

TO THE HONORABLE MEMBERS OF THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
ORGANIZATION OF AMERICAN STATES:

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REQUEST BY THE UNIVERSITY OF MIAMI HUMAN RIGHTS CLINIC, THE  
UNIVERSITY OF MIAMI IMMIGRATION CLINIC, THE FLORIDA IMMIGRANT  
ADVOCACY CENTER (FIAC), ALTERNATIVE CHANCE, THE CENTER FOR  
CONSTITUTIONAL RIGHTS (CCR), AND LOYOLA LAW CLINIC & CENTER FOR  
SOCIAL JUSTICE  
FOR PRECAUTIONARY MEASURES UNDER ARTICLE 25(2) OF THE COMMISSION'S  
RULES OF PROCEDURE, AGAINST  
THE UNITED STATES OF AMERICA  
ON BEHALF OF:  
GARY RESIL  
HARRY MOCOMBE  
ROLAND JOSEPH  
EVEL CAMELIEN  
PIERRE LOUIS  
AND OTHER SIMILARLY-SITUATED HAITIAN NATIONALS SUBJECT TO  
IMMEDIATE DEPORTATION BY THE UNITED STATES

Submitted under the provisions of Article 23 of the Commission's Rules of Procedure by  
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## I. INTRODUCTION

The University of Miami School of Law Human Rights Clinic and Immigration Clinic, The Florida Immigrant Advocacy Center (FIAC), Alternative Chance, The Center for Constitutional Rights (CCR), and Loyola Law Clinic and Center for Social Justice request precautionary measures, under Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights, on behalf of Gary Resil, Harry Mocombe, Roland Joseph, Evel Camélien, and Pierre Louis, as well as all similarly-situated detained Haitian nationals who have final orders of removal from the United States immigration authorities based on criminal offenses and who face imminent and forcible deportation to Haiti.<sup>1</sup> In accordance with Art. 28(i) and Art. 33 of the Rules of Procedure of this Commission, no claim contained within this petition has been submitted pursuant to another procedure before an international governmental organization of which the United States is a member.<sup>2</sup>

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<sup>1</sup> Throughout this Petition, the named and unnamed Petitioners will collectively be referred to as “Petitioners.”

<sup>2</sup> Undersigned advocates for Petitioners are aware that a similarly-situated individual, Paul Pierre, has filed for precautionary measures with this Commission. *Paul Pierre v. United States*, Inter-Am. C.H.R., Case No. P-1431-08 (filed December 6, 2008). Undersigned advocate Rebecca Sharpless is representing Mr. Pierre in his case before the Commission. Mr. Pierre’s case was filed in December 2008 and is still pending. Mr. Pierre, like the Petitioners here, has been detained by U.S. immigration authorities and is scheduled for imminent deportation. The Undersigned urge the Commission to grant both Mr. Pierre’s request for precautionary measures as well as the instant request filed by Petitioners.

## II. OVERVIEW: BACKGROUND AND CONTEXT

The January 12, 2010 massive earthquake in Port-au-Prince, Haiti left over 200,000 Haitians dead and 1.2 million more displaced and homeless. One year later, the serious humanitarian crisis in Haiti not only persists but has worsened. The recent cholera epidemic, combined with contested elections, severe street violence and social unrest, has sent Haiti into a tailspin. The country is experiencing a public health and humanitarian crisis of epic proportions.<sup>3</sup>

Notwithstanding the continuing catastrophe in Haiti, Immigration and Customs Enforcement (ICE) announced on December 9, 2010 to a small group of community-based organizations and legal aid groups that it was (1) lifting a prior ban on deportations to Haiti for individuals with criminal convictions, and (2) ending its policy of releasing detainees with orders of removal after 90 days.<sup>4</sup> The moratorium was one of a number of humanitarian measures that

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<sup>3</sup>Secretary General Ban Ki Moon, Remarks to the General Assembly, UNITED NATIONS NEWS SERVICE. (Dec. 3, 2010), available at [http://www.un.org/apps/news/infocus/sgspeeches/statments\\_full.asp?statID=1025](http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1025) (last visited Jan. 6, 2011) (“The challenges arising from the January 12 earthquake -- enormous as they were already -- have been compounded by the needs arising from the passage of Hurricane Tomas, the cholera outbreak and increasing political tensions.”). The Pan-American Health Organization expects 650,000 new cholera victims over the next six months, meaning that 8.3% of the total Haitian population is expected to have contracted cholera by June 2011 – meaning another 23,000 deaths are expected in the next 6 months. *See also* Richard Knox, Doctors Urge Cholera Vaccine for Haiti, Neighbors: NPR, NAT’L PUB. RADIO (December 10, 2010), available at <http://www.npr.org/2010/12/10/131950133/doctors-urge-cholera-vaccine-for-haiti-neighbors> (last visited Jan. 6, 2011) (The epidemic has reportedly spread to neighboring Dominican Republic, and experts believe that Haiti will continue to suffer from the outbreak for several years); IACHR Expresses Concern Over Situation in Camps for Displaced Persons in Haiti, No. 114/10, IACHR HOME (November 10, 2010), available at <http://www.cidh.oas.org/Comunicados/English/2010/115-10eng.htm> (last visited Jan. 6, 2011) (“An estimated 1.4 million people are still living in camps for internally displaced persons with limited access to food water and hygienic facilities.”); UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (OCHA), Haiti Earthquake Situation Report #34, 1-2 (Apr. 16, 2010); Liesl Gerntholtz, Sexual Violence: Help Haiti's Women, Human Rights Watch, Mar. 9, 2010, available at <http://www.hrw.org/en/news/2010/03/10/haitis-rape-crisis> (last visited Jan. 6, 2011).

<sup>4</sup> Jennifer Kay, Deportations Loom as Deadline for Haitians nears, Miami Herald (Dec. 20, 2010) available at: <http://www.deseretnews.com/article/700093504/Deportations-loom-as-deadline-for-Haitians-nears.html> (351 deportees being held in Louisiana with ICE expecting to deport 700 in 2011) (Last visited Jan. 4, 2011); Frances Robles and Nadege Charles, Deportations of Haitian Convicts Set to Resume, MIAMI HERALD.COM (Dec. 21, 2010), available at <http://www.miamiherald.com/2010/12/21/1982902/deportations-of-haitian-convicts.html#ixzz1A5H8poJI> (last visited Jan. 6, 2011) (“Some 100 Haitians in South Florida had their deportations placed on hold after a Jan. 12 earthquake that killed an estimated 300,000 people. But recently they

the U.S. Government had adopted until conditions improve in Haiti. The other humanitarian measures included Temporary Protected Status (TPS) designation to Haitian nationals living in the United States prior to the earthquake,<sup>5</sup> humanitarian parole for certain orphans,<sup>6</sup> and deferred action for qualifying individuals who arrived after the earthquake.<sup>7</sup>

It is ironic that on December 9, 2010, the same day ICE lifted its ban on deportations, the U.S. State Department issued a travel warning discouraging any nonessential travel to Haiti on account of the situation of “continued high crime, the cholera outbreak, frequent disturbances in Port-au-Prince and in provincial cities, and limited police protection and access to medical care.”<sup>8</sup> Authorities immediately began rounding up Haitians from their homes in communities across the country, detaining hundreds of individuals. ICE is holding Haitians in various

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were rounded up, held at the Krome Detention Center in West Miami-Dade and then last week transferred to three facilities in Louisiana. They make up about a third of the 351 ex-convicts nationwide whose deportations to Haiti were suspended after a 7.0-magnitude earthquake rocked the country.”).

<sup>5</sup> TPS is a temporary immigration status granted to eligible nationals of Haiti, or persons without nationality who last lived in Haiti. Haitian TPS beneficiaries are allowed to both remain and legally work in the U.S. for an 18-month period beginning January 21, 2010. Pending extension by the Secretary of Homeland Security, TPS status will expire on July 22, 2011. *See* Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (Jan. 21, 2010); Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals, U.S. Dep’t of Homeland Security (Jan. 15, 2010), available at [http://www.dhs.gov/ynews/releases/pr\\_1263595952516.shtm](http://www.dhs.gov/ynews/releases/pr_1263595952516.shtm) (last visited Jan. 6, 2011).

<sup>6</sup> Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans, U.S. Dep’t of Homeland Security (Jan. 18, 2010), available at [http://www.dhs.gov/ynews/releases/pr\\_1263861907258.shtm](http://www.dhs.gov/ynews/releases/pr_1263861907258.shtm) (last visited Jan. 6, 2011). Advocates had also asked the U.S. government to take additional steps to address the scope of the current humanitarian crisis in Haiti by granting humanitarian parole to Haitians in Haiti with family members residing in the U.S. or with urgent medical needs. The U.S. government, however, has refused to exercise its parole authority for these groups of Haitians. *See generally* Haiti Advocacy Working Group (HAWG), available at [http://ijdh.org/wordpress/wp-content/uploads/2010/07/HAWG\\_Immigration\\_FINAL.pdf](http://ijdh.org/wordpress/wp-content/uploads/2010/07/HAWG_Immigration_FINAL.pdf) (last visited Jan. 6, 2011).

<sup>7</sup> “Refugees Live Uncertain Existence In a Maze of Immigration Laws,” Miami Herald (July 7, 2010), available at <http://www.miamiherald.com/2010/07/11/v-fullstory/1726132/refugees-live-uncertain-existence.html#> (last visited Jan. 5, 2011).

<sup>8</sup> U.S. State Department, Bureau of Consular Affairs, Travel Warning: Haiti (Dec. 9, 2010), available at [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_4632.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_4632.html) (last visited Jan. 6, 2011). *See also* Letter From Vincent Warren, Executive Director Center for Constitutional Rights, and Bill Quigley, Legal Director Center for Constitutional Rights, to President Barack Obama (Dec. 16, 2010), available at [http://www.ccrjustice.org/files/FINAL%20Letter%20to%20President\\_Haiti%20Deportations%20%282%29.pdf](http://www.ccrjustice.org/files/FINAL%20Letter%20to%20President_Haiti%20Deportations%20%282%29.pdf) (last visited Jan. 5, 2011).

facilities, including Hudson County Jail in New York and T. Don Hutto Residential Center in Taylor, Texas. ICE transferred a large number male detainees from the Krome Service Processing Center in Miami, Florida, where they had access to their families and a large nearby Haitian community, to three remote jails in Basile, Lasalle, and Waterproof, Louisiana, effectively cutting them off from their families, communities, and advocates.<sup>9</sup> In at least one case, guards assaulted a detainee who peacefully resisted transfer.<sup>10</sup>

According to U.S. immigration authorities, the detained groups are slated for deportation to Haiti in mid-January 2011.<sup>11</sup> On January 5, 2011, some Petitioners detained at Tensas Parish Correctional Center in Waterproof, Louisiana were fingerprinted in apparent preparation for deportation. Petitioners have not only been detached from their families and lives in the United States but also face indefinite and arbitrary detention in squalid detention facilities upon their arrival in Haiti. Under a longstanding policy of the Haitian government, explained below, all deportees with criminal records are detained in Haitian police station holding cells upon arrival in Haiti under conditions that have been widely documented as inhumane.

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<sup>9</sup> There are only six nonprofit immigration attorneys in Louisiana. Of the 77 attorneys who are members of the American Immigration Lawyers Association, 55 are located in New Orleans. Moreover, unlike other cities in the United States, New Orleans has only a small community of private attorneys willing to accept pro bono immigration cases.

<sup>10</sup> Lerner Decl., Ex. A-1 ¶ 8.

<sup>11</sup> Frances Robles and Nadege Charles, *Deportations of Haitian Convicts Set to Resume*, MIAMI HERALD.COM (Dec. 21, 2010), available at <http://www.miamiherald.com/2010/12/21/1982902/deportations-of-haitian-convicts.html#ixzz1A5H8poJI> (last visited Jan. 6, 2011) (“Some 100 Haitians in South Florida had their deportations placed on hold after a Jan. 12 earthquake that killed an estimated 300,000 people. But recently they were rounded up, held at the Krome Detention Center in West Miami-Dade and then last week transferred to three facilities in Louisiana. They make up about a third of the 351 ex-convicts nationwide whose deportations to Haiti were suspended after a 7.0-magnitude earthquake rocked the country.”). This timing has been confirmed by advocates’ conversations with U.S. immigration officials.

Despite pleas to halt the removal program, ICE quietly continues to move forward with the planned deportations. Public pressure, including letters and op-eds, has fallen on deaf ears.<sup>12</sup> Family members and advocates for these Haitians have reported continued round-ups or threats thereof throughout December 2010 and early January 2011.

Meanwhile, ICE has remained decidedly silent about the decision to resume deportation. ICE's website contains no information concerning this systematic removal of Haitians from U.S.

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<sup>12</sup> U.S. Gov't Resumes Deportations to Haiti Amid Spiraling Cholera Outbreak and Worsening Humanitarian Situation, JSF Post (Jan. 1, 2011), available at <http://www.jsf-post.com/2011/01/01/u-s-government-resumes-deportations-to-haiti-amid-spiraling-cholera-outbreak-and-worsening-humanitarian-situation/> (last visited Jan. 4, 2011); CCR Sends Letter to Obama Raising Concerns Over Immediate Plans to Resume Deportations to Haiti Amid Spiraling Cholera Outbreak, Center For Constitutional Rights (Dec. 16, 2010), available at <http://www.ccrjustice.org/newsroom/press-releases/ccr-sends-letter-obama-raising-concerns-over-immediate-plans-resume-deportat> (last visited Jan. 4, 2010); Letter from Vincent Warren, Executive Director, Center for Constitutional Rights and Bill Quigley, Legal Director, Center for Constitutional Rights to President Barack Obama, December 16, 2010, available at: [http://www.ccrjustice.org/files/FINAL%20Letter%20to%20President\\_Haiti%20Deportations%20\(2\).pdf](http://www.ccrjustice.org/files/FINAL%20Letter%20to%20President_Haiti%20Deportations%20(2).pdf) (last visited Jan. 4, 2011); Rights Groups Denounce U.S. Decision to Resume Deportations to Haiti Amid Cholera Outbreak and Worsening Humanitarian Situation, Center for Constitutional Rights (Dec. 13, 2010), <http://www.ccrjustice.org/newsroom/press-releases/rights-groups-denounce-u.s.-government-s-decision-resume-some-deportations-h> (last visited Jan. 4, 2011); Brandon Hensler, ACLU and Congresswoman-elect Frederica Wilson call on Obama Administration to Avert "Human Rights Disaster," Halt Deportation of Haitian Nationals, ACLU of Florida (Dec. 29, 2010), [http://www.aclufl.org/news\\_events/index.cfm?action=viewRelease&emailAlertID=3886](http://www.aclufl.org/news_events/index.cfm?action=viewRelease&emailAlertID=3886). Letter from Laura Murphy, ACLU Washington Legislative Director, and Howard Simon, Executive Director American Civil Liberties Union of Florida, to President Barack Obama (Dec. 29, 2010), available at [http://www.aclu.org/files/assets/ACLU\\_Haitian\\_Letter\\_12-29-10\\_final.pdf](http://www.aclu.org/files/assets/ACLU_Haitian_Letter_12-29-10_final.pdf); U.S. Government Resumes Deportations To Haiti Amid Spiraling Cholera Outbreak And Worsening Humanitarian Situation, Institute For Justice & Democracy In Haiti (Dec. 14, 2010), [Http://Ijdh.Org/Archives/16072](http://Ijdh.Org/Archives/16072) (Last Visited January 4, 2011); Michelle Karshan, Being Deported To Post Earthquake Haiti, Alternative Chance/Chans Alternativ (Dec. 15, 2010), [Http://Www.Alternativechance.Org/](http://Www.Alternativechance.Org/). (Last Visited January 4, 2011); Imam Mahdi Bray, Mas Freedom Condems U.S. Gov't's Decision To Resume Deportations To Haiti Amid Soaring Cholera Outbreak And Deteriorating Humanitarian Conditions, The Crescent Report (Dec. 14, 2010), [Http://Mahdibray.Net/2010/12/15/](http://Mahdibray.Net/2010/12/15/) (Last Visited Jan. 4, 2011); Letter From @AFSC\_Org To President Obama On Haitian Deportations, Detention Watch Network (Dec. 20, 2010), [Http://Detentionwatchnetwork.Wordpress.Com/2010/12/23/Letter-From-Afsc-Org-To-President-Obama-On-Haitian-Deportations/](http://Detentionwatchnetwork.Wordpress.Com/2010/12/23/Letter-From-Afsc-Org-To-President-Obama-On-Haitian-Deportations/) (Last Visited Jan. 4, 2010); Letter From Shan Cretin, American Friends Service Committee, To President Obama (Dec. 21, 2010), Available At: [Http://Afsc.Org/Sites/Afsc.Civicactions.Net/Files/Documents/Letter\\_To\\_President\\_Obama\\_Re\\_Haiti\\_Deportation\\_20Dec2010.Pdf](http://Afsc.Org/Sites/Afsc.Civicactions.Net/Files/Documents/Letter_To_President_Obama_Re_Haiti_Deportation_20Dec2010.Pdf) (Last Visited: Jan. 4, 2010); Immigrant Advocates Call To Halt Haitian Deportations, CBS News Miami (Dec. 29, 2010) [Http://Miami.Cbslocal.Com/2010/12/29/Immigrant-Advocates-Call-For-Halt-Of-Haitian-Deportations/](http://Miami.Cbslocal.Com/2010/12/29/Immigrant-Advocates-Call-For-Halt-Of-Haitian-Deportations/). (Last Visited: Jan. 4, 2010).

soil.<sup>13</sup> There is very little information in the public domain. The dearth of public information only contributes to the terror that family members feel at the prospect of losing their parents, children, siblings, and other loved ones to a dangerous fate in Haiti. ICE's announced deportation date of mid-January 2011 gives Petitioners, their families, and their communities virtually no opportunity to seek reversal of the decision to lift the deportation moratorium and no possibility of preparing for the serious consequences of deportation.

### **III. THE FIVE NAMED PETITIONERS, THEIR FAMILIES, AND THE LARGER GROUP THEY REPRESENT**

As detailed in the stories below and in the declaration of Romy Lerner, a supervising attorney at Florida Immigrant Advocacy Center, (Ex. A-1), the recent roundups, detention, and announced deportations of Petitioners have created fear, confusion, and major life disruptions for Petitioners, their families, and Haitian communities in the United States.

#### **A. Named Petitioner Gary Resil<sup>14</sup>**

Gary Resil is a 61-year-old Haitian man who has been living as a lawful permanent resident in the United States since 1967. Mr. Resil fled Haiti after his family was attacked for political reasons. He has five United States citizen children for whom he was the primary caretaker after his marriage ended in divorce approximately ten years ago. He worked as a real estate investor and is also an accomplished musician. Mr. Resil is currently detained at Tensas Parish Detention Center in Waterproof, Louisiana, after having been transferred from Krome Service Processing Center in Miami, Florida – a detention facility near his residence in Boca Raton, Florida. He has a final order of removal from August 2010 based upon criminal

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<sup>13</sup> See ICE, News Releases-Enforcement & Removal, 1/8/2008–current, available at <http://www.ice.gov/news/releases/index.htm> (last visited Jan. 6, 2011).

<sup>14</sup> Lerner Decl., Ex. A-1 ¶¶ 13-17.

convictions for theft and racketeering offenses relating to his business. For reasons set forth below, he therefore faces immediate incarceration by Haitian authorities if he is deported to Haiti.

Mr. Resil suffers from a number of serious medical conditions, including diabetes, rapid heartbeat, high blood pressure, and anxiety. To keep his diabetes under control, Mr. Resil takes the medication Metformin. He suffers from the related condition of low platelets, which requires that he get a blood test every two months and that he take steroids when his platelet count is too low. Mr. Resil has not been getting his required diabetic diet in Tensas Parish Detention Center.

As his only remaining relatives in Haiti were killed in the January 2010 earthquake, Mr. Resil has no family in Haiti to bring food and water to him in jail or to help secure his release. Given the current cholera epidemic and the situation of general unrest in Haiti, Mr. Resil's lack of family ties could have devastating consequences for his life, health, and well-being.

**B. Named Petitioner Harry Mocombe<sup>15</sup>**

Harry Mocombe is a 30-year-old Haitian man who came to the United States as a lawful permanent resident in 1999 at the age of 19. U.S. immigration authorities are detaining Mr. Mocombe at Tensas Parish Detention Center in Waterproof, Louisiana, after having transferred him there from Krome Service Processing Center in Miami, Florida. Prior to being detained, Mr. Mocombe resided in Florida with his 6-year-old son, a U.S. citizen, and the mother of his son, a lawful permanent resident.

Mr. Mocombe's son suffers from Canavan, a rare leukodystrophy disease afflicting children that is degenerative. There is no cure for the disease. Treatment is limited to supportive care with symptoms progressing until the child's death in their early teens. Children without

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<sup>15</sup> Lerner Decl., Ex. A-1 ¶¶ 18-22.



care have a life expectancy of only 4 to 5 years. Mr. Mocombe's son does not walk or talk, suffers from seizures, and is on a feeding tube. A nurse helps Mr. Mocombe and his partner take care of his son because of the severity of his condition. Since Mr. Mocombe has been away from home, his son has experienced more seizures.

An immigration judge ordered Mr. Mocombe removed on September 21, 2010 on account of convictions for burglary of an unoccupied dwelling and offenses involving theft and dealing in stolen property. Thus, like the other Petitioners, Mr. Mocombe faces immediate incarceration by the Haitian authorities upon his deportation to Haiti. He lost in the earthquake the only two remaining family members he had in Haiti: his mother's brother and sister. Mr. Mocombe would therefore have no one to bring him food and water in the Haitian jail or help to attempt to secure his release from detention.

**C. Named Petitioner Roland Joseph<sup>16</sup>**

Roland Joseph is 43 years old and arrived in the United States as a lawful permanent resident in 1999. He is detained at Tensas Parish Detention Center in Waterproof, Louisiana after having been transferred from Krome Service Processing Center in Miami, Florida. A Florida resident, Mr. Roland has four children, ages 22, 19, 16, and 12, and a 2-year-old grandchild, all of whom are lawful permanent residents or U.S. citizens. Since their mother passed away in 2000, Mr. Joseph has been a single father and the sole financial provider for his children. Since his detention his children have fallen months behind on their rent.

Mr. Joseph was ordered removed on September 7, 2010 based on his conviction for two counts of drug possession with intent to sell, for which he was sentenced to a total of six months in prison. Mr. Joseph has no family or friends in Haiti. If he were deported to Haiti and

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<sup>16</sup> Lerner Decl., Ex. A-1 ¶¶22-26.

imprisoned, he would have no one to advocate for his release or provide him with food and water.

**D. Named Petitioner Evel Camelien<sup>17</sup>**

Evel Camelien is a 53-year-old man who came to the United States by boat in 1980.<sup>18</sup> He was detained at Krome Service Processing Center in Miami, Florida but then transferred to Tensas Parish Detention Center in Waterproof, Louisiana. Mr. Camelien has four children in the United States, ages 9, 11, 18, and 28. Three of his children in the United States are U.S. citizens and one is a lawful permanent resident. Prior to being detained by U.S. immigration authorities, Mr. Camelien was living with his older children and financially supporting his two younger children. A resident of Lakeland, Florida, Mr. Camelien owns a house and had been steadily employed for many years before being detained by ICE.

Mr. Camelien had three other children who were living in Haiti, but all three died in the earthquake. Mr. Camelien also lost his mother, father, and sister-in-law to the disaster. Because Mr. Camelien has an order of removal based on a drug conviction, he will be detained by Haitian authorities upon arrival in Haiti. He has only a few members of his extended family living in Haiti. Mr. Camelien does not know where they are living and it is highly unlikely that, even if he is able to locate them, they would be able to assist Mr. Camelien once he is deported to Haiti and jailed.

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<sup>17</sup> Lerner Decl., Ex. A-1 ¶¶27-30.

<sup>18</sup> After being deported to Haiti in 1986, Mr. Camelien fled violence in Haiti and returned to the United States in 1988.

**E. Named Petitioner Pierre Louis<sup>19</sup>**

Pierre Louis is a 27-year-old man from Haiti who has lived in the United States as a lawful permanent resident since 2001. He is detained at Tensas Parish Detention Center in Waterproof, Louisiana after having been transferred from Florida. Mr. Louis had been supporting his five-year-old son, a U.S. citizen, and his father, a lawful permanent resident, by working for National Car Rental. On February 23, 2010, Mr. Louis received a final order of removal based upon a conviction for falsely claiming to be a U.S. citizen, in connection with an application to register to vote. He also has criminal convictions for misdemeanor battery and stealing a bookbag. Like the other petitioners, he faces incarceration upon arrival in Haiti.

Mr. Louis has suffered from schizophrenia since he was a teenager and has been prescribed the antipsychotic medication Seroquel. He fears living without his medication because he hears voices, talks to himself, and cries a lot. Mr. Louis is terrified of being deported to Haiti and jailed because he is aware that detainees do not receive medication or medical treatment. He has no family in Haiti to help him deal with his serious medical condition, bring him food while he is in jail, and advocate for his release. Mr. Louis' only relative in Haiti, his aunt, died in the earthquake.

**F. The Unnamed Petitioners**

The stories of Petitioners Resil, Mocombe, Joseph, Camelin, and Louis reflect the stories of the larger group of Petitioners represented in this request for precautionary measures. These Petitioners may be found in the custody of the United States in the system of U.S. ICE detention, including in the Hudson County Jail in Kearny, New Jersey; Baker County Jail, in Macclenny,

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<sup>19</sup> Lerner Decl., Ex. A-1 ¶31-33.

Florida; Tensas Parish Detention Center in Waterproof, Louisiana; South Louisiana Correctional Center in Basile, Louisiana; and LaSalle Detention Center in Jena, Louisiana.<sup>20</sup>

The unnamed Petitioners include men and women; individuals with acute and chronic illnesses and mental disabilities; the elderly; and former asylum seekers. The majority of the unnamed Petitioners have lived as lawful permanent residents in the United States for many years and possess extensive family, economic, and community ties to this country.<sup>21</sup> Some suffer from serious mental health and/or other medical conditions that will go untreated and become life-threatening upon removal to Haiti.<sup>22</sup>

U.S. immigration law, however, largely precludes immigration judges from considering the effects of deportation on these immigrants and their families due to the broad categories of crimes which render non-citizens ineligible for judicial review of their removal charges and narrow judicial interpretations of the Convention Against Torture. *See supra*, Part IV.D. As a result, the immigration judges issued removal orders against most of the Haitian nationals at issue in this petition after only short hearings.

#### **IV. HISTORICAL, LEGAL, AND POLITICAL CONTEXT**

##### **A. The History of U.S. Policy Towards Haitian Migrants**

The decision by ICE to resume deportations of Haitian nationals must also be understood in the context of a long history of the U.S. government forcing Haitians into harm's way.<sup>23</sup> The

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<sup>20</sup> Lerner Decl., Ex. A-1 ¶¶ 8, 13, 18, 23, 27.

<sup>21</sup> Lerner Decl., Ex. A-1 ¶¶ 4, 11, 13-15, 18, 20, 23, 25.

<sup>22</sup> Lerner Decl., Ex. A-1 ¶¶ 11, 17, 33.

<sup>23</sup> *See* Florida Immigrant Advocacy Center, *Haitian Refugees: A People In Search Of Hope* 1-2 (2004), available at <http://www.fiacfla.org/reports/HaitianRefugeesAPeopleinSearchofHope.pdf> (noting a history of discrimination against Haitian refugees that spans four decades) (last visited Jan. 6, 2011).

first Haitian “boatpeople” seeking protection from persecution arrived in the United States in September 1963. All twenty-five refugees in the group were fleeing Haiti’s ruthless, U.S.-supported dictator, François (“Papa Doc”) Duvalier. In heavily criticized decisions, all were denied asylum and deported.<sup>24</sup> Harsh measures and tactics continued through the 1960s, 70s and 80s to force their return to Haiti or keep them locked up as a group, resulting in a grant of asylum for less than two percent of Haitians who sought it between 1980 and 1991.<sup>25</sup> Later, following the September 1991 coup that deposed democratically elected Haitian President Jean Bertrand Aristide, the tide of refugees swelled. The United States continued interdicting Haitian asylum-seekers at sea, only pausing repatriations for less than three months.<sup>26</sup> Whereas the United States had previously brought Haitians whom interviewers deemed to have a “credible fear” of

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<sup>24</sup> Cheryl Little, *United States Haitian Policy: A History of Discrimination*, 10 N.Y.L. Sch. J. Hum. Rts. 269, 270 (1993) (“The fundamental principles of refugee protection have been abandoned time and again in favor of returning Haitians to a country where its people are routinely victimized.”).

<sup>25</sup> The United States Court of Appeals for the Eleventh Circuit, or southeastern United States, found that statistical data on individual immigration detention decisions demonstrated a “stark pattern of discrimination” against Haitians. *Jean v. Nelson*, 711 F.2d 1455, 1487 (11th Cir. 1983). Professor Carlos Ortiz Miranda has written that throughout the 1980s and the first half of the 1990s, “the United States domestic and foreign policy regarding Haitian boatpeople and refugees ... had three objectives: (1) to exclude, detain, and restrict the use of parole for Haitians physically present in the United States, (2) to interdict Haitians on the high seas, and (3) to process Haitian refugees in their own country.” Carlos Ortiz Miranda, *Haiti and the United States During the 1980s and 1990s: Refugees, Immigration, and Foreign Policy*, 32 San Diego L. Rev. 673, 679 (1995). Contemporary United States policy retains the first two objectives. It is important to note that while the United States government termed Haitian refugees fleeing the repressive, United States-supported Duvalier regime in the 1980s “economic immigrants,” and thus denied the vast majority political asylum, almost three times more Haitians were deemed political refugees under the democratic government of President Jean Bertrand Aristide in the early and mid 1990s “than during an entire decade marked by human rights abuses and tyranny.” See Convention on the Elimination of all Forms Racial Discrimination (CERD), Shadow Report 2008, available at <http://www.ijdh.org/pdf/headline1-8-08.pdf> (last visited Jan. 6, 2011). This was so despite a dramatic drop in the number of refugees attempting to reach the United States during Aristide’s term. Cheryl Little, *Intergroup Coalitions and Immigration Politics*, 53 U. Miami L. Rev. 717, 722 (1999).

<sup>26</sup> Cheryl Little, *United States Haitian Policy: A History of Discrimination*, 10 N.Y.L. Sch. J. Hum. Rts. 269, 299, n.129 (“Unable to find a regional solution and unwilling to bring the Haitians to the United States, the U.S. government began forcibly repatriating the Haitians on November 18, 1991.”).

persecution to the United States, after the coup the U.S. Government began warehousing Haitian refugees at makeshift camps at the U.S. naval base in Guantánamo Bay, Cuba.<sup>27</sup>

In March 1992, the former U.S. Immigration and Naturalization Service decided to re-interview the Haitians who had already been found to have a credible fear of return and to repatriate those who failed the second interview.<sup>28</sup> When a federal judge required that counsel be made available for these interviews, President George W. Bush issued an executive order making screening for fear of return discretionary rather than mandatory.<sup>29</sup>

Continuing this pattern of unrestrained repatriation in 2005, a politically violent year in Haiti, the United States granted only nine pre-screening interviews for the over 1800 Haitians intercepted at sea.<sup>30</sup> This failure to comply with the fundamental principle of *non-refoulement* was consistent with President George H.W. Bush's statement at a 2004 press conference: "we will turn back any *refugee* that attempts to reach our shore."<sup>31</sup>

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<sup>27</sup> Harold Koh, The "Haiti Paradigm" in United States Human Rights Policy, 103 Yale L.J. 2391, 2394 (1994); see *Haitian Refugee Ctr. v. Baker*, 789 F. Supp. 1552, 1571-72 (S.D. Fla. 1991).

<sup>28</sup> Koh, *infra* note 26, at 2394. Those Haitian detainees remaining at Guantánamo were brought to the United States in 1993 following a court order and legal settlement. *Id.* at 2397.

<sup>29</sup> Whereas the Executive Order 12,324 had provided that "no person who is a refugee will be returned without [the U.S. Attorney General's] consent, 46 Fed. Reg. 48,109 (Sept. 29, 1981), Executive Order 12,807 provided only that "the Attorney General, in his unreviewable discretion, *may* decide that a person who is a refugee will not be returned without his consent," 57 Fed. Reg. 23,133 (June 1, 1992).

<sup>30</sup> *Our Opinion: Give Haitians a Fair Opportunity to Seek Refuge*, Miami Herald at L4 (Jan. 22, 2006).

<sup>31</sup> President Bush Welcomes Georgian President Saakashvili to White House: Remarks by the President and Georgian President Saakashvili in Photo Opportunity, White House News Release/Transcript (Feb. 25, 2004) (emphasis added).

## **B. The Cholera Epidemic and Other Troubling Conditions In Haiti**

Haiti is currently suffering its first cholera outbreak in decades, if not a hundred years.<sup>32</sup> While normally cholera can be treated and the mortality rate kept low, in Haiti under the existing humanitarian crisis, the mortality rate is more like 5-10%.<sup>33</sup> As of December 3, 2010, the cholera epidemic had spread to all ten departments of the country and there were 81,000 reported cases with 1,800 deaths, although experts estimate that the actual numbers are probably close double that.<sup>34</sup> As of December 26, those numbers had risen to 109,196 people who have contracted cholera and 3,333 who have died as a result of the disease.<sup>35</sup> The disease continues to spread, and the World Health Organization and Pan-American Health Organization expect another 650,000 cases within the first 6 months of 2011.<sup>36</sup> Dr. Arthur Fournier, an expert on medicine and disease in Haiti, estimates that roughly 5-10% of the Haitian population will become infected with cholera.<sup>37</sup>

The epidemic has been traced to a particularly lethal strain, *vibrio cholerae*, that appeared in India four years ago and can result in death in as little as two hours after symptoms first exhibit.<sup>38</sup> Jailed populations are particularly at risk, where the overcrowding, lack of sanitation

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<sup>32</sup> Declaration of Dr. Arthur Fournier (Jan. 5, 2011) (hereinafter, "Fournier Decl."), Ex. A-4 ¶10.

<sup>33</sup> Fournier Decl., Ex. A-4 ¶15.

<sup>34</sup> See Secretary General Ban Ki Moon, Remarks to the General Assembly, United Nations News Service (Dec. 3, 2010), available at [http://www.un.org/apps/news/infocus/sgspeeches/statments\\_full.asp?statID=1025](http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1025) (last visited Jan. 6., 2011).

<sup>35</sup> Fournier Decl., Ex. A-4 ¶16.

<sup>36</sup> Fournier Decl., Ex. A-4 ¶17.

<sup>37</sup> Fournier Decl., Ex. A-4 ¶16.

<sup>38</sup> Richard Knox, Doctors Urge Cholera Vaccine for Haiti, Neighbors: NPR (December 10, 2010) available at: <http://www.npr.org/2010/12/10/131950133/doctors-urge-cholera-vaccine-for-haiti-neighbors> (last visited Jan. 6, 2011); Fournier Decl., ¶¶10-11.

or toilets, and lack of clean drinking water present classic conditions for cholera transmission.<sup>39</sup> Deportation of individuals with criminal convictions to Haiti is particularly worrisome then, since “Haiti often puts criminal detainees in prison, where cholera can quickly spread unchecked.”<sup>40</sup> Individuals held in police holding cells lack regular access to food, safe drinking water, and medical or mental health care.<sup>41</sup> As a result, individuals in these detention settings are not able to take the precautions necessary to avoid contracting cholera such as hand-washing several times a day with treated water, drinking only treated water, and eating food still hot taken right from the stove.<sup>42</sup> Moreover, detainees are held in overcrowded cells and locked inside for 24 hours at a time with no outside break and are forced to sleep on insect and rodent infested cement floors and to defecate in bags and urinate in communal buckets.<sup>43</sup>

Similar conditions have existed in Haiti’s prison system.<sup>44</sup> Paul Waggoner, a U.S. citizen aid worker recently released from Haiti’s National Penitentiary, told *The Montreal Gazette* that there was no clean water in prison. Waggoner also reported that while he was in the National Penitentiary, “A couple of bodies a day were being removed from there. . . . The last night I just

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<sup>39</sup> Fournier Decl., ¶¶23-33; May Decl., ¶¶13-21; BBC News—Haiti Cholera Outbreak Spreads to Port-au Prince Prison (Nov. 19, 2010) available at: <http://www.bbc.co.uk/news/world-latin-america-11800143> (last visited on Dec. 29, 2010).

<sup>40</sup> Jennifer Kay, *Deportations Loom as Deadline for Haitians nears*, *Miami Herald* (Dec. 20, 2010) available at: <http://www.deseretnews.com/article/700093504/Deportations-loom-as-deadline-for-Haitians-nears.html> (last visited Jan. 4, 2011).

<sup>41</sup> Fournier Decl., Ex. A-4 ¶14.

<sup>42</sup> Fournier Decl., Ex. A-4 ¶15.

<sup>43</sup> Fournier Decl., Ex. A-4 ¶20.

<sup>44</sup> Declaration of Dr. John May (Jan. 5, 2011) (hereinafter, “May Decl.”), Ex. A-2 ¶¶18-21.



went to the bathroom in plastic bags my friends had given me.”<sup>45</sup>

The cholera epidemic is occurring in the context of the aftermath of the earthquake nearly a year ago, from which Haiti has still not recovered and which killed more than 230,000 people, injured another 300,000 people and left approximately 1.5 million people displaced, and amid post-election violence and civil unrest so severe that the U.S. State Department warned U.S. citizens against traveling to Haiti:

Beginning in October, protests, demonstrations, and violent disruptions have occurred regularly in downtown Port-au-Prince. In November, violent demonstrations occurred for several days in and around Cap Haitien, making travel in and out of the area very hazardous. In several cases UN police had to shelter U.S. citizen missionaries and Non-Governmental Organization (NGO) workers and coordinate their departure once protests ended. Following the first round of elections in late November, demonstrations occurred in numerous parts of Port-au-Prince and in cities throughout the country. During demonstrations protestors have damaged vehicles, thrown rocks, and burned tires to block traffic.<sup>46</sup>

On January 4, 2011, Haiti announced that it was postponing the second round of presidential elections widely disputed and condemned as fraudulent, further intensifying the atmosphere of uncertainty and instability.<sup>47</sup>

Finally, it should be recognized that this Commission has recently addressed additional aspects of the still-deteriorating human rights situation in Haiti when it issued precautionary measures ordering a halt to forced evictions from temporary encampments

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<sup>45</sup> See Harrold, Max, *Despite Prison Ordeal, Aid Worker Anxious to Return to Haiti*, *The Gazette* (Jan. 2, 2011), available at <http://www.montrealgazette.com/news/Despite+prison+ordeal+worker+anxious+return+Haiti/4050156/story.html#ixzz19w5GkOMi> (last visited Jan. 6, 2011).

<sup>46</sup> U.S. State Department, Bureau of Consular Affairs, *Travel Warning: Haiti* (Dec. 9, 2010), available at [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_4632.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_4632.html) (last visited Jan. 6, 2011).

<sup>47</sup> *Haiti Second Round Vote Impossible Before February*, *Reuters* (Jan. 4, 2011) available at AlertNet, <http://www.trust.org/alertnet/news/haiti-second-round-vote-impossible-before-february/> (last visited Jan. 6, 2011).

of those displaced by the earthquake and requested precautionary measures be put in place to address rape and other gender-based violence occurring in the camps.<sup>48</sup>

### **C. Treatment of Criminal Deportees in Haiti**

Deportees with criminal records face illegal, indefinite, and degrading detention by Haitian authorities upon arrival in Haiti. In general, there is no medical treatment and no food other than what is provided by family members of the detainees.<sup>49</sup> The police station holding cells in which detainees have been held in recent years are perilously unsanitary.<sup>50</sup> Contagious diseases like tuberculosis and parasites like scabies are common.<sup>51</sup> The water is contaminated and is extremely dangerous to drink.<sup>52</sup> The temperature typically runs over 100 degrees with no, or virtually no, ventilation.<sup>53</sup> People are detained for 24 hours a day with no natural light in terribly overcrowded conditions.<sup>54</sup> Prisoners are forced to defecate in bags and urinate in communal buckets.<sup>55</sup> Detainees sleep standing up or on cement floors that are infested with

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<sup>48</sup> Inter-American Commission on Human Rights, PM 367-10, Forced Evictions from Five Camps for Displaced Persons, Haiti (2010) available at <http://www.cidh.oas.org/medidas/2010.eng.htm> (last visited Jan. 6, 2011); Press Release: Inter-American Human Rights Commission Sets Unprecedented Recommendations for Haitian Government to Address Wave of Sexual Violence in Displacement Camps, Institute for Justice and Democracy in Haiti, Jan. 4, 2011, available at <http://ijdh.org/archives/16256> (last visited Jan. 6, 2011).

<sup>49</sup> Declaration of Michelle Karshan, Executive Director of Alternative Chance in Haiti, (Jan. 5, 2011) (hereinafter, "Karshan Decl."), Ex. A-3 ¶28; May Decl., Ex. A-2 ¶10; Fournier Decl., Ex. A-4 ¶31.

<sup>50</sup> Karshan Decl., Ex. A-3 ¶16; May Decl., Ex. A-2 ¶11.

<sup>51</sup> Karshan Decl., Ex. A-3 ¶29.

<sup>52</sup> *Id.* ¶14.

<sup>53</sup> *Id.* ¶20.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

insects and rodents.<sup>56</sup>

The abysmal conditions in police station holding cells reflect the conditions generally in Haitian prisons. The more than 6,000 individuals incarcerated in detention facilities in Haiti live in conditions that are severely overcrowded, poorly ventilated, and unsanitary.<sup>57</sup> Prisoners and detainees suffer from lack of basic hygiene, malnutrition, inadequate health care, and rodent infestation, and disproportionately suffer from preventable diseases such as beriberi, AIDS, and tuberculosis.<sup>58</sup> In 2009, the U.S. Congressional Committee on Appropriations concluded that there is a “persistent problem of overcrowding at the National Penitentiary, where thousands of inmates languish in squalor, some dying of TB, without being charged with any crime.”<sup>59</sup> This Commission has also expressed its concern about Haiti’s prison, stating in its 2009 Annual Report that: “Persons deprived of liberty continue to live in overcrowded conditions that do not respect the minimum universally recognized standards for detention, in violation of their fundamental rights.”<sup>60</sup>

The earthquake has exacerbated the already life-threatening conditions in Haiti’s prisons.<sup>61</sup> For example, overcrowding has made it necessary for detained individuals to sleep standing up with a rope tied around their waist and affixed to a window, to prevent themselves

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<sup>56</sup> *Id.* ¶¶11, 20.

<sup>57</sup> May Decl., Ex. A-2 ¶7.

<sup>58</sup> *Id.*; see also Fournier Decl., Ex. A-4 ¶29.

<sup>59</sup> Department of State, Foreign Operations, and Related Programs, Appropriations Bill, 110<sup>th</sup> Cong. (2009).

<sup>60</sup> Inter-American Commission on Human Rights, Annual Report 2009, Chapter IV, ¶404.

<sup>61</sup> Karshan Decl., Ex. A-3 ¶¶5, 11.

from falling over.<sup>62</sup> Moreover, as discussed above, the cholera epidemic has taken a tremendous toll on the Haitian population generally; individuals in overcrowded detention conditions are particularly susceptible to contracting and dying from this contagious disease.<sup>63</sup>

In addition to these horrendous conditions, Haitian authorities are well-known to inflict physical abuse on, and sometimes even kill, imprisoned individuals. In 2010, after the earthquake, police and corrections officers killed unarmed prisoners at a national prison in Les Cayes.<sup>64</sup> In 2009, the U.S. State Department stated that “[p]risoners reported abuse by correctional officers.”<sup>65</sup> A 2003 U.S. State Department report described “[b]eatings with fists, sticks, belts, and ‘kalot marassa’—a severe boxing of the ears—[as] the most common form of abuse.”<sup>66</sup>

Corruption and indifference pervade Haiti’s correctional and police system.<sup>67</sup> Prior to the moratorium on deportations to Haiti, officials routinely extorted money from detainees and their relatives in order to buy release from detention.<sup>68</sup> In 2009, the U.S. State Department reported that “returnees” faced “alleged corruption, widespread discrimination, and social abuse after

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<sup>62</sup> *Id.* at ¶11.

<sup>63</sup> *Id.* at ¶¶13, 16, 19, 54; May Decl., Ex. A-2 ¶¶14-17; Fournier Decl., Ex. A-4, ¶31.

<sup>64</sup> Deborah Sontag and Walt Bogdanich, “Escape Attempt Led to Killings of Unarmed Inmates”, N.Y. Times (May 22, 2010), available at <http://www.nytimes.com/2010/05/23/world/americas/23haiti.html> (Last visited Jan. 6, 2011). *See also* “Report Assails Haiti Officers in Prison Killings” N.Y. Times (Oct. 21, 2010) available at [Haiti-info.com](http://www.haiti-info.com), <http://www.haiti-info.com/?Panel-s-Report-Assails-Haiti> (Last visited Jan. 6, 2011).

<sup>65</sup> U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm> (Last visited Jan. 6, 2011).

<sup>66</sup> U.S. Department of State, 2003 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27902.htm> (Last visited Jan. 6, 2011); *see also* Karshan Decl., Ex. A-3 ¶21.

<sup>67</sup> U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm> (Last visited Jan. 6, 2011).

<sup>68</sup> *Id.*; Karshan Decl., Ex. A-3 ¶50.

returning home.”<sup>69</sup> This included “arbitrary arrests, false accusations about their activities to local police, and extortion attempts against them and their families abroad during the initial detention phase.”<sup>70</sup>

The Haitian government has failed to implement relatively simple and costless measures to improve conditions for criminal deportees. For example, although the United States government provides the medical records of deportees to the Haitian authorities, it is the practice of the Haitian government to store these records at the Ministry of Interior, where they are never made available to medical professionals.<sup>71</sup>

The detention of criminal deportees is illegal under both Haitian and international law, both of which prohibit detention without charge.<sup>72</sup> In 2009, the U.S. Department of State reported that Haitian law

prohibits arbitrary arrest and detention, and the constitution stipulates that a person may be arrested only if apprehended during the commission of a crime or on the basis of a warrant by a legally competent official such as a justice of the peace or magistrate. The authorities must bring the detainee before a judge within 48 hours of arrest.”<sup>73</sup>

The State Department noted, however, that “officials frequently did not comply with these

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<sup>69</sup> U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm> (Last visited Jan. 6, 2011).

<sup>70</sup> *Id.*

<sup>71</sup> Karshan Decl., Ex. A-3 ¶23.

<sup>72</sup> The policy also violates international standards prohibiting arbitrary arrest and detention. Universal Declaration of Human Rights (UDHR) G.A. Res. 217 A III, Art. 9 (Dec. 10, 1948) (ensuring “fair and public hearing by an independent and impartial tribunal” on criminal charges); Art. 9 & 14, International Covenant on Civil and Political Rights (ICCPR) G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 59, U.N. Doc. A/6316, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976; ratified by U.S. June 8, 1992) (forbidding arbitrary arrest and detention as well as punishment after a criminal sentence has already been completed).

<sup>73</sup> U.S. Department of State, 2009 Country Reports on Human Rights Practices: Haiti, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm> (last visited Jan. 6, 2011) (explaining rationale in Haitian law and noting that the Haitian Penal Code makes it a crime punishable by up to five years imprisonment to illegally detain a person (Haiti Penal Code Article 289)).

provisions in practice.”<sup>74</sup> The United Nations Commission on Human Rights has concluded that the detention of criminal deportees constitutes a violation of the International Covenant on Civil and Political Rights.<sup>75</sup>

Despite the dire situation facing criminal deportees to Haiti, U.S. administrative and federal courts have adopted an exceptionally narrow interpretation of the protections available to prevent deportation under Article 3 of the Convention Against Torture (CAT). Under Article 3, individuals who are likely to suffer torture (defined as severe pain and suffering) at the hands of government agents in their home country can apply to immigration judges to have their deportations stopped until there is no likelihood of torture.<sup>76</sup> The vast majority of Haitians facing indefinite incarceration and mistreatment in Haiti therefore have no domestic remedy available to them.

#### **D. The Treatment of Immigrants with Criminal Convictions Under U.S. Law**

As this Commission has recently recognized in the *Smith & Armendariz* case, U.S. immigration law imposes virtually automatic deportation on immigrants with a wide-range of criminal convictions, leaving no room for immigration judges to balance the negative effects of deportation against concerns for public safety.<sup>77</sup> Traditional humanitarian factors such as

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<sup>74</sup> *Id.*

<sup>75</sup> International Covenant on Civil and Political Rights, art.14. para.7, Dec. 16, 1966. (“No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”) *See also* UN Commission on Human Rights, Report of the Situation of Human Rights in Haiti, prepared by Mr. Adama Dieng, independent expert, in accordance with Commission resolution 2000/78, ¶21 (Geneva: E/CN.4/2001/106. (Jan. 30 2001).

<sup>76</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, reprinted in Human Rights Web, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984) (providing “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”)

<sup>77</sup> *Wayne Smith and Hugo Armendariz v. U.S.*, Inter-Am. C.H.R., Report No. 81/10, Case. Co. 12.562 (July 12, 2010).

rehabilitation, length of residency in the United States, family ties, hardship to U.S. citizen children and spouses, work history, conditions in the home country, and property ties are irrelevant in many immigration court proceedings. Many have commented on the many ways in which the U.S. Government has criminalized its civil immigration system, especially since the draconian reforms to immigration law in 1996.<sup>78</sup> As recently noted by the United States

Supreme Court:

While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The “drastic measure” of deportation or removal . . . is now virtually inevitable for a vast number of noncitizens convicted of crimes.<sup>79</sup>

As a result, deportation—or “the equivalent of banishment or exile”—is now a consequence that often far outweighs the punishment for a crime.<sup>80</sup> Lacking defenses to removal, many immigrants are ordered removed at preliminary administrative hearings and have no basis for filing administrative and federal court appeals.

Compounding the restrictions on remedies for immigrants convicted of a crime is the country’s strict mandatory detention policy for almost all immigrants deportable for a criminal offense.<sup>81</sup> The law ties the hands of immigration judges, precluding them from setting bond for even longtime lawful permanent residents who never served any time in criminal custody or

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<sup>78</sup> See, e.g., Teresa A. Miller, *Citizenship and Severity: Recent Immigration Reforms and the New Penology*, 17 *Georgetown Immigration L.J.* 611 (2003); Robert Pauw, *A New Look at Deportation as Punishment: Why at Least Some of the Constitution’s Criminal Procedure Provisions Must Apply*, 52 *Administrative L. Rev.* 305 (2000); Juliet Stumpf, “The Crimimmigration Crisis: Immigrants, Crime, and Sovereign Power, 56 *American Univ. L. Rev.* 367 (2006). See also *Deportation Nation: A Timeline Of Immigrant Criminalization*, <http://www.deportationnation.org/multimedia/deportation-nation-a-timeline-of-immigrant-criminalization/> (last visited Jan. 5, 2011).

<sup>79</sup> *Padilla v. Kentucky*, 130 S.Ct. 1473, 1477 (2010).

<sup>80</sup> *Id.* at 1486.

<sup>81</sup> 8 U.S.C. § 1226(c).

were granted release by criminal judges, and are neither flight risks nor risks to the community. The United States Supreme Court has upheld this mandatory detention policy as constitutional, at least with respect to lawful permanent residents who have been detained for a “brief period.”<sup>82</sup> This inflexible approach to detention has had tragic consequences.<sup>83</sup>

### **E. U.S. Detention Policy**

The United States detains over 380,000 people in approximately 350 facilities across the country, at a cost to tax payers of more than \$1.7 billion per year.<sup>84</sup> Starting in the 1990s, the U.S. Government began to expand its use of detention as a routine means of enforcing immigration law.<sup>85</sup> Detentions have skyrocketed over the last decade. According to Detention Watch Network, “[t]he average daily population of detained immigrants has grown from approximately 5,000 in 1994, to 19,000 in 2001, and to over 30,000 by the end of 2009.” ICE continues to expand its bed capacity, aiming to deport 400,000 noncitizens in 2010.<sup>86</sup>

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<sup>82</sup> *Demore v. Kim*, 538 U.S. 510, 513 (2003). The court considered lawful detention during removal proceedings that lasts “an average time of 47 days and a median of 30 days.” *Id.* at 529.

<sup>83</sup> Bernstein, Nina, Officials Hid Truth of Immigrant Deaths in Jail, *New York Times* (Jan. 9, 2010), available at <http://www.nytimes.com/2010/01/10/us/10detain.html> (last visited Jan. 5, 2010); A Closer Look at 83 Deaths, *The Washington Post*, available at <http://www.washingtonpost.com/wp-srv/nation/specials/immigration/map.html> (last visited Jan. 6, 2011).

<sup>84</sup> Detention Watch Network, About the U.S. Detention and Deportation System, available at <http://www.detentionwatchnetwork.org/aboutdetention> (last visited Jan. 4, 2011). Shankar Vedantam, Immigration Backlog Stirs Move to Release Some U.S. Detainees, *Washington Post* (Aug. 28, 2010), available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/27/AR2010082705023.html> (“The number of immigrants being detained in the United States has doubled in the last decade, to 369,000 annually.”) (last visited Jan. 5, 2010).

<sup>85</sup> Detention Watch Network, The History of Immigration Detention in the U.S: A Rapidly Expanding Detention System., available at <http://www.detentionwatchnetwork.org/node/2381> (last visited Jan. 4, 2011).

<sup>86</sup> *Id.* See also Human Rights Advocates Say NO to Massive Immigration Detention Center in Northeast, News Release, American Friends Service Committee (Dec. 21, 2010), available at <http://afsc.org/story/human-rights-advocates-say-no-massive-immigration-detention-center-northeast#> (last visited on Jan. 5, 2011).



Immigration detention has become a multi-billion dollar industry, with counties and private contractors being awarded lucrative federal contracts.<sup>87</sup>

Many detention facilities with contracts to hold immigrants—including many of the large capacity facilities—are located in remote areas of the country, resulting in the separation of detainees from their families, support networks, and lawyers.<sup>88</sup> Telephone access is prohibitively expensive and often limited to 10-15 minutes per call.<sup>89</sup> Even if a detainee were lucky enough to have family nearby, detention facilities often impose arbitrary restrictions on visiting hours and may prohibit physical contact during visits.<sup>90</sup>

U.S. immigration authorities have been documented as providing inadequate oversight and review of due process and conditions of confinement. The Inspector General for the Department of Homeland Security reported widespread violations of detention standards in the facilities it audited.<sup>91</sup> Poor conditions of confinement include lack of medical care that has

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<sup>87</sup> See Laura Sullivan, Prison Economics Help Drive Arizona Immigration Law, National Public Radio (Oct. 28, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=130833741> (last visited Jan. 5, 2010); See GEO Receives ICE Contract for 600-Bed Low-risk Immigration Detention Center in Texas, Business Wire (Dec. 8, 2010), available at <http://sinelson.typepad.com/susan-i-nelson-immigrat/2010/12/geo-receives-ice-contract-for-new-600-bed-immigration-civil-detention-center-in-texas.html> (last visited Jan. 5, 2011).

<sup>88</sup> Locked Up Far Away, Human Rights Watch (Dec. 2, 2009), available at <http://www.hrw.org/en/reports/2009/12/02/locked-far-away-0> (last visited Jan. 6, 2011).

<sup>89</sup> See New York University School of Law Immigrant Rights Clinic, Locked Up but Not Forgotten: opening access to family & community in the Immigration Detention System (2010), [http://www.law.nyu.edu/ecm\\_dlv2/groups/public/@nyu\\_law\\_website\\_\\_news\\_\\_media/documents/documents/ecm\\_p ro\\_065626.pdf](http://www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__news__media/documents/documents/ecm_p ro_065626.pdf) (last visited Jan. 6, 2011); Nina Bernstein, Move Across Hudson Further Isolates Immigrant Detainees, N.Y. Times, Mar. 17, 2010, available at <http://www.nytimes.com/2010/03/17/nyregion/17detain.html> (last visited Jan. 2, 2011) (same).

<sup>90</sup> See, e.g., New York University School of Law Immigrant Rights Clinic, Locked Up but Not Forgotten: opening access to family & community in the Immigration Detention System (2010), [http://www.law.nyu.edu/ecm\\_dlv2/groups/public/@nyu\\_law\\_website\\_\\_news\\_\\_media/documents/documents/ecm\\_p ro\\_065626.pdf](http://www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__news__media/documents/documents/ecm_p ro_065626.pdf) (last visited Jan. 6, 2010).

<sup>91</sup> Department of Homeland Security, Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities* (Jan. 16, 2007), available at [http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG\\_07-01\\_Dec06.pdf](http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-01_Dec06.pdf) (last visited Jan. 6, 2011). These violations

resulted in deaths, physical and sexual abuse, retaliation, and overcrowding.<sup>92</sup> Those most vulnerable populations—women, mentally disabled, refugees and children—are also least equipped to protect their own rights.<sup>93</sup> Although the U.S. Government does not track the incidence of mental disabilities among individuals in immigration detention, a recent report by the American Civil Liberties Union and Human Rights Watch estimated that at least 15 percent of the daily or annual total of individuals in detention have mental disabilities, including mental illness.<sup>94</sup> Individuals with mental disabilities in detention disproportionately suffer from inadequate medical care, abuse, separation from family, and an inability to successfully pursue legal relief from removal.<sup>95</sup>

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related to standards concerning medical care, environmental health and safety, detainee grievance procedures, access to legal materials, access to telephones, housing classifications, recreation, among other things.

<sup>92</sup> Bernstein, Nina, Officials Hid Truth of Immigrant Deaths in Jail, *New York Times*, available at <http://www.nytimes.com/2010/01/10/us/10detain.html> (last visited Jan. 5, 2010); A Closer Look at 83 Deaths, *The Washington Post*, available at <http://www.washingtonpost.com/wp-srv/nation/specials/immigration/map.html> (last visited Jan. 6, 2011); National Public Radio, Immigrant Detainees Tell of Attack Dogs and Abuse (Nov. 17, 2004), available at <http://www.npr.org/templates/story/story.php?storyId=4170152> (last visited Jan. 6, 2011); Anil Kalhan, *Rethinking Immigration Detention*, 110 *Colum. L. Rev. Sidebar* 42, 47 (2010) (Explaining that detention has been worsened by inadequate conditions of confinement--particularly with ICE's expanded use of county jails, whose conditions long have been "excoriat[ed]" as the "worst blight in American corrections."); Detention Watch Network, Conditions in Immigration Detention, available at <http://www.detentionwatchnetwork.org/node/2383> (last visited January 4, 2011).

<sup>93</sup> See, e.g., Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*, 167-173 (June 2003), available at <http://physiciansforhumanrights.org/library/report-persprison.html> (last visited Jan. 6, 2011).

<sup>94</sup> American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System* (July 2010) available at [www.aclu.org/human-rights/deportation-default-mental-disability-unfair-hearings-and-indefinite-detention-us-immig](http://www.aclu.org/human-rights/deportation-default-mental-disability-unfair-hearings-and-indefinite-detention-us-immig) or <http://www.hrw.org/node/91725> (last visited Jan. 6, 2011); American Immigration Council, *Non-Citizens with Mental Disabilities*, 2010, available on <http://www.immigrationpolicy.org/special-reports/non-citizens-mental-disabilities> (last visited Jan. 6, 2011). See also *Dying for Decent Care*, Florida Immigrant Advocacy Center (Feb. 2009), available at [www.fiacfla.org/reports/DyingForDecentCare.pdf](http://www.fiacfla.org/reports/DyingForDecentCare.pdf) (last visited Jan. 6, 2011).

<sup>95</sup> *Id.*

**V. PETITIONERS FACE IMMINENT AND IRREPARABLE HARM AS A RESULT OF THEIR DEPORTATIONS.**

Petitioners seek the immediate intervention of this Commission to order precautionary measures requesting that the United States halt its plans to resume deportations to Haiti in mid-January 2011, in preparation for which it has already begun roundups, detention and processing. Article 25 of the Inter-American Commission Rules of Procedure provides that “[i]n serious and urgent situations,” the Commission may request that a State adopt precautionary measures “to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any petition or case.”<sup>96</sup> Such measures “may be of a collective nature to prevent irreparable harm to persons due to their association with . . . a group, or a community with identified or identifiable members.”<sup>97</sup>

The Commission has authority to consider this Petition and award precautionary measures against the United States, a Member State of the Organization of American States (“OAS”), in accordance with Article 20 of the Statute of the Commission and Article 23 of the Rules of Procedure of the Commission, which authorizes petitioners to file complaints alleging violations of the rights protected under the American Declaration.

Moreover, in accordance with the principles contained in Article 25(4)(a) of the Commission’s Rules of Procedure, the situation of risk has been brought to the attention of the pertinent authorities. Advocates have contacted ICE and petitioned President Barack Obama

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<sup>96</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25(2).

<sup>97</sup> Rules of Procedure of the Inter-American Commission on Human Rights, Art. 25(3).

himself to plea for a halt to the roundups, detention, and imminent deportations of Petitioners.<sup>98</sup>

Unfortunately, these calls have fallen on deaf ears. According to the New York Times, “Barbara Gonzalez, a spokeswoman for Immigration and Customs Enforcement, said in a statement last week that the agency was deciding whom to deport in a manner ‘consistent with our domestic immigration enforcement priorities,’ but did not elaborate.”<sup>99</sup> No information about the new deportation program is available on ICE’s website. Petitioners and their advocates are left in the dark, with little information about next steps, and few if any avenues for domestic relief.

**A. Petitioners’ imminent removal to Haiti is “serious and urgent” and will result in irreparable harm.**

Upon removal, Petitioners will be detained *en masse* in Haitian police station holding cells and, if history is a guide, be subject to indefinite, unreasonable and arbitrary detention as well as life-threatening, cruel and degrading treatment. As detainees in the police station holding cells, Petitioners will be exposed to filthy and unhealthy conditions, will have little to no access to food and drinking water, and will be directly exposed to cholera, which has already claimed the lives of at least 48 individuals detained in the national prison system in Haiti and which will undoubtedly spread even more quickly in light of the overcrowding. The sheer number of Petitioners will likely contribute to massive overcrowding of Haitian police station holding cells. Even if and when they are released, they will face the stigma of being an “American” ex-convict

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<sup>98</sup> See *infra* note 11.

<sup>99</sup> Kirk Semple, Haitians in U.S. Brace for Deportations to Resume, N.Y. Times (Dec. 19, 2010) at A20, available at <http://www.nytimes.com/2010/12/20/nyregion/20haitians.html> (last visited Jan. 6, 2011).

deportee in Haiti, which has serious social and economic consequences, discussed above.<sup>100</sup> The burden of additional people will necessarily compound the human rights, humanitarian, and public health crises in Haiti associated with the earthquake, including internal displacement, malnutrition, interpersonal violence, and a cholera outbreak, along with highly contested elections and post-election violence.

1. Right to Life; Security of Person; and Freedom from Cruel, Infamous or Unusual Punishment (Arts. I, XXVI)

Article I of the American Declaration of the Rights and Duties of Man (“the Declaration” or “American Declaration”) provides: “Every Human being has the right to life, liberty and the security of person”. Article XXVI of the Declaration provides, in relevant part: “. . . Every person accused of an offense has the right . . . not to receive cruel, infamous or unusual punishment.”<sup>101</sup> The U.S. government’s decision to initiate round-ups and detentions of Haitian nationals and to commence deportations on or about mid-January 2011, directly contravenes the guarantees contained in these provisions and will undoubtedly lead to violations of these fundamental rights.

a. Right to life

In the Inter-American system, the right to life is the most fundamental right, as without it the enjoyment of other rights cannot be fulfilled.<sup>102</sup> The Commission has defined the right to include “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health,

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<sup>100</sup> May Decl., Ex. A-2 ¶10; Karshan Decl., Ex. A-3 ¶ 11-12, 14-16, 18-20, 22, 47-54.

<sup>101</sup> American Declaration of the Rights and Duties of Man, Art. XXVI, OEA/Ser.L.V/I.4 rev. 13, June 30, 2010).

<sup>102</sup> See, e.g., *Gary T. Graham (Shaka Sankofa) v. United States*, Case 11.193, Inter-Am. C.H.R., Report No. 97/03, OEA/Ser.L/V/II.114 Doc. 70 rev. 1 ¶ 26 (2003) (“[T]he right to life is widely recognized as the supreme right of the human being, respect for which the enjoyment of other rights depends.”).

and his reputation.”<sup>103</sup> Although the right to life is principally aimed at protecting against arbitrary deprivations of life by the State or its agents, the Commission has found the right implicated in a broad range of situations, which do not necessarily result in death but expose individuals “to the genuine and foreseeable risk of death,”<sup>104</sup> including cases of detentions and forcible repatriations.<sup>105</sup>

The United States’ decision to deport Petitioners violates their right to life. These individuals will, upon arrival in Haiti, undoubtedly be packed into police station holding cells, where they will face a genuine and foreseeable risk of death on account of several factors. First, the historically unsanitary and dangerous conditions in these holding cells themselves create serious health risks before the earthquake.<sup>106</sup> As described above, due the lack of sanitation, food and water, detainees in these holding cells are forced to defecate, urinate, and eat in the same tight quarters; drinking water, food, and medical care are rarely available to detainees, who are dependent on family and friends to bring them provisions;<sup>107</sup> and the facilities are rodent-infested.<sup>108</sup> Moreover, with the recent cholera outbreak, this situation is only exacerbated.

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<sup>103</sup> *The Haitian Center for Human Rights et al. v. United States*, Case 10.675, Inter-Am. C.H.R., Report No. 51/96OEA/Ser.L/V/II95 Doc. 7 rev. ¶ 170 (1997).

<sup>104</sup> *Haitian Center for Human Rights v. U.S.*, Cas 10.675, Inter-Am. C.H.R., Report No. 51/96, OEA/Ser. L. IV/11.95 Doc. 7 rev. ¶ 16 (1997).

<sup>105</sup> *Parque Sao Lucas v. Brazil*, Case 10.301, Inter-Am, C.H.R., Report No. 40/03, OEA/Ser./L/V/II.114, doc. 70 rev. 1 ¶¶ 44-55 (2003) (detention of prisoners); *The Haitian Centre for Human Rights*, Case 10.675, Inter-Am. C.H.R. (Forcible Repatriation of Haitian nationals).

<sup>106</sup> May Decl., Ex. A-2 ¶ 10; Karshan Decl., Ex. A-3 ¶ 26-30.

<sup>107</sup> See Institute for Justice and Democracy in Haiti, *Being Deported to Post-Earthquake Haiti?* (Dec. 16, 2010) available at <http://ijdh.org/archives/16127> (last visited Jan. 6, 2011) (“While in detention criminal deportees are not provided food, treated drinking water, medical or mental health care, and are not provided any necessary medications.”); Karshan Decl., Ex. A-3 ¶¶ 12, 20, 22, 28, 34; May Decl., Ex. A-2 ¶¶ 7-9.

<sup>108</sup> May Decl., Ex. A-2 ¶ 7.

Indeed, the spread of cholera is worsened by cramped conditions, and someone who has acquired cholera can die within two to three hours without proper fluid intake and medical attention.<sup>109</sup>

Prior to the earthquake, deportees detained in Haitian police station holding cells suffered dire fates before the earthquake, especially those without family and/or support networks. Today, even those who have families in Haiti who are willing and able to help are at grave risk of death under the current circumstances. The fabric of nearly every Haitian family has been severely stressed due to post-earthquake conditions. Nearly 1.4 million people in Haiti are estimated to be internally displaced or homeless.<sup>110</sup> Thus, detained deportees may not be able to even contact their family members in Haiti; or these family members may have perished, as is the case with the five named petitioners as discussed above, or moved since the earthquake.<sup>111</sup> Even if they are present in Port-au-Prince, where the police holding cells are located, they may not be able to care for themselves, let alone a relative.

b. Right to liberty and security of person

The Commission has defined the right to security of person as “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.”<sup>112</sup> The Commission has interpreted this provision to include similar protections to those rights protected under Article 5 of the American Convention,<sup>113</sup> which establishes the right of every person to

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<sup>109</sup> May Decl., Ex. A-2 ¶¶ 13-17.

<sup>110</sup> See Ban Ki Moon, REMARKS TO THE GENERAL ASSEMBLY ON HAITI (December 3, 2010), available at [http://www.un.org/apps/news/infocus/sgspeeches/statments\\_full.asp?statID=1025](http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1025) (last visited on Jan. 6, 2011).

<sup>111</sup> Lerner Decl., Ex. A-1 ¶¶ 16, 22, 26, 30, 33.

<sup>112</sup> *The Haitian Centre for Human Rights et al.*, Case 10.675, Inter-Am. C.H.R. at ¶¶ 170-71.

<sup>113</sup> Report on Terrorism and Human Rights, Inter-American C.H.R. OEA/Ser.L/V/II.116, Doc. 5 rev. 1 ¶155 (Oct. 22 2002) (noting that while the American Declaration lacks a general provision on the right to humane treatment, the

respect for their “physical, mental and moral” integrity and to be free from “cruel, inhuman or degrading treatment.”

Significantly, the protections encompassed by these provisions are much broader in scope than mere protection from physical mistreatment. They extend to any act that is clearly contrary to respect for the “inherent dignity of the human person” and specifically include acts that cause psychological and emotional damage,<sup>114</sup> “emotional trauma,”<sup>115</sup> “trauma and anxiety,”<sup>116</sup> and “intimidation” or “panic.”<sup>117</sup> The Inter-American Court has indicated that it is “proper to human nature that the person subjected to arbitrary detention will experience extreme suffering.”<sup>118</sup>

Additionally, the court has stated that “it is enough that the illegal detention was brief so as to give rise” to a violation of personal dignity.<sup>119</sup> A violation of this right may arise from

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Commission has interpreted Art. I as containing a prohibition similar to that of Art. 5 of the American Convention) (citing Juan Antonio Aguirre Ballesteros (Chile), Case 9437, Inter-Am. C.H.R., Report No.5/85, OEA/Ser.L/V/II.66, doc. 17 (1985)).

<sup>114</sup> *Castillo Paez*, Inter-Am. Ct. H. R., (Ser. C) No. 35, at pp 63, 66 (Nov. 3, 1997).

<sup>115</sup> *Victims of the Tugboat “13 de Marzo” v. Cuba*, Case 11.436, Inter-Am. C.H.R., Report No. 47/96, OEA/Ser.L/V/II.95, doc. 7 rev. at ¶ 106 (1997) (finding Cuba responsible for violating the personal integrity of 31 survivors of a refugee boat fleeing to U.S. as a consequence of the emotional trauma resulting from the shipwreck caused by Cuba).

<sup>116</sup> *See, e.g., Maria Mejia v. Guatemala*, Case 10.553, Inter-Am. C.H.R. Report No. 32/96, OEA/Ser.L/V/II.95, doc. 7 rev. at 370, p 60 (1997) (Guatemalan Military officials found liable for causing trauma and anxiety to the victims [constraining] their ability to lead their lives as they desire”).

<sup>117</sup> *See, e.g., id.* at 61 (finding Guatemalan military responsible for actions designed to “intimidate” and [incite] “panic” among community members).

<sup>118</sup> *Caso Juan Humberto Sanchez v. Honduras*, Inter-Am. Ct. H.R. (Ser. C) No.99, ¶¶ 201, 174 (June 7, 2003).

<sup>119</sup> *Caso de los Hermanos Gomez Paquiyauri v. Peru*, Inter. Am. Ct. H.R. (Ser. C) No. 110, ¶ 108, n. 159; *Caso Maritza Urrutia v. Guatemala*, Inter-Am. Ct. H.R. (Ser.C) No. 103, ¶ 87; *Caso Juan Humberto Sanchez*, Inter-A. Ct. H.R. (Ser. C) No. 99, ¶ 98 (June 7, 2003); *Tamayo Case v. Peru*, Inter-Am. Ct. H.R. (Ser.C) No. 33 ¶¶ 57-58. *See also Castillo Petruzzi et al. Case*, Inter-A. Ct. H.R. (Ser.C), No. 52 (30 May 1999).



degrading conditions during detention,<sup>120</sup> degrading treatment while in the custody of the state<sup>121</sup> or the violation of fundamental human rights.

The fact that Petitioners face detention in Haiti places them in a particularly precarious position. In *Caso de los Ninos de la Calle v. Guatemala*,<sup>122</sup> the Inter-American Court held that an illegally detained person finds himself in an aggravated and vulnerable situation, in which there is a risk that his rights to physical integrity and to be treated with dignity will be violated.<sup>123</sup> The United States has violated the Article I right to personal security of Petitioners by deporting them to Haiti knowing that they will be detained and subjected to illegal, cruel, and degrading incarceration.<sup>124</sup>

c. Right to freedom from cruel, infamous or unusual punishment

Recently, in the case of *Mortlock v. U.S.*, this Commission emphasized that the guarantee against “cruel, infamous or unusual punishment” is not limited to the penal context, but applies with equal force in the immigration context.<sup>125</sup> “[T]he appropriate test,” the Commission found, is whether the humanitarian appeal of the case is so powerful that it could not reasonably be resisted by the authorities of a civilized state.”<sup>126</sup> The appropriate standard for the application of

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<sup>120</sup> Cfr. IDH Court, *Caso Instituto de Reeducacion del Menor*, Sentencia de 2 de Septiembre de 2004. Series C No. 112; *Caso Cantoral Benavides*, Sentencia de 18 de agosto de 2000. Serie C No. 69; Corte I.D.H., *Caso Fermin Ramirez*, Sentencia de 20 de junio de 2005. Serie C No. 126 parr. 118.

<sup>121</sup> Caso IDH Court, *Caso Instituto de Reeducacion del Menor*, Sentencia de 2 de Septiembre de 2004. Series C No. 112; *Ms. X v. Argentina*, Case 10.506. Inter-Am. CHR No. 38/96; *Caso Maritza Urrutia*, Sentencia de 27 de noviembre de 2003. Serie C No. 103, parra. 85;

<sup>122</sup> *Caso de los Ninos de la Calle v. Guatemala*, Inter-Am. Ct. H.R. (Ser. C). No. 63 (Nov. 19, 1999).

<sup>123</sup> *Id.* at 166.

<sup>124</sup> *Caso de los Ninos de la Calle v. Guatemala*, at ¶¶ 174-76.

<sup>125</sup> *Mortlock v. U.S.*, Inter-Am. C.H.R., Report no. 63/08, Case No. 12.534, ¶¶82-85.

<sup>126</sup> *Mortlock* ¶ 91.

the test is “whether the deportation will create extraordinary hardship to the deportee and her family and may well amount to a death sentence given two principal considerations: (1) the availability of medical care in the receiving country, and (2) the availability of social services and support, in particular the presence of close relatives.”<sup>127</sup>

The United States violates Article XXVI by deporting sick and healthy individuals to the center of an internationally recognized epidemic that is already beginning to spread to neighboring Dominican Republic and for which there are limited resources available. Even Petitioners who are not currently ill or who have some form of social services and support in Haiti would be at serious risk of contracting cholera during their detention in a police station holding cell, as documented in the declarations of Michelle Karshan, Dr. John May, and Dr. Arthur Fournier.<sup>128</sup>

In present-day Haiti, medical care, particularly for the treatment of cholera, is not available to the vast majority of the population.<sup>129</sup> Deportees with physical or mental health problems, such as Petitioners Gary Resil and Pierre Louis, discussed above, are at heightened risk of acquiring cholera in this environment. Moreover, even deportees with family members in Haiti would not necessarily have contact with them, due to the massive displacement and lack of traditional modes of communication. This is the very type of extreme circumstance and

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<sup>127</sup> Mortlock ¶¶91.

<sup>128</sup> May Decl., Ex. A-2 ¶¶ 10-14, 20; Fournier Decl., Ex. A-4 ¶¶ 15, 16, 29-34; Karshan Decl., Ex. A-3 ¶¶ 14-19.

<sup>129</sup> Fournier Decl., Ex. A-4 ¶¶15-18; 22, 24-28. *See also* Ban Ki Moon, REMARKS TO THE GENERAL ASSEMBLY ON HAITI (December 3, 2010), available at [http://www.un.org/apps/news/infocus/sgspeeches/statments\\_full.asp?statID=1025](http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1025) (last visited on Jan. 6, 2011).

“extraordinary hardship” to the deportee and her family that, as the Commission articulated in *Mortlock*, “may well amount to a death sentence.”<sup>130</sup>

As this Commission has underscored, a State must bear responsibility not only for direct state action that results in rights violations, but also for “foreseeable consequences that flow from state action.”<sup>131</sup> When the United States knowingly deports individuals to post-earthquake Haiti, in the midst of a cholera epidemic, and some of those individuals contract the disease, the United States incurs international responsibility.

## 2. Right to family life; Special protections for children (Arts. V, VI, VII)

Article V of the American Declaration guarantees the “right to the protection of law against abusive attacks upon... private and family life,” and Article VI guarantees the “right to establish a family, the basic element of society, and to receive protection therefore.” Article VII states that: “all children have the right to special protection, care and aid.”

The Inter-American Commission has established that Articles V and VI of the American Declaration, taken together, “prohibit arbitrary or illegal interference with family life” by the State.<sup>132</sup> However, this fundamental right is not absolute. In that vein, the Commission has stated that “interference with family life may only be justified where necessary to meet a pressing need to protect public order, and where the means are proportional to that end.”<sup>133</sup>

To assess the public necessity and proportionality of the interference in family life in the deportation context, the Commission has articulated a balancing test: “the state’s right and duty

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<sup>130</sup> Fournier Decl., Ex. A-4 ¶33.

<sup>131</sup> *Smith & Armendariz v. U.S.* at ¶ 48.

<sup>132</sup> Inter-Am. C.H.R., Report on the Situation of Human Rights of Asylum Seeker within the Canadian Refugee Determination System, ¶ 162; *see also Smith & Armendariz v. U.S.* ¶ 48.

<sup>133</sup> *Smith & Armendariz v. U.S.*, ¶ 166.

in maintaining public order” through expulsion of removable non-citizens “must be balanced against the harm that may result to the rights of the individuals concerned in the particular case.”<sup>134</sup> To that end, the Commission has looked to the following elements under this balancing test:

the age at which the non-citizen immigrated to the host state; the non-citizen’s length of residence in the host state; the non-citizen’s family ties in the host state; the extent of hardship the non-citizen’s deportation poses for the family in the host state; the extent of the non-citizen’s links to the country of origin; the non-citizen’s ability to speak the principal language(s) of the country of origin; the nature and severity of the non-citizen’s criminal offense(s); the non-citizen’s age at the time of the criminal offense(s) was/were committed; the time span of the non-citizen’s criminal activity; evidence of the non-citizen’s rehabilitation from criminal activity; and the non-citizen’s efforts to gain citizenship in the host state.<sup>135</sup>

Moreover, the Commission has laid particular emphasis on State taking “the best interest of minor child . . . into consideration in a parent’s removal proceeding”<sup>136</sup> under Article VII.

Importantly, the Commission has emphasized that “these elements are not an exhaustive list or a rigid set of considerations to be addressed in every case. The balancing test must be flexible to the specific facts of each individual case.”<sup>137</sup> The present case is precisely the type which requires a flexible approach to an extreme set of facts involving dire public health and human rights emergencies.

Here, as in *Smith and Armendariz v. U.S.*, Petitioners have not been given the opportunity to present a humanitarian defense to deportation or to have their rights to family duly considered before deportation. Nor were the best interests of Petitioners’ U.S. citizen children taken into

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.* ¶ 54.

<sup>136</sup> *Id.* ¶ 56.

<sup>137</sup> *Id.* ¶ 55.

account by any decision maker.<sup>138</sup> Petitioners face deportation to a country in extreme crisis, with no guarantees of continued contact (telephonically, electronically, or in person) with their children and families. In many cases, primary breadwinners will lose the ability to financially provide for their families, which in most cases include small children and elderly parents. As documented above, many Petitioners and their families have expressed a sense of panic and desperation at the prospect of having their families and lives torn apart by the pending deportations. Accordingly, the United States' detention and planned deportation of Petitioners constitutes a violation of their and their families' rights under Articles V, VI, and VII.

### 3. Rights to fair trial and due process (Arts. XVIII, XXVI)

Article XVIII of the American Declaration provides: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights." Article XXVI provides, in relevant part: "Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws . . . ."

In *Smith and Armendariz v. U.S.*, the Commission adopted the balancing test articulated above for determining the existence due process violations in the deportation context. Noncitizens subject to deportation, the Commission found, must have an opportunity "to present a defense against deportation based on humanitarian and other considerations."<sup>139</sup> The State must permit judicial bodies charged with reviewing

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<sup>138</sup> *Id.* ¶ 59.

<sup>139</sup> *Id.* at ¶ 5

deportation orders to give meaningful consideration to a non-citizen’s defense and “balance it against the State’s sovereign right to enforce reasonable, objective immigration policy.”<sup>140</sup> Following *Mortlock*, the Commission underscored that, “in the context of immigration proceedings that include the sanction of deportation, . . . heightened due process protections apply.”<sup>141</sup>

Here, as in *Smith and Armendariz v. U.S.*, the majority of Petitioners have not been given the opportunity to present a humanitarian defense to deportation or to have their due process rights considered before deportation. They have been found deportable based on the nature of their convictions, without having had any opportunity to present arguments or evidence of extenuating circumstances that would mitigate against their deportation or for a waiver of their deportation. Such a practice directly contravenes the Commission’s recommendations in *Smith and Armendariz*.

Indeed, the situation at hand is amongst the most compelling imaginable scenarios for a humanitarian defense to deportation. Many Petitioners have been in the U.S. for decades, many from a young age. In many cases, Petitioners’ family and cultural ties to Haiti were limited to begin with, and even further distanced after the earthquake’s catastrophic death, injury, and displacement toll. Several Petitioners do not speak Haitian Kreyol. The majority of Petitioners have children and other close relatives in the United States. In many cases, Petitioners are the primary breadwinners in their families.

Most compelling in the immediate future, however, is the catastrophic situation in Haiti. As documented above, if Petitioners are deported to Haiti, many if not all will

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at ¶ 63.

undoubtedly be indefinitely detained in police station holding cells, where they will be subjected to mistreatment, deprived of adequate food and water, devoid of communication with family, friends, lawyers, and exposed to a deadly cholera epidemic. All of these factors weigh heavily in favor of the U.S. government not deporting Petitioners to Haiti.

The United States' resumption of deportations of Haitian noncitizens without an opportunity to present individualized defenses to their deportation based on humanitarian and other concerns therefore also violates Articles XVIII and XXVI of the American Declaration.

**B. The Commission has previously urged States to adopt precautionary measures in similar situations to this one.**

The Commission has previously requested that the United States adopt precautionary measures in the context of immigration and health, such as in the case of *Andrea Mortlock v. U.S.*<sup>142</sup> Here, several Petitioners suffer from serious medical and mental health conditions that would not be treated appropriately in Haitian detention centers. Moreover, the entire class of Petitioners would be exposed to a cholera epidemic in Haiti that will undoubtedly grow in detention centers if the population housed in those centers is dramatically increased.

The Commission has also previously requested that OAS member states adopt precautionary measures on behalf of entire communities to protect members who are in danger of irreparable harm. In the *Haitians and Dominicans of Haitian Origin Case*, the Commission granted precautionary measures on behalf of “thousands of persons of Haitian origin and Dominicans of Haitian descent who had been expelled by the authorities of the Dominican

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<sup>142</sup> *Mortlock v. U.S.*, Inter-Am. C.H.R., Report no. 63/08, Case No. 12.534.

Republic, through collective round-ups, and without legal procedures to properly determine the nationality and family ties of the expelled persons.<sup>143</sup> In 2001, the Commission granted precautionary measures to the people of La Granja, Ituango municipality, in Antioquia, Colombia.<sup>144</sup> The precautionary measures were granted for the municipality as whole and individuals were not specifically named. Also in 2001, the Commission granted precautionary measures on behalf of members of the National Association of Peasant and Indigenous Women of Colombia (ANMUCIC).<sup>145</sup> Though only the president of the association was named, the Commission granted measures to protect the lives and persons of all the unnamed association members.”

Although only some of the Petitioners are individually named, the exact number of persons in need of precautionary measures is not known, since the U.S. government’s announcement regarding resumed deportations came with no warning and with a short time frame for implementation. A few media reports indicate the initial numbers of deportees are estimated to be well over one hundred, but this number is unconfirmed and could easily grow or change. Petitioners, however, form a distinct class and identifiable group with identifiable members in that they all have been identified as subject to imminent deportation due to their criminal convictions in the U.S.

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<sup>143</sup> *Case of Persons of Haitian Origin and Dominicans of Haitian Descent, Dominican Republic*, Granting of Precautionary Measures, Inter-American Commission on Human Rights, Nov. 22, 1999.

<sup>144</sup> *Case of La Granja, Ituango municipality, Colombia*, Granting of Precautionary Measures, Inter-American Commission on Human Rights, Sept. 5, 2001.

<sup>145</sup> *Case of National Association of Peasant and Indigenous Women, Colombia*, Granting of Precautionary Measures, Inter-American Commission on Human Rights, Mar. 2, 2001.



## **VI. RELIEF REQUESTED**

The facts outlined above establish the serious and urgent situation facing the Petitioners. The U.S. Government's plan to resume deportations to Haiti will place Petitioners (both named and unnamed) at risk of death, degrading treatment, arbitrary detention in Haiti, and permanent separation from family members. Moreover, the change in U.S. Government policy will create an additional strain on the Government of Haiti despite the Commission's reminder to States of their obligation to assist Haiti following the earthquake.<sup>146</sup>

To prevent imminent and irreparable harm, Petitioners respectfully request that the Honorable Commission urge the United States Government to adopt precautionary measures and, most importantly, immediately halt its plans to resume deportations to Haiti on or about mid-January 2011 of all Petitioners, which include the 5 named Petitioners and all Haitian nationals subject to imminent deportation from the U.S.

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<sup>146</sup> The Commission has reminded the international community of the importance of respecting international human rights obligations "in all circumstances" subsequent to the earthquake in Haiti, "in particular non-derogable rights and the rights of those most vulnerable." Inter-Am. C.H.R., Press Release No. 11/10, IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), available at <http://www.cidh.oas.org/Comunicados/English/2010/11-10eng.htm> (last visited on Jan. 6, 2011). Additionally, Member States of the Organization of American States (the "OAS") are obligated by the OAS Charter to "join together in seeking a solution... whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State." Charter of the Organization of American States, Art. 37, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.X. 3.

Specifically, Petitioners seek the following precautionary measures:

- Instruct United States Government to halt its plans to resume deportations to Haiti of Petitioners, including the 5 named Petitioners and all Haitian nationals subject to imminent deportation;
- Instruct the United States Government to immediately halt roundups and detentions of Haitian nationals in the U.S. and to release Petitioners into the community and facilitate their return home while the Commission considers the instant request for precautionary measures and during any stay of deportations to Haiti.
- Instruct the U.S. Government to publically release information about its decision to resume deportations to Haiti; and to explain what assessment was conducted of the circumstances in Haiti prior to the change in policy;
- Instruct the U.S. Government to engage with the Haitian-American and immigration advocacy communities in the U.S. in decision-making around changes in immigration policy with respect to Haiti. This engagement should be public, transparent and meaningful;
- Instruct the U.S. Government to protect Petitioners from retaliation or harm for filing the instant request for precautionary measures;
- Instruct the U.S. Government to prevent forced sedation or drugging to effectuate removals to Haiti;
- Instruct the U.S. Government to grant deferred action to all persons facing removal to Haiti;
- Protect Petitioners from inhumane conditions of confinement while in U.S. custody, including providing medical and mental health care and protection from excessive force and discriminatory treatment;
- Ensure the U.S. Government implements special protections for women, children, and those with chronic medical and/or mental illnesses or disabilities while in immigration detention;
- Instruct the U.S. Government to undertake an investigation into any allegations of cruel, inhuman and degrading treatment and other harsh conditions of detention and transfers, including allegations of the excessive use of force in the arrest, detention and transfers of Petitioners;

- Ensure the U.S. Government allow access to family members and human rights organizations to observe and assess the conditions of detention and assist detainees obtain assistance; and
- Pursuant to article 18(g) of the Commission’s Statute, order further investigation into the facts of this case and, if possible, conduct an on-site visit to the detention facilities where numerous Haitian nationals are held, namely: Tensas Parish Detention Facility in Waterproof, Louisiana, South Louisiana Correctional Center, in Basile, Louisiana, and LaSalle Detention Center in Jena, Louisiana.
- Instruct the wardens, custodians and agencies not to commence removal while the Commission considers Petitioners requests, including the individuals and agencies in the following list and all other wardens, custodians and local ICE Field Offices where Petitioners are detained:

Tensas Parish Detention Center South  
 Warden John Smith  
 8606 Highway 65  
 Waterproof, LA 71375  
 USA  
 318-749-5810 Tel  
 318-749-5811 Fax

South Louisiana Correctional Center  
 Warden David Viator  
 3843 Stagg Aven.  
 Basile, LA 70515  
 USA  
 337-432-5493 Tel  
 337-432-5497 Fax

Krome Detention Center and Field Office  
 Field Office Director Marc Moore  
 18201 SW 12th Street  
 Miami, FL 33194  
 305-207-2100 Tel

LaSalle Detention Facility (LDF)  
 Field Office Director Philip T. Miller  
 Assistant Field Office Director Charles W. Jean  
 830 Pine Hill Road  
 Jena, LA 71342  
 Facility Main Telephone Line: (318) 992-7800  
 Field Office Main Telephone Line: (318) 992-1609

Hudson County Correctional Facility  
30-35 Hackensack Avenue  
Kearny, NJ 07032  
U.S.A.  
Field Office Director: Christopher Shanahan  
Assistant Field Office Director (Detention): William Joyce  
Assistant Field Office Director (Detained Case Management): Wayne Muller  
Facility Main Telephone Line: (201) 395-5600 - #9  
Field Office Main Telephone Line: (212) 863-3401

New Orleans Field Office  
1250 Poydras Suite 325  
New Orleans, LA 70113  
Phone: (504) 599-7800

Newark Field Office  
614 Frelinghuysen Ave., 3rd Floor  
Newark, NJ 07114  
(973) 645-3666 Tel

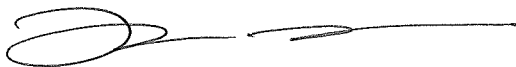
New York Field Office  
26 Federal Plaza, Rm. 1105  
New York, NY 10278  
(212) 264-4213 Tel

Baker County Facility  
1 Sheriff's Office Drive  
MacClenny, FL 32063  
Facility Main Telephone Line: (904) 259-2231  
Field Office Main Telephone Line: (904) 281-856

Respectfully submitted,

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TO THE HONORABLE MEMBERS OF THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
ORGANIZATION OF AMERICAN STATES:

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## TABLES OF EXHIBITS

### **Exhibit A: Declarations:**

(Attached)

1. Declaration of Romy Lerner.
2. Declaration of Dr. John May, M.D.
3. Declaration of Michelle Karshan.
4. Declaration of Dr. Arthur Fournier, M.D.

### **Exhibit B: Periodicals:**

1. Jennifer Kay, *Deportations Loom as Deadline for Haitians nears*, Miami Herald (Dec. 20, 2010) (available at: <http://www.miamiherald.com/2010/12/20/1981814/deadline-nears-for-haitians-deportation.html>)
2. Nina Bernstein, N.Y. Times, *Move Across Hudson Further Isolates Immigrant Detainees*, (Mar. 17, 2010), (available at: <http://www.nytimes.com/2010/03/17/nyregion/17detain.html>)
3. BBC News—*Haiti Cholera Outbreak Spreads to Port-au Prince Prison* (Nov. 19, 2010) (available at: <http://www.bbc.co.uk/news/world-latin-america-11800143>) (last visited on Dec. 29, 2010 )
4. Jeffrey Kahn, Associate Research Scholar in Law; Robina Foundation Human Rights Fellow at Yale Law School, *ICE Should Not Resume Deportations to Haiti*, (Dec. 28, 2010) (Available at: [http://www.huffingtonpost.com/jeffrey-kahn/ice-should-not-resume-dep\\_b\\_802048.html](http://www.huffingtonpost.com/jeffrey-kahn/ice-should-not-resume-dep_b_802048.html))
5. David Edwards, *Despite cholera outbreak, US ends ban on deportations to Haiti* (Dec. 13, 2010) (Available at: <http://www.rawstory.com/rs/2010/12/ice-lifts-ban-deportations-haiti-cholera-outbreak/>)
6. Richard Knox, *Doctors Urge Cholera Vaccine for Haiti, Neighbors: NPR* (Dec. 10, 2010) (available at: <http://www.npr.org/2010/12/10/131950133/doctors-urge-cholera-vaccine-for-haiti-neighbors>)
7. Frances Robles, Miami Herald, *Deportations of Haitian convicts set to resume*, (Dec. 21, 2010), (available at: <http://www.miamiherald.com/2010/12/21/1982902/deportations-of-haitian-convicts.html#ixzz1A5H8poJI>)



8. Kirk Semple, *The New York Times*, *Haitians in U.S. brace for Deportation to resume*, (Dec. 19, 2010), (available at: <http://www.nytimes.com/2010/12/20/nyregion/20haitians.html>)
9. Max Harrold, *Despite prison ordeal, aid worker anxious to return to Haiti*, (*Jan. 2, 2011*), (available at: <http://www.montrealgazette.com/news/Despite+prison+ordeal+worker+anxious+return+Haiti/4050156/story.html#ixzz1ACvrJDWz>)
10. Deborah Sontag, *N.Y. Times*, *Escape Attempt Led to Killings of Unarmed Inmates*, (May. 22, 2010), (available at: <http://www.nytimes.com/2010/05/23/world/americas/23haiti.html?pagewanted=all> )
11. Deborah Sontag / Walt Bogdanich, *N.Y. Times*, *Report Assails Haiti Officers in Prisons Killings* (Oct. 21, 2010), (available at: <http://www.haiti-info.com/?Panel-s-Report-Assails-Haiti>)
12. Michelle Faul, *abcNEWS*, *Haiti earthquake opens window on dismal prisons*, (Mar. 6, 2010) (available at: <http://abcnews.go.com/International/wireStory?id=10029659>)
13. USA today, *Violence erupts at Haiti prison; 3 inmates killed*, (Oct. 18, 2010) (available at: [http://www.usatoday.com/news/world/2010-10-17-haiti-prison-unrest\\_N.htm](http://www.usatoday.com/news/world/2010-10-17-haiti-prison-unrest_N.htm))
14. Nina Bernstein, *N.Y. Times*, *Officials Hid Truth of Immigrant Death in Jails*, (Jan. 9, 2010) ( available at: [http://www.nytimes.com/2010/01/10/us/10detain.html?\\_r=1](http://www.nytimes.com/2010/01/10/us/10detain.html?_r=1))
15. CBSNEWS MIAMI, *Immigrants advocates call to halt Haitian Deportations*, (Dec. 29, 2010) (available at: <http://miami.cbslocal.com/2010/12/29/immigrant-advocates-call-for-halt-of-haitian-deportations/>)
16. Karen Keller, *Public Radio*, *Immigrant Detainees Tell of Attack Dogs and Abuse* (Nov. 17, 2004) (available at: <http://www.npr.org/templates/story/story.php?storyId=4170152>)
17. Laura Sullivan, *Prison Economics Help Drive Arizona Immigration Law*, *National Public Radio* (Oct. 28, 2010) (available at: <http://www.npr.org/templates/story/story.php?storyId=13083374> )
18. Audra D.S. Burch and Nadege Charles, *Refugees Live Uncertain Existence In a Maze of Immigration Laws*, *Miami Herald* (July 7, 2010) (available at:

<http://www.miamiherald.com/2010/07/11/v-fullstory/1726132/refugees-live-uncertain-existence.html#>)

### **Exhibit C: United Nations and Other International and U.S. Authorities\**

1. Ban Ki Moon, *Remarks to the General Assembly on Haiti* (Dec. 3, 2010) (available at: [http://www.un.org/apps/news/infocus/sgspeeches/statments\\_full.asp?statID=1025](http://www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=1025))
2. The United Nations Refugee Agency, *OHCHR / UNHCR urge extending suspension of returns to Haiti*, (Feb. 12, 2010) (available at: <http://www.unhcr.org/4b7543026.html>)
3. U.S. State Dept., Bureau of Consular Affairs, *Travel Warning* (Dec. 9, 2010) (available at: [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_4632.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_4632.html))
4. The Inter-American Commission on Human Rights, *Concerns over situations in camps for displaced persons in Haiti*, (Apr. 16, 2010), (available at: <http://www.cidh.oas.org/Comunicados/English/2010/115-10eng.htm>)
5. Inter-American Commission on Human Rights, *Annual Report 2009*, Chapter IV, Para. 404. (available at: <http://www.cidh.oas.org/annualrep/2009eng/Chap.IV.d.eng.htm>)
6. U.S. Dep't of Homeland Security, *Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals*, (Jan. 15, 2010), (available at: [http://www.dhs.gov/ynews/releases/pr\\_1263595952516.shtm](http://www.dhs.gov/ynews/releases/pr_1263595952516.shtm))
7. U.S. Dep't of Homeland Security, Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans, (Jan. 18, 2010), (available at: [http://www.dhs.gov/ynews/releases/pr\\_1263861907258.shtm](http://www.dhs.gov/ynews/releases/pr_1263861907258.shtm))
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10. United States Bureau of Citizenship and Immigration Services, *Haiti: Information on Conditions in Haitian Prisons and Treatment of Criminal Deportees*, (Jul.2, 2001) (available at: <http://www.unhcr.org/refworld/docid/3dece9f87.html>)

11. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Human Rights Report: Haiti*, (Mar. 11, 2010) (available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136116.htm>)
12. U.S. Department of State, Bureau of Democracy, *Country report on Human Rights Practices, Human Rights Report: Haiti*, (Feb. 25, 2004) (available at: <http://www.state.gov/g/drl/rls/hrrpt/2003/27902.htm>)
13. C.H.R., Press Release No. 11/10, *IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti* (Feb. 2, 2010) (available at, <http://www.cidh.oas.org/Comunicados/English/2010/11-10eng.htm>)

### **Exhibit D: Journals And Reports:**

1. Final Letter to President\_Haiti Deportations, (Dec. 16, 2010) (available at: [http://ccrjustice.org/files/FINAL%20Letter%20to%20President\\_Haiti%20Deportations%20\(2\).pdf](http://ccrjustice.org/files/FINAL%20Letter%20to%20President_Haiti%20Deportations%20(2).pdf))
2. Anne Gell affidavit, (Dec. 16, 2010) (available at: <http://ccrjustice.org/files/Anne%20Gell%20affidavit.pdf>)
3. Beatrice Lindstrom affidavit, (Dec. 16, 2010) (available at: <http://ccrjustice.org/files/Beatrice%20Lindstrom%20affidavit.pdf>)
4. New York University School of Law Immigrant Rights Clinic, *Locked Up but Not Forgotten: opening access to family & community in the Immigration Detention System* (Apr. 2010), (available at: <http://afsc.org/sites/afsc.civicactions.net/files/documents/LockedUpFINAL.pdf>)
5. Anil Kalhan, “*Rethinking Immigration Detention*”, 110 Colum. L. Rev. Sidebar 42, 47 (July 21, 2010) (available at: <http://www.columbialawreview.org/articles/rethinking-immigration-detention-part-i>)
6. International Crisis Group, *Stabilisation and Reconstruction after the Quake, Latin America/Caribbean Report N°32*, (Mar. 31, 2010), (available at: <http://www.crisisgroup.org/en/publication-type/media-releases/2010/latam/haiti-stabilisation-and-reconstruction-after-the-quake.aspx>)
7. Human Right Network, U.S. Human Rights Network, *Shadow Report to the Convention on the Elimination of all forms of Racial Discrimination*, (Mar. 2008) (available at: <http://www.ijdh.org/pdf/headline1-8-08.pdf>)

### **Exhibit E: Internet Authorities:**

1. Institute for Justice and Democracy in Haiti, *Being Deported to Post-Earthquake Haiti?* (Dec. 16, 2010) (Available at: <http://ijdh.org/archives/16127>)
2. Imam Mahdi Bray *MAS Freedom Condemns U.S. Government's Decision to Resume Deportations to Haiti amid Soaring Cholera Outbreak and Deteriorating Humanitarian Conditions*, (Dec. 15, 2010) (available at: <http://mahdibray.net/2010/12/15/mas-freedom-condemns-u-s-government%E2%80%99s-decision-to-resume-deportations-to-haiti-amid-soaring-cholera-outbreak-and-deteriorating-humanitarian-conditions/>)
3. Center for Constitutional Rights, *CCR Sends Letter to Obama Raising Concerns Over Immediate Plans to Resume Deportations to Haiti Amid Spiraling Cholera Outbreak*, (Dec. 16, 2010) (available at: <http://ccrjustice.org/newsroom/press-releases/ccr-sends-letter-obama-raising-concerns-over-immediate-plans-resume-deportat>)
4. American Friend Service Committee, *Letter to President Obama about Haitian Deportations*, (Dec. 23, 2010) (available at <http://afsc.org/document/letter-president-obama-about-haitian-deportation>)
5. Brandon Hensler, Center for Constitutional Rights. *ACLU and congresswoman-elect Frederica Wilson call on Obama administration to avert "human rights disaster," halt deportation of Haitian nationals*, (Dec. 29, 2010) (available at: [http://www.acluf.org/news\\_events/?action=viewRelease&emailAlertID=3886](http://www.acluf.org/news_events/?action=viewRelease&emailAlertID=3886))
6. Liesl Gertholtz, *Sexual Violence: Help Haiti's Women*, Human Rights Watch, (Mar. 9, 2010) (available at: <http://www.hrw.org/en/news/2010/03/10/haitis-rape-crisis>)
7. Haiti Advocating Working Group, *Create a Haitian Family Reunification Parole Program to Increase Remittances to Haiti*, (available at: <http://ijdh.org/archives/13616> )
8. Florida Immigrant Advocacy Center, *Haitian Refugees, a people in search of Hope*, (2004) (available at: <http://www.fiacfla.org/reports/HaitianRefugeesAPeopleinSearchofHope.pdf>)
9. Detention Watch Network, *About the U.S. Detention and Deportation System*, (available at: <http://www.detentionwatchnetwork.org/aboutdetention>) (last visited January 5, 2011).
10. Detention Watch Network, *The History of Immigration Detention in the U.S: A Rapidly Expanding Detention System*, (available at: <http://www.detentionwatchnetwork.org/node/2381> ) (last visited January 4, 2011).

11. Detention Watch Network, *Conditions in Immigration Detention*, (available at: <http://www.detentionwatchnetwork.org/node/2383> ) (last visited January 4, 2011).
12. American Civil Liberties Union and Human Rights Watch, *Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System*, (Jul. 26, 2010), (available at: [www.aclu.org/human-rights/deportation-default-mental-disability-unfair-hearings-and-indefinite-detention-us-immig](http://www.aclu.org/human-rights/deportation-default-mental-disability-unfair-hearings-and-indefinite-detention-us-immig) or <http://www.hrw.org/node/91725>)
13. American Immigration Council, *Non-Citizens with Mental Disabilities*, (Nov. 23, 2010), (available at: <http://www.immigrationpolicy.org/special-reports/non-citizens-mental-disabilities>)
14. Florida Immigrant Advocacy Center, *Dying for Decent Care: Bad Medicine in Immigration Custody*, (Feb. 2009) (available at: [www.fiacfla.org/reports/DyingForDecentCare.pdf](http://www.fiacfla.org/reports/DyingForDecentCare.pdf))
15. National Network For the Defense of Human Rights, NDHR *presents the State of Haitian Prisons (Oct. 2010)* (available at: [http://rnddh.org/IMG/pdf/Rapport\\_prison-2.pdf](http://rnddh.org/IMG/pdf/Rapport_prison-2.pdf))
16. Deportation Nation, *A Timeline Of Immigrant Criminalization*, (available at: <http://www.deportationnation.org/multimedia/deportation-nation-a-timeline-of-immigrant-criminalization/>) (last visited January 4, 2011).
17. American Friend Service Committee, *Human Rights Advocates Say No to Massive Immigration Detention Center*, (Dec. 21, 2010), (available at: <http://afsc.org/story/human-rights-advocates-say-no-massive-immigration-detention-center-northeast> )
18. Business Wire, *GEO Receives ICE Contract for 600-Bed Low-risk Immigration Detention Center in Texas*, (Dec. 8, 2010), (available at: <http://sinelson.typepad.com/susan-i-nelson-immigrat/2010/12/geo-receives-ice-contract-for-new-600-bed-immigration-civil-detention-center-in-texas.html>)
19. Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*, 167-173 (June 2003) (available at <http://physiciansforhumanrights.org/library/report-persprison.html>) (last visited Jan. 6, 2011)

**EXHIBIT A**

**Declarations**

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**DECLARATION OF ROMY LERNER**

## DECLARATION OF ROMY LERNER

1. My name is Romy Lerner. I am supervising attorney for the Detention Project at Florida Immigrant Advocacy Center (FIAC) in Miami, Florida. I have worked as an attorney at FIAC for five years. I am writing this declaration in support of the request for protective measures on behalf of Petitioners Gary Resil, Harry Mocombe, Roland Joseph, Pierre Louis, and Evel Camélien and other similarly-situated Haitian nationals subject to immediate deportation by the United States.
2. FIAC is a non-profit legal services organization that works to protect the basic human rights of all immigrants. FIAC staff attorneys represent noncitizens in affirmative applications for immigration relief, in removal proceedings, and on appeal. South Florida has the largest Haitian community in the United States, and FIAC has represented countless Haitian clients.
3. After learning, shortly before the December holidays, that the U.S. government intended to resume deportations to Haiti in January, and that many Haitians had been transferred from detention centers in Florida to Louisiana, FIAC enlisted the help of Hiroko Kusuda of Loyola University New Orleans College of Law, Law Clinic and Center for Social Justice, and others, to interview Haitian detainees at Louisiana detention centers. Our team in Florida reviewed notes from approximately seventy-five interviews conducted in Louisiana, and interviewed relatives of those at risk of removal to Haiti. Our team also reviewed the immigration court files of the petitioners, with the exception of Evel Camélien, whose immigration proceedings concluded in 1986 and whose file has been



archived. I personally interviewed ten Haitian detainees in Louisiana by telephone, conducted several in-person interviews at Krome Service Processing Center in Florida, and spoke with the five petitioners on two separate occasions.

4. The Haitians at risk of imminent deportation range widely in their cultural backgrounds. While some speak little English, many others have spent much of their lives in the United States and do not speak Creole.
5. Many of the detained Haitians, as well as FIAC's nondetained Haitian clients, lost family members and loved ones in the January 2010 earthquake. Many people in the Haitian community in South Florida have suffered serious trauma as a result of their families' experiences in the earthquake, and have undertaken the financial burden of supporting any surviving family members in Haiti.
6. Haitians arriving in the United States in the past year have suffered particularly extreme trauma, and I have encountered many who appear to have symptoms of post-traumatic stress disorder, anxiety, depression, and other psychological or psychiatric disorders. Many new arrivals are also physically ill or injured due to the earthquake.
7. With the earthquake's destruction of Haiti's infrastructure, the political violence and disorder following the recent presidential election in Haiti, and the cholera outbreak, this is a particularly important time for the U.S. government to support the Haitian community rather than flooding Haiti with a tide of returning refugees. In light of Haiti's history of imprisoning those deportees with criminal convictions in inhumane conditions, along with the cholera outbreak and widespread violence, Haitians have good reason to fear deportation.

8. My clients and the people I have interviewed in the Petitioner class are truly terrified by the prospect of being deported to Haiti. Many who had been released were re-detained in recent days or weeks, and many were transferred to detention centers in rural Louisiana, presumably in preparation for removal. The transfers mean that they are now detained at facilities far from their family, friends, and attorneys. The transfers were accomplished in a chaotic and brutal manner, with guards dressed in riot gear. One of FIAC's clients was assaulted by guards when he peacefully resisted transfer.
9. The transferred Haitian detainees have been provided with very little information about when their deportations will occur. We believe removals are imminent based upon statements by the U.S. government, the transfers to Louisiana, and reports from one of the Petitioners that U.S. Immigration and Customs Enforcement had begun fingerprinting detainees in Louisiana.
10. The detainees' family members are also understandably frightened. The 20-year-old stepdaughter of one detainee—who is studying biology at Nova Southeastern University—reports that the detention of her stepfather has seriously disrupted her family. Her stepfather had been caring for her grandmother who suffers from Alzheimers and cannot be left alone. Because her stepfather is detained, her mother has had to stop working in her field of health care in order to stay home and care for her grandmother. The wife of another detainee, a U.S. citizen who works as a medical assistant, has had to increase her already long hours in order to make-up for the loss of income to the family since her husband has been detained.

Her mother has been forced to move in with the family to help out and care for the three children ages two, eight, and twelve, one of whom has a learning disability.

11. The majority of the detained individuals at issue in this petition have lived for many years as lawful permanent residents in the United States and possess extensive family, economic, and community ties to this country. Some suffer from serious mental health and/or other medical conditions that will go untreated and become life-threatening upon removal to Haiti. U.S. immigration law, however, largely precludes immigration judges from considering the effects of deportation on these immigrants and their families.
12. Because this request for precautionary measures has been prepared with great urgency, and because the named Petitioners are currently detained in rural Louisiana, our team has not been able to obtain declarations from the petitioners at this date, but they have given us their permission to share their stories. The following information is based on interviews with the detainees, their family members, and review of their court files. The statements are made on information and belief.
13. On January 2 and January 4, 2011 I interviewed **Gary Resil**, a 61-year-old Haitian father of five U.S. citizen children, who has been a lawful permanent resident in the United States for approximately 44 years. He is currently detained at Tensas Parish Detention Center in Waterproof, Louisiana, after having been transferred from Florida, where he and his family were residing. On August 23, 2010, Mr. Resil was ordered removed by an immigration judge on account of

criminal convictions for theft and racketeering, for which he was sentenced to a total of approximately one year in prison.

14. Mr. Resil told me that he fled Haiti in 1967 after his family was attacked for political reasons.
15. From interviews, I also learned that following his divorce about ten years ago, Mr. Resil became the primary caretaker for his minor children. In addition to his career in real estate investment, Mr. Resil is a musician who has worked with Mighty Sparrow, Arrow, and Run DMC.
16. Mr. Resil informed me that several of his relatives passed away in the earthquake in Haiti. His sister-in-law, niece, and nephew were killed when their house collapsed.
17. Finally, I learned that Mr. Resil suffers from diabetes, heart problems, high blood pressure, and anxiety. To keep his diabetes under control, Mr. Resil takes the medication Metformin. Mr. Resil suffers periodically from low platelet level which requires that he get a blood test every two months and that he take steroids when his platelet count is too low. Mr. Resil has not been getting his required diabetic diet in Tensas Parish Detention Center. If removed to Haiti, he is afraid he will die because he will not have access to his medication.
18. On January 2 and 4, 2011, I interviewed **Harry Mocombe**, a 30-year-old Haitian man who came to the United States as a lawful permanent resident in 1999 at the age of 19. U.S. immigration authorities are detaining Mr. Mocombe at Tensas Parish Detention Center in Waterproof, Louisiana, after having transferred him from Florida. Prior to being detained, Mr. Mocombe resided in Florida with his

6-year-old U.S. citizen son and with the mother of his son, Majorie, a lawful permanent resident, with whom I also spoke.

19. Mr. Mocombe and Marjorie informed me that their son suffers from Canavan, a rare leukodystrophy disease afflicting children that is degenerative. There is no cure for the disease. Treatment is limited to supportive care with symptoms progressing until the child's death in his or her early teens. Children without care have a life expectancy of only 4-5 years. Mr. Mocombe's son does not walk or talk, suffers from seizures, and is on a feeding tube. Since Mr. Mocombe has been absent from the home, his son has experienced more frequent seizures. A nurse helps Mr. Mocombe and his partner take care of his son because of the severity of his condition.
20. I learned that Marjorie is struggling to take care of their son. She works full-time in a doctor's office and just learned that the nurse who has been helping them five (5) hours a day will only be available for two (2) hours. Because Mr. Mocombe had been providing essential care to their son, his absence has had a severe impact on her and their son. Other family members of Mr. Mocombe are incapable of taking care of his son because he is completely dependent on others and requires an extremely high level of specialized care.
21. Mr. Mocombe's records show that an immigration judge ordered him removed on September 21, 2010 on account of criminal convictions for burglary of an unoccupied dwelling and offenses involving theft and dealing in stolen property.
22. Like the other Petitioners, Mr. Mocombe fears immediate incarceration by the Haitian authorities upon his deportation to Haiti. He lost the only two remaining

family members he had in Haiti due to the earthquake —his mother’s brother and sister. Mr. Mocombe would therefore have no one to bring him food in a Haitian jail and no one to make an attempt to get him out of detention.

23. On January 2 and 4, I interviewed **Roland Joseph**, a 43-year-old Haitian man who arrived to the United States in 1999 as a lawful permanent resident. He is detained at Tensas Parish Detention Center in Waterproof, Louisiana after having been transferred from Florida. Mr. Roland has four lawful permanent resident children ages 22, 19, 16, and 12. He also has a 2 year old grandchild who is an American citizen.

24. Mr. Joseph was ordered removed on September 7, 2010 due to convictions for drug possession with intent to sell, for which he was sentenced to a total of six months in prison.

25. Mr. Joseph has been a single father since the children’s mother passed away nearly 10 years ago. His children have experienced emotional distress and financial hardship because of his detention. An interview with his children revealed that Mr. Joseph was their sole financial provider. Since his detention the children have fallen months behind in their rent.

26. Mr. Joseph no longer has friends or family in Haiti. If deported, he would therefore have no one to advocate for his release or provide him with adequate food or drinking water.

27. On January 2 and 4 I interviewed **Evel Camélien**, a 53-year-old man who came to the United States by boat in 1980. Mr. Camélien has four children in the United States, ages 9, 11, 18, and 28. Three of his children are U.S. citizens and the other

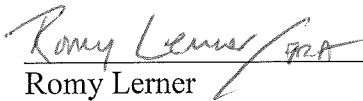
is a lawful permanent resident. He explained that after being deported to Haiti in 1986, Mr. Camelien fled violence in Haiti and returned to the United States in 1988. Mr. Camelien believes he was ordered removed because of a cocaine possession conviction. Recently, Mr. Camelien was again picked up by immigration authorities and detained in Florida, before being transferred to Tensas Parish Detention Center in Waterproof, Louisiana.


28. I learned that prior to this detention, Mr. Camelien was steadily employed and supporting his minor children.
29. I also learned that Mr. Camelien had three additional children who were living in Haiti at the time of the earthquake and all were killed during this disaster. Mr. Camelien also lost his mother, father, and sister-in-law in the earthquake.
30. Because Mr. Camelien has an order of removal based on a criminal conviction, he fears he will be detained by Haitian authorities upon arrival in Haiti. He has only a few members of his extended family living in Haiti. It is uncertain where they are living and unlikely that they would be able to assist Mr. Camelien once he is deported to Haiti and jailed.
31. On January 2 and 4, I interviewed **Pierre Louis**, a 27-year-old man who has lived in the United States as a lawful permanent resident since entering as a teenager in 2001.
32. Mr. Louis is detained at Tensas Parish Detention Center in Waterproof, Louisiana after having been transferred from Florida. Mr. Louis had been supporting his five-year-old son, a U.S. citizen, and his father, a lawful permanent resident, by working for National Car Rental. On February 23, 2010, Mr. Louis received a

final order of removal based upon a conviction for falsely claiming to be a U.S. citizen, in connection with an application to register to vote. He also has criminal convictions for misdemeanor battery and stealing a bookbag.

33. Mr. Louis reports that he suffers from schizophrenia and has been prescribed the antipsychotic medication Seroquel. He fears living without his medication because he hears voices and talks to himself. Mr. Louis is terrified of being deported to Haiti and jailed because he is aware that detainees do not receive medication or medical treatment. He has no family in Haiti to help him deal with his serious medical condition, bring him food while he is in jail, or advocate for his release. Mr. Louis' only relative in Haiti, his aunt, died in the earthquake.

I declare under penalty of perjury that the following is true and correct to the best of my information, knowledge, and belief.

  
\_\_\_\_\_  
Romy Lerner

  
\_\_\_\_\_  
Date



**DECLARATION OF JOHN MAY, M.D.**

**DECLARATION IN SUPPORT OF PETITIONERS' REQUEST FOR  
PRECAUTIONARY MEASURES TO THE  
INTERAMERICAN COMMISSION FOR HUMAN RIGHTS**

I, Dr. John P. May, M.D., declare and state as follows:

1. I am a medical doctor licensed to practice in 12 different states, including New York. I am additionally certified through the American Academy of HIV Medicine. I am the President of Health through Walls, a not-for-profit organization facilitating improvements in prison health care in developing countries, including Haiti, Dominican Republic, and Jamaica. In addition, I am currently the Chief Medical Officer for Armor Correctional Health Services, Inc. I also hold the position of Clinical Professor at the Department of Internal Medicine at Nova Southeastern University College of Osteopathic Medicine and serve as a consultant for the Civil Rights Division of the U.S. Department of Justice.
2. Since 1992, I have been involved in health care in jails and prisons, including as a practicing physician, medical director, administrator, and consultant. In 2001, I began working internationally in prison health programs in developing countries. I am the past chair of the International Relations Committee of the American Corrections Association. I am a board member of the International Corrections and Prison Association and am the Chair of the Health Care Working Group for that organization. My work in the Haitian prison system was recognized in 2007 with a special award from the U.S. Ambassador to Haiti.
3. In 2001 I founded Health through Walls Inc., a non-profit organization dedicated to assisting Haitian authorities to improve their health care services in the Prison Civile de Port-au-Prince and other national prison facilities. Our primary focus is to train and accompany the prison health care staff in the identification and treatment of infectious disease, as well as to create sustainable systems of prison health care delivery within the national prison system. Since July 2009 to date, we receive funding for an 18-month project from the United States Agency for International Development (USAID) for our work in Haiti's prisons.
4. In my role as President and Founder of Health through Walls, I have traveled to Haiti numerous times, visited Haitian prisons, and spent hundreds of hours within the health unit of the Prison Civile de Port-au-Prince. I have also visited two police station holding facilities. I am intimately familiar with the medical care and treatment available in Haitian prisons and the medical staff and systems in place. I have toured living quarters, provided care and treatment to many prisoners in conjunction with Haitian health care authorities, and interviewed many prisoners regarding the conditions they face. I last visited the national prison in Port-au-Prince on December 20, 2010.
5. I have given a number of presentations about my experience in Haiti, a sample of which includes "Update on the Health through Walls Initiative" at the National Commission on Correctional Health Care on October 11, 2005 in Denver Colorado, "The Haitian Prison Restoration Project" at the American Correctional Association meeting in August 2005, and "HIV Care in Prisons of Developing Countries" at the United States Conference on

AIDS on September 19, 2008 in Fort Lauderdale. I have also published articles related to prison health care, developing systems of infection disease control, and HIV care in jails and prisons. (Please see the attached curriculum vitae). I most recently co-authored an article for the Health Care for Prisoners in Haiti, John P. May, MD; Patrice Joseph, MD; Jean William Pape, MD; and Ingrid A. Binswanger, MD, MPH, *Annals of Internal Medicine*, First published August 2, 2010 on [annals.org](http://annals.org). *Ann Intern Med* September 21, 2010 vol. 153 no. 6 407-410.

6. I have also personally had numerous one on one discussions with the Director of the national prison system, Jean Celestin, as well as with United Nations' MINUSTAH Corrections Advisors and others regarding the cholera epidemic. Further, we regularly participate in the meetings between the prison administration, the Red Cross, Gheskio, MINUSTAH Corrections Advisors, and others. We have participated in such meetings called specifically to discuss cholera in the national prisons.

#### **Background Information on Haiti's Prison System**

7. In Haiti, over 6000 persons are incarcerated in prisons or local police station holding facilities. In general, the conditions in which prisoners live are severely overcrowded, poorly ventilated, and unsanitary. Prisoners and detainees suffer from lack of basic hygiene, malnutrition, inadequate health care, and rodent infestation. Preventable diseases such as beriberi, AIDS, and tuberculosis have been a serious problem.
8. The Prison Civile de Port-au-Prince, located in Port-au-Prince, which was seriously damaged in the earthquake of 12 January 2010 and some cell areas destroyed, currently has the capacity to hold 400 prisoners yet there are nearly 2,000 prisoners detained there now. Prior to the earthquake, the Prison Civile de Port-au-Prince, which was built to house 800 but expanded to house 1,200, had 4,300 prisoners at the time of the January 12, 2010 earthquake. Based on my own follow-up with patients and sources of information, I estimate 2-3 people die in the Prison Civile de Port-au-Prince per month due to lack of adequate medical care and serious conditions.
9. The conditions at the Prison Civile de Port-au-Prince are unsanitary; the prisoners are locked in grossly overcrowded cells with only a short period of time out of the cell to bathe. There are no toilets or sinks in the cells. Prisoners use communal buckets to urinate and defecate in bags and there is no sanitation system for swift disposal of waste.

#### **Deportees Held In Police Station Holding Facilities**

10. Since 2006, deportees to Haiti with criminal convictions are imprisoned in a police station holding facility. Prior to 2006, such deportees were imprisoned in the Prison Civile de Port-au-Prince. The police station holding facilities that I observed prior to the earthquake include a one-story building with poor air circulation, increasing the spread of infectious diseases. The facilities are hot and overcrowded. There are no provisions, including food or drinking water, available to detainees unless family members bring

them. On November 27, 2008 when I first visited the facility and interviewed the supervisor he told me that the facility was not intended for long term detention but nonetheless, long term detention will happen if deportees cannot be released to family members.

11. In some detention settings in Haiti, detainees do not have access to treated water, or rehydration ingredients or packets or to medical care. Police station holding cells additionally, have no medical staff or response, and no formal cholera prevention or treatment access. Detainees are locked in their cells 24 hours per day except for a 15 minute period to bathe. There are no toilets or sinks in the police station holding cells. Detainees use communal buckets to urinate and defecate in bags and there is no sanitation system for swift disposal of waste. These cells are also unsanitary and overcrowded.
12. Persons deported to Haiti face additional barriers to receive adequate medical and mental health care. In Haiti, there exists pervasive stigma against deportees, especially those with criminal convictions. They are blamed for some of the country's problems, such as the high crime rate and violence. There is a belief that deportees squandered their opportunity in the United States (or other countries) and as a result they are shunned, not offered assistance, and remain on the periphery of Haitian society.

#### **Onset of the Cholera Epidemic and its Effect on Haiti's Prison System**

13. In October 2010 a cholera epidemic began to rage through Haiti and is now in all of the regions of Haiti. The most recent official numbers released December 26, 2010 by Haiti's Ministry of Health puts the numbers of recorded deaths from cholera since mid-October at more than 3,300, with more than 150,000 cases of persons sickened thus far from the deadly illness. The real numbers are believed to be twice the official numbers as hundreds were unable to make it to health centers and died at home or along the road en route to medical care. The strain of cholera has been identified to be a virulent and aggressive strain from South Asia. The World Health Organization states that the true numbers are probably twice these amounts. Further the World Health Organization predicts that 650,000 people will contract cholera over this coming year. However, because only a small percent of those with Cholera exhibit symptoms, it is believed that thousands of others are silent carriers capable of spreading the illness to others over a period of weeks from the time they contract the deadly disease.
14. According to the World Health Organization, Haiti's cholera epidemic has not peaked yet, nor has it been contained. A key to the prevention of cholera is treated water. A person with cholera can die within two hours of contracting the disease because they lose an enormous amount of body fluids and become dehydrated to the point where they go into shock, their internal organs are affected and they experience cardiac arrest.
15. Further, there have been cholera epidemics in other national prison facilities such as Cap Haitian, Cayes, Hinche, Mirabalais, Cayes, etc. with fatalities.

16. Since the onset of the cholera epidemic in Haiti we have urged the national prison administration to move quickly to prevent, diagnose and treat cholera and to provide a 24-hour medical team to immediately respond to new cases of cholera. Of great concern is the swiftness of the disease from its onset and that frequently cholera victims can dehydrate so rapidly that they die within two to three hours from the first system of the disease.
17. The medical response to police holding areas will need to be aggressive and comprehensive. For example, there needs to be twenty-four hour staffing.

December 20, 2010 Visit to Prison Civile de Port-au-Prince

18. On December 20, 2010, I visited the Prison Civile de Port-au-Prince in Haiti and also met with Jean Roland Celestin, Director of the National Prison Administration and others to assess the incidence of cholera in the national prison system.
19. As of December 20, 2010, there were 48 prisoners system-wide that had died from cholera. Of these prisoners, 28 had died of cholera at the Prison Civile de Port-au-Prince. Additionally, there were 20 prisoners at the Prison Civile de Port-au-Prince known to have cholera on the day I visited (December 20, 2010).
20. Finally, after observing that many of the prisoners who died in the Prison Civile de Port-au-Prince perished during the nighttime when there was no medical staff to assist with rehydrating those who were sick, the Prison Civile de Port-au-Prince as of mid-December, now has medical staff on site throughout the night. On December 20, 2010, when I visited the Prison Civile de Port-au-Prince I learned that there had not been any deaths since the nighttime medical shift began.
21. Additionally, we were informed that Prison Civile de Port-au-Prince will soon be reopening its largest detention building, the "Titanic" and that there is no provision for drinking water at that facility.



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John May, M.D.  
Dated: January 5, 2010

**DECLARATION OF MICHELLE KARSHAN**

**DECLARATION IN SUPPORT OF PETITIONERS' REQUEST FOR  
PRECAUTIONARY MEASURES TO THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

I, Michelle Karshan, declare and state as follows:

1. I am a U.S.-born citizen of the United States and lived in Haiti full time for more than ten years from 1995-2004 and 2009-2010. I am the founder and Executive Director of Alternative Chance, a program founded in 1996 dedicated to assisting criminal deportees in Haiti. Additionally, I am the Vice President of Health through Walls, Inc. and the Coordinator of its Haiti program. In this capacity, I assist Haitian authorities to improve their health care services in Haiti's Prison Civile de Port-au-Prince (originally known as the National Penitentiary) and other national prison facilities. Since the earthquake, but before the cholera outbreak, I have also visited police stations and their holding cells in Port-au-Prince and Croix-des-Bouquets, Petionville, Cayes and Leogane. I base the statements expressed in this declaration primarily on my own knowledge gained through personal observations, interviews and participation in key stakeholder meetings.<sup>1</sup>
2. I am providing this declaration to the Inter-American Commission on Human Rights to explain the impact of removal to Haiti on Petitioners, Haitian nationals who have final orders of removal from the United States government based on prior criminal convictions, and who are currently detained or at imminent risk of being detained in U.S. detention centers and who face imminent deportation to Haiti.

**I. INTRODUCTION**

3. On January 12, 2010 a catastrophic earthquake hit Haiti, directly affecting millions of people, causing more than 230,000 deaths, leaving at least another 300,000 persons injured, and forcing nearly 1.5 million persons to sleep in the streets in spontaneous sheet or tent camps. At least 1.3 million people continue to live in horrible conditions in makeshift encampments and there is no significant progress on providing transitional or permanent housing. Haiti continues to experience earthquake aftershocks.
4. The National Palace and most of the ministries and administrative buildings and court buildings collapsed or were severely damaged. According to some estimates, seventy percent of the Haitian government buildings were destroyed, including courts, police stations, hospitals, and schools.
5. Of particular relevance to the collapse of infrastructure in Haiti, eight of the 17 national prison facilities were destroyed or damaged, as well as many police stations where local detainees, criminal deportees and national prisoners were held. Since the earthquake, the national prison administration, citing a lack of space, has increasingly detained their prisoners in police station holding cells, causing explosive overcrowding and disparity between the two populations (police station detainees and national prison detainees) now

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<sup>1</sup> See Michelle Karshan, Resume and Summary.

housed in police station detention. To date, the repair or rebuilding of prison and police buildings has been painfully slow, while gross overcrowding has caused a rise in serious illnesses, deaths, and the mixing of children with adults in the national prison. The Prison Civile de Port-au-Prince was reopened with limited space while repairs and construction are underway.<sup>2</sup>

6. The U.S. Government announced on December 9, 2010 that it would resume removals to Haiti in January 2011. I first learned on December 10, 2010 that the Department of Homeland Security (DHS) had lifted the suspension on deportation of criminal aliens to Haiti when a Florida attorney forwarded to me an email correspondence that contained a “dear colleague letter” from Mary Kramer, Co-chair, American Immigration Lawyers Association-ERO Liaison to the membership of the American Immigration Lawyers Association informing them that “per the Department of Homeland Security [DHS]” the “halt on removals to Haiti of criminal-aliens has been LIFTED” and that their enforcement officers had already “arrested 89 Haitian nationals with final orders.” I have heard similar reports in the media but have not seen any official announcement by DHS.
7. If Petitioners are deported to Haiti, they will face life-threatening conditions. First, they will be detained in overcrowded and unsanitary conditions that expose them to (a) cholera without treatment options; (b) potential violence; and (c) stigma as deportees from the United States. Second, they will face substantial obstacles to obtaining release from detention, and thus will face additional risk of death from contracting cholera. Third, the political conditions in Haiti, following a widely-contested election, create even more violence and instability. The United States is planning to send Haitian nationals to a country to face dire circumstances that threaten their lives.

## **II. DETENTION IN HAITI OF UNITED STATES DEPORTEES WITH CRIMINAL CONVICTIONS**

8. In this section, I lay out the process by which, in my experience, individuals were typically deported from the U.S. to Haiti before the January 12, 2010 earthquake. I believe that a similar process would be used if the U.S. resumes deportations of Haitian nationals in January 2011.
9. When the U.S. government intends to deport an individual to Haiti, it typically gives the Haitian government advance notice of its intent prior to the arrival of the Haitian deportee. The U.S. government also sends the Haitian authorities information, including criminal history, about the deportees.
10. Upon arrival, deportees are processed by Haiti’s immigration officials and taken into custody by the national police, who fingerprint, photograph, and interrogate them. Deportees are then detained in police station holding facilities due to their prior criminal offenses. This detention is unlawful and arbitrary—the Haitian government provides no due process prior to or during detention.

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<sup>2</sup> See *RNDDH presents the State of Haitian Prisons*, National Network for the Defense of Human Rights (RNDDH), October 2010 OCTOBER 2010, [http://rnddh.org/IMG/pdf/Rapport\\_prison-2.pdf](http://rnddh.org/IMG/pdf/Rapport_prison-2.pdf).



11. Haiti's national prison system and police stations holding cells are even more overcrowded since the earthquake. Prisoners are held in barbaric conditions in which the majority of the detainees are forced to sleep standing up by simply standing in place or by tying a rope around their waist and affixing it to a window, to support their bodies.
12. Specifically, the conditions in the police station holding cells in Port-au-Prince and surrounding neighborhoods and towns are unsafe, inhumane and degrading in the following ways<sup>3</sup>:
  - lack of drinking water or food;
  - grossly overcrowded conditions;
  - unsafe conditions, including a shortage of officers in detention settings and violence;
  - physical abuse by corrections officers and police officers;
  - lack of medical and mental health care, even in emergency situations;
  - exposure to infectious diseases and unsanitary conditions; and
  - lack of exercise.
13. As described below, these are the very conditions in which diseases such as cholera can fester.

### **III. PETITIONERS' EXPOSURE TO CHOLERA WHILE IN DETENTION**

14. While held in the police station holding cells, individuals lack regular access to food, safe drinking water, and medical or mental health care. The worst aspect of this detention now is the lack of clean water and sanitation due to the current cholera epidemic. Based on my work with Dr. John May through Health through Walls and my work in the detention medical field, I understand that cholera is a deadly disease primarily caused by exposure to bacteria-infected water or feces, and can cause rapid dehydration, shock, cardiac arrest and death within the first few hours of its first symptom. Numerous cases of cholera have been reported in the prisons and presumably are present in the police station holding facilities. Persons with cholera must be quickly rehydrated and in severe cases require an IV drip. They must be attended to round the clock by medical personnel in either Cholera Treatment Centers (CTCs), health centers or hospitals.<sup>4</sup>
15. When dealing with cholera, there is a complex protocol<sup>5</sup> for medical personnel to adhere to treat and decide if discharge is appropriate. There are also precautions that people can take to prevent cholera. These precautions, determined by Haiti's Ministry of Health together with the World Health Organization and the Pan American Health Organization and others, call for hand washing several times a day with treated water, drinking only

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<sup>3</sup> *Statement by Pierre Esperance*, Executive Director, RNDDH, December 27, 2007.

<sup>4</sup> See attachment, section on cholera.

<sup>5</sup> *Haiti Cholera Training Manual: A Short Course for Healthcare Providers*, Ministry of Health and Population/Centers for Disease Control and Prevention, November 2010, [http://bepast.org/disease\\_information/cholera/haiticholera\\_trainingmanual\\_en.pdf](http://bepast.org/disease_information/cholera/haiticholera_trainingmanual_en.pdf).

treated water (that was placed in a clean bottle), eating food still hot taken right from the stove, and issuing special instructions to individuals who are housed with or exposed to someone who has cholera.<sup>6</sup> Further, the public has been advised through flyers, radio, television and community workers that at the first onset of diarrhea, an individual should immediately start to rehydrate him/herself with measured mixture of salt, sugar and treated water, and then immediately seek medical help at a health center or CTC.<sup>7</sup>

16. Individuals who are detained in police station holding cells are generally not able to comply with these precautions or obtain medical treatment if they become sick with cholera. They do not have access to treated water and they are held in unsanitary conditions and exposed to each other's feces due to the lack of latrine facilities.
17. Moreover, the fear and panic surrounding cholera in Haiti is matched by a dearth of public information about the disease. Many Haitians, uninformed as to how to protect themselves while interacting with people who have cholera, simply avoid anyone whom they suspect of having cholera and will not assist those who are ill.
18. Criminal deportees in police station holding facilities will not have access to safe and treated drinking water. As a result, they will likely drink untreated water. Criminal deportees detained at the police station holding facilities regularly develop dysentery when first imprisoned and typically lose a lot of weight the first two weeks they are detained due to unsafe water; this was true even prior to the cholera epidemic. Individuals deported to Haiti under these circumstances will face a particularly terrifying experience if they develop dysentery (which they likely will), as they will not know whether they have dysentery or the first signs of cholera, and will not be able to obtain emergency medical assistance in either case.
19. It is very likely that the arriving criminal deportees will die from cholera when detained upon arrival. Deporting them into this chaotic, negligent, inhumane and deadly situation amounts to a death sentence.

#### **IV. OTHER INHUMANE AND DEGRADING CONDITIONS OF DETENTION**

20. During their detention in police station holding cells, criminal deportees are locked inside overcrowded holding cell areas for 24 hours at a time with no outside break and are forced to sleep on insect and rodent-infested cement floors and to defecate in bags and urinate in communal buckets. The holding cells at the Direction Centrale Police Judiciaire (DCPJ) police administrative building have no windows and no ventilation and the temperatures in most police station holding cells are well over 100 degrees.<sup>8</sup>
21. Police dispatched from special units of the Haitian National Police regularly visit these

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<sup>6</sup> See attachment, section on cholera.

<sup>7</sup> See attachment, section on cholera.

<sup>8</sup> See *Haiti: Information on Conditions in Haitian Prisons and Treatment of Criminal Deportees*, <http://www.unhcr.org/refworld/country,,USCIS,,HTI,4562d94e2,3dece9f87,0.html>.

cells to remove “local detainees” to physically torture them before returning them to the cell. This serves to further terrify criminal deportees, thereby making it easier to gain their cooperation in paying bribes for their release. Additionally, police officers routinely strike, beat or box the ears (a technique referred to as *kalot marassa*), and otherwise physically abuse detainees, including criminal deportees.

22. The conditions in the police station holding cells are also unsafe for Petitioners due to the stigma deportees with criminal convictions face in Haiti. *See* Section VII.
23. In some instances the United States government transfers medical files to the Haitian government for those being deported who suffer from serious mental or medical illness. Despite requests from doctors, hospitals, and Alternative Chance, the Haitian government steadfastly and intentionally withholds life-saving information vital to the medical care and survival of the deportee, storing the medical records at the Ministry of Interior, where they are never made available to medical professionals.<sup>9</sup>
24. Prior to the earthquake, only a small percent of those in need of medical care at the Prison Civile de Port-au-Prince were able to access the dispensary, and the overwhelming majority who did have such access were nevertheless unable to secure diagnostic exams, treatment and medications. At Haiti’s Prison Civile de Port-au-Prince, critically ill patients were emaciated, unable to breathe or swallow their medications, unable to eat or drink fluids, and left for weeks without an IV or oxygen. They were forced to alternately lie directly on the cement ground outside the dispensary under the scorching sun, and on the floor inside the dispensary. They were left to die.
25. Following the earthquake, when prisoners at the Prison Civile de Port-au-Prince were on 24-hour lockdown, only a handful of sick prisoners were able to access the dispensary. During a riot and prison break attempt in October 2010, the entire dispensary at the Prison Civile de Port-au-Prince was burned and destroyed, including all medical records, equipment, medicines, and a digital x-ray machine recently installed by Health through Walls.<sup>10</sup>
26. Prior to the earthquake I interviewed and observed many criminal deportees suffering from mental illness detained in police station custody for more than two months who had become confused, despondent, in need of their regular medications, experiencing auditory and visual hallucinations and suicidal ideation. On some occasions criminal deportees made attempts at suicide but were never put on suicide watch or transferred to a mental health facility.
27. On numerous occasions I have advised the police of an individual’s medical or mental illness and needs but the individual was still not provided any services. On other occasions, it was the police themselves who informed me of a criminal deportee’s medical or mental health condition but did not see an obligation to respond with services.

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<sup>9</sup> See *No Mercy: Haitian Criminal Deportees* by Amy Bracken, NACLA magazine, September/October 2009.

<sup>10</sup> See *Violence erupts at Haiti prison, 3 inmates killed*, Associated Press, October 18, 2010.

28. There is no refrigerator for storing food in police stations, and police station detainees only get one meal a day if they have a family member providing food. Since the earthquake, with the loss of family members, difficulties in traveling, displacement, lack of jobs, and now a fear of cholera, it is significantly more difficult to have a family member be of assistance. Without family support to provide bottled water, the detainee is forced to drink untreated water, putting them at risk of contracting dysentery, particularly in face of the cholera epidemic.
29. As a result of the above-mentioned prison and detention conditions, prisoners typically suffer from scabies, fungus, dizziness, painful acid reflux, severe arthritic pain in the joints, high blood pressure, out of control diabetes, extreme loss of weight, vision problems, seizures, strokes, headaches, tuberculosis, dehydration, AIDS-related opportunistic infections, and now cholera, which has caused at least 48 deaths in the national prison system and scores of deaths in other police detention facilities.
30. The lack of any medical care puts those with special needs such as diabetes or hypertension at particular risk. Further, lack of exercise complicates certain health conditions which require normal exercise to stay in check, such as hypertension.

#### **V. POTENTIAL INDEFINITE DETENTION OF PETITIONERS**

31. In Haiti, arriving criminal deportees are generally denied any due process, access to attorneys, or knowledge of any proceedings surrounding their detention. The Haitian government generally does not release newly deported criminal deportees unless an eligible Haiti-based family member applies for their release.
32. Since 2006, newly arriving criminal deportees, and sometimes other deportees are detained in police station holding cells. President Rene Preval and then-Prime Minister Jean-Jacques Alexis made public this change in policy with regard to criminal deportees and declared on the radio that all criminal deportees are to be imprisoned upon arrival in Haiti for an indefinite period of time, with those having more serious convictions held longer periods of time. Non-criminal deportees are often detained as well in police station holding cells.
33. From July 2009 until January 2010, I once again personally visited and interviewed criminal deportees on a regular basis at the DCPJ police station holding cells and other police station holding cells, where I found at least five criminal deportees who had been held indefinitely, some for five months, because they had no family members to come forward for them. Those criminal deportees with families coming forward were usually held for two weeks, even if the family member had applied for their release on the first day. The Haitian police chief charged with overseeing criminal deportees informed me that they were enforcing the policy requiring that a close family member come forward to take responsibility prior to releasing criminal deportees, regardless of the nature of their crime, and would continue to hold the others.
34. I interviewed many criminal deportees in these police station holding cells who were held

three or four months without a change of clothes, in feces-soiled clothes, some mentally ill and experiencing auditory and/or visual hallucinations, depression, paranoia, talking to themselves, in a state of confusion, some acting out and others suffering from serious and life-threatening illnesses. Many had begged the authorities for medical care and medications, to no avail.

35. Moreover, human rights abuses as extreme as the killing and massacres of unarmed prisoners is becoming more commonplace. A May 23, 2010 front-page New York Times article, entitled “Signs of Cover-Up After Killings in Haiti Prison,”<sup>11</sup> reported on a massacre by police and corrections officers of unarmed prisoners at a national prison at Les Cayes, killing 12 to 19 prisoners and injuring perhaps 40 others following the earthquake and a subsequent cover-up. Many of the bodies were buried in an unmarked grave.
36. In a subsequent New York Times article entitled “Report Assails Haiti Officers in Prison Killings”<sup>12</sup> by Deborah Sontag and Walt Bogdanich, dated October 21, 2010, the findings of a joint commission charged with investigating the massacre at Les Cayes revealed that “...at least 12 detainees [were] killed by Haitian officers who opened fire ‘deliberately and without justification,’ using ‘inappropriate, abusive and disproportionate force’ against unarmed inmates who presented no immediate threat, according to an independent commission of inquiry report on the Jan. 19 uprising.”
37. Five months later I personally coordinated a Health through Walls medical exam team to visit the Les Cayes prison and we examined and interviewed dozens of prisoners who still had bullets in them, including in the head, stomach area, legs, and other areas.
38. Finally, on Sunday, October 17, 2010, sick and angry prisoners at the Prison Civile de Port-au-Prince took seven people (UN police, UN Corrections Advisors, and two other visitors) hostage in an effort to escape the prison. Some of those taken hostage sustained injuries. The prisoners overwhelmed the facility and those former prisoners from the Les Cayes prison – where the massacre had occurred earlier, beat up the former warden of that prison who was also being detained at the Prison Civile de Port-au-Prince together with police and corrections officers also being charged for the Les Cayes prison massacre. The Haitian police and the United Nations mission were able to secure the prison, although two prisoners were shot and one is said to have been trampled to death during the incident. During the several-hour riot, prisoners completely trashed the medical area and all its equipment, materials and diagnostic tools.<sup>13</sup>

## **VI. EXAMPLES OF HAITIAN DEPORTEES WITHIN THE HAITIAN DETENTION SYSTEM**

39. In 2000, tragically Claudette Etienne died four days after being deported to Haiti after she was forced to rely on scraps of food and untreated water. She developed dysentery,

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<sup>11</sup> See *Signs of Cover-Up After Killings in Haiti Prison*, New York Times, May 23, 2010.

became severely dehydrated, and died within the year.<sup>14</sup>

40. In April 2008, Marie Raymonville, a 64 year old grandmother who suffered from HIV/AIDS, diabetes and hypertension was deported to Haiti after living forty years in the United States. She was detained for one month in horrific conditions in a police station holding cell and was not provided treated water, food, medical treatment or medications, even though the police were aware of her medical condition and needs and received a medical file from the United States regarding her serious medical conditions.
41. While in detention, Ms. Raymonville became seriously dehydrated from dysentery, dangerously compromising her health. She also had animal bites, insect stings and diarrhea more than twenty times per day. After a month, her family in the United States arranged for her to be admitted to the public hospital, where they had to pay all related medical costs. It took a month of hospitalization to stabilize Ms. Raymonville and sufficiently rehydrate her.
42. Our program began visiting her in the hospital and took over her care, arranging housing, household help and coordinating her medical visits and medications. Her various medications were costly and aside from the cost of her antiretroviral medication, there was no government or not-for-profit assistance with her medical costs, medications or care. Her HIV/AIDS medical providers informed us that they could not treat or evaluate her medical conditions other than HIV/AIDS.
43. Ms. Raymonville became confused, depressed, and suffered a stroke. She never fully recovered and eventually became comatose and died.
44. On June 29, 2009 I interviewed Mr. F. S. who was deported to Haiti on May 27, 2009 as a criminal deportee and was detained by Haiti's police for 10 days in a police station holding cell. Mr. S. had been deported to Haiti with one bottle of insulin, although he was never on liquid insulin and did not know how to administer the insulin with a hypodermic needle. Additionally, Mr. S. has serious eye problems and had surgery while in immigration detention in the United States. He was transferred with a medicine for his eyes that had been given to him post-operative and had since been taken off of. Mr. S. told me that he was detained in the police station holding cell with no appropriate medications for his diabetes, eyes and other medical problems for which he had been prescribed daily medications.
45. Mr. S. explained: "I begged the police every day to help me to get medical attention and the proper medicines but they didn't care and they ignored me. Also, they didn't give us any food or water. Without my medicines I became very weak and tired. I felt terrible. And there was a lot of violence in the cell between the deportees and the other guys and the police did not stop them from fighting. I was terrified that I would get hit in my eye that had been operated on. It was very crowded in the cell and there was no light. There was no light bulb in the cell."

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<sup>14</sup> See *Mother of Two, Deported to Haiti*, by Mara Delt, Haiti Progress, 2000.

pressure to appear to be apprehending those who escaped during the earthquake from prison and police detention; the increase in mob violence; lynchings by mobs and killings by police; the recent attacks on police stations; recent prison riots; and a cholera epidemic raging through Haiti, including in its detention settings.

## **VII. PETITIONERS WILL FACE EXTREME STIGMA IN ADDITION TO LIFE THREATENING CONDITIONS**

47. Following the earthquake, executions by police and brutal mob lynchings of suspected looters or escaped prisoners were documented in part by CNN news, other international media and human rights and policy organizations.<sup>15</sup> On some occasions the police handed those under their control over to mobs specifically for the purpose of having the suspect killed. The PBS Frontline special on Haiti's earthquake, aired on March 30, 2010, showed images of dead young men who had been bound; it also showed one man still living, but clearly injured and possibly dying, who was bound and left in front of a police station. The police, on camera, said they could not take the man in and instead claimed to have telephoned for an ambulance. The injured man appeared to be incoherent, had clearly been injured, but it was not clear whether he was also mentally ill. The police did not assist him or protect him. Instead they abandoned him in the street.
48. In late December 2010, the police reported that 45 people accused of being sorcerers who came to intentionally spread cholera in Haiti were stoned, hacked and burnt to death in the south of Haiti. The police reported that some of the victims were not from the area and because the local people did not know them, they perceived them as a threat.
49. In September 2010, the Associated Press reported that "Haitian authorities say a rural police station was burned and an officer killed by a mob. Haitian police spokesman Frantz Lerebours says police agent Guillotau Hubert shot an unidentified man who insulted him on Thursday. He then took the wounded man into custody in the coastal town of Cayes Jacmel. Lerebours says angry neighbors attacked the station with machetes and rocks, overpowered two officers and tied them to chairs before hacking Hubert to death and setting fire to his body and the station. On Friday police arrested 20 people in connection with the attack."
50. Additionally, Haitian deportees from the U.S. are highly stigmatized upon their return to Haiti. Prior to the earthquake, the 2009 State Department human rights report<sup>16</sup> covering Haiti reported that: "Returnees some of whom spent substantial portions or most of their lives abroad, alleged corruption, widespread discrimination and social abuse after returning home. Reported discriminatory practices include arbitrary arrests, false accusations about their activities to local police, and extortion attempts against them and their families abroad during the initial detention phase, in exchange for quicker release from administrative quarantine."
51. Criminal deportees are highly vulnerable to persecution, re-arrest, torture and assassination. They are easily identifiable because of differences attributed to living in the United States:

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<sup>15</sup> See e.g., breakdown of these executions in *Haiti: Stabilisation and Reconstruction after the Quake*, Latin America/Caribbean Report N°32, 31 March 2010, International Crisis Group.

they tend to be visibly different in the way they walk, talk, their ability to speak Creole, their accents, clothes, style of dress, hairstyles, and eye contact, and whether they have gold teeth or grills, tattoos, or scars.<sup>17</sup>

52. Criminal deportees are at significantly greater risk of being re-arrested as scapegoats for rising crime and insecurity in Haiti. They are often the first suspects identified by police investigating a given crime. They are at risk of being lynched in neighborhoods where they are strangers. They are targeted as “escapees” from detention facilities, pegged as “criminal” because of their mannerisms and other visible differences, and because of anger, panic and fear instilled in the general public by the Haitian government’s powerful media campaign portraying all criminal deportees as professional, sophisticated criminals. The Haitian government also promotes the idea that the deportation of these individuals from the United States is part of an overall plan by the United States government to destabilize Haiti. There is also an overwhelming social anger and disgust with regard to criminal deportees, who are viewed as having squandered their opportunities in the United States and perceived to have had lots of money but not have sent it home to help their families.<sup>18</sup>
53. Criminal deportees are discriminated against by the police and perceived as garbage by police, the justice system and other detainees. In detention, local detainees are generally not supportive, nor do they typically share their food with criminal deportees. Local detainees generally subsist on assistance provided by their families, who often live locally. Criminal deportees, on the other hand, often do not have local family connections in the city or town in which they are detained. Police are aware of this reality, and the dire consequences of not having local family support, but remain apathetic. The Haitian government is equally complicit, as it will not provide life-sustaining necessities to detained criminal deportees.
54. As a result, criminal deportees who are detained in Haiti are at great risk of malnutrition, disease, and death. They are amongst the most vulnerable members of Haitian society. As such, if the U.S. resumes deportations to Haiti, criminal deportees will undoubtedly be held in detention upon arrival, and will be at much greater risk of contracting and dying from cholera.

January 5, 2010

Michelle Karshan

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<sup>17</sup> See *American-style 'grills' mark Haitian Deportees as targets* by Ruth Morris, Sun Sentinel Dec 29, 2006, [http://www.kwabs.com/artman/publish/printer\\_4600.shtml](http://www.kwabs.com/artman/publish/printer_4600.shtml).



## Michelle Karshan

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### WORK EXPERIENCE :

July 15, 2009 –  
Present

**Haiti Exams Coordinator**, Health through Walls. Coordinator of large scale health program (prompted by Senator Leahy and the Foreign Appropriations Committee/Département of State, Foreign Operations S. 3288) in Haiti's National Penitentiary, and charged with performing medical screening and creation of medical charts for each of the 4,300 prisoners detained there, as well as to reorganize their medical service structure and train their health care personnel. Funded by the United States government through its United States Agency for International Development (USAID).

2008 - 2009

**Adjunct Professor of Law**, Georgetown University School of Law

1996 – Present

**Founder/Executive Director**, Alternative Chance/Chans Alternativ, Haiti. In volunteer capacity, oversee social service/advocacy peer counseling self-help program for criminal deportees in Haiti. Successfully generated international media coverage sensitizing public, governments, and human rights organizations to injustices of criminal and immigration laws. Wrote orientation manual for criminal deportees, fundraising appeals, advisories, and newsletters.

2005 – 2009

**Communications Consultant** Independent public relations consultant on wide range of projects.

2004 – Present

**Guest Speaker and Expert Witness on Haiti**, Various speaking engagements including: Criminal Justice and Deportation: The Invisible Crisis conference at John Jay College of Criminal Justice; Speaking tours on political situation in Haiti at universities and human rights organizations in Minnesota and South Carolina and at Mid-Atlantic Witness for Peace annual conference; Guest speaker on deportation to Haiti at Conference on Haiti Crisis sponsored by Church World Service and endorsed by several congresspersons. Regularly provide expert witness declarations and testimony for immigration proceedings on Criminal Deportation to Haiti, Haiti's country conditions and its prison and jail conditions. Recommended by the United Nations, was feature speaker on Criminal Deportee reintegration in Haiti at the 2007 Crime & Violence in the Caribbean conference held at the University of the West Indies, MONA, in Jamaica and sponsored by the World Bank and Inter-American Development Bank.

- 2005                    **Director of Communications**, Osborne Association. Oversaw all communications for large New York based criminal justice agency.
- 1995 – 2004            **International Press Liaison for Presidents of Haiti**, National Palace, Haiti. Performed press and delegation briefings, pitched stories, wrote press releases, briefing papers, progress reports, articles, web content, newsletters, congressional briefings and press packages. Set up press interviews, briefings and conferences for President. Identified press issues and trends.
- 1991 – 1995            **Radio Producer/Host**, WBAI and WNWK, New York. Weekly radio show on political crisis in Haiti.
- 1991 – 1994            **Public Relations/Public Participation Consultant**, Parsons Brinckerhoff, New York. Through interview process examined and documented public participation techniques used in transportation planning throughout the United States. Findings were published in federal report. In 1991 researched, publicized and organized series of town meetings throughout New York State on watershed issue.
- 1993 – 1994            **Publicist**, Mystic Fire Video, New York. Publicized new age/alternative videos and audios through press releases, pitching stories, identifying appropriate press and markets. Oversaw jacket cover content and press kits.
- 1989 – 1990            **Quality Assurance Program Planner Analyst**, Woodhull Hospital, Brooklyn, New York. Managed Quality Assurance Department and oversaw hospital-wide coordination of quarterly reports for compliance review and hospital recertification. Wrote reports based on database information, statistical analysis, and medical reports and meeting minutes.
- 1980 - 1989            **Paralegal Consultant**, Performed research and writing for criminal defense and litigation firms and represented clients at administrative hearings.
- 1978 – 1980            **Court Liaison and Counselor**. Offender Aid & Restoration (OAR), New York. Supervised counselors, facilitated family and adolescent counseling, trained volunteers. Advocated for alternative sentencing before the courts, wrote portions of reports to funders.
- OTHER:**                    Authored two community social service directories; Served on Brooklyn Community Board 2 Social Service Committee; Served as Coordinator of Ex-Prisoner Affairs for New York Friends Prison Committee; Co-authored and facilitated non-violent conflict resolution workshops in New York State prisons; Designed and taught several courses including paralegal skills, human rights reporting, peer counseling, internet and job skills training.

**EDUCATION:**

1980 – 1981

Paralegal Institute Certificate program

1974 – 1979

St. Francis College, Brooklyn, New York. Psychology Major/Criminal Justice Minor

**DECLARATION OF ARTHUR FOURNIER, M.D.**

**DECLARATION REGARDING THE CHOLERA EPIDEMIC IN HAITI IN  
SUPPORT OF PETITIONERS' REQUEST FOR PRECAUTIONARY  
MEASURES TO THE INTER-AMERICAN COMMISSION ON HUMAN  
RIGHTS**

I, Dr. Arthur Michael Fournier, M.D., declare and state as follows:

1. I am a medical doctor licensed to practice in Florida. I am currently Professor and Vice Chairman Family Medicine & Community Health and Associate Dean for Community Health Affairs at the University of Miami, Miller School of Medicine in Miami, Florida. I also hold a joint appointment for internal medicine and nursing at University of Miami, Miller School of Medicine.
2. I received my medical degree from Tufts University School of Medicine, Boston, Massachusetts, in 1973. After graduating from Tufts University I completed my residency in Internal Medicine at the University of Miami and Affiliated Hospitals.
3. I currently have a joint appointment at Jackson Memorial Hospital in Miami as well as the University of Miami, Miller School of Medicine's Hospitals and Clinics. My Curriculum Vitae is attached.
4. Over the years I have authored and co-authored many articles and abstracts as well as delivered many lectures on various topics in internal medicine as well as some that relate specifically to Haiti (see listing below). Additionally, I currently have an article ready for publication on my experiences in Haiti during the first two months of the cholera epidemic entitled: "Cholera in the Central Plateau in Artibonite Valley of Haiti."

Articles:

Congenital Rubella Syndrome in Haiti, Pan American Journal of Public Health, 2002, Oct., 12(4):269-273.

Human Immunodeficiency Virus in Haiti. Journal of the National Medical Association. 1999;19(3):165-170.

The Health Care Delivery Crisis in Haiti. Family Medicine. 1996;28(7):498-499.

Opportunistic Infections and Kaposi's Sarcoma Among Haitians: Evidence of New Acquired Immunodeficiency state. Annals of Internal Medicine. 1983;98(3):277-284.

### Competitive Abstracts and Exhibitions and Articles:

Improved Health Parameters in Rural Haiti Associated with a Community Health Worker Program. Global Health Education Conference, Santo Domingo, Dominican Republic, February 2007.

Haiti: Destiny's Child: Huffington Post, February 2010.

Out of the Rubble, A Miracle Named Karen: Miami Herald, January 2010.

Bringing Haitians A Healthier Future: Miami Herald, September 2009.

Haiti on the Brink: Huffington Post, July 2009.

Haiti Deja vu: Huffington Post, September 2008.

In Response to the ABC Nightline Special on Sex Trade in Haiti Huffington Post, July 2008.

### **I. Project Medishare**

5. I am co-founder, past President and currently Secretary Treasurer of Project Medishare for Haiti, Inc. ("Project Medishare"), a not-for-profit organization I helped found in 1994. Project Medishare is dedicated to sharing its human and technical resources with its Haitian Partners in the quest to achieve quality healthcare and development services for all.<sup>1</sup>

6. Since 1994, Project Medishare has searched for ways to help improve the health conditions of the people of Haiti. To achieve that goal, Project Medishare has established partnerships with physicians and allied health professionals and has trained Haitian physicians, nurses and other health professionals. It has provided technology, supplies and equipment to the Project Medishare Clinic in Thomonde, Haiti and other affiliated programs throughout Haiti. Today, Project Medishare has over 95 local staff of Haitian doctors, nurses, LPN's, health agents, and administrative staff to provide needed health care to the people of Haiti.<sup>2</sup>

7. In the immediate aftermath of the January 12, 2010, earthquake in Haiti, doctors from Project Medishare were the first team of foreign physicians to arrive in Haiti. At the

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<sup>1</sup> Helping the People of Haiti, PROJECT MEDISHARE <http://www.projectmedishare.org/> (last visited January 5, 2011).

<sup>2</sup> Our Programs, Community Health Programs in Thomonde, PROJECT MEDISHARE <http://www.projectmedishare.org/our-programs/community-health-program-in-thomonde/> (last visited January 4, 2011).

request of President Rene Preval and the Haitian Ministry of Health, Project Medishare set up a field-trauma hospital on the grounds of the Port-au-Prince Airport.<sup>3</sup> Due to Project Medishare's existing and longterm relationships in Haiti we were able to effectively coordinate medical relief efforts with the Haitian government.<sup>4</sup>

8. Later Project Medishare transitioned the field hospital to be the first trauma and rehabilitation hospital in Haiti.<sup>5</sup> As the immediate critical medical needs subsided, Project Medishare focused its efforts on continued care for the people of Haiti as well helping to assess and rebuild the fragile, if non-existent, health care infrastructure.

9. I have personal knowledge of the conditions in Haiti and particularly as they relate to the health care infrastructure in the country and the declared cholera epidemic as I have been in the country on numerous occasions before and after the earthquake and have assisted the Haitian Government with the design and implementation of immediate and long-term recovery plans.

## **II. Cholera Outbreak**

10. On October 21, 2010, the United States, Center for Disease Control (CDC) confirmed a cholera outbreak in Haiti. Prior to the earthquake, Haiti had not experienced any cholera outbreaks for decades, and most likely this is the first one in at least 100 years.<sup>6</sup> Indeed the CDC has confirmed that the current strain of Cholera linked to the outbreak is not indigenous to the area but rather, most similar to cholera strains found in South Asia.<sup>7</sup>

11. This particular strain of cholera is particularly lethal and can result in death in as little as two hours after symptoms first appear.<sup>8</sup>

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<sup>3</sup> Earthquake Relief, Our Projects, PROJECT MEDISHARE, <http://www.projectmedishare.org/our-programs/earthquake-relief/> (last visited January 5, 2011).

<sup>4</sup> Earthquake Relief, Our Projects, PROJECT MEDISHARE, <http://www.projectmedishare.org/our-programs/earthquake-relief/> (last visited January 5, 2011).

<sup>5</sup> <http://www.projectmedishare.org/our-programs/earthquake-relief/>

<sup>6</sup> Haiti Cholera Outbreak, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/haiticholera/situation/> (last visited January 5, 2011); See also, Travel Health Precaution, Cholera in Haiti, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://wwwnc.cdc.gov/travel/content/travel-health-precaution/haiti-cholera.aspx> (last visited January 4, 2011). See also, Morbidity and Mortality Report, Centers for Disease Control and Prevention, [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5948a4.htm?s\\_cid=mm5948a4\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5948a4.htm?s_cid=mm5948a4_w) (last visited January 5, 2011).

<sup>7</sup> CDC Responds to Cholera Outbreak in Haiti, 2010 Haiti Cholera Outbreak, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/haiticholera/update/> (last visited January 5, 2011).

<sup>8</sup> Morbidity and Mortality Report, Centers for Disease Control and Prevention, [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5948a4.htm?s\\_cid=mm5948a4\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5948a4.htm?s_cid=mm5948a4_w) (last visited January 5, 2011)

12. As the CDC has confirmed, “for a cholera outbreak to occur two conditions have to be met: (1) significant breaches in the water, sanitation, and hygiene infrastructure used by groups of people, permitting large-scale exposure to food or water contaminated with *Vibrio cholerae* organisms; and (2) cholera must be present in the population.”<sup>9</sup>

13. Additionally, as the CDC has warned, “cholera is most often spread through the ingestion of contaminated food or drinking water. Water may be contaminated by the feces of an infected person or by untreated sewage. Food is often contaminated by water containing cholera bacteria because it was handled by a person ill with cholera.”<sup>10</sup>

### **III. Symptoms/Treatment/Death Toll**

14. As per the CDC description of cholera, “the infection is most often asymptomatic or causes a mild gastroenteritis. However, about 5% of infected persons develop severe, dehydrating, acute, watery diarrhea.”<sup>11</sup> Cholera “can cause rapid dehydration, shock and death within the first few hours of its first symptom.”<sup>12</sup> The CDC recommends that the first line of treatment is rehydration. “Administration of oral rehydration salts and, when necessary, intravenous fluids and electrolytes in a timely manner with adequate volumes will reduce case fatality rates to <1%. Severe cases should be treated with antimicrobial agents to which the circulating strain is susceptible.”<sup>13</sup>

15. While normally cholera can be treated and the mortality rate kept low, in Haiti under the existing humanitarian crisis, the mortality rate, in my opinion, is more like 5-10%.

16. The initial outbreak began in the central Artibonite region north of Port-au-Prince and has rapidly spread to other regions, including the densely populated Port-au-Prince.<sup>14</sup> In my estimation and based on the documents I have reviewed, it is expected that 5-10% of the Haitian population will become infected with cholera. The Haitian Ministry of Health recently announced that there have been an estimated 109,196 people who have

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<sup>9</sup> Cholera Confirmed in Haiti, October 10, 2010, 2010 Haiti Cholera Outbreak, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/haiticholera/situation/> (last visited January 4, 2011).

<sup>10</sup> Travel Health Precaution, Cholera in Haiti, Traveler’s Health, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://wwwnc.cdc.gov/travel/content/travel-health-precaution/haiti-cholera.aspx> (last visited January 5, 2011).

<sup>11</sup> Cholera Confirmed in Haiti, October 10, 2010, 2010 Haiti Cholera Outbreak, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/haiticholera/situation/> (last visited January 4, 2011).

<sup>12</sup> Being Deported to Haiti?, INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, <http://ijdh.org/archives/16127> (last visited on January 4, 2011).

<sup>13</sup> Cholera Confirmed in Haiti, October 10, 2010, 2010 Haiti Cholera Outbreak, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/haiticholera/situation/> (last visited January 4, 2011).

<sup>14</sup> Haiti Cholera Outbreak Spreads to Port-au-Prince Prison, BBC NEWS, LATIN AMERICA AND CARIBBEAN, (November 19, 2010), <http://www.bbc.co.uk/news/world-latin-america-11800143>.



contracted cholera since October 2010. However, according to Alternative Chance, a non-profit organization operating in Haiti, this number could be much higher.<sup>15</sup> Further, the Haitian Health Ministry, announced that as of December 26, 2010, the cholera death toll in Haiti has reached 3,333. This represents an increase in the number of deaths when compared to previous reports.<sup>16</sup>

17. It is my professional opinion, based on my conversations with Haitian medical providers that the predictions of the World Health Organization and the Pan-American Health Organization that approximately 650,000 persons in Haiti will be sickened over the next year by cholera, with a large percentage of these to occur within the next few months, is accurate.<sup>17</sup>

18. Unfortunately, given the current conditions in Haiti and the lack of medical care services, the epidemic has spread throughout Port-au-Prince. Estimates are in the range of more than 10,000 deaths as a result of cholera. The lack of clean water and sanitation services along with the overcrowded conditions make the future appear bleak for the nation of Haiti and its inhabitants.

#### **IV. Project Medishare's Efforts to Combat the Spread of Cholera**

19. Project Medishare has made every effort to be on the front lines in Haiti responding to the deadly cholera epidemic. We have been directly involved in trying to stop the spread of this deadly disease by networking with the Haitian Ministry of Health, Partners in Health, the American Red Cross, and many other partnering non-governmental organizations (NGOs).<sup>18</sup>

20. Project Medishare works on two fronts to help stop the spread of this disease. We are focused on treating those infected with the disease and saving lives, as well as educating the people of Haiti on how sanitation and clean water can prevent the disease. Of course this is particularly troublesome given that the very basic things we need to help stop the spread of cholera (clean water and sanitation) are precisely what is lacking in Haiti.

21. Project Medishare jointly operates Cholera Treatment Centers (CTC) in rural Haiti where the epidemic is currently worse. These centers treat the local population. For example, in our CTC in Mirabalais, Haiti, we, along with Partners in Health, have hired

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<sup>15</sup> Being Deported to Haiti?, INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, <http://ijdh.org/archives/16127> (last visited on January 4, 2011).

<sup>16</sup> Haiti Death Toll Soars Past 3,000, YAHOO NEWS, (December, 30, 2010), [http://news.yahoo.com/s/afp/20101231/hl\\_afp/haiticholeratoll\\_20101231024826](http://news.yahoo.com/s/afp/20101231/hl_afp/haiticholeratoll_20101231024826)

<sup>17</sup> Being Deported to Haiti?, INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, <http://ijdh.org/archives/16127> (last visited on January 4, 2011).

<sup>18</sup> Cholera Response, Our Programs, PROJECT MEDISHARE, <http://www.projectmedishare.org/our-programs/cholera-response/> (last visited January 5, 2011).

128 medical and support staff from Mirabalais and the surrounding area to help combat the deadly epidemic.<sup>19</sup> Additionally, our medical staff and health agents have received extensive training following WHO standards of cholera disease management by MSH-Belgium and other partners.<sup>20</sup>

22. In our Cholera Treatment Clinic in Mirabalais in Haiti, we have treated approximately 3,000 patients infected with cholera. Of the approximately 3,000 people treated, only 6 have died. This is due to the administration of quick and effective medical treatment. However, we are able to treat only a small number of those infected. Further, our treatment facilities constitute an exception to the rule in a country whose already-faltering healthcare system has been ravaged by the earthquake as well as the cholera epidemic.

### **V. Situation in Haiti Conducive to the Spread of Cholera**

23. As the CDC has correctly stated, “the prevention and control of cholera requires surveillance, heightened measures to ensure the safety of drinking water and food, and appropriate facilities and practices for disposal of feces and for hand washing.”<sup>21</sup>

24. Prior to the earthquake, only 17% of Haitians had access to adequate sanitation.<sup>22</sup> Since the earthquake that number has considerably decreased. Additionally, currently in Haiti, there are 1.3 million people still living in tents or tarp encampments.<sup>23</sup> Most of these camps lack adequate water and sanitation.<sup>24</sup>

25. Because cholera is a mostly a waterborne disease, the implications of a lack of adequate water supply and sanitation in the country are disastrous when confronted with a cholera epidemic.

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<sup>19</sup> Jennifer Browning, AP Reports Rural Haiti Suffers the Worst of Cholera Epidemic; Project Medishare Continues to Battle Cholera through Prevention, Education and Treatment, PROJECT MEDISHARE BLOG, <http://projectmedishare.wordpress.com/2010/12/09/ap-reports-rural-haiti-suffers-the-worst-of-cholera-epidemic-project-medishare-continues-to-battle-through-prevention-education-and-treatment/> (last visited January 5, 2010).

<sup>20</sup> Jennifer Browning, PROJECT MEDISHRE BLOG, <http://projectmedishare.wordpress.com/2010/12/09/ap-reports-rural-haiti-suffers-the-worst-of-cholera-epidemic-project-medishare-continues-to-battle-through-prevention-education-and-treatment/> (last visited January 4, 2010).

<sup>21</sup> Cholera Confirmed in Haiti, October 21, 2010, 2010 Cholera Outbreak, CENTERS FOR DISEASE CONTROL, <http://www.cdc.gov/haiticholera/situation/>.

<sup>22</sup> Haiti Cholera Outbreak Spreads to Port-au-Prince Prison, News Latin American & Caribbean, BBC NEWS, <http://www.bbc.co.uk/news/world-latin-america-11800143> (last visited on January 5, 2011).

<sup>23</sup> Being Deported to Haiti?, INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, <http://ijdh.org/archives/16127> (last visited on January 5, 2011).

<sup>24</sup> Unstable Foundations: Impact of NGOs on Human Rights for Port-au-Prince’s Internally Displaced People, October 4, 2010, Professor Mark Schuller York College (City University of New York) <http://ijdh.org/wordpress/wp-content/uploads/2010/10/Report-unstable-foundations-final-2.pdf>.

26. I have been in Haiti on numerous occasions and have personal knowledge of the present conditions with respect to the general state of the health care infrastructure, and Haiti's ability to deal with a cholera outbreak of this magnitude. It is my professional opinion, that due to the lack of sanitation and clean water supply, and the lack of an existing and functioning health care and sanitation infrastructure, the cholera epidemic will have disastrous consequences for Haiti. The system is currently under severe stress and the Haitian people will fare poorly against a cholera epidemic.

27. Additionally, the humanitarian organizations currently operating in Haiti are already strained. These organizations have a shortage of medical supplies to prevent and treat cholera, and there is a serious shortage of medical personnel.

28. Given the current conditions of the health care infrastructure, the poor sanitation, lack of adequate housing, the quality of the water supply, it is a highly dangerous and volatile situation. The Haitian Government is ill equipped to deal with a situation of this magnitude.

#### **VI. Conditions in the Jails and Police Holding Facilities Also Conducive for the Spread of Cholera**

29. I am generally familiar with the conditions of Haiti's prisons and police holding cells. The conditions in Haiti's jails are currently unsanitary and grossly overcrowded. Most of the cells have no toilets or sinks. Prisoners use communal buckets to urinate and defecate in bags and there is no existing sanitation system to remove the waste. There is typically a lack of proper medical care.

30. With respect to the Police station holding facilities, where the deportees from the U.S. are likely to be sent, detainees must rely on family members to provide them with food and water.

31. Given the unsanitary conditions that presently exist in Haiti's prison system, the overcrowding, the lack of adequate water supply, and the lack of medical care available to the prison population – particularly those in police station holding cells – the situation is clearly conducive to the spread of cholera. As stated above, cholera is a water-borne illness and the unsanitary conditions coupled with the lack of water will undoubtedly contribute to the spread of this disease.

32. Furthermore, it is my understanding that persons deported to Haiti are subject to prejudices that will hamper their ability to receive medical care and other assistance. They are typically shunned by Haitian society, particularly those with criminal records, as they are seen as having wasted their opportunity in the United States.

33. For all of these reasons, the deportation of Haitian nationals at a time when the country is experiencing a cholera outbreak and when its fundamental infrastructures are

severely damaged – and to some extent non-existent – constitutes, in my opinion, cruel and inhuman treatment of the deportees. They will be exposed to serious and life-threatening conditions in the jails and holding facilities.

34. Additionally, this action will serve to exacerbate the already-fragile situation in Haiti by stressing a system that is presently already severely stressed. The present medical establishment is currently struggling to stave off a grave humanitarian catastrophe. It has no capacity to effectively deal with additional cases of cholera.

I, Arthur Michael Fournier, M.D., declare under penalty of perjury that the foregoing is true and correct. Executed on January 5, 2011.

  
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Arthur Michael Fournier, M.D.

**University of Miami**  
Curriculum Vitae

1) **Date:** February 9, 2010

**I. PERSONAL**

2) **Name:** Arthur Michael Fournier, MD

3) **Home Phone:** (305) 931-7266

4) **Office Phone:** (305) 243-2847

5) **Home Address:** 18031 Biscayne Boulevard, #1604  
Aventura, FL 33160

6) **Current Academic Rank:** Professor and Vice Chairman Family Medicine & Community Health  
Associate Dean for Community Health Affairs

7) **Primary Department:** Family Medicine and Community Health

8) **Secondary or Joint Appointment:** Internal Medicine  
School of Nursing  
Family Medicine, Dartmouth Medical College

9) **Citizenship:** USA

10) **Visa Type:** N/A

**II. HIGHER EDUCATION**

11) **Institutional:**  
August 1965 – June 1969 B.A. Merrimack College  
North Andover

August 1969 – June 1973 M.D. Tufts University School of Medicine  
Boston, MA

August 1973 – June 1976 Internal Medicine Residency  
University of Miami Affiliated Hospitals

12) **Non-Institutional:** None

**13) Certification, Licensure:** Diplomate, American Board of Internal Medicine - 1976  
State of Florida License No. 23123

### **III. EXPERIENCE**

#### **14) Academic:**

July 1978 - 1984 Assistant Professor of Medicine  
University of Miami

July 1984 - 1994 Associate Professor of Medicine  
University of Miami

July 1987 - 1994 Associate Professor of Family Medicine  
(Secondary Appointment)

July 1987 - Present Associate Professor of Nursing  
(Secondary Appointment)

July 1988 - Present Associate Dean for Community Health Affairs

July 1994 - 1995 Associate Professor of Family Medicine

July 1995 - Present Professor of Family Medicine & Community Health  
Professor of Internal Medicine (Secondary Appointment)

July 1997 - Present Adjunct Professor of Family Medicine and Community Health  
Dartmouth Medical School

July 1998 - Present Vice Chair for Community Health, Department of Family Medicine  
and Community Health

November 2008 – Director of the Global Institute for Community Health and Development

#### **15) Hospital Appointments:**

- 1) Jackson Memorial Hospital
- 2) University of Miami Hospitals and Clinics

## 16) Non-Academic:

1976 - 1978 Practice  
National Health Service Corps  
Onley, Virginia

17) **Military:** Lt. Commander  
USPHS (Ret)

## IV. PUBLICATIONS

### 18) **Books and Monographs Published:**

- The Zombie Curse: A Doctor's 25 Year Journey into the Heart of the AIDS Epidemic in Haiti. Joseph Henry Press. 2006
- Office Prevention of Coronary Artery Disease: Prevention in Clinical Practice, D Becker, ed. Plenum Publishing Company, 1987.
- Acute Arthritis: Acute Internal Medicine, LB Gardner, ed. Medical Examination Publishing, 1986.
- Near Drowning: Emergencies in Internal Medicine, LB Gardner, ed. Medical Examination Publishing, 1986.
- Hypo- and Hypercalcemia: Emergencies in Internal Medicine, LB Gardner, ed. Medical Examination Publishing, 1986.

### 19) **Juried or Refereed Journal Articles and Exhibitions:**

#### Journal Articles:

- 1) Fournier A.M. Primary Care Remuneration — A Simple Fix. This article (10.1056/NEJMopv0907129) was published on August 19, 2009, at NEJM.org.
- 2) Fournier, A.M. Addressing Health Disparities in South Florida through AHEC. National AHEC Bulletin. 2005 Summer 22(2) 9-10.
- 3) Lawrence J., Fournier A., Asma A. Key Health Services and Health Care Accessibility Through School-Based Health Centers: a Preliminary Analysis. Journal of Urban Health. 2002 Dec., 79(4):S128-129.
- 4) Golden N, Kempker R, Khator P, Summerlee R, Fournier A. Congenital Rubella

- Syndrome in Haiti. Pan American Journal of Public Health. 2002 Oct., 12(4):269-273.
- 5) Francis J, Reed A, Yohanes F, Dodard M, Fournier A. Screening for Tuberculosis Among Institutionalized Orphans in a Developing Country. American Journal of Preventive Medicine. 2002 Feb; 22(2):117-119.
- 6) Dodard M, Vulcain A, Fournier A. Project Medishare: A Volunteer Program in International Health at the University of Miami. Academic Medicine. 2000;75(4):397-401.
- 7) Fournier AM. Diagnosing Diabetes, A Practitioner's Plea: Keep it Simple. JGIM. August 2000 (Editorial).
- 8) Pierre J, Fournier AM. Human Immunodeficiency Virus in Haiti. Journal of the National Medical Association. 1999;19(3):165-170.
- 9) Fournier AM. Service Learning in a Homeless Clinic. JGIM. 1999;14(4):258-259 (Editorial).
- 10) Fournier AM, Carmichael C. Socioeconomic Influences on the Transmission of Human Immunodeficiency Virus Infection. Archives of Family Medicine 1998;7:214-217.
- 11) Fournier AM: On Being a Doctor: The Gram Stain. Ann Intern Medicine 1998;128(9):776.
- 12) Fournier AM: Medical Education in Underserved Communities: Experience from an Urban Area Health Education Center. J Health Care of the Poor and Underserved. 1998;9(2):109-117.
- 13) Fournier AM: Intracellular Starvation in the Insulin Resistance Syndrome and Type II Diabetes Mellitus. Medical Hypotheses. 1998;51:95-99.
- 14) Fournier AM: Resolving the Conflicts Between General and Specialty Internal Medicine: The Internist as Consulting Physician-Scientist. Am J Med. 1998;104(3):259-263.
- 15) Fournier AM, Harea C, Ardalan K, Sobin L. Health Fairs as a Unique Teaching Methodology. Teaching and Learning in Medicine. 1998;11(1):48-51.
- 16) Fournier AM: Clinical Experience in the Preclinical Years: Role of an Area Health Education Center Program. Teaching and Learning in Medicine 1997;9(3):239-242.
- 17) Fournier AM, Dodard M. The Health Care Delivery Crisis in Haiti. Family Medicine 1997;29(9):666-669.
- 18) Fournier AM: Confessions of a Recovering Internist. Family Medicine



1996;28(7):498-499.

19) Fournier AM, Tyler R, Iwasko N, LaLota M, Shultz J, Greer PJ: Human Immunodeficiency Virus Among the Homeless in Miami: A New Direction for the HIV Epidemic. Amer J Med 1996;100(5):582-584.

20) Fournier AM: The Longest Housecall. Ann Intern Med 1996;125(4):341-342.

21) Fournier AM: Insulin Resistance Syndrome (Letter). Am J Medicine 1996;101(3):328.

22) Fournier AM, Perez-Stable A, Greer JP: Lessons from a Clinic for the Homeless. JAMA 1993;270:2721-2724.

23) Fournier AM, Hoenig LJ, Sosenko JM: The Degree of Blood Pressure Evaluation and End Organ Damage with Severe Hypertension: A Case-Control Study. Amer J Med Sci 1993;306(6):367-370.

24) Fournier AM, Michel J: Courvoisier's Sign Revisited: Two Patients with Palpable Gallbladders. So Med J 1992;85(5):548-550.

25) Fournier AM, Sosenko JM: The Relationship of Total Lymphocyte Count to CD4 Lymphocyte Counts in Patients Infected with Human Immunodeficiency Virus. Amer J Med Sci 1992;304(2):79-82.

26) Nguyen HN, O'Sullivan MJ, Fournier AM: The Impact of National Health Service Corps Physicians in Lowering the Perinatal Mortality Rate in Dade County, Florida. Ob and Gyn 1991;78-3(1):1-6.

27) Fournier AM, Gelbard MA, Gardner LB: Unified General Internal Medicine Programs: A Path for General Medicine. J Gen Int Med 1990;5:166-169.

28) Fournier AM, Zeppa R: Pre-Operating Screening for HIV Infection. Arch Surg 1989;124:1038-1040.

29) Fournier AM, Dickinson G, Cleary T, Erdfrocht I, Fischl MA: A Comparison of Tuberculosis and Non-Tuberculous Mycobacteriosis in Patients with the Acquired Immunodeficiency Syndrome. Chest 1988;93:772-775.

30) Fournier AM, Dickinson Z, Kelly R: Doppler Ultrasonography as a Guide to Management in Takayasu's Arteritis. J Rheumatol 1988;15:527 (Letter).

31) Fournier AM, Gadia MT, Kubrusely D, Skyler JS, Sosenko JM: Blood Pressure, Insulin and Glycemia in Non-Diabetic Individuals. Am J Med 1986;80:861-864.

32) Sosenko JM, Gadia MT, Fournier AM, O'Connell MT, Skyler JS: Body Stature: A Major Risk Factor for Diabetic Sensory Neuropathy. Am J Med 1986;1031-1034.

- 33) Sosenko JS, Kubrusely DB, Goldberg RB, Fournier AM, Hsia SL, Gadia MT, Skyler JS: HDL and Glycosylated Hemoglobin in Non-Diabetic Individuals. Arch Int Med 1986;146:1521-1524.
- 34) O'Connell M, Kubrusely D, Fournier A: Systemic Necrotizing Vasculitis Seen Initially as Hypertensive Crisis, Archives Internal Medicine, 1985;114:265-267.
- 35) Sparti P, Becker D, Fournier A: Report of a Collaborative Family Medicine-Internal Medicine Service. Family Medicine, 1985;17(4):159-160.
- 36) Pitchenik AE, Fischl MA, Dickinson GM, Becker DM, Fournier AM, O'Connell MT, Colton RM, Spira TJ: Opportunistic Infections and Kaposi's Sarcoma Among Haitians: Evidence of a New Acquired Immunodeficiency State. Annals of Internal Medicine, 1983;98(3):277-284.
- 37) Becker DM, Fournier AM, Gardner LB: A Description of a Means of Improving Ambulatory Care in a Large Municipal Teaching Hospital: A New Role for Nurse Practitioners. Medical Care, 1982;20(10):1046-1050.

#### **19A) Competitive Abstracts and Exhibitions:**

- Aftab A, Chery M, Fournier AM, Powers E: Improved Health Parameters in Rural Haiti Associated with a Community Health Worker Program. Global Health Education Conference, Santo Domingo, Dominican Republic, February 2007.
- Aftab A, Fournier AM: Evaluation of a novel cervical self sampling device. International HPV Conference, Vancouver, Canada, March 2005.
- Lawrence J, Aftab A, Fournier AM: Key Health Services and Health Care Accessibility Through School-Based Health Centers: A Preliminary Analysis. Presented at the First International Conference on Inner City Health, Toronto, Canada, October 2002.
- Pitchenik A, O'Connell M, Weiner D, Robaina O, Radick J, Dalton Y, Thompson P, Calonge R, Fournier A, Prodanovich S. A Community Service Tobacco Awareness Curriculum in Medicine School. WCTOH. Chicago, IL, August 2000.
- Fournier AM, Todini C. Financing Community-Based Health Professions Education Through an Area Health Education Center Mechanism. Community Campus Partnerships for Health. Washington, D.C., April 2000.
- Fournier A, Foster R, Harris O, Selleck C, Zucker S: Building a Statewide AHEC Network: The Florida Experience. National AHEC Convention, Chicago, Illinois, July 1995.
- Fournier AM, Gerber A, Multach M: Contributions of an Urban Area Health Education

Center Towards Generalist Education. Presented at the Association of American Medical Colleges Southern Regional Meetings, Miami, Florida, 1993.

- Fournier AM, Sosenko JS: The Relationship of Total Lymphocyte Counts to CD4 Counts in Patients Infected with Human Immunodeficiency Virus. Poster Presentation, Society of General Internal Medicine, 1991.
- Nguyen HA, O'Sullivan MJ, Fournier AM: The Impact of National Health Service Corps Physicians in Lowering Perinatal Mortality Rate in Dade County, Florida. National AHEC Conference. Charleston, SC, 1991.
- Fournier AM, Branch W, Gardner LB, Woo B: Workshop on Unified General Internal Medicine Training. Presented at the Society of General Internal Medicine, April 1989.
- Fournier AM, Branch W, Gardner L, Woo B: Symposium of Unified General Internal Medicine Training. Presented at the Society of General Internal Medicine, April 29, 1988.
- Fournier AM: A Federally Funded Unified General Internal Medicine Training Program: Presented at Association of Program Directors in Internal Medicine, March 2, 1988. New York.
- Fournier AM, Gelbard M, Gardner L, Materson B, Perez-Stable E, Caralis P, McKenzie J: Conversion to a Single Track, General Internal Medicine Training Programs: A Paradigm of Change Within Large, Complex Institutions. "Fourth Annual Symposium on Teaching Internal Medicine," Philadelphia, Dec. 2-3, 1987.
- Multach M, Perez-Stable A, Fournier AM: Improving Clinical Teaching Using an Interviewing Model and Interviewing Techniques. "Fourth Annual Symposium on Teaching Internal Medicine," Philadelphia, Dec. 2-3, 1987.
- Nash MS, Kessler AM, Fournier AM, Green BA: Cardiac Adaptation Following Functional Electrical Stimulation Reconditioning in Human Quadriplegia. Presented May 28-31, 1986. 33rd Annual Meeting Indianapolis, Indiana. American College of Sports Medicine.
- Kubrusely DB, Goldberg RB, Fournier AM, Skyler JS, Hsia SL, Sosenko JM: Associations Between Plasma Lipid Components and Glycemia in Normal Women. Presented at the 4th Meeting of the American Federation for Council Research, 1984.

#### **Other Publications:**

- Fournier AM. Haiti: Destiny's Child: Huffington Post, February 2010
- Fournier AM. Out of the Rubble, A Miracle Named Karen: Miami Herald, January 2010

- Fournier AM. Bringing Haitians a Healthier Future: Miami Herald, September 2009
- Fournier AM. A Prophet Is Never Recognized: Huffington Post, July 2009
- Fournier AM. Haiti on the Brink: Huffington Post, January 2009
- Fournier AM. Let's make a difference - from the bottom up: Miami Herald, January 2009
- Fournier AM. Unsung Heroes: Huffington Post, October 2008
- Fournier AM. No Time for Subtlety: Huffington Post, September 2008.
- Fournier AM. Haiti Déjà vu: Huffington Post, September 2008.
- Fournier AM. In Response to the ABC Nightline Special on Sex Trade in Haiti: Huffington Post, July 2008.
- Fournier AM. Cruising with a Conscience: Haiti's Southern Peninsula. Sail, December 1995.
- Fournier AM: Blood Pressure, Insulin and Glycemia in Non-Diabetic Subjects. Internal Medicine Digest, 1987;7-8.
- Fournier AM: Blood Pressure, Insulin and Glycemia in Non-Diabetic Subjects. International Synopses, 1986.
- Pitchenik A, Fischl M, Dickinson G, Becker DM, Fournier AM, O'Connell MT, Spira T: Immunodeficiency Syndrome in Haitian Patients. Morbidity and Mortality Weekly Report, July 9, 1982.

**21) Other Works Accepted for Publication:**

**V. PROFESSIONAL**

**22) Funded Research Performed:**

- Grants for Residency Training in General Internal Medicine and/or General Pediatrics - Competitive renewal. AM Fournier, PI. Awarded June 3, 1984 through 1987. Total award=\$823,328. Indirect cost 8%.
- Grants for Residency Training in General Internal Medicine and/or General Pediatrics - Competitive renewal. Awarded June 1987 through 1990. AM Fournier, PI. Total award=\$985,491. Indirect cost 8%

- MSN Family Nurse Practitioner Program. Department of Health and Human Services, United States Public Health Service with Louisa Murray, EdD. Awarded June 1986 through 1989. Total award=\$777,670. No indirect costs
- Area Health Education Center. United State Department of Health and Human Services, Health Resources and Services Administration. Awarded October 1, 1986 through 1989. AM Fournier, PI. Total award=\$1,077,740. Indirect cost 8%
- Area Health Education Center. Supplemental Award, October 1987 through 1989. AM Fournier, PI. Total award=\$30,000. Indirect cost 8%
- State of Florida, Department of Human Resources and Services. Demonstration Project Linking Indigent Care to Medical Education, 1987. AM Fournier, PI. Total award=\$300,000. No indirect costs.
- State of Florida, Department of Resources and Services. Demonstration Project Linking Indigent Care to Medical Education, 1988. AM Fournier, PI. Total award=\$1,000,000. No indirect costs.
- Area Health Education Center, United States Department of Health and Human Services. Health Resources and Services Administration. Competitive Renewal October 1989 through 1992. AM Fournier, PI. Total award=\$2,302,999. Indirect cost 8%
- AIDS Education and Training Center. United States Department of Health and Human Services. Health Resources and Services Administration. October 1989 through September 1992. AM Fournier, PI. Total award=\$1,103,000. Indirect cost 8%
- State of Florida Department of Human Resources and Services. State Area Health Education Center Program, 1989. AM Fournier, PI. Total award=\$500,000. No indirect costs.
- State of Florida Department of Human Resources and Services. State Area Health Education Center, 1990. AM Fournier, PI. Total award=\$1,000,000. No indirect costs.
- State of Florida Department of Human Resources and Services. State Area Health Education Center, 1991 AM Fournier, PI. Total award=\$1,000,00. No indirect costs.
- Area Health Education Center, United States Department of Health and Human Services, Health Resources and Services Administration. Supplemental Award=\$100,000, 1991. Indirect cost 8%
- Area Health Education Center, United States Department of Health and Human Services, Health Resources and Services Administration. Competitive Renewal. October 1992 through September 1995. Total Award=\$1,208,000. Indirect cost 8%

- State of Florida, Department of Health and Rehabilitative Services. State Area Health Education Center, 1992, \$1,000,000. No indirect costs.
- AIDS Education and Training Center, June 1992 - (indefinite). United States Department of Health and Rehabilitative Services. Approximately \$950,000 per year. Indirect cost 8%
- State of Florida, Department of Health and Rehabilitative Services. State of Florida, Area Health Education Center, 1993, \$1,250,000. No indirect costs.
- A Student Faculty Mobilization Award. United States Department of Health and Rehabilitative Services. May 1, 1993 through June 1, 1994 = \$500,000. Indirect cost 8%
- State of Florida, Area Health Education Center, 1994, \$1,700,000. No indirect costs.
- Health Education and Training Centers. Co-PI with Zucker S, Harris O, Selleck C, 1993 - Present. Indirect cost 8%
- Model AHEC Program, U.S. Department of Health and Rehabilitative Services. Co-PI with Steven Zucker – Present. Indirect cost 8%
- State of Florida, Area Health Education Center, July 1, 1995 through June 30, 1996, \$2,300,000. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 1996 through June 30, 1997, \$2,059,559. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 1997 through June 30, 1998, \$2,059,559. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 1998 through June 30, 1999, \$2,059,559. No indirect costs.
- Open Society Institute, December 15, 1998 through December 14, 2001, \$1,000,000. Indirect costs 10%.
- State of Florida, Area Health Education Center, July 1, 1999 through June 30, 2000, \$2,185,408. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 2000 through June 30, 2001, \$2,236,110. No indirect costs.
- Dr. John T. Macdonald Foundation Signature Program on School Health, July 2000-2005, \$6,500,000. No indirect costs.
- Model AHEC Award, Department of Health and Human Services, September 1, 2001 through August 31, 2002, \$210,186. Indirect cost 8%

- State of Florida, Area Health Education Center, July 1, 2001 through June 30, 2002, \$2,959,085. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 2002 through June 30, 2003, \$2,775,039. No indirect costs.
- Green Family Foundation: “Project Medishare”, February 2003-2005, \$750,000. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 2004 through June 20, 2005, \$3,002,500. No indirect costs.
- Model AHEC Award, Department of Health and Human Services, September 1, 2004 through August 31, 2005, \$173,086. Indirect cost 8%
- State of Florida, Area Health Education Center, July 1, 2005 through June 30, 2006, \$2,567,518. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 2006 through June 30, 2007, \$2,567,518. No indirect costs.
- State of Florida, Area Health Education Center, July 1, 2007 through June 30, 2008, \$2,567,518. No indirect costs.
- Model AHEC Award, Department of Health and Human Services, September 1, 2005 through August 31, 2006, \$165,176. Indirect cost 8%
- State of Florida Tobacco Prevention and Cessation Programs, October 2007 through June 2009, \$4,000,000. No indirect costs.

### **23) Editorial Responsibilities:**

2009 – Reviewer, World Scientific Publishing Co (WSPC)

2008 – Senior Editor, The Lynn Carmichael – Miami Manual for Family Medicine and Primary Care

1989 - Present Reviewer, Chest

1989 - Present Reviewer, Journal of General Internal Medicine

1990 - Reviewer, MKSAP IX

1992 - Present Reviewer, JAMA

1995 - Present Reviewer, Journal of Health Care for the Poor and Underserved

1998 - Present Reviewer, Teaching and Learning in Medicine

2000 - Reviewer, Learn and Serve America

2001 - Present Reviewer, American Journal of Preventive Medicine

2002 - Present Reviewer, Academic Medicine

2004 – Present Reviewer, Journal of the American Board of Family Practice

**24) Professional and Honorary Organizations:**

Member, Society of General Internal Medicine

Member, American College of Physicians

Member, Society of Teachers of Family Medicine

Founding President, Project Medishare

Member, American College of Preventive Medicine

**25) Honors and Awards:**

Miami-Dade County Medical Association, Lifetime Achievement Award, 2007

National AHEC Organization, Andy Nichols Award for Social Justice, 2004

“Honorary Haitian Citizen”, Awarded by The Haitian-American Cultural Association, May 2002

Finalist: Health Care Heroes Award. Miami-Dade Chamber of Commerce 2001.

Profiled in Marquis Who’s Who in America – 2001

Rural Health Network of Monroe County Florida, Inc. Award – Lifelines Project 1999.

Nominee, Association of American Medical Colleges (AAMC) 1999 Humanism in Medicine Award.

University of Florida College of Medicine, Project Haiti: Exceptional Services and Commitment to Project Haiti and the People of Haiti, 1998.

Health Foundation of South Florida -- In Appreciation for Bringing Medical Services to



Homeless Patients at Miami Hope Center, 1998.

Student National Medical Student Association, In Service to the People of Haiti, 1998.

Visiting Professor, Dartmouth Medical School, 1998.

International Institute of Human Understanding: Lifetime Achievement in Transcultural Medicine, 1997.

Community Service Award, American College of Physicians, 1994.

Saint Augustine Medal for Distinguished Alumni Humanitarian Services; Merrimack College, 1991.

Visiting Professor, Eastern Virginia Medical School, August 1989.

Lecturer: State of Kuwait - University of Miami Post-Graduate Medical Education Center Course, 1983.

**26) Post-Doctoral Fellowships: None**

**27) Other Professional Activities:**

- Conceived, implemented and supervised the Jackson Memorial Hospital and University of Miami Employee Health Plans; model faculty practices for cost-effective health care for medical center employees.
- Consultant for peer review; Health Resources and Services Administration, Bureau of Health Professions; Training Grants in General Internal Medicine Program.
- Consultant for peer review; Health Resources and Services Administration, Bureau of Health Professions. Model AHEC Program.
- Consultant for fellowship review. The National Fund for Medical Education.
- Moderator, Task Force on AIDS and the Primary Care Physician. Sponsored by Health Resources and Services Administration, November 1987.
- Participant, Multidisciplinary Conference on HIV Infection. Sponsored by Health Resources and Services Administration. Baltimore, MD, 1988.
- Participant, Society of General Internal Medicine Faculty Development Program on AIDS, 1988.
- Consultant to the Commonwealth of Virginia, to establish a statewide Area Health Education Center, 1988.

- Presenter and Participant. Conference on Financing Ambulatory Education. Institute of Medicine, April 1989.
- Participant, “The Future of Primary Care.” Sponsored by the Health Resources and Services Administration, March 1990.
- Conceived and implemented South Shore Community Clinic for homeless, immigrants, and refugees on Miami Beach.
- Founded a medical exchange program with the teaching hospital and medical school of Haiti, and several schools in the United States.
- Consultant to Albert Einstein School of Medicine to establish an Area Health Education Center for the State of New York.
- Established teaching clinics in two elementary schools and one high school.
- Coordinates and leads students and faculty teams providing humanitarian health care services in Haiti.
- Peer reviewer, Learn and Serve America; Corporation for National Service.
- Patent 6155990. A cervical self sampling device. Awarded December 5, 2000.

## **VI. TEACHING**

### **28) Teaching Awards Received:**

Best Teacher Award, Internal Medicine Inpatient Service, 2005

Nominee, George Paff Award for Excellence in Clinical Teaching, 1985.

### **29) Teaching Responsibilities:**

1978 - 1989 Lecturer, Physical Diagnosis M.D. - PhD, and Traditional Medical Students

1978 - Present Attending Physician  
 Jackson Memorial Hospital Inpatient Service  
 (Currently 2 months/year)

1978 - 1990 & Attending Physician  
 1993 - 1994 Jackson Memorial Hospital  
 General Medical Clinics

1982 - 1989 Physician Participant, "Introduction to the Patient"

1987 - 1990 Attending Physician  
Morning Clinic Sessions  
(Interns and nurse practitioners)

1991 - Present Community Preceptor  
Clinical Skills (first and second year students)

1991 Community Preceptor  
Physical Diagnosis

1991 - 1994 Community Preceptor  
Camillus House; weekly rotation  
Third year Student Medicine Clerkship  
Third year Family Medicine Clerkship

1992 Faculty Coordinator and Preceptor  
Dartmouth Medical School  
Family Medicine Clerkship "away" program in Miami

1994 - 1996 Attending Physician  
South Shore Hospital, Family Practice Residency Program

1994 - 1996 Community Preceptor  
South Shore Community Clinic

1996 – Present - Community Preceptor: Jefferson Reaves Community Health Center; Miami  
Hope Clinic; The Clinic in the Center for Haitian Studies.

**30) Thesis and Dissertation Advising:** None

## **VII. SERVICE**

**31) University Committee and Administrative Responsibilities:**

University Administrative Responsibilities:

### **Committees:**

Cancer Early Detection and Screening Committee (1988-1989)

Admissions Committee (1987-1990)

Area Health Education Center Advisory Committee (Chair)

Faculty Retreat Planning Committee (1989)

Fringe Benefit Committee (1992)  
Generalist Initiative Steering Committee (1993-Present)

**Department Committees:**

1978 - 1994 Internship Selection Committee  
1994 - Present Family Medicine Clerkship Committee

**Administration:**

1978 - 1979 Assistant Director  
Medical Clinics

1978 - 1988 Director  
Department of Medicine  
Nurse Practitioner Program

1979 - 1988 Director  
Medical Clinics

1980 - 1989 Director  
Primary Care Training Program  
Internal Medicine

1981 - 1987 Director  
Family Medicine, Internal Medicine Inpatient Service

1986 - 1988 Medical Director  
University of Miami School of Medicine, School of Nursing  
Nurse Practice Program  
Miami, Florida

1986 - 1988 Associate Project Director  
Area Health Education Center Program  
University of Miami School of Medicine  
Miami, Florida

1986 - Present Director  
National Health Service Corps Project  
Jackson Memorial Hospital  
Miami, Florida

1988 - Present Associate Dean for Community Health Affairs

1988 - Present Project Director  
Area Health Education and Training Center Program  
University of Miami School of Medicine  
Miami, Florida

1989 - 1993 Project Director  
AIDS Education and Training Center

As Associate Dean for Community Health Affairs, Dr. Fournier provides financial support and technical assistance to the following departments and programs:

- 1) The Department of Family Medicine
- 2) Clinical Skills Clerkship
- 3) Generalist Initiative
- 4) Department of Pediatrics

**32) Community Activities:**

1986 - Present Voluntary Faculty  
Florida Keys Health Fair

1987 - Present Volunteer Physician  
Camillus Health Concern Clinic for the Homeless

1994 - Present Founding President  
Project Medishare

1995 - Present Faculty Advisor  
Florida Keys Health Fair

1995 - Present Advisory Board  
Haitian-American Medical Student Association

1995 - Present Voluntary Faculty, Little Haiti Health Fair