

Testimony of
Dina Paul Parks

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Good afternoon, ladies and gentlemen. My name is Dina Paul Parks, and I am the Executive Director of the National Coalition for Haitian Rights (NCHR). I would like to thank you for the opportunity to testify here today before you, members of the Senate Subcommittee on Immigration, in this matter of the detention and treatment of Haitian Asylum Seekers. I am particularly honored, Mr. Chairman, to address this committee under your leadership, which has been so instrumental in establishing and fighting to protect this nation's refugee protection laws. I would also like, Mr. Chairman, to acknowledge Senator Brownback for his demonstrated commitment to the plight of the most vulnerable immigrants and refugees. The Haitian asylum-seekers who are the subject of this hearing most certainly belong in this category.

Mr. Chairman and members of the Subcommittee, you have heard from several of our distinguished guests about the basic and most salient facts of the latest INS policy of detaining Haitian asylum seekers based solely on their nationality. As you have by now learned, this policy is just the latest in a very long history of double-standard treatment for Haitians by the US government. Unfortunately, the corollary element to this dynamic is the long, painful tradition of political violence and repression of human rights in Haiti. Over the next few minutes, I will attempt to provide some context about Haiti's current political situation as it relates to these asylum seekers. First, however, a little bit of history about NCHR and its work in this field.

Introduction and Overview of NCHR

Twenty years ago, the National Emergency Coalition for Haitian Refugees was formed as a coalition of 42 U.S. and Haitian religious, labor and human rights organizations in order to ensure that the thousands of Haitian refugees and asylum applicants fleeing the increasingly repressive Duvalier regime received fair hearings and treatment in the United States. Once that initial crisis was addressed, NCHR dropped the "Emergency" from its name and began to educate the American and international public about the political and economic causes of Haitians' flight from their homeland. We continued our advocacy to help guarantee fair and equal treatment for Haitian refugees and immigrants.

Throughout its history, NCHR has spearheaded national litigation, education and advocacy efforts designed to halt the deportation and secure the legal status of Haitian boat people. The Coalition's efforts over several years were instrumental in gaining passage of reforms in U.S. immigration law in 1986 enabling more than 40,000 Haitians to attain legal residency. As a plaintiff in a landmark case against the Department of Justice, NCHR helped secure parole into the U.S. for nearly three hundred Haitian asylum-seekers who had been quarantined for as long as twenty months at the U.S. naval station at Guantánamo Bay, Cuba. This legal effort led ultimately to the closing of what was probably the world's first camp for HIV-positive refugees.

NCHR has also assumed international leadership in organizing support for human rights in Haiti. NCHR staff members have conducted numerous investigative missions to Haiti and published more than 40 reports on the status of human rights there. Together with Americas Watch, NCHR set up an Elections Observation Watch in 1987 to monitor what were meant to be Haiti's first free elections and which instead ended in a military-sponsored massacre. We followed with a parallel month-long monitoring of the successful democratic elections in December 1990. In 1992, we established a permanent NCHR office in Port-au-Prince for promoting human rights and democratic reform. This office has grown in stature and impact over the past 10 years, with its Director, Pierre Esperance, receiving the Human Rights Award from the US Ambassador, Brian Dean Curran, last month.

The Coalition, which changed its name in 1996 to the National Coalition for Haitian Rights, has become internationally recognized for its in-depth knowledge of the human rights situation in Haiti and has been a primary source of information and testimony for inquiries of the United Nations Commission for Human Rights, the Inter-American Commission on Human Rights of the Organization of American States, the US Congress and other influential bodies. Our staff provided intensive training on the context for promoting human rights in Haiti for observers in the country as part of the UN/OAS Civilian Mission. In addition, we are often consulted by the information bureau of the US INS for expertise on the political and human rights situation in Haiti, as well as by regional INS asylum offices to provide in depth staff training on specific topics.

Overview of Concerns and Recommendations

Background of Haiti's Human Rights and Political Situation

Beginning in 1957, the 14-year rule of Dr. Francois Duvalier was often characterized as bloody, insidious, and tyrannical, although exceedingly well organized and kept under rigid control. Papa Doc strategically made the army a very close political ally by conceding certain powers and fostering a strictly regimented corruption among its leadership that trickled down to the lowest soldiers to maintain their loyalty. In order to ensure, however, that the army did not get so powerful that it might eventually become a threat to him, he created the "Tontons Macoutes", an equally well-organized hierarchy of para-military henchmen who also took their power directly from the executive branch. Together, they worked to suppress opposition to the presidency and throughout the 1960s either killed, exiled or forced into hiding between 10,000 and 20,000 primarily middle- and upper-class Haitians. These Haitian immigrants easily found refuge in the US, Canada and France.

Succeeded by his young son Jean-Claude Duvalier in 1971, the Duvalier regime quickly faced significant challenges with infighting and jockeying for position and power. Seen as weaker than his father and less concerned with consolidating power than with economic gain and amusement, Baby Doc allowed a certain cosmetic "liberalization" which resulted in a reduction in torture and arbitrary arrest in exchange for a widening of the lines of international aid that would help make up for the vast deficits occasioned by the increased greed of the kleptocracy. By 1980 however, the situation worsened again to the point where, through the 1980's, thousands of Haitians were fleeing persecution and other disasters. This time, however, faced with numbers of largely poor and uneducated Haitians, the US responded with interdiction and forced repatriation. Of the

24,000 Haitians intercepted in international waters by the US Coast Guard from 1981 until Aristide came to office, only eleven out of 24,000 -- less than a mere 1% -- were granted asylum; the rest were shipped back. By comparison, 75,000 Cuban refugees were picked up in that same period. All 75,000 -- including convicted criminals -- were granted immediate asylum.

Four years after the ousting of Baby Doc, Jean-Bertrand Aristide's Lavalas movement swept Haiti's first democratic elections in 1990. The movement was initially a broad-based coalition of progressive political parties and grassroots organizations from around the country, most of whom had banded together in the anti-Duvalier movement in the mid 1980s. Much hope was placed on this administration to permanently change the repressive and anti-democratic traditions practiced by successive Haitian governments. Importantly, during the first seven months of this regime, the flow of those trying to flee to the United States or elsewhere trickled to almost zero.

Aristide was deposed on September 30, 1991 in a military-led coup. A reign of terror was quickly resumed and, with the help of the well-organized paramilitary organization FRAPH, the repression of Aristide supporters lasted through October 1994. During this time, over 4,000 Haitians were killed, 300,000 became internal refugees, thousands more fled across the border to the Dominican Republic, and more than 60,000 took to the high seas in search of protection from the rampant human rights abuses that were characterized by the UN and OAS as gross and systematic violations.

US-led efforts returned President Aristide to power in October 1994 to complete his term in office. He quickly abolished the military, replacing it with a civilian police force, and hopes ran high, but the loose Lavalas coalition soon began to fragment. When Aristide's successor, Rene Preval, was elected in the 1995 elections, a divisive element had taken hold within the party. One year later, Aristide visibly withdrew his support from Preval, and broke off from his own Lavalas party (called OPL - Organisation Politique Lavalas) to create a new party with a closer faction of supporters, called Lafanmi Lavalas, or the Lavalas Family.

Political violence turmoil began in earnest early the following year when 1997 legislative elections were hotly contested by Lafanmi candidates who accused their former OPL colleagues of fraud. Problems in which unfilled seats in parliament and the inability to come to a negotiated settlement resulted in Preval's January 1999 decision to rule -- unconstitutionally -- by decree. This action was severely criticized both in Haiti and without as highlighted in the US State Department Country Report on Human Rights Practices in 1999. In addition, armed groups that began calling themselves "popular organizations" (OP) loyal to Aristide began to stage violent protests of the Preval government and forced the resignation of the Prime Minister, leaving the post unfilled for nearly 18 months.

In early 1999, an opposition coalition to both OPL and Lafanmi was formed to seek a consensus among the executive branch, certain opposition parties and members of civil society about setting up elections, although there was still no functioning legislative branch. It was called the Espace de Concertation pour la Sauvegarde de la Democratie (Space for Concord for the Safekeeping of Democracy) and represented a range of political views, including former Aristide protégés.

These elections -- deemed critical to unblocking a three-year old stand off -- were postponed 5 times due to violence, sabotage and allegations of tampering and were finally held on May 21, 2000. The tension rose with each successive postponement, raising the stakes each time. The incidence of electoral violence rose at an alarming rate, and most sources recognize at least 15 politically motivating assassinations during this time. This statistic does not include the numerous other abuses that took place such as disappearances, non-fatal shootings, lynchings and the burning down of houses, businesses and party offices. Many of the victims were outspoken critics of the Lavalas government and on several occasions, this abuse took place under the eyes of the police. Although it was rare that any group would claim responsibility for these actions, it was widely attributed to the so-called popular organizations, or OPs, in the name of Lavalas.

By the time the OAS declared the elections free but not fair because the method of tabulation was not done according to regulation, a larger and more eclectic political opposition calling itself the Convergence Démocratique (CD) had formed. Its members included a wide range of parties across the political spectrum, all in opposition to the tally of the vote in the May elections, and they boycotted the presidential elections held in November 2000, which brought President Aristide to power for a second time. Their criticism of the Lavalas party and its leaders intensified during this period as did the backlash from sectors close to the government.

On February 7, 2001, when President Aristide was sworn into office, the Convergence made a public declaration that they would not accept the election of Aristide since the previous elections had not been resolved, and declared that they were naming a parallel president to a parallel government. Since then, government and opposition have been locked in a political stale-mate in which neither side recognizes the legitimacy of the other. Both sides have also rebuffed serious negotiations despite the intervention of the OAS in over 20 trips to settle the dispute.

The policy of "zero tolerance" introduced by Aristide in June 2001, which legitimizes the lynching of delinquents or those accused as such, has been used as a pretext for these groups to threaten and harass anyone perceived as a menace to Lavalas. This was taken to the extreme on December 17, 2002, the day of the attack on the National Palace, branded as an alleged coup attempt by the Aristide government. Less than two hours after the attack, around Port-au-Prince and in various locations around the country, bands of armed Lavalas supporters, occasionally accompanied by elected Lavalas officials, attacked and burned down the homes and offices of Convergence party members and supporters, attacked journalists and began to force the censure the reporting of these incidents by the independent Haitian media.

Beginning in November and throughout December 2001, journalists and human rights defenders were threatened and attacked on a daily basis. One journalist sympathetic to the Convergence named Brignol Lindor was lynched and assassinated on December 2nd by a crowd who claimed to be getting revenge for an anonymous attack on a Lavalas supporter a few days earlier. Shortly afterward, approximately 30 journalists, particularly those from radio stations who did not auto-censure their broadcasts after the attacks, fled Haiti. In addition, early in 2002, a small number of high profile judges, social and political activists have continued to flee Haiti as pressure, harassment and attacks against person, family and property have continued.

A report on an investigation of the December 17th attack by the Inter-American Commission for Human Rights of the OAS, issued on July 1, 2002, concluded that the attack was not a coup attempt and that the violent mobs had to have had foreknowledge of what was expected of them in order to retaliate in such a manner. However, as more recent incidents have shown, these armed gangs are loyal to members of various factions of the Lavalas government and not exclusively to one central figure. They are disparate and operate chaotically, vying for power, and some are beginning to lose their "privileges". This is seen as a betrayal by the gangs, resulting in increasing verbal and other backlash against the Lavalas movement, which has both fomented this violence and to some degree lost control of it, as it has taken a life of its own.

Recent Events

The US Department of State, Human Rights Watch, Amnesty International and NCHR have considered Aristide's human rights record in his second term as poor for a democracy. The biggest problems identified include:

- ? impunity for those claiming to act on behalf or in support of the government;
- ? a politicized police force;
- ? the lack of independence of the judiciary; and
- ? harassment and persecution of members of the opposition, those journalists who do not self-censure, human rights defenders, and other outspoken critics of the government, its policies and the armed OPs.

These obstacles have continued over the last three months.

July

? Journalist Israel Jacky Cantave and his cousin disappeared on the way home from work. They were found beaten and injured several days later by neighbors of the building where they were being held.

? July - September: Student protests against the government for attacking the foundation of the Independent Haitian University and retaliation against student protestors. The government unilaterally and without warning decided to dismiss the vice chancellor of the university and suspend all student and faculty elections and appoint its own directors.

August

? Jailbreak of Amiot "Cubain" Metayer out of a prison in Raboteau, Gonaives on August 2. Cubain is a former Aristide ally who was arrested for his role in the December 17th attacks after international pressure on Aristide to address the concerns raised by the OAS report. The jailbreak freed close to 160 other prisoners. These armed street gangs continue to roam the streets with total impunity.

September

? A week-long gang war in the Cite Soleil slum over a cache of arms resulted in at least 20 dead and 100 wounded

? 19th -- Haitian National Police (HNP) shut down the concert of a popular band for playing song deemed critical of Aristide. "Revolution" lists some of the country's ills and says "Mr. President, I am talking to you ..." Although government officials declared it had not ordered the

shut down, no action has been taken to offer an apology to the band or its organizers or to sanction the police officers responsible.

? 20th -- The disappearance of a popular pro-Aristide community leader and two associates after being arrested by the police over a traffic dispute with government officials sparked tire burning and violent protest in the streets of Carrefour Feuilles for several days. Heavily armed gang members demanded the release of Felix Bien-Aime, and heavily armed members of the HNP retaliated by firing teargas and bullets into the popular neighborhood. At least one journalist reported being assaulted by the police while other casualties included one death and several injuries. A week later, there had been several attempts to burn down the local police station.

? 20th -- The resignation of two ministers in less than 10 days - Minister without portfolio, in charge of negotiations with the opposition Marc Bazin, announced his resignation due to frustration with governmental policy while Jean-Baptiste Brown, Minister of justice and national security, follows his predecessor by 3 short months just days after the release of his report on the events of December 17, 2001.

? 26th - Three popular independent radio stations, Radio Kiskeya and Radio Caraibes and Radio Ibo shut down after receiving serious and credible threats by armed men. Just days later, President Aristide is cited to have said that if the Haitian press continued to repeat what the international press is saying, it is a clear continuation of the damage of the 1991 coup d'etat. This type of statement is what has incited people to act within the guidelines of the zero tolerance policy.

Ongoing have been the accusations, consistently leveled but yet to be investigated, at police and government officials, including former top police officer Mario Andresol, Senator Dany Toussaint and others of involvement in drug trade, kidnappings and corruption.

No Mass Exodus Imminent

In spite of these recent and ongoing developments, the historical information outlined earlier provides us with many reasons why there is now little fear to be had about a mass exodus of Haitian refugees at this time. First, the figures from the 1980s and during the coup d'etat of the early 90s show that the numbers of refugees identified and interdicted are beyond comparison. From some 24,000 throughout the 1980s to 60,000 in just three years in the early 1990s, these figures have dropped to a scant 1,483 since October 2001. During this period, according to its website, the USCG reports only 1 or 0 interdictions in the months of October, January, February, June and August, meaning that even in the months before the INS policy on Haitian refugees was known as such, the Coast Guard picked up no boat people in January or February 2002, despite the intense turbulence the country experienced in December 2001 following the attack on the National Palace and reprisal attacks on members of the opposition. Again, I would like to remind the Committee that these are the Coast Guard's own numbers, and they do not support the notion of a mass exodus. The interdictions from 1984 to 1989 and then from 1991 to 1995 far exceed these statistics.

However, the reasons for a lack of a larger wave of refugees are not merely to be found in the statistics. With regards to Haiti, there are great distinctions to be made between the political and human rights situations under the Duvaliers, the de facto Cedras regime that overthrew Aristide

and the current administration. Under the previous regimes, the forces of government and repression were strictly regimented and part of a clear, recognized and well-known hierarchy. Under the Duvaliers, there were the military and the Macoutes - used to balance out each others' power. Under Cedras, the military's power was complemented by both the paramilitary group FRAPH and an elaborate system of rural "chefs de section" and "attaches".

However, under the current administration, no such organization or consolidated center of power exists. In fact, many human rights activists and political observers diagnose chaos and disorder instead. Haiti's seven-year old police force is politicized and corrupt with staffing far below the original 5,000 recruits - primarily due to attrition. The country's many armed gangs, the popular organizations, are primarily loyal to the Aristide government, but not necessarily to Aristide. They are loyal to other popular or local leaders within Lavalas such as Senator Dany Toussaint, former military officer, and Senator Medard Joseph of Gonaïves, whose loyal gangs include the Cannibal Army, responsible for August's spectacular jailbreak, and others. In fact, with the arrests this year of Cannibal Army leader Amiot "Cubain" Metayer and Ronald Camille, known as Ronald Cadavre, leader of one of the most powerful Cite Soleil gangs, there is a sense that the Lavalas government has begun to betray their "loyal supporters". As William Joseph, a Cannibal Army leader warned shortly after the jailbreak, "We are letting Lavalas know who we are. We helped them get up the mountain. Now we are telling them to pull us up, too."

This is not to say that the situation in Haiti is not grave and in great need of attention. It is, rather, to point out that:

1), the repression has not reached the levels found under past oppressive, highly-organized governments; and 2) there is a much stronger network of human rights defenders, independent journalists and others in place today.

This network makes it much harder for official, state-sponsored abuse to go unchallenged. Linkages between the Haitian press and European human rights organization Reporters Without Borders, as well as the vast movement to seek justice for slain journalist and political commentator, Jean Dominique, are characteristic of this movement.

The US State Department's December 2001 travel advisory and its August 2002 response to the violence in Gonaïves surrounding the jailbreak also clearly acknowledge and highlight the volatility of the situation. In particular, the August statement calls "upon the Government of Haiti to take all necessary steps to restore order" as well as "to protect the people of Haiti and prevent further lawlessness," underscoring the lack of control the Haitian Government has been able to exert over these "popular organizations". The government's inability or unwillingness to re-arrest Metayer or the authors of the attack two months after the jailbreak while it is known precisely where they can be found sends a clear signal of the danger faced by local residents who have evacuated their homes and become internally displaced.

It is into this context that recent deportees from the December 3, 2001 boat have been returned -- into the hands of those who were directly responsible for much of the violence against the opposition party MOCHRENA with which they have been associated because of their religious affiliation. There is increasing evidence that these deported Haitians are subject to further human rights abuses upon their return.

Of the 167 Haitians who have been subjected to prolonged detention, almost 50 have been deported. Detainees are deported in groups by the INS and are subjected to handcuffing and shackling during transport. Once returned, they are transferred to the custody of Haitian authorities at the airport in Port-au-Prince. The deportees were then transferred to Delmas 33, a prison known for its extremely hazardous living conditions.

The story of one woman underscores the plight of the deportees. Upon her return, she reported to us that while in Delmas she was held in one cell with more than 60 women, some of whom had committed violent crimes. Others were very sick or pregnant. One woman was there with a newborn infant. The women had only one cot for every three women. They were provided no food or water. There were no toilet facilities, forcing the detainees to urinate and defecate on the floor.

The woman was held at Delmas 33 for two days until her family was able to locate her. They then were forced to pay a large fine (approximately U.S. \$400) to obtain her release. The woman reported that there were two other women in a similar situation who were deported at the same time as she, who were also jailed and fined.

Upon her release, the woman returned to Gonaives, where she and her family resided. She reported that she experienced significant abuse and harassment from CIMO, a government security force supported by the Aristide government. Her mother's restaurant was sprayed with gunfire. She and her brother-in-law were later stopped by the same group, which hit her on the back and chest with their rifles. She was hospitalized after she began to spit up blood. She reported that her brother-in-law suffered more injuries, including a blow to his head.

The woman has since gone into hiding, as have other deportees whom we were able to reach upon their return but have since lost contact with. She told us that she will likely try to flee Haiti again, as she fears for her life.

Other returnees have reported similar experiences. It is disturbing that the INS continues to deport Haitians from the December boat arrival in the face of the deteriorating human right situation and political instability now going on all over Haiti, but especially in Gonaives.

Role of OAS

As referenced earlier, the OAS has been attempting to mediate the two-year old conflict between President Aristide and the Convergence. The passage of Resolution 822 last month speaks to the need to "normalize the functioning of democratic institutions in Haiti and to strengthen them" and points out the role the international community must play in order to ensure that this change will take place. These include elections, dialogue and consensus building, but the Resolution also recognized the need for a restoration of aid to Haiti in order to reinforce the failing institutions such as the police, and the judiciary, as well as to ensure that reparations are made for victims of the December 17, 2001 reprisals.

While Haiti has begun to take some steps toward the implementation of some of the points of the resolution, its prospects for success are extremely limited. For example, while Haiti has already published its report on the December 17th attack and claims to have begun to make reparations,

the report is considered unbalanced and unsatisfactory and the reparation process has been less than transparent. The formation of the new Provisional Electoral Council (CEP), scheduled to be completed in one month, has not yet begun. Haiti has neither begun to translate the perpetrators of the December 17 reprisals into justice nor to begin a more elaborate disarmament program. While some politically motivated crimes are being more actively pursued, such as the Jean Dominique case, the investigation of the kidnapping of journalist Israel Jacky Cantave is not being pursued by the government, despite the evidence.

The ultimate success of the resolution may be limited because of the:

- ? lack of political will to deal with certain politically motivated crimes,
- ? impunity that members of the police and most "popular organizations" continue to enjoy,
- ? inevitable controversy that will surround the creation of the new CEP and the level of transparency with which it will ultimately operate; and
- ? weakness of those institutions which are necessary to ensure a secure and stable climate for these democratic institutions to operate.

In brief, while the current levels of international intervention and Haiti's willingness to cooperate remain the same, it is unlikely that the human rights situation in Haiti will either improve or deteriorate drastically - in brief, the status quo.

Conclusion

In conclusion, Mr. Chairman, I would respectfully submit the following recommendations for the Subcommittee's consideration to address the plight of these Haitian asylum seekers.

A Halt to Deportations: At a minimum, the INS should not be deporting any asylum seekers back to a place that even the US government acknowledges has become more dangerous than when they fled it 10 months ago.

Release Current Detainees: Those still being held at the facilities in Miami should be released in order to have ample opportunity, as other nationalities, to secure attorneys and prepare their asylum cases, instead of being subject to a system that stacks the odds against them and skews their chances of a fair hearing.

Detention Standards: For those that are detained, especially over an extended period of time, the INS must apply its own standards and provide for meaningful access to counsel and medical care.

Alternatives to Detention: The INS has a number of options for dealing with asylum seekers, including releasing them either to community sponsors or under the auspices of a supervisory system, which is actually cheaper than detention. Under no circumstances should these asylum-seekers be treated like criminals, subject to lock-downs, invasiveness searches and the like.

Interdiction: The US government should not be interdicting asylum seekers as a means of deterrent, which is in clear violation of international law and undermines the very premise of refugee protection. At a minimum, all Coast Guard cutters should have a properly-trained Creole

speaker on board to conduct a credible initial screening, instead of returning those fleeing Haiti en masse, no questions asked.

Finally, I would like to say just a little about the Haitian-American community and its contributions to this nation. Our community has produced individuals such as Pierre-Richard Prosper, the US Ambassador-at-Large for War Crimes Issues; Dr. Rose-Marie Toussaint, the first African-American woman to head a liver transplant service in the world; Dumas Siméus, chairman and CEO of the Siméus Foods International, the largest black-owned business in Texas and one of the top in the country; Mario Elie, the power guard that helped lead the Houston Rockets to back-to-back NBA championships in the 1990s. We are doctors, taxi cab drivers, lawyers, home health aides, journalists, entertainers, even executives, like NCHR's own Board Chair, Mr. Eddy Bayardelle, First Vice President for Global Philanthropy at Merrill Lynch. We are a people who love our country but when forced to leave it, we make an extraordinary impact where we land, and the community is enriched for it. There is simply no reason that we should always, always, always be treated like second-class citizens by the United States government.

Again, I thank you for this opportunity to address the Subcommittee today. We are confident, Mr. Chairman, that you and your colleagues will exercise due diligence in addressing our concerns that these asylum seekers be treated in a fair and humane matter, consistent with both US and international law.