

Testimony of  
**Ms. Cheryl Little**

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My name is Cheryl Little. I am the Executive Director of the Florida Immigrant Advocacy Center (FIAC), a non-profit agency that provides free legal assistance to detained as well as non-detained immigrants including many Haitian asylum seekers. Thank you, Mr. Chairman, for the opportunity to address this Committee regarding our concerns about the treatment of Haitian asylum seekers. Permit me to thank both you Senator Brownback and the other members of the Subcommittee as well for your leadership in defending immigrants' basic rights'.

My testimony is also supported by the Women's Commission for Refugee Women and Children, which recently conducted an assessment of the treatment of Haitian asylum seekers in the United States and the Dominican Republic. I participated in that delegation at the invitation of the Women's Commission.

#### I. Overview

On December 3, 2001, a boatload of 187 Haitians ran aground off the Miami coast. Twenty of the Haitians jumped overboard, 18 of them swimming to shore. Two reportedly drowned. The remaining 167 Haitians were rescued by the US Coast Guard and placed in INS custody. Pursuant to immigration laws passed in 1996, they were placed in the expedited removal process and interviewed individually by INS Asylum Officers while in detention in Miami. The Asylum Officers determined that all but two of the Haitians had a "credible fear" of persecution upon return to their home country, which means that they had a substantial likelihood of proving their eligibility for asylum.

After passing their credible fear interviews, asylum seekers are eligible for release from detention pending final adjudication of their asylum claims. Indeed, following their interviews, many of the Haitians were told by Asylum Officers that they would be quickly released, as virtually all Haitian asylum seekers in the Miami District had been prior to December 3 and as most similarly situated asylum seekers of other nationalities and races are today.

INS adopted a policy of detaining Haitians, and only Haitians, in mid-December of last year. INS Headquarters issued a directive to Miami INS not to release any Haitian asylum seekers in expedited removal without explicit INS approval. INS later claimed this was done because they feared a mass migration and sought to deter Haitian boat persons from making the dangerous voyage. However, the initial detention directive expressly included all Haitians, regardless of whether they arrived by air or by boat. By including airport arrivals, INS showed that its policy was not to protect Haitians on the high seas from loss of life - because those arriving by plane arrive safely. Instead, it revealed a deeper discriminatory purpose.

The INS has also claimed that it considered Haitians more of a flight risk than other nationalities because the Haitians had demonstrated their desperation by leaving Haiti by boat. While this "desperation" may shed light on the reason the Haitians seek asylum, it neither explains nor justifies a policy of discriminatory treatment.

Haitians released in the past, pending final decisions on their asylum cases, have not absconded. For example, Sr. Jeanne O'Laughlin, President of Barry University, helped sponsor over 300 Haitians following their release from detention in 1982. All but a handful appeared for their hearings. Sister Jeanne's offer to help sponsor all of the female Haitian asylum seekers currently detained has not been accepted by INS. Moreover, the very nature of asylum is such that all those genuinely seeking this protection are truly desperate.

On March 15, 2002, FIAC, along with pro-bono attorneys, filed a class action lawsuit in federal court on behalf of detained Haitian asylum seekers in South Florida who had passed their credible fear interviews. The lawsuit challenges the government's policy of discriminating against Haitian asylum seekers by detaining them on account of their nationality and/or race. Although the Court made the important finding that the INS detention policy differentiated between Haitians and non-Haitians, on May 17, 2002 the case was dismissed without a hearing, even though the facts of the case were in dispute. It was dismissed on the basis that the INS has virtually unfettered statutory and constitutional authority to discriminate and that it is up to politicians in Washington, not the courts, to determine the Haitians' fate. In her ruling, the judge wrote, "Petitioners' cry for freedom needs to be directed to those representatives of the political branches responsible for enacting immigration laws and policies." An appeal is currently pending with the Court of Appeals for the Eleventh Circuit.

INS has not provided any valid, nondiscriminatory justification for its Haitian policy. The INS stated that it adopted the policy in order to save Haitian lives and to prevent a mass migration from Haiti. Yet the only evidence INS has put forth to support its claim of a mass migration are Coast Guard statistics which show that 350 Haitians were interdicted in November, 2001, compared to a total of 96 in the preceding three months. However, Coast Guard statistics also show that they were routinely interdicting more than 350 Haitians a month at various times during the last five years (for example, 395 in January 2000, 477 in October 1998, 428 in September 1998, and 421 in November 1997). Each of these monthly interdictions represented substantial increases over total interdictions from the preceding three months, yet no mass migration occurred following any of these months of increased interdictions. The INS has provided no explanation as to why the 350 interdictions in November 2001 are proof of a threatened mass migration while the higher interdiction numbers in other months were not.

The overall number of Haitian interdictions in 2001 simply do not indicate a mass migration nor do Coast Guard interdiction statistics for 2002. In fact, statistics show quite the opposite. There were fewer interdictions in the first half of 2002 than there were in the first half of 2001. The drop in numbers in the first half of 2002, although relatively minor, cannot be attributed to the Haitian detention policy because the INS denied it had such a policy. Indeed, no Haitians were interdicted in January or February of 2002, even though this was during the period of time when INS's detention policy was still a secret. From early December 2001 until March 2002, INS officials gave false and misleading information to the advocacy community in an apparent

attempt to cover-up their policy of detaining Haitians. The policy only became public in March, 2002. A secret policy clearly could have no deterrent effect in Haiti when no one knew about it here or in Haiti. Moreover, 628 Haitians were interdicted between March and July, the months immediately after the INS's detention policy became public.

Most importantly, INS' claim that absent the current Haitian detention policy we are likely to see a Haitian exodus rivaling the Mariel Boatlift or the number of Haitians and Cubans who were detained in Guantanamo in the mid-90's is absurd. Only 1,956 Haitians were interdicted at sea by the Coast Guard in 2001. This number is significantly smaller than the Mariel Boatlift in the spring of 1980, during which 125,000 Cubans arrived in the United States, as well as the relatively large flow of refugees in 1994 consisting of 25,069 Haitians and 37,191 Cubans.

Haitians who flee by boat know full well the risks they undertake when they take to the high seas in flimsy boats. The vast majority are interdicted by the US Coast Guard and forcibly returned. Others, even less fortunate, lose their lives at sea. History proves that Haitians who are desperate to flee political violence in their country will not be deterred from coming to the United States by threat of detention.

Based on a recent assessment by the Women's Commission for Refugee Women and Children, in which I participated, we are also concerned that countries in the Caribbean region, including the Dominican Republic and the Bahamas, are closing their doors to Haitian refugees. The Haitians are subject to detention, harassment by local authorities and forced return.

Haitians in fear of their lives have nowhere to go for protection. They are not welcomed in the United States, and as mentioned above, they are not welcome in the Caribbean. Further, there is no in-country refugee processing in Haiti and no systemic effort to assess whether interdicted Haitians have viable asylum claims or reasons to fear return.

#### Lack of Attorney Access

Asylum applicants in the Miami District generally are released after passing their credible fear interviews and then have about a year to find lawyers and prepare their cases. The Haitians, by contrast, faced expedited hearings because they are in detention. Additional immigration judges were detailed from their downtown Miami courtrooms to Krome Service Processing Center (Krome) to hear the Haitian cases. Many hearings were scheduled for only one hour -- and some for only a half hour -- including time for translation, whereas non-Haitian cases are routinely set for three hour hearings. Judges held up to five merits hearings a day and some have said they could not grant continuances of more than four (4) weeks in the Haitian cases. No such restriction applies to non-Haitian cases.

The Haitians have had precious little time to attempt to find lawyers and prepare their cases. Despite efforts by Steven Lang, Coordinator of the Pro Bono Program of the Executive Office of Immigration Review (EOIR), to secure attorneys to assist the Haitians, very few have done so. For example, Mary Kramer, President of the South Florida Chapter of the American Immigration Lawyers Association (AILA), expressed concern that the Haitian detention policy was discriminatory and she was therefore reluctant to participate in any effort that would somehow lend it credence. She also pointed out that AILA's pro-bono resources were already stretched thin.

Most of the Haitians are therefore without attorneys and have no idea how to effectively present their case. Many Haitians have already been ordered removed by immigration judges, often times because they couldn't complete their asylum applications, which are in English and which call for detailed answers in English. Asylum applications submitted by the Haitians frequently consist of only one or two sentences. Detention officers with no training in asylum law -- likely well-intentioned -- have attempted to help some of the Haitians with their applications. In January alone, FIAC received 162 requests for help from the Haitians. FIAC has attempted to assist dozens of Haitians in filing appeals with the Board of Immigration Appeals (BIA), most of whom went before the immigration judge without legal representation. The BIA is now streamlining decisions, and a number of the Haitian asylum seekers have received one or two sentence denials of their appeals, summarily affirming the decisions of the immigration judges without explanation. FIAC even received a BIA denial for a Haitian client whose appeal brief was not yet due.

On April 15, 2002, the United Nations High Commission for Refugees (UNHCR) issued an Advisory Opinion, concluding not only that the policy of using detention in order to deter future refugees flows-- as is being done with the Haitians-- violates basic principals of international law, but that detaining asylum seekers of a particular nationality while releasing asylum seekers of other nationalities is in violation of international norms of refugee law.

Both the UNHCR and the Lawyers Committee for Human Rights (LCHR) have emphasized that detention severely hinders an asylum seeker's ability to access legal services and effectively present an asylum claim. Indeed, a study conducted by Georgetown University's Institute for the Study of International Migration indicated that asylum seekers in detention are more than twice as likely as those who aren't detained to be without legal representation and that persons with attorneys are four to six times more likely to be granted asylum. It is therefore ironic that at a time when FIAC and other pro-bono attorneys need better access than ever in order to assist the Haitian detainees, attorney access has become even more restrictive.

Attorneys in South Florida attempting to help the Haitians face innumerable obstacles, including waiting hours just to meet with clients, and a serious lack of adequate visitation space. For example, headcounts at Krome have often lasted all morning and sometimes into the afternoon, during which there is no attorney access at all. Lengthy delays once headcounts are over also occur because escorts are not available to bring the detainees to meet with their attorneys. FIAC and Catholic Legal Immigration Network, Inc. (CLINIC) share one small attorney booth at Krome, which is clearly inadequate given the large number of Krome detainees in need of pro bono help. Additional space that has sometimes been provided FIAC and CLINIC attorneys is even more problematic, as Krome Officers and other detainees regularly walk through the area or sit within earshot of the attorney interviews.

In February, 2002, INS officials even restricted weekend and holiday visitation hours at Krome to between 7:00-11:00 a.m. Previously, attorneys could meet with their clients almost anytime on weekends. The new policy has prevented many attorneys who wish to provide pro bono help to the Haitians from doing so.

At the Turner Guilford Knight Correctional Center (TGK), where most of the Haitian women were held until late August 2002, unreasonable delays just in getting permission to enter the

facility were a frequent problem. At best, FIAC staff typically wait up to an hour just for an escort to take them to the women's unit. Frequent policy changes without prior notice regarding identification required to enter TGK also cause considerable delays.

While all female asylum seekers at TGK, including the Haitians, were recently moved to the Broward County Work Release Center (Broward Center), FIAC staff have experienced unreasonable delays in meeting with clients there and even have been denied access to them by INS officials. INS has also made it much more difficult for FIAC to conduct Know Your Rights presentations for the women at the Broward Center. These presentations are being subject to far harsher requirements than the same presentations at TGK and Krome.

The problems facing FIAC staff in gaining access to their Haitian clients are exacerbated by the fact that they are being held in four different facilities: Krome, Broward Center, a local Miami Hotel, and a detention facility in Berks County, Pennsylvania, each far removed from the other. The Broward Center in Pompano, Florida, is 73 miles roundtrip north of FIAC's Miami office and Krome is 44 miles roundtrip to the south. The Pennsylvania facility is over 1200 miles away.

The Haitians are extremely depressed and demoralized, not only because of the conditions of their confinement but because they see asylum seekers from other countries being quickly released. This is adversely affecting their ability to articulate their asylum claims. Many Haitians say they feel they're being pressured to abandon their asylum claims and a number of them have done so recently. The Haitians have engaged in a number of hunger strikes in order to call attention to their plight.

### III Conditions of Detention

Conditions at facilities housing the Haitians have largely been deplorable. For example, Krome -- which houses the male detainees -- has been terribly overcrowded. In May 2002, for example the population at Krome, was over 800 even though INS officials have said the maximum capacity should be 538. The overcrowding presents a serious health and safety hazard and adversely affects virtually all aspects of detainees' lives, including meaningful access to attorneys and to medical care. While the Krome population has decreased recently, advocates in New York and New Jersey report that 20 to 30 asylum seekers are being transferred from Miami every week to detention facilities in the Northeast.

Conditions of detention for the women have been even harsher. In mid-December, 2000 all of the women housed at Krome, an "open" INS Service Processing Center housing no one serving a criminal sentence, were moved to TGK, a maximum-security county jail in Miami, Florida housing inmates who have been arrested or are already serving sentences. Most of the women transferred were asylum seekers. They were moved following allegations by female detainees at Krome of sexual abuse by guards there, including sexual molestation, harassment, and even rape. These allegations began to publically surface in late May, 2000 and an investigation was initiated by the Office of Public Integrity, the Office of Inspector General, the FBI and the U.S. Attorney's Office. It is uncertain, however, whether this investigation will prove fruitful since some of the victims and witnesses of the abuse have been deported while a number of the officers implicated in the abuse remain at Krome.

In March, 2001 Amnesty International claimed that the women's move from Krome to TGK effectively resulted in "punishing" them for the U.S. government's failure to protect them and they called on INS to take immediate steps to ensure their safety and well-being. Amnesty reported that the women at TGK were suffering especially harsh treatment, including verbal abuse and insults by guards; frequent cell "lockdowns" for hours at a time; and inadequate provision of food, medical care and exercise facilities.

The Women's Commission for Refugee Women and Children (Women's Commission) twice assessed conditions at TGK and found it to be totally inadequate for the housing of asylum seekers, who typically represent the majority of women detainees in the custody of the Miami District. They also found that the women were living in deplorable conditions and that incarcerating them at TGK seriously interfered with their access to legal assistance and thus jeopardized their ability to successfully pursue their asylum claims. The Women's Commission concluded that the women in INS custody "have paid the price for inflicted abuses by INS officers and other officials at the Krome Service Processing Center."

FIAC issued its own report about conditions at TKG in December, 2002 and a supplemental report in April, 2002. The reports focus on the dehumanizing nature of the women's detention, including invasive strip searches and the lack of translation services which routinely led to some officers misunderstanding, berating, and humiliating them. The reports also focus on INS' failure to comply with its own detention standards, which were supposed to be fully implemented at TKG on March 1, 2001.

Ironically, the women reported incidents of sexual harassment and molestation by male trustees in TGK shortly after their transfer from Krome, again calling into question the safety of the women and the INS' failure to pursue a solution that recognizes the unique needs of women detainees and offer them the protection they deserve.

On March 26, 2002, Miami-Dade County Commissioners recognized that TGK was "not designed to meet the detention needs of immigration detainees" and that conditions at TGK are more severe than those imposed upon male detainees held at the Krome Service Processing Center. The County Commission passed a resolution directing the County Manager to work with INS to investigate alternative sites within Miami-Dade County for the female detainees and to submit a report regarding such alternatives within 45 days of the resolution. On August 26, 2002, INS began moving female asylum seekers at TGK to the Broward Center, a Wackenhut-run facility. While this is a far more appropriate setting for the women and the Broward Center's staff have been extremely cooperative and helpful, FIAC is concerned that in 1999 a number of women there complained they were being sexually abused and harassed. Additionally, Wackenhut-run facilities have been subject to a great deal of criticism and have even been sued by the Department of Justice (DOJ). FIAC is hopeful that conditions at the Broward facility will remain adequate and we plan to monitor the situation to ensure the women there are safe and provided appropriate services.

Women are also detained at the local Comfort Suites Hotel ("Hotel") in Miami when there is no space for them elsewhere and where families with minor children are often housed. While it would seem that detainees would be far better off in the Hotel, those confined there are in effect

in a gilded cage. INS guards monitor the hallways outside their rooms and conditions at the Hotel are particularly troubling.

Attorney visitation is not accommodated at all at the Hotel itself. FIAC must request detainees from the Hotel be brought to Krome for attorney visitation at least 24 hours in advance. The policy for making such a request has changed numerous times over the past several months, with attorneys and advocates periodically given new fax numbers or contact persons to ensure their request is received and carried out. Even given prior notice, detainees are often not brought on time, they sometimes miss meals in order to meet with their attorneys, and they often spend hours waiting in processing to be transported back to the hotel after legal visits.

Detainees' families also have no access to the Hotel and must meet with their loved ones at Krome. Although many women have requested contact visits with family, they claim they are not brought to Krome, as requested. Indeed, one Haitian woman reported that her parents had traveled to Krome from their home in West Palm Beach, FL on four occasions and she was never brought to Krome to visit with them.

Detainees at the Hotel, including children, have absolutely no access to recreational activities, or even fresh air, as they are confined to their rooms the entire day. Detainees also have no access to educational activities. Some women say they have gone weeks without a change in uniform and many have not even been given a change of underwear.

In March, 2002 FIAC staff accompanying Congressman Conyers on a tour of the Hotel observed a family of five in one room, which included a seventy-nine year old Haitian woman and a nineteen month old baby. Frequently those in the same room are not related. Although we've been told by INS officials that the Hotel is for temporary detention only, a number of detainees have been held at the Hotel for months.

On April 29, 2002, FIAC learned that there were 113 INS detainees at the Hotel. Although FIAC was aware that the INS detainee population at the Hotel had steadily increased since implementation of the Haitian detention policy, the detainee population there on April 29 was almost double the number in March 2002. Most of the detainees at that time were single female asylum seekers, over half of whom were Haitian. While the number of detainees at the hotel has decreased recently, it is in large part because INS has been transferring large numbers of detainees to New Jersey and Pennsylvania, as previously mentioned. .

On March 9, 2002, Congressman John Conyers visited the Haitians at Krome, TGK, and the hotel and found "serious deficiencies" in all three facilities.

Most of the Haitians who arrived on the December 3 boat remain in INS detention. On September 25, 2002, there were approximately 107 such Haitians in Miami, including about 25 women at the Broward Center and about 80 men at Krome. Another approximately 33 Haitian asylum seekers who arrived by plane were in detention in Miami on September 25th. Five of the December 3rd boat persons are in Berks, Pennsylvania.

IV Forcible Separation of Families

A number of Haitian families have been forcibly separated by INS. I focus the Committee's attention on just one of those cases, the case of Ernst Moise and his family, as representative of the indignities suffered by Haitian asylum seekers in their quest for justice and safety.

Mr. Moise, along with his two children, his common law wife and her two adult children from a prior relationship, fled Haiti by boat, arriving off the coast of Florida on December 3, 2001. They made a drastic decision to face the uncertainties of the voyage at sea and life in a new land because of the certainties of their circumstance - escalating violence perpetrated by an increasingly oppressive regime which they had openly and vocally opposed. They joined a band of others from their local community, all similarly targeted by the Aristide regime, on a week-long boat trip.

On December 5, 2001, INS interviewed Mr. Moise and set him for a "credible fear" interview, a procedure by which the US government ensures that it does not deport individuals who may face persecution at home. On December 6, 2001, INS conducted that interview, and based upon the facts Mr. Moise provided to the officer, INS found that he and all the family members traveling with him faced a credible fear of persecution upon return to Haiti. Had Mr. Moise not been Haitian, he and his family would then have been paroled from INS custody and allowed to pursue their claim for political asylum free from detention. As a parolee, he would have been entitled to work in the USA and support his family pending that claim.

Because of INS policy which targeted Haitian asylum seekers for continued detention, Mr. Moise faced an accelerated hearing date without representation from an attorney. Within six weeks of his arrival, the Immigration Judge forced him to submit an asylum application and scheduled him for a full hearing on the merits of his asylum claim. Mr. Moise does not speak English. His is not even fully literate in his native Creole. A "friend" helped him fill the asylum application which consisted of four brief sections of prose text: "Because of insecurity, I am afraid for my life;" "Because of insecurity of my country I am coming here for safety;" "Applicant was threatened by supporters of Lavalas which led him to leave the country and seek asylum in the United State;" and, ominously, "They can kill me."

In the meantime, INS split the family, detaining them in three separate places. Initially, INS placed the father and the two teenage sons in a secured hotel room, while placing the mother in a separate hotel room at the same facility before moving her to the Turner Guilford Knight Jail (TGK). The adult daughter and the adult son were placed respectively in TGK and Krome.

In response to FIAC's efforts to obtain pro-bono help for the Haitians, Catholic Charities Legal Services (CCLS) sent four lawyers to Krome in order to assist individuals in preparing asylum applications. CCLS interviewed Mr. Moise and his family on the holiday weekend of Saturday, February 16. They agreed to take the case, only to discover that Mr. Moise had been scheduled for a full hearing the next Tuesday. With only three days to prepare for a lengthy and legally complex hearing, CCLS attorney Randy McGroarty personally explained to Mr. Moise that he might have to ask for more time from the Immigration Judge. At this news, Mr. Moise began to quietly cry. As much as he feared for his life in Haiti, the seemingly unattainable promise of freedom in the U.S. and the prospect of continued detention here had taken a tremendous psychological toll.



The Immigration Judge fortunately granted a brief 3-day continuance to allow for adequate preparation. While the office worked hard in preparing a more thorough asylum application, fully detailing the political difficulties of Mr. Moise, the clear, honest and humble voice of the Haitian fisherman, testifying on his own behalf, helped convince the Immigration Judge that he had a well-founded fear of future persecution upon return to Haiti and resulted in the Judge's granting him and his two sons political asylum.

Even after an immigration officer had found that he had a credible fear of persecution, even after an Immigration Judge determined that he deserved political asylum, INS continued to detain Mr. Moise and his family. The INS trial attorney reserved the right to appeal the case before the BIA, which precluded release pending that appeal. McGrorty strongly believes that had Mr. Moise not been Haitian, INS would not have reserved the right to appeal and he would have been released immediately.

Mr. Moise was therefore forced to return to the locked hotel with his two sons. The teenage boys had no access to schooling, recreation, or their mother who was still detained at TGK.

Not until Representative Conyers toured the Miami detention facilities and met with the Moise family, and not until FIAC filed a lawsuit did INS finally make the decision that they would not, after all, appeal the case. INS therefore had to release Mr. Moise and his two sons.

However, because Mr. Moise and the boys' mother were never legally married, she could not benefit from his asylum status. While the law of asylum allows children to benefit from their parents' asylum status, the reverse is not true. Parents cannot benefit from their children's status. Because Mr. Moise and the boys' mother were not legally married another Immigration Judge heard her claim and that of her two adult children. He denied that case, refusing to take into account the asylum status of her children. The mother and her daughter are currently detained at the Broward Center.

Mr. Moise and his sons have overcome political oppression in Haiti, the vagaries of U.S. immigration law, the trauma of detention, and the myriad of unique barriers faced by Haitian asylum seekers, yet still face the prospect of fractured family. Separation from their mother eclipses the otherwise bright future of safety in the United States the boys could enjoy. The cherished bond between a mother and her children which underlies our notion of family values seems to matter little for Haitians.

## V. Fate of Returnees

FIAC is gravely concerned about the safety of those Haitians already deported and about the likely deportation of 107 of the Haitian asylum seekers who remain in INS custody after ten months in the United States. Virtually all of the Haitians on board the December 3rd boat are from Rabateau, a section of Gonaïves which has been the epicenter of recent political violence and unrest in Haiti. The US State Department, Amnesty International and the National Coalition for Haitian Rights have all issued statements in recent weeks expressing grave concern regarding the escalating political violence there and the Haitian government's inability to control it.

On July 29, 2002, three Haitian women detained in Miami were awoken around 2:00 a.m., shackled, handcuffed and taken to the airport. They remained shackled and handcuffed on the plane trip to Haiti, where they were immediately jailed. According to Rigmane Ovilma, who spoke with FIAC by phone, conditions in the Haitian jail were horrific: several women were cramped in a cell, they had no water, no toilet and one tiny cot was shared by three. The women's families were told they had to pay \$2000 (\$400 US) each to get the women released. Ms. Ovilma told FIAC, "We were living in a nightmare in Haiti before we left, then we lived a nightmare in the United States of America and we are living a nightmare again in Haiti. I still have the scars of the shackles on my ankles they put on us when they deported us because they were so tight.... Why are we being treated this way? Doesn't anybody care about our lives?"

The women's lives remain at great risk in Haiti. Ms. Ovilma's mother's restaurant was riddled with bullets following the jail break of Amiot "Cubain" Metayer and the escape of 150 other prisoners, and Rigmane and her brother beaten so severely that they had to be hospitalized for several days. FIAC has been unable to maintain consistent contact with the women because they have been forced into hiding.

According to Merrie Archer, Senior Policy Associate at the National Coalition for Human Rights, the Haitian women's fears are well-founded. Archer told FIAC on August 9, 2002, "Should these refugees [December 3 boatpersons] be returned to Haiti, they would be unable to return to their homes at this time because returning to Raboteau would mean putting them in the hands of their aggressors with no hope of intervention on their behalf by the Haitian government. Unable to return home, they would join the ranks of the hundreds of internally displaced persons fleeing the terror and the impunity that the government continues to allow this gang to enjoy."

Following the most recent outbreak in Gonaïves, the Haitian women currently detained at the Broward Center told FIAC: "None of us can sleep at night. We toss and turn and think about what may have happened to our families and our children who are in Haiti. And we think about what will happen to us when we are deported. We feel that we will surely die when we are sent back. No one will be able to protect us, not even our families. There is no democracy in Haiti, only violence."

## VI Conclusion

Using the threat of detention to deter the arrival of asylum seekers is neither legally nor morally acceptable. Indeed, it appears that the INS policy is not about saving Haitian lives, but rather about keeping Haitians out, at the expense of their legal rights. If our Government is truly concerned about saving Haitian lives then they should attempt to ensure that those Haitians already in the United States have a fair opportunity to make their case for asylum and are afforded the same treatment and protection as other similarly situated groups.

Our responsibility to protect persons among us who have fled political persecution should not depend on politics. Haitian asylum seekers come to the United States seeking refuge from persecution. They expect to be treated fairly and equally by the world's leading democracy and defender of human rights. While we certainly understand the need after September 11th to protect our borders, to indefinitely detain Haitian asylum seekers in the Miami District who have committed no crime and treat them differently than any other group is a perplexing waste of

precious resources and a colossal waste of U.S. taxpayers money. In mid-June, taxpayers had already spent more than 2 million to detain the Haitians.

The longer the Haitians are detained, the more desperate their situation becomes. Earlier this month, a Haitian asylum seeker at Krome attempted to hang himself. He told advocates, "I thought I wanted to die rather than stay here in Krome being humiliated everyday . . . . It looks like they are just going to send us all back anyway. We always feel pressure to just give up. So what am I to do?"

His statement is eerily reminiscent of a letter written by detained Haitian asylum seekers at Krome more than ten years ago. In September 1991, Haitians there wrote, "We wish to emphasize . . . that right now we are living in the most difficult and painful times of human life . . . . We prefer to die than to live in the uncertainty that drowns our thoughts."

The Haitian asylum seekers are not criminals. They are not asking for special treatment, only fair and equal treatment. To flee from persecution is not a crime; it is a basic human right. It is the Government's responsibility now to treat the Haitian asylum seekers as they treat asylum seekers from other countries. Asylum seekers from countries other than Haiti in the Miami District who pass their credible fear interviews are quickly released. Haitians deserve no less.

## VII Recommendations

Haitians in the Miami District who demonstrate a "credible fear" of persecution upon return to Haiti should be released from detention, as are all other similarly situated persons.

Haitians should be provided a full and fair opportunity to prepare their asylum claims and to obtain legal counsel. If paroled, their ability to obtain counsel is greatly increased. If the Haitians remain in detention their cases should proceed according to the regular Immigration Court schedule, rather than be expedited, so they have a fair opportunity to obtain counsel and prepare their cases.

The INS must improve conditions of detention in facilities such as Krome and TGK. At a minimum, such conditions should comply with the INS Detention Standards adopted in September 2000.

In the past, the United States implemented in-country refugee processing in Haiti and conducted on board Coast Guard screenings. While imperfect, these measures at least provided some check to assess potential claims from Haitian asylum seekers. At a minimum, such measures should be implemented again.

Thank you for listening to our concerns.

## Footnotes

1. Statistics derived from INS's own records reveal a stark pattern of discriminatory detention. In November 2001, immediately prior to its change in detention policy, the INS released 96% of all Haitians who had passed their credible fear interviews. INS released similarly situated non-Haitians during the same period at a comparably high rate. After INS adopted a no-release policy for Haitians in December 2001, the release rate for Haitians dropped to virtually zero. Only unaccompanied minors and pregnant women were released. At the same time, INS continued to release non-Haitian asylum seekers at the very high rate. For example, for the period December 1, 2001 to February 15, 2002, the INS released non-Haitian asylum seekers at a rate of 91%.

2. In documents submitted to the court in March, 2002, INS acknowledged that on March 18, 2002, Peter Michael Becraft, Acting Deputy Commissioner of the Immigration and Naturalization Service (INS), had issued this directive.

3. INS officials claimed on August 2002 that Sister Jeanne withdrew the offer that she had made in April, 2002, to help sponsor the Haitians. That was not the case and Sister Jeanne so informed the INS Commissioner. She has received no response.

4. *Jeanty v. Bulger*, Case No. 02-20822-Civ-Lenard (S.D.Fla 2002).

5. Even when interdictions rose to 200 (Feb. 2001; June 2001), migrations decreased in subsequent months.

6. Local INS officials publicly denied the existence of the policy and issued large numbers of boilerplate decisions denying release to Haitians which contained false reasons for denial. Only when Congressman Conyers met with these officials in Miami early in March, 2002 did they admit that, with few exceptions (e.g. pregnant women), the Haitians weren't being released. Similarly, only after a lawsuit challenging the detention policy was filed in mid-March, did INS officials in Washington acknowledge that they had instructed Miami INS not to release the Haitians. Attorneys wasted precious time preparing release requests for the Haitians rather than assisting them with their asylum applications.

7. The Haitians who arrived on December 3rd named their boat the "Si M'ap Viv Se Jezi" which means "If I'm still alive it's because of Jesus." They clearly knew the risk they were undertaking in making the sea voyage, yet were determined to do so given their grave fear of remaining in Haiti.

8. "At a glance, this new [detention] policy certainly appears to be discriminatory and unconstitutional. Although these people deserve representation, I am hesitant to lend countenance to EOIR's and INS' highly objectionable treatment of these people. I note further that our Chapter's pro bono resources are stretched to the limit... If the INS were to continue to parole Haitian nationals who establish a credible fear of persecution, these individuals could join their families in the community, seek work authorization, and retain qualified private counsel. They would also have time to prepare their court cases in a meaningful fashion." Letter from Mary Kramer to Steve Lang, February 19, 2002.

9. The UNHCR wrote this advisory opinion at FIAC's request. On May 9, 2002 the Lawyer's Committee submitted an amicus brief to the District Court in Miami (Jeanty v. Bulger, Case No. 02-20822-Civ-Lenard (S.D.Fla 2002).

10. Asylum Representation, Summary Statistics, prepared by Dr. Andrew I. Schoenholtz, Director of Law and policy Studies, Institute for the Study of International Migration, Georgetown University, May 2000.

11. Female INS detainees who are not asylum seekers continue to be held at TGK.

12. Many of the detained Haitian asylum seekers at Krome began a peaceful hunger strike on Saturday, July 6, 2002, after one of the Haitians learned that his child had died in Haiti. On Monday, July 8, 2002, a Creole-speaking FIAC paralegal who works at FIAC's Krome office was escorted off the facility because he was under investigation for initiating the hunger strike, even though he had not been present at Krome for nearly a week before the hunger strike and had consistently advised detainees not to engage in behavior, such as a hunger strike, that could result in their punishment or transfer. While the paralegal was allowed to return to Krome after INS' accusations were proven to be baseless, FIAC's access to the Haitians was curtailed during this critical time in which two of the Haitians were reportedly beaten by guards after the hunger strike began.

13. Amnesty International, "USA: 'I'm not an inmate. Why should I be treated as one?' Women asylum-seekers punished for state's failure to protect them," March 2001.

14. "Freedom Denied: Middle Eastern Asylum Seekers Caught Up in U.S. Immigration Sweep," Women's Commission for Refugee Women & Children, December 2001; "Innocents in Jail: INS Moves Refugee Women from Krome to Turner Guilford Knight Correctional Center, Miami," Women's Commission for Refugee Women & Children, June 2001.

15. Ibid.

16. Ibid.

17. Cheryl Little and Charu Newhouse al-Sahli, "INS Detainees in Florida: A Double Standard of Treatment," Florida Immigrant Advocacy Center, December 2001, and supplement thereto, January - April 2002.

18. Miami Dade Legislative Item File Number 021139, "Alternative Facilities to House Female INS Detainees at TGK," Adopted Resolution, Introduced April 18, 2002.

19. Charles, Jacqueline. "Inmates Say They Had Sex with Guards: Work Release Center Plagued with Problems," The Miami Herald, August 10, 1999; Charles, Jacqueline. "Broward Jail Gets Surprise Review: Jenne identifies Lapses in Security," The Miami Herald, August 21, 1999.

20. For example, in 2000, the Department of Justice sued Wackenhut for the abuse and neglect of juveniles at a facility in Louisiana, where they claimed conditions were "dangerous and life-threatening."

21. While the INS is now releasing many of the Haitian asylum seekers who arrived by air, this was only done after a lawsuit was filed in federal court. Moreover, for months after the INS' decision to consider these Haitians for release, those arriving by plane faced "enhanced scrutiny" in obtaining release and their sponsors were required to submit countless documents, such as payroll stubs, bank statements, and notarized affidavits of support. This documentation was not being required for the release of non-Haitian asylum seekers in South Florida.

22. The five include a mother and her son (father at Krome), a father and his son and an 18 year old.

23. This section of my testimony is based on a statement given by Randy McGrorty, Executive Director, Catholic Charities Legal Services, to the U.S. Commission on Civil Rights, June 21, 2002. Mr. Moise was a named plaintiff in the lawsuit filed on March 15, 2001.

24. While the mother was initially detained at the hotel, after several months she was eventually transferred to TGK, where her daughter was. Her daughter had not been able to communicate with her family in detention and did not know where anyone else was until her mother was brought to TGK.

25. FIAC represents another Haitian family which has been forcibly separated. In this case, a mother and her son were transferred to Pennsylvania and separated from the father who is detained at Krome. Their asylum case is consolidated.

26. U.S. Department of State, "Haiti: Violence in Gonaives," Press Statement, August 5, 2002. Amnesty International, "Haiti: Human rights and rule of law must be upheld," Press Release, August 7, 2002. National Coalition for Haitian Rights, "Haitian Coalition Express Grave Concern Over Growing Violence in Haiti," Press Release, August 7, 2002.

27. These women were part of a group of 22 Haitian asylum seekers deported on July 29. It is FIAC's understanding that the government of Haiti may not have issued travel documents for the 22 Haitian asylum seekers deported on July 29.

28. Barciela, Susana. "Free the Haitian Asylum Seekers," The Miami Herald, June 20, 2002, p. 6B.