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January 25, 1977

Honorable Griffin Bell
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Attorney General Bell:

We would like to bring to your attention a problem which raises fundamental issues of human rights and liberty and which cries out for a quick and just solution. We refer to the presence in the United States -- mainly in the Miami, Florida area -- of over 1,000 Haitian nationals who have sought political refuge in this country, pursuant to the United Nations Protocol Relating to the Status of Refugees, 19 United States Treaties 6223 (1968). Article 33 of that treaty provides that the United States shall not return an alien who has a well-founded fear that he would be persecuted for racial, political or social reasons to the country in which his life or liberty would be so threatened. Nevertheless, the Immigration and Naturalization Service and the Justice Department are seeking to return these Haitians to their native land for the alleged reason that they are not in fact bona fide refugees. INS seeks to carry out this massive deportation without even granting the Haitians even the most elementary due process hearing at which they may prove the basis of their fears of persecution.

We are the attorneys for most of these individuals. We are confident that upon review of the situation you will agree that the government's treatment of the Haitian refugees over the previous four years has not been in accord with our Constitution, our laws and treaties, and our traditions of extending refuge to those seeking freedom from tyranny and oppression.

We have challenged INS' procedures in a number of cases filed in the United States District Court for the Southern District of Florida. Marie Pierre, et al. v. United States, No. 73-1689-WM, on

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appeal as to some petitioners, No. 75-3975 (5th Cir.); Marie Sannon, et al. v. United States, No. 74-428-JLK; Ketley Jean-Baptiste, et al. v. United States, No. 75-2124-JLK. About 500 individuals are involved in these cases. We have argued that our clients are entitled, under the Constitution, statutes, and treaties of the United States, to a trial-type evidentiary hearing, with the assistance of counsel, before immigration judges or other unbiased decision makers. Heretofore, they have been afforded only a rudimentary "interview" with an INS inspection officer immediately upon arrival in the United States, and without opportunity to consult with counsel.

Our plea for de novo evidentiary hearings has received wide support from The National Council of Churches, the Lutheran Council in the United States, the Archdiocese of Miami, the National Emergency Civil Liberties Committee, and other organizations. In addition, these groups have provided money and services which have enabled the Haitians to survive and to pursue their claims in the courts.

The Subcommittee on Immigration, Citizenship and International Law of the House of Judiciary Committee recently reviewed the procedures by which the Haitians' asylum claims were considered and concluded that the procedures were inadequate for many of the reasons which we have argued before the courts. See the report of the Subcommittee, entitled "Haitian Emigration," a copy of which is attached as Appendix A. Among the Subcommittee's most salient findings and recommendations were that the Haitians typically did not comprehend the nature and meaning of asylum and of the asylum "interviews," that the Haitians should have been allowed to consult with counsel and other advisers prior to their interviews, that the Haitians should have been advised of that right, that the personnel conducting the interviews typically lacked sufficient familiarity with the social, political and cultural background of Haiti, and that the reports and recommendations of the Office of Refugee Migration of the State Department to the Miami District Director, who was responsible for the ultimate decision, were "grossly inadequate" and "arbitrary."

On November 6, 1976, the New York Times in a half-page editorial criticized INS' handling of the Haitians' applications for asylum and called for full and fair hearings for all Haitians seeking refuge in the United States. See Appendix B. The Times editorial echoed the concern repeatedly expressed by the Miami News and other newspapers and commentators over the last 4 years.

Finally, at an oral argument in the Sannon and Jean-Baptiste cases held on December 20, 1976, federal district Judge James

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Lawrence King stated on the record that he was of the view that the government should have allowed the plaintiffs to present their asylum claims at trial-type evidentiary hearings, and that he would issue an appropriate order to that effect unless the government agreed to do so. See the transcript of Judge King's remarks, Appendix C.

In response to Judge King's remarks, the government reluctantly agreed to provide limited evidentiary hearings to the approximately 275 Haitians involved in the two cases before the Judge (Sannon and Jean-Baptiste cases). The government's position was stated in a motion filed on January 14, 1977, a copy of which is attached as Appendix D. In that motion, the Justice Department refused to abandon its position that the Haitians have no right to a hearing on their asylum applications. Consequently, the government has not offered to extend hearing rights to Haitians involved in cases before other judges or other courts, nor has it changed its regulations or policy with respect to future applicants for refuge. Thus the Justice Department has sought to avoid an unfavorable (to it) decision from the one judge who has carefully studied the problem, in the hope that it can continue to ignore the rights of countless other applicants.

In the light of the above, we urge the following relief:

1. At the least, all Haitians who are physically present in the United States and who have requested political refuge should be guaranteed the right to a full due process hearing before an immigration judge prior to any attempt to return them to Haiti. This right should be applied prospectively and retroactively, and without exception. It should be embodied in a specific Justice Department regulation. We would like to participate in the formulation of the proposed regulation, at least by being permitted to suggest procedures and language and to comment upon Justice Department proposals.

2. Haitians who arrive in the United States seeking political refuge should not be kept in jail pending the determination of their applications and possible judicial review thereof. The INS' policy until recently was to hold the Haitians in jail until and unless they can raise \$500 bond, which was beyond the means of most of the Haitians. Only the efforts of the National Council of Churches and other church and charitable groups allowed the release of many of the Haitians. Others have remained in custody for periods of up to two years.

The House immigration subcommittee reviewed this problem and recommended that the bond requirement be discontinued. In response, INS raised the bond requirement to \$1,000! Moreover, INS has moved the

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more recent arrivals to jails in Texas, where they do not have the opportunity to consult with or be assisted by the Miami counsel who were retained in 1972 by the Haitian Refugee Information Center in Miami to represent Haitian refugees arriving in Miami.

3. In addition, those seeking political asylum should be permitted to seek employment pending the final determination of their applications. Article 17 of the Protocol guarantees that a refugee should be allowed to work, and the Fifth Circuit has held that that right supersedes the labor certification restrictions of the immigration act. See Pierre v. United States, 525 F.2d 933 (1975). It is manifestly unfair to deprive the refugees of the means of livelihood while they pursue their claims to refugee status; to do so makes a mockery of the guarantees of the Protocol.

4. Finally, and we believe this is most important, the only just and humane solution to the problem of the Haitians already present in the United States is for the government to issue a blanket grant of asylum. These people have been in this country for periods ranging up to 4-1/2 years. They have established roots in the Miami and New York areas. Many are married and have had children, who are citizens of the United States. It is one thing to announce a policy that in the future all Haitians (and others) who seek political refuge will be granted speedy and fair evidentiary hearings, and that those who fail to show that they in fact are refugees will be deported. It is quite another thing to uproot and disrupt the lives of people who have been here for years, who came here in good faith, who committed no crime but suffered in jail and outside of jail, and who have made significant efforts to establish roots in this country. The delay occasioned in the determination of these cases lies with the government, which heretofore has refused to treat them fairly. As a matter of humanity and justice, these individuals should be allowed to remain.

In a recent report to the President by the Domestic Council Committee on Illegal Aliens, former Attorney General Levi acknowledged that "massive deportation [of illegal aliens presently within the United States] is both inhumane and impractical." This is even more true of people who came not to seek jobs, but to seek freedom from oppression. We respectfully request that you terminate the Department's efforts to effect a massive deportation of Haitian refugee applicants presently within the United States, and that you order a blanket grant of asylum to these people.

In the interest of brevity, we have not described in detail the inadequacy of the procedures actually followed by INS. We

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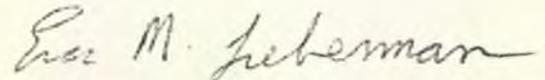
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also have not described the repressive nature of the present regime in Haiti, the lack of individual freedom, the prevalence of medieval methods of torture, and the broad meaning of the term "political prisoner" in Haiti. On the latter point, we attach as Appendix E, a copy of the most recent report of Amnesty International, which the State Department recognizes to be an impartial observer on such questions.

We would appreciate the opportunity to discuss these urgent matters with you personally at your earliest convenience. We can provide you, either at or in advance of such meeting, with whatever further information and documentation you may wish in considering this petition. Please communicate your views or response to Eric M. Lieberman, one of the undersigned counsel.

Thank you for your consideration.

Sincerely yours,



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