement in legal efforts to bring attention to this INS detention policy. Ms. Sharpless referred to an April 15, 2002, advisory opinion from the Office of the United Nations High Commissioner for Refugees that commented on the United States’ current use of detention as a method of discouraging other Haitian refugees from seeking asylum while releasing asylum seekers from other nations. The advisory opinion noted that the United States is a party to the 1967 Protocol concerning the Status of Refugees; and therefore, it is bound by law to enforce international refugee protections as outlined in the Protocol and the 1951 convention relating to the Status of Refugees.¹[1] The advisory opinion, she added, provides that “detention of asylum seekers is inherently undesirable,” and that detention “may make it more difficult for asylum seekers and refugees to secure legal counsel, communicate with family members and access legal materials and interpreters to assist in the preparing their claims.”²[2] Clarel Cyriaque, past president of the Haitian Lawyers Association, spoke about the difficulty he and other lawyers experience when trying to obtain unfettered private access to their clients.

¹[1] ¹The 1967 Protocol relating to the Status of Refugees, adopted Jan. 31, 1967, *entered into force* Oct. 4, 1967, 606 U.N.T.S. 267 (1967). The United States acceded to this protocol in 1968.

²[2] ²*Ibid.*

Randy McGroty, a Catholic Charities Legal Services attorney, and Anwen Hughes, a lawyer with the Lawyers Committee for Civil Rights, both discussed their personal involvement in the case of Ernest Moise, a Haitian asylum seeker. Mr. Moise, his wife, and their children were separated and placed in indefinite detention as a result of, according to the presenters, INS' "facially discriminatory" policy.[3] Ernest Moise, they noted, was an anti-Aristide supporter who fled Haiti via water with his family and other anti-Aristide supporters, under the threat of violent political reprisal for their stance against President Jean-Bertrand Aristide. Mr. Moise and the others were intercepted by U.S. patrols. The Moise family was separated while in INS custody, with members of the family being held at Krome, the Turner Guilford Knight Correctional Center, and other INS or INS contract facilities. Mr. Moise, who is literate, was able to establish credible fear and convince a judge that he deserved political asylum. He was released, but the INS reserved the right to appeal his case. Moreover, because Mr. Moise and his wife were not technically married, different judges heard their cases and decided differently. According to Mr. McGroty, Mrs. Moise was not released and, as of June 21, 2002, attorneys were still fighting to obtain asylum for her.

HAITIAN AMERICAN COMMUNITY LEADERS, ASYLUM SEEKERS, AND THEIR FAMILY MEMBERS

Marie Jocelyn Ocean was the only member of any panel to have been detained under the current INS policy. Through the assistance of Florida Immigrant Advocacy Center attorneys, she was granted asylum. She spoke to the Commissioners through an interpreter.

Ms. Ocean explained that she came to the United States because in Haiti people were trying to kill her and members of her family because of their political activity. In fact, she stated that her brother and father had been killed. She told of very difficult living conditions, including lack of food, and fear resulting from ongoing political problems in Haiti. When she arrived in the United States, she was detained but was eventually released. However, she expressed concern for all the other Haitian women who came to this country to experience freedom and life without fear but who are now being held in U.S. custody and are likely to be returned to Haiti.

Jean Robert LaFortune, chair of the Haitian American Grassroots Coalition, averred that there is a historic prejudice in the United States against Haiti and Haitian immigrants and that this prejudice has its roots in the Haitian Revolution of the 18th century. He noted that President George Washington, himself, advised against the importation of any Haitian slaves who had witnessed the revolution for fear that they would agitate rebellion. Mr. LaFortune suggested that the actions of Denmark Vesey, a former Haitian slave who witnessed the Haitian rebellion and plotted a violent revolution in Virginia, reinforced the beliefs of many early Americans that Haitians and their descendents should not be

3[3] 3Brief *Amicus Curaie* of the Lawyers Committee for Human Rights in Support of Petitioners' Motion for Temporary Restraining Order and/or Preliminary Injunction and Class Writ of Habeas Corpus, Case No. 02-20822-CIV (Leonard/Simonton).

brought to this nation. Moreover, Mr. LaFortune insisted that this foolish idea that somehow “the rebellious” Haitians threatened the national interest of our country has persisted in the United States. He suggested it can be witnessed in the former Bush administration’s policy toward Haitians, and he maintained that it is the basis of the current Bush administration’s INS policy toward Haitians. He noted that time and time again such policies have been rejected and urged members of the Commission to work toward doing so in this instance as well.

Sidney Charles, a Haitian businessman and president of the Republican Party of Florida, noted that he came to the United States at the age of 17 by boat and worked hard. Now, in his early 50s, he boasted that he has a six-figure income and has a picture of himself posing with former President Ronald Reagan. Nevertheless, he is still perplexed and distraught over his inability to navigate the complicated INS visitation and immigration rules that ultimately prevented him from obtaining a travel visa for his mother to fly to the United States. He noted that one of her only wishes was to see her grandchildren before she died. He insisted that INS policies, as applied to Haitians, prevented him from making that wish come true for his mother, who died in 1995. He urged changes in existing U.S. immigration policies.

11 CIVIL AND HUMAN RIGHTS LEADERS¹

1

Members of the third panel spoke against the indiscriminate manner in which Immigration and Naturalization Service officials apply the rules.

Jose Basulto, president of Brothers to the Rescue, explained how INS violates the “wet foot-dry foot” rule with respect to Cuban refugees who have made it safely to U.S. soil.^{4[4]} The rule mandates that Cubans intercepted on the high seas will be returned to Cuba, but those who make it to U.S. soil may be granted asylum. He insisted many Cubans are unfairly treated as if they had been interdicted at sea and are not granted asylum.

1

Sister Jeanne O’Laughlin, president of Barry University, and Maria E. Roberts, chairperson of the Miami-Dade County Commission for Women, both spoke strongly against any INS policy that results in the unfair treatment of women in comparison with men. Both referenced an INS policy that allows the imprisonment of all female INS detainees in a maximum-security criminal institution because INS cannot guarantee their safety in one of INS’ own facilities. Sister O’Laughlin lamented the need to house women detainees in prisons when better and more adequate housing is available; in fact, she offered housing at Barry University to the women detainees. Similarly, Ms. Roberts

^{4[4]} ⁴Frank Davies, “Bush: ‘Wet foot-dry foot’ Policy Will Stay in Place,”⁴ *Cuban Info Links: News and Information Services* <http://www.cubainfolinks.net/Articles/wet_dry.htm> (Aug. 28, 2002).

stressed the inequitable aspects of the women's treatment in respect to the treatment of men. She noted that in mid-December 2000 all of the women at Krome Detention Center, including women from Latin American, Asia, Europe, and Haiti, were transferred to the Turner Guilford Knight Correctional Center (TGK) after allegations of sexual abuse and improprieties by the guards were revealed. At TGK, she alleges that the women are subjected to conditions more restrictive than those imposed upon the men at Krome. According to Ms. Roberts, the women are offered less frequent family visits, no private room for meeting with attorneys, and a far inferior law library, and subjected to body searches, lock downs, and disruptive head counts in the middle of the night. Other alleged disparities include inferior food, inadequate medical treatment, problems getting items from the commissary, more limited phone access, and difficulty in getting translation help.

Finally, Lida Rodriguez-Taseff of the local ACLU chapter also questioned the government's reason for the Haitian detention policy. She informed the Commissioners that, in her view, the government's justification for its current discriminatory Haitian-only detention policy is bitterly reminiscent of the anti-Haitian policies of the past—policies that were rejected by the courts and repudiated by right-minded Americans. Ms. Roberts continued, saying that once again the excuse is that without these policies a mass exodus of Haitians can be expected. She stated that long-time residents of Miami vividly remember the year 1991, when following the coup d'état in Haiti, lawyers for Haitians on board Coast Guard cutters were forced to file a class action to stop the government from forcibly repatriating them. The U.S. government, whose lead attorney in this case was Solicitor General Kenneth Starr, filed an emergency petition with the Supreme Court of the United States, alleging that 20,000 Haitians were on Haitian beaches and ready to head to Guantanamo. For Ms. Roberts, and many others addressing the Commissioners, U.S. fears of a mass exodus have never been proven legitimate.[5] For almost all of those making presentations at the meeting, the current Haitian-only detention policy is a surreal repetition of the past racist and discriminatory policies that have been repudiated time and again in U.S. courts.

After listening to the impassionate testimony of the immigration experts, former Haitian refugees, detainees, and their family members, and several civil and human rights leaders, the Commissioners unanimously agreed that the U.S. Commission on Civil Rights needed to take action to determine who is responsible for the change in policy regarding Haitian refugees. Once determined, the Commissioners approved contacting the appropriate officials and urging that this INS policy, which allows the indefinite detention of Haitian refugees, be reversed.

11 COMMISSION INSPECTION 1 OF TURNER GUILFORD KNIGHT FACILITY 1 C

5[5] 5Statement of Lida Rodriguez-Taseff, prepared for the "Informal Briefing for the U.S. Commission on Civil Rights on the Treatment of Haitian Asylum Seekers in South Florida."

After the briefing three Commissioners, Chairperson Mary Frances Berry, Vice Chair Cruz Reynoso, and Elsie Meeks, along with several Commission staff members and others, inspected the Turner Guilford Knight Correctional Center. TGK is a maximum-security prison in Miami-Dade County where many Haitian female refugees are being held pursuant to a contract between INS and Miami-Dade County. Detainees from several other countries are also housed at TGK.

The purpose of the detention site inspection was to investigate and collect information on confinement conditions at an INS contract facility housing INS detainees. Through the inspection, the Commissioners had the opportunity to learn about conditions from the female INS detainees and TGK officials. The inspection provided the Commissioners information about the following:

- *Law Library Access*—whether legal materials are readily available.
- *Attorney Access*—whether attorneys and detainees are able to communicate telephonically and in person as outlined within the detention standards.
- *Health Care*—whether detainees receive adequate medical attention.
- *Grievance Procedures*—whether detainees are aware of the grievance procedures and are able to utilize the process.
- *Visitation*—whether the friends and families of detainees, as well as nongovernmental organizations, are able to visit detainees as outlined in the detention standards.
- *Telephone Access*—whether detainees are able to use the telephones as outlined in the detention standards to contact friends, family, legal service providers, consular officials, and the appropriate courts.
- *Recreation*—whether detainees are allowed to use recreation facilities, both indoor and outdoor, as outlined in the detention standards.
- *Religious Practices*—whether detainees are able to exercise their faiths, including the ability to engage in rites, participate in services, observe dietary restrictions, and possess religious articles of their faiths.
- *Co-mingling of Detainees*—whether facilities not owned and operated by the INS improperly release detainees into the general population of inmates.

After the tour, Lois Spears, director of the Miami-Dade County Corrections and Rehabilitation Department, TGK employees and officials, a local INS representative, and representatives from local advocacy group members met briefly with Commissioners Mary Frances Berry, Cruz Reynoso, and Elsie Meeks to discuss the current INS policy and to propose actions that could be taken to improve conditions at the prison for female INS detainees.

During the meeting, Commissioner Cruz Reynoso noted that none of the Hispanic detainees with whom he talked had been at the facility for more than 30 days. It was also noted by Commission staff that four Chinese detainees at TGK had been there for only nine days. However, many of the Haitian detainees, who spoke to the Commissioners through a translator, had been detained at TGK for seven months. At the meeting, Director Spears insisted that she was only trying to improve the lives of the women when

she entered into the INS contract permitting the detainees to be housed at TGK. She had heard about their conditions at Krome for the women, specifically, the allegations of sexual assault. She knew the county had space in TGK and believed she could keep the women from being assaulted by agreeing to keep them at TGK for what she thought would be a short period of time. She did not expect that the women would still be at TGK many months later.

The Commissioners addressed two specific concerns raised by the detainees, food and affordable access to long-distance telephone service to Haiti. Additionally, greater access to TGK officials and the detainees by representatives of the Haitian community was discussed. Agreement was reached to provide more familiar food to the women and to provide Haitian advocates increased access to detention officials and the women housed at TGK. Although there was some discussion regarding telephone access, the issue was generally deemed to be outside the control of the county since it had already entered into an exclusive five-year contract with AT&T, prior to the transfer of the INS detainees. Nonetheless, options for improving long-distance access to Haiti were to be explored.

CONCLUSION AND RESOLUTION

As a result of the meeting with the ACLU and others, as well as the inspection of TGK, the Commission and its State Advisory Committee in Florida have engaged local and federal officials on the issue of the INS Haitian indefinite detention policy and the conditions of confinement at facilities housing Haitians and other asylum seekers.

The Staff Director of the Commission, in a letter to INS Commissioner James W. Ziglar, expressed the view that however well intended, no federal agency should engage in national origin discrimination or embrace a policy that creates the appearance of national origin discrimination. A policy that denies parole opportunities and essentially asylum only to Haitians—many with credible bases to fear for their lives—is not the least restrictive manner to accomplish the stated goals of deterrence and protection of refugees. The Immigration and Naturalization and Service was urged to cease enforcing a policy of indefinite detention of Haitian refugees.

Since June 2002 almost two-dozen Haitians have been returned to Haiti. The 18 men and three women were among the 187 migrants aboard the sailboat “Simapvivetzi,” which was found floundering in waters off the Miami coast on December 3, 2001. The men were removed from Krome Detention Center and the women were taken from Turner Guilford Knight, where they had been detained for the past seven months. Their repatriation sparked protests by Haitian Americans outside INS offices in Miami, who chanted “Freedom Now” and maintained that the INS no-release policy as applied to Haitians amounted to selective enforcement of immigration laws and racial and national origin discrimination.^{1[6]}

^{6[6]} Tere Figueras, “U.S. Move to Deport Haitians Protested; 25 Held by INS Sent Back to Homeland,” *Miami Herald*, July 30, 2002, section B, p. 1.