

Testimony of

# **Bishop Thomas G. Wenski**

October 1, 2002

I am Bishop Thomas G. Wenski, Auxiliary Bishop of Miami, Florida and chairman of the United States Conference of Catholic Bishops' (USCCB) Committee on Migration. Thank you for the opportunity to submit this testimony on the United States government's treatment of Haitian asylum-seekers, including a group of over 160 Haitian asylum-seekers who were brought into Florida by the United States Coast Guard in December 2001.

Mr. Chairman, I first would like to thank you for calling this hearing and for your leadership on asylum protection and other issues affecting immigrants and refugees. Indeed, Senator Kennedy, our country can trace the very establishment of our refugee protection laws to your vision and determination. Your leadership is sorely needed and welcomed at a time when the United States' commitment to protecting the persecuted too often inappropriately depends on national origin. Discriminatory policies based on national origin are all the more inappropriate when no legitimate national security concerns are involved, which is the case for the Haitian asylum-seekers who are the subject of this hearing.

I also want, Mr. Chairman, to acknowledge the presence of Senator Brownback on this Subcommittee and at this hearing. Senator Brownback was kind enough to take time out of his busy schedule to visit with the USCCB Committee on Migration several weeks ago. My brother bishops and I were most impressed, both with the dedication to protecting refugees and asylum-seekers that has been a hallmark of his tenure in Congress and by the passion that he brought to those issues, during his visit with us. We were particularly moved by his expression of concern about the manner in which the People's Republic of China treats North Korean asylum-seekers. We would point out to the Subcommittee the unfortunate parallels between the way China treats North Korean asylum-seekers and the manner in which the United States treats asylum-seekers from Haiti. USCCB looks forward to working with both of your offices to ensure that the human rights and dignity of all asylum-seekers are upheld.

## **I. Introduction**

Mr. Chairman, the United States Catholic bishops have long been committed to improving the plight of refugees and asylum-seekers. Indeed, we harken back to the plight of the Holy Family, including the infant Jesus, who fled into Egypt to escape the tyranny of King Herod. Jesus teaches us that in the face of the refugee and asylum-seeker we see the face of Christ. "For I was hungry and you gave me food, thirsty and you gave me drink, a stranger and you welcomed me?" (Matthew 25:35). In response to our Lord's call, the Catholic Church in the United States, through the work of Migration and Refugee Services of USCCB, the Catholic Legal Immigration Network, Inc. (CLINIC), our Catholic Charities agencies, and Catholic Relief Services, provides basic needs and resettlement assistance to refugees and asylum-seekers throughout the world.

Since 1986, MRS of USCCB has operated the Cuban/Haitian Primary/Secondary Program, providing processing and resettlement services to newly arriving Cuban and Haitian "entrants" who are resettled in and outside the State of Florida. Currently, most of those served by the program are Cubans. Approximately 43% of the incoming Cuban and Haitians served by MRS are reunited with relatives in South Florida. For the approximately 36% of those "entrants" who have no relatives in the United States, resettlement programs with established Cuban and Haitian communities outside of Florida have been set up to provide structured resettlement services in Austin, TX, Albuquerque, NM, Houston, TX, Lafayette, LA, Las Vegas, NV, Louisville, KY, Lansing, MI, Phoenix, AZ and Rochester, NY. Almost all Haitians released from INS detention are placed with relatives in South and Central Florida, Boston, Brooklyn, New York City and Newark, NJ.

The Catholic Church, through its various organizations, has years of experience in addressing the needs of Haitians needing asylum or resettlement. My oral testimony will focus on what my over twenty years personal experience informs me should be the fair treatment of Haitian asylum-seekers. My hope is that my oral and written testimony will make clear that it is in the interest of the United States to treat fairly all asylum-seekers, including Haitian asylum-seekers. Haitian refugees and immigrants have contributed and continue to contribute to our country because conditions there force them to flee for the United States. For example, during the seven-month administration in 1991 of the first democratically-elected president of Haiti, the number of Haitians fleeing by boat dropped to nearly zero. Conversely, the exodus dramatically rose during the military coup which ousted him. Interdiction and detention will not deter desperate people from fleeing Haiti and thus must be reformed as only properly addressing the root causes of flight will stop further outflows.

## II. Summary of Recommendations

The United States Catholic bishops are deeply concerned about the latest manifestation of a United States policy of limiting Haitian asylum-seekers' access to its asylum procedures. This policy, established in December 2001 and applied mostly to asylum-seekers fleeing Haiti by boat, consisted of bringing Haitians to Florida where their asylum applications were put on a fast-track for decision-making and detaining them in INS facilities and county jails, resulting in inadequate access to counsel and asylum procedures. In short, individuals who may have been found to meet the United States and international law definition of a refugee were denied asylum and returned to where they feared persecution because the normal procedures applicable to asylum-seekers were not applied to them.

It has been reported that some Haitian asylum-seekers who have encountered the United States Coast Guard on the high seas since December 2001 have been taken to the naval base at Guantanamo Bay, Cuba where individuals suspected of terrorism are also being held. These Haitian asylum-seekers are not suspected of terrorism, but are being detained on the same naval base as suspected terrorists because the United States government wants to deter other Haitians from fleeing persecution in Haiti.

Unfortunately, the United States policy of limiting Haitian asylum-seekers' access to its asylum procedures has a decades-long history. This hearing cannot begin to address the plight of the current population of Haitian asylum-seeker detainees who are mostly in Florida without

addressing the problematic aspects of this history and how that history reverberates to this day. The policy has included interdiction or preventing Haitian asylum-seekers from entering the United States to make an asylum claim by forcibly returning them to Haiti; detention in INS facilities and jails with United States citizens who have committed crimes; and inadequate assessment of claims without considering credible reports from a variety of sources on country conditions in Haiti. This testimony will highlight our concerns and offer our recommendations regarding the United States policy of interdicting and detaining Haitian asylum-seekers.

In summary, we recommend the following:

1. Reform of the current interdiction policy, allowing for:
  - a. Haitian asylum-seekers' access to legal counsel, non-governmental organizations (NGOs) and an Immigration Judge;
  - b. provisions for rest and food before presenting a claim;
  - c. space for privacy when developing and presenting a claim; and
  - d. arrangements for identifying and assisting unaccompanied minors and other vulnerable groups.
2. Reform of the current detention policy for asylum-seekers, particularly the Haitian asylum-seekers picked up by the United States Coast Guard in December 2001, allowing for:
  - a. exceptional detention of asylum-seekers for limited purposes and in facilities that at least meet the Immigration and Naturalization Service's (INS) own detention standards;
  - b. the systematic release of asylum-seekers found to have a credible fear of persecution; and
  - c. the development of alternatives to detention, especially for unaccompanied children, women, families and sufferers of post-traumatic stress disorder.

### III. Overview of Concerns and Recommendations

#### 1. The United States Interdiction Policy

Mr. Chairman, the United States Catholic bishops believe that our nation's asylum system should afford those who request asylum an opportunity for more direct access to trained Asylum Officers, Immigration Judges, the Board of Immigration Appeals (BIA) and the federal courts. In our 1995 statement, *One Family Under God*, the United States Catholic bishops outline a position in this regard. "Political asylum must remain a real option. Appropriate due process protections, a user-friendly system, and access to legal representation are important variables in maintaining a healthy system."

#### Past Interdiction Policies

The United States Catholic bishops find that various manifestations of the United States policy of interdicting Haitian asylum-seekers arriving by boat should be abandoned as they do not reflect an asylum policy which respects basic human rights and international law. The United States interdiction program has taken many forms in the past two decades and for some periods has been very effective in preventing Haitians from applying for asylum. For example, United States government statistics show that between 1981 and 1991, over 22,000 Haitians were interdicted at sea and only 28 of them were allowed into the United States to apply for asylum. Under the

Reagan Administration, the interdiction program was targeted only at vessels carrying Haitians and there was minimal screening on board Coast Guard vessels to identify potential refugees. The screening, usually taking place without legal counsel and under challenging physical conditions, would usually result in the return to Haiti of those interdicted. During the Bush administration, the screening process ended and all Haitians were returned to Haiti and in-country processing centers were established for consideration of their refugee claims. United States policy changed once again under the Clinton Administration, resulting in the establishment of camps on Guantanamo, where the refugee claims of those interdicted would be considered. We note that while most of the Haitians in Guantanamo at the time were eventually repatriated to Haiti, some were paroled and benefited from the Haitian Refugee Immigration Fairness Act, passed by Congress in October 1998. The law provides that certain Haitian asylum-seekers who had arrived in the United States before December 31, 1995 can apply for legal permanent resident status.

### Current Interdiction Policy

United States interdiction activities now encompass the gamut of foreign nationals seeking entry to the United States. A fundamental concern with regard to these procedures is their adequacy with regard to refugee protection and their consistency as applied to different nationalities. INS asserts that any interdicted person of any nationality who indicates a need for protection will have that need evaluated consistent with international standards. It appears, however, that Cuban and Chinese nationals generally receive more, and better defined, asylum processing than other nationals. Note, however, that better access to asylum for some Chinese does not necessarily mean that they are categorically released from detention. The exact screening procedures applied to other nationalities, including Haitians, are unclear, but appear to be minimal or non-existent.

In addition to concerns about the quality and consistency of refugee screening among different nationalities, we have concerns about the differences between the standards that apply at sea and those that apply on United States land. While Chinese nationals may receive more asylum processing than other nationalities, some have argued that the "credible fear" standard that is applied to those interdicted at sea is stricter than that applied to those who reach land. For Cuban asylum-seekers, the United States applies the "wet-foot/dry-foot" policy. Under this policy, Cubans interdicted at sea who can demonstrate a credible fear of persecution are taken to Guantanamo for a refugee status determination. If recognized as refugees, they are resettled to a third country, but not to the United States. If the Cubans are interdicted in Bahamian or Dominican waters, they are taken to those countries and their cases are not considered by the United States authorities. Cubans who make it to United States soil, however, are "paroled" into the United States and are essentially eligible to adjust their status to lawful permanent resident after one year.

### Regional Significance

Our concerns regarding interdiction, which is one response of the United States to the irregular movement of migrants and asylum-seekers, is best understood when considered in the broader context of our region's concern with responding effectively to traffickers and smugglers. We are concerned that the efforts of the United States and other governments in the Western Hemisphere

to respond aggressively to individuals who resort to desperate measures to leave desperate situations will result in asylum-seekers continuing to face persecution. Thus, we urge that the enforcement of migration law and policy at frontiers, within territorial borders or on the high seas be humane and not act as a deterrent to asylum-seekers or preclude access to the asylum process.

## 2. Detention of Asylum-Seekers

United States law provides for mandatory detention of individuals arriving with false or no documents and awaiting determinations of whether they have a credible fear of persecution. As a consequence of this and other mandatory detention laws enacted in 1996, the INS's need for detention space increased dramatically, forcing it to use jails where criminals are detained to detain asylum-seekers when INS facilities are not available. Some asylum-seekers have shared the same cell with individuals serving time for violent crimes. We believe that this mandatory detention policy should be reformed.

Detention has become a poor substitute for a policy of effective removal. Under United States law, the INS may release detained individuals found to have a credible fear of persecution. In practice, release policies vary from one INS district to another, resulting in individuals found to have a credible fear of persecution remaining in detention for months or years while their asylum applications are pending.

### The Continued Detention of Haitian Asylum Seekers Based on their National Origin

Access to adequate legal representation for Haitians is severely hampered by the INS's discriminatory detention policy toward Haitian asylum-seekers. Whereas most asylum-seekers from other parts of the world are released from detention in the Miami, FL area after passing a credible fear interview, Haitians continue to be detained, sometimes even after having won asylum.

The new detention policy was instituted in December 2001 immediately after a wooden sailboat carrying over 160 Haitian asylum-seekers ran aground in Biscayne National Park near Miami. Since that time the INS in Miami has released 91 percent of asylum-seekers from other countries, while most Haitian asylum-seekers remain detained.

While the INS initially denied it had a policy of discriminating against Haitians, it admitted on March 19, 2002 that it has a policy of detaining Haitian asylum-seekers in order to deter Haitians from coming to the United States. This is an alarming policy both because it discriminates on the basis of national origin and because it is a misuse of administrative detention. The sole purpose of INS detention, which is civil, non criminal detention, is to facilitate the hearing and removal process, ensuring that individuals appear for their hearings and can be removed when necessary. Administrative detention used as a deterrence mechanism places a criminal justice sanction on a process that does not have the accompanying procedural protections. Moreover, people seeking asylum and fleeing persecution should never be sent the message of deterrence through detention.

At this time, most of the Haitian asylum-seekers who have arrived since December 2001 continue to languish in detention or have already been deported to Haiti - often without a meaningful hearing due to their claims being put on a fast-track for decision-making and their inability to access adequate legal representation while in detention. Those who remain in detention often face depression and feelings of hopelessness. They are separated from family and friends and often do not believe that they will have access to a fair hearing. It is of paramount importance that they have the opportunity to make their asylum claims fully and reliably with the assistance of legal counsel.

While asylum-seekers remain in detention, they face serious obstacles to securing legal counsel and communicating with an attorney once one has been found. The phones to which detainees have access are prohibitively expensive for most of the Haitian asylum-seekers, who have few or no resources. A phone card worth \$20 to \$25 will pay for 10 minutes worth of phone calls from a detention center. Even those who are fortunate enough to have a family member who can send them such a card must use it very judiciously. For most, phone calls to Haiti, necessary to secure documentation of their asylum claims, are out of the question because of the expense of making such calls from detention centers.

When their clients are in detention, attorneys are undermined in their attempts to fully develop their clients' claims in a variety of ways. Attorneys representing Haitians have had difficulty gaining access to their clients in detention and often have no privacy in discussing their clients' claims with them. Detainees are sometimes moved to other detention centers far from their attorneys. Expert witnesses needed to help develop a case are sometimes prevented from accompanying the attorney into the detention center. A detention attorney with the Catholic Legal Immigration Network, Inc. (CLINIC) faced severe opposition from the INS when he tried to bring a mental health expert into the detention facility to interview his client who had been gang raped by Haitian security forces. While the request was finally granted, after repeated denials, the INS's uncooperative approach caused an unnecessary delay in developing the case.

For all of these reasons, we urge the INS to end its discriminatory treatment of Haitians and to apply the same policy to all asylum-seekers regardless of nationality. The INS should parole any asylum-seeker who is not a flight risk or a danger to the community to family members or local NGOs during the pendency of immigration proceedings.

### Alternatives to Detention

While the human toll exacted by the INS policy toward Haitian asylum-seekers is immeasurable, the financial toll is not. In response to a request from INS, the Vera Institute of Justice conducted an evaluation of supervised release programs for persons who would otherwise be detained by the INS. The study concluded that supervision costs only \$12 per day, as compared to the \$61 cost per day for INS detention. According to the evaluation report of the pilot project, it costs the INS \$3,300 to provide supervised release to each asylum-seeker compared to \$7,300 to detain an asylum-seeker.

In addition to its other flaws, the INS policy toward Haitian asylum-seekers is not cost-effective, including because INS in Miami has not responded to members of the community who have offered to provide housing and other assistance to the Haitian asylum-seekers. We recommend that, consistent with our broader position regarding the release from detention of asylum-seekers

and our support for alternatives to detention, INS release the asylum-seekers to organizations and members of the community, allowing for access to counsel and a fair asylum hearing.

The provisions on alternatives to detention of asylum-seekers in the "Homeland Security Act of 2002," H.R. 5005, currently being considered by the Senate provide for the release of certain asylum-seekers from detention, access to legal and social services and improved conditions for detained or otherwise supervised asylum-seekers. If enacted, these provisions would greatly reform the United States' current detention policy for asylum-seekers.

#### The Needs of Special Populations

The detention policy applied to asylum-seekers should take into account the special needs of certain asylum-seekers, including families, unaccompanied children, pregnant women, victims of sexual violence, and sufferers of post-traumatic stress disorder. As with the Haitian asylum-seeker population with whom this hearing is concerned, it has been shown that detention has a profound and disturbing effect on particularly traumatized asylum-seekers or those with special needs. Detention facilities can rarely meet these populations' special needs, including psycho-social counseling and prenatal care. While it is a challenge for any asylum-seeker to access special services during the pendency of a claim, detention often greatly exacerbates the effects of persecution and should be avoided whenever possible.

#### INS Detention Standards

Finally, in response to the rising immigration detainee population and in consultation with refugee experts, the INS developed detention standards that cover the range of issues related to detention conditions, including access to counsel and medical care. These standards are intended to apply to both INS and non-INS detention facilities that house detainees for more than 72 hours, but, as in the case of the Haitian asylum-seekers, facilities too often do not even meet INS standards. We ask Congress to urge the INS to place these standards in regulation. At a minimum, it is important that Congress monitor the implementation of the standards, which INS has stated will take place in two phases over a 24-month period. INS had previously reported that implementation of these standards was scheduled to be completed by December 31, 2002. We do not know the current schedule for the implementation of the detention standards, but such implementation should be monitored by the United States government, UNHCR and non-governmental groups. If these standards had been in place at the facilities where the Haitian asylum-seekers were being detained such issues as access to counsel, psycho-social counseling and medical care could have been addressed and prevented such high rates of depression and denials of asylum.

Generally, then, asylum-seekers should not be detained and, if necessary, only for the briefest possible period for the limited purposes of, for example, establishing identity or to establish the very basic elements of the asylum claim. If an asylum-seeker is detained in a detention facility, we recommend that every effort be made not to detain that asylum-seeker in the same facility and certainly not the same cell as criminal offenders. Law enforcement procedures at a jail which may be appropriate for individuals serving criminal sentences undermine the rights of asylum-seekers. If an asylum-seeker must be exceptionally detained, the asylum-seeker must be in a facility that at a minimum meets INS detention standards.

#### IV. Conclusion

In conclusion, Mr. Chairman, we support a policy which allows Haitian asylum-seekers to have access to appropriate due process protections and to not be unnecessarily detained. In summary, we recommend the following:

1. Reform of the current interdiction policy, allowing for:
  - a. Haitian asylum-seekers' access to legal counsel, NGOs and an Immigration Judge;
  - b. provisions for rest and food before presenting a claim;
  - c. space for privacy when developing and presenting a claim; and
  - d. arrangements for identifying and assisting unaccompanied minors and other vulnerable groups.
2. Reform of the current detention policy for asylum-seekers, particularly the Haitian asylum-seekers picked up by the United States Coast Guard in December 2001, allowing for:
  - a. exceptional detention of asylum-seekers for limited purposes and in facilities that at least meet the INS's own detention standards;
  - b. the systematic release of asylum-seekers found to have a credible fear of persecution; and
  - c. the development of alternatives to detention, especially for unaccompanied children, women, families and sufferers of post-traumatic stress disorder.

Again, Mr. Chairman, we urge that the enforcement of migration law and policy at the frontiers, within territorial borders or on the high seas be humane and not act as a deterrent to asylum-seekers or preclude access to the asylum process. We know that you and your colleagues are sensitive to these important issues and will give them due attention. Thank you for your consideration of our views.