

# AFTERSHOCKS:

THE HUMAN IMPACT OF  
U.S. DEPORTATIONS TO  
POST-EARTHQUAKE

# Haiti



University of Miami School of Law  
Immigration Clinic

University of Miami School of Law  
Human Rights Clinic

University of Chicago Law School  
International Human Rights Clinic

## AUTHORS

### University of Miami School of Law Immigration Clinic

The Immigration Clinic represents low-income immigrants in a wide variety of immigration proceedings and works in collaboration with community and advocacy groups to reform the law and advance the cause of social justice for immigrants. The Clinic's projects are designed to bring awareness to important issues facing immigrants and their families.

### University of Miami School of Law Human Rights Clinic

The Human Rights Clinic uses international human rights law to address circumstances of global injustice and propose solutions to systemic human rights violations in the United States and abroad. Students learn to practice law in the international and cross-cultural context of human rights litigation, advocacy, research, and fieldwork at the local, national, and international levels.

### University of Chicago Law School International Human Rights Clinic

The International Human Rights Clinic works for the promotion of human rights and social and economic justice in the United States and globally. The Clinic uses international human rights laws and norms as well as other substantive laws and strategies to draw attention to human rights violations, develop practical solutions to those problems using interdisciplinary methodologies, and promote accountability on the part of state and non-state actors.

## KEY COLLABORATORS

### Alternative Chance/Chans Alternativ

Based in Haiti and New York, Alternative Chance is a self-help, peer counseling, limited reentry program founded in Haiti in 1996 by Michelle Karshan together with four young men who were deported because of a criminal conviction. The program works with those facing deportation and those already deported to Haiti because of a criminal conviction in the United States or elsewhere.

### Americans for Immigrant Justice (AI Justice)

Americans for Immigrant Justice is a legal services organization based in Miami, Florida that is dedicated to protecting and promoting the basic human rights of immigrants through a unique combination of free direct services, impact litigation, policy reform, and public education at local, state, and national levels.

### Haitian Women of Miami (FANM)

For almost 25 years, Fanm Ayisyen Nan Miyami, Inc. (FANM)/Haitian Women of Miami has been a major catalyst for addressing social service, health, education, economic development and human and civil rights issues that affect immigrant Haitian women and their families in the United States. Located in the heart of little Haiti in Miami, Florida, FANM's mission is to empower Haitian women and their families socially, economically and politically and facilitate their adjustments to South Florida and the United States.

### The Institute for Justice & Democracy in Haiti (IJDH)

IJDH works with the people of Haiti in their non-violent struggle for democracy, justice, and human rights by distributing information on human rights conditions in Haiti, pursuing legal cases, and cooperating with human rights and solidarity groups in Haiti and abroad. IJDH is based in Boston, Massachusetts. Its Haiti-based partner, Bureau des Avocats Internationaux, is located in Port-au-Prince, Haiti.

---

Copyright © 2015  
University of Miami  
School of Law,  
Immigration Clinic and  
Human Rights Clinic.  
All rights reserved.  
Report design by  
Elizabeth Estefan.

Cover photograph was  
taken by Bess Adler at  
the Port-au-Prince airport  
tarmac as deportees  
arrived by bus from a  
U.S. charter flight.  
All rights reserved.  
Used with permission.

## FEATURED PHOTOGRAPHY

### Bess Adler,

[www.BessAdler.com](http://www.BessAdler.com),  
is a photojournalist  
based in New York City  
who is working on an  
ongoing photo story on  
deportations to Haiti.  
Ms. Adler's photographs  
are featured throughout  
the report, including on  
the cover.

### Magnus Länje,

[www.magnusphoto.com](http://www.magnusphoto.com),  
is a photographer based  
in Stockholm, Sweden  
whose portrait of the  
family of a deportee  
appears in this report.

### Darcy Padilla

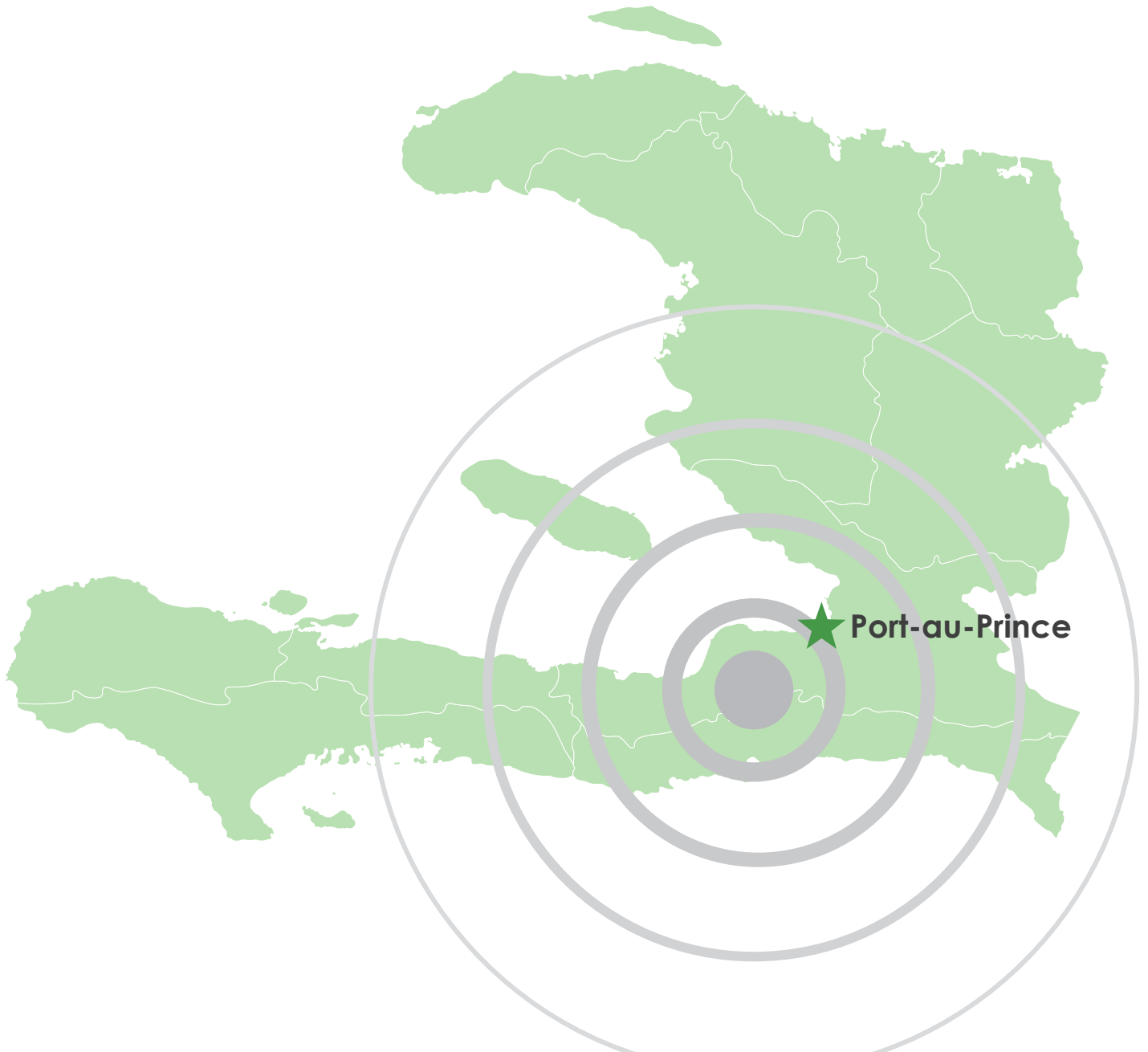
of Agence VUI,  
[www.darcypadilla.com](http://www.darcypadilla.com),  
graciously permitted  
the authors to use a  
photograph she took  
at Mars and Kline  
Psychiatric Center in  
Port-au-Prince.



---

**This report is dedicated to  
Wildrick Guerrier  
(1976-2011)  
and the many others who have  
lost their lives or who  
continue to suffer after  
being deported to  
post-earthquake Haiti.**

---





# Contents

Foreword ▪ i

Acknowledgements ▪ ii

Acronyms and Abbreviations ▪ iii

**Executive Summary ▪ v**

**Key Recommendations for the United States ▪ xiv**

**Methodology ▪ xv**

Chapter 1

**Introduction & Background ▪ 1**

Chapter 2

**Factual Findings ▪ 15**

Chapter 3

**International Law Prohibits Deportations to  
Post-Earthquake Haiti ▪ 40**

Chapter 4

**Recommendations to the United States, Haiti,  
and the International Community ▪ 47**

Endnotes ▪ 53





# Foreword

By Edwidge Danticat

A few years ago, on a Father's Day in 2007, I published an opinion piece in The New York Times called "Impounded Fathers," about fathers—mostly heads of households—who had been suddenly rounded up and deported to their home countries, leaving spouses and small children behind. Nearly a decade later, these types of deportations have increased to an average of 400,000 a year during the current administration. These deportations affect not only fathers, but also mothers and single people. They also impact the physically and mentally ill, the disabled, and even in some cases the dying.

This report, *Aftershocks: The Human Impact of U.S. Deportations to Post-Earthquake Haiti*, focuses on deportations that took place after Haiti suffered the worst natural disaster in its history. As the earth shook and up to 300,000 Haitians lost their lives, also shattered were the hopes and dreams of many families who had hoped for a reprieve from being expelled to a devastated country.

In the past five years, U.S. Immigration and Customs Enforcement (ICE) has deported approximately 1,500 people to Haiti who, due to a criminal record, do not qualify for immigration relief called Temporary Protected Status. This includes individuals with chronic and terminal illnesses, as well as people who were born in a third country and had never set foot in Haiti. The United States continues to deport people in spite of the fact that Haiti has been suffering from a massive post-earthquake humanitarian crisis in which 1.5 million people became homeless and nearly a million were affected by a cholera epidemic introduced to the country by United Nations troops.

When they arrive in Haiti, deportees become outcasts because of the stigma attached to being a deportee with a criminal history. These men and women are targets for violence, harassment, and extortion by the police and society at large. Those deportees without family connections are doomed to homelessness or other precarious living situations. Female deportees are particularly vulnerable to sexual assault if they have no family or community support.

Back in the United States, many families plunge into financial and emotional decline once a loved one is deported. These families must carry on without a primary breadwinner, while also providing financial support for the deported family member in Haiti. Children whose parents have been deported are often left flailing. I once attended the funeral of a young man who had started acting erratically after his father was deported. He was once asked why his behavior had changed so much and he said that he, a U.S. citizen, missed his father so much that he wanted to be deported too.

As this report explains, the United States is not taking into consideration the continuing humanitarian, and increasingly political, crisis in Haiti, as ICE continues to deport more and more people to Haiti. The Inter-American Commission on Human Rights, guided by international human rights law, demands that countries respect an individual's "right to life, physical, and mental integrity," as well as their right to a establish and maintain a family. The deportations outlined in this report are not following even these most basic standards. This must change. And it must stop. Please read on to find out why and how.

## SOURCES

1. Impounded Fathers, Edwidge Danticat—<http://www.nytimes.com/2007/06/17/opinion/17danticat.html>.
2. The Obama Administration's Two Millions Deportations Explained, Mother Jones, <http://www.motherjones.com/politics/2014/04/obama-administration-record-deportations>.



# Acknowledgements

The introduction, background and factual findings of this report were authored by University of Miami School of Law Human Rights Clinic and Immigration Clinic students Lauren Geraghty, Geoffrey Louden, and Stephanie Rosendorf, under the supervision of Professor Kelleen Corrigan, Professor Romy Lerner, and Professor Rebecca Sharpless.

The section on international human rights law was authored by University of Chicago Law School International Human Rights Clinic student Yuan Yuan, with feedback from student Matthew Marthaler, and under the supervision of Professor Caroline Bettinger-Lopez and Professor Brian Citro. All authors wrote the executive summary and recommendations.

This report was written in collaboration with Michelle Karshan of Alternative Chance/Chans Alternatif, Cheryl Little of Americans for Immigrant Justice, Marleine Bastien of FANM, and Brian Concannon of the IJDH.

This report incorporates the research and writing of numerous former clinical students from the University of Miami School of Law and builds upon briefs and reports submitted to the Inter-American Commission on Human Rights and the United Nations: *Miami Law Human Rights Clinic*—Drew Aiken, Averil Andrews, Lea Dartevelle, Farrah Elchahal, Kenosha Ferrell, Margaret Jordan, Jennifer Jurney, Erin Lewis, Ashley Matthews, Liam McGivern, Rachel Oostendorp, Justin Ortiz, Miya Patel, Shelley Pessa, Miraisy Rodriguez, Jessica Sblendorio, Monika Siwiec, James Slater, Michael Stevenson, and Beatriz Carta Wagman; *Miami Law Immigration Clinic*: Stephanie Almirola, Gueter Aurelien, Eric Baum, Theresa Breslin, Lia Calabro, Saul Cardenas, Kathryn DeMarco, Morgan France-Ramirez, Natalie Garrett, Niyala Harrison, Tiffany Hawks, Adam Hooch, Haley Kornfield, Francesse Lucius, Alanna McCoy, Thomas Oglesby, Nathalie Remelus, Elizabeth Rieser-Murphy, Misato Sawada, Kathleen Schulman, Dana Turjman, Nneka Utti, and Brittany Young. University of Chicago Law School student Lindsay Gus also assisted with research for the report.

The following individuals have previously partnered with the authors to document the issues discussed in this report: Joseph Anderson, Farrin Anello, Susana Barciela, Jamil Dakwar, Nancy Francillon, Laila Hlass, Hiroko Kusuda, Sarah Mehta, Sunita Patel, William Quigley, Judy Rabinovitz, Laura Raymond, Corina Salazar, Pam Spees, and Christina Zampas.

Preliminary drafts of this report were circulated for comment to Farrin Anello, Sabi Ardalan, Virginia Benzan, Holly Cooper, Meghan Heesch, Sital Kalantry, Ira Kurzban, Helena Olea, and Moria Paz, all of whom provided valuable feedback.

The authors are appreciative of the officials from the White House, U.S Department of Homeland Security, U.S. Department of State, and U.S. Embassy in Port-au-Prince who met with the authors and partners on several occasions. The authors also thank officials from the Haitian government who met with the authors and partners during their visits to Haiti.

The authors thank Le Groupe d'Appui aux Rapatriés et Réfugiés/Support Group for Returnees and Refugees (GARR) for use of their offices while in Haiti.

The authors deeply appreciate the contributions of clinic paralegals Roseliris Dominguez and Danny Vargas, without whose assistance this report would not have been possible. The authors also thank Dean Patricia White of the University of Miami School of Law for her support of this project.

Finally, and most importantly, the authors wish to thank the many deportees and their families who generously shared their stories of loss and hardship.


While the authors are grateful for the assistance of the individuals and organizations listed above, the authors and collaborators are solely responsible for the findings, legal analysis, and recommendations in this report.



# Acronyms and Abbreviations

<b>AILA</b>	American Immigration Lawyers Association
<b>CAT</b>	Convention Against Torture
<b>CDC</b>	Center for Disease Control and Prevention
<b>DCPJ</b>	Direction Centrale de la Police Judiciaire (Haitian Central Directorate of Judicial Police)
<b>DHS</b>	U.S. Department of Homeland Security
<b>DOS</b>	U.S. Department of State
<b>ERO</b>	U.S. Enforcement and Removal Operations
<b>FANM</b>	Fanm Ayisyen Nan Miyami (Haitian Women of Miami)
<b>FRAKKA</b>	Fòs Refleksyon ak Aksyon sou Koze Kay (Force for Reflection and Action on Housing)
<b>FOIA</b>	Freedom of Information Act
<b>IACHR</b>	Inter-American Commission on Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICE</b>	U.S. Immigration and Customs Enforcement
<b>IDP</b>	Internally Displaced Person
<b>IJDH</b>	Institute for Justice & Democracy in Haiti
<b>IOM</b>	International Organization for Migration
<b>LGBT</b>	Lesbian, Gay, Bisexual, and Transgender
<b>LPR</b>	Lawful Permanent Resident
<b>MINUSTAH</b>	United Nations Stabilization Mission in Haiti
<b>NGO</b>	Non-Governmental Organization
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>ONM</b>	Office National de la Migration (Haitian Office of National Migration)
<b>TPS</b>	Temporary Protected Status
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>USAID</b>	U.S. Agency for International Development
<b>USCIS</b>	U.S. Citizenship and Immigration Services



A photograph of a makeshift shelter constructed from weathered tarps and wooden poles. The shelter is situated on a rocky, uneven ground. In the foreground, there is a large, worn black tire lying on its side. To the left, a red plastic tub is filled with various pieces of clothing, including a white shirt and a blue jacket. The background shows a clear blue sky. A green text box is overlaid on the center of the image.

This report documents the stories of the men and women deported from the United States to post-earthquake Haiti on account of a criminal history.



# Executive Summary

Haiti still reels from the devastating effects of the January 12, 2010 earthquake that killed up to 300,000 people, rendered one in seven Haitians homeless, and wreaked \$9 billion in damage in a country whose 2009 GDP was only \$7 billion. At least 85,000 people still live in internally displaced person camps (IDP camps) and many have moved back into shoddy structures that would not survive another earthquake. The cholera epidemic that struck Haiti in the wake of the earthquake has been characterized by the Centers for Disease Control and Prevention (CDC) as “the worst cholera outbreak in recent history,” killing at least 8,721 people and sickening over 700,000 in all parts of the country. Medicine, medical care, and mental health care remain in scarce supply and largely unavailable to individuals who are poor, disenfranchised, or live in rural areas. Political instability is widespread. The rebuilding of Haiti proceeds at a glacial pace. Only a fraction of the international aid that was designated to address the humanitarian crisis and subsequent human rights violations has been allocated and spent, and an even smaller fraction of that aid has helped the people for whom it was intended.

In light of this humanitarian crisis, in January 2010, the United States granted Temporary Protected Status (TPS)—a temporary immigration status—to qualifying Haitian nationals living in the United States on the date of the earthquake who lacked other lawful status. TPS remains in effect today for qualifying Haitian beneficiaries. People who have been convicted of two misdemeanors or one felony offense, however, fall outside the scope of TPS protection and can be deported. Over the past five years, the United States has forcibly returned to Haiti approximately 1,500 men and women who are categorically barred from TPS

protection on account of their criminal histories. Most of these individuals have significant family ties in the United States and many suffer from serious physical and mental health conditions and illnesses. U.S. Immigration and Customs Enforcement (ICE) has carried out these deportations despite the U.S. Department of State’s admonitions against U.S. citizen travel to Haiti in light of the country’s instability and weak medical facilities, and despite ICE’s knowledge of the acute dangers facing Haitian nationals who are deported from the United States. The result has been utterly devastating for deportees in Haiti and the families they leave behind in the United States.

*People who have been convicted of two misdemeanors or one felony offense fall outside the scope of TPS protection and can be deported.*

This report documents the stories of the men and women deported from the United States to post-earthquake Haiti on account of a criminal history. Through extensive fieldwork and research, this report details the experiences of deportees—some of whom refer to themselves as “strangers in a strange land”—and their U.S.-based family members. The report argues that the United States violates the fundamental human rights of Haitian nationals and their family members when it deports them to Haiti without due consideration of the deportees’ individual circumstances and the humanitarian crisis in Haiti. It concludes by making recommendations to the United States, Haiti, and the international community.

## JANUARY 2010: HAITI FALLS AND THE UNITED STATES RESPONDS

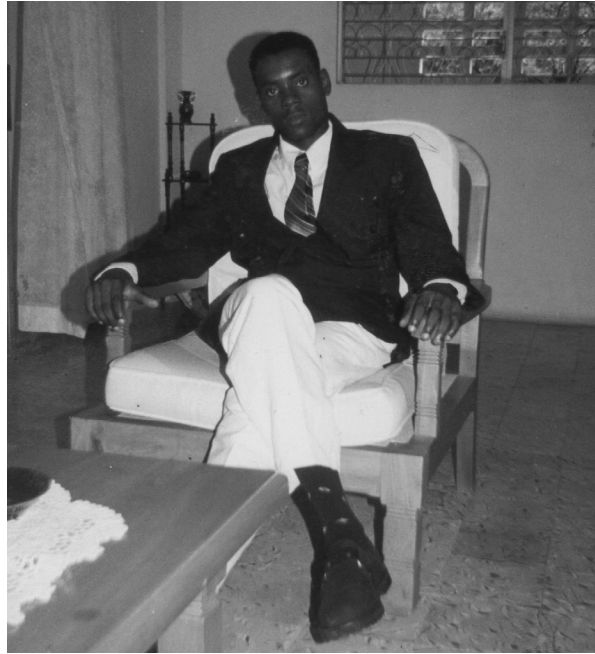
In January 2010, in recognition of the sheer ruin that had befallen Haiti and in accordance with its international human rights obligations, the United States immediately halted all deportations to Haiti. This action was taken to avoid adding to the burden of a country in crisis and to avoid placing deportees in life-threatening circumstances. Other countries, including Canada, France, and Mexico, also stopped all forced returns to Haiti on humanitarian grounds.

In the fall of 2010, despite news of the devastating cholera outbreak, ICE authorities began quietly rounding up and detaining Haitian nationals with final orders of deportation who did not qualify for TPS because they had been convicted of two misdemeanors or one felony. Many of these individuals were living with their families and leading productive lives. ICE authorities shipped hundreds of men and women to remote county jails and private prisons in Louisiana, in close proximity to an airport where private deportation flights contracted by the U.S. government leave for Haiti.

*The United States forcibly deported 27 men to Haiti on January 20, 2011. Upon their arrival, all were jailed. Wildrick Guerrier fell ill and died ten days later of cholera-like symptoms.*

Advocates and community groups raised concerns for the deportees' well-being in light of the October 2010 cholera outbreak and Haiti's longstanding practice of jailing deportees with criminal histories in life-threatening conditions. Brushing aside safety concerns, the United States forcibly deported 27 men to Haiti on January 20, 2011. Upon their arrival, all were detained in cramped jail cells and exposed to feces, blood, and vomit. Wildrick Guerrier, a healthy 34-year old man, fell ill and died ten days later of cholera-like

Wildrick Guerrier 1976 – 2011



*Wildrick Guerrier died after a week in Haitian jail after being deported.*

symptoms. In response, the United States halted deportations for about two months. In April 2011, the United States resumed deportations. These deportations continue today, with flights leaving from Louisiana every month.

Many of the men and women deported to Haiti are lawful permanent residents (LPRs) who lived in the United States for many years, if not most of their lives. In fact, some were born in another country and had never set foot in Haiti prior to their deportations, but were deported to Haiti because their parents are Haitian nationals. Most deportees have family members in the United States, including U.S. citizen children and other loved ones. A substantial number have terminal diseases, chronic mental and physical conditions, and permanent disabilities. Many were deported for only minor or nonviolent criminal offenses, and have stories similar to that of Conrad, a mentally ill man who was deported on account of two misdemeanors: failing to return a rental car on time and giving false information to a law enforcement official.



## ■ THE UNJUST DEPORTATION OF CONRAD

Conrad is a 59-year-old Haitian man who was deported by U.S. authorities in 2011 after having resided legally in the United States for more than 25 years.<sup>1</sup> Nearly his entire family lives in the United States, including his U.S. citizen mother, siblings, and children.

Since his deportation to Haiti, Conrad has been confined in a private mental health institution he refers to as “death row” because he is forced to live in lockdown without access to needed medications and care. His family in the United States pays for him to live at the institution because they fear he will be harmed in the outside world. Conrad’s brother, David, is afraid that if Conrad walked around freely in Haiti, “he would be robbed, beaten, kidnapped, or killed” because of his mental illness.



*Deportee Conrad is now confined to a mental health institution.*

| Photo by Bess Adler

Conrad first came to the United States in the mid-80s and became an LPR. During more than two decades in the United States, Conrad studied, worked as a pastor, and devoted himself to the church and his ministry.

However, in the late 1980s, Conrad began to suffer from the effects of serious mental illness, including schizophrenia. He was later convicted of a few minor nonviolent crimes. Subsequently, Conrad was detained and ordered deported, despite his mental illness and lack of access to a lawyer or his family members. Records show that ICE was aware that Conrad suffered from mental illness.

ICE’s own policies required that immigration authorities

should have balanced Conrad’s serious mental and physical illnesses, strong family ties to the United States, and positive contributions as a community member against his relatively minor criminal history. Yet despite his many equities, in July 2011, ICE deported Conrad to Haiti.

Since his deportation to Haiti, Conrad’s mental and physical health has deteriorated. In addition to his mental illness, Conrad also has a number of physical ailments, including high blood pressure, stomach problems, hypoglycemia, and prostate issues. He has lost weight, experiences hallucinations and paranoia, and is not receiving sufficient medical or mental health care at the institution. His family also fears that the food at the facility, which Conrad describes as “dog food,” is affecting his health because it is too salty and lacks nutrition. When family members visit Conrad to bring him extra food, he is often in tears.

Conrad’s family also fears for his physical safety, even at the facility. On at least one occasion, another patient attacked Conrad, beating him on his head and ears, causing him difficulty hearing in one ear.

Conrad regularly begs his family to secure his return to the United States, where he can be surrounded by loved ones and receive proper care for his physical and mental health conditions. The family dreads that Conrad will suffer further harm in the facility: “Who knows,” said his siblings, “They might just go find him dead at the facility.” But Conrad’s family knows that the inevitable alternatives in Haiti— suffering at an even more horrific public mental health facility or facing attacks on the streets due to the stigma against both deportees and the mentally ill—are even more grave. ■

*The mother of Conrad holds a photograph of her son with other family members.*

| Photo by Bess Adler



## ■ DEPORTED DESPITE INTERNATIONAL PROTECTION

Billy received "precautionary measures" from the IACHR but the United States nevertheless deported him in November 2011.<sup>2</sup> Billy, who now lives in Port-au-Prince, has no kneecap and the bones in his leg painfully rub together. Billy had numerous surgeries on his leg and knee and was awaiting an implant when ICE officials deported him to Haiti. He cannot afford any medical treatment in Haiti. Billy has five children in the United States, whom he was previously supporting through disability benefits. They are currently being supported by Billy's mother, who is struggling financially. ■

the beneficiaries, the IACHR issued "precautionary measures" to protect 62 men and women from forcible return to Haiti by the United States. Ignoring many of these precautionary measures, the United States deported at least 19 of the protected men and women to Haiti.

In 2012, the UN Independent Expert on the Situation of Human Rights in Haiti, Michel Forst, advised that countries "should refrain from any and all forced returns to Haiti" because "individuals returned to Haiti are vulnerable to human rights violations, especially the fundamental rights to life, health, and family."

On March 14, 2014, Walter Kälin, a member of the United Nations Human Rights Committee, expressed serious concern to a U.S. government delegation in Geneva about the United States' decision to deport people with medical conditions to post-earthquake Haiti.

The United States has failed to heed these myriad calls for a fundamental shift in its Haiti deportation policy.

## INTERNATIONAL CONDEMNATION OF POST-EARTHQUAKE DEPORTATIONS TO HAITI

The international community has exhorted the United States and other countries to halt deportations to Haiti during the post-earthquake humanitarian crisis. In 2010 and 2011, the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations High Commissioner for Refugees (UNHCR) issued joint statements calling on countries to suspend all forced returns to Haiti. The most recent statement has not been retracted or replaced.

Starting in 2011, the Inter-American Commission on Human Rights (IACHR)—the regional human rights body for the Americas—found that deportations to Haiti constituted urgent and irreparable harm to numerous deportees. Citing compelling health and family concerns of

## U.S. RESPONSE: ICE'S APRIL 1, 2011 POLICY AND THE USAID REINTEGRATION PROGRAM

When the United States resumed deportations to Haiti after Wildrick Guerrier's death, it did so under a policy announced on April 1, 2011 that promised that deportations to Haiti would be "as safe, humane, and minimally disruptive" as possible. The policy provided that ICE would balance Haitian nationals' criminal records against "equities" such as "duration of residence in the United States, family ties, or significant medical issues" prior to removal. Where "compelling medical, humanitarian, or other relevant factors" weigh against removal, ICE pledged to exercise its discretion to halt an individual's deportation.

Decisions made under the April 1 Policy are entirely at ICE's discretion and lack notice, transparency, or judicial review. As documented in this report, the U.S. government's ongoing





*Marcus, who was deported in August 2013, sleeps on sheets on the ground and burns paper at night to try and keep the mosquitoes at bay.*  
| Photo by Bess Adler

deportation of Haitian nationals with serious physical and mental health problems, strong family ties to the United States, and other equities demonstrates that ICE is not abiding by the April 1 Policy. The policy thus does not accomplish its stated goals.

The April 1 Policy justifies deportations to Haiti, in part, on the existence of a U.S.-funded “reintegration strategy that encompasses a range of services for returned Haitians to smooth their transition into Haitian society, including healthcare assistance and skills training to enhance employment prospects.” A reintegration program was funded by the U.S. Agency for International Development (USAID), administered by the International Organization for Migration (IOM), and then channeled through the Haitian Office of National Migration (ONM) and other Haitian non-governmental organization (NGO) partners.

Starting in 2012, the United States began to reduce funding and logistical support for the deportee reintegration program. As of April 2014, U.S. funding for the reintegration program stopped completely, even though ICE continues to use the program to justify its claims that deportations to Haiti will be conducted safely and humanely.

Even when it was fully implemented, the reintegration program failed to live up to its stated goals. Critically ill deportees failed to receive adequate health care and medication. Individuals with serious mental disabilities were locked up in jail-like public mental health institutions. Numerous deportees who participated in trainings and submitted “livelihood plans” received no materials or equipment. Some were given materials they were unable to use. Others could not reach the implementing partners to follow up.

Despite the end of the reintegration program

and the continued devastating conditions in Haiti, the United States continues to deport people to Haiti on a monthly basis. The lack of a fully functioning, sufficiently funded, accountable, and transparent reintegration program in Haiti to meet the basic life needs of deportees places these vulnerable individuals at even greater risk.

## DEPORTEES AS HAITI'S SCAPEGOATS

Deportees from the United States with criminal histories are scapegoats in Haiti. Deportees experience a wide range of threats to their lives and well-being, including physical violence, arbitrary detention, stigmatization, malnourishment, unemployment, insufficient access to identification documents, unstable and unsafe housing, and the inability to access medical and mental health care and medicine. Although Haitian authorities have ceased the *routine* jailing of arriving deportees, Haitian officials acknowledge that they have and will continue to detain some deportees. Haitian authorities and the public unfairly characterize deportees as dangerous individuals who perpetrate violence in the country. Haitian police attack, mistreat, and wrongfully arrest deportees and refuse to assist deportees when they are the victims of crime.

## HOUSING INSECURITY AND UNEMPLOYMENT

The severe stigmatization and financial hardship that deportees face prevent them from finding adequate or stable housing and employment. Housing in Haiti is scarce and many deportees lack the family networks needed to find a safe place to live. Many deportees must rely upon the generosity of family or friends for temporary housing solutions, which often include moving from place to place, or staying in dangerous and impoverished neighborhoods. Many deportees become itinerant or homeless.

Moreover, finding gainful employment is out of reach for many deportees. In a country with a high general unemployment rate, deportees face additional challenges due to discrimination, lack of contacts, and language and cultural barriers. Many deportees do not speak fluent Creole or speak Creole with an accent that is recognizably “American.” For deportees with physical or mental health conditions, disabilities, women without immediate family, or individuals who identify as lesbian, gay, bisexual, or transgender (LGBT), the risks are even more acute.

## HEALTH VULNERABILITIES

Even before the earthquake, Haiti lacked the infrastructure to provide adequate medical care to its people. The earthquake damaged and overwhelmed Haiti’s already-fragile health system. It left the country particularly ill-equipped to provide earthquake-related trauma and disability services and to address a persistent

*Some mentally ill deportees are held against their will in inhumane conditions in mental institutions, where they are forcibly injected with psychotropic drugs.*

cholera epidemic. Today, almost half of Haiti’s population lacks access to even basic health care. Medical care for many chronic or significant illnesses and for mental health issues is practically nonexistent. Medication is often unavailable and is too costly for most of Haiti’s population. While the number of cholera infections has surged in recent months, the number of treatment centers is dwindling. Deportees are uniquely vulnerable to the lack of available health services in Haiti. Many lack family ties or other social support in Haiti and are often unaware of what limited health services exist. Because deportees

are largely unemployed, few are able to afford medical care or medication. Deportees with mental health conditions and physical disabilities face stigmatization and extreme health risks. Some mentally ill deportees are held against their will in inhumane conditions in mental institutions, where they are forcibly injected with psychotropic drugs.

## **AT HEIGHTENED RISK: WOMEN & LGBT DEPORTEES**

Women and LGBT deportees from the United States are marginalized and thus face particular risk due to alarming rates of gender-based violence in Haitian society. From 2010 to 2012, approximately 70% of Haitian women and girls experienced some form of gender-based violence.

---

***The police and neighborhood men threatened to rape deportee Stephanie, a lesbian.***

---

One aid organization for rape survivors in Port-au-Prince reported in 2012 that it was receiving five reports of rape a day. NGOs have widely documented lax police attitudes toward sexual violence, and the UN Human Rights Committee recently raised concerns about weak legal protections for women victims.

---

***An employee of a temporary shelter for deportees in the outskirts of Port-au-Prince assaulted deportee Francine, the only female deportee in the shelter.***

---

Female deportees are at heightened risk on account of both their gender and deportee status. Recently-arrived female deportees without family in Haiti are especially vulnerable, and often are placed in an informal, government-run temporary shelter located in a remote

area outside of Port-au-Prince. This precarious situation places them at high risk of sexual assault and homelessness.

---

***Merlene, a homeless, mentally ill deportee, reportedly resorted to survival sex, a form of transactional sex performed in exchange for economic resources or protection.***

---

LGBT deportees also encounter extreme violence and hardship—including harassment, beatings, murders, and other forms of violence—upon return to Haiti. LGBT individuals often refrain from reporting abuses, fearing that the perpetrators will retaliate and the police will either fail to respond or will attack the victim. During the UN Human Rights Committee’s 2014 review of Haiti’s human rights record, the Committee expressed concern about violence against LGBT individuals.

Anti-gay sentiment has grown in the years since the earthquake. Some anti-gay organizations and religious leaders blamed LGBT individuals for the earthquake, on the grounds that “immoral acts” had invoked the wrath of God. In the years following the earthquake, these groups have been responsible for multiple violent attacks on LGBT individuals and for arson against LGBT organizations’ offices. In the summer of 2013 alone, a mob committed 47 attacks on LGBT individuals with weapons such as knives, machetes, and cement blocks.

LGBT deportees are particularly vulnerable to harm because many lack family ties and pre-established support networks in Haiti. Many end up homeless or living in poorer neighborhoods, where rates of crime and violence are high. LGBT deportees may also be more exposed to attacks from the community and the police because of their perceived Americanized mannerisms. This is particularly true of women who are perceived as masculine or androgynous and men who appear effeminate.





## THE DEVASTATING IMPACT OF FAMILY SEPARATION

Deportations to Haiti take a tremendous toll on both deportees and the family members—especially U.S. citizen children—whom they leave behind. Deportees and their U.S.-based families experience severe psychological and financial effects due to family separation. Family members in the United States suffer not only from the distance and sense of loss, but also from the worry and fear for their loved one’s safety. The financial impact is equally grave. In many cases, deportees’ families not only lose the primary breadwinner, but must also send money to their family members in Haiti to help them survive. Even those families with money to travel to Haiti have little means of minimizing the family separation because current conditions often do not permit safe visits.

For children affected by deportations, the psychological, behavioral, and emotional consequences can be particularly severe. In one study documenting the effects of family separation due to deportations, children from Haitian families reported the highest level of psychological symptoms, particularly depression, as compared to children of Chinese, Dominican, Mexican and Central American families.

---

*Jimmy’s young son, a U.S. citizen, developed anger issues and behavioral problems after his father was deported to Haiti. The child’s mother reported that her son had developed a defiant attitude towards authority, saying things like, “You are not my dad.” The child became so emotionally disturbed that he was institutionalized three times under Florida’s involuntary civil commitment statute and had to be medicated. The family began collecting public assistance in 2011 because of the absence of Jimmy, the primary breadwinner.*

---



*Sandy, age 13, holds a picture of her mother, Sonia, who was deported in 2012. | Photo by Bess Adler*

## DEPORTATIONS TO POST-EARTHQUAKE HAITI VIOLATE INTERNATIONAL HUMAN RIGHTS LAW

The United States violates international human rights law when it deports men and women to post-earthquake Haiti without due consideration of 1) the humanitarian and human rights crisis in Haiti, and 2) the individual circumstances of the deportees and their families. International human rights law provides robust protections for individuals at risk of deportation, including limitations on the ability of host countries to deport individuals based on a criminal history or unlawful presence. International human rights law increasingly

requires decision-makers to balance adverse factors, such as the severity and number of criminal convictions, against equities of the non-national, such as duration of residence in the host country, family ties in the host and home countries, significant medical issues, and conditions in the home country.<sup>3</sup>

In particular, the deportation of Haitian nationals to post-earthquake Haiti violates the rights to family and private life by separating deportees from their families, including their minor children, in the United States. The process of deportation also fails to provide deportees' children with special protections or take the best interests of children into account, in violation of international human rights law. In addition, the United States must respect Haitian nationals' rights to life, security, integrity, and health during the deportation process. The United States is responsible for violations of these rights due to its knowledge of the specific vulnerabilities and hardships deportees face in Haiti, including a woefully inadequate health system, deportees' lack of family or social ties, and the violence, discrimination, and stigmatization deportees as a class face in Haiti. Finally, due process norms under international law afford Haitian nationals the right to have deportation determinations adjudicated by a neutral decision maker who applies an individualized balancing test on a case-by-case basis. Due process also includes the right to judicial review of the initial decision to be deported. Deficiencies in U.S. immigration law and in the April 1 Policy constitute a failure on the part of the United States to guarantee the right to due process during the deportation of Haitian nationals. ■





# Key Recommendations for the United States

The United States should fully adhere to its international and domestic legal obligations by taking the following measures.

To protect Haitian nationals from being returned to a situation where they face severe human rights violations, the United States should:

- **Halt Deportations to Haiti.** The United States should refrain from deporting any individual to Haiti, unless and until the current humanitarian crisis in Haiti significantly improves such that deportees from the United States can survive and lead safe and dignified lives in Haiti.
- **Extend Temporary Protected Status (TPS) to All Haitian Nationals.** The United States should extend TPS to all Haitian nationals currently living in the United States, regardless of criminal history and regardless of their date of arrival in the United States, for the post-earthquake duration of the humanitarian crisis in Haiti.

If and when conditions in Haiti improve to such a degree that some deportations might be justified, the United States should:

- **Adopt a Humanitarian Balancing Test.** The United States should balance, on a case-by-case basis, equitable factors against the nature and severity of the criminal activity. This balancing test should apply to people regardless of immigration status or criminal record and include analysis of family and community ties, the length of time in the United States, medical and mental health needs, and conditions in Haiti.
- **Adhere to Due Process and Fair Trial Principles.** The United States should ensure that the humanitarian balancing test is carried out by an immigration judge and incorporates all fair trial and due process principles, including adequate notice, ability to present evidence, and the opportunity for appeal. These legal proceedings should not be purely discretionary or conducted by an immigration enforcement officer, as provided by the current April 1 Policy.
- **Provide Special Protection for Children and Ensure Their Best Interests are Given Primary Consideration.** The United States should provide children with special protection during deportation proceedings and ensure their best interests are taken into account during each stage of the process.
- **Ensure the Existence of a Robust, Fully-Functioning, Sufficiently-Funded, Accountable, and Transparent Reintegration Program in Haiti.** The reintegration program must be tailored to the individual circumstances of each deportee.
- **Encourage the Government of Haiti to Officially and Publicly Issue a No-Detention Policy.** The United States should encourage Haiti to adopt a no-detention policy stating that Haitian authorities shall not detain deportees from the United States except in accordance with Haitian law, which requires probable cause that the deportee has committed a crime in Haiti and requires that detainees be brought before a judge within 48 hours.

*A full list of recommendations, including recommendations directed at the Government of Haiti and the international community, is included at the end of this report.<sup>4</sup>*

# Methodology

This report is the culmination of four years of research by the authors—in collaboration with numerous partners—since late 2010, when the authors learned that the United States was planning to resume deportations to Haiti after the January 12, 2010 earthquake.

Professors and students from the University of Miami School of Law Human Rights Clinic and Immigration Clinic, as well as representatives from FANM and Alternative Chance, traveled to Haiti to conduct interviews on four occasions: February 2011, February 2012, December 2013, and October 2014. Professors and students from the Immigration Clinic and Human Rights Clinic and an attorney from AI Justice also conducted interviews in February 2011 at three detention centers in Louisiana where Haitian men and women are held immediately before being deported. Professors and students from the Human Rights Clinic and Immigration Clinic also interviewed Haitian men and women detained by U.S. immigration authorities in several locations in South Florida.

This report is based on interviews and correspondence with numerous people in the United States and Haiti, both in person, on the telephone, and via email or other correspondence. These include Haitian nationals detained in the United States; people who have been deported to Haiti; family members of detained and deported Haitians; Haitian and U.S. government officials; advocates, lawyers and other members of civil society; members of United Nations (UN) agencies and international NGOs; and physicians and other technical professionals.

## INTERVIEWS WITH AFFECTED PERSONS

All people whose stories are reflected in this report agreed to be interviewed or otherwise participate in this research. Interviews were conducted in private. Most interviews were conducted in English. A few interviews were conducted with the aid of a Haitian Creole or French interpreter. When an NGO partner, interpreter, or other individual was present in an interview, their presence was explained to the interviewee and consent was received prior to the interview. The researchers provided no incentives to interviewees, but did provide transportation reimbursement and an inexpensive meal for deportees who needed to travel to the interview site in Port-au-Prince, Haiti.

## DEPORTEES IN HAITI

The authors and their partners interviewed more than one hundred individuals who have been forcibly returned to Haiti. The vast majority of these individuals were deported from the United States to Haiti after the 2010 earthquake. The authors also conducted a limited number of interviews with individuals deported to Haiti prior to the 2010 earthquake and individuals deported by other countries to Haiti. Interviewees included men and women; people of Haitian descent born in Haiti, Bahamas, Cuba, the Democratic Republic of the Congo, and the Dominican Republic; and people of varying ages, physical and mental health statuses, and sexual orientations. All interviewees had a U.S. criminal history, which ranged from minor to more severe.

Most of the interviews in Haiti were conducted in Port-au-Prince at the offices of a local NGO where confidentiality was assured. The authors also visited other facilities in and around







*University of Miami Clinic student Lauren Geraghty talks with a deportee in Port-au-Prince. | Photo by Kelleen Corrigan*

Port-au-Prince, where they spoke with deportees. The locations of interviews included hotel conference rooms, the temporary homeless shelter run by Haiti's Office of National Migration, mental health facilities, as well as the airport tarmac during processing after a deportation flight in December 2013. The authors also spoke to some deportees over the telephone.

#### **HAITIANS DETAINED IN THE UNITED STATES AND FACING DEPORTATION**

The authors and their partners also interviewed over 250 Haitians detained in the United States who were or are facing deportation. These interviews took place at the following detention facilities: Glades County Detention Center, in Moore Haven, Florida; Krome Service Processing Center in Miami, Florida; Monroe County Detention Center in Key West, Florida; Tensas Parish Detention Center in Waterproof, Louisiana; Lasalle Detention

Facility in Jena, Louisiana; and South Louisiana Correctional Center in Basile, Louisiana. Some of the interviewees were eventually deported, while others were not. Those who were not deported were permitted by U.S. immigration authorities to remain in the United States under the discretionary April 1, 2011 policy, described in this report.

#### **FAMILY MEMBERS OF HAITIAN DETAINEES AND DEPORTEES**

The authors and their partners also conducted interviews with family members of Haitians who were detained and awaiting deportation or who had already been deported. The people interviewed included mothers, fathers, husbands, wives, fiancées, children, and other close family and friends. All interviews with children under age 18 were carried out with the approval of their parents.

A few interviewees and family members



asked that their names be published in this report. Others requested the use of a pseudonym. Where there is any concern about the safety or security of an individual, a pseudonym is used and some identifying information is withheld.

## INTERVIEWS WITH GOVERNMENT OFFICIALS

### UNITED STATES OFFICIALS

The authors and collaborators have had formal and informal discussions with numerous officials from the United States government since 2010. These include officials from the White House, the Department of Homeland Security (DHS), the U.S. Department of State (DOS), The U.S. Agency for International Development (USAID), and the U.S. Embassy in Haiti. These interviews took place in both the United States and in Haiti, in person and by telephone. In addition, some of the authors spoke with U.S. government officials in Geneva, Switzerland in March 2014 and November 2014 in the context of reviews of the United States by the United Nations Human Rights Committee and Committee Against Torture, respectively.

One meeting with officials from the White House and DHS took place on January 28, 2011 in Washington, DC and focused on the Department's decision to resume deportations and the risks facing the deportees. Another meeting with DHS officials occurred on January 29, 2014 in Washington, DC. This meeting focused on the April 1, 2011 policy, including the procedures utilized by ICE to determine which individuals would be deported each month.

Additional information on U.S. government policies was gathered through a Freedom of Information Act (FOIA) request made by Americans for Immigrant Justice.

The authors met with U.S. government officials as part of ongoing litigation brought by the authors and partners before the IACHR. None of the information contained in this report comes from these confidential meetings.

### HAITIAN OFFICIALS

The authors met with numerous Haitian officials while in Haiti, including officials from the Office of Citizen Protection (Florence Elie and Jean-Claude Prevost), the National Migration Office, the Central Directorate of Judicial Police (DCPJ), and Dr. Louis Marc Jeanny Girard, MSPP (Medical Director, Mars and Kline Psychiatric Center).

In October 2014, the authors met with the former Haitian Minister of Justice, Renal Sanon, as well as an official from the Office of Public Security. The authors sent letters requesting meetings with the Minister of Public Health and the Minister of the Interior but did not receive replies to these requests.

## INTERVIEWS WITH OTHER STAKEHOLDERS

The authors also interviewed dozens of third parties with relevant expertise or experience concerning deportees in Haiti. Among the interviewees were representatives from international NGOs and UN agencies, including the International Organization on Migration (IOM), UNHCR, the UN Independent Expert on Haiti, Partners in Health, and others. The authors also consulted with medical experts in the United States and Haiti, including Dr. Arthur Fournier from University of Miami Miller School of Medicine's Project Medishare, Dr. John May from Health Through Walls, and Dr. Patrick Joseph from Les Centres GHESKIO, as well as experts in the field of psychology who have conducted research and other work in Haiti, including Dr. Jessy Devieux (Florida International University), Dr. Marjory Clermont Mathieu (Haiti State University), and Dr. Marie Guerda Nicolas (University of Miami). Finally, the authors conferred with local advocacy organizations in Haiti and the United States, including Ellie Happel (NYU Global Justice Clinic, based in Haiti), Jackson Doliscar (Field Educator/ Activist with Fòs Refleksyon ak Aksyon sou Koze Kay (FRAKKA)), Meena Jagannath (Florida Legal Services Community Justice Project), and others. ■









# Introduction & Background

## THE EARTHQUAKE

On January 12, 2010 the earth moved, and Haiti fell. Originating from a previously unknown fault line, the earthquake's epicenter was located only 16 miles from the capital, Port-au-Prince.<sup>5</sup> As one survivor recounted, "I saw a lot of people crying for help, a lot of buildings collapsed...[there were] a lot of people without help, people bleeding. I saw a movie theatre, a supermarket, a cybercafe, an apartment building, which collapsed...[P]eople were falling in the streets."<sup>6</sup> Registering at a magnitude of 7.0 on the Richter scale and lasting for 35 seconds, the earthquake damaged or destroyed 13 of the country's 15 ministerial buildings, 60% of the country's hospitals, and 4,200 schools.<sup>7</sup> The onslaught of over 50 aftershocks that day wrought further destruction on the already weakened country.<sup>8</sup> The earthquake compromised Haiti's basic infrastructure, including roads, electricity, water, and communications.<sup>9</sup> As many as 300,000 people may have perished.<sup>10</sup> Of those who died, 1,200 were teachers, over 500 were health care professionals, and one in three were civil servants.<sup>11</sup> One in seven Haitians became homeless as a result of the earthquake.<sup>12</sup> Earthquake-related damages totaled \$9 billion U.S. dollars. In comparison, Haiti's 2009 GDP was only \$7 billion.<sup>13</sup>

On January 13, 2010, the day after the earthquake, the Secretary of DHS and the Assistant Secretary for ICE announced a halt of all deportations to Haiti in response to the earthquake.<sup>14</sup> Other countries, including Canada, France, and Mexico, also stopped all forced returns to Haiti on humanitarian grounds.<sup>15</sup>

A short time later, the DHS Secretary authorized TPS for certain Haitian nationals who

were in the United States as of January 12, 2010.<sup>16</sup> U.S. law authorizes the DHS Secretary to designate TPS status to foreign nationals from countries that are experiencing armed conflict, environmental disasters, or that are "unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state."<sup>17</sup> After Haiti's addition to the list of TPS countries, eligible Haitian nationals could apply to U.S. Citizenship and Immigration Services (USCIS) for TPS. However, Haitian nationals convicted of at least two misdemeanors or one felony offense in the United States were statutorily ineligible for TPS status.<sup>18</sup> The grant of TPS to Haitian nationals present in the United States at the time of the earthquake initially ran through July 22, 2012.<sup>19</sup> It was later extended to include those in the United States as of January 12, 2011, and continues to be in place today.

In addition to the earthquake devastation, Haiti has suffered an outbreak of cholera that, as of 2014, has killed 8,721 Haitian people and infected over 700,000.<sup>20</sup> The Haiti National Public Health Laboratory confirmed the first case of cholera on October 22, 2010, with hospitalizations beginning on October 17, 2010.<sup>21</sup> The Centers for Disease Control and others found that the outbreak stemmed from poor sanitation conditions at the UN Stabilization Mission in Haiti (MINUSTAH) troops' camp, which resulted in the inadvertent introduction of cholera into the Mèyè tributary, the Artibonite River, and ultimately, other water sources throughout the country.<sup>22</sup>

The cholera outbreak continues to the present day. Populations most vulnerable to contracting cholera include those living in areas without clean water and functioning sanitation systems, like slums or camps for internally displaced persons.<sup>23</sup> Children and the elderly are also particularly vulnerable.<sup>24</sup>



## ■ U.S. DEPORTATION LAW: A BRIEF OVERVIEW

Over the last 20 years, the United States has increasingly rolled back the ability of noncitizens who have been convicted of crimes to successfully defend themselves against deportation (or “removal”). Under current U.S. immigration law, even long-term lawful permanent residents (LPRs) with U.S. citizen spouses and children can be deported for certain crimes, including misdemeanors.<sup>25</sup> Congress has amended U.S. law multiple times to expand the criminal grounds of deportation and eliminate defenses that were historically available.<sup>26</sup> As the U.S. Supreme Court has observed, the “dramatic” 1996 reform in U.S. immigration law has rendered deportation “practically inevitable” for anyone convicted of an offense which falls within a removal ground.<sup>27</sup>

A brief consideration of common forms of immigration relief available in immigration court proceedings illustrates how so few people with criminal records, including Haitian nationals, are able to successfully halt their deportations.

**Cancellation of removal for certain permanent residents (LPR cancellation)** is a defense to deportation for LPRs facing deportation on account of criminal convictions and other deportable acts.<sup>28</sup> It is not available to LPRs who have certain convictions<sup>29</sup> or who fail to meet stringent continuous residence requirements.<sup>30</sup> The crimes that bar LPR cancellation are called “aggravated felonies,” even though this category includes relatively minor offenses.<sup>31</sup> Immigration judges lack discretion to grant cancellation of removal to those who do not meet these requirements, no matter how compelling their life circumstances.<sup>32</sup>

**Cancellation of removal for non-permanent residents (non-LPR cancellation)** is a defense to deportation for non-LPRs, including people without immigration status.<sup>33</sup> Non-LPRs are only eligible if they meet a strict “good moral character” requirement,<sup>34</sup> have been present in the United States continuously for ten years,<sup>35</sup> and can establish “exceptional and extremely unusual hardship” to immediate LPR or U.S. citizen family members if they were to be removed.<sup>36</sup> Grants are capped at 4,000 per year.<sup>37</sup> As with LPR cancellation, a judge may not grant this relief unless the individual strictly meets all of the requirements.

**Asylum, withholding of removal, and relief under the Convention Against Torture (CAT)** are defenses to deportation for people who fear torture or other forms of persecution in their home countries.<sup>38</sup> Individuals with criminal records are often statutorily ineligible for asylum and withholding of removal.<sup>39</sup> Moreover, U.S. courts have narrowly interpreted persecution in ways that exclude many individuals from protection.<sup>40</sup> With few exceptions, an individual must file for asylum within one year of arriving in the United States.<sup>41</sup> An individual may apply for withholding of removal if he or she is filing outside the one-year deadline, but the standard of proof for withholding cases is higher than for asylum.<sup>42</sup> While there is no criminal bar to deferral of removal under CAT, the Board of Immigration Appeals and some U.S. courts have held that even life-threatening conditions faced by deportees in Haiti do not qualify as torture, unless there is a showing that Haitian authorities, or those acting with their acquiescence, purposefully inflict “severe pain or suffering.”<sup>43</sup> The narrow judicial interpretation of CAT makes this form of relief largely unavailable to individuals facing deportation to Haiti.<sup>44</sup> ■



The rebuilding of Haiti proceeds at a glacial pace.<sup>45</sup> Only a fraction of the international aid that was designated to address the humanitarian crisis has been allocated and spent, and only an even smaller portion of that aid has helped the people for whom it was intended.<sup>46</sup> Political instability further thwarts rebuilding efforts.<sup>47</sup>

## U.S. POST-EARTHQUAKE DEPORTATION POLICIES AND PRACTICES

### THE RUSH TO RESUME REMOVALS

Despite the extension of TPS to Haiti after the earthquake, internal DHS records indicate that U.S. officials were actively discussing the resumption of deportations of Haitians with criminal convictions, despite knowledge that Haiti's infrastructure had been destroyed. On February 18, 2010, the then Senior Counsel to ICE sent an email to colleagues asking "what is your sense of working with GoH [Government of Haiti] to slowly begin criminal removals?"<sup>48</sup> A little over one month later, ICE proposed to approach the government of Haiti to resume removals of individuals who entered the United States after the TPS cutoff date and individuals with criminal convictions.<sup>49</sup>

In November 2010, less than three weeks after USAID informed ICE of Haiti's cholera outbreak, ICE lifted the temporary suspension of deportations to Haiti and instructed ICE to begin re-apprehending Haitians who had previously been released from detention in the United States.<sup>50</sup> Without any public announcement, ICE officers began quietly rounding up and detaining Haitian nationals with criminal convictions, including many who had been on supervised release from immigration detention following the earthquake. An email exchange between ICE's Assistant Director and the Acting Deputy Director suggests, however, that the United States had deported over 100 Haitian nationals even before making the official decision to resume deportations.<sup>51</sup> The

whereabouts and identities of these deportees are unclear.

In December 2010, advocates, including the authors of and contributors to this report, learned of ICE's decision to resume deportations. They petitioned President Obama and staged protests to express concerns about the danger of deporting individuals to post-earthquake Haiti, in light of the devastating humanitarian conditions, including the cholera outbreak, and Haiti's longstanding practice of detaining U.S. deportees in horrific jail conditions upon arrival in Haiti.<sup>52</sup> The advocates' calls fell on deaf ears.

On January 6, 2011, immigrants' rights advocates, including this report's authors and contributors, filed a request for precautionary measures (similar to injunctive relief) with the IACHR, a human rights body within the Organization of American States.<sup>53</sup> The precautionary measures petition, filed on behalf of five named Haitian nationals who faced imminent deportation to Haiti, asked the IACHR to order the United States to halt post-earthquake deportations to Haiti. Carrying out such deportations, the petition argued, would be tantamount to a death sentence and would violate several rights guaranteed by the American Declaration on the Rights and Duties of Man, including the rights to life, health, family unity, due process, and special protections for children.<sup>54</sup> 280 organizations and individuals submitted a letter to the IACHR in support of the precautionary measures request.<sup>55</sup>

### JANUARY 20, 2011: THE FIRST FLIGHT BACK

Despite these exhortations, on January 20, 2011, the U.S. government deported 27 men to Haiti, the first deportations following DHS's official announcement that it was lifting the post-earthquake suspension.<sup>56</sup> That same day, the U.S. State Department issued a travel warning to U.S. citizens "strongly advising" against all but essential travel to Haiti due to "the critical crime



level, cholera outbreak, frequent and violent disturbances...lack of adequate medical facilities, and limited police protection.”<sup>57</sup> Upon arrival in Haiti, all of the deportees were detained for an indefinite period in a jail under life-threatening conditions, pursuant to a longstanding practice of the Haitian government.<sup>58</sup>

Eight days later, a group of advocates, including this report’s authors and contributors, met with White House officials and urged them to reconsider their decision to resume deportations, expressing concern that someone might die given the conditions in Haiti.<sup>59</sup> Within hours of the meeting, the advocates learned that a young man on the January 20 flight, Wildrick Guerrier, had fallen gravely ill while detained in a Haitian jail. Wildrick and other detainees were jailed in overcrowded cells which deportees later described as being filled with feces, vomit, and blood, and lacking clean water or sanitation.<sup>60</sup> The deportees were crammed into small cells.<sup>61</sup> There was not enough room for everyone in the cell to sleep on the floor at the same time, so the deportees took turns.<sup>62</sup> Despite begging for help, Wildrick received no medical treatment during the week he was jailed and died of cholera-like symptoms shortly after being released.<sup>63</sup> He is survived by his fiancé, Claudine Magloire, a son, his mother, and two brothers in the United States.<sup>64</sup>

Wildrick’s death made headlines.<sup>65</sup> On February 6, 2011, the IACHR granted the precautionary measures request that had been filed on behalf of the five Haitian men.<sup>66</sup> The IACHR requested that the United States postpone the deportations of the five men until “[c]onditions are in place in Haiti to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards; and [t]he procedures in place to decide upon and review the deportation of those named take adequately into account their right to family life and their family ties in the United States.”<sup>67</sup>

In response to the outcry over Wildrick’s death, the United States temporarily halted deportations to Haiti until April 2011.

## U.S. RESPONSE: THE APRIL 1 POLICY

On March 7, 2011, ICE issued a proposed policy on the resumption of deportations to Haiti.<sup>68</sup> The policy called for “limited removal of criminal aliens with a focus on serious offenders such as violent felons.”<sup>69</sup> The policy applied to Haitian nationals “with a final order of removal who pose a threat to the public safety given their previous serious criminal offense or history.”<sup>70</sup> Threats to public safety were deemed to include, but were not limited to, convictions of “homicide, rape, sexual assault, robbery, sex offense against children, aggravated assault, assault, kidnapping, false imprisonment, sale of cocaine, smuggling cocaine, sale of marijuana, and larceny.”<sup>71</sup> The policy called for case-by-case review before removal.<sup>72</sup> ICE requested feedback on the policy, but gave the public only five days to submit comments.<sup>73</sup>

Reaction was swift. Over two hundred organizations and individuals criticized the lack of transparency with which ICE had developed the proposed policy and the short period of time allowed for comment; ICE’s willingness to return people to life-threatening conditions in Haiti; and ICE’s faulty public safety justification for the resumption of deportations.<sup>74</sup>

On April 15, 2011, ICE released the final policy (which was retro-dated to April 1) for resumed removals to Haiti. The “April 1 Policy” applied to Haitian nationals living in the United States who had been ordered deported due to a criminal conviction.<sup>75</sup> The policy directed removal efforts to focus on Haitian nationals with “significant criminal records,” downgraded from the previously proposed language of “serious offenders such as violent felons.”<sup>76</sup> The April 1 Policy expanded on the initial policy’s proposal requiring case-by-case consideration by introducing a balancing test to determine whether a person would be deported to Haiti. Under the test, ICE pledged to consider “adverse factors, such as the severity, number of convictions, and dates since convictions, and balance these against



*Claudine Magloire, Wildrick Guerrier's fiancé, disagrees with the United States' decision to deport people to Haiti. | Photo by Bess Adler*

## ■ REMEMBERING WILDRICK

“He was my soulmate,” said Claudine Magloire, reflecting on her fiancé Wildrick Guerrier who died on January 30, 2011 after a week in a Haitian jail.<sup>77</sup> In addition to Claudine, Wildrick left behind his mother, two younger brothers, and a nine-year-old son, all of whom are U.S. citizens or LPRs. Claudine and Wildrick met in 1998 and were friends before they started dating in 2006. Wildrick was a father figure to Claudine’s teenage son and well-respected in his community. “He was a wonderful person, always tried to make peace, make you happy and smile,” remembers Claudine, who still thinks about him every day.

Wildrick, who was an LPR but had not yet become a U.S. citizen, was slated for deportation after completing his criminal sentence.<sup>78</sup> While detained by U.S. authorities, Wildrick became known as “Black Jesus” because of his peacemaking skills. The deportees again gave him this moniker at the jail in Haiti, where he cared for the more feeble inmates, and undertook efforts to clean the filthy facility—efforts which ironically may have precipitated his death.

While detained in the United States, Wildrick told an interviewer that he was afraid of the conditions in Haiti.<sup>79</sup> Medical staff at the facility certified that he was healthy and cleared him for a deportation flight on January 20, 2011.<sup>80</sup>

Upon deportation, Haitian officials detained Wildrick and over 20 other men in a filthy police cell, where they were exposed to feces, blood, and vomit. The jail was “not a place even for an animal,” recalled Claudine. Concerned about Wildrick’s well-being, Claudine called the jail authorities, who assured her that he was fine. In reality, Wildrick had begun to experience severe diarrhea and vomiting days after being jailed in Haiti. He was not given medical treatment. Haitian jail authorities released Wildrick after about a week, but it was too late. He “didn’t last 24 hours,” said Claudine.

“It has been a tough journey,” says Claudine, who has struggled in the years since Wildrick’s death. She was laid off from her job at a bank and only recently found work at an accounting firm. A single mother, she has had to work hard and rely on the generosity of her two sisters to pay her rent and electrical bills. Asked whether U.S. officials should be sending people back to Haiti at this time, Claudine said “what they are doing is not right... They need to stop.” ■



any equities...such as duration of residence in the United States, family ties, or significant medical issues.”<sup>81</sup> The policy stated that “where there are compelling medical, humanitarian, or other relevant factors, supervised release or other alternatives to detention programs may be appropriate.”<sup>82</sup>

### **ADVOCATES CRY FOUL: RESPONSE TO THE APRIL 1 POLICY**

Advocates reacted swiftly to the April 1 Policy. On the day the policy was released, the authors and contributors to this report issued a statement “call[ing] on the Obama Administration for an immediate halt to all removals to Haiti and the release of all Haitians being held with final orders of removal.”<sup>83</sup> Four days later, nearly 3,400 people sent a letter to President Obama, Secretary of State Clinton and DHS Secretary Napolitano urging an immediate “halt [to] these inhumane and cruel deportations to Haiti.”<sup>84</sup> In July 2011, over 100 organizations and individuals sent an additional letter to DHS Secretary Napolitano citing serious problems and inconsistencies with the implementation of the April 1 Policy.<sup>85</sup>

### **THE UNITED STATES ACKNOWLEDGES CONTINUED RISK: TPS EXTENSIONS AND HAITI TRAVEL WARNINGS**

Since the earthquake, the Secretary of Homeland Security has twice extended TPS, and the protection remains in force today. In May 2011, approximately five months after the U.S. government authorized the first post-earthquake deportation flight, the Secretary extended and redesignated TPS for Haitian nationals.<sup>86</sup> The extension was to January 22, 2013 and the redesignation allowed otherwise-eligible Haitians who had arrived within a year of the earthquake to apply for TPS.<sup>87</sup> The rationale for the extension was the continued “devastating effects of the January 2010 earthquake that prevent Haitians from returning to their country in safety.”<sup>88</sup>

In March 2014, the State Department updated its Haiti travel warning and the DHS Secretary

extended TPS a second time.<sup>89</sup> The extension was to January 22, 2016 and was justified by the “substantial, but temporary, disruption of living conditions in Haiti based upon extraordinary and temporary conditions in that country that prevent Haitians who have TPS from safely returning.”<sup>90</sup> On December 4, 2014, the State Department updated its Haiti travel warning again, urging U.S. citizens to exercise caution when visiting Haiti and explaining that “medical facilities [...] are particularly weak” and that “[individuals] with serious health concerns have been unable to find necessary medical care in Haiti and have had to arrange and pay for medical evacuation to the United States.”<sup>91</sup>

Although the United States continues to recognize the devastation that has befallen Haiti, the continued humanitarian crisis, and the unsafe conditions for U.S. citizens traveling there, it has chartered at least one deportation flight per month since April 2011.

### **THE APRIL 1 POLICY’S FAILURE TO ADEQUATELY CONSIDER HUMANITARIAN FACTORS**

As documented in this report, the U.S. government’s ongoing deportation of Haitian nationals with serious physical and mental health problems, strong family ties to the United States, and other factors demonstrates that ICE is not abiding by the April 1 Policy. The policy requires ICE to conduct a “balancing test” that weighs ICE’s enforcement priorities against a non-citizen’s humanitarian and hardship factors prior to deportation.<sup>92</sup> Specifically, ICE must consider “the severity and number of criminal convictions, dates since the convictions, duration of residence in the United States, family ties, or significant medical issues.”<sup>93</sup> The policy also instructs that “where there are compelling medical, humanitarian, or other relevant factors, supervised release or other alternatives to detention programs may be appropriate” in lieu of deportation.<sup>94</sup> The April 1



Policy requires that ICE officials apply a balancing test to all Haitian men and women subject to deportation, LPRs and non-lawful permanent residents alike.<sup>95</sup>

### PROCEDURAL DEFICIENCIES

The April 1 Policy, as implemented, suffers from significant defects. Initial decisions under the balancing test are made by ICE deportation officers, whose function is case management and ensuring individual compliance with deportation orders.<sup>96</sup> Although ICE has claimed that officers assess every case under the policy, there is no way to ensure that cases are reviewed and no transparency to the review, even when it takes place.<sup>97</sup> There is no written decision, no review of ICE's decision by an independent adjudicator, and no right to appeal.<sup>98</sup>

*Decisions made under the April 1 Policy are entirely at ICE's discretion, and there is no notice, transparency, or judicial review.*

Although ICE has told advocates that its deportation officers are required under the April 1 Policy to interview each Haitian national about his or her humanitarian factors, an ICE official stated in January 2014 that regular interviews had only recently begun.<sup>99</sup> By that time, the policy had been in place for almost three years and countless Haitians had already been deported. No publicly available guidance has been issued to ICE's field offices requiring that officers conduct interviews; ICE officials have acknowledged that they do not know if interviews are taking place in all cases.<sup>100</sup> ICE has also stated that Haitians facing deportation are not given written notice of the policy or informed that the interview would be used to determine whether they should be permitted to remain in the United States.<sup>101</sup> In fact, officials opposed giving deportees notice on the grounds that such transparency would provide

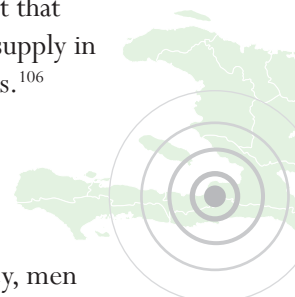
a "road map to avoid deportation."<sup>102</sup> As a result, even if potential deportees are interviewed, they do not have a meaningful opportunity to prepare a defense to deportation.

ICE's procedures for assessing whether an individual with a physical or mental illness should be deported are flawed. ICE officials have stated that they will deport individuals if they are medically stable at the time of deportation.<sup>103</sup> In doing so, ICE ignores the reality that the physical and mental health of individuals will likely deteriorate upon return to Haiti because they will not have access to medical care or stable and safe living conditions.<sup>104</sup> According to an ICE health official, ICE determines whether or not a deportee will have access to needed medications by calling the World Health Organization, pharmacies, or pharmaceutical companies to find out whether medication for a particular illness exists in Haiti.<sup>105</sup> But this process fails to account for the fact that many medications are in extremely short supply in Haiti and are too costly for most deportees.<sup>106</sup>

### WHO IS BEING DEPORTED

Since the adoption of the April 1 Policy, men and women whose compelling equities outweigh their criminal histories and who precisely fit the profile in the policy have been deported to Haiti. The United States has deported approximately 1,500 men and women on account of a criminal record.<sup>107</sup> In the nine months following adoption of the April 1 Policy, ICE returned approximately 20 to 40 individuals per month.<sup>108</sup> The deportations continued with increasing numbers in 2012 and 2013, reaching monthly averages of 50 people.<sup>109</sup> Today, ICE continues to deport Haitians on a monthly basis, with flights averaging around 20-30 individuals.<sup>110</sup>

ICE has deported 19 individuals to whom the IACHR extended precautionary measures because of their serious medical conditions or strong family ties in the United States. Many of the men and women deported to Haiti were LPRs who had

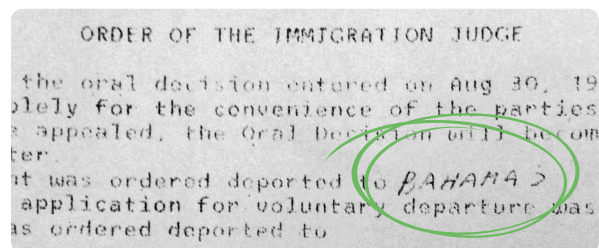


lived in the United States for many years, if not most of their lives.<sup>111</sup> Most deportees have family members in the United States, including U.S. citizen children and other loved ones. The United States has deported individuals with terminal diseases, chronic mental and physical conditions requiring daily medication, and permanent disabilities requiring major accommodations.<sup>112</sup>

Men and women are deported even for minor or nonviolent criminal offenses. For example, of the individuals that the United States deported to Haiti in two months for which the authors have ICE flight manifests listing deportees' crimes, approximately 50 percent of the deportees had nonviolent drug convictions.<sup>113</sup>

The United States has deported people like Conrad, who suffers from multiple serious medical conditions, including a psychotic disorder, dangerously high blood pressure, and prostate complications.<sup>114</sup> He was deported in July 2011 for two nonviolent misdemeanor crimes despite his serious illnesses and the fact that his family, including three children, his mother, and his four siblings, are all living lawfully in the United States. He is now deteriorating physically and mentally at a substandard mental institution in Port-au-Prince.

The United States has also deported individuals with at least one Haitian parent who had never set foot in Haiti because they were born in another country. Because Haitian law confers citizenship on any child born to a Haitian parent, the United States deports to Haiti people born to Haitian parents in other countries, like the Bahamas.<sup>115</sup> The United States has deported people to Haiti even when the order of removal has specified another country.<sup>116</sup>



### **“BUT I WASN’T BORN IN HAITI!”**

The United States has forcibly returned people who were not born in Haiti but who have a parent who was born there. One Bahamian-born man’s story was captured by Dr. Sue Weishar of Loyola University, who reported on Loyola Law students’ interviews with detained Haitians on the brink of deportation:

---

*Of all the tragic stories that were shared with Loyola Law School Clinic volunteers..., perhaps none were more wrenching than those from young men born in the Bahamas to Haitian parents, who then grew up in the U.S. They are not considered nationals of either the U.S. or the Bahamas. Imagine being deported to a Haitian prison at this time, having never lived in Haiti, with no family ties, and barely able to speak the language. Where is the humanity in an immigration policy that would subject a person to such a fate? A young man of Haitian descent born in the Bahamas who was being deported for two drug possessions pleaded with a volunteer, “This is destroying my family. My son is without a father. [My] wife is without a husband. I am different at 26 than I was at 19. I know I’ve done wrong. I am not a U.S. citizen but I am a human being. I love my family.”<sup>117</sup>*

---

### **PUBLIC SAFETY CONTRADICTIONS IN THE APRIL 1 POLICY**

ICE has publicly justified its decision to resume deportations to Haiti on a faulty public safety rationale that is undermined by the United States’ own historic practices. Ten years ago, the U.S. Supreme Court ruled that in most cases, detention of individuals beyond 180 days after

## ■ DEPORTEE CARL

Carl is a former LPR who suffers from schizophrenia.<sup>118</sup> He is married to a U.S. citizen. ICE released him from detention in 2009. Four and a half years later, ICE inexplicably re-detained and deported him, despite the fact that he had been ordered deported based on a nonviolent drug offense for which he had served his time, and he had committed no new crimes.<sup>119</sup>

issuance of a final order of removal is unlawful.<sup>120</sup> In general, ICE must release from detention individuals it cannot deport within that time frame.<sup>121</sup> ICE has justified its resumption of deportations to Haiti on the ground that it cannot detain Haitian nationals with criminal convictions indefinitely and that releasing them from detention in the United States “poses a significant threat to the American public.”<sup>122</sup>

For years, however, ICE has successfully used supervised release programs for Cubans and citizens of other countries with whom the United States lacks repatriation agreements.<sup>123</sup> As Roxana Bacon, former Chief Counsel to USCIS, has acknowledged, “[t]he United States regularly refuses to remove even the most violent offenders when there are compelling reasons not to exercise deportation,” as in the case of Cuba.<sup>124</sup> Under supervised release, people are allowed to leave immigration detention under close monitoring requirements, such as regular reporting to deportation officers.<sup>125</sup> While ICE officials have used supervised release as an alternative to deportation for some Haitians, they have also detained and deported Haitian nationals with compelling equities, including people who had previously been successfully living with their families in the United States on supervised release, such as Carl, profiled above.

*As Roxana Bacon, former Chief Counsel to USCIS, has acknowledged, “[t]he United States regularly refuses to remove even the most violent offenders when there are compelling reasons not to exercise deportation,” as in the case of Cuba.*

## THE U.S.-FUNDED REINTEGRATION PROGRAM

The United States further justified its decision to restart deportations to Haiti by claiming in the April 1 Policy that it would “resume removals in as safe, humane, and minimally disruptive a manner as possible.”<sup>126</sup> This claim was predicated in large part on the existence of a U.S.-funded “comprehensive reintegration strategy” for deportees which was supposed to provide “a range of services for returned Haitians to smooth their transition into Haitian society, including healthcare assistance and skills training to enhance employment prospects.”<sup>127</sup> The reintegration program was funded by USAID, administered by the IOM, and then channeled through ONM and other Haitian NGO partners. The United States began scaling back its deportee reintegration program in 2012 and eliminated it entirely in April 2014.<sup>128</sup> In ending the funding and the program, the United States lost a primary justification for resuming deportations to Haiti under the April 1 Policy.<sup>129</sup>

*The United States began scaling back its deportee reintegration program in 2012 and eliminated it entirely in April 2014.*

Even at its apex in 2011 and early 2012—when the United States was providing funds for cultural and skills training, cell phones, medical







*If the temporary homeless shelter reaches capacity, newly arrived deportees sleep outside under a tent, exposed to the elements. | Photo by Miami Law Clinic Student*

care, and livelihoods programs—deportees complained that they could not access the program’s services. Deportees were adamant that they were unable to access any or most benefits, calling the program “fake”<sup>130</sup> and “useless,”<sup>131</sup> and complaining about being given “the run around.”<sup>132</sup> Deportees received cellphones and some deportees were able to attend orientation or training sessions, but many English-speaking deportees had difficulties understanding the trainings held in Creole.<sup>133</sup> Deportees in 2012 reported receiving little follow up and being unable to get the equipment they had requested through the livelihoods program.<sup>134</sup>

One deportee, Augustine, planned to start a small business related to food service since he had worked in the U.S. restaurant industry.<sup>135</sup> He provided the USAID reintegration program’s Haitian NGO partner with a list of materials he needed. However, he did not receive the supplies he requested and was unable to reach the NGO

partner despite repeated calls.<sup>136</sup> Deportees who did manage to receive some livelihoods supplies found that they were being given unusable equipment—such as a computer with a broken charger—or were told to start businesses that required skills they did not possess.<sup>137</sup> For example, Reginald, a deportee who had submitted a business plan involving transport of goods, was offered some goats and in-kind assistance instead.<sup>138</sup>

Several deportees felt that the local NGOs that implemented the program only contacted deportees when they needed to increase their numbers to justify continued funding.<sup>139</sup> Deportees recall having their photos taken in an orientation session or with the equipment they were given but complained of being unable to reach the NGO partners or to implement their projects due to insufficient equipment, training, or follow-up.<sup>140</sup> Deportee Clifford reported that he was told to pretend to be working at a barber shop when



## ■ INTERNATIONAL CONDEMNATION OF THE DEPORTATIONS

The international community has called upon the United States to halt or significantly reduce forced returns to Haiti in light of the ongoing humanitarian crisis precipitated by the 2010 earthquake. In February 2010, and again in June 2011, the OHCHR and the UNHCR issued a joint statement urging countries to suspend all forced returns to Haiti due to the post-earthquake humanitarian crisis.<sup>141</sup> The joint statement also advised countries that chose to continue deportations to give “special consideration and refrain from returning to Haiti persons with special protection needs,” including persons living with disabilities or severe medical conditions, and to “[p]revent situations where returns lead to separation of family members.”<sup>142</sup> This advisory has not been revoked or replaced.

As described above, in 2011, the IACHR issued a press release stating that the deportation of “seriously ill persons” to Haiti presented urgent and irreparable harm that “could jeopardize [Haitians’] lives, considering the humanitarian crisis that persists in the country.”<sup>143</sup> The IACHR has since found that the compelling health and family concerns in cases of at least 62 men and women warranted protection from deportation and issued formal precautionary measures on their behalf.<sup>144</sup> In granting these precautionary measures, the IACHR pressed the United States to halt deportations until “the United States has procedures in place that adequately take U.S. family ties into account in deportation determinations.”<sup>145</sup> The United States, however, disregarded some of the precautionary measures, deporting at least 19 protected individuals.

In 2012, the U.N. Independent Expert on the Situation of Human Rights in Haiti, Michel Forst, advised that all States “should refrain from any and all forced returns to Haiti” because deportations to Haiti “threaten the rights to life, health, family, equality, and due process.”<sup>146</sup> While the Independent Expert urged that “all forced returns to Haiti be indefinitely halted,” he stated that countries who choose to deport “should ensure the existence of appeal procedures, the guarantee of due process of law, and the consideration of family and other humanitarian factors prior to deportation.”<sup>147</sup> He raised specific concerns about deportations of vulnerable groups of individuals, such as “persons living with disabilities or suffering from severe medical conditions... victims of sexual or gender based violence, persons whose deportation would lead to the separation of family members, persons not born in Haiti, and persons with no known family members in Haiti.”<sup>148</sup>

On March 14, 2014, the UN Human Rights Committee reviewed the U.S. government’s compliance with the International Covenant on Civil and Political Rights (ICCPR), an international human rights treaty binding upon the United States.<sup>149</sup> At the review, Walter Kälin, a member of the Committee, asked the United States delegation how it justifies deportations to Haiti of people with medical conditions in light of the problematic country conditions since the earthquake.<sup>150</sup> The United States government representative pointed to the aid money the United States has put toward development in Haiti since the earthquake and then mentioned the U.S.-funded reintegration program.<sup>151</sup> ■



some “people [] came” to visit the site.<sup>152</sup> Deportee Frantz had his photo taken with car washing materials he had been given but was not able to wash more than one car and one bike because he lacked funds to complete his project.<sup>153</sup> Milton remembers having photos taken of his orientation but he had not been given the equipment needed to implement his business plan.<sup>154</sup> He believes the photos were used to prop up the program as a success.<sup>155</sup>

The reintegration program also purported to provide certain health care services. The authors are aware of one case from 2012 in which a deportee who had blood pooling in his brain received emergency brain surgery in Haiti arranged by the reintegration program. ICE had deported this critically ill deportee despite being aware of his multiple and serious medical conditions.<sup>156</sup> USAID considered the care provided to this deportee an exception and advised the deportee to go to the Dominican Republic so that he could receive better medical care.<sup>157</sup> The positive intervention seems to have been an isolated case, as many more deportees have complained about being unable to access adequate health care or medications.<sup>158</sup> As discussed below, individuals with serious mental health needs have not been given appropriate treatment or assistance but instead have been sent to Mars and Kline Psychiatric Center, a jail-like public mental health institution.<sup>159</sup>

The post-earthquake reintegration program was not the first time a U.S.-funded reintegration program had fallen short in Haiti. A similar program had been in place from 2006 to 2009 and was defunded for similar reasons.<sup>160</sup> The program, which was started by the UN and later partially funded by the United States, was touted by the U.S. government as being “a model” for other countries.<sup>161</sup> In March 2009, the U.S. Embassy in Port-au-Prince commented in a cable that the cultural orientation courses and micro-enterprise support was a “critical resource” for deportees, who, after living for years or even decades in the United States, return to a country that is only

“nominally theirs.”<sup>162</sup> However, complaints among deportees were frequent. The United States was aware of serious problems with the program, noting in a 2009 cable that, among other things, “criminal deportees claim that [the] program is unresponsive to the needs of assistance recipients and that local employees are corrupt.”<sup>163</sup> The pre-earthquake reintegration program ended in 2009.<sup>164</sup>

Rather than provide additional funds and oversight to improve and strengthen the post-earthquake reintegration program, the United States defunded it. By late 2013, only remnants of the reintegration services remained. On December 17, 2013, this report’s authors and contributors observed the arrival in Haiti of deportees from the United States. Deportees were given only a cell phone.<sup>165</sup> Local NGOs provided deportees with brochures indicating that they should have access to physical and mental health services and free transportation for those relocating outside of Port-au-Prince.<sup>166</sup> Deportees reported being unable to access the described benefits. For example, one HIV-positive deportee with other serious medical complications was simply told upon arrival that he should find a doctor.<sup>167</sup> Deportees did not receive any orientation about how to survive in post-earthquake Haiti or information about whether they could access any other reintegration benefits.<sup>168</sup> In addition, deportees were surrounded by more than a half dozen heavily-armed soldiers with balaclavas and SWAT-style uniforms and were likely too intimidated to ask any questions about these and other critical issues.<sup>169</sup>

Months later, however, the United States continued to tout the program as a success, using it to justify ongoing deportations to Haiti. In March 2014, the United States appeared before the UN Human Rights Committee to be reviewed for compliance with its international human rights obligations. When questioned by a member of the UN Committee about the justification for U.S. deportations to Haiti in light of the humanitarian



crisis, the DHS Officer for Civil Rights and Civil Liberties cited the U.S.-funded reintegration program, stating that “the U.S. government has worked with nongovernmental organizations to establish humanitarian procedures for reception and reintegration of these returning individuals” and that the “U.S. government continues to be committed to humanitarian reintegration, working with the Haitian government.”<sup>170</sup>

Without U.S. funding, the Haitian government is now solely responsible for any continued reintegration programming. In October 2014, the Minister of Justice expressed the need for a reintegration program, but acknowledged it would be an insurmountable “resource problem” for Haiti.<sup>171</sup> The sole remaining component of the reintegration program is a temporary homeless shelter run by ONM. The shelter is used for deportees who do not have family or friends to act as “reference contacts” to be responsible for the deportees upon arrival in Haiti.<sup>172</sup> The maximum amount of time a deportee is generally allowed to stay at the shelter is 30 days.<sup>173</sup> If the center reaches capacity, newly-arrived deportees must sleep outside under a tent, exposed to the elements.<sup>174</sup>

The shelter is located in a remote neighborhood, far removed from the urban center of Port-au-Prince and reliable public transportation.<sup>175</sup> There are no services to assist deportees with securing housing, healthcare, or emergency medical treatment.<sup>176</sup> No telephone or other form of communication is available to deportees, unless they have their own cell phones.<sup>177</sup> Former deportees run the center with little supervision from ONM, which has raised concerns about physical safety at the facility.<sup>178</sup> Women and LGBT deportees are especially vulnerable at the shelter, as discussed below. ■







*Deportee Sidney's tattoo marks the loss of his parents who died when Sidney was young. | Photo by Bess Adler*

# Factual Findings

## DEPORTEES AS SCAPEGOATS: PHYSICAL HARM, DETENTION, STIGMATIZATION, AND DISCRIMINATION

Deportees live under the near-constant threat of physical violence and arbitrary arrest because of a commonly held, but incorrect, belief that they are the primary perpetrators of violence in Haiti.<sup>179</sup> The Haitian government has reinforced this stereotype and encouraged stigmatization of deportees.<sup>180</sup> Haitian authorities have attacked, mistreated, and arrested deportees, who are easily identifiable by their manner of dress, the way they walk, how they speak, other physical traits like tattoos or dreadlocks, and their sudden arrival in neighborhoods.<sup>181</sup> In a June 2013 press conference, Lucmane Delille, then Government Commissioner of Port-au-Prince announced that police would cite and arrest people for “*mauvais comportement*,” or bad behavior, such as wearing “sagging pants” and “walking funny.”<sup>182</sup>

Governmental antipathy toward deportees is reflected in the Haitian authorities’ initial processing of them upon arrival in Haiti. For years, the Haitian government systematically, and without cause, detained all deportees from the United States with criminal records in life-threatening conditions.<sup>183</sup> Even though U.S. deportees are no longer *routinely* jailed upon arrival in Haiti, high-level authorities confirmed as recently as October 2014 that the Haitian government has detained and will continue to detain some deportees upon arrival from the United States.<sup>184</sup> After a charter flight carrying deportees lands in Haiti, Haitian authorities take the deportees to the DCPJ and require them to provide a “reference contact” before they will be released from custody.<sup>185</sup> The requirement that

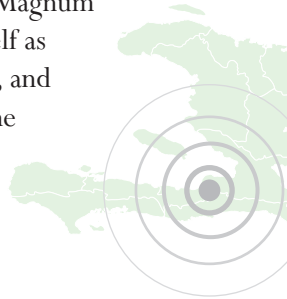
families sign deportees out of detention upon their arrival contributes to the stigmatization of deportees and reflects the government’s expectation that deportees will commit crimes or otherwise require monitoring.

Once they are released into Haitian society, deportees from the United States experience harm, stigma, and discrimination at the hands of Haitian authorities.<sup>186</sup>

When Deportee Smith checked in at a local police station as he had been instructed upon deportation, the officer told him: “The deportees come out here to give us problems” and arbitrarily detained him for 30 minutes.<sup>187</sup> Deportee Magnum reports that even though he keeps to himself as much as possible, the police stop, question, and search him a couple of times a month on the street.<sup>188</sup>

Haitian police often decline to assist deportees who experience forcible gang recruitment or other crimes. Deportee Ferdinand was unable to access police protection from gang members who tried to recruit him.<sup>189</sup> One day, members of a criminal gang came to Ferdinand’s home in Port-au-Prince and pressed him to join them. After they left, Ferdinand went to the police and asked for protection from the gang. The police refused to help him. Later, several gang members returned to his home. When Ferdinand refused to join them, the gang members began to savagely beat him in front of his wife and child. He was saved only by the intervention of his neighbors who witnessed the ordeal. Knowing the police would not protect him due to his criminal deportee status, Ferdinand was forced to permanently flee his home.

Haitian authorities further hamper deportees’ integration into Haitian society





by making it difficult to obtain Haitian national identification documents.<sup>190</sup> Delays are common, and deportees may be asked to pay a bribe to obtain such documents.<sup>191</sup> Because it is illegal in Haiti to not produce identification upon request by a police officer, deportees without identification face arrest.<sup>193</sup> For example, police arrested and beat one deportee, Wilky, because he did not have an identification document.<sup>193</sup> Without Haitian identification, deportees cannot work legally or acquire a passport.<sup>194</sup> Even when a deportee is able to obtain a passport, it is stamped with the following restriction: “This passport valid for travel anywhere except the United States,” marking the bearer as having been deported for a crime.<sup>195</sup>

Members of the public also scapegoat and attack deportees because of the stigma against them.<sup>196</sup> Deportees report staying indoors as much as they can to avoid being the victim of violence by people in their communities.<sup>197</sup> Mob justice is not uncommon in Haiti. The OHCHR has noted that vigilante justice and lynching is widespread in Haiti—with 121 lynchings in 2012 alone.<sup>198</sup> Perpetrators attack victims for a number of reasons, including that they “are unknown to the area and are suspected of being ill-intentioned.”<sup>199</sup> According to the UN Independent Expert on Haiti, Gustavo Gallón, the uptick in lynchings reflects Haitians’ “lack of confidence in justice.”<sup>200</sup> Moreover, the OHCHR and MINUSTAH found that Haitian “authorities’ efforts to prevent and suppress lynching remain largely insufficient.”<sup>201</sup> The rhetoric and discrimination against deportees makes them potential targets for such attacks.

The United States has long been aware of the policies and practices of the Haitian government that punish, stigmatize, and fail to protect deportees with criminal histories. In a 2009 cable, officials at the U.S. Embassy in Port-au-Prince recognized that “criminal deportees ... encounter [obstacles] directly arising from their deportee status, including

## ■ DEPORTEE FELIX

Deportee Felix experienced a particularly harrowing encounter with the Haitian National Police.<sup>202</sup> After an officer was killed near Felix’s house, police conducted a sweep of the neighborhood and residents. Instead of running from the officers, Felix stood still with his hands up to show he was not a threat. Despite his peaceful stance, a police officer ran at him, pointed the barrel of his rifle at Felix’s chest, and struck him repeatedly. The officer forced Felix into the back of a truck and took him to a police station. There, the officer made Felix face a wall, while several officers proceeded to beat him with the butts of their rifles. After the beating, Felix was placed in a cell until a family member could pick him up.

social marginalization and discrimination, false accusations to police, and police abuse.”<sup>203</sup> The Embassy further cited deportees’ complaints of being scapegoated, stating that even when they do nothing wrong, “we’re blamed anyway, just because we’re deportees.”<sup>204</sup> The Embassy cable opined that “[m]ore efforts to help criminal deportees re-integrate into Haitian society would not only benefit this small group of people, but also would likely make Haiti more receptive to greater numbers of deportations.”<sup>205</sup>



*Felix demonstrates for the authors how he was forced to stand up against a wall before officers beat him with the butts of their rifles.*

*| Photo by Geoffrey Louden*







*Carrying machine guns and wearing balaclavas and bulletproof vests, Haitian police make a show of force at the Port-au-Prince airport tarmac when deportees arrive from the United States. | Photo by Bess Adler*

## ■ JAILING DEPORTEES UPON ARRIVAL IN HAITI

Until recently, Haitian authorities have systematically jailed deportees with U.S. criminal histories upon arrival for indefinite periods of time and in life-threatening conditions.<sup>206</sup> In 2007, the State Department (DOS) criticized this practice in its annual human rights report on Haiti: “citizens deported [to Haiti] after completing prison sentences in foreign countries were often detained, although they had not violated any domestic laws.”<sup>207</sup> The DOS emphasized that this practice contravened both international and Haitian law, which prohibits arbitrary arrests and detentions and provides for procedural due process.<sup>208</sup> The jailings continued even after a Haitian court ruled in 2006 that the detention of deportees was illegal.<sup>209</sup>

Haiti’s law enforcement authorities have a long history of abusing people in their custody. In 2004, the DOS Country Report on Human Rights Practices in Haiti described widespread physical abuse of detainees at the hands of the Haitian National Police, such as burning with cigarettes, choking, kalot marassa (severe boxing of the ears that can lead to eardrum damage), and electric shock.<sup>210</sup> Treatment of incarcerated persons has not improved in more recent years. The 2012 State Department report recognized that Haitian prisons “remained overcrowded, poorly maintained, and unsanitary,” and subjected prisoners to “physical abuse by correctional officers,” “corruption[,] and neglect.”<sup>211</sup> The 2013 report cited instances of “corrections officers using physical punishment and psychological abuse to mistreat prisoners.”<sup>212</sup> The report further documented incidents in which “the HNP allegedly beat or otherwise abused detainees and suspects.”<sup>213</sup> Due to stigmatization, detained people with mental illness are particularly at risk.<sup>214</sup> Utility closets are used to put people in isolation.<sup>215</sup> Jailers beat the mentally ill or individuals with intellectual disabilities if they act out or are disruptive due to a failure to receive required medication or other reasons.<sup>216</sup>

Moreover, “many prisoners and detainees suffered from a lack of basic hygiene, malnutrition, poor quality health care, and illness caused by lack of access to clean water.”<sup>217</sup> Some prisoners were forced to “defecate[] into plastic bags.”<sup>218</sup> Moreover, the 2013 report stated that “there were several reports [that the Haitian National Police] beat or otherwise abused detainees and suspects.”<sup>219</sup>



People who are detained in Haitian prisons and jails—both deportees and other Haitians—generally do not have access to food, potable water, beds, hygienic products, working toilets, or medical care.<sup>220</sup> In the DCPJ, the Haitian National Judicial Police station in Port-au-Prince, deportees were held in small cells with 60 to 80 other detainees and were forced to take turns sleeping on the floor.<sup>221</sup> The jail’s cells provide no ventilation or sunlight and the insect- and rodent-infested cement floors are covered in feces, dirt, vomit and blood.<sup>222</sup> Deportees with family in Haiti who were detained at the DCPJ were entirely dependent on their family members to provide food and other basic necessities to survive.<sup>223</sup> Those without relatives in Haiti would rely upon the generosity of other deportees’ families.<sup>224</sup>

In 2011, following the death of deportee Wildrick Guerrier presumably due to conditions in the jails, the Haitian government shortened detention periods for arriving deportees to approximately two weeks.<sup>225</sup> Detention conditions remained horrific, especially in light of the overcrowding in those facilities that remained standing after the earthquake, which had destroyed several of the country’s jails and prisons.<sup>226</sup> In 2012, DOS announced that the practice of automatic detention of arriving deportees had declined throughout the year and had stopped by the end of the year.<sup>227</sup>

Today, although Haitian authorities have ceased the *routine* detention of arriving deportees, the possibility of detention still poses a looming threat to deportees. Over the past year, Haitian authorities have detained certain deportees upon arrival and required some deportees to report to authorities through regular check-ins.<sup>228</sup> Haitian officials have articulated the current detention policy in different ways.<sup>229</sup> According to the Minister of Justice, the Haitian government retains the authority to detain returning deportees for up to two weeks and there is no set list of permissible reasons for exercising this authority.<sup>230</sup> The Minister stated that deportees could be detained if they do not have family members in Haiti who agree to take responsibility for them.<sup>231</sup> The DCPJ Police Inspector gave different reasons for detaining arriving deportees. The Inspector told Michelle Karshan, a collaborator on this report, that deportees are held if they are being investigated because they are wanted on a warrant in Haiti and that deportees with drug convictions are detained until they are interrogated by police. It is clear that the Haitian authorities still detain deportees, although the current criteria for detention is unclear. Moreover, although Haitian law mandates that people in pretrial detention see a magistrate within 48 hours, detained deportees are not brought before a judge.<sup>232</sup>

On the Port-au-Prince airport tarmac, deportees arrive by bus from a U.S. charter flight. | Photo by Bess Adler





*Deportee Evans bears scars from extreme exposure to mosquitoes while he was illegally jailed upon arrival in Haiti.*

*| Photo by Rebecca Sharpless*



Corrupt Haitian authorities have extorted large sums of money from deportees and their families in exchange for release or security.<sup>233</sup> When Deportee Alex was deported in 2013, Haitian authorities demanded approximately \$1,000 USD from his uncle.<sup>234</sup> The government jail authorities told Alex that if the family did not pay, he would die in jail and he would be just another person who got lost in the system.<sup>235</sup> The family of another deportee, Auguste, profiled later in this report, was asked to pay \$3,000.<sup>236</sup>

Haitian government officials document incoming deportees through a process of fingerprinting and photographing deportees and reviewing records from ICE.<sup>237</sup> Authorities interview deportees and ask questions about their criminal record, private life, and familiarity with firearms.<sup>238</sup> ■





Many in Port-au-Prince live in tents and other precarious structures. | Photo by Rebecca Sharpless

## HOUSING INSECURITY AND UNEMPLOYMENT

In addition to suffering arbitrary detention, physical harm, and other forms of discrimination and stigmatization, deportees struggle to provide for their basic needs, including securing housing and employment. Without work, it is difficult to afford housing. Without housing, it is difficult to hold down a steady job. The obstacles deportees face in obtaining Haitian identification further complicates their ability to apply for housing and employment.

### DEPORTEES FACE DIFFICULTIES SECURING HOUSING

Safe and affordable housing is scarce in Haiti, even for those living without the stigma

of deportee status. The earthquake initially forced approximately 1.5 million Haitians into IDP camps.<sup>239</sup> The approximately 85,000 people who still live in the official IDP camps endure overcrowded conditions, live under plastic sheeting, and lack regular access to toilets or drinking water.<sup>240</sup> Many of those initially displaced have since left the camps but have moved into other shoddy structures that would not survive another earthquake.<sup>241</sup> Others continue to reside in camps which have been removed from the “official” list of IDP camps at the government’s request.<sup>242</sup> Some people have been evicted from these camps by force.<sup>243</sup> Others received short-term rental subsidies but could not afford to stay in their apartments after the grants ended.<sup>244</sup> Most post-earthquake aid

has been earmarked for rebuilding middle class single-family homes.<sup>245</sup> These programs exclude renters and other members of Haiti's poorer communities, including most deportees.<sup>246</sup> Complicated and irregular land title issues in Haiti make any significant social housing developments for the poor unlikely in the near future.<sup>247</sup>

As a result, deportees are vulnerable to homelessness, a life in the slums, or an itinerant lifestyle that involves constantly moving from house-to-house to live with friends or distant relatives. Upon deportation, many Haitians rely upon money from U.S.-based family members to help them survive.<sup>248</sup>

Deportee Alex has been forced to rely on his father in the United States to send him money because he has been consistently refused employment since his deportation in 2013.<sup>249</sup> His father can only occasionally send approximately \$200. In order to survive, Alex converted to Seventh Day Adventism to receive assistance and housing from parishioners.

Deportee Clifford, age 22, has no family in Haiti to help him meet his basic needs or find employment.<sup>250</sup> He is only able to survive on the limited amount of money that his U.S.-based mother can occasionally send.

Some deportees end up living on the street while others move from one temporary housing situation to another.<sup>251</sup> Deportees who manage to scrape together enough money to rent a place may encounter difficulties finding housing because of stigmatization by landlords based on their deportee status.<sup>252</sup> Deportees fortunate enough to secure housing are also often forced to reside in poor, dangerous communities and are sometimes targeted for robbery. One deportee, Gary, reported having his small one-room dwelling burglarized while he was away. Nearly all of his belongings were stolen.<sup>253</sup> When Gary went to report the break-in to the police, they refused to help him.<sup>254</sup> Another deportee, Augustine, moved into his father's home upon deportation to Haiti.<sup>255</sup> Shortly thereafter, the home was robbed and Augustine was tied up.

His father had to pay the armed thieves livestock to release his son. Due to threats from the thieves, Augustine went to reside with another family member and started to keep a low profile.

Those deportees who end up residing with relatives or others in Haiti often face a precarious situation if they are unable to contribute to the household income. Deportees sometimes encounter resentment or may be vulnerable to mistreatment by their Haiti-based hosts because they have no other housing options.<sup>256</sup>

## DEPORTEES FACE DIFFICULTIES SECURING EMPLOYMENT

Haiti remains the poorest country in the Western Hemisphere.<sup>257</sup> Even before the earthquake, 80 percent of the population was living in poverty, with 54 percent in abject poverty.<sup>258</sup> Seventy-six percent of the population was earning less than \$2 USD a day, with 60 percent receiving less than \$1 USD.<sup>259</sup> Today, unemployment is between 40 and 60 percent, making it 192nd out of 203 countries in terms of unemployment.<sup>260</sup> While the economic and employment situation is dire for many Haitians, deportees experience additional obstacles to finding employment because of stigmatization and discrimination, lack of a national identification card, language issues, no or few networking contacts, and little knowledge of the Haitian employment system.

---

***The UN Independent Expert on Haiti found in his report on forced returns to Haiti that:***

***Few Haitian nationals forcibly returned from the United States... have been able to find jobs despite their notable efforts, skills, and levels of education. This is due to high unemployment rates and stigmatization of deportees...and lack of community and family connections. Deportees stand out in Haitian society by the way they dress,***





*A Haitian police officer destroying a "pepe" stand on a street in Port-au-Prince. | Photo by Geoffrey Loudon*

**carry themselves, and style their hair. Some had stable jobs or careers in the countries from which they were removed and now face bleak job prospects in Haiti. Without access to work, deportees have difficulty paying for food, clothing, housing and other basic needs and are unable to support dependents.<sup>261</sup>**

Many deportees remain unemployed for years, despite repeated attempts to find jobs. Deportees report that revealing their status as deportees results in discrimination that prevents them from finding work, regardless of professional qualifications, English language skills, and a U.S. education.

Deportee Colson has been unable to find a job in Haiti since being deported in 2012. During his 27 years in the United States, he

sold car insurance, served as a notary public, and provided medical transportation services.<sup>262</sup> Since his deportation to Haiti, Colson has repeatedly filled out job applications but has not received any responses. He believes this is because of his deportee status and the fact that many applications require him to list his arrest history.

Even if an employer does not specifically request a criminal history, a requirement to list previous work experience can work against deportees. One man noted how potential employers reject him after seeing his resume because it contains jobs in the United States, revealing his status as a deportee.<sup>263</sup> Others believe that their appearance makes it obvious they are deportees.<sup>264</sup> Deportee Magnum explained that despite being a plumber by trade, he has encountered serious difficulties finding a job.<sup>265</sup> “[T]he people in Haiti aren’t going to give you a chance,” said Magnum, who has dreadlocks, a gold tooth, and tattoos.<sup>266</sup> “They look at me like I’m a threat.”<sup>267</sup>

Deportees who have no family support in Haiti are even more susceptible to long-term unemployment and poverty. “Without family or independent support, we deportees are doomed,” said Wilky, an unemployed deportee.<sup>268</sup> To survive, deportees often try to pick up odd jobs like cleaning out wells, tutoring children, or selling second-hand merchandise from the United States, “pepe,” on the street.<sup>269</sup> But because of their status as deportees, these activities in the informal sector make them even more vulnerable to violence or arbitrary arrests by police.

U.S. and Haitian officials have recognized the tremendous risks and obstacles facing deportees in Haiti as well as the need for professional livelihood training and support. However, as detailed above, the U.S. post-earthquake reintegration program fell short of its goals and funding ended altogether in April 2014.<sup>270</sup>

## GRAVE THREATS TO PHYSICAL AND MENTAL HEALTH

Deportees face significant and even life-threatening risks in Haiti because of the ongoing cholera epidemic and lack of access to adequate medical care and medication. Since the earthquake, over 700,000 Haitians have been sickened by cholera and “mental health needs [have] skyrocketed.”<sup>271</sup> Yet five years after the earthquake, healthcare “remain[s] woefully inadequate” in Haiti.<sup>272</sup> Haiti still lacks the infrastructure necessary to properly treat most significant physical and mental illnesses. Approximately half of Haiti’s population lacks access to even basic care, with the disabled, mentally ill, poor, and those living in rural areas facing the greatest barriers.<sup>273</sup> Deportees are especially vulnerable because of their isolation, stigmatization, and poverty. The United States nonetheless continues to deport Haitian nationals who suffer from significant physical or mental health issues, putting them at risk of deterioration, and even death.

*On just one returning flight to Haiti this year, there were two deportees with HIV, six with mental illness, nine with hypertension, five with diabetes, and one who had polio.*

The physical conditions and disabilities of deported persons have included: HIV, hepatitis, kidney disease, blindness, diabetes, sickle cell anemia, hypertension, a tear in the heart, hypothyroidism, seizures, a partially-amputated foot, a missing kneecap, migraines, severe insomnia, colon problems, open head wounds, and borderline mental retardation.<sup>274</sup> Mental health conditions have included: schizophrenia, bipolar disorder, suicidal ideation, anxiety, and depression.<sup>275</sup> On just one returning flight to Haiti in 2014, there were two deportees with HIV, six with mental illness, nine with hypertension, five with diabetes, and one who had polio.<sup>276</sup>



## INADEQUATE MEDICAL AND MENTAL HEALTH CARE

Medical services in Haiti are extremely limited due to a lack of resources and a “critical” shortage of health professionals.<sup>277</sup> According to the Pan-American Health Organization, “the country’s health system faces complex organizational and managerial problems which have resulted in services of limited availability and poor quality.”<sup>278</sup> The U.S. State Department’s travel warnings have acknowledged that “[m]edical facilities... are particularly weak” and have noted that “U.S. citizens injured in accidents and others with serious health concerns have been unable to find necessary medical care in Haiti.”<sup>279</sup> The Haitian health system lacks the capacity to treat chronic health problems and complicated conditions.<sup>280</sup> The system, for example, cannot adequately support services for dialysis or heart surgery.<sup>281</sup> The lack of proper treatment for chronic diseases can lead to both acute medical catastrophes, such as heart attacks and strokes, and long-term consequences such as kidney failure.<sup>282</sup>

According to estimates, only about half of Haiti’s population has access to basic medical care.<sup>283</sup> The fact that the health system is largely privatized creates barriers to care for the poor.<sup>284</sup> Health care services are largely provided by NGOs, which are overburdened and cannot meet the needs of the entire country.<sup>285</sup> Further, many international NGOs which provided emergency relief after the earthquake have ceased their operations.<sup>286</sup> Haiti’s small public health sector provides only the most basic medical services and does not provide medication.<sup>287</sup> The cost of care in the for-profit sector is unaffordable for the majority of the population, including most of deportees.<sup>288</sup>

Obtaining mental health care in Haiti is particularly challenging. The country has only around 20 psychiatrists—about one for every 500,000 people—and only approximately five work in the public health system.<sup>289</sup> Most of Haiti’s mental health professionals are located in Port-au-Prince, creating an even more acute lack of access to care in other areas of the country.<sup>290</sup>

Haiti’s education system gives doctors and nurses little training on mental health issues, unless they choose to specialize in that area.<sup>291</sup> Those who do are often inadequately trained and prepared.<sup>292</sup> Moreover, the Haitian government allocates a mere *one percent* of its total health budget to mental health.<sup>293</sup> Because doctors lack sufficient training, mentally ill patients in Haiti are often simply medicated with tranquilizers instead of being properly diagnosed and treated.<sup>294</sup>

The availability of medication is extremely poor in Haiti.<sup>295</sup> Medicine for chronic conditions, such as diabetes and hypertension, as well as antipsychotics and other drugs for the treatment of mental illness, are in particularly scarce supply.<sup>296</sup> Researchers from the University of California, San Francisco found that a significant number of medicines were not available in *any* private retail, nonprofit, public or mixed medicine outlet they surveyed.<sup>297</sup> For those medicines that are available, high costs make them inaccessible to many Haitians.<sup>298</sup>

For deportees, most of whom are unemployed, the cost of medical care is often prohibitive. Few of the deportees in need of care whom the authors and contributors interviewed have been able to access it. The vast majority reported that they have been unable to obtain medical or mental health care and/or medicine in Haiti, either because of the cost or because they could not find the medication.<sup>299</sup>

Deportee Peterson was not able to take the medication he requires for his hypertension because he found it was not always available, and when he was able to find it, it was too expensive.<sup>300</sup> Without treatment, he faces a serious risk of heart attack or stroke.<sup>301</sup> Multiple deportees suffering from psychotic disorders, major depression and anxiety have reported similar problems accessing treatment.

Alex, a deportee with post-traumatic stress and major depressive disorders, has not been able to obtain the anti-depressants he needs.<sup>302</sup>

Deportee Carl is schizophrenic and is prone to hypercoagulation, which can lead to life-



threatening pulmonary embolisms.<sup>303</sup> Although a local NGO has helped Carl to find a doctor and medicine, he does not have the money to continue paying for his treatment and regular trips to Port-au-Prince to see his doctors.

When the U.S.-funded reintegration program was in effect, a few deportees received some assistance with medical care.<sup>304</sup> Yet the vast majority of individuals were unable to access care.<sup>305</sup> One deportee, for example, contacted IOM, a USAID partner, for help obtaining psychotropic medication he had been prescribed.<sup>306</sup> However, he did not receive any assistance and has been unable to pay for the drugs himself.<sup>307</sup> During the reintegration program, IOM staff told the authors that deportees had access to medical insurance but would have to pay for it themselves.<sup>308</sup> In April 2014, the United States stopped funding the reintegration program altogether.<sup>309</sup>

Deportees express feeling left in the dark about how to access the medical care that exists. Many have few or no connections in Haiti and are unfamiliar with the country. Navigating the system alone to attempt to access limited care is nearly impossible. Because mere survival is a challenge each day, many deportees may also lack the physical and emotional reserves necessary to find the resources to address their health needs.

Finally, the stigma associated with being a deportee also creates a barrier to care. One advocate reports that deportees have been turned away from medical centers because of their status as deportees and have been treated with disdain even by health care workers.<sup>310</sup> The advocate has had to intervene on multiple occasions to ensure that deportees receive care.<sup>311</sup>

Shortly after his arrival in Haiti in 2011, deportee Magnum found himself suffering from a fever and continuous vomiting, which are symptoms of cholera.<sup>312</sup> Magnum went to a treatment center, but was turned away. He was admitted only when a foreign advocate came to the facility and insisted that he be seen. When

Magnum went to a clinic run by an international NGO for follow up care, the security guard at the gate refused to let him in. The advocate again intervened and Magnum was permitted to enter the facility, only to be told by a staff person that he would have to pay the highest amount on their sliding scale despite his poverty. He was only able to see a doctor when the advocate became involved again.

Several months later, Magnum contacted IOM for medical assistance. IOM directed him to a local hospital. Magnum had worn an ankle brace to help him walk in the United States after he tore several ligaments in his heel in a motorcycle accident. He was also prescribed Xanax and Clonopin for severe anxiety. However, the hospital told Magnum that there was nothing that could be done for him in Haiti for either of his medical issues.

## **MISTREATMENT AND STIGMATIZATION OF THE MENTALLY ILL**

Mentally ill deportees face significant additional risks and harm in Haiti. Mental illness has long been stigmatized in Haiti.<sup>313</sup> The mentally ill are neglected and abused even by family members.<sup>314</sup> One deportee's family member says she fears for her schizophrenic brother-in-law because many of the people she knows do not understand mental illness and she is aware "of many people being beaten or even killed in the neighborhood because people think they are vampires or other evil beings doing voodoo."<sup>315</sup> Many individuals do not even seek treatment for mental health conditions because of the shame associated with such illness.<sup>316</sup> Because deportees as a whole are stigmatized, a deportee who is *also* mentally ill faces an extraordinary amount of stigma.

Many mentally ill individuals end up in Haiti's prison system.<sup>317</sup> Poor mentally ill Haitians deemed to require institutionalization, including deportees, also are confined at one of two public mental health institutions. Mars and Kline Psychiatric Center in Port-au-Prince is designed for short-term treatment.<sup>318</sup> Défilé de Beude in Croix-des-Bouquets, a Port-au-Prince suburb,





is a long-term facility.<sup>319</sup> Both institutions are in extremely poor condition, with dangerous living conditions and a lack of crucial staff and services.<sup>320</sup> A psychologist with experience working with mentally ill patients in Haiti stated that “the mental health institutions are worse than warehouses, and are probably not fit to house humans.”<sup>321</sup>

In a September 2013 photo essay, *Time* magazine showed a series of photos from Défilé de Beude. The photographer reported that patients sleep “on concrete slabs in barred cells” which he referred to as “cages.”<sup>322</sup> At the time of the shoot, the facility was housing 250 people, 100 people above its maximum capacity.<sup>323</sup> During the ten days he visited the hospital, the photographer saw only one doctor, but never once saw him interact with any patients in the facility.<sup>324</sup>

Mars and Kline Psychiatric Center, where Haitian officials with ONM have institutionalized multiple U.S. deportees, also

resembles a jail.<sup>325</sup> The facility is meant to hold no more than 60 people, but was holding twice that number as of October 2014.<sup>326</sup> Although the facility’s maximum stay is 90 days, in some cases treated patients remain stuck at the facility for much longer because no one comes forward to claim them.<sup>327</sup> Mentally ill deportees with no family or friends to care for them may languish at Mars and Kline indefinitely.

## DISABLED DEPORTEES FACE SEVERE PROBLEMS

Disabled deportees are particularly vulnerable to harm in Haiti. Life for disabled persons after the earthquake in Haiti has been described as “many circles of hell.”<sup>328</sup> Estimates are that 300,000 people were injured during the January 2010 earthquake. Experts believe that “2,000 to 4,000 people survived with





*Deportee Merlene, who was institutionalized at Mars and Kline for over a year, was deported with a leg injury that is now infected and untreated.*  
| Photo by Bess Adler

## ■ TRAPPED AT MARS AND KLINE PSYCHIATRIC CENTER

Merlene, a female deportee, was held at Mars and Kline Psychiatric Center for over one year, from September 2013 through November 2014.<sup>329</sup> ONM brought her to the facility and kept her there because she suffers from severe mental illness and has no family or friends in Haiti to care for her. In December 2013, she was being forcibly injected with an antipsychotic. When the authors visited the facility in October 2014, Merlene was rambling and incoherent. During that visit, the authors accompanied Merlene inside the facility, up to the locked living quarters. The dank building is divided into two sections for men and women, with dark surroundings and iron bars. The living quarters smell overwhelmingly of urine and feces. The men's section was not visible because it was obscured by a concrete wall with a lone door. The women's section resembled a cage with metal bars. Because of the bars anyone, including men, can see inside. Two patients in one room were sprawled on the concrete floor with nothing but a blanket beneath them. In another room, there were several iron beds without any mattresses. Without resources, the hospital is unlikely to improve in the near future, as the facility remained in virtually the same state of disarray that it had been right after the earthquake.

Merlene was released from Mars and Kline Psychiatric Center in November 2014, but remains homeless.<sup>330</sup> She lives in a tent outside the temporary shelter for homeless deportees.<sup>331</sup> Merlene is suffering from a serious infection on her leg and is not getting medical treatment.<sup>332</sup> ■



amputations, more than 200 survived with spinal cord injuries (SCI), and thousands had fractures.<sup>333</sup> An estimated 200,000 people will have long-term disabilities as a result of the earthquake,<sup>334</sup> adding significantly to the “already large number of Haitians living with disabilities.”<sup>335</sup> While some initial emergency aid was earmarked for these issues, there are now a much larger number of disabled persons in Haiti and insufficient resources to help them.<sup>336</sup> A population study undertaken in 2012 in Port-au-Prince showed that almost one in six households included a person with a disability.<sup>337</sup> Yet fewer than half of the people who reported needing rehabilitative medical assistance received such care.<sup>338</sup> The same study also found that people with disabilities do not participate equally in employment or education, and they have poorer access to healthcare.<sup>339</sup> Hospitals and clinics lack the funding, space, and human resources to treat the disabled, and the few existing rehabilitative and treatment facilities have substandard conditions.<sup>340</sup> Moreover, Haiti generally lacks disabled-accessible institutions, infrastructure, and transportation.<sup>341</sup>

In addition to the barriers mentioned above, disabled individuals face stigmatization, neglect, and abuse in Haiti.<sup>342</sup> One study, for example, found that community members subjected the disabled to verbal attacks or avoided any contact with them to prevent “contamination.”<sup>343</sup> Negative attitudes toward the disabled contributed to the persistence of discrimination in all areas of life: education, employment, health and even family.<sup>344</sup> For disabled persons who are also deportees, the stigma, marginalization, and physical vulnerability is compounded by their dual status.

One physically disabled deportee put at high risk is Billy. Billy, who has no kneecap, was taking pain medication and awaiting surgery for his knee while he was in the United States.<sup>345</sup> However, in November 2011, he was deported to Haiti without having had surgery and despite having been the beneficiary of precautionary measures

from the IACHR. As of December 2013, he had not been able to see a doctor and could not afford medication or the necessary physical therapy for his knee in Haiti. Due to the pain in his knee, Billy is only able to walk for short periods of time and walks no more than two blocks a day.

## CONTINUED EFFECTS OF THE CHOLERA OUTBREAK

The post-earthquake cholera outbreak continues to pose a significant threat to many Haitians, particularly for those who live in areas with poor sanitation and a lack of clean water. This includes many deportees. As of December 2, 2014, there had been 717,203 cholera cases in the country and 8,721 cholera related deaths.<sup>346</sup> Haiti’s prison system is currently experiencing an outbreak of the disease.<sup>347</sup> Moreover, since September 2014 there has been a dramatic increase in the number of new cases over the first three quarters of the year.<sup>348</sup>

At the same time, access to treatment for cholera has been dwindling. In November 2014, Doctors Without Borders reported that there were insufficient beds available to treat cholera victims.<sup>349</sup> The Haitian health system still confronts inadequate funding, human resources, and medicine necessary to treat cholera patients.<sup>350</sup> Many of the international nonprofit groups running cholera treatments centers have pulled out of the country, shrinking the number of these facilities by more than two thirds.<sup>351</sup> At the same time, the percentage of cholera patients who die at the remaining treatment centers is increasing.<sup>352</sup> This rise has been attributed to “weakness in the capacity of health centers to provide timely and adequate health services”<sup>353</sup> and treatment delays caused by the longer travel time resulting from facility closures.<sup>354</sup>

Clean drinking water and sanitation remains scarce in Haiti.<sup>355</sup> Haiti lacks—and the international community has failed to provide—the funds necessary to build that infrastructure.<sup>356</sup>





Polluted waterways, like this one in Port-au-Prince, increase the risk of contracting cholera or other waterborne diseases. | Photo by Bess Adler

Deportees may be at particular risk of contracting cholera and other communicable diseases because they often face homelessness or live in substandard or unsafe housing.<sup>357</sup> Fragile living situations often involve lack of sanitation and insufficient clean water.<sup>358</sup> Additionally, deportees may become infected more easily because they have not developed “herd immunity,” or immunity as a result of prior exposure.<sup>359</sup> Those deportees with medical issues or who are confined to mental health facilities may face heightened risks as well, since “[m]ore than 30% of the health care centers have no access to safe water, and even though 80% of them have pit latrines, only half of these meet sanitation requirements.”<sup>360</sup> Deportees who are detained in prisons or jails are also more likely to contract the disease.

## WOMEN'S VULNERABILITY TO SEXUAL VIOLENCE, AND SOCIAL AND ECONOMIC HARM

Female deportees face particularly grave prospects upon return to post-earthquake Haiti. Sexual and gender-based violence is an unfortunate reality for many women in Haiti and has worsened since the earthquake.<sup>361</sup> During the period 2010 to 2012, approximately 70% of women and girls in Haiti experienced some form of gender-based violence.<sup>362</sup> Between July 2009 and June 2011, a coalition of four nongovernmental organizations reported 672 incidents of sexual violence, 90% of which included reports of rape.<sup>363</sup> Sexual violence has reached an alarming level after the earthquake. One aid organization for rape survivors in Port-au-Prince received an average of five reports of rape per day in 2012.<sup>364</sup>



Haiti's legal system does not provide adequate protections for women.<sup>365</sup> Until 2005, Haitian law considered rape to be only an "assault on morals" and an attack on the victim's honor rather than a crime against a woman's right to physical integrity.<sup>366</sup> In the October 2014 review of Haiti's compliance with the ICCPR, the UN Human Rights Committee raised concerns about the weak protections of women against gender-based violence, including rape.<sup>367</sup>

Gender-based violence generally goes unreported because Haitian women have little faith in the justice system. Haitian authorities provide little assurance that assailants will be arrested and prosecuted, and in fact often demonize and blame the victim for the assault.<sup>368</sup> Haitian authorities are all-too-often implicated in acts of sexual violence themselves. Poor and uneducated women infrequently report sexual violence because they face systemic barriers

such as low literacy and education rates, a lack of disposable income and poor access to public transportation that impede their access to legal aid and justice systems.<sup>369</sup>

Women in Haiti face social and economic exclusion, gender stereotyping, and cultural and legal discrimination, all of which create an environment that allows violence against women to continue as an accepted practice.<sup>370</sup> Women in Haiti generally have fewer economic opportunities than men and are in fewer positions of authority.<sup>371</sup> As a result, women are often forced to depend upon men for economic support or to succumb to sexual exploitation for economic survival.<sup>372</sup>

Female deportees are particularly at risk because the discrimination they experience as deportees in Haiti further limits the resources and opportunities available to them.<sup>373</sup> According to a leading women's rights activist in Haiti,



*Deportees Brenda and Nadine holding hands | Photo by Bess Adler*

women deportees are “very vulnerable to the current conditions of Haiti, and [can] be susceptible to sexual assault.”<sup>374</sup> For female deportees without family in Haiti, the threat of gender-based violence is especially high because they often lack safe and stable shelter and a family support system.<sup>375</sup>

Recently-arrived female deportees without family have no choice but to be placed in an informal, government-run temporary shelter located in a remote area outside of Port-au-Prince.<sup>376</sup> Since the shelter is run by untrained male former deportees paid by the Haitian government with little oversight from ONM, female deportees are at heightened risk.<sup>377</sup> For example, deportee Francin had no choice but to seek shelter at the temporary shelter, where she suffered an assault at the hands of a shelter employee.<sup>378</sup> Another deportee, Kettie, was so afraid at the shelter that she had trouble sleeping.<sup>379</sup> She says, “one guy threatened to violate me. He would try to touch my breasts...and I made him stop.”<sup>380</sup>

Such precarious situations for female deportees also may lead to homelessness.<sup>381</sup> For instance, another deportee, Merlene, fell victim to gender-related violence. Homeless and suffering from mental illness, she reportedly was forced to resort to survival sex, a form of transactional sex performed in exchange for economic resources or protection.<sup>382</sup> These conditions, taken in their totality, create an often-insurmountable barrier for women deportees, especially those without family ties or other sources of support and protection.

## LGBT DEPORTEES' VULNERABILITY TO VIOLENCE AND HARDSHIP

LGBT deportees encounter violence and hardship upon return to Haiti on account of a pervasive hetero-normative societal attitude and the lack of legal protections afforded to LGBT individuals.<sup>383</sup> Haitian society has long rejected LGBT individuals because of the country's strict

conservative social and religious values.<sup>384</sup> The operations director at SEROvie, an LGBT activist organization in Port-au-Prince, has summarized the experience of LGBT individuals in Haiti as follows: “lesbian and gay people are beaten in the street... They are discriminated against by health professionals [and] abandoned by their families.”<sup>385</sup>

LGBT deportees live in constant fear of being harmed. Haitian LGBT organizations “have documented physical attacks, robberies, and murders committed on the basis of victims' gender-nonconforming demeanor, style of dress, or association at private gatherings with other LGBT members in the community.”<sup>386</sup> LGBT individuals often refrain from reporting abuses because of a fear that the perpetrators will retaliate and the police will either fail to respond or will attack the victim.<sup>387</sup> Haitian police officers “have verbally and physically attacked LGBT people who have reported violent crimes committed against them.”<sup>388</sup> These acts of violence reportedly have included gang rapes of lesbians by police officers.<sup>389</sup>

During the UN Human Rights Committee's 2014 review of Haiti's human rights record, the Committee expressed concern about violence against LGBT individuals.<sup>390</sup> The Committee recommended that Haiti ensure documentation of discrimination and compensation for victims, and that Haiti adopt a national awareness campaign to fight stereotypes based on sexual identity.<sup>391</sup>

Anti-gay sentiment has grown in the years since the earthquake. The earthquake set back prospects for gains for LGBT individuals by destroying aid organizations' offices and spaces used for services and support networks.<sup>392</sup> Some blamed LGBT individuals for the earthquake, leading to heightened violence on the grounds that “immoral acts” had invoked the wrath of God.<sup>393</sup> The earthquake ushered a rise in “corrective rape” and increased harassment due to the vulnerability of LGBT individuals who were displaced and living in flimsy shelters.<sup>394</sup>

The high level of hostility toward LGBT individuals, compounded by the destruction of



*For LGBT deportees, the experience of danger and hardship in Haiti is twofold because LGBT deportees face structural barriers and violence as a consequence of both LGBT- and deportee-related stigma and discrimination.*

the earthquake, has stunted LGBT activism and increased the public backlash directed toward LGBT individuals in Haiti.<sup>395</sup> In the summer of 2013, Haitians flooded the streets of Port-au-Prince to participate in an anti-gay protest organized by an anti-gay “coalition of moral and religious organizations.”<sup>396</sup> The street protests quickly escalated to violence and chaos.<sup>397</sup> Members of the public ransacked and looted LGBT aid organization offices, delivered death threats to employees, and even committed arson against organization offices.<sup>398</sup> This violence included 47 attacks on actual or assumed LGBT individuals with weapons such as knives, machetes, and cement blocks.<sup>399</sup>

For LGBT deportees, the experience of danger and hardship in Haiti is twofold because LGBT deportees face structural barriers and violence as a consequence of both LGBT- and deportee-related stigma and discrimination. Because of the culture of secrecy and hostility toward LGBT individuals in Haiti, they must often establish a tight-knit support network of trusted friends or family to assist in securing safe housing and avoiding harm.<sup>400</sup> Given that many deportees lack family ties or pre-established support networks in Haiti, LGBT deportees are even more vulnerable to harm. Moreover, since deportees often end up homeless or living in poorer neighborhoods where rates of crime and violence are higher, safe housing is often unattainable for LGBT deportees. LGBT deportees may also be more exposed to attacks from the community and the police because of their perceived Americanized mannerisms. This is particularly true of women who are perceived as

masculine or androgynous and men who appear effeminate.<sup>401</sup>

Deportee Stephanie, a lesbian, experienced threats because she is perceived to have a masculine appearance.<sup>402</sup> Stephanie recounts one incident when she was standing outside of her aunt’s house in Haiti: “Three men passed by...and said they better not catch me late at night because they [would] show everyone that I’m a female and not a man. Basically they [were] saying [that they were going to] rape me.”

Since being deported in 2013, Stephanie has endured threats not only from the community, but also from police officers. Stephanie explains, “even the police [are] like that. If I tell the police, they’ll tell the person who [threatened me] and that person will retaliate [against me]. You can’t rely on the police to help you.” On another occasion, Stephanie was threatened by a police officer who was aware that she is a lesbian and repeatedly made vulgar sexual advances towards her.

## THE DEVASTATING IMPACT OF FAMILY SEPARATION

Deportation leads to the separation of families, resulting in psychological, emotional, and financial harms for both deportees and the family members left behind in the United States. In the case of deportations to Haiti, the consequences are often particularly severe. Family members in the United States suffer not only from the separation and sense of loss but also from the worry and fear for the loved one’s safety. The financial impact is equally grave. In many cases, deportees’ families not only lose the primary breadwinner but must also send money to their deported loved ones to help them survive in Haiti. While virtually all deportees arrive in Haiti with an immense sense of loneliness, isolation, and uncertainty about the future, those without family or friends in Haiti face an even bleaker situation.





*When single mother Sonia was deported in 2012, her children had to be split up between two of her sisters. | Photos by Bess Adler*

## ■ A FAMILY PULLED APART BY DEPORTATION

In 2012, the United States deported Sonia, age 34, to Haiti on account of a criminal record.<sup>403</sup> Sonia is the single mother of three U.S. citizen children—two sons (Gabriel, age 17 and Gregory, age 11) and a daughter (Sandy, age 13). Before her deportation, Sonia worked as a home healthcare aide to provide the sole source of financial support to her family. An LPR, she had lived in the United States since she was seven years old.

Sonia's son, Gabriel, vividly remembers the last time he was with his mother. It was around Christmas of 2010 and Gabriel was in seventh grade. His mother had left the house to buy a red shirt for his school band concert the next day. She never returned home. Gabriel explained that "she called and said she wouldn't be coming back... that was the last time I saw her." He later found out that immigration authorities had detained Sonia while she was driving.

Gabriel was not able to see his mother before she was deported, except via video monitor at her final immigration court hearing, during which he was not allowed to speak with her. The hardest part, Gabriel said, was that "I didn't get to say goodbye to her... that was the part that really killed me [when] she said she was in Haiti and I didn't even know she was gone."

After the United States deported Sonia, her children were forced to live with their grandmother, Ruth, and Ruth's two teenage sons. Ruth suffers from glaucoma and struggled to support the children financially. Eventually, the family was forced to split the children between Sonia's sisters, Roselin and Rene, because neither is financially stable enough to care for all three children.

The children's education has been disrupted by their mother's deportation. Peter is suffering academically because he has not been able to focus in school since his mother was deported. Gabriel, currently a junior in high school, has started to think about college. When asked what his plans were for life after graduation, Gabriel replied: "Go to college... I want to go up North maybe... [I] just want to come back and surprise my family and come back with something good... I want



to become [an] architect or an engineer.” But, as his aunt Rene points out, college may not be a realistic option for him because the family cannot pay for it. In his mother’s absence, Gabriel was forced to take on responsibilities for his siblings. “I have to be there for my brother and sister,” he said. “I have to be there for myself, and I have to be the bigger person now.”

The children all experience a deep sense of loss. Gabriel and Sandy regarded their mother as their best friend. Gabriel explains that, “when I’m talking to her, it’s like I’m talking to my friend, not just my mom. I tell her everything, [and] joke around. I never lived with my dad, so I never had a father figure around. But my mom was my best friend, so she would always be there for me whenever I needed her.”

The children have not seen their mother since she was detained in 2010. Sometimes talking to her over the phone makes it even harder knowing that they cannot see her and be with her in person. Gabriel described the last time he spoke with his mother on the phone: “I had a cold... [so] she was telling me what medicine to [take] and she was telling me what she would have done if she was there. And it kinda hit me when she said that because, if she was here, she would’ve taken care of me and gotten me medicine.”

Since her deportation, Sonia has been unable to find work in Haiti. Instead, she has had to rely entirely on her family in the United States for support. Sonia’s father, who is receiving social security benefits, sends money to Sonia from his limited social security income. The rest of her family in the United States is too poor to help very much. ■

*Deportee Sonia worked as a home healthcare aide in the United States but now has no means of supporting herself in Haiti..*

*| Photo by Bess Adler*



Family separation due to deportation damages the physical and mental health of parents, spouses, siblings, children, and other relatives of deportees. One study of the family impact of deportations in general estimated that when primary earners are deported, their partners who remain in the United States lose an average of 2.2 years off their estimated lifespan due to an increase in health problems, stress, occupational challenges, and economic hardship.<sup>404</sup> Families of Haitian deportees must not only grapple with the economic burdens, but they also are confronted with the constant fear that their loved one may not survive the violence and discrimination against deportees in post-earthquake Haiti.

The mother of deportee Andre describes symptoms of insomnia following the deportation of her son, saying, "I don't sleep, I cannot sleep. Even if I try, it wakes me up."<sup>405</sup>

Deportee Daniel left behind his mother and his two aunts in the United States, all three of whom are deaf and mute.<sup>406</sup> While in the United States, Daniel was both the main caretaker and sole custodian for his mother and his aunts. Daniel provided financial assistance for all three and handled all matters regarding their medical care. Since Daniel's deportation, his mother and aunts are struggling to adapt to life without him. They are also struggling to financially support Daniel in Haiti and are extremely worried about his safety and well-being.

Since the deportation of Evans in 2012, his mother has encountered immense emotional and financial difficulties.<sup>407</sup> For a short time after he was deported, Evans' sister and mother occasionally sent him small amounts of money. Now they are barely able to cope without Evans' financial support. Evans' mother can no longer pay the household bills and is facing eviction from the home she shared with Evans and his sister. She cries frequently and has lost a significant amount of weight. Once, after speaking to Evans on the phone and hearing of his difficulties in Haiti, she attempted to hang herself.

Henry, the brother of deportee Evans, has endured both emotional and financial hardships since his brother was deported in 2011.<sup>408</sup> Evans, whom Henry described as a "cool guy, nonviolent, and well-mannered [with] an addiction problem," was deported for simple drug possession-related crimes. Since Evans was deported to Haiti, Henry worries about his well-being: "His future is hopeless... he is hungry. I have to send him money just to sustain [him]. I send whatever I can [but] it is a huge financial strain. It is hard to cope." Henry also expressed fears that his brother will die in Haiti and he will not be able to pay for any type of funeral or burial services: "If anything happened to him, I wouldn't want them to just dig a hole."

For children affected by deportations, the psychological, behavioral, and emotional consequences can be far-reaching and pervasive, especially in the case of deportations to Haiti.<sup>409</sup> In a study documenting the effects of family separation due to deportations, children from Haitian families reported the highest level of psychological symptoms, particularly depression, as compared to children of Chinese, Dominican, Mexican and Central American families.<sup>410</sup>

The 19 year-old daughter of deportee Augustine expressed the sadness and trauma of losing her father to deportation in 2011: "A family is built of a father, a mother, and kids. The government has taken away my father, my best friend. He has always been help for me, our support system."<sup>411</sup>

This young woman and her family have gone without enough food for days. In an effort to keep the family afloat after her father's deportation, she took on financial responsibilities for the family. She was forced to drop out of college and put on hold her dream of becoming an attorney for battered Haitian women.<sup>412</sup>

As children struggle to cope with the loss of a loved one to deportation, they can develop serious behavioral and educational issues.<sup>413</sup> Following the deportation of Jimmy, his young son, a U.S. citizen, developed anger issues and





The wife and five U.S. citizen children of deportee Augustine have struggled emotionally and financially since ICE deported him in 2011. | Photo by Magnus Lanje

Deportation isn't right at all. The effects it has on me not only physically but mentally is horrible. The Government deporting has broken up this family. We're not completed anymore. How does it feel to be incomplete? It feels like you've been walking with only one pair of shoe on. The deportation hurt us all not one but all. My father worked two jobs for us. Now that he's not here our electricity has been cut off, telephone bill not payed. Refrigerator empty; not eating for two days at most.

This fifteen-year-old daughter of a deportee describes the impact of her father's deportation on her and her family.





Deportee Carl holds hands with his wife Christina. | Photo by Kelleen Corrigan



Deportee Carl, who suffers from mental illness, is pictured here in graduation robes.

## ■ A HEARTBREAKING DEPORTATION

Christina, the U.S. citizen wife of deportee Carl, has struggled to cope after the United States deported her husband in September 2014 for a drug crime.<sup>414</sup> Both she and her husband suffer from mental illness. Carl has schizophrenia and was hospitalized when he had a relapse in 2013. Carl also sometimes suffers from excessive blood clotting, which puts him at risk for experiencing a life-threatening pulmonary embolism. Christina struggles with bipolar and schizoaffective disorder.

Since U.S. immigration authorities detained Carl, Christina has had many sleepless nights and constantly fears that she will relapse. Before Carl was deported, Christina and Carl supported each other when they experienced episodes related to their illnesses. Christina explains that “in the U.S., when I looked like I was going to have a relapse, Carl would take me to the doctor. We did everything together. He reminded me to take my medication and to go to doctors’ appointments.”

Christina is particularly worried for Carl’s safety and well-being because Carl was over-medicated while detained by ICE in the United States. Christina recalls that “it took him a year and half to recuperate from all of the medication they gave him.” She is afraid that something similar or worse will happen in Haiti. Christina reports sadness and fear for her husband’s safety in Haiti. “The hardest thing for me is being away from him, being scared that he might have a relapse, that [in Haiti, the authorities] might kill him because they don’t understand mental disability[ies],” she said.

Since Carl’s deportation, Christina has been forced to look to her parents for help and money to provide housing for Carl in Haiti. Christina, however, “can’t count on family forever because everyone is struggling.” Christina’s father had open heart surgery and her mother is in and out of the hospital.

Christina does not know how Carl is going to pay for and access medical care, because medical care and medication is expensive and he has to travel to Port-au-Prince to see a doctor. As to his outlook on the future, Carl states: “There is no future here. I’m afraid one day I might have a relapse [and I] might lose my wife.” ■



behavioral problems.<sup>415</sup> His mother reported that her son had developed a defiant attitude towards authority, saying things like, “You are not my dad.”<sup>416</sup> The child became so emotionally disturbed that he was institutionalized three times under Florida’s involuntary civil commitment statute and had to be medicated.<sup>417</sup> The family had to start collecting public assistance in 2011 because of the deportation and the child’s serious emotional issues that followed.<sup>418</sup>

Deportations to Haiti typically impose extreme financial hardship on both the deportees and their families in the United States. In many cases, the loss of a primary financial provider to deportation causes a household income to drop below the poverty line.<sup>419</sup> In a 2010 report, the Urban Institute found that family separation due to detention and deportation had particularly severe economic consequences for Haitian families residing in Miami.<sup>420</sup> Within six months of deportation, Haitian household incomes were reduced by an average of 58%.<sup>421</sup> In the absence of a primary breadwinner, family members in the United States try to make ends meet by working extra hours, going without the basic necessities, or relying on public assistance. Sixty-seven percent of previously-unenrolled Haitian families began receiving food stamps in the year following one family member’s detention or deportation to Haiti.<sup>422</sup>

U.S.-based family members of deportees face the impossible choice of moving to an insecure situation in Haiti to reunite with their family members or staying in the United States without their loved one. Despite the numerous security, financial, and emotional risks, families sometimes decide to relocate to Haiti to keep the family together.

In the case of deportee Frantz, the expenses related to his deportation put extraordinary financial strains on his U.S. citizen fiancé, Maria, and their 10-year-old U.S. citizen son.<sup>423</sup> Before Frantz’s deportation, he has been the primary breadwinner and had started a construction business to financially support

the family. Following his deportation in 2011, Maria struggled to pay the most basic household expenses. Because Frantz was unable to find a job in Haiti, Maria had to send him money so he could survive. But the emotional consequences of the separation were the most painful. As a result, Maria decided to move with their son to Haiti in the fall of 2011. Although it was a difficult decision, Maria and Frantz decided the move would be best for their son so he could grow up with his father in his life.

The children of deportee Auguste, a single father, have experienced severe financial and legal problems as a result of their father’s deportation.<sup>424</sup> Auguste was initially detained in a Haitian jail upon deportation. While in the facility, officials refused to release him until his family paid money. Fearing for their father’s life, his children sent \$2,600 USD to Haiti. However, this meant foregoing their rent money. Without the funds to pay for rent, the family of five was forced to leave their home in Florida and move to New York to live with another relative. Auguste’s oldest daughter, age 22, reported that a government social service agency in New York told her she must assume guardianship over her four younger siblings or risk having the family separated. The deportation has left her confused and overwhelmed by having to assume all familial responsibilities.

As these stories illustrate, deportation to post-earthquake Haiti inflicts devastating effects on families, particularly children. Because of the dire post-earthquake conditions in Haiti, deportation constitutes permanent family separation in virtually all cases. The psychological harm of this separation is long-lasting and the financial impact is severe. ■



# International Law Prohibits Deportations to Post-Earthquake Haiti

## INTRODUCTION

The U.S. government violates the human rights of Haitian deportees under international law when it sends them to post-earthquake Haiti without due consideration of the continuing humanitarian and human rights crisis in the country and the individual circumstances of the deportees and their families. International human rights law provides robust protections for individuals at risk of deportation, including limitations on the ability of host countries to deport individuals based on a criminal history or unlawful presence. Some international human rights bodies have categorically banned deportations (also referred to as “expulsions,” “removals,” or “forced returns”) in particular circumstances, while others have established specific criteria that govern deportation decisions.<sup>425</sup>

International human rights law recognizes the following rights and standards in several contexts, including deportations:

- The rights to family unity and private life;
- The rights of children to “special protections” and to have their “best interests” considered when their family members are at risk of deportation;
- The right to life;
- The rights to personal security, integrity, and health; and
- The rights to due process and a fair hearing during the process of deportation.

International human rights law, including the language of international and regional human rights instruments and the interpretation of these instruments by international human rights

bodies, should guide U.S. policy and practice concerning deportations to post-earthquake Haiti.<sup>426</sup> International human rights law increasingly requires decision-makers to balance adverse factors, such as the severity and number of criminal convictions, against equitable factors of the non-national, such as duration of residence in the host country, family ties in the host and home countries, significant medical issues, and other conditions in the home country. In certain cases—such as when a deportation is likely to result in a violation of the right to life or the right to be free from torture and cruel, inhuman, or degrading treatment or punishment—human rights law imposes a categorical ban on deportation.<sup>427</sup>

The United States should, pursuant to its international human rights law obligations and the exhortations of international experts,<sup>428</sup> immediately halt deportations to Haiti, extend Temporary Protected Status (TPS) to all Haitian nationals in the United States, and permit the return of already-deported individuals to the United States. If and when conditions in Haiti improve to such a degree that some deportations might be justified, international law requires the United States to adopt laws, procedures, and programs designed to address the particular needs and vulnerabilities of Haitian nationals and to ensure respect for their human rights both in the United States during the process of deportation and upon their return to Haiti. More generally, the United States should adhere to the pronouncements of international human rights bodies that compel countries, including the United States, to expand their participation in the international protection regime. One important step in this direction is to adopt a “Universal



TPS” or other protection policy that permits all non-citizens—regardless of nationality, criminal record, residency status, or date of arrival in the United States—to remain lawfully in the United States for the duration of humanitarian and human rights crises brought on by natural or human-made disasters in their home countries, such as that in post-earthquake Haiti.

## THE DEPORTATION PROCESS MUST TAKE FAMILY SEPARATION AND THE BEST INTERESTS OF THE CHILD INTO ACCOUNT

International human rights law requires countries to protect non-nationals against interference in family and private life during the process of deportation. It establishes that children have the right to special protections and requires countries to consider children’s “best interests” during the process of deportation. It further prohibits countries from separating children from their parents, except as a last resort.

The deportation of Haitian nationals to post-earthquake Haiti violates their rights to family and private life by separating them from their families, including their minor children, in the United States. The current process of deportation also fails to provide deportees’ children with special protections or take their best interests into account, in violation of international human rights law.

### THE RIGHTS TO FAMILY AND PRIVATE LIFE

The American Declaration on the Rights and Duties of Man (American Declaration) establishes the rights to private and family life, including the right to establish a family and receive protection for that family under the law.<sup>429</sup> The International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified and is legally bound by, establishes a similar right to be free from “arbitrary or unlawful interference” with one’s family.<sup>430</sup> The American Convention likewise

contains protections for the rights of the family and the right to privacy.<sup>431</sup>

The Inter-American Commission on Human Rights has declared that “removal proceedings for non-citizens must take due consideration of the best interest of the non-citizens’ children and a deportee’s rights to family, in accordance with international law.”<sup>432</sup> In *Smith & Armendariz v. U.S.*, the Commission held that the United States violated the rights to family and private life because U.S. law does not permit an immigration judge, in most cases, to “consider on an individualized basis [petitioners’] rights to family and the best interest of their children” during removal proceedings.<sup>433</sup> The Commission declared that countries must conduct an individualized balancing test during the process of deportation that considers “the extent of hardship the non-citizen’s deportation poses for the family in the host state.”<sup>434</sup> In a separate report, the Commission announced that deportation that results in the separation of family members “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>435</sup>

Along similar lines, the UN Human Rights Committee has found that a country must weigh the degree of hardship a family would encounter as a result of a deportation against the country’s reason for the deportation.<sup>436</sup> Factors to be considered include the duration of residence in the host country and whether the non-national’s spouse and children speak the language of the country of origin.<sup>437</sup> The European Court of Human Rights (European Court) has held that countries must strike a “fair balance” between the right to family life and the prevention of crime or disorder when determining whether to deport a non-national.<sup>438</sup> In applying this test, the European Court held that a man who had committed a violent crime could not be deported because his wife had no ties to his home country, even though she spoke one of the main languages used there.<sup>439</sup> The Court also considered the length of time since the crime was



committed and the good behavior of the non-national following the crime.<sup>440</sup> In another case, the European Court held that the right to respect for family life would be violated if Denmark deported a man convicted of a serious drug offense because his wife and child would face “serious difficulties” if they were to follow him to his home country.<sup>441</sup>

### SPECIAL PROTECTIONS FOR CHILDREN

The American Declaration establishes that “all children have the right to special protection, care, and aid.”<sup>442</sup> The Inter-American Commission has interpreted this provision in line with the UN Convention on the Rights of the Child, which states that in all actions concerning children, the “best interests of the child shall be a primary consideration.”<sup>443</sup> The Inter-American Court of Human Rights has emphasized that “any immigration policy that respects human rights... must give priority to the assessment, determination, consideration and protection of the best interest of the child” and must prioritize “the right of the child to be heard and to participate in the different stages of the proceedings.”<sup>444</sup> The UN Committee on the Rights of the Child has defined “best interests” to mean “a larger weight must be attached to what serves the child best,” especially when an action of the State “has an undeniable impact” on the child.<sup>445</sup> It has further declared that separating children from their parents “should only occur as a last resort measure.”<sup>446</sup>

In *Smith & Armendariz*, the Inter-American Commission determined (1) that the wife of one of the petitioners had struggled to support the couple’s child and pay basic living expenses following his deportation, and (2) that the petitioner’s child lost the moral and emotional support of her father.<sup>447</sup> As a result, the Commission found that the United States had violated the American Declaration because it failed to consider the best interests of the non-citizen’s child prior to deportation.<sup>448</sup>

The European Court has halted the deportation of a parent based solely on the

best interests of her children, even though the non-citizen would have been eligible to return to the host country two years after her removal and despite the fact that the citizen father had already been granted full custody of the child.<sup>449</sup> In a case involving the deportation of two parents, the UN Human Rights Committee found that Australia needed to demonstrate “additional factors justifying the removal” beyond the “simple enforcement of its immigration law,” since the child had grown up entirely in the host country and developed social relationships there.<sup>450</sup>

This case law underscores the importance of an equitable balancing test that weighs the rights of children and their families against factors adverse to the non-national. In the case of post-earthquake deportations from the United States to Haiti, many Haitian deportees have U.S.-based family members, including children who are U.S. citizens or lawful permanent residents. Deportees were often the primary providers for their families. As a result, their spouses and children face significant financial and emotional hardship following deportation. Moreover, circumstances in Haiti make it difficult for family members to live or even travel there. Many children of deportees do not speak French or Creole and thus cannot attend school in Haiti. Children’s health also could be severely compromised by exposure to new diseases to which they have not built an immunity. U.S.-based spouses and family members would face similar health risks, and may also not speak Creole or French, making it especially difficult for them to find work in a country with 40-60% unemployment.<sup>451</sup> These circumstances make family reunification impossible for many deportees, and weigh heavily in favor of not deporting Haitian nationals to post-earthquake Haiti.

International human rights experts have urged respect for the right to family life and the rights of children who would be left behind, including their right to education, in the context of deportations to post-earthquake Haiti.



The UN High Commissioners for Refugees and Human Rights have urged countries to “prevent situations where returns lead to separation from family members.”<sup>452</sup> The UN Independent Expert on the Situation of Human Rights in Haiti emphasized that countries should ensure “the consideration of family” prior to deportation for all Haitian nationals.<sup>453</sup> The Inter-American Commission issued precautionary measures urging the United States to suspend deportations of Haitian nationals until procedures are in place that “adequately take into account their right to family life and their family ties in the United States.”<sup>454</sup>

## THE DEPORTATION PROCESS MUST TAKE INTO ACCOUNT POTENTIAL VIOLATIONS OF THE RIGHTS TO LIFE, SECURITY, INTEGRITY, AND HEALTH IN THE HOME COUNTRY

International human rights law requires countries to respect the rights to life, security, integrity, and health during deportation determinations. As discussed below, host countries may violate international human rights law when they deport a non-national with the knowledge that there is a significant risk that the non-national will experience infringements of these rights in their home countries. In the case of post-earthquake Haiti, the United States has full knowledge of the specific vulnerabilities and hardships deportees face in Haiti, including a woefully inadequate health system, deportees’ lack of family or social ties, and the violence, discrimination and stigmatization deportees as a class face in Haiti. As a result, the United States violates deportees’ rights to life, security, integrity, and health when it returns them to Haiti.

The American Declaration states that “every human being has the right to life, liberty and the security of . . . person.”<sup>455</sup> The Inter-American Commission has interpreted this provision to include the right of every person

“to have his physical, mental, and moral integrity respected.”<sup>456</sup> The Inter-American Court has further interpreted the right to life to mean the right to a “dignified life” and to “not be prevented from having access to the conditions that guarantee a dignified existence.”<sup>457</sup> The ICCPR establishes similar rights to life, security, and integrity.<sup>458</sup> The American Declaration further states that “every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care.”<sup>459</sup>

The Inter-American Commission has declared that a country’s immigration policy “must respect the right to life, physical and mental integrity.”<sup>460</sup> The Commission has further held that exposing individuals to a “genuine and foreseeable risk of death” by returning them to their country of origin constitutes a violation of the right to life.<sup>461</sup> Even when the risk of death is not “so imminent,” the Commission has found that a deportation that would likely result in the termination of critical medication would violate Article 26 of the American Declaration, which guarantees individuals the right “not to receive cruel, infamous or unusual punishment.”<sup>462</sup> The Commission has also recognized a violation to the right of security when deportation affects a person’s “enjoyment of his life, his limbs, his body, his health, and his reputation.”<sup>463</sup> The Inter-American Court held that a country violated a family’s right to moral and mental integrity when, among other things, it expelled the family to its home country despite the family’s fear and uncertainty about the consequences of returning home, where the parents had suffered inhumane treatment at the hands of the authorities in the past.<sup>464</sup> Similarly, General Comment No. 31 of the UN Human Rights Committee imposes upon countries “an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6



[right to life] and 7 [torture or cruel, inhuman or degrading treatment] of the [ICCPR], either in the country to which removal is to be effected or in any country to which the person may subsequently be removed...”<sup>465</sup>

In *Mortlock v. United States*, the Inter-American Commission found that deporting an individual living with HIV/AIDS to her home country where she would be unable to obtain proper treatment would amount to “protracted suffering and a premature death” in violation of her rights under the American Declaration.<sup>466</sup> The Commission laid out a balancing test for deportees with health problems and those likely to face health problems upon arrival in their home country. The test considers whether 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>467</sup>

Similarly, in *D. v. The United Kingdom*, the European Court held that the U.K.’s forcible return of a terminally-ill individual to his home country where he was not likely to receive adequate treatment for HIV/AIDS would amount to inhuman treatment under the European Convention on Human Rights.<sup>468</sup> In *B.B. v. France*, an HIV-positive prisoner appealed to the European Commission on Human Rights to remain in a French prison, where he was receiving treatment, and not to be deported to the Congo, where he would not be able to access treatment.<sup>469</sup> In view of the petitioner’s deteriorating health and the impossibility of receiving treatment in the Congo, the European Commission referred the case to the European Court. The Commission asserted that deportation would violate the prohibition on torture, inhuman, or degrading treatment in the European Convention on Human Rights.<sup>470</sup>

The European Court has broadly construed the prohibition on forced returns to protect

individuals from being forcibly returned to countries plagued by general violence, particularly non-citizens who are members of groups that are systematically exposed to ill-treatment.<sup>471</sup> In *N.A. v. United Kingdom*, the European Court held that in order to qualify for protection from general violence, the ill-treatment an individual alleges he will face if returned “must attain a minimum level of severity.”<sup>472</sup> It further held that the protection would be granted even when “the danger emanates from persons or groups of persons who are not public officials.”<sup>473</sup> In an earlier case, the Court held that the deportation of a man related to charges of terrorism would violate the non-citizen’s human rights due to “serious allegations of human rights abuses” by security forces in the man’s home country directed toward members of his religious group.<sup>474</sup>

The rights to life, security, integrity and health must be taken into consideration prior to deporting individuals to post-earthquake Haiti. Deportees with physical or mental health conditions often lack access to necessary medicines and health services in Haiti. The risk of contracting cholera and other communicable diseases is especially high for deportees given the likelihood that they will live in unsafe housing conditions and/or be detained by Haitian authorities. This is especially true for deportees with compromised immune systems or disabilities. The UN Independent Expert on Haiti and the UN High Commissioners for Refugees and Human Rights have urged governments not to send individuals with serious medical conditions back to Haiti, given the lack of medicines and medical care in the country.<sup>475</sup>

Deportees as a class also experience violence and stigmatization that leave them particularly vulnerable to threats to life, security, integrity, and health, and that generally threaten their human dignity. Many deportees live in fear of verbal and physical attacks, from both Haitian authorities and the community at large. Some groups of deportees, including



women and LGBT individuals, are particularly vulnerable to sexual assault and other forms of violence. Victims of sexual violence lack access to effective legal mechanisms to ensure perpetrators are caught and punished. Moreover, deportees often lack social, cultural and economic ties in Haiti, making it difficult or impossible to secure food, housing, and employment, thereby placing them at greater risk. The United States must weigh all of these factors, as the Commission did in *Mortlock*, prior to conducting any deportation. Given the devastating conditions in post-earthquake Haiti, especially for deportees, this balancing test weighs in favor of not forcibly returning *anyone* to Haiti at this moment in time, regardless of criminal history.

As discussed above, U.S. courts have narrowly interpreted persecution in ways that exclude many individuals from protection.<sup>476</sup> While the U.S. has ratified and is thus bound by the UN Convention Against Torture, it has included an understanding that limits the U.S. interpretation of the prohibition on the forced return of people who are likely to be tortured.<sup>477</sup> This understanding has resulted in a narrow interpretation of torture, including in the context of Haitian nationals applying for CAT protection to stop their deportation to Haiti. Specifically, the Board of Immigration Appeals and some U.S. courts have held that even life-threatening conditions faced by deportees in Haiti do not qualify as torture, unless there is a showing that Haitian authorities, or those acting with their acquiescence, purposefully inflict “severe pain or suffering.”<sup>478</sup> This narrow judicial interpretation of CAT imposes a high burden on applicants, making this form of relief largely unavailable to individuals facing deportation to Haiti.<sup>479</sup> By not including a balancing test that weighs criminal history against equities and by narrowly construing CAT protection, the U.S. legal regime fails to comply with international standards.

## THE DEPORTATION PROCESS MUST FOLLOW INTERNATIONAL DUE PROCESS NORMS

International human rights law requires countries to protect the rights to due process and fair trial during the process of deportation. Deficiencies in U.S. immigration law and in the implementation of the April 1 Policy constitute a failure on the part of the United States to respect the rights to due process and fair trial during the process of deportation of Haitian nationals.

The American Declaration provides robust due process protections, establishing the rights to “resort to the courts to ensure respect for . . . legal rights” and “to be given an impartial and public hearing.”<sup>480</sup> Both the Inter-American Commission and Inter-American Court have interpreted these provisions to require countries to provide “effective and appropriate judicial guarantees” during all kinds of proceedings, including administrative matters.<sup>481</sup> The Inter-American Court has specifically emphasized that the “full range of basic guarantees of due process” are applicable during deportation proceedings.<sup>482</sup> Similarly, the Inter-American Commission has declared that a country’s “immigration policy must guarantee to all an individual decision with the guarantees of due process.”<sup>483</sup>

Due process guarantees are especially important when children’s interests are concerned.<sup>484</sup> The Inter-American Court has emphasized “the right of the child to be heard and to participate in the different stages” of immigration proceedings.<sup>485</sup>

In the *Case of the Pacheco Tineo Family v. Bolivia*, the Inter-American Court held that “a proceeding that may lead to the expulsion or deportation of an alien must be of an individual nature, in order to allow the personal circumstances of each person to be assessed.”<sup>486</sup> Children whose parents are subject to deportation proceedings, the Court found, must be treated as interested, active parties to the proceedings themselves, not “as subjects, conditioned by and limited to the rights of their parents.”<sup>487</sup> The Court subsequently held in *Case of*



*Dominican and Haitian People Expelled v. Dominican Republic* that the lack of access to administrative or judicial review in deportation proceedings, as well as the absence of a right to appeal the decision, constituted a violation of the right to due process.<sup>488</sup>

In *Smith & Armendariz v. United States*, the Inter-American Commission declared that “heightened due process protections apply” in the context of deportation because of the fundamental rights that are, oftentimes irreversibly, at stake.<sup>489</sup> The United States violated an individual’s due process rights under the American Declaration, the Commission found, when it failed to provide that individual and his family a “judicial mechanism to present their humanitarian defenses.”<sup>490</sup> The Commission underscored that immigration removal proceedings must be conducted by a neutral decision maker and that a balancing test flexible to the facts of each case is the “only mechanism” by which to reach a fair decision.<sup>491</sup>

---

***In Smith & Armendariz, the Commission identified the following factors as relevant for an individualized determination regarding deportation:*<sup>492</sup>**

***[T]he 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>493</sup>**

---

As detailed above, U.S. immigration law, in most circumstances, does not permit an immigration judge to conduct such a balancing of humanitarian equities against adverse factors weighing in favor of deportation.<sup>494</sup> The April 1 Policy concerning U.S. deportations to Haiti directs ICE to conduct a balancing test that weighs the United States’ interest in deportation against the non-national’s equities, but it lacks clear guidelines, and decisions are made entirely at the discretion of ICE officers. Moreover, there is no clear notification process or opportunity for the non-national to respond. The determination is not reviewed by an immigration judge or other independent adjudicator. There is no right to appeal. This stands in stark contrast to the requirements laid out in *Smith & Armendariz*.

The United States should adopt a deportation legal regime that comports with international due process standards and that includes all the hallmarks of due process and fair trial principles, including transparency, a fair hearing before an immigration judge, notice, the opportunity to receive legal representation, and a balancing of all of equitable factors described above. Additionally, courts must take the best interests of the child into account during any removal proceeding involving his/her parent(s). These guarantees are especially important in the case of deportations to post-earthquake Haiti due to the heightened and unique risks laid out in this report. Moreover, the determination laid out above must not be purely discretionary and must be subject to appeal and judicial review. All legal proceedings should be conducted by an immigration judge and not by an immigration enforcement officer, as the current April 1 Policy provides. ■



## CHAPTER 4

# Recommendations to the United States, Haiti, and the International Community<sup>495</sup>

## UNITED STATES

### WITH RESPECT TO HAITIAN NATIONALS, THE UNITED STATES SHOULD:

- 1. Halt Deportations to Haiti.** The United States should refrain from deporting any individual to Haiti, unless and until the current humanitarian crisis in Haiti significantly improves such that deportees from the United States can survive and lead safe and dignified lives in Haiti.
- 2. Extend Temporary Protected Status (TPS) to All Haitian Nationals.** The United States should extend TPS to all Haitian nationals currently living in the United States, regardless of criminal history and regardless of date of arrival in the United States, for the duration of the humanitarian crisis in Haiti.
- 3. Adopt a Humanitarian Balancing Test, If and When Conditions in Haiti Improve to Such a Degree That Some Deportations Might Be Justified.** The United States should balance, on a case-by-case basis, equitable factors against the nature and severity of the criminal activity. This balancing test should apply to people regardless of immigration status or criminal record, should not be purely discretionary, and should be subject to appeal and judicial review. The balancing test should be conducted by an immigration judge and not by an immigration enforcement officer, as the current April 1 Policy provides. Equitable factors include:
  - Hardship if deportation were to occur, including but not limited to consideration of the following factors:
    - » Whether the noncitizen or U.S.-based family member suffers from a disability, physical or mental health condition, or illness;
    - » The availability and accessibility of medicine and medical care, social services, housing, employment, and other forms of support;
    - » The exposure to health risks (e.g., cholera) or other threats to life or well-being on account of the general country conditions in Haiti or the particular vulnerability of the noncitizen or his/her family;
    - » Family, community, work, language, cultural, or other ties;
    - » The noncitizen and any accompanying family members' ability to speak Haitian Creole;
    - » The impact of deportation on the noncitizen's immediate family members, especially minor children;
    - » Whether the individual is a member of a vulnerable group; and
    - » Whether the individual was born in the country of deportation.

- Conditions in the country of deportation;
  - Specific vulnerabilities to those conditions of the noncitizen and any accompanying family member;
  - U.S. property or business ties;
  - Duration of residence in the United States;
  - Value and service to the community;
  - Rehabilitation and good character, if a criminal record exists;
  - Service in the U.S. Armed Forces; and
  - Any other equities the individual may have.
4. **Ensure the Existence of a Robust, Fully-Functioning, Sufficiently-Funded, Accountable, and Transparent Reintegration Program in Haiti to Meet the Basic Life Needs of Deportees.** The reintegration program must be tailored to the individual circumstances of each deportee and funds should be appropriated consistent with an individual's needs and abilities. Critical components of such a reintegration program include: (1) providing necessary financial aid and in-kind assistance to deportees, based upon an individualized assessment of each individual's case; (2) improving collaboration between the Haitian government, civil society, and NGOs; (3) financing educational facilities and learning centers in Haiti which deportees can access at no cost; (4) aiding in the creation of jobs for deportees in Haiti; (5) assisting in the provision of free or low cost healthcare for deportees in Haiti; and (6) ensuring that all deportees receive a Haitian national identification card immediately upon deportation and eliminating any barriers to acquiring regular (non-marked) passports in a timely manner; and (7) working with the Haitian government to improve negative perceptions and eliminate stigmatization of deportees. A final essential component of a successful reintegration program is the creation of an independent monitoring body to ensure that the reintegration program is fully implemented, effective, and complies with international human rights standards.
5. **Encourage the Government of Haiti to Officially and Publicly Issue a No-Detention Policy.** The United States should encourage Haiti to adopt a no-detention policy stating that Haitian authorities shall not detain deportees from the United States except in accordance with Haitian law, which requires probable cause that the deportee has committed a crime in Haiti and mandates that detainees be brought before a judge within 48 hours.
6. **Permit the Return of Haitian Deportees.** Allow individuals deported to post-earthquake Haiti to return to the United States, since no deportation in the past five years could have met the standards of the humanitarian balancing test proposed in Recommendation I.3.
7. **Engage with U.S. Civil Society in a Transparent, Meaningful, and Timely Manner.** The United States should engage with immigrants' and human rights advocates in a transparent and meaningful way about its decisions with respect to deportations to Haiti and other related matters. This commitment includes, at a minimum, holding bi-annual roundtables or stakeholder meetings.



8. **Promote Increased International Aid to Haiti.** The United States should work with Haitian and international NGOs to ensure that foreign aid money allocated to Haiti is remitted through means that are transparent and that aid money is effectively allocated in a way that rebuilds Haiti's infrastructure and creates sustainable positive improvements in the lives of all Haitian people, and not just select sectors. The United States should provide targeted funds to improve jails and detention centers in Haiti.

**WITH RESPECT TO ALL NON-CITIZENS, THE UNITED STATES SHOULD:**

9. **Adopt Laws, Procedures, and Programs That Respect Human Rights of Foreign Nationals.** The United States should enact laws, procedures, and programs designed to ensure respect for their human rights during the process of deportation, including the rights to life; family unity and private life; personal security, integrity, and health; due process and a fair hearing; and the rights of children to "special protections" and to have their "best interests" considered when their family members are at risk of deportation.
10. **Provide Special Protection for Children and Ensure Their Best Interests Are Given Primary Consideration.** The United States must provide children with special protection during the process of deportation and ensure their best interests are taken into account during each stage of the process. This includes providing children the right to be heard and to participate, as appropriate, in deportation proceedings.
11. **Eliminate or Minimize Civil Immigration Detention and Improve Existing Detention Practices.** The United States should eliminate or minimize the use of detention in civil immigration cases. Any continued use of detention must eliminate use of remote detention facilities so as to help ensure access to lawyers and support networks. Detention conditions must conform to national and international standards, which should and be codified into U.S. law.
12. **Expand U.S. Participation in the International Protection Regime**
- a. **Adopt "Universal TPS."** The United States should adopt a "Universal TPS" or other protection policy that permits all non-citizens—regardless of nationality, criminal record, residency status, or date of arrival in the United States—to remain lawfully in the United States for the duration of humanitarian and human rights crises brought on by natural or human-made disasters in their home countries, such as the crisis in post-earthquake Haiti. The United States should look to the opinions of international human rights bodies, legal experts, and NGOs, and experts in making a determination as to the existence and duration of such crises.
  - b. **Adopt Cartagena Declaration Standard.** The United States should incorporate the following standard from the Cartagena Declaration into U.S. law: individuals should receive protection from forced return when their "lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."<sup>496</sup>

- c. **Expand Interpretation of Article 3 of the Convention Against Torture.** The United States should retract its understanding of Article 3’s protection as only applying to forms of mistreatment that are “specifically intended” to inflict severe pain or suffering and bring the U.S. interpretation of the scope of protection under Article 3 into conformity with international law.
- d. **Permit Complaints Under Article 22 of the Convention Against Torture.** The United States should make the necessary declaration under Article 22 of the UN Convention Against Torture, which permits individuals to lodge complaints before the UN CAT Committee about violations of their rights by the U.S. government.
- e. **Respect IACHR Decisions and Findings.** The United States should respect the findings and decisions of the Inter-American Commission on Human Rights (IACHR). In particular, the United States should utilize a presumption of non-deportability in any case in which the IACHR has issued precautionary measures.

### THE GOVERNMENT OF HAITI SHOULD:

1. **End Detention of Deportees.** Haiti should end the practice of detaining deportees for any length of time unless there is probable cause to believe the individual committed a crime in Haiti. The government should issue an official policy announcing the permanent and unequivocal cessation of this practice.
2. **Improve Detention Conditions.** Haiti should ensure that conditions in jails, prisons, and detention facilities meet international human rights standards. Detainees—both deportees and the general population—should not be subjected to physical harm at the hands of jail officials or other inmates. Detainees should only be kept in safe and sanitary detention conditions, which includes, at a minimum, potable water, edible food, and medical and mental health care. Officials who demand bribes to ensure detainee safety or security should be held accountable.
3. **Eliminate “Sign Out” of Custody Requirement.** Haiti should eliminate the current requirement that family members or others sign the deportee out of custody upon arrival in Haiti and take responsibility for the deportee.
4. **Ensure Availability of ID Cards and Passports.** Haiti should ensure distribution of national identification cards to Haitian deportees immediately upon their return to Haiti, and ensure deportees’ timely access to regular (unmarked) Haitian passports.
5. **Remove Stigmatization of Deportees.** Haiti should take affirmative steps to change negative public perceptions toward and violence against deportees and remove any institutionalized forms of stigmatization against deportees. Haiti should investigate and sanction any government officials who engage in this type of stigmatization.



- 6. Protect Vulnerable Deportees.** Haiti should take steps to protect deportees who are especially vulnerable in Haitian society, including women, LGBT individuals, and those with physical or mental illness or disability.
- 7. Ensure Basic Life Needs of Deportees.** Haiti should work with the United States to ensure that fully-functioning, sufficiently-funded, accountable, and transparent reintegration, housing, and healthcare programs are in place in Haiti to meet the basic life needs of deportees.

### THE UNITED NATIONS SHOULD:

- 1. Reissue Advisory on Haiti.** The UN should reissue, through the Office of the High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, and the Independent Expert on Haiti, advisories and reports calling upon all UN member states to halt forced returns to Haiti in light of the continuing humanitarian crisis.
- 2. Issue General Comment.** The UN should issue a general comment, through one of the UN human rights treaty monitoring bodies, on the duties of UN member states under international human rights law not to engage in forced returns during a humanitarian crisis.
- 3. Issue Strong Rebuke.** The UN should issue a strong rebuke to the United States during the Universal Periodic Review in 2015 for its continued deportations to post-earthquake Haiti.

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR) SHOULD:

- 1. Monitor Deportations to Haiti.** The IACHR should continue to monitor the situation of post-earthquake deportations from the United States to Haiti through hearings, working meetings, reports, and public decisions.
- 2. Endorse Balancing Test Set Forth Above.** Endorse the balancing test set forth in Recommendation 3 to the United States, as applicable to both LPRs and non-LPRs of all nationalities in general and, at the very least, to Haitian LPRs and non-LPRs.
- 3. Expand the Balancing Test in *Smith & Armendariz v. U.S.* and *Mortlock v. U.S.*** The IACHR should expand the balancing test in *Smith & Armendariz v. U.S.* and *Mortlock v. U.S.* to include all of the factors listed in the balancing text in Recommendation 3., including the risk of being exposed to new threats to life and health in the country of origin, the availability and accessibility of housing and employment, and the impact of these hardships on the non-citizen's children and other family members and loved ones. ■







# Endnotes

- 1 The information in this section came from the following sources: Interview with Beverly, Dominique, & David, in Miramar, Florida (Nov. 8, 2014); Interview with Elie, sister in-law of deportee, in Port-au-Prince, Haiti (Oct. 6, 2014); Interview with Conrad, deportee, in Port-au-Prince, Haiti (Dec. 18, 2013); ICE Records (on file with authors).
- 2 Interview of Billy, deportee, Port-au-Prince (Dec. 15, 2013).
- 3 See, e.g., *Mortlock v. United States*, Case 12.534, Inter-Am. Comm’n H.R., Report No. 63/08, OEA/Ser. L/V/II.134, doc. 5 rev. 1 (July 25, 2008); *Smith & Armendariz, et al. v. United States*, Case 12.562, Inter-Am. Comm’n H.R., Report No. 81/10 OEA/Ser.L/V/II.139, doc. 5 rev. 1 (Mar. 7, 2011).
- 4 See discussion *infra* at pp. 47-51.
- 5 Jean-Germain Gross, *State Failure, Underdevelopment, and Foreign Intervention in Haiti* 168 (2011).
- 6 *Haiti Earthquake: ‘Thousands Poured Out, Crying and Carrying Bodies,’* The Guardian, Jan. 13, 2010, <http://www.theguardian.com/world/2010/jan/13/haiti-earthquake-eyewitness-stories>.
- 7 Maureen Taft Morales & Rhoda Margesson, Cong. Research Serv., R41023, *Haiti Earthquake: Crisis & Response* 1 (2010); Int’l Monetary Fund, *Haiti: 2012 Article IV Consultation and Fifth Review Under the Extended Credit Facility* 5 (2013), <http://www.imf.org/external/pubs/ft/scr/2013/cr1390.pdf>.
- 8 Morales, *supra* n. 7 at 1.
- 9 *Id.*
- 10 *Tectonic Shifts: Haiti Since the Earthquake* 1 (Mark Schuller & Pablo Morales eds., 2012).
- 11 Int’l Monetary Fund, *Haiti: 2012 Article IV Consultation and Fifth Review Under the Extended Credit Facility* *supra* n. 7 at 5.
- 12 *Tectonic Shifts: Haiti Since the Earthquake*, *supra* n. 10 at 1.
- 13 Int’l Monetary Fund, *supra* n. 6 at 5; Jean-Germain Gross, *supra* n. 5 at 73.
- 14 *Statement of Deputy Press Secretary Matt Chandler*, Jan. 13, 2010, <http://www.dhs.gov/news/2010/01/13/statement-deputy-press-secretary-matt-chandler>.
- 15 UN Indep. Expert on the Situation of Human Rights in Haiti, *Rep. of the Independent Expert on the Situation of Human Rights in Haiti, Addendum: Forced Returns of Haitians by Third States*, Human Rights Council, UN Doc A/HRC/20/35/Add.1 (June 4, 2012), ¶¶ 18-23 [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1_en.pdf) [hereinafter *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*].
- 16 Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (Jan. 21, 2010).
- 17 8 U.S.C. § 1254a(b)(1)(A)-(B) (2012).
- 18 8 U.S.C. § 1254a(c)(2)(B)(ii) (2012).
- 19 Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476 (Jan. 21, 2010).
- 20 *Epidemiological Update-Cholera*, PAHO, 1 (Dec. 02, 2014), [http://www.paho.org/hq/index.php?option=com\\_docman&task=doc\\_view&gid=28391+&Itemid=999999&lang=en](http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=28391+&Itemid=999999&lang=en).
- 21 Alejandro Cravioto, et al., Final Report of the Independent Panel of Experts on the Cholera Outbreak in Haiti 3 (2011), available at <https://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf>.
- 22 *Id.* at 4.
- 23 *Cholera*, Fact Sheet No. 107, World Health Org., <http://www.who.int/mediacentre/factsheets/fs107/en/> (last updated Feb. 2014).
- 24 *Cholera Risk Factors*, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/cholera/basics/risk-factors/con-20031469> (last updated Apr. 5, 2014).
- 25 8 U.S.C. § 1227(a)(2) (2012) (criminal grounds of deportability); 8 U.S.C. § 1182(a)(2) (2012) (criminal grounds of inadmissibility); see also Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 Harv. L. Rev. 1936, 1938 (2000).
- 26 See Bill Ong Hing, *Re-examining the Zero-Tolerance Approach to Deporting Aggravated Felons: Restoring Discretionary Waivers and Developing New Tools*, 8 Harv. L. & Pol’y Rev. 141, 145-164 (2014).
- 27 *Padilla v. Kentucky*, 559 U.S. 356, 360-64 (2010).
- 28 8 U.S.C. § 1229b(a) (2012).
- 29 8 U.S.C. § 1229b(a)(3) (2012) (requiring that the individual “has not been convicted of any aggravated felony”); see also 8 U.S.C. § 1101(a)(43) (2012) (defining aggravated felony).
- 30 8 U.S.C. § 1229b(a)(1) (2012) (requiring that the individual “has been an alien lawfully admitted for permanent residence for not less than 5 years”) and 8 U.S.C. § 1229b(a)(2) (2012) (requiring that the individual “has resided in the United States continuously for 7 years after having been admitted”).
- 31 For example, current law defines theft as an aggravated felony if the sentence imposed is one year, even if the sentence is suspended. See 8 U.S.C. § 1101(a)(43)(G)(2012); 8 U.S.C. § 1101(a)(48)(B)(2012). Such crimes are misdemeanors in many states. See Morawetz, *supra* n. 28 at 1940.
- 32 A predecessor statute, Immigration and Nationality Act section 212(c) permitted LPRs with aggravated felonies to apply for relief from removal. Section 212(c), however, was repealed in 1997 and remains available only to individuals convicted while 212(c) was still in effect. See *Matter of Abdelghany*, 26 I&N Dec. 254, 268 (BIA 2014).
- 33 8 U.S.C. § 1229b(b)(1)(2012).
- 34 8 U.S.C. § 1229b(b)(1)(B)-(C)(2012); see also 8 U.S.C. § 1011(f) (2012) (defining good moral character).
- 35 8 U.S.C. § 1229b(b)(1)(A)(2012).
- 36 8 U.S.C. § 1229b(b)(1)(D)(2012). The Board of Immigration Appeals has interpreted “exceptional and extremely unusual hardship” to require showing suffering that is “substantially” beyond the ordinary hardship that would be expected when a



close family member leaves this country.” *Matter of Monreal-Aguinaga*, 23 I. & N. Dec. 56, 62 (BIA 2001).

- 37 8 U.S.C. § 1229(e)(1) (2012).
- 38 8 U.S.C. § 1158 (2012) (asylum); 8 U.S.C. § 1231(b)(3) (2012), 8 C.F.R. § 208.16 (2012) (withholding of removal); 8 C.F.R. § 208.18 (2012) (deferral of removal under the Convention Against Torture).
- 39 8 U.S.C. § 1158(b)(2)(A)(ii)-(iii) (2012) (criminal bars to asylum); 8 U.S.C. § 1231(b)(3)(B)(ii)-(iii) (2012) (criminal bars to withholding).
- 40 In order to be granted asylum or withholding of removal, persecution must be on account of “race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1158(b)(1)(B)(i) (2012) (asylum); 8 U.S.C. § 1231(b)(3)(A) (withholding of removal); 8 U.S.C. 1101(42) (A) (2012)(defining refugee for purposes of asylum and withholding of removal). Persecution is not defined by the Immigration and Nationality Act. Courts have held that general conditions that affect all people alike do not rise to the level of persecution for purposes of asylum and withholding of removal. *See, e.g. Capric v. Ashcroft*, 355 F.3d 1075, 1084 (7th Cir. 2004).
- 41 8 C.F.R. § 208.4(a) (2012).
- 42 An individual applying for withholding of removal based on fear of future persecution alone must demonstrate “it is more likely than not” that his or her “life or freedom would be threatened.” 8 C.F.R. § 208.16(b)(2) (2012). An individual applying for asylum need only show “a reasonably possibility” of persecution. 8 C.F.R. § 208.13(b)(2)(i)(B) (2012).
- 43 8 C.F.R. § 208.18(a)(1); *In re J-E*, the Board of Immigration Appeals found that, based on the record presented by the applicant, “standard prison conditions in Haiti do not constitute torture within the meaning of 8 C.F.R. § 208.18(a).” *In re J-E*, 23 I. & N. Dec. 291, 291 (BIA 2002); *see also Pierre v. Attorney General*, 528 F.3d 180, 189 (3d Cir. 2008) (finding that lack of medical care and resultant pain Pierre would suffer in Haitian jail did not constitute torture for purposes of CAT); *see generally* Mary Holper, *Specific Intent and the Purposeful Narrowing of Victim Protection Under the Convention Against Torture*, 88 Or. L. Rev. 777 (2009).
- 44 *See* Exec. Office of Immigration Review, U.S. Dep’t. of Justice, *FY2012 Statistical Year Book M1* (Mar. 2013), available at <http://www.justice.gov/eoir/statspub/fy12syb.pdf> (of the 29,796 CAT applications, 643 were granted and 9,710 were denied. 736 were deemed abandoned, 6,327 were withdrawn, and another 12,380 were listed as “other.”).
- 45 CCTV America, *Americas Now This Week: Haiti’s Reconstruction Slowed By Corruption* (Oct. 29, 2014), <http://www.cctv-america.com/2014/10/29/americas-now-this-week-haitis-reconstruction-slowed-by-corruption-and-bribery>; The Stream Team, Aljazeera America, *Haiti: 4 Years After the Quake* (Jan. 10, 2014), <http://www.aljazeera.com/watch/shows/the-stream-of-the-latest/2014/1/10/haiti-4-years-after-thequake.html> (“[P]rogress in Haiti is slow at best... Many of the infrastructure projects USAID had promised have been scaled down or halted.”).
- 46 U.S. Government Accountability Office, Haiti Reconstruction: USAID Infrastructure Projects Have Mixed Results and Face Sustainability Challenges, GAO-13-558 (June 18, 2013), <http://www.gao.gov/products/GAO-13-558?source=ra> (as of March 31, 2013 “most funds ha[d] not been disbursed”); The Stream Team, Aljazeera America, *supra* n. 25 (noting that “[t]he largest recipient of government funding for Haiti’s reconstruction has been U.S.-based companies” and that “less than one percent [] of contracts went to Haitian companies”).
- 47 Report of the Ad Hoc Advisory Group on Haiti, E/2014/95, ¶¶ 13-15, 49 (Oct. 8, 2014), available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2014/95&referer=/english/&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=E/2014/95&referer=/english/&Lang=E).
- 48 After receiving a response, the Senior Counsel to ICE informed ICE Director John Morton that two weeks prior, ICE’s Office of Detention and Removal Operations had reached out to a U.S. Department of State contact at the U.S. Embassy in Port-au-Prince to inquire when the State Department thought ICE could resume removals to Haiti. *See* Email from Beth Gibson, Senior Counsel, Immigration and Customs Enforcement, to John Morton, Dir., Immigration and Customs Enforcement (Feb. 18, 2010) (records obtained through a Freedom of Information Act request) (on file with authors). Gibson promised Morton to “keep working it.” *Id.*
- 49 Email from Beth Gibson, Senior Counsel, Immigration and Customs Enforcement copying John Morton, Dir., Immigration and Customs Enforcement (Feb. 18, 2010) (records obtained through a Freedom of Information Act request) (on file with authors).
- 50 Email from Undisclosed Sender to John Morton, Dir., Immigration and Customs Enforcement (Oct. 22, 2010) (records obtained through a Freedom of Information Act request) (on file with authors) (describing an outbreak of “an extremely virulent” strain of cholera); Email from John Sandweg, Acting Dir. Immigration and Customs Enforcement, to Beth Gibson, Asst. Deputy Dir., Immigration and Customs Enforcement & Suzanne Barr, Chief of Staff to Secretary Napolitano, Department of Homeland Security (Nov. 10, 2010) (records obtained through a Freedom of Information Act request) (on file with authors) (informing the recipients that the suspension “policy was lifted” and they “should begin to re-apprehend [Haitians] previously released.”).
- 51 In an email chain regarding a December 2010 congressional inquiry into the decision to resume removals, the following exchange took place between ICE Enforcement Assistant Deputy Director Beth Gibson and ICE Acting Deputy Director, Daniel Ragsdale:  
Gibson: ERO provided me figures today [December 27, 2010]—110 Haitian removals since earthquake. One of the 110 was a removal to France. But, the number seems high where all the material says no removals since the earthquake. Maybe all VR? Stew on it. I may need your help to think it through after a full briefing from ERO and OPLA on Thursday.  
Ragsdale: 10-4. We can always asked [sic] them to scrub the manifests? I-216’s? That does seem high.  
Gibson: They are scrubbing for Thursday. I’ll keep you posted. Trying not to pre-judge.  
The manifests presumably refer to the Haiti flight manifests. “Maybe all VR?” may refer to the practice of voluntary removal. Emails between Beth Gibson, Asst. Deputy Dir., Immigration and Customs Enforcement, and Daniel



- Ragsdale, Acting Deputy Dir., Immigration and Customs Enforcement (Dec. 27, 2010) (records obtained through a Freedom of Information Act request) (on file with authors).
- 52 Letter from Vincent Warren and Bill Quigley, Ctr. for Constitutional Rights, to Barack Obama, U.S. President (Dec. 16, 2010), [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); Gary Nelson, *Protests Surround Planned Deportations To Haiti*, CBS Miami (Dec. 20, 2010, 6:09 PM), <http://miami.cbslocal.com/2010/12/20/protests-surround-planned-deportations-to-haiti/#comments>; see also Kirk Semple, *Haitians in U.S. Brace for Deportations to Resume*, N.Y. Times, Dec. 19, 2010, at A20.
- 53 *Request for Precautionary Measures Before the Inter-American Commission on Human Rights*, U. of Miami Sch. of Law Human Rights and Immigration Clinics 1 (2011), available at <http://www.law.miami.edu/clinics/pdf/2011/summary-of-interamerican-petition-for-precautionary-measures-feb2011.pdf>.
- 54 *Id.* at 2.
- 55 Letter in Support of Precautionary Measures to Stop Imminent Deportations of Haitians from the United States to Dr. Santiago Canton, Executive Secretary, Inter-American Commission on Human Rights (Jan. 10, 2011), available at <http://ccrjustice.org/files/IACHR%20Haitian%20Deportations%20FINAL%20Sign-on%20Ltr.pdf>.
- 56 Tom Brown, *U.S. Resumes Deportations to Quake-Ravaged Haiti*, Reuters, Jan. 20, 2011, available at <http://www.reuters.com/article/2011/01/21/us-usa-haiti-deportations-idUSTRE70K08P20110121>.
- 57 *Travel Warning: Haiti*, U.S. Dep't of State (Jan. 20, 2010), <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=10315>.
- 58 See discussion *infra* at pp. 18-19.
- 59 Meeting Between Immigration Advocates and U.S. Gov't Officials, in Washington, D.C. (Jan. 28, 2011) (U.S. government officials at this meeting included Assistant Deputy Director of ICE Beth Gibson. Advocates included Marleine Bastien, Clarel Cyriaque, Cheryl Little, Randy McGrorty, and Rebecca Sharpless).
- 60 Jacob Kushner, *U.S. Deportees to Haiti, Jailed Without Cause, Face Severe Health Risks*, Florida Center for Investigative Reporting, Nov. 13, 2011, <http://fcir.org/2011/11/13/u-s-deportees-to-haiti-jailed-without-cause-face-severe-health-risk/>; see also Jennifer Kay, *Haitian Deportee Dies After Cholera-like Symptoms*, Miami Herald (Feb. 1, 2011), <http://www.miamiherald.com/2011/02/01/v-print/2044410/hatian-deportations>.
- 61 Kushner, *supra* n. 60.
- 62 *Id.*
- 63 *Id.*
- 64 Michael Miller, *Updated: Confusion Over Haitian Deportations After Victim's Fiance Blames US Gov For Death*, Miami New Times Riptide Blog (Feb. 3, 2011 6:56 PM), [http://blogs.miaminewtimes.com/riptide/2011/02/clauidine\\_magloire\\_fiance\\_of\\_ha.php](http://blogs.miaminewtimes.com/riptide/2011/02/clauidine_magloire_fiance_of_ha.php).
- 65 *Deported Haitian Man Dies in Jail*, Miami (CBS4), (Feb. 1, 2011), available at <http://miami.cbslocal.com/2011/02/01/deported-haitian-man-dies-in-jail/>.
- 66 *PM 5/11—Gary Resil, Harry Mocombe, Roland Joseph, Evel Camélien, and Pierre Louis, United States*, Inter-Am. Comm'n H.R. (2011) <http://www.oas.org/en/iachr/decisions/precautionary.asp> [hereinafter "IACHR, Precautionary Measures"].
- 67 *Id.*
- 68 *Policy for Resumed Removals to Haiti*, U.S. Immigration and Customs Enforcement (Apr. 1, 2011), <https://www.ice.gov/news/releases/policy-resumed-removals-haiti>; U.S. Immigration and Customs Enforcement, AILA InfoNet at Doc. No. 11030722, *Policy for Resumed Removals to Haiti* (Mar. 7, 2010), <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C8412%7C34771> [hereinafter *Policy for Resumed Removals to Haiti*].
- 69 *Id.*
- 70 *Id.*
- 71 *Id.*
- 72 *Id.*
- 73 *Id.*
- 74 Letter from Caroline Bettinger-Lopez et al., Univ. of Miami School of Law Human Rights Clinic, to Barack Obama, U.S. President (Mar. 18, 2011), <http://www.ccrjustice.org/files/2011%2003%2018%20Sign-on%20letter-FINAL.pdf>; *ICE Should Halt Deportations To Haiti, Says ACLU*, Am. Civil Liberties Union (Mar. 11, 2011), <https://www.aclu.org/human-rights-immigrants-rights/ice-should-halt-deportations-haiti-says-aclu>; Letter from Thomas M. Susman, Dir., Governmental Affairs Office, Am. Bar Assoc. to U.S. Immigration and Customs Enforcement (Mar. 11, 2011), <http://www.ccrjustice.org/files/American%20Bar%20Association%20Letter%20Removals%20to%20Haiti%203-11-11.pdf>; Am. Immigration Lawyers Assoc., AILA InfoNet Doc. No. 11031462, *Statement of the American Immigration Lawyers Association In Opposition to the U.S. Government's Resumption of Deportations to Haiti and Comments on the ICE Draft "Policy for Resumed Removals to Haiti"* 4-6 (Mar. 11, 2011), <http://www.aila.org/content/default.aspx?docid=34838>; see generally *Haiti: IACHR—Haitian Removals*, Ctr. for Constitutional Rights, <http://www.ccrjustice.org/ourcases/current-cases/iachr-haitian-removals>.
- 75 *Policy for Resumed Removals to Haiti*, *supra* n. 68.
- 76 *Id.*
- 77 All information in this section came from interviews with Claudine Magloire between January 2011 and November 2014, unless otherwise indicated.
- 78 Wildrick Guerrier was deported on account of convictions for possession of a firearm and battery on a law enforcement officer.
- 79 Interview with Wildrick Guerrier by La. Law Ctr. Immigration Clinic, in Baton Rouge, La. (Dec. 28, 2010).
- 80 Medical Summary of Federal Prisoner/Alien In Transit, U.S. Dep't of Justice (Jan. 19, 2011) (on file with authors).
- 81 *Policy for Resumed Removals to Haiti*, *supra* n. 68.
- 82 *Id.*
- 83 Press Release, Centr. for Constitutional Rights, *ICE Begins Second Round of Deportations to Haiti During Humanitarian Crisis* (April 15, 2011), [http://www.ccrjustice.org/files/Statement\\_April%2015%20Deportations%20to%20Haiti%20Final2%2010.58am.pdf](http://www.ccrjustice.org/files/Statement_April%2015%20Deportations%20to%20Haiti%20Final2%2010.58am.pdf).
- 84 Letter from the Univ. of Miami Immigration and Human Rights Clinics, the Ctr. for Constitutional Rights, Florida Immigrant Advocacy Ctr., FAMN and Alternative Chance,



- to Barack Obama, U.S. President (Apr. 19, 2011), <http://ccrjustice.org/files/Final%20Petition%20Deportations.pdf>.
- 85 Letter from African and Caribbean Network Limited et al., to Janet Napolitano, Secretary of Homeland Sec., U.S. Dep't of Homeland Sec. (July 15, 2011), [http://ccrjustice.org/files/Joint%20Letter%20on%20Haitian%20returns\\_final%207%2020%2011.pdf](http://ccrjustice.org/files/Joint%20Letter%20on%20Haitian%20returns_final%207%2020%2011.pdf).
- 86 Extension and Redesignation of Haiti for Temporary Protected Status, 76 Fed. Reg. 29000 (May 19, 2011) ("The redesignation of Haiti allows additional individuals who have been continuously residing in the United States since January 12, 2011, to obtain TPS, if eligible, including certain Haitians who arrived in the United States following the January 12, 2010 earthquake in Haiti").
- 87 *Id.*
- 88 *Id.*
- 89 *Haiti Travel Warning*, Bureau of Consular Affairs, U.S. Passports and Int'l Travel, U.S. Dep't of State (Mar. 14, 2014), available at <http://travel.state.gov/content/passports/english/alertswarnings/haiti-travel-warning.html>.
- 90 Extension of the Designation of Haiti for Temporary Protected Status, 79 Fed. Reg. 11808 (March 3, 2014).
- 91 *Haiti Travel Warning*, *supra* n. 89.
- 92 *Policy for Resumed Removals to Haiti*, *supra* n. 68.
- 93 *Id.*
- 94 *Id.*
- 95 *Id.*
- 96 Meeting between Immigration Advocates and Immigration and Customs Enforcement, Washington. D.C. (Jan. 29, 2014).
- 97 *Id.*
- 98 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 53.
- 99 Meeting between Immigration Advocates and Immigration and Customs Enforcement, Washington. D.C. (Jan. 29, 2014).
- 100 *Id.*
- 101 *Id.*
- 102 *Id.*
- 103 *Id.*
- 104 See discussion *infra* at pp. 24-27.
- 105 Meeting between Immigration Advocates and Immigration and Customs Enforcement, Washington. D.C. (Jan. 29, 2014).
- 106 See discussion *infra* at pp. 24-27.
- 107 The U.S. deported approximately 349 individuals between April 2011 and December 2011 and over 500 individuals both in 2012 and 2013 to Haiti. See *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶¶ 41 & 46 (stating that the United States "forcibly returned 376 individuals to Haiti between January and December 2011" and continued "to deport approximately 40-50 persons to Haiti each month" in the 2012 year); U.S. Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec., ICE Air Charter (unpublished manifests containing names of people on monthly deportation flights to Haiti April-December 2011, June-December 2012, February-September 2013, and September 2014) (on file with authors) [hereinafter unpublished manifests].
- 108 *Id.*
- 109 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶¶ 41 & 46; U.S. Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec., ICE Air Charter (unpublished manifests of monthly deportation flights to Haiti, April-December 2011, June-December 2012, February-September 2013, and September 2014) (on file with authors).
- 110 U.S. Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec., ICE Air Charter (Sept. 2014) (unpublished manifest of deportation flight to Haiti) (on file with authors).
- 111 The authors make this conclusion based on interviews with over a hundred deportees and their family members.
- 112 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶¶ 41 & 46; U.S. Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec., ICE Air Charter (unpublished manifests of monthly deportation flights to Haiti, April-December 2011, June-December 2012, February-September 2013, and September 2014) (on file with authors).
- 113 The July 2012 flight on which percentage is based totaled 47 and the September 2014 flight totaled 27. U.S. Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec., ICE Air Charter (July 2012, Sept. 2014) (unpublished manifest of monthly deportation flights to Haiti showing crimes) (on file with authors).
- 114 See discussion *supra* at p. vii.
- 115 Const. de la Republique D' Haïti, 1987, arts. 10-12 (The principle of *jus sanguinis* confers citizenship to any child of a native-born Haitian mother).
- 116 Such deportations are contrary to U.S. and international law, unless the U.S. government notifies the noncitizen of their intention to deport to a country other than the one listed on the removal order and gives the noncitizen an opportunity to file for asylum, withholding of removal, or relief under Article 3 of CAT. See Immigration and Nationality Act §§ 241(b)(1)-(2), (b)(3)(B), 8 U.S.C. §§ 1231(b)(1)-(2), (b)(3)(B)(2011); *Convention Relating to the Status of Refugees*, art. 33, 1951 189 U.N.T.S. 137; *Protocol Relating to the Status of Refugees*, 1967, 606 U.N.T.S. 267; Interview with Bernard, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013).
- 117 Sue Weishar, *U.S. Resumes Deportations to Haiti*, Just South E-Newsletter (Jan. 12, 2011), <http://www.loyno.edu/jrsri/us-resumes-deportations-haiti>.
- 118 Interview with Carl, deportee, & his wife, Christina, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 119 *Id.*
- 120 *Zadvydas v. United States*, 533 U.S. 678, 701 (2001).
- 121 *Id.*
- 122 *Policy for Resumed Removals to Haiti*, *supra* n. 68.
- 123 Immigration and Refugee Board of Canada, *Responses to Information Requests* (Jan. 31, 2008), [http://www.justice.gov/eoir/vll/country/canada\\_coi/cuba/ZZZ102626.E.pdf](http://www.justice.gov/eoir/vll/country/canada_coi/cuba/ZZZ102626.E.pdf) (describing how the United States routinely releases Cuban from detention on orders of supervision if they cannot be deported).
- 124 Roxana Bacon, *Taking Issue With Homeland Security On Haiti*, 47 Ariz. Att'y 8 (June 2011), available at [https://www.myazbar.org/AZAttorney/PDF\\_Articles/0611Soundoff.pdf](https://www.myazbar.org/AZAttorney/PDF_Articles/0611Soundoff.pdf)
- 125 *Id.* ("a variety of protections are available, including supervised release and electronic monitoring devices, to ensure the public's safety").
- 126 *Policy for Resumed Removals to Haiti*, *supra* n. 68.
- 127 *Id.*



- 128 Telephone interview with former staff member of International Organization on Migration (Oct. 6, 2014).
- 129 *Policy for Resumed Removals to Haiti*, *supra* n. 68 (stating that the United States has been working with partners “to resume removals in as safe, humane, and minimally disruptive a manner as possible and to develop a comprehensive reintegration strategy that encompasses a range of services for returned Haitians to smooth their transition into Haitian society, including healthcare assistance and skills training to enhance employment prospects.”).
- 130 Interview with Olson, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 131 Interview with Raymond, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 132 Interview with Milton, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 133 Interview with Reginald, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 134 *See, e.g.*, Interview with Augustine, deportee, in Port-au-Prince, Haiti (Feb. 2012); Interview with Richard, deportee, in Port-au-Prince, Haiti (Feb. 2012); Interview with Magnum, deportee, in Port-au-Prince, Haiti (Feb. 2012); Interview with Samuel, deportee, in Port-au-Prince, Haiti (Feb. 2012); Interview with Milton, deportee, in Port-au-Prince, Haiti (Feb. 2012; *see also Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 79).
- 135 Interview with Augustine, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 136 *Id.*
- 137 Interview with Gary, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 138 Interview with Reginald, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 139 *See, e.g.*, Interview with Gary, deportee, in Port-au-Prince, Haiti (Feb. 2012) (commenting that he was only given a piece of livelihoods equipment when visitors came to see the progress of the program).
- 140 *See, e.g.*, Interview with Richard, deportee, in Port-au-Prince, Haiti (Feb. 2012) (stating that he handed in a livelihoods proposal and tried following up in person and by telephone, but could not reach anyone at IOM or the NGO partners); Interview with Wesley, deportee, in Port-au-Prince, Haiti (Feb. 2012) (noting that he attended a meeting in his hometown outside Port-au-Prince but was unable to get livelihoods equipment or follow up).
- 141 UN High Comm’r for Refugees, *OHCHR/UNHCR Urge Extending Suspension of Returns to Haiti* (Feb. 12, 2010), <http://www.unhcr.org/4b7543026.html>; UN High Comm’r for Refugees, *Joint UNHCR-OHCHR Return Advisory Update on Haiti* (June 9, 2011), <http://www.unhcr.org/4e0305666.html> [hereinafter both of these documents will be referred to together as “UN High Commissioner for Refugees and Human Rights Joint Communications”].
- 142 *Id.*
- 143 Press Release, Inter-Am. Comm’n H.R., IACHR Urges United States to Suspend Deportations to Haiti, Press Release No. 6/11 (Feb. 4, 2011), <http://www.cidh.oas.org/Comunicados/English/2011/6-11eng.htm>.
- 144 IACHR, Precautionary Measures, *supra* n. 66.
- 145 *Id.*
- 146 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶¶ 74 & 93(a); *see also* UN Indep. Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, Human Rights Council, UN Doc. A/HRC/20/35 ¶¶ 89-90 (Apr. 23, 2012), <http://ijdh.org/wordpress/wp-content/uploads/2012/06/Report-of-the-Independent-Expert-on-the-situation-of-human-rights-in-Haiti-Michel-Forst.pdf>
- 147 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 54.
- 148 *Id.* at ¶ 93(h)-(i).
- 149 International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171, (ratified June 8, 1992), *available at* <http://indicators.ohchr.org/>.
- 150 Kälin Questioning, *infra* n. 170.
- 151 Mack Response, *infra* n. 170.
- 152 Interview with Clifford, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 153 Interview with Frantz, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 154 Interview with Milton, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 155 *Id.*
- 156 Medical Summary of Federal Prisoner/Alien In Transit, U.S. Dep’t of Justice (April 14, 2011) (on file with authors).
- 157 Email from USAID staff to Michelle Karshan (Sept. 12, 2012).
- 158 *See, e.g.*, Interview with Augustine, deportee, in Port-au-Prince, Haiti (Feb. 2012); Interview with Richard, deportee, in Port-au-Prince, Haiti (Feb. 2012); *see also Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 78.
- 159 Brochure for Returning Deportees, Office National de la Migration (on file with authors); Interview with Dr. Louis Jeanny Girard, M.D., Mars and Kline Psychiatric Center, in Port-au-Prince, Haiti (Oct. 7, 2014).
- 160 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 78. Even before the earthquake, the United States government had recognized the need for reintegration services for deportees to Haiti.
- 161 *Program for Haitian Deportees Serves as Model for the Caribbean*, by Eric Green, USINFO, Aug. 7, 2007, *available at* <http://iipdigital.usembassy.gov/st/english/article/2007/08/200708031159511xeneerg0.9294702.html#axzz3LhcAcmb6>.
- 162 Cable from U.S. Embassy in Port-au-Prince, Haiti, Haitian Criminal Deportees (Part Two) Reintegration Program, ¶ 8 (Mar. 31, 2009), *available at* [http://www.wikileaks.org/plusd/cables/09PORTAUPRINCE348\\_a.html](http://www.wikileaks.org/plusd/cables/09PORTAUPRINCE348_a.html).
- 163 *Id.*
- 164 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 78.
- 165 Observation of Deportee Processing by Members of the Univ. of Miami Sch. of Law Human Rights & Immigration Clinics, in Port-au-Prince, Haiti (Dec. 17, 2013).
- 166 *Id.*
- 167 Telephone interview with Eddy, deportee (Dec. 27, 2013).
- 168 Observation of Deportee Processing by Members of the Univ. of Miami Sch. of Law Human Rights & Immigration Clinics, in Port-au-Prince, Haiti (Dec. 17, 2013).



- 169 *Id.*
- 170 Walter Kälin, Member, UN Human Rights Comm., Questioning of the United States at the 3044th Meeting of the United Nations Human Rights Committee (Mar. 13, 2014) (transcript on file with authors) *available at* <http://www.treatybodywebcast.org/hrccte-110-session-united-states/> (download “HRCttee 110 session: United States Part 2”) [hereinafter Kälin Questioning]; Megan Mack, Officer for Civil Rights and Civil Liberties, Dep’t of Homeland Sec., Response to Questioning at the 3045th Meeting of the United Nations Human Rights Committee (Mar. 14, 2014) (transcript on file with authors), *available at* <http://www.treatybodywebcast.org/hrccte-110-session-united-states/> (download “HRCttee 110 session: United States Part 3”) [hereinafter Mack Response].
- 171 Interview with Jean Renal Sanon, Minister of Justice and Public Security of the Republic of Haiti, in Port-au-Prince, Haiti (Oct. 7, 2014). Despite the discontinuation of funds from the United States, the Haitian government continues to run the temporary homeless shelter for deportees without family and reportedly may still provide assistance in discrete exceptional cases.
- 172 Interview with Jean Renal Sanon, *supra* n. 171.
- 173 *Id.*
- 174 Visit to Temporary Homeless Shelter by Univ. of Miami Sch. of Law Human Rights & Immigration Clinics, Port-au-Prince, Haiti (Dec. 18, 2013).
- 175 *Id.*
- 176 *Id.*
- 177 *Id.*
- 178 *Id.*; Interview with Francin, deportee, in Port-au-Prince, Haiti (Dec. 18, 2013).
- 179 *Embassy Obtains Resumption Of Criminal Deportee Flights To Haiti*, ¶6 (May 27, 2009), <http://cablegatesearch.net/cable.php?id=09PORTAUPRINCE506&q=deportees%20haiti%20> (describing “Haiti’s historic reluctance to take in criminal deportees” based upon the Haitian government’s insistence that deportees “pose a criminal threat . . . and that Haiti does not have the resources or capacity to reintegrate them.”); *see also Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 71 (“Deportees are highly stigmatized in Haitian society.”).
- 180 *Embassy Obtains Resumption Of Criminal Deportee Flights To Haiti*, *supra* n. 179 at ¶6 (finding that the Haitian authorities’ “reluctance” to accept deportees with criminal convictions “is that they pose a criminal threat—an assertion not supported by statistics or specific cases”).
- 181 *See discussion infra* pp. 15-16.
- 182 *Haiti Commissioner: Police to Issue Citations For Sagging Pants*, Sentinel Haiti, June 18, 2013, <http://www.defend.ht/politics/articles/defense/4559-commissioner-to-issue-citations-for-sagging-pants>.
- 183 Ruth Morris, *For Haitian Deportees, A Flashy Smile Signals a Telltale History*, Sun Sentinel, (Dec. 29, 2006), [http://articles.sun-sentinel.com/2006-12-29/news/0612281255\\_1\\_deportees-grill-streets](http://articles.sun-sentinel.com/2006-12-29/news/0612281255_1_deportees-grill-streets); *see also Embassy Obtains Resumption Of Criminal Deportee Flights To Haiti*, *supra* n. 179 at ¶ 6; *see also discussion infra* pp. 18-19.
- 184 Interview with Jean Renal Sanon, *supra* n. 171; Interview with Advisor at the Office of Public Security, in Port-au-Prince, Haiti (Oct. 7, 2014).
- 185 Interview with Jean Renal Sanon, *supra* n. 171.
- 186 Interview with Felix, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Telephone interview with Ferdinand, deportee (Oct. 1, 2014); Interview with Gary, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Alex, deportee, in Port-au-Prince, Haiti (Dec. 5, 2013); Interview with Smith, deportee, in Port-au-Prince, Haiti (Feb. 19, 2011); *see also* Interview with Peterson, in Port-au-Prince, Haiti (Dec. 2013) (reporting that the police frequently stop him because of his dreadlocks, tattoos and American accent); Interview with Stanley, in Port-au-Prince, Haiti (Dec. 14, 2013) (stating that “[i]f the police know you are a deportee, if a bad crime happens then the first person they go to is the deportee.”); Interview with Auguste, in Port-au-Prince, Haiti (Feb. 18, 2011) (stating that “whatever happens in my neighborhood, I’m a target . . . they [the police] said anything happens in the neighborhood, I would be the first suspect”); *Haitian Criminal Deportees (Part Three): An Overview of Deportee Associations and Concerns*, ¶16 (Mar. 31, 2009), [http://www.wikileaks.org/plusd/cables/09PORTAUPRINCE347\\_a.html](http://www.wikileaks.org/plusd/cables/09PORTAUPRINCE347_a.html) (noting that the U.S. Embassy sees repeated “police abuse” as one of significant obstacles affecting deportees in Haiti).
- 187 Interview with Smith, deportee, in Port-au-Prince, Haiti (Feb. 19, 2011).
- 188 Telephone interview with Magnum, deportee (Dec. 15, 2014).
- 189 Telephone interview with Ferdinand, deportee (Oct. 1, 2014).
- 190 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 80; *Haitian Criminal Deportees (Part Three): An Overview of Deportee Associations and Concerns*, *supra* n. 186 at ¶ 13; *see also* Interview with Wilky, deportee, in Port-au-Prince, Haiti (Dec. 16, 2013) (reporting he did not get his identification card for eighteen months).
- 191 Interview with Jimmy, deportee in Port-au-Prince, Haiti (Feb. 2012).
- 192 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶78; Interview with Jean Renal Sanon, *supra* n. 158.; Interview with Bernard, *supra* n. 116 (police threatened Bernard, a deportee, with arrest because he did not have identification); Interview with Wilky, deportee in Port-au-Prince, Haiti (Dec. 16, 2013).
- 193 Interview with Wilky, deportee in Port-au-Prince, Haiti (Dec. 16, 2013).
- 194 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 80; Interview with Jimmy, deportee in Port-au-Prince, Haiti (Feb. 2012).
- 195 *Haitian Criminal Deportees (Part Three): An Overview of Deportee Associations and Concerns*, *supra* n. 186 at ¶13; *2012 Country Reports on Human Rights Practices—Haiti*, Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, 5 (April 19, 2013), *available at* <http://www.state.gov/j/drl/rls/hrrpt/2012/wha/204458.htm> (“New passports issued to deportees contain a stamp invalidating them for travel to the country from which the person was deported.”).
- 196 Telephone interview with Sonia, deportee (Oct. 7, 2014); Interview with Rubin, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Mozart, deportee, in Port-au-Prince, Haiti (Dec. 14, 2013); Interview with Evans, deportee, in Port-au-Prince, Haiti (Dec. 2013); Telephone Interview with Moise, deportee (Dec. 17,



- 2013); Telephone interview with Nedor, deportee (Dec. 16, 2013); see also *Haitian Criminal Deportees (Part Three): An Overview of Deportee Associations and Concerns*, supra n. 186 at ¶16 (citing “social marginalization and discrimination, false accusations to police” as significant obstacles affecting deportees in Haiti); 2009 *Country Reports on Human Rights Practices—Haiti*, Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, 5 (Mar. 11, 2010), available at <http://www.state.gov/j/drl/rls/hrrpt/2009/wha/136116.htm> (stating that deportees “alleged corruption, widespread discrimination, and social abuse” upon deportation and noting that they suffered “false accusations about their activities to local police”).
- 197 Interview with Stanley, deportee, in Port-au-Prince, Haiti (Dec. 14, 2013); Interview with Carl, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Interview with Felix, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Telephone interview with Moise, deportee (Dec. 17, 2013); Interview with Rubin, deportee, in Port-au-Prince, Haiti (Dec. 2013).
- 198 *An End to Mob Justice in Haiti*, Office of the High Comm’r. for Human Rights (May 8, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/LynchingInHaiti.aspx>.
- 199 *Id.*
- 200 Independent Expert on the Situation of Human Rights in Haiti, *Rep. of the Independent Expert on the Situation of Human Rights in Haiti* (by Gustavo Gallón) ¶ 50, Human Rights Council, UN Doc. A/HRC/25/71 (Feb. 7, 2014). [hereinafter “*Rep. of the Independent Expert on the Situation of Human Rights in Haiti* (Gallon)”].
- 201 *Bi-Annual Report on Human Rights in Haiti: January – June 2013*, MINUSTAH/OHCHR, (Sep. 2013), <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CC0QFjAC&url=http%3A%2F>
- 202 Interview with Felix, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 203 *Haitian Criminal Deportees (Part Three): An Overview of Deportee Associations and Concerns*, supra n. 186 at ¶ 16.
- 204 *Id.*
- 205 *Id.*
- 206 *Haiti: Information on conditions in Haitian Prisons and Treatment of Criminal Deportees (2nd Response)*, The Resource Info. Ctr., U.S. Citizenship and Immigration Serv. (Feb. 12, 2002), available at <http://www.refworld.org/docid/3dec98224.html>. (admitting that although some of those returned may be deportees with more serious convictions, “others are not. Often unable to speak Creole, with no friends or relatives to provide support, little hope of due process, little or no immunity from Haiti’s tropical diseases and parasitic ailments, and forced to endure appalling conditions in jail, they are extraordinarily vulnerable”).
- 207 2006 *Country Reports on Human Rights Practices—Haiti*, Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State (Mar. 6, 2007), available at <http://www.state.gov/j/drl/rls/hrrpt/2006/78895.htm>.
- 208 The Haitian Constitution states that “except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official” when the following requirements are satisfied the order “must formally state the reason...for the arrest or detention and the provision of the law that provides for punishment...legal notice must be given...the accused must be notified of his right to be assisted by counsel at all phases...and no one may be arrested in the place of another.” Const. de la Republique D’ Haïti, 1987, art. 24 [Haiti]; see also 2012 *Country Reports on Human Rights Practices—Haiti*, supra n. 195.
- 209 2006 *Country Reports on Human Rights Practices—Haiti*, supra n. 207.
- 210 2003 *Country Reports on Human Rights Practices—Haiti*, Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State (Feb. 25, 2004), available at <http://www.state.gov/j/drl/rls/hrrpt/2004/41764.htm>.
- 211 2012 *Country Reports on Human Rights Practices—Haiti*, supra n. 195 at 5.
- 212 2013 *Country Reports on Human Rights Practices—Haiti*, Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State 4 (Feb. 27, 2014), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220451#wrapper>.
- 213 *Id.*
- 214 See discussion *infra* at pp. 24-27.
- 215 Telephone interview with Michelle Karshan (Dec. 16, 2014).
- 216 *Id.*
- 217 2011 *Country Reports on Human Rights Practices—Haiti*, Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, 5 (May 24, 2012), available at <http://www.state.gov/j/drl/rls/hrrpt/2011/wha/186522.htm>.
- 218 *Id.* (describing conditions in a prison facility in Les Cayes).
- 219 2013 *Country Reports on Human Rights Practices—Haiti*, supra n. 212 at 4.
- 220 Kushner, supra n. 60.
- 221 *U.S. Reviews Care of Deported Haitian Who Died*, Wall St. J. (Sept. 20, 2011), available at <http://online.wsj.com/article/APc100abc244db4732b2ac6a25eaa31172.html>; *Haiti: Information on conditions in Haitian Prisons and Treatment of Criminal Deportees (2nd Response)*, supra n. 206.
- 222 *Haiti: Information on conditions in Haitian Prisons and Treatment of Criminal Deportees (2nd Response)*, supra n. 206.
- 223 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti* (Gallon), supra n. 200.
- 224 Interview with Auguste, deportee, in Port-au-Prince, Haiti (Feb. 12, 2011).
- 225 *Id.*
- 226 2012 *Country Reports on Human Rights Practices—Haiti*, supra n. 195 at 5 (stating that “the prison system had not recovered from the 2010 earthquake that damaged its principal facilities”); see also 2013 *Country Reports on Human Rights Practices—Haiti*, supra at 212 at 5 (explaining that “prisons and detention centers throughout the country remained overcrowded, poorly maintained, and unsanitary...following the destruction of numerous correctional facilities in the 2010 earthquake, prison and detention center overcrowding was severe...many prison facilities lacked basic services such as plumbing, sanitation, waste disposal, medical services, potable water, electricity, and isolation units for contagious patients”).
- 227 2012 *Country Reports on Human Rights Practices—Haiti*, supra n. 195 at 10.
- 228 Interview with Jean Renel Sanon, supra n. 171.
- 229 *Id.*
- 230 *Id.*



- 231 *Id.*
- 232 Article 26 of Haiti's Constitution states: "No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision." See Interview with Moise, deportee, in Port-au-Prince, Haiti (Oct. 13, 2014).
- 233 2011 Country Reports on Human Rights Practices—Haiti, *supra* n. 217 at 10.
- 234 Interview with Alex, deportee, in Port-au-Prince, Haiti (Oct. 6, 2014).
- 235 *Id.*
- 236 Interview with Auguste, deportee, in Port-au-Prince, Haiti (Feb. 12, 2011).
- 237 *Id.*
- 238 Interview with Jean Renel Sanon, *supra* n. 171.
- 239 Shelter and Housing, U.S. Agency for Int'l Dev., <http://www.usaid.gov/haiti/shelter-and-housing> (last updated Feb. 10, 2014).
- 240 Displacement Tracking Matrix, IOM/IASC, (Sep. 2014) <http://iomhaitidataportal.info/dtm/>; Report of the ad Hoc Advisory Group on Haiti, *supra* n. 47; Amnesty Int'l, Document—Haiti: Displaced People Still Leave In Despair Four Years After Devastating Earthquake, AI Index AMR 36/003/2014 (Jan. 9, 2014), <http://www.amnesty.org/en/library/asset/AMR36/003/2014/en/417ef25a-8a00-403c-bbb4-36730189233c/amr360032014en.html> (citing to IOM data from October 2013 finding that only 8% of camps (26) have water, 54% of camps (166 sites) have latrines, and the average number of people per latrine is 114); Int'l Org. for Migration, IOM Seeks End to Displacement in Haiti, <http://haiti.iom.int/iom-seeks-end-displacement-haiti>.
- 241 Shelter and Housing, *supra* n. 239; Rep. of the Independent Expert on the Situation of Human Rights in Haiti (Gallon) *supra* n. 200 at ¶ 73; Int'l Org. for Migration, Number of Haitians Living in Post-Earthquake Camps Drops Sharply, <http://haiti.iom.int/number-haitians-living-post-earthquake-camps-drops-sharply>.
- 242 Displacement Tracking Matrix, V2.0 Update, IOM/IASC, (Sep. 30, 2013), <http://www.eshelter-cccmhaiti.info/jl/images/dtm%20v2%20report%20oct%202013%20eng---.pdf> (showing that three camps, totaling about 64,378 individuals, were taken off the official IDP camps list in 2013 after the Haitian government requested their removal because the "characteristics of these settlements are those of '... new neighborhoods needing urban planning with a long term view ...', not of IDP sites."); IOM Reports Big Drop in IDP Population after Removing 3 Areas from "Official" Camp List, Center for Economic and Policy Research, (Oct. 22, 2013), <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/iom-reports-big-drop-in-idp-population-after-removing-3-areas-from-official-camp-list>.
- 243 Haitian Civil Society 2013 Report on Forced Evictions in the Port-au-Prince Metropolitan Area, Collective of Housing Rights Organizations: GARR, POHDH, PAPDA, SRJ-Haiti, FRAKKA, (Dec. 30, 2013), [http://undertentshaiti.com/wp-content/uploads/2014/04/2013\\_Evictions\\_Report\\_Collective\\_of\\_Housing\\_Rights\\_Organizations.pdf](http://undertentshaiti.com/wp-content/uploads/2014/04/2013_Evictions_Report_Collective_of_Housing_Rights_Organizations.pdf); Haiti: Hundreds Face Violent Forced Eviction, Amnesty International, (Oct. 18, 2013), <http://www.amnesty.org/en/library/asset/AMR36/020/2013/en/30106c67-6430-4e1a-a0ec-082284b658f1/amr360202013en.html>.
- 244 Angela Sherwood et al., *Supporting Durable Solutions to Urban, Post-Disaster Displacement: Challenges And Opportunities In Haiti*, Brookings Inst. & Int'l Org. for Migration 16 (2014), available at <http://www.brookings.edu/~media/research/files/reports/2014/02/07%20haiti%20displacement/supporting%20durable%20solutions%20to%20displacementhaiti%20march%204%202014.pdf>; see Rep. of the Independent Expert on the Situation of Human Rights in Haiti (Gallon), *supra* n. 200 at ¶ 73 ("The people who have left the camps in the past two years (over 1.85 million) have not necessarily resolved their housing problem. Most have received a grant to help them find shelter for about a year, but this cannot be considered a sustainable solution.").
- 245 *Tectonic Shifts: Haiti Since the Earthquake*, *supra* n. 10 at 101.
- 246 *Id.*
- 247 Rep. of the Independent Expert on the Situation of Human Rights in Haiti (Gallon), *supra* n. 200 at ¶¶ 15, 45.
- 248 See discussion *infra* at pp. 21-24.
- 249 Interview with Alex, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 250 Interview with Clifford, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013).
- 251 Interview with Evans, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Interview with Mozart, deportee, in Port-au-Prince, Haiti (Dec. 15, 2014).
- 252 Interview with Daniel, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 253 Interview with Gary, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013).
- 254 *Id.*
- 255 Interview with Augustine, deportee, in Port-au-Prince, Haiti (Feb. 2012).
- 256 Interview with Colson, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Telephone interview with Kettie (Dec. 15, 2013).
- 257 Haiti Overview, The World Bank, <http://www.worldbank.org/en/country/haiti/overview> (last visited Dec. 2, 2014).
- 258 The World Factbook, Haiti, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>.
- 259 Rep. of the Independent Expert on the Situation of Human Rights in Haiti (Gallon), *supra* n. 200 at ¶ 11.
- 260 *Id.* at ¶ 14; The World Factbook, Haiti, *supra* n. 258.
- 261 Rep. of the Independent Expert on the Situation of Human Rights in Haiti, *supra* n. 15 at ¶ 72.
- 262 Interview with Colson, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 263 Interview with Evans, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 264 Morris, *supra* n. 183.
- 265 Interview with Magnum, deportee, in Port-au-Prince, Haiti (Feb. 2011).
- 266 *Id.*
- 267 *Id.*
- 268 Interview with Wilky, a deportee, in Port-au-Prince, Haiti (Oct. 4, 2014); see also telephone interview with Sonia, a deportee (Dec. 18, 2013) (stating that an individual needs connections to obtain employment in Haiti); Telephone interview with Moise, deportee (Dec. 17, 2013) (stating that his mother is retiring soon and he does not know what he will do when she can no longer support him).



- 269 Interview with Felix, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Interview with Daniel, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Interview with Francisco, deportee, in Port-au-Prince, Haiti (Oct. 6, 2014).
- 270 See discussion *supra* at pp. 9-13.
- 271 *Epidemiological Update-Cholera*, *supra* n. 20; Fabio Bucciarelli & Megan Gibson, *Frustration and Suffering in Haiti's Mental Facilities*, Time Mag. (Sept. 19, 2013), [www.lightbox.time.com/2013/09/19/frustration-and-suffering-in-haitis-mental-facilities/#1](http://www.lightbox.time.com/2013/09/19/frustration-and-suffering-in-haitis-mental-facilities/#1); see also Cath Turner, *Examining Mental Health in Haiti*, Al Jazeera (Feb. 10, 2014), <http://blogs.aljazeera.com/blog/americas/examining-mental-health-haiti>.
- 272 *Four Years after Earthquake, Housing, Sanitation, Health Care are Still Pressing Needs in Haiti*, Ctr. for Econ. & Policy Research (Jan. 09, 2014), <http://www.cepr.net/index.php/press-releases/press-releases/four-years-after-earthquake-housing-sanitation-health-care-are-still-pressing-needs-in-haiti>.
- 273 *Health Response to the Earthquake in Haiti*, PAHO, 4 (2011), available at <http://new.paho.org/disasters/dmdocuments/HealthResponseHaitiEarthq.pdf>.
- 274 See Unpublished Manifests, *supra* n. 107; see also interview with Evans, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Interview with Billy, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Sonia, deportee, in Port-au-Prince, Haiti (Dec. 18, 27, 31, 2013); Interview with Stanley, deportee, in Port-au-Prince, Haiti (Dec. 14, 2013); Interview with Marckenson, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Peterson, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Eddy, deportee, in Port-au-Prince, Haiti (Dec. 27, 2013); Interview with Phillip, deportee, in Port-au-Prince, Haiti (Dec 15, 2013).
- 275 See Unpublished Manifests, *supra* n. 107; see also, Interview with Carl, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014); Interview with Alex, deportee, in Port-au-Prince, Haiti (Dec. 14, 2013 & Oct. 5, 2014); Interview with Evans, deportee, in Port-au-Prince, Haiti (Dec. 2013 & Oct. 5, 2014); Interview with Beverly, in Miramar, Fla. (Nov. 8, 2014); Interview with Dominique, in Miramar, Fla. (Nov. 8, 2014); Interview with David, in Miramar, Fla. (Nov. 8, 2014); Telephone interview with Kettie, deportee (Dec. 15, 2013).
- 276 U.S. Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec., ICE Air Charter March 19, 2013 (unpublished manifest of monthly deportation flights to Haiti) (on file with authors); *Diseases & Conditions, Post-Polio Syndrome*, Mayo Clinic, <http://www.mayoclinic.org/diseases-conditions/post-polio-syndrome/basics/definition/con-20021725> (up to half of individuals who had polio at a young age may develop post polio syndrome, the complications of which include respiratory failure) (last updated June 11, 2014).
- 277 *Health in the Americas: Haiti*, World Health Org. & Pan Am. Health Org., [http://www.paho.org/saludenlasamericas/index.php?option=com\\_content&view=article&id=38&Itemid=36&lang=en](http://www.paho.org/saludenlasamericas/index.php?option=com_content&view=article&id=38&Itemid=36&lang=en) (last updated Apr. 11, 2013).
- 278 *Id.*
- 279 *Haiti Travel Warning*, *supra* n. 89.
- 280 Interview with Dr. Patrick Joseph, M.D., Gheskio, in Port-au-Prince, Haiti (Oct. 8, 2014); Declaration of Dr. Arthur Fournier (Dec. 2014) (on file with the authors).
- 281 Interview with Dr. Patrick Joseph, M.D. *supra* n. 280.
- 282 Declaration of Dr. Arthur Fournier (Dec. 2014), *supra* n. 280.
- 283 *Health Response to the Earthquake in Haiti*, PAHO, 4 (2011), available at <http://new.paho.org/disasters/dmdocuments/HealthResponseHaitiEarthq.pdf>.
- 284 See *International Activity Report 2013-Haiti*, Medecins San Frontieres (Dec. 31, 2013) ("Healthcare in Haiti remains largely privatized and most people do not have the financial means to pay for it"); *Health in the Americas: Haiti*, *supra* n. 277 [www.msf.org/international-activity-report-2013-haiti](http://www.msf.org/international-activity-report-2013-haiti) [hereinafter, MSF *International Activity Report*].
- 285 *Health Response to the Earthquake in Haiti*, *supra* n. 283 at 4; Declaration of Dr. Arthur Fournier, *supra* n. 280.
- 286 Report of the Ad Hoc Advisory Group on Haiti, *supra* n. 47 at ¶ 23.
- 287 Interview with Dr. Patrick Joseph, M.D., *supra* 280; see also Harinder Singh Chahal, et. al., *Availability, Prices and Affordability of Essential Medicines in Haiti*, 3 J. of Global Health 1, 5-7 (2013); *Health in the Americas: Haiti*, *supra* n. 277.
- 288 MSF *International Activity Report*, *supra* n. 284; see also *Health in the Americas: Haiti*, *supra* n. 277.
- 289 Telephone interview with Dr. Jessy Devieux, Ph.D., Assoc. Professor, Fla. Int'l Univ. (Oct. 28, 2014); see also 2011 *Country Reports on Human Rights Practices—Haiti*, *supra* n. 217 at 6; *Corrections Update*, Department of Peacekeeping Operations, United Nations, Volume 4, 15 (Dec. 2012); <http://www.un.org/en/peacekeeping/publications/cljas/Corrections2012.pdf>.
- 290 See *Le Systeme de Sante Mental en Haiti*, IESM-OMS 16-17 (2011), available at [http://www.who.int/mental\\_health/who\\_aims\\_country\\_reports/who\\_aims\\_report\\_haiti\\_fr.pdf](http://www.who.int/mental_health/who_aims_country_reports/who_aims_report_haiti_fr.pdf).
- 291 *Id.* at 22.
- 292 *Id.*; see also Telephone interview with Dr. Jessy Devieux, Ph.D., *supra* n. 289; see also Jennifer Severe, M.D., *Challenges of Becoming a Psychiatrist in Haiti-Partners in Health: an Emerging Model to Train Generalist Physicians*, 9 *The Residents' J.* 5, 5-7 (May 2014), [http://ajp.psychiatryonline.org/pb/assets/raw/journals/residents-journal/2014/May\\_2014.pdf](http://ajp.psychiatryonline.org/pb/assets/raw/journals/residents-journal/2014/May_2014.pdf). ("Overall, the limitations in psychiatric training and treatment that exist in Haiti serve to reduce motivation for training in psychiatry.")
- 293 *Le Systeme de Sante Mental en Haiti*, *supra* n. 290 at 11.
- 294 Telephone interview with Dr. Jessy Devieux, *supra* n. 289.
- 295 Chahal, et. al., *supra* n. 287 at 5-7; *Health in the Americas: Haiti*, *supra* n. 277.
- 296 Chahal, et. al., *supra* n. 287; Telephone interview with Dr. Marie Guerda Nicolas, Ph.D., Assoc. Professor, Univ. of Miami (Dec. 10, 2014).
- 297 Chahal, et. al., *supra* n. 287.
- 298 Chahal, et. al., *supra* n. 287; *Health in the Americas: Haiti*, *supra* n. 277.
- 299 See, e.g. Interview with Evans, deportee, in Port-au-Prince, Haiti (Dec. 2013 & Oct. 5, 2014); Interview with Billy, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Sonia, deportee, in Port-au-Prince, Haiti (Dec. 18, 27, 31, 2013); Interview with Marckenson, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Peterson, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013); Interview with Eddy, deportee, in Port-au-Prince, Haiti (Dec. 27, 2013); Interview with Phillip, deportee, in Port-au-Prince,



- Haiti (Dec 15, 2013); Interview with William, deportee, in Port-au-Prince, Haiti (Dec. 2013); Interview with Magnum, deportee, in Port-au-Prince, Haiti (Dec. 2013 & Dec. 15, 2014); Interview with Randal, deportee, in Port-au-Prince, Haiti (Dec. 2013); Interview with Stanley, deportee, in Port-au-Prince, Haiti (Dec. 14, 2013); Interview with Wilky, deportee, in Port-au-Prince, Haiti (December 14, 2013 & Oct. 5 2014).
- 300 Interview with Peterson, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013).
- 301 *High Blood Pressure (hypertension)*, Mayo Clinic (Sept. 6, 2014), <http://www.mayoclinic.org/diseases-conditions/high-blood-pressure/basics/complications/con-20019580>.
- 302 Interview with Alex, deportee, in Port-au-Prince, Haiti (Dec. 14, 2013 & Oct. 5, 2014).
- 303 Interview with Carl, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 304 See discussion *supra* at pp. 9-13.
- 305 *Id.*
- 306 Interview with Stanley, deportee, in Port-au-Prince, Haiti (Dec. 14, 2013).
- 307 *Id.*
- 308 Interview with IOM staff member, in Port-au-Prince, Haiti (Dec. 17, 2013).
- 309 Telephone interview with former staff member of International Organization on Migration (Oct. 6, 2014).
- 310 Telephone interview with Michelle Karshan (Dec. 14, 2014).
- 311 *Id.*
- 312 The information about this incident is taken from a telephone interview with Magnum (December 15, 2014) and a telephone interview with Michelle Karshan (December 14, 2014).
- 313 *Culture and Mental Health in Haiti: A Literature Review*, WHO/MSD/MER/10.1, World Health Org. & Pan Am. Health Org., 12 (2010), available at [http://www.who.int/mental\\_health/emergencies/culture\\_mental\\_health\\_haiti\\_eng.pdf](http://www.who.int/mental_health/emergencies/culture_mental_health_haiti_eng.pdf); *2012 Country Reports on Human Rights Practices—Haiti*, *supra* n. 195 at 31. (“As a group, people with mental illness or developmental disabilities were consistently marginalized, neglected, and abused in [Haiti].”).
- 314 *2011 Country Reports on Human Rights Practices—Haiti*, *supra* n. 217 at 29-30 (“family members frequently tied up persons with cognitive disabilities or mental illness for long periods of time”).
- 315 Interview with Elie, sister-in-law of deportee, in Port-au-Prince, Haiti (Oct. 6, 2014). See also *2011 Country Reports on Human Rights Practices—Haiti*, *supra* n. 217 at 30 (stating that neglect and abuse of the mentally ill stems from a lack of understanding of mental illness).
- 316 Telephone interview with Dr. Marjory Clermont-Mathieu, Ph.D., Professor, Haiti State Univ. (Dec. 4, 2014).
- 317 Interview with Michelle Karshan (Dec. 16 2014).
- 318 *Le Systeme de Sante Mentale en Haiti*, *supra* n. 290 at 22; Visit to Mars and Kline Psychiatric Hospital by Univ. of Miami Sch. of Law Human Rights & Immigration Clinics, Port-au-Prince (Dec. 18, 2013 & Oct. 7, 2014); Telephone interview with Dr. Marie Guerda Nicolas, Ph.D., Associate Professor, Univ. of Miami (Dec. 10, 2014).
- 319 *Id.*
- 320 *2011 Country Reports on Human Rights Practices—Haiti*, *supra* n. 217 at 29 (“conditions in the state hospital for mental illness were well below international standards, with patients often living in harsh conditions. Patients were frequently restrained in order to keep them from wandering, and many of them were kept isolated in small rooms without windows and without adequate or regular access to hygiene. Staff in the hospitals were insufficient to meet patients’ needs and were often untrained for providing mental health services.”).
- 321 Telephone interview with Dr. Jessy Devieux, Ph.D., *supra* n. 289.
- 322 Bucciarelli, *supra* n. 271.
- 323 *Id.*
- 324 *Id.*
- 325 Visit to Mars and Kline Psychiatric Hospital by Univ. of Miami Sch. of Law Human Rights & Immigration Clinics, Port-au-Prince (Dec. 18, 2013 & Oct. 7, 2014).
- 326 Interview with Dr. Louis Jeanny Girard, M.D., Mars and Kline, in Port-au-Prince, Haiti (Oct. 7, 2014).
- 327 *Id.*
- 328 Anne-christine d’Adesky & PotoFanm+Fi, *Beyond Shock: Charting the Landscape of Sexual Violence in Post-Quake Haiti: Progress, Challenges & Emerging Trends 2010-2012*, Abridged Version, 107 (2012), available at <http://potofi.files.wordpress.com/2012/12/beyond-shock-abridged-version-haiti-gbv-progress-report-nov-2012.pdf>.
- 329 Unless otherwise indicated, the information in this section came from the authors’ visits to Mars and Kline Psychiatric Center on October 7, 2014 and December 18, 2013. See also Deborah Sontag, *In Haiti, Mental Health System is in Collapse*, N.Y. Times (Mar. 19, 2010) <http://www.nytimes.com/2010/03/20/world/americas/20haiti.html?pagewanted=all&r=0>. (at Mars and Kline “patients, padlocked in tiny concrete cells, clutched the bars and howled for attention. Feces clotted the gutter outside a ward where urine pooled under metal cots without mattresses.”).
- 330 Email from Bess Adler, in Port-au-Prince, Haiti to Rebecca Sharpless (Dec. 8, 2014).
- 331 *Id.*
- 332 *Id.*
- 333 Michael D. Landry, PT, PhD, *Physical Therapists in Post-Earthquake Haiti: Seeking a Balance Between Humanitarian Service and Research*, 90 *Physical Therapy* J. 974, 974 (2010) (citing Colleen O’Connell, Aleema Shivji, and Thomas Calvot, *Handicap International Report—Preliminary findings about persons with injuries—Haiti Earthquake 12 January 2010*, Handicap Int’l, at 2-8 (Jan. 29, 2010), available at [www.reliefweb.int/sites/reliefweb.int/files/resources/724BE5476ED089AA852576BE005BC5C7-Full\\_Report.pdf](http://www.reliefweb.int/sites/reliefweb.int/files/resources/724BE5476ED089AA852576BE005BC5C7-Full_Report.pdf)).
- 334 United Nations, *Disability, Natural Disasters, and Emergency Situations*, <http://www.un.org/disabilities/default.asp?id=1546>.
- 335 Landry, *supra* n. 333 at 974.
- 336 *2013 Country Reports on Human Rights Practices—Haiti*, *supra* n. 212 at 40.
- 337 Aude Brus, Lisa Danquah, Pierre Gallien, Claire Perrin Houdon, Hannah Kuper, Islay Mactaggart, & Sarah Polack, Patric Senia, *Disability in Post-Earthquake Haiti: Prevalence and Inequality in Access to Services*, Handicap International, 1, 3 (Sept. 2014) (on file with authors).
- 338 *Id.* at 7.



- 339 *Id.*
- 340 2013 Country Reports on Human Rights Practices—Haiti, *supra* n. 212 at 40.
- 341 Landry, *supra* n. 333 at 974.
- 342 2013 Country Reports on Human Rights Practices—Haiti, *supra* n. 212 at 40; See also Women’s Refugee Comm’n Persons With Disabilities and the Humanitarian Response in Haiti, (Jan. 2010), <http://www.womensrefugeecommission.org/persons-with-disabilities-and-the-humanitarian-response> (the disabled are often “shunned and stigmatized”).
- 343 Lisa Danqua & Aude Brus, *Representation and Evaluation of Disability in Port-au-Prince, Haiti: Methodological Report—2013*, International Centre for Evidence in Disability 85 (2013), [http://www.hiproweb.org/uploads/tx\\_hidrtdocs/RS02Haiti.pdf](http://www.hiproweb.org/uploads/tx_hidrtdocs/RS02Haiti.pdf).
- 344 *Id.*
- 345 Interview with Billy, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013).
- 346 *Epidemiological Update-Cholera*, *supra* n. 20 at 1.
- 347 Email from Dr. John May to Romy Lerner (Dec. 11, 2014)
- 348 *Epidemiological Update-Cholera*, *supra* n. 20 at 1; *Haiti: Too Few Beds to Treat Cholera Patients*, *Medicins Sans Frontieres*, (Nov. 24 2014), <http://www.msf.org/article/haiti-too-few-beds-treat-cholera-patients>.
- 349 *Haiti: Too Few Beds to Treat Cholera Patients*, *supra* at 348.
- 350 *Id.*; see also 2014 Humanitarian Needs Overview Mid-Year Review Haiti, UN Office of the Coordinator for Humanitarian Affairs, 7-9 (July 2014), [www.humanitarianresponse.info/system/files/documents/files/HNO%2022%20august%202014.pdf](http://www.humanitarianresponse.info/system/files/documents/files/HNO%2022%20august%202014.pdf).
- 351 Randal C. Archibold & Somini Sengupta, *UN Struggles to Stem Haiti Cholera Epidemic*, *N.Y. Times* (Apr. 19, 2014), available at <http://www.nytimes.com/2014/04/20/world/americas/un-struggles-to-stem-haiti-cholera-epidemic.html>.
- 352 *Id.*
- 353 UN Secretary General, *Report of the Secretary General on the United Nations Stabilization Mission in Haiti*, ¶ 17, UN Doc. S/2014/162 (March 7, 2014).
- 354 *See Haiti Cholera Response United Nations in Haiti Mid-Year Update (January-July 2014)*, Office of the UN in Haiti, 4 (July 2014), <http://www.humanitarianresponse.info/system/files/documents/files/Mid-year%20cholera%20fact%20sheet.pdf>; see also 2014 Humanitarian Needs Overview Mid-Year Review Haiti, *supra* n. 350 at 7-9.
- 355 Archibold & Sengupta, *supra* n. 351; see also 2014 Humanitarian Needs Overview Mid-Year Review Haiti, UN Office of the Coordinator for Humanitarian Affairs, 7 (July 2014), <http://www.humanitarianresponse.info/system/files/documents/files/HNO%2022%20august%202014.pdf>.
- 356 *Id.*
- 357 See discussion *supra* at pp. 21-22; see also Declaration of Dr. Arthur Fournier (Dec. 2014).
- 358 *Health in the Americas: Haiti*, *supra* n. 277.
- 359 Declaration of Dr. Arthur Fournier, *supra* n. 280.
- 360 *Health in the Americas: Haiti*, *supra* n. 277.
- 361 *Our Bodies are Still Trembling: Haitian Women Continue to Fight Against Rape: One Year Update*, Inst. for Justice and Democracy in Haiti, et al. (Jan. 2011), available at <http://ijdh.org/wordpress/wp-content/uploads/2011/03/1-Year-GBV-2011.pdf>.
- 362 Robert Maguire, *Peace Brief 119: Haitian Women: The Centerpost of Reconstructing Haiti*, U.S. Inst. of Peace 2 (Jan. 06, 2012), available at <http://www.usip.org/sites/default/files/resources/PB-119.pdf>.
- 363 *Haiti: Sexual Violence against Women, Including Domestic Sexual Violence; In Particular, Prevalence within and outside of Camps for the Internally Displaced; Criminal Prosecutions (2011-May 2012)*, Research Directorate, Immigration and Refugee Board of Canada (June 08, 2012) available at <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454021> (citing *Violences spécifiques faites aux femmes*, Concertation nationale contre les violences faites aux femmes 5 (Nov. 25, 2011), available at [http://www.youphil.com/sites/default/files/Concertation%20Nationale%20-%20Diffusion%2025%20nov%2011%20\(Vs%20Finale\).pdf](http://www.youphil.com/sites/default/files/Concertation%20Nationale%20-%20Diffusion%2025%20nov%2011%20(Vs%20Finale).pdf)).
- 364 *Id.*
- 365 Meena Jagannath, *Barriers to Women’s Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 29, & 34-5 (2011).
- 366 Shannon D. Lankenau, Note, *Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions*, 64 U. Cal. Hastings L. J. 1759, 1766, (August 2013), (citing Lisa Davis, *Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti*, 65 U. Miami L. Rev. 867, 873 (2011)); see also Benedetta Faedi Duaramy, *Women in the Aftermath of the 2010 Haitian Earthquake*, 25 Emory Int’l. L. Rev. 1193, 1212 (2012) (citing Bonafice Alexandre, *Décret du 6 juillet 2005 modifiant le Régime des Agressions Sexuelles et Elimination en la Matière les Discriminations Contre la Femme [Decree Changing the Regulation of Sexual Assaults and Eliminating Forms of Discrimination Against Women]*, *Le Moniteur*, 2 (Aug. 11, 2005).
- 367 UN Human Rights Comm., Concluding Observations of the Human Rights Committee: Haiti, UN Doc. CCPR/C/HTI/CO/1 (Oct. 27, 2014); Press Release, MADRE, *UN Human Rights Committee Confronts Violations against Haitian Women and LGBT Persons* (Nov. 05, 2014), available at <http://www.madre.org/page/madre-news-125/news/un-human-rights-committee-confronts-violations-against-haitian-women-and-lgbt-persons-974.html>.
- 368 Equality Now, et al., *Ensuring Haitian Women’s Participation and Leadership in all stages of National Relief and Reconstruction: A Gender Shadow Report of the 2010 Post-Disaster Needs Assessment*, Haiti Gender Equality Collective, 4 (March 31, 2010), available at <http://www.gendereaction.org/publications/2010/gsr.pdf>; see also Jagannath, *supra* n. 365 at 38-9 (2011).
- 369 *Ensuring Haitian Women’s Participation and Leadership in all stages of National Relief and Reconstruction*, *supra* n. 368 at 4.
- 370 UN Human Rights Council, *Accelerating Efforts to Eliminate all Forms of Violence against Women: Ensuring Due Diligence in Preventing*, UN Doc. A/HRC/14/L.9/Rev. 1 at ¶ 11 (June 23, 2010); see also Ctr for Human Rights and Global Justice/Global Justice Clinice, *Yon Je Louvri: Reducing Vulnerability to Sexual Violence in Haiti’s IDP Camps*, New York: NYU School of Law 45, 80 (Jan. 20, 2012), available at <http://chrgj.org/wp-content/uploads/2012/07/yonjelouvri.pdf>.
- 371 “Nobody Remembers Us:” *Failure to Protect Women’s and Girls’ Right to Health and Security in Post-Earthquake Haiti*, Human Rights Watch (2011), available at <http://www.hrw.org/sites/default/files/reports/haiti0811webcover.pdf>; see also KOFIV, et al., *Struggling to Survive: Sexual Exploitation*



of *Displaced Women and Girls in Port-au-Prince, Haiti* (Jan. 20, 2012), available at <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Struggling-to-survive-2012-reduced.pdf>; *A Profile of Police and Judicial Response to Rape in Port-au-Prince*, Human Rights Section (HRS), Office of the High Comm'r H.R. (June 2012), available at <http://minustah.org/?p=36059>.

- 372 “*Nobody Remembers Us: Failure to Protect Women’s and Girls’ Right to Health and Security in Post-Earthquake Haiti*, Human Rights Watch (2011), *supra* n. 371. See also telephone interview with Kettie, deportee (Dec. 15, 2013).
- 373 *Accelerating Efforts to Eliminate all Forms of Violence against Women: Ensuring Due Diligence in Preventing*, *supra* n. 370 at ¶ 11 (“heightened vulnerability resulted in targeted, compounded and structural discrimination”); see also Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, Human Rights Council, UN Doc. A/HRC/17/26, at ¶ 102 (May 2, 2011) (by Rashida Manjoo); *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15.
- 374 Declaration of Malya Villard Appolon, ¶ 24, p. 4 (on file with authors).
- 375 *Yon Je Louvri: Reducing Vulnerability to Sexual Violence in Haiti’s IDP Camps*, *supra* n. 370 at 41 (women without family and community protections who lack access to secure housing are most exposed to the threat of violence.).
- 376 Fact-finding Missions Conducted by U. of Miami Sch. of Law Human Rights and Immigration Clinics, Port-au-Prince, Haiti (Dec. 14-18, 2013 & Oct. 7, 2014).
- 377 Fact-finding Mission Conducted by U. of Miami Sch. of Law Human Rights and Immigration Clinics, Port-au-Prince, Haiti (Dec. 14-18, 2013).
- 378 Interview with Francin, deportee, in Port-au-Prince, Haiti (Dec. 24, 2013).
- 379 Interview with Kettie, deportee, in Port-au-Prince, Haiti (Dec. 15, 2013) (describing how one man at the shelter threatened to violate her and touched her breasts and how she was always afraid there).
- 380 *Id.*
- 381 *Id.*
- 382 Interview with Merlene, deportee, in Port-au-Prince, Haiti (Dec. 17, 2013, Oct. 07, 2014).
- 383 MADRE, et. al, *Supplementary Information on Haiti Regarding Sexual Violence, Sexual Exploitation and Access to Education for Women and Girls*, Submission to the Country Report Task Force, Human Rights Comm., 105th Sess., July 9-27, (2012) (quoting *The Impact of the Earthquake, and Relief and Recovery Programs on Haitian LGBT People*, International Gay and Lesbian Human Rights Comm’n & SEROVIE (2011), available at <http://iglhrc.org/sites/iglhrc.org/files/504-1.pdf>).
- 384 Joe Siegel, *Haitians Launch Country’s First LGBT Organization*, The Edge Boston (Mar. 1, 2012), available at [http://www.edgeboston.com/news/local/news/130523/haitians\\_launch\\_country’s\\_first\\_lgbt\\_rights\\_organization](http://www.edgeboston.com/news/local/news/130523/haitians_launch_country’s_first_lgbt_rights_organization) (“Religious rhetoric dictates that masisi (term for homosexuals) are mortal sinners and abominations to society.”); see also MADRE, et. al, *Fighting for Our Lives: Violence and Discrimination against Women and LGBT Persons in Haiti*, Submission to Human Rights Comm., 112th Sess. Oct. 7-31, (2014), available at [http://www.madre.org/uploads/misc/1417531722\\_Haiti%20ICCP%20Report%20ENG%202014%20final.pdf](http://www.madre.org/uploads/misc/1417531722_Haiti%20ICCP%20Report%20ENG%202014%20final.pdf) (“[M]embers of the LGBT community [are compelled] to live in secrecy and isolation, under constant threat due to fear of violence, harassment and discrimination.”).
- 385 Allyn Gaestal, *Haiti’s Fight for Gay Rights: As LGBT Community Becomes More Visible, Anti-Gay Violence Rises Too*, Al Jazeera America (Nov. 8, 2014), <http://projects.aljazeera.com/2014/haiti-lgbt/>.
- 386 *Fighting for Our Lives: Violence and Discrimination against Women and LGBT Persons in Haiti*, *supra* n. 384; *The Impact of the Earthquake, and Relief and Recovery Programs on Haitian LGBT People*, International Gay and Lesbian Human Rights Comm’n & SEROVIE (2011), available at <http://iglhrc.org/sites/iglhrc.org/files/504-1.pdf>; Nathalie Margi, *In Post-Earthquake Haiti. Activists Fight Violence Based on Gender and Sexuality*, France 24 (Nov. 14, 2010), <http://observers.france24.com/content/20101114-post-earthquake-haiti-activists-fight-violence-based-gender-sexuality>.
- 387 *Fighting for Our Lives: Violence and Discrimination against Women and LGBT Persons in Haiti*, *supra* n. 384.
- 388 *Id.*
- 389 *Id.*
- 390 Concluding Observations of the Human Rights Committee, *supra* n. 367; *UN Human Rights Committee Confronts Violations against Haitian Women and LGBT Persons* (Nov. 05, 2014), *supra* n. 367.
- 391 *Id.*
- 392 MADRE, et. al., RE: Submission to the Country Report Task Force for the Adoption of Lists of Issues for Republic of Haiti Scheduled for Review by the Human Rights Committee during the 110<sup>th</sup> Session to be held in March 2014, transmitted letter dated December 20, 2013, address to the Secretariat of the UN Human Rights Comm., 110th Sess., March 11-28, 21 (Dec. 20, 2013).
- 393 *Urgent Action—Haiti: LGBTI Organization’s Office Attacked in Haiti*, Amnesty International (Nov. 26, 2013), <http://www.amnesty.org/fr/library/asset/AMR36/021/2013/fr/0fa8890c-b08f-4fe8-9ca7-b88a1ea6d443/amr360212013en.html>; *Haiti Anti-Gay Protest Draws More Than 1,000 Demonstrators*, Huffington Post (July 19, 2013), [http://www.huffingtonpost.com/2013/07/19/haiti-anti-gay-protest\\_n\\_3625095.html](http://www.huffingtonpost.com/2013/07/19/haiti-anti-gay-protest_n_3625095.html).
- 394 *The Impact of the Earthquake, and Relief and Recovery Programs on Haitian LGBT People*, *supra* n. 386.
- 395 *First National Congress Against Homophobia in Haiti*, The Haitian Sentinel (May 23, 2012), available at <http://www.defend.ht/news/articles/community/3046-first-national-congress-against-homophobia-in-haiti>.
- 396 *Urgent Action—Haiti: LGBTI Organization’s Office Attacked in Haiti*, *supra* n. 393; see also *Haiti Anti-Gay Protest Draws More Than 1,000 Demonstrators*, *supra* n. 393.
- 397 *First National Congress Against Homophobia in Haiti*, The Haitian Sentinel, *supra* n. 395.
- 398 *Urgent Action—Haiti: LGBTI Organization’s Office Attacked in Haiti*, *supra* n. 393; see also *Haiti Anti-Gay Protest Draws More Than 1,000 Demonstrators*, *supra* n. 393.
- 399 Gaestal, *supra* n. 385; Organization of American States, Press Release, *IACHR Condemns Recent Wave of Violence against LGTBI Persons in Haiti* (July 30, 2013) [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/054.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/054.asp)).



- 400 *Supplementary Information on Haiti Regarding the Treatment of Lesbian, Gay, Bisexual, and Transgender Individuals (LGBT)*, transmitted by letter dated April 27, 2012 address to the Secretariat of the UN Human Rights Comm., 105th Sess., July 9-27, UN GOAR, 3 (April 27, 2012), [http://www.ccprcentre.org/doc/2014/02/INT\\_CCPR\\_ICO\\_HTI\\_16058\\_E.pdf](http://www.ccprcentre.org/doc/2014/02/INT_CCPR_ICO_HTI_16058_E.pdf); see also *Fighting for Our Lives: Violence and Discrimination against Women and LGBT Persons in Haiti*, *supra* n. 384 at 15; RE: *Submission to the Country Report Task Force for the Adoption of Lists of Issues for Republic of Haiti Scheduled for Review by the Human Rights Committee during the 110<sup>th</sup> Session to be held in March 2014*, *supra* n. 392.
- 401 *Id.*
- 402 All information in this section came from an interview with Stephanie, deportee, in Port-au-Prince, Haiti on December 16, 2013.
- 403 Sonia was deported for crimes relating to theft. All information in this section comes from interviews with Sonia on October 7, 2014 and December 18, 27 & 31, 2013 in Haiti and with her three children and two sisters in Lake Worth, Florida on November 8, 2014.
- 404 Sara Satinsky, et al., *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families*, Human Impact Partners (June 2013), <http://www.humanimpact.org/projects/hia-case-stories/family-unity-family-health-an-inquiry-on-federal-immigration-policy/>.
- 405 Interview with Vanessa, 60 year-old mother of Andre, deportee, in Ft. Lauderdale, Fla. (Oct. 2, 2011).
- 406 Interview with Daniel, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 407 Interview with Evans, deportee, in Port-au-Prince, Haiti (Oct. 5, 2014).
- 408 Interview with Henry, brother of Evans, deportee, in Miami, Fla. (Oct. 22, 2011).
- 409 Satinsky, et al., *supra* n. 404; see also Ajay Chaudray, et al., *Facing Our Future: Children in the Aftermath of Immigration Enforcement*, The Urban Institute (Feb. 2010), [http://www.urban.org/UploadedPDF/412020\\_FacingOurFuture\\_final.pdf](http://www.urban.org/UploadedPDF/412020_FacingOurFuture_final.pdf). One study found that at least 5,100 children were forced into the child welfare system due to the deportation of a parent. See Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (Nov. 2, 2011).
- 410 Carola Suárez-Orozco, et al., *Making up for lost time: The experience of separation and reunification among immigrant families*, 41:4 *Family Process*, 625-641, 634 (2002); See e.g., Kalina Brabeck, et al., *The Psychological Impact of Detention and Deportation on U.S. Migrant Children and Families: A Report for the Inter-American Human Rights Court* (Aug. 2013), available at <http://www.bc.edu/content/dam/files/centers/humanrights/doc/IACHR%20Report%20on%20Psychosocial%20Impact%20of%20Detention%20%20Deportation-FINAL%208-16-13.pdf>.
- 411 Interview with Sandra, 19-year-old daughter of Augustine, deportee, in Miami, Fla. (Oct. 19, 2011).
- 412 Interview with Melissa, 15-year-old daughter of Augustine, deportee, in Miami, Fla. (Oct. 19, 2011).
- 413 Chaudray, et al., *supra* n. 409.
- 414 The information in this section came from interviews with Carl, deportee and his wife, Christina in Port-au-Prince, Haiti on October 5, 2014.
- 415 Interview with Michelle, partner of Jimmy, deportee, in Miami, Fla. (Oct. 4, 2011).
- 416 *Id.*
- 417 The Florida Mental Health Act of 1971 (Fla. Stat. §§394.451-394.4789 (2005), commonly known as the “Baker Act”) is a Florida statute that allows for involuntary examination of an individual. Judges, law enforcement officials, physicians or mental health professionals can initiate it. There must be evidence that the person: has a mental illness (as defined by the Baker Act) and is harm to self or to others (as defined by the Baker Act).
- 418 Interview with Michelle, 31 year-old partner of Jimmy, deportee, in Miami, Fla. (Oct. 4, 2011).
- 419 Satinsky, et al., *supra* n. 404.
- 420 Ajay Chaudray, et al., *supra* n. 409.
- 421 *Id.*
- 422 *Id.*
- 423 The information about Frantz and his family came from an interview with Maria in Miami, Florida on October 10, 2011.
- 424 The information about Auguste and his family came from a telephone interview with 23 year-old daughter of Auguste on October 7, 2011 and an interview with Auguste on February 12, 2011 in Port-au-Prince, Haiti.
- 425 For a thoughtful recent accounting of some of this case law, see Moria Paz, *Human Rights, Immigration, and Border Walls* (November 17, 2014), 11, available at SSRN: <http://ssrn.com/abstract=2526521> (forthcoming draft); Jaya Ramji-Nogales, *Undocumented Migrants and the Failures of Universal Individualism*, 47 *Vanderbilt J. Transnational L.* 722-39 (2014); David Weissbrodt, *The Human Rights of Noncitizens* (2008); and Moria Paz, *The Tower of Babel: Human Rights and the Paradox of Language*, 25 *European J. Int’l L.* 473 (2014).
- 426 The United States is bound by certain international and regional treaties and instruments, such as the American Declaration on the Rights and Duties of Man (and its corresponding treaty, the Charter of the Organization of American States), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). Other sources of international legal authority, such as the Convention on the Rights of the Child (CRC), the American Convention on Human Rights (American Convention), the European Convention on Human Rights (European Convention), and the Cartagena Declaration on Refugees, while not binding on the United States, constitute persuasive authority. International human rights bodies—such as the Inter-American Commission on Human Rights (Inter-American Commission), the Inter-American Court of Human Rights (Inter-American Court), the European Court of Human Rights (European Court), the UN Human Rights Committee, and the UN Committee on the Rights of the Child—interpret and apply the law contained in these treaties and instruments. Each body has imposed clear limitations on the ability of countries to deport non-nationals under international human rights law.
- 427 See non-derogation clauses in, e.g., American Convention on Human Rights, art. 27, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter “American Convention”]; International Covenant on Civil and Political Rights, art. 4,



- Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter “ICCPR”]; European Convention on Human Rights, art. 15, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter “ECHR”].
- 428 See, e.g., U.N. High Commissioners for Refugees and Human Rights Joint Communications, *supra* n. 168 (urging States to “suspend all involuntary returns to Haiti”); *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 68 (urging States to refrain from forcibly returning “individuals [] to Haiti [because they] are vulnerable to human rights violations.”); IACHR, Precautionary Measures, *supra* n. 66 (urging the United States to suspend deportations of persons to Haiti who are “seriously ill or who have family members in the United States,” and issuing precautionary measures on behalf of 62 Haitian nationals subject to deportation from the United States).
- 429 American Declaration of the Rights and Duties of Man, O.A.S. Official Rec., OEA/Ser. L./V./II.23, doc. 21 rev. 6 (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser. L.V/II.82, doc. 6 rev. 1, at arts. V-VI (1992) [hereinafter “American Declaration”].
- 430 ICCPR, *supra* n. 427 at art. 17(1). See also ECHR, *supra* n. 427 at art. 8 (“Everyone has the right to respect for his private and family life.”).
- 431 American Convention, *supra* n. 427 at arts. 17, 11.
- 432 *Smith & Armendariz, et al. v. United States*, Case 12.562, Inter-Am. Comm’n H.R., Report No. 81/10 OEA/Ser.L/V/II.139, doc. 5 rev. 1, ¶ 57 (Mar. 7, 2011).
- 433 *Id.* at ¶ 64.
- 434 *Id.* at ¶ 54.
- 435 Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights of Asylum seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, doc. 40 rev., ¶ 166 (Feb. 28, 2000) [hereinafter “Canada Refugee Report”].
- 436 *Francesco Madafferri v. Australia*, Commc’n no. 1011/2001, UN Doc. CCPR/C/81/D/1011/2001, ¶ 9.8 (2004) (finding that the right to family life would be violated if the petitioner was deported because his family lived for fourteen years in the host country and his wife and children did not speak the language of his country of origin).
- 437 *Id.*
- 438 *Boultif v. Switzerland*, App. no. 54273/00, Eur. Ct. H.R., ¶ 47 (2001).
- 439 *Id.*
- 440 *Id.* at ¶ 51.
- 441 *Amrollahi v. Denmark*, App. No. 56811/00, Eur. Ct. H.R., ¶¶ 41, 43-44 (2002).
- 442 American Declaration, *supra* n. 429 at art. VII.
- 443 Canada Refugee Report, *supra* n. 435 at ¶¶ 159-66; Convention on the Rights of the Child, art. 3(1), Nov. 20, 1989, 1577 UNTS 3.
- 444 Inter-American Court of Human Rights, Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, OC-21/14, ¶¶ 70, 116 (August 19, 2014).
- 445 Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1), UN Doc. CRC/C/GC/14, ¶¶ 39, 40 (2013).
- 446 *Id.* at ¶ 61.
- 447 *Smith & Armendariz, supra* n. 432 at ¶¶ 17, 44.
- 448 *Id.* at ¶ 60.
- 449 See *Nunez v. Norway*, App. no. 55597/09, Eur. Ct. H.R. (2011); but see *Antwi and Others v. Norway*, App. no. 26940/10, Eur. Ct. H.R. (2012) (allowing the expulsion of a Ghanaian man who had violated Norwegian immigration law, where both he and his wife were born and raised in Ghana).
- 450 *Winata v. Australia*, Commc’n no. 930/2000, CCPR/C/72/D/930/2000, ¶ 7.3 (July 26, 2001). Although the Committee found that the removal would constitute arbitrary interference with the petitioners’ family life, it also implied that removal could be lawful if preceded by an examination of the petitioners’ case with due consideration given to the protection of the minor child.
- 451 See discussion *supra* at pp. 21-24.
- 452 UN High Commissioners for Refugees and Human Rights Joint Communications, *supra* n. 141.
- 453 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 54.
- 454 IACHR, Precautionary measures, *supra* n. 66
- 455 American Declaration, *supra* n. 429 at art. I.
- 456 *Report on Terrorism & Human Rights*, Inter-Am. C. H. R., Doc. OEA/Ser.L./VIII.116 doc. 5 rev. 1 corr., ¶¶ 149-150 (Oct. 22, 2002) (noting that while the American Declaration lacks a general provision on the right to humane treatment, the Commission has interpreted Art. I as containing a prohibition similar to that of Art. 5 of the American Convention, *supra* n. 427).
- 457 *Case of the Street Children (Villagrán-Morales et al.) v. Guatemala*, 1999 Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 144 (Nov. 19, 1999). See generally Steven R. Keener & Javier Vasquez, *A Life Worth Living: Enforcement of the Right to Health Through the Right to Life in the Inter-American Court of Human Rights*, 40 Colum. Hum. Rts. L. Rev. 597 (2009).
- 458 ICCPR, *supra* note 427 at art. 6 (1) (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”); art. 9(1) (“Everyone has the right to liberty and security of person.”); and art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).
- 459 American Declaration, *supra* n. 429 at art. XI.
- 460 *Smith & Armendariz, supra* n. 432 at ¶ 50 (citing *Mortlock v. United States*, Case 12.534, Inter-Am. Comm’n H.R., Report No. 63/08, OEA/Ser. L/V/II.134, doc. 5 rev. 1 (July 25, 2008), ¶ 78).
- 461 *Haitian Ctr. for Human Rights v. United States*, Case 10.675, Report No. 51/96, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.95 doc. 7 rev. ¶ 167 (1997).
- 462 *Mortlock v. United States*, Case 12.534, Inter-Am. Comm’n H.R., Report No. 63/08, OEA/Ser. L/V/II.134, doc. 5 rev. 1 (July 25, 2008), ¶ 90; American Declaration, *supra* n. 429 at art. XXVI.
- 463 *Haitian Ctr. for Human Rights, supra* n. 461 at ¶ 170.
- 464 *Case of the Pacheco Tineo Family v. Bolivia*, Inter-Am. Ct. H.R., Series C No. 272, ¶¶ 206-208 (Nov. 25, 2013).
- 465 Human Rights Committee, General Comment No. 31, CCPR/C/21/Rev.1/Add.13, March 26, 2004 (adopted on March 29, 2004) [online] [http://sim.law.uu.nl/SIM/CaseLaw/Gen\\_Com.nsf/a1053168b922584cc12568870055fbbc/7fe15c0f9b9dc489c1256ed800498f39?OpenDocument](http://sim.law.uu.nl/SIM/CaseLaw/Gen_Com.nsf/a1053168b922584cc12568870055fbbc/7fe15c0f9b9dc489c1256ed800498f39?OpenDocument).



- 466 *Mortlock*, *supra* n. 462 at ¶ 94.
- 467 *Id.* at ¶ 91.
- 468 *D. v. United Kingdom*, App. No. 30240/96 Eur. Ct. H.R. (1997).
- 469 *B.B. v. France*, App. No. 30930/96, Eur. Ct. H.R. ¶¶ 8-25(1998).
- 470 *Id.* The host country quashed the deportation order before the European Court of Human Rights heard the case.
- 471 *See N.A. v. United Kingdom*, App. no. 25904/07, Eur. Ct. H.R. (2008).
- 472 *Id.* at ¶ 110.
- 473 *Id.* *See also Urgent Action: Forced Returns to Iraq Deferred*, Amnesty Int'l, (Nov. 4, 2014) <http://www.amnesty.org/es/library/asset/EUR35/004/2010/es/e04edaaf-e74b-481c-a870-a32fd4c09fe3/eur350042010en.html> (reporting on ECHR decision directing that forcible returns to Baghdad should be suspended immediately because of the deterioration in the security situation.).
- 474 *Case of Chahal v. United Kingdom*, App. no. 22414/93, Eur. Ct. H.R., ¶ 107 (1996). *See also MSS v. Greece and Belgium*, App. no. 30696/09, f 53) Eur. Ct. H.R. (2011) ¶ 253 (prohibiting the forced return of a non-citizen who faced extreme poverty in his home country following deportation and holding that the non-citizen's expulsion was a violation of the right to be free from degrading treatment because he was left dependent on the government's support in a situation of "serious deprivation or want incompatible with human dignity" upon return to his home country); cf *Cartagena Declaration on Refugees*, Nov. 22, 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, available at <http://www.refworld.org/docid/3a6b36ec.html> (broadly defining refugees as "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order").
- 475 *Rep. of the Independent Expert on the Situation of Human Rights in Haiti*, *supra* n. 15 at ¶ 42; UN High Commissioners for Refugees and Human Rights Joint Communications, *supra* n. 141. *See discussion supra* at pp. 24-27 for more information on the dearth of medicine and medical care in post-earthquake Haiti.
- 476 *See discussion supra* at p. 2.
- 477 The United States ratified the treaty with the understanding that torture, defined as "intentionally inflicted" severe pain or suffering, must be "specifically intended" to serve as a basis for protection under Article 3 of the Convention. *See S. Comm. on Foreign Relations, Report on Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, S. Exec. Rep. No. 101-30, at 9 (1990).
- 478 8 C.F.R. § 208.18(a)(1); *In re J-E*, the Board of Immigration Appeals found that, based on the record presented by the applicant, "substandard prison conditions in Haiti do not constitute torture within the meaning of 8 C.F.R. § 208.18(a)..." *In re J-E*, 23 I. & N. Dec. 291, 291 (BIA 2002); *see also Pierre v. Attorney General*, 528 F.3d 180, 189 (3d Cir. 2008) (finding that lack of medical care and resultant pain Pierre would suffer in Haitian jail did not constitute torture for purposes of CAT); *see generally* Mary Holper, *Specific Intent and the Purposeful Narrowing of Victim Protection Under the Convention Against Torture*, 88 Or. L. Rev. 777 (2009).
- 479 *See* Exec. Office of Immigration Review, U.S. Dep't. of Justice, *FY2012 Statistical Year Book M1* (Mar. 2013), available at <http://www.justice.gov/eoir/statspub/fy12syb.pdf> (of the 29,796 CAT applications, 643 were granted and 9,710 were denied. 736 were deemed abandoned, 6,327 were withdrawn, and another 12,380 were listed as "other.").
- 480 American Declaration, *supra* n. 429, arts. XVII, XXVI. *See also* ICCPR, *supra* n. 427 at art. 14(1) ("everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law").
- 481 *Benito Tide Mendez et al. v. Dominican Republic*, Case 12.271, Inter-Am. Comm'n H.R., Report No. 64/12, ¶277 (Mar. 29, 2012) (discussing "Judicial Guarantees"); *Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants*, OC-18/03, Inter-American Court of Human Rights (IACtHR), 17 September 2003, ¶ 123.
- 482 Inter-American Court of Human Rights, *Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, OC-21/14, ¶ 112 (August 19, 2014); *Case of Dominican and Haitian People Expelled v. Dominican Republic*, Inter-Am. Ct. H.R., Series C No. 282, ¶¶ 355-58 (Aug. 28, 2014). *Vélez Loor v. Panama*, preliminary objections, merits, reparations and costs, Judgment Inter-Am. Ct. H.R Series C No. 218 ¶¶ 142-43 (Nov. 23, 2010). The rights to due process and a fair hearing include administrative procedures such as deportation, asylum, relief under the Torture Convention, appointment of a guardian *ad litem*, and determination of the best interest of the child, among others.
- 483 *Mortlock*, *supra* note 462 at ¶ 78.
- 484 Convention on the Rights of the Child, *supra* n. 443 at art. 12. *See also* Committee on the Rights of the Child, General Comment No. 14, *supra* note 445 at ¶¶43 (stating that the "best interests of the child" standard cannot be correctly applied if children's due process rights are not protected in all matters affecting the child, which would include their parents' deportation proceedings); Inter-American Court of Human Rights, *Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, *supra* n. 444 at ¶ 116 (listing specific guarantees under international human rights law that must govern immigration proceedings involving children).
- 485 Inter-American Court of Human Rights, *Advisory Opinion on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, *supra* n. 444 at ¶116 (detailing list of "guarantees that, under international human rights law, must govern any immigration proceedings that involve children.").
- 486 *Case of the Pacheco Tineo Family v. Bolivia*, *supra* n. 464 at ¶ 133 (Nov. 25, 2013).
- 487 *Id.* at ¶ 228.
- 488 *Case of Dominican and Haitian People Expelled v. Dominican Republic*, *supra* n. 482 ¶¶ 356-58, 390-97 (Aug. 28, 2014). *See also Benito Tide Mendez*, *supra* n. 481 at ¶ 289 (Mar. 29, 2012).
- 489 *Smith & Armendariz*, *supra* n. 432 at ¶ 63; *see also Benito Tide Mendez*, *supra* n. 481 ¶ 284 (citing *Report on Terrorism*) ("proceedings involving detention, status or removal of aliens

from a state's territory by exclusion, expulsion or extradition require individualized and careful assessment and [are] subject to the same basic and non-derogable procedural protections applicable in proceedings of a criminal nature”).

- 490 *Smith & Armendariz*, *supra* n. 432 at ¶¶ 62, 64 (citing *Maya Indigenous Community of Toledo District v. Belize*, Case 12.053, Inter-Am. Comm'n H.R., Report No. 40/04, OEA/Ser.L./V/II.122, doc. 5 rev. 1 ¶ 175 (2004); *see also Benito Tide Mendez*, *supra* n. 481 at ¶ 279 (underscoring the importance of countries' "obligation to provide an effective remedy to all persons within their jurisdiction against violations of their fundamental rights and that the Convention provides that the guarantee recognized therein applies not just to the rights contained in the Convention, but also to those recognized in the constitution or laws"); *Mortlock*, *supra* n. 462, ¶¶ 83-84; *see also Report on Terrorism*, *supra*, note 456, at ¶ 401.
- 491 *Smith & Armendariz*, *supra* n. 432 at ¶ 58; *Mortlock*, *supra* n. 462 at ¶ 78.
- 492 The Commission noted that these factors had previously been articulated by the European Court of Human Rights and the UN Human Rights Committee as appropriate for use in deportation proceedings.
- 493 *Smith & Armendariz*, *supra* note 432 at ¶ 54.
- 494 *See discussion supra* at p. 2.
- 495 These recommendations are adapted, in part, from recommendations offered to the Inter-American Commission on Human Rights by the authors and collaborators (on file with authors) as well as recommendations presented in the report of the UN Indep. Expert on the Situation of Human Rights in Haiti, *Rep. of the Independent Expert on the Situation of Human Rights in Haiti, Addendum: Forced Returns of Haitians by Third States*, Human Rights Council, 12, UN Doc A/HRC/20/35/Add.1, Sec. XII (June 4, 2012), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-35-Add1_en.pdf).
- 496 Cartagena Declaration on Refugees, Nov. 22, 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, *available at* <http://www.refworld.org/docid/3ae6b36c.html>.









**MIAMILAW**  
UNIVERSITY OF MIAMI SCHOOL OF LAW

Immigration  
Clinic

Immigration Clinic  
University of Miami School of Law  
1311 Miller Drive  
Coral Gables, FL 33146  
305.284.6092  
immigrationclinic@law.miami.edu

**MIAMILAW**  
UNIVERSITY OF MIAMI SCHOOL OF LAW

Human Rights  
Clinic

Human Rights Clinic  
University of Miami School of Law  
1311 Miller Drive  
Coral Gables, FL 33146  
305.284.1678  
hrc@law.miami.edu



International Human Rights Clinic  
The University of Chicago Law School  
6020 S. University Ave  
Chicago, IL 60637  
773.704.3111  
citro@uchicago.edu

