



DEPORTATION IN THE TIME OF CHOLERA

DHS'S MIXED RESPONSE TO HAITI'S EARTHQUAKE

By Royce Bernstein Murray, Esq.

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ABOUT PERSPECTIVES ON IMMIGRATION

The Immigration Policy Center's Perspectives are thoughtful narratives written by leading academics and researchers who bring a wide range of multi-disciplinary knowledge to the issue of immigration policy.

ABOUT THE AUTHOR

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ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

The dramatic announcement on May 17, 2011 that the Department of Homeland Security (DHS) would extend Temporary Protected Status (TPS) for another eighteen months to Haitians, including those who entered the country no later than January 12, 2011, is a welcome step forward in the saga of the Haitian earthquake. The decision to extend and redesignate Haiti for TPS has been a long time coming and reflects more than a year of solid effort on the part of advocates and the Haitian community. In many ways, DHS's handling of the devastating January 2010 earthquake in Haiti is emblematic of the triumphs and tribulations discussed in a recent report issued by the Immigration Policy Center, [Second Annual DHS Progress Report: An Analysis of Immigration Policy in the Second Year of the Obama Administration](#). This critique found that the immigration agencies appear to be tackling issues affecting Haitians independently, failing to coordinate their enforcement and benefits-oriented policies. At times, critical information was disseminated in a limited and *ad hoc* fashion, generating confusion and unease about DHS policies. Observers have been left questioning how DHS's priorities are ordered and whether they are integrated at the department level. DHS's latest actions offer hope that a more coordinated, thoughtful, and humanitarian approach will prevail.

To fully understand the significance of the extension and redesignation of TPS for Haitians, it is necessary to revisit the last year of efforts and to note the areas where DHS continues to struggle over a humanitarian policy. Given the intense internal struggles that usually accompany any designation of TPS, the expansion and redesignation are a genuine victory for a more

humane immigration system. Critical issues still must be addressed, however, particularly the policy of deporting Haitians back to Haiti even though the Haitian infrastructure is severely damaged and conditions remain dangerous.

DHS earned much praise in 2010 from the Immigration Policy Center and others for its swift and humanitarian response to the earthquake: deportations to Haiti were immediately suspended and Secretary Napolitano quickly designated Haiti for Temporary Protected Status (TPS), thereby enabling thousands of Haitians who had been present in the United States to remain lawfully and receive employment authorization for 18 months.¹ Mid-year, U.S. Citizenship and Immigration Services (USCIS) extended the registration period from six months to a full year to allow more individuals the opportunity to apply.² Immigration and Customs Enforcement (ICE) issued guidance to its Field Office Directors on distributing information about TPS registration to Haitian detainees.³ USCIS conducted extensive outreach in English, French, and Creole to be sure that Haitians already in the U.S. had the information they needed to consider registration for TPS.⁴ When the registration deadline arrived in mid-January 2011, more than 53,000 Haitians had applied for TPS (with more than 46,000 approved), though the number of applications is far short of the estimated 100,000 Haitians who are eligible.⁵ USCIS was also generous in its consideration of TPS fee waivers.

Many injured and orphaned children in Haiti were granted humanitarian parole to come to the U.S. for medical care and to resettle with prospective adoptive parents.⁶ Applications for parole to further the inter-country adoption process were

ceased on April 14, 2010, in response to a request by the Haitian government; normal adoption procedures resumed thereafter.⁷ In the end, well over 1,000 parole requests were granted to children available for adoption.⁸ Less than two weeks after the Help HAITI Act of 2010⁹ (which allowed certain Haitian orphans paroled into the U.S. to apply for permanent residence) was passed in early December 2010, USCIS issued a timely policy memo with implementation procedures to adjust the status of eligible paroled orphans.¹⁰

But by the end of 2010, it seemed that DHS was acting at cross-purposes. Without any written notice or formal guidance, ICE decided to resume deportations of certain Haitians. Immigrant advocates were universally outraged by both the callous nature of the decision and the lack of information provided to the community.¹¹ It seemed that, in the blink of an eye, DHS's prioritization had shifted to one of extreme enforcement. It also became apparent that the decision was made with minimal, if any, intra-departmental coordination, which seemed to erode much of the public goodwill generated at the outset of the catastrophe.

For several months, ICE had only explained this dramatic change in policy verbally; it announced to some community groups in December 2010 that it would initially remove Haitians with serious criminal convictions and anticipated deporting approximately 700 Haitians by the end of 2011.¹² ICE promptly put words into action. As of early January 2011, ICE had detained over 300 Haitians and transferred many to remote detention centers in Louisiana in preparation for removal, leaving detainees far from and less able to communicate with their attorneys and families.¹³ ICE proceeded

to deport the first plane load of 27 Haitian men to Haiti on January 15, 2011, including those with low-level convictions.¹⁴

Following an outcry from Haitian advocates, on March 7, 2011, ICE finally posted on its web site a draft policy about removals to Haiti, labeling it "pre-decisional/deliberative" (a term generally used to protect information from release in a Freedom of Information Act request)—despite the fact that deportations had resumed six weeks earlier. Moreover, ICE initially provided only five business days for public comment, later extending the period by one week.¹⁵ On April 1, 2011, ICE issued its final written policy and more carefully defended its decision to resume removals to Haiti.¹⁶ The policy explains that these are people with serious criminal convictions who are supposed to be deported. If deportation is not reasonably foreseeable, ICE cannot detain them indefinitely, so ICE is forced to choose between releasing dangerous individuals into American communities or removing them to Haiti. When determining whether to deport the person, ICE relies on public safety arguments and alleges that it will exercise "sound judgment and discretion" as they weigh an individual's adverse factors against their equities and compelling circumstances. However, it is also true that not all deportable immigrants have serious criminal convictions. Some individuals convicted of less serious crimes and misdemeanors, in some cases committed long ago, are still subject to deportation by ICE.¹⁷

Unsurprisingly, anxiety abounds in the Haitian community. Given that ICE made its initial announcement to resume deportations one month before the end of the TPS registration period—a regrettable lack of coordination

between ICE and USCIS—some Haitians were understandably afraid to apply for TPS out of concern that they would bring themselves to ICE’s attention. Although the final removal policy states that Haitians with pending TPS applications or grants of TPS will not be removed, ICE offered this clarification more than two months after the TPS registration deadline passed.

The resumption of removals is particularly inhumane given an outbreak of cholera that has sickened a quarter of a million Haitians and killed over 4,700 as of early April.¹⁸ The outbreak could sicken nearly 780,000 Haitians and kill over 11,000 before the end of this year, according to researchers from Harvard Medical School and the University of California, San Francisco.¹⁹ The police detention centers where deportees are routinely held upon arrival in Haiti (under the long-time policy of the Government of Haiti to detain U.S. deportees with criminal records) have no access to clean water or medical care, leaving cholera to run rampant. An utter lack of infrastructure, housing, and employment render deportations impracticable and unconscionable, most especially for those Haitians who have long-standing ties to the U.S. and few resources available or family members who can assist in Haiti.²⁰ The U.S. resumption of removals has also encouraged the Dominican Republic to follow suit and resume the deportation of Haitians, but in mass numbers.²¹

The consequences of this renewed push for deportation are real. Ten days after the first group of criminal deportees was removed to Haiti, Wildrick Guerrier—a lawful permanent resident who had lived in the U.S. for 17 years—died of cholera-like symptoms in a Haitian jail cell.²²

This tragedy likely contributed to ICE belatedly stating in its final policy that it is developing a “comprehensive reintegration strategy” and working “to resume removals in as safe, humane, and minimally disruptive a manner as possible....”²³ Thus far, there is no evidence that these stated intentions are being made a reality. Two weeks after the policy was issued, a second plane load of 19 Haitians was deported on April 15th.²⁴

Although there are limits on how long immigrants convicted of crimes who have completed their incarceration can be held in immigration detention,²⁵ the United States is far better equipped to handle any public safety concerns these individuals might present than is Haiti, with its crumbled infrastructure and dysfunctional rule of law. Years of experience dealing with Cuban criminals and stateless individuals who cannot be removed also provides a template for handling these cases.²⁶ ICE claimed in its final policy that it would consider supervised release or other alternatives to detention, but any use of these tools has been far from transparent.

Immigrant advocates have pleaded with Secretary Napolitano to use discretion (which is well within her power) to halt deportations to Haiti.²⁷ A formal request for an audit by the DHS Office of Inspector General has been made based largely on the lack of transparency.²⁸ Likewise, the Inter-American Commission on Human Rights has vocally sided with Haitian advocates. On February 4, 2011, in response to an emergency petition for precautionary measures filed by rights groups in January, the Inter-American Commission urged the U.S. Government to cease deportations for Haitians with serious illnesses or family members in the U.S.²⁹ DHS should heed this recommendation.

Prior to DHS's recent TPS announcement, concerned citizens and lawmakers had also pushed for extension and redesignation of TPS to allow those people who came to the U.S. immediately after the earthquake, in many cases on visitor visas, the opportunity to seek refuge in the U.S. while Haiti rebuilds. On March 14, 2011, a bipartisan group of 16 members of the House of Representatives, including Rep. Ileana Ros-Lehtinen (R-FL, Chairwoman of the House Committee on Foreign Affairs) and Rep. John Conyers (D-MI, Ranking Member of the House Committee on the Judiciary) urged Secretary Napolitano to do exactly that.³⁰ Extensions of their nonimmigrant status, as well as re-parole and deferred action, would also help accommodate those Haitians who arrived after the earthquake.³¹

The extension of TPS for Haitians—and particularly the redesignation of the eligibility period—demonstrates the best of what the Administration can do using its executive branch authority to improve the quality of people's lives. It demonstrates a commitment to good

immigration policy and to "good government" policies such as greater transparency and coordination. In the Haitian context, DHS should also implement a program to grant humanitarian parole to the estimated 105,000 Haitian already approved as beneficiaries of family-based visa petitions, just as has been done for Cubans under the Cuban Family Reunification Parole Program.³² If paroled, visa beneficiaries would be able to await a visa from the safety of the United States, where they have family and where they can earn money to remit to others left behind. DHS could choose to parole individuals based on the chronological order in which their petitions were approved or instead prioritize a smaller number, such as spouses and minor children of lawful permanent residents. DHS should also extend humanitarian parole to parents who want to visit with their children receiving medical care in the United States.³³ Along with the cessation of Haitian deportations, these steps would help right DHS's path and strike a sensible and humane balance between the needs of Haitians and our own immigration system.

ENDNOTES

¹ U.S. Citizenship and Immigration Services, "[Designation of Haiti for Temporary Protected Status](#)," 75 Fed. Reg. 3476 (January 21, 2010).

² U.S. Citizenship and Immigration Services, "[Extension of Initial Registration Period for Haitians Under the Temporary Protected Status Program](#)," 75 Fed. Reg. 39957 (July 13, 2010).

³ Email from DRO Taskings to [REDACTED], January 25, 2010.

⁴ For a summary of outreach conducted on Haiti TPS, see U.S. Citizenship and Immigration Services, Office of the Ombudsman, [Annual Report 2010](#), June 30, 2010, p. 84.

⁵ Kirk Semple, "[U.S. Sees Success in Immigration Program for Haitians](#)," *New York Times*, January 19, 2011; Georgia East, "Many Haitians in U.S. Afraid to Seek Amnesty," *Bellingham Herald*, January 11, 2011 (quoting USCIS spokesperson, Ana Santiago). It is interesting to note that USCIS prepared to adjudicate up to 200,000 Haitian TPS applications. See U.S. Citizenship and Immigration Services, Office of the Ombudsman, [Annual Report 2010](#), June 30, 2010.

⁶ U.S. Citizenship and Immigration Services, "[Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans Fact Sheet](#)," January 18, 2010.

ENDNOTES *continued...*

⁷ U.S. Citizenship and Immigration Services, “[Special Humanitarian Parole Program for Haitian Orphans Draws to a Close at Request of Haitian Government](#),” April 4, 2010.

⁸ Ibid.

⁹ Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help HAITI Act), Pub. L. No. 111-293, 124 Stat. 3175 (2010).

¹⁰ USCIS Policy Memorandum, Subject: “[Implementing the Help HAITI Act of 2010](#),” PM-602-0020, December 21, 2010.

¹¹ See [letter](#) to Santiago Canton, Executive Secretary, Inter-American Commission on Human Rights, Jan. 10, 2011, “Re: Letter In Support of Precautionary Measures to Stop Imminent Deportations of Haitians from the United States,” January 10, 2011 (signed by 285 organizations and individuals), on file with University of Miami Human Rights Clinic; Letter to Secretary Napolitano from American Immigration Lawyers Association, et al., December 22, 2010; [Letter](#) to Secretary Janet Napolitano from American Immigration Lawyers Association, et al., December 22, 2010.

¹² Jesuit Refugee Service/USA, “[Deporting Haitians into Peril: A Disturbing Policy](#),” January 7, 2011.

¹³ See Florida Immigrant Advocacy Center (FIAC) and Center for Constitutional Rights (CCR), News Release: “[Deportations to a Death Trap](#),” January 20, 2011; Jesuit Refugee Service/USA, “[Deporting Haitians into Peril: A Disturbing Policy](#),” January 7, 2011.

¹⁴ Carrie Bettinger-Lopez, et al., “[Deportations to Haiti: Still a Death Sentence](#),” Huffington Post, April 8, 2011; [Letter from U.S. Catholic Conference of Bishops and Catholic Legal Immigration Network \(CLINIC\) to Secretary Janet Napolitano](#), March 11, 2011.

¹⁵ U.S. Immigration and Customs Enforcement, “[Proposed Policy for Resumed Removals to Haiti](#),” March 7, 2011.

¹⁶ See ICE, News Release: “[Policy for resumed removals to Haiti](#),” April 1, 2011.

¹⁷ ICE’s removal policy for Haitians states that it will focus on “Level One” and “Level Two” offenders identified in its March 2011 memo “[Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens](#). ” According to that memo, Level Two offenders include those convicted of felonies or three or more misdemeanors.

¹⁸ See Center for Constitutional Rights (CCR), et al., News Release: “[ICE Formalizes Policy to Deport Haitians During Humanitarian Crisis](#),” April 6, 2011.

¹⁹ Michelle Roberts, “[Haiti cholera ‘far worse than expected,’ experts fear](#),” BBC News, March 15, 2011.

²⁰ See generally, [request](#) to the Inter-American Commission on Human Rights by the University of Miami Human Rights Clinic, et al., 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, et al., and Other Similarly Situated Haitian Nationals Subject to Immediate Deportation by the United States, submitted January 6, 2011.

²¹ The Dominican Republic lifted its moratorium on deportations of Haitians in February 2010 and, as of mid-March, had deported over 2,000 Haitians. Reports indicate that people are being rounded up en masse, at night, regardless of the separation of families, and returned to Haiti in the dark without notifying Haitian officials. See Jesuit Refugee Service/USA, “Comments on ICE Pre-decisional Policy for Resumed Removals to Haiti,” March 11, 2010.

²² See Jennifer Kay, “Haitian deportee dies after cholera-like symptoms,” *Miami Herald*, February 1, 2011.

²³ U.S. Immigration and Customs Enforcement, “[Proposed Policy for Resumed Removals to Haiti](#),” March 7, 2011.

²⁴ See Allyn Gaestel, “[Deportees from U.S. face bleak prospects in Haiti](#),” *Los Angeles Times*, April 24, 2011.

²⁵ See [Zadvydas v. Davis](#), 533 U.S. 678 (2001) (holding that indefinite detention of certain aliens is subject to Constitutional limits and that to justify detention beyond six months, the Government has to demonstrate that that removal is likely in the foreseeable future—with the exception of aliens detained on terrorism-related charges).

²⁶ See *Miami Herald* Editorial, “[Halt Haitian Deportations](#),” April 18, 2011.

²⁷ See [letter](#) to Secretary Janet Napolitano from American Immigration Lawyers Association, et al., December 22, 2010.

²⁸ See Letter to DHS Inspector General Richard L. Skinner, Re: Request for Audit of DHS’ Resumption of Deportations to Haiti, From American Civil Liberties Union, et al., January 31, 2011.

²⁹ Inter-American Commission on Human Rights, Press Release: “[IACHR Urges United States to Suspend Deportations to Haiti](#),” No. 6/11, February 4, 2011.

³⁰ Letter to Janet Napolitano, Secretary of the Department of Homeland Security, from John Conyers, et al., March 14, 2011.

³¹ Marisol Bello, “[Haitian quake refugees worry as U.S. visas expire](#),” USA Today, May 11, 2011.

³² See U.S. Dept. of State, “[Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2010](#).”

³³ Ibid.



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