THE HAITIANS IN MIAMI:

CURRENT IMMIGRATION PRACTICES IN THE UNITED STATES

A JOINT REPORT OF:

THE LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS

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THE INTERNATIONAL HUMAN RIGHTS LAW GROUP

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INTRODUCTION

There are presently over 8,800 exclusion and deportation cases involving Haitians pending before the Immigration and Naturalization Service (INS) in southern Florida. In July, 1978 the INS began to escalate the rate of hearings in these cases. While in the first half of 1978 an average of 10 deportation hearings were held each day in Miami, by late September the INS had escalated the daily average to over 100 hearings each day. On at least several occasions since September, as many as 150 hearings have taken place in a single day. Many of these cases have involved applicants for political asylum in the United States.

The escalated rate of hearings has served to undermine minimal due process protections for the Haitians. It also has created severe problems for the lawyers working on these cases. In October, several of the attorneys representing Haitian clients requested our organinations to come to Miami to observe the hearings; meet with other attorneys working on these cases; and evaluate the effect of the current accelerated proceedings.

This report is the result of our visit, which took place between October 17-21, 1978. Our conclusions are derived from our personal observations of deportation hearings and INS interviews with applicants for political asylum, as well as informal discussions we held with attorneys representing the Haitians, various INS personnel and members of the Haitian community in Miami.

The three organizations that have participated in this mission and prepared this report are all non-governmental and non-political. Our involvement is based on mutual concern that the United States is not properly conducting these immigration proceedings. Specifically, we question whether the current rate of hearings allow for adequate due process pro-

tection to refugees seeking political asylum in this country. In this regard, we are concerned particularly that the protections afforded to applicants for asylum in the United States be properly observed. These include provisions of the Immigration and Nationality Act, as well as the protections guaranteed by the United Nations Convention Relating to the Status of Refugees and the United Nations Protocol Relating to the Status of Refugees which the United States acceded to in 1968. A copy of this report has been forwarded to the office of the United Nations High Commissioner for Refugees in order to keep that body informed of current United States Practices.

This report represents only a preliminary analysis of current immigration practices in Miami, and an outline of several major problem areas. In the coming months, the three organizations that have cooperated in the preparation of this report will work with other organizations in continuing to investigate and report on developments involving the Immigration and Naturalization Service's treatment of the Haitian community in Miami.

Preparation of this report was undertaken by Michael Posner, Executive Director of The Lawyers Committee for International Human Rights; Amy Young-Anawaty, Executive Director of The International Human Rights Law Group; and Dale Swartz, Director of the Alien Rights Law Project of the Washington Lawyers Committee for Civil Rights Under Law.

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BACKGROUND

Thousands of Haitians have migrated to southern Florida in the past decade. Many have applied for political asylum, based on their belief that they will be persecuted if they return to their homeland. Between December 1972 and November 1977, an estimated 3,500 Haitians arrived in the United States.

Governed by members of the Duvalier family since 1956, Haiti has been faced with an ongoing pattern of serious violations of human rights. These violations have been documented by nongovernmental human rights organizations such as Amnesty International (see appendix B). In August, 1978, Amnesty released a statement noting the initiation of large scale deportation hearings in Miami (see appendix C). The statement expressed concern that "the United States Government not deport any of these persons to Haiti without fully assuring itself that they will not face imprisonment or persecution on their return."

The Amnesty statement based its concern on a number of factors. It stated:

> There has been no reduction in numbers nor reorganization of the notorious security militia and other military personnel who have been responsible for illegal arrests, maltreatment and other beeaches of constitutional guarantees. In the past year Amnesty International has received reports that arrests have been carried out without due legal safeguards. Furthermore, the "loi Anti-Communiste", adopted on 28th April 1969, is still in force, and provides that persons found to have made "any declaration of belief in communism verbal or written, public or private," or propagated "communist or anarchist doctrines by conferences, speeches, conversations ... by leaflets, posters, newspapers ..." will be charged with crimes against the state, tried in a military court, and, if convicted, mandatorily "punished by death penalty."

Since November 1977, the number of Haitians that have been processed by the INS's district office in Miami has increased substantially. Two major factors account for this increase. In June 1978,

the government of the Bahamas announced its intention to begin deporting all undocumented Haitians. The explanation given for this decision was to ease existing Bahamian unemployment. A substantial number of the Haitians that were expelled from the Bahamas subsequently came by boat to Florida.

A second factor that helps to account for the increase in the number of cases has been the recent emergence of a number of Haitians who have been long-time undocumented residents of Florida. Many of these people, who were previously unknown to the INS, came into INS offices to obtain work authorizations as a result of a promise made to the National Council of Churches by INS General Counsel David Crosland. In a letter dated November 8, 1977 (see appendix D), Crosland stated in part: "INS will provide written authorization to work on request to all Haitians presently in Florida, whether detained or not, who have previously sought political asylum and have asylum claims pending."

Following the publication of this agreement, Acting INS District Director Edward Sweeney unilaterally issued work authorizations to all Haitians requesting them, even if they did not have asylum claims pending. In the next few months as many as 3000 undocumented Haitian aliens, many of them previously unknown to the INS, requested authorization to work in response to this new policy. In the course of the period following the granting of these authorizations, a significant number of Haitians were able to secure jobs in the Miami area.

Using records of names and addresses obtained from those who had sought work authorization , the INS began to institute deportation proceedings in almost all of these cases.

In June, 1978 a decision was made by INS to begin revoking these work authorizations, an action that has now been taken in almost every

one of the Haitian cases presently pending in southern Florida. These revocations have severely jeopardized the economic security of these applicants, forcing many to choose between illegal work and government assistance, for which many of them are ineligible.

As a result of the increased number of Haitian cases that were initiated using information derived from the work authorization applications, and those that resulted from the forced departures from the Bahamas, INS came under increased pressure to expedite the deportation hearings. Consequently, the number of hearings began to increase from an average of 5 to 15 per day during the first half of 1978 to an average of 60 per day in August. By mid-September, the daily average was over 100 and occasionally exceeded 150 hearings per day. An expedited hearing schedule continues to be followed today despite expressions of concern from a number of attorneys and organizations concerned with these problems, including our own.

EFFECT OF THE EXPEDITED PROCESS

All of the local attorneys with whom we spoke, including officers of the South Florida Chapter of the Association of Immigration and Nationality Lawyers, expressed the strong opinion that the present rate of processing asylum applications and conducting deportation hearings makes it virtually impossible for counsel to effectively represent their clients.

Before analyzing the current practices in Miami, it is useful to examine standard INS procedures in similar cases. An applicant for political asylum may be able to file his or her asylum application before, during, or after deportation proceedings have been initiated.

An application that is filed prior to formal deportation proceedings will be handled by the INS District Office, without the added complications or time constraints caused by formal hearings. After an application is completed and submitted to the INS, an interview is scheduled pursuant to Section 108. It is not unusual for these interviews to be scheduled a month or more after applications have been filed. It is often several more months before the INS and State Department finally have reviewed the application and made a final determination as the claim for asylum.

By contrast, in the current proceedings in Miami, every Haitian case has been singled out for special accelerated handling by INS. The decision to treat the Haitian cases as a group, and to expedite their handling have placed great burdens on counsel. In order to fully understand the dimensions of the recent situation, a number of factors must be analyzed carefully.

First, the Haitian asylum applicants are being subjected to immediate deportation proceedings. The INS has adjudicated few, if any, of these asylum claims prior to the initiation of deportation proceedings.

Second, the deportation hearings are occurring at a rate of over 100 per day in as many as four different courtrooms. The hearings are taking place in both morning and afternoon sessions. Simply based on the continuing volume of the cases, the effectiveness of counsel is severely undermined. This problem is compounded by the simultaneous scheduling in another building of 108 asylum interviews, which are described in more detail later in this report. In several instances individual attorneys have been faced with as many as fifteen or even twenty hearings and 108 interviews at one time.

These conflicts are exaggerated because of the limited number of

attorneys willing and able to work with the Haitians. Though a number of local attorneys are or have in the past handled cases involving Haitians, there are no more than seven attorneys presently handling the cases on a regular basis. The South Florida Chapter of the Association of Immigration and Nationality Lawyers has made efforts to recruit additional lawyers, but to date, their efforts have not succeeded in alleviating the problem.

A second stage of the process that is affected by the expedited proceedings is the preparation of applications for political asylum. A substantial number of the Haitians are applying for asylum and each must prepare a separate INS application form, I-589 (see appendix E). Because each applicant must show that he or she would be subject to or has a well-founded fear of persecution, it is necessary for an attorney to gather particularized evidence from a number of sources in support of each application. This may include reports for intergovernmental and nongovernmental organizations on the general conditions in the country, as well as any special references to past instances of persecution against specific nationality groups, religions, social classes, etc. In addition, affidavits from the applicants themselves, as well as from those familiar with their particular situation, are critical. This process can be and usually is extremely time-consuming and difficult. In these cases, it requires an understanding of both the political situation in Haiti, which is by no means clear, and the particular problem faced by the individual applicant.

It has been the experience of our organizations in preparing asylum applications that each such application requires a minimum of fifteen hours to be prepared properly. Moreover, background material and affidavits may take weeks and even months to obtain.

The expedited hearings require counsel to prepare an inordinate number of these I-589 asylum application forms each week, a task which cannot possibly be completed thoroughly. In most of these cases, the immigration judges are requiring the filing of I-589 forms between 10 and 20 days after the initial hearings take place. The INS has taken the position in these cases that where an applicant has failed to file the I-589 form, within 10 or 20 days, the claim for asylum should be rejected for "lack of prosecution". In cases where applications have been filed after that period the District Director's office has rejected them because of "untimely filing". These actions have no basis in law; they serve only to undermine the applicants' entitlement to due process protections.

SECTION 108 INTERVIEWS

A number of related problems involve present procedures for handling interviews with asylum applicants pursuant to 8 CFR 108. The first problem relates back to the availability of effective representation. Because the interviews are conducted concurrently with the deportation hearings, and take place in a building that is several blocks away from the hearing rooms, it is extremely difficult for counsel even to be present during these interviews. It is certainly not possible for these attorneys to be at both the hearings and interviews, and still have time to properly prepare the I-589 applications. As a result, many of the attorneys either give their clients some instructions prior to the interview or they simply don't participate. In either case, the client is effectively denied proper representation at this vital stage of the proceedings.

Even where an attorney is able to represent his client, such representation is less than effective because of the way the interviews are being conducted. One serious problem with the current procedures is the manner in which these interviews are recorded. In order to protect the

applicants' due process rights, each interview should be recorded in its entirety. This serves to protect the applicant against distortion or mistake in transcription. This is not being done in any of the Haitian cases. In fact, it is our conclusion, based on personal observation, as well as on conversations with a number of the attorneys in Miami, that applicants' answers are often improperly transcribed. In interviews we observed on October 20, the result of the INS's summary transcription of answers was the distortion of several critical answers given by applicants. A more detailed description of the interview process helps underscore some of the deficiencies in the current procedures.

The interviews are conducted in a large room that is partitioned into approximately eight cubicles. In each cubicle there is an interviewer, a typist, and an interpreter - all government personnel. The interview area and the adjoining waiting room are being used exclusively for the Haitian cases; all other asylum applicants are interviewed in another section of the federal building. The interviews are conducted in a routine fashion, utilizing a set of prepared general questions pertaining to the applicants' background and fear of persecution. The questions are relayed through Creole interpreters.

There are a number of problems that relate directly to the use of these interpreters. Partially because of the large number of interviews that are conducted each day, the interpreters often summarize an applicant's statement, leaving out important details. This observation was reaffirmed by virtually all of the attorneys working on these cases, as well as by members of the Haitian community.

In the course of our observations we were struck by the complete lack of trust that characterizes all of the proceedings. Nowhere is this more evident than at the interview stage, and particularly in relation to the

role of government-employed Creole interpreters. Many of the applicants regard the interpreters as totally unsympathetic United States Government personnel and, in some cases, as allies or even agents of the Haitian Government. Whether that is true is much less important than the effect of this perception on the Haitians. Certainly in the context of an asylum interview, where the applicant is already ill at ease, the presence of an interpreter who may have ties or sympathies to the Haitian Government further stifles an applicant's willingness to discuss freely and explain his reasons for seeking asylum. Because of these difficulties, significant improvements need to be made in assuring proper selection and professional training of these interpreters.

Even where the translation is complete and accurate, the interviewers do not always instruct the typists to type the applicant's verbatim answers on the INS interview form. Again, in large part because of the time pressure caused by the expedited procedures, the interviewers have summarized many of the answers, a practice that violates the INS's Operating Instructions, as well as the applicant's right to present a complete application for asylum.

Finally, current interview procedures in Miami minimize the active role of counsel. Attorneys often are not allowed to ask clarifying questions or to participate effectively in the interviews. Their objections to improperly transcribed answers are routinely overruled.

We observed two interviews that illustrate several of the problem areas in current INS practice. In one instance an applicant gave a very long and detailed account of her personal experiences in Haiti, including the arrest of a family member and her own harassment by members of the Ton Ton Macoutes (the Haitian para-military security force). She described in great detail the ransacking of her store and personal threats

that were made against her by local Ton Ton Macoute agents. Her remarks were translated in summary form by the interpreter and then virtually ignored by the interviewer, who merely wrote on the INS form that she was harassed by the Ton Ton Macoutes.

A second interview had much the same result. When the interviewer asked if the applicant had any written material in support of his claim for asylum, he responded that he had material which was being sent down from Canada by his friends and relatives. The interviewer refused to allow this answer because he did not have the information with him. The record in his case merely states "no" in answer to that question. Later in the same interview the applicant was questioned about his political activities in Haiti. When he was asked specifically whether he was a member of any political parties, he explained, in some detail, that he has participated in public and private political activities in opposition to the Haitian Government. The interviewer decided that the recorded answer would be "no" to this question because the applicant could not identify a specific political party. Thus, none of the applicant's comments were added to the interview record in this case. Such misrepresentation of answers is certainly impermissible, and seriously undermines the applicant's written record.

In summary, with regard to the Haitian cases, the INS appears to be concerned primarily with expediting the deportation process and handling the hearings as economically as possible. As a result, minimal due process protections have been severely undermined in the 108 interviews. Under current practice, the record of these interviews, intended to reveal eligibility for asylum, may be used against the applicant in subsequent proceedings, regardless of the legitimacy of his or her claim.

TREATMENT OF COUNSEL

In addition to these ongoing practices, there have been a number of isolated incidents which have further complicated the current situation. For a prolonged period certain counsel were denied access to waiting rooms, and thus were unable to advise the Haitians of their rights or help them prepare for their hearings (see appendix F).

INS officials have made a number of accusations against attorneys who have worked on behalf of the Haitians. They have become particularly hostile when counsel have taken any actions that would slow down the rate of the hearings. At one point the INS threatened to initiate disciplinary proceedings for champerty or soliciting against an attorney who was working on a retainer basis for the National Council of Churches. This threat was later abandoned when the attorney's action was supported in an informal opinion from The Florida Bar (see appendix C).

Another incident involved a law student working on the Haitian cases as part of a legal training program sanctioned by the Florida courts. This student was warned by INS officials that his ultimate admission to the Bar could be jeopardized if he continued to work on these cases (see appendix H).

REVIEW OF ASYLUM APPLICATIONS

As a result of the accelerated handling of the Haitian cases, the asylum applications generally lack sufficient information for a determination to be made as to an applicant's refugee status. This creates problems at several stages of the process. A claim for asylum is first reviewed at the INS' district office by the District Director. According to INS procedures, he can either grant a clearly meritorious request

for asylum, refer the case to the State Department for their advisory opinion, or deny the claim if he determines that it is "clearly lacking in substance," 8 CFR 108.2. In an overwhelming percentage of the recent Haitian cases the District Director has concluded immediately following the Section 108 interviews that asylum applications are clearly lacking in substance.

Applicants have been sent a form letter denial (see appendix I), which explains that sufficient information has not been presented in support of the asylum claim. In addition, this letter states that the applicant has failed to identify "any dates, places, or occurances that can be independently identified by the Service". emphasis added. This standard is not in conformity with either the Immigration Act and Regulations, or the requirements of The United Nations Protocol and Convention.

Certainly if there were more time to prepare these applications and additional information was compiled, a number of these requests for asylum could be granted at this stage of the process. This would eliminate the need for additional consideration in these cases, and result in a savings of time and expense. It would also assure prompt disposition of these claims and enable those found to be refugees to begin working and establishing themselves.

Asylum claims that are rejected by the District Director must still be sent to the State Department for review. The State Department has thirty days in which to make a recommendation. If they determine that asylum should be granted, the District Director is asked to review the case. If he stands by his decision to deny the application, the case must be certified to the Regional Commissioner for a final decision, 8 CFR 108.2.

The State Department reviews each case primarily on the basis of the I-589 application form, and the 108 interview record. The review is conducted by the Office of Refugee and Migratory Affairs of the Bureau of Human Rights and Humanitarian Affairs (ORM). In selected cases, the State Department may request comments or recommendations from the United Nations High Commissioner for Refugees.

Under the present circumstances, however, neither the State Department nor the United Nations High Commissioner for Refugees have sufficient information to make a meaningful determination regarding the refugee status of the applicants. Thus, they are reviewing application forms that often consist of blank or partially filled-in answers, and interview answers that fail to reflect the complete responses given by applicants. Under these circumstances, few, if any, claims for asylum are supported by the State Department or United Nations High Commissioner for Refugees.

THE REFUGEE STANDARD

A related problem concerns the apparent conflict in the standards of the Immigration and Nationality Act and the United Nations Convention Relating to the Status of Refugees. Both define the instances under which an individual is a refugee and therefore cannot be deported. The Convention was incorporated into United States law through The Protocol Relating to the Status of Refugees 606 U.N.T.S. 267 (1967), which was ratified in 1968. Article 33 of the Convention, entitled "Prohibition of Expulsion or Return," provides that an alien with a <u>well-founded fear</u> of persecution based on "race, religion, nationality, membership in a particular social group or political opinion" cannot be expelled. Yet, Section 243(h) of the Immigration and Nationality Act provides that

> The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which, in his opinion, the alien would be subject to persecution on account of race, religion or political opinion.

It is possible to envisage a number of instances where an applicant could demonstrate that he has a well-founded fear of persecution, even though he could not provide evidence that he actually would be subject to persecution. This ambiguity in current American law creates additional difficulties which must also be clarified and corrected.

INTERVIEWS WITH ASYLUM APPLICANTS

Our mission to Miami did not seek to gather information on the current political situation in Haiti. However, we did interview a number of Haitian asylum applicants regarding their personal experiences. (See appendix J for case summaries.) Based on these very brief interviews, we believe that there are a number of very strong claims for political asylum. Yet the attorneys working on these cases need time for adequate preparation of the individual applications, as well as for gathering general information, affidavits, and other material concerning the current situation in Haiti, such as the recent Amnesty International statements (see appendixes B & C). Without an opportunity to adequately prepare and present this information, the legal protections provided under the Immigration Act, and Regulations, as well as the United Nations Refugee Treaties, have little meaning.

CONCLUSION

In the past six months, the Immigration and Naturalization Service's Miami District office has taken a number of very serious actions that have substantially undermined the rights of Haitians seeking political asylum in the United States. These actions involve the application process for political asylum and the timing and procedures in both deportation and exclusion cases.

While we are not in a position to evaluate any of the individual claims for political asylum, we observed a number of instances in which present procedures fail to afford adequate due process protections to individual applicants. The following summary is based on our personal observations of hearings and interviews, as well as conversations with members of the Haitian community and their attorneys:

1) Haitian cases processed since July 1978 by the INS's District Office in Miami have been handled under special procedures that deny normal due process protections

2) The accelerated rate of deportation hearings, up to 150 per day makes it virtually impossible for attorneys to represent effectively their clients.

3) Attorneys have been given insufficient time to prepare asylum applications. The problem is complicated because a substantial number of the Haitians lack formal education, financial resources and working knowledge of English. At the very least, these factors make the preparation of asylum applications more difficult and more time consuming.

4) It is very difficult for attorneys even to be present with their clients at asylum interviews because they are conducted

concurrently with deportation hearings, on an expedited basis, in a building several blocks from the deportation hearing rooms.

5) Even when an attorney can be present, current interview procedures minimize his effectiveness. Lawyers have been denied the right to ask clarifying questions, to challenge the typed record of the proceedings, or otherwise to participate actively in the interviews.

6) The asylum interviews in these cases are neither recorded nor fully transcribed. Rather, a summary of each answer is typed out. This practice should be altered because the typed summaries often are inaccurate or incomplete.

7) There are also a number of problems that result from the use of certain Creole interpreters. Important details in applicants' answers are often omitted or insufficiently summarized by these interpreters.

8) There have been a number of isolated incidents where INS officials have criticized proper activities of attorneys representing the Haitians, thereby undermining their work and impeding their ability to provide effective representation.

9) For an extended period, attorneys were denied access to waiting rooms and thus were unable to advise the Haitians of their rights or receive help in preparing for hearings.

10) One attorney was threatened by INS personnel with potential disciplinary proceedings for soliciting, even though he was working on retainer for the National Council of Churches.

11) As a result of the accelerated handling of the Haitian cases, the asylum applications often are not completed properly. Therefore, they lack sufficient information for a determination to be made as to the applicants' refugee status.

12) Subsequent review of these applications by the State Department and United Nations High Commissioner for Refugees is not productive. The applicants' record as seen by these agencies bears little or no relationship to the validity of individual asylum claims.

13) There are unresolved conflicts between the legal standard of the Convention Relating to the Status of Refugees and the Immigration and Nationality Act. Resolution of such conflicts could have a significant impact on many of these cases.

14) While we did not seek thoroughly to review current conditions in Haiti, we believe that many of the people we interviewed in Miami have very strong claims for political asylum.