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Haiti Refugees and Migrants

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Islands to Let U.S. Process Haiti Refugees

By STEVEN GREENHOUSE

Special to The New York Times

WASHINGTON, June 3 — The Turks and Caicos Islands, a small British-ruled group of islands off the Bahamas, agreed today to let the Clinton Administration process Haitian refugees on a beach site on the islands.

Administration officials said the decision was important because it is the first time officials outside the United States have agreed to let Washington process Haitians' applications for asylum on land, where the situation will be far less cramped and stressful than at sea.

The decision is the Administration's second diplomatic victory this week in persuading other countries to help with Haitian refugees. Jamaica agreed on Wednesday to let Washington anchor ships in Kingston harbor to interview Haitians seeking refugee status in the United States.

The Administration plans to start these processing centers around June 13, but meanwhile it is continuing to return Haitians seeking to enter the United States. Today, the Coast Guard sent back 120 boat people intercepted 18 miles off of Haiti's north coast.

At the same time, the Administration sought today to step up pressure on Haiti's military leaders and their wealthy supporters by asking France, Canada and Venezuela to consider banning all flights to and from Haiti and cutting off all financial transactions with Haiti. After a meeting at the United Nations today, all four nations voiced a readiness to consider the tighter sanctions.

U.S. May Cut Off Flights

American officials said today that the Administration was leaning strongly toward cutting off all flights between Haiti and the United States by the end of this month and halting all financial transactions with Haiti.

The Administration is embracing tighter sanctions after many supporters of Haiti's exiled President, the Rev. Jean-Bertrand Aristide, protested that the Administration has failed to use all the weapons in its sanctions arsenal to put maximum pressure on Haiti's military.

At a meeting today, the Turks and Caicos legislative council agreed to an American proposal that would allow processing of Haitian refugees on a site of up to five acres on Grand Turk Island. A few details remain to be worked out, American officials said. British diplomats said their Government would soon give its approval.

Turks and Caicos officials have been uneasy about lending their territory for a processing center because they fear that it could hurt their tourism industry, which includes a Club Med resort.

The United States plans to interview fleeing Haitians on a beach in the Turks and Caicos Islands.

U.S. Policy Shift Backed By Aristide

Veiled Support Voiced For Military Action

By Roberto Suro
Washington Post Staff Writer

After months of disagreements and recriminations with the United States, exiled Haitian President Jean-Bertrand Aristide yesterday spoke encouragingly of President Clinton's recent policy changes while urging more aggressive steps against Haiti's military rulers.

In a veiled endorsement of military intervention, Aristide called for "swift and determined action" to remove the army generals who deposed him in 1991 and for the deployment of a large international force to help him reestablish democracy in Haiti.

Aristide's comments signaled an important convergence with the administration on the Haitian crisis. Until recently the administration had urged Aristide to reconcile with his political opposition, a move the deposed president refused to make. The administration has since dropped that line. Now both Clinton and Aristide are talking about the need to oust the Haitian military and the possibility of doing it by force.

Making his first extensive public remarks since Clinton took a new stance on Haiti, Aristide said, "President Clinton needs help, and I am helping him as he can help us."

Aristide said the tightened embargo against Haiti promoted by the administration is "a good step" and he avoided any direct criticism of Clinton's new policy toward Haitian refugees.

The kind words were all the more remarkable because they came at a Capitol Hill luncheon sponsored by the TransAfrica lobbying group, which has led the opposition to Clinton's Haiti policies among civil rights groups and refugee advocates.

Responding to a 27-day hunger strike by Randall Robinson, executive director of the group, Clinton

announced May 8 that the United States would begin offering Haitian boat people a chance to seek refugee status rather than automatically returning them to their homeland.

The new policy won an important measure of international support yesterday when the Turks and Caicos Islands, a British dependency in the Caribbean, agreed to let the United States set up a five-acre refugee processing facility on Grand Turk Island. The decision came two days after Jamaica offered to allow the United States to conduct processing aboard ships anchored in its territorial waters.

"It buys them time," Rep. Kweisi Mfume (D-Md.) said of the administration's success in winning support from the Caribbean nations.

Mfume, chairman of the Congressional Black Caucus, emphasized that he does not agree with the administration's approach but acknowledged, "It certainly allows them for some time to work with other nations in the region."

In stepping up the pressure on Haiti's military and in dealing with the refugees fleeing the island republic, the Clinton administration has emphasized its determination to find international solutions that will win the endorsement and participation of other countries in the region.

In calling for the ouster of the military, Aristide also emphasized the need for multilateral action. Aristide, who was elected by an overwhelming majority but ruled for only seven months before the military overthrew him in 1991, was careful not to openly invite the invasion of his homeland. But he nonetheless made his intentions clear.

"As you know, we do not seek military occupation," he said, "and if I were to ask for a military interven-

tion, I would be impeached under my constitution. However, I do believe that action can be taken to rid the nation of the thugs who have taken her hostage and restore democracy to Haiti.

"Therefore, swift and determined action should be taken to remove the coup leaders within the framework of the Governors Island agreement. I will not waste time describing what this action would be. The international community knows how to proceed."

Aristide was referring to an agreement signed under the United Nations' auspices last July 3, in which the commander of the military government, Lt. Gen. Raoul Cedras, promised to leave office and allow Aristide to resume power by last Oct. 30. Cedras failed to fulfill several preliminary steps to the accord, and it collapsed last fall.

"The military breached the agreement, and Aristide is just calling on the international community to enforce it," said Michael Barnes, the former Maryland congressman who advises Aristide.

Aristide argued yesterday that after Cedras and the other top officers are removed from power, the other provisions of the agreement should be implemented. These include the dispatch of a sizable international mission to reform the Haitian military and other measures to promote democracy. Aristide suggested that with sufficient international support, no prolonged occupation of Haiti by the U.S. military would be necessary.

Yet even as he offered Clinton a measure of encouragement, Aristide urged his supporters to keep pressing the president: "Once we keep the pressure on, he will continue, I hope, I wish, I think, he will continue building the pressure on the military, on the thugs to get rid of them."



DATE: 6-6-94
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Haiti leaders sound battle cry

Government warns of an invasion

By Tom Squitieri
USA TODAY

PORT-AU-PRINCE, Haiti — Haiti's military-controlled government is moving this Caribbean nation closer to a war footing, calling on the army and civilians to prepare to resist a military invasion.

In a communique followed by government radio broadcasts Sunday, President Emile Jonassaint's government called on the military that appointed him "to take all measures" to stop a foreign intervention.

U.S. Defense Secretary William Perry, visiting Europe, said any peacekeeping forces the United States and its allies send to Haiti would number in the thousands and stay for months, not weeks.

Critics have warned that such intervention could last for years, but Perry seemed to offer a shorter timetable on NBC's *Meet the Press*.

The Jonassaint government also called on police, the army and other official parts of the government to "take steps to organize civil defense to defend the country against foreign troops."

The fear of an invasion was heightened Friday, after exiled Haitian President Jean-Bertrand Aristide told U.S. reporters he now supports a "surgical strike" to remove the junta leaders and restore him to office.

All weekend Haitian radio

stations played *La Dessalinienne* — Haiti's national anthem, which celebrates its independence — and other patriotic music as part of the government effort to spark unity among Haitians.

They also called together the various chief *hougans*, voodoo priests, to join the effort to protect Haiti.

The communique from Jonassaint, installed by the military on May 11, urges citizens to "remain calm and vigilant in the face of provocation."

U.S. warships, part of a U.N. blockade, continue to prowl off Haiti's coast well within the 3-mile limit. U.S. Coast Guard he-

licopters also regularly buzz close to Haiti's shore.

Jonassaint also has ordered the Justice Ministry to begin criminal legal proceedings against anyone who supports a military interdiction in Haiti, a clear reaction to comments by Aristide, ousted in a 1991 coup.

All the steps are seen as precursors to the government declaring a state of emergency.

Roadblocks have reappeared in Port-au-Prince, the capital, and throughout Haiti.

Some parts of the country, such as areas where gasoline is smuggled through, have been declared security zones where reporters are forbidden to trav-

el. Harassment and politically connected murders, which had dropped in the days following Jonassaint taking office, are on the rise again.

But while repression is building again in the country, some coup organizers appear to be examining other options.

Miami criminal lawyer Frank Rubino, who defended Panama's Manuel Noriega, spent the weekend here to meet with Haiti's two most powerful leaders, Army head Gen. Raoul Cedras and Police chief Col. Michael Francois. The speculation: They may be looking to cut a legal deal with the United Nations.

Haitians starting to favor invasion

Sanctions' pains changing minds

By Anna Spon
ASSOCIATED PRESS

PORT-AU-PRINCE, Haiti — Despite national memories of Spanish, French, British and American occupations, prolonged suffering under U.N. sanctions is leading many Haitians to welcome the idea of a U.S. military invasion.

"Things are getting so bad here that people are beginning to forget history," said a guide at the Pantheon of the Heroes museum who identified himself only as Jean-Marie.

Haitians of all classes remember with pain and indignation the 19-year U.S. occupation that began in 1915, when their land was under the rule of white Marines who didn't hide their racism and contempt for a nation born of a rebellion by black slaves.

Even exiled President Jean-Bertrand Aristide has long opposed a U.S. invasion on his behalf — although last week he said the United States should be "moving toward a surgical action" that could topple the military within days.

President Clinton has not ruled out military action. And Defense Secretary William Perry left that door open yesterday while maintaining that Washington is focusing on the sanctions.

[Asked on NBC-TV's "Meet the Press" about the prospects for retraining Haiti's military to support a democratic government, Mr. Perry said such an operation could keep U.S. troops in the country for several months.

"If we go into Haiti with any kind of a peacekeeping force, as we have considered under the U.N. provisions in the past, one element of that would be ... retraining a security force in Haiti to include both the military and the police," he said.

"We're certainly talking about several thousands of security forces. And it's not a short time. You're not talking about weeks; you're talking about months," he said.

[More than 200 U.S. and Canadian troops were sent to Haiti aboard the USS Harlan County on such a training mission in October, but the ship turned back when confronted by hostile demonstrators on the dock in Port-au-Prince.]

On the streets of Port-au-Prince last week, many said they would prefer a foreign invasion, even an occupation, to the hardships they now face.

The sanctions are aimed at forcing out the military-backed government so that Mr. Aristide can return to power. U.N. economic sanctions followed soon after Mr. Aristide's ouster in 1991 and were tightened last month in the face of the military's refusal to allow him to return.

Thousands of people have lost

jobs over the past month as factories closed for lack of supplies and fuel. Port traffic has dropped 75 percent since the sanctions were tightened May 21, the newspaper *Le Nouvelliste* reported.

The cost of food and medicine is soaring, and gasoline smuggled illegally into the country is priced out of reach for most people.

"I don't care about history. I care about right now," Eric Victor, 29, said as he sold religious books at the capital's main bus station. "And right now I am living in hell. ... The Americans should either let the refugees go to Miami or they should invade, but they shouldn't leave us like this."

As Mr. Victor spoke Friday, 122 Haitian boat people who had been turned back by the United States were being repatriated at a nearby Haitian immigration processing center.

"My husband used to work at a factory where they make cassettes, but they closed it down because of the embargo," said a woman selling baby clothes on a street corner who identified herself only as Mrs. Edoin.

"This is how I feed my five children," she said. "If the Americans think it is better for us, then maybe they should invade. But if they put any more sanctions, we won't be able to survive."

• Staff writer Ron Taylor in Washington contributed to this report.

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DATE: 6/7/94

TO: Steven Warnoff

FROM: Lorie Heinrich

FAX NUMBER: 456-7028

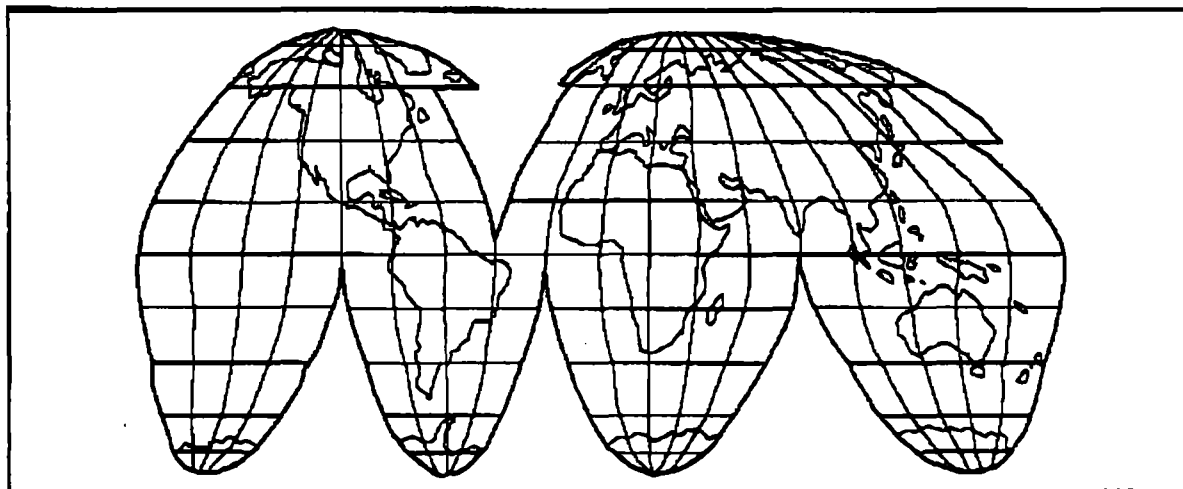
NUMBER OF PAGES:

Attached is an agenda from the INS Haiti training conference conducted 2 weeks ago in San Antonio, Texas, along with an outline of the contents of the notebooks given to all conference participants.

Our next conference will be held in Dallas, Texas during the week of June 20-24. I have not completed the agenda for this conference, however, the contents will be the same except we will be using some different presenters this time around.

If you have any questions, you can give me a call at the above telephone #.

Lorie
Lorie Heinrich



HAITI REFUGEE TRAINING
San Antonio, Texas
May 23-27, 1994

DAY 1 Monday

○ **Welcome**

Mr. Richard M. Casillas
District Director
San Antonio, Texas

John W. Cummings
Acting Director, Office of
International Affairs

○ **Administrative Issues**

Barbara Blessing
Southern Regional Office

○ **Overview of U.S. Refugee**
Program
- History of in-country
program in Haiti

Lorle Rados Heinrich
Office of International Affairs

○ **Int'l Refugee Protection**

Scott Busby
Legal Staff
UNHCR

L U N C H

○ **U.S. Refugee Law**

Ed Grant
Office of the General Counsel

DAY 2 Tuesday

○ **U.S. Refugee Law**

T. Alexander Aleinikoff
General Counsel

Harold Koh
Yale University

Cheryl Little
Florida Rural Legal Services

*Michael Ratner, Center
For Constitutional Rights*

*Merrill Smith
Church World Service*

L U N C H

- *Country Conditions*

*Alex Dupuy
Professor of Sociology
Wesleyan University*

*Marie Racine
Professor of Linguistics
University of the
District of Columbia*

DAY 3 Wednesday

- *Country Conditions*

*William O'Neill
Former Legal Director
Int'l Civilian Mission*

*Jocelyn McCalla
Executive Director
National Coalition for
Haitian Refugees*

L U N C H

- *Using Country Conditions
Information*
- *Administrative Issues*

*Ted Albers
Resource Information Center*

To be announced

DAY 4 Thursday

- *Issue Identification*

*Bo Cooper
General Counsel*

○ *Refugee Interview
Techniques*

*Creonice Lawson
Asylum Officer
Miami*

L U N C H

○ *Decision Writing*

*Bo Cooper
General Counsel*

○ *Mock Interview & Write-up*

*Bo Cooper

General Counsel*

DAY 5 Friday

○ *Discussion on Write-ups*

*Staff
General Counsel/Int'l Affairs*

○ *Working aboard a ship*

*Bill Russell
Management Analyst
San Antonio INS*

○ *Closing Remarks (telephonically)*

*Doris Meissner
Commissioner*

○ *Presentation of Certificates*

*Mr. Luis Garcia
District Director
Mexico City*

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Agenda**List of Participants 2****Basic Law Manual 3****HAITI****REFLAP 4**

* (the attached includes the contents of this section.)
Country Conditions 5

**U.S. Refugee Program 6****Decision Writing 7****U.N.H.C.R. Handbook 8****REFUGEE
TRAINING****9****10****12**

SUMMARIES OF REPORTS AND OTHER DOCUMENTS ON HAITI**INS RESOURCE INFORMATION CENTER - May 1994**

Amnesty International, United States of America/Haiti: The Price of Rejection - Human Rights Consequences for Rejected Haitian Asylum-Seekers, May 1994

The fate of Haitians, either forcibly repatriated or denied refugee-status by the in-country processing program, is discussed in this paper. Examples of grave abuses, including torture and execution, against some of these individuals are provided. Concern for the safety of the survivors and the safety of family members of both survivors and deceased is expressed.

Human Rights Watch/Americas / National Coalition for Haitian Refugees, Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy, April 1994.

Brief reviews of recent developments in U.S. policy toward Haiti, the human rights situation and flawed efforts by the international community to bring about President Aristide's return, the role of the UN/OAS International Civilian Mission in Haiti, the rise of the Front for the Advancement and Progress of Haiti (a neo-Duvalierist group - FRAPH), and recent political assassinations are provided. Information on groups at risk, including trade unionists, Aristide supporters, religious congregations and leaders, popular organizations, and the media, is provided through examples of serious human rights violations against members of these various groups. In its discussion of the response of the international community, the report focuses on the U.S. role and briefly critiques the U.S. Department of State's report on Haiti in *Country Reports on Human Rights Practices for 1994*. Discrepancies between the Department of State's account of reports by the International Civilian Mission and the Mission's actual reporting, as well as the Dept. of State's general understating of the gravity of conditions in Haiti, are pointed out.

National Coalition for Haitian Refugees, Persecution of Refugee Applicants in Haiti & Persecution of Haitian Refugees Forcibly Returned to Haiti, 21 April 1994

The National Coalition for Haitian Refugees is a coalition of religious, labor, civil rights, and human rights organizations that works to protect the rights of Haitian asylum-seekers under American and international law. The Coalition is widely respected for its monitoring of and credible reporting on human rights conditions in Haiti. The Coalition staff works closely with Human Rights Watch/Americas to produce joint reports on conditions in Haiti. The two draft memoranda included here give details of individuals and, in some cases, members of their families whose rights were seriously abused after they were forcibly repatriated, refused refugee status by the in-country processing program, or both.

St. Thomas Law Review - Margulies, Peter, "Difference in Asylum Law: Haitian and Holocaust Refugee Narratives," *St. Thomas Law Review*, Volume 6, Fall 1993, p. 135-152.

A summary and excerpts of points for asylee/refugee adjudicators is provided. The main point of the article is to demonstrate the plausibility, or plausible components, of stories that are often deemed incredible by immigration authorities. It refers specifically to issues of escape, flight and hiding; Haitians' tendency to deny that anything they are doing is political even when it is; the lack of consistency and detail in Haitian discourse; and the necessity of deception for survival.

UN Department of Public Information, *International Mission in Haiti Denounces Reported Incidents of Rape as 'Part and Parcel of Political Violence and Terror'*, 23 March 1994.

(not included in hard copy documents for refugee training - copy attached for your use)

This UN press release reports on the ICM concern over the numerous cases of rapes which have recently been brought to its attention and which appear to have political overtones.

UN General Assembly, *The Situation of Democracy and Human Rights in Haiti*, A/48/532/Add.1, 18 November 1993 & *The Situation of Democracy and Human Rights in Haiti*, A/48/532, 25 October 1993

The most recent published reports of the UN/OAS International Civilian Mission in Haiti to the UN General Assembly - In late 1992 and early 1993 the Organization of American States (OAS) and the United Nations (UN) established a joint UN/OAS International Civilian Mission in Haiti to monitor widespread human rights abuses, to report its concerns to the authorities, to submit recommendations and to inquire as to the follow-up to its recommendations. Mission offices were initially opened in the chief towns of each of Haiti's nine departments in March 1993. By September, four additional offices had opened. At its maximum deployment, the Mission had 204 staff members divided among 13 offices throughout Haiti. However, by the middle of October when it became clear that the Governors Island Agreement was breaking down, most of the Mission was evacuated to the Dominican Republic for security reasons. A small faction of the Mission returned to Haiti early in 1994 where they have continued to monitor the situation in Port-au-Prince. Occasional efforts to investigate abuses in the countryside have met with hostility, threats, and physical harassment from civilians who appear to be supported by the military and its associates. The above reports provide accounts of the worsening human rights situation in Haiti and point out that the abuses are politically motivated even in cases in which the victims are ordinary citizens and not political activists. Most of those who are targeted are

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Aristide supporters, *Lavalassiens*, from poor neighborhoods and communities, both in Port-au-Prince and the countryside. Most of the abuses are committed with impunity by the military or by civilian auxiliaries of the military. In citing specific examples of individuals whose rights have been seriously abused, the reports often note the political basis for the abuse, e.g., support of Aristide or membership or activism in any of a huge number of neighborhood, or larger, popular, church-based, development, worker, student, youth, literacy, or women's organizations. The reports also include accounts of rape and/or other serious abuses directed against family members or friends of those targeted.

9. U.S. Committee for Refugees, "Dominican Republic" & "Haiti," *World Refugee Survey*, 1994.

The chapter on the DR provides information that Haitians are fleeing into that country and being forcibly repatriated by its government. Among those Haitians who have not been repatriated, more than 1300 have been granted refugee status by the UNHCR.

The chapter on Haiti describes the in-country refugee processing program and discusses repatriation, internal displacement, and socio-economic conditions.

10. U.S. Department of State, "Haiti," *Country Reports on Human Rights Practices for 1993*, February 1994, p. 467-474. (see Ian Martin letter under U.S. Senate)

The State Department report begins with a short summary of political developments in Haiti since the military coup and brief descriptions of the Haitian military's structure and the Haitian economy. An extensive discussion of widespread, serious human rights abuses by the military and its associates, their impunity, and the role of the International Civilian Mission follows. This part of the report is organized according to categories of rights that are under consideration, i.e.,

Respect for the integrity of the person: abuses include extrajudicial killing, disappearances, and torture

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- Respect for the integrity of the person: abuses include extrajudicial killing, disappearances, and torture
- Respect for civil liberties, including freedom of the press and speech, freedom of peaceful assembly and association, freedom of religion, and freedom of movement
- Respect for Political Rights, including the right of citizens to change their governments

There are also sections on government attitudes toward human rights investigations; discrimination based on race, sex, religion, disability, language, or social status; and workers' rights.

U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Haiti: Profile of Asylum Claims and Country Conditions* (Washington, D.C., 5 May 1994), 13 p.

This profile was prepared by the Office of Asylum Affairs which is part of the Bureau of Democracy, Human Rights and Labor (formerly Bureau of Human Rights and Humanitarian Affairs). It provides a brief summary of events since the September 1991 coup, information on the structure and impunity of the armed forces, the police, paramilitary personnel; the deteriorating economy; and the worsening human rights situation, in part characterized as a general pattern of deliberately eliminating adversaries. The section on "Frequently Occurring Claims" discusses the risk faced by Haitians of various political groupings, including Aristide supporters and relatives of Aristide supporters, as well as individuals who left Haiti prior to the Coup, poll watchers (Mandateurs), and members of community action groups. Risk associated with participation in earlier pro-Aristide or anti-military demonstrations is contrasted with the current situation which allows no expression of support for Aristide. Individuals returned to Haiti are not considered to be at risk solely for having attempted to leave and safe relocation for many Haitians is reported to be possible.

U.S. INS Office of International Affairs, *Considerations When Adjudicating Haitian Refugee/Asylee Applications*, 9 March 1993

These considerations were prepared in order to promote consistency and fairness in adjudicating Haitian refugee/asylee applications. They include brief sections on reporting of levels of violence in Haiti, sources of violence, state violence (including a brief description of the military structure), targets of violence (including the role of prominence), and analysis in decision-making (including a brief discussion of persecution and the countrywide risk of persecution).

U.S. INS Resource Information Center, *Haiti, Profile Series*, August 1993

This profile on Haiti includes a short political history, a description of the legal structure of the government as intended by the Constitution, abrogation of constitutionally guaranteed rights, the Haitian Military, the role of rural section chiefs, the use of repression and abuse to destroy civil society, categories of abuse, and groups at risk. Explanations of some Creole and French expressions are given, e.g., *Ti Legliz*, *Tontons Macoutes*, *Lavalas*, *CASEC*, *Djack*, *Kalor Marasa*, *Plcquet*, *Zenglendos*, *Sans Mamans*, *Komite Katye*.

U.S. Senate Committee on Foreign Relations, Subcommittee on Western Hemisphere and Peace Corps Affairs, "Letter from Ian Martin, former Director of Human Rights, UN/OAS International Civilian Mission in Haiti to John Shattuck, Assistant Secretary of State for Human Rights and Humanitarian Affairs, U.S. Department of State," *Hearing on U.S. Policy Toward Haiti*, 8 March 1994.

This letter, which will be included in the Congressional Record as part of the above hearing, points out discrepancies between the actual reporting of the UN/OAS International Civilian Mission (ICM) and the U.S. Department of State's account of ICM reporting in *Country Reports on Human Rights Practices for 1993*. One example is the State Dept. reference to an attack on the ICM by a pro-Aristide group. Mr. Martin states that, "neither the Executive Director of the Mission nor I can recall any incident which could be so described. Certainly it is quite wrong to give the impression that the Mission was intimidated in its work at any time by pro-Aristide groups, let alone that this was on an equal footing with the hostility displayed toward it on many occasions by the military and those linked to them."

0-7-54 8:00AM
RESPONSES TO U.S. REQUEST TO RESETTLE
HAITIAN REFUGEES

78162:# 2/ 2

<u>Country</u>	<u>Yes (Number)</u>	<u>No</u>	<u>Possible</u>	<u>Unlikely</u>
Australia			X	
Bahamas		X		
Barbados		X		
Belize			X	
Brazil				X
Canada	X (?)			
Costa Rica			X	
Denmark		X		
El Salvador		X		
France		X		
Grenada				X
Guyana			X	
Honduras		X		
Jamaica			X	
Mexico		X		
Netherlands	X (5)			
New Zealand			X	
Nicaragua			X	
Norway				X
Panama		X		
St. Lucia		X		
St. Vincent		X		
Suriname			X	
Sweden			X	
Switzerland			X	
United Kingdom				X
Uruguay				X
Venezuela	X (?)			

HAITI MIGRANT TASK FORCE MEETING
Tuesday, June 7, 1994, 10:00 a.m.
White House Situation Room

AGENDA

1. Review of Concept of Operations
2. Status/Follow-up on:
 - A. Jamaica
 - B. TCI
3. Recruitment of Staff
4. Bahamas
5. Report on 3rd Country Resettlement
6. Message to Haitians
7. Press Plan
8. Other Business

6/7/94

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JACK ANDERSON and MICHAEL BINSTEIN

Cruising Into Conflicts at the INS

Romantic sunsets at sea, frolicking on sandy islands and hours of lounging on the deck. It sounds like an ad for "The Love Boat," but it's a day at the office for some Immigration and Naturalization Service inspectors—whose families and friends get to tag along for free.

The inspectors are assigned to search for illegal immigrants aboard luxury cruise ships. While the Clinton administration tries to trim 252,000 jobs from the federal payroll, there's no talk of downsizing, belt-tightening or reinventing government during a typical cruise. INS officials and their guests board ship at the crack of dawn and head for such ports of call as the Bahamas. By noon, they have reached their destination and settle in for the afternoon. The actual work does not start for another four or five hours.

At other times, INS officials have taken their wives on five-day, four-night luxury-liner cruises to exotic Mexican vacation spots. Their guests ride for free or reduced fares as long as they stay in the same room. On discounted day trips, guests of INS inspectors ride for as little as \$10 while members of the general public pay \$99 to \$119 for the same cruise. Inspectors have taken as many as three guests per cruise with them.

Federal law prohibits INS inspectors from bringing their friends and families along on discounted cruises. Since 1989, they have received two specific warnings that the trips for families and friends are illegal. But Justice Department investigators recently found INS inspectors still illegally accepting such trips at least 15 percent of the time. Because inspectors have the authority to fine a cruise line up to \$3,000 for each illegal alien they find on board, the free trips pose a conflict of interest.

"In our opinion, the free or reduced fares and accommodation rates for family members and friends are directly related to the INS inspectors' position and authority," Justice Department investigators wrote in an internal report. "The reduced fares would cause a reasonable person to question whether such a gratuity could result in more lenient inspections or treatment of the cruise lines."

Rather than checking passport and immigration information when passengers reach port, INS officials often inspect passengers and crew

members while they are en route to the United States. That's when friends and family of INS officials can travel at reduced rates.

According to conservative estimates by the Justice Department inspector general, the taxpayers paid INS inspectors \$218,000 in salaries and benefits to take 1,615 of these cruises in 1992. In 1993, there were 1,190 en route inspections.

Because the en route inspections are primarily for the convenience of the cruise lines, the ships pick up the inspectors' overtime costs and travel expenses—including taxis, food and lodging. Neither the INS nor the cruise lines could provide receipts for inspectors' expenses, which "only exacerbates" the "appearance of a conflict of interest," according to the report.

INS officials in Washington responded to the report by saying, as they have in the past, that they are working "towards correcting the problems identified."

In letters to Attorney General Janet Reno and INS Commissioner Doris Meissner, Rep. Gary A. Condit (D-Calif.), chairman of the Government Operations subcommittee on justice and transportation, has called for the dismissal of all INS employees who have violated the conflict-of-interest laws.

"This looks pretty blatant to me because they [the INS officials] had been warned, and they had been warned more than once," Condit told our associate Andrew Conte. "You've got to start letting people know by [firing them]. . . . They can't give this perception that it's vacation time."

It's time for the Pentagon to call in the Salvation Army.

Thanks to wasteful inventory practices, the military has mothballed redundant levels of shirts, socks, shoes, uniforms, mattress covers and tents. In all, the Pentagon has a 10-year supply on 26 percent of the items in its \$1.8 billion clothing and textile inventory, according to a recent audit by the General Accounting Office.

Some of the items are so aged or obsolete they're probably more suitable for a reenactment of the Normandy invasion than for use on a 1990s battlefield.

WILLIAM RATLIFF

Signaling a return to gunboat policies?

President Clinton has joined the United Nations in tightening the embargo on Haiti and spoken of future options that will make Americans almost long for the days when U.S. policy toward Latin America was benign neglect.

The president himself — backed by some in Congress, the media, academia and beyond — has argued that military force would be in order if — face it, when — economic pressures don't send Haiti's thug-rulers running. Indeed, Mr. Clinton's former chief adviser on Haiti, Lawrence Pezzullo, has warned that the embargo simply sets the stage for military force.

This from a president who neither likes nor understands the military.

Mr. Clinton justifies the use of military force because Haiti is: "in our backyard," a staging area for drug shipments to the States, the only country in the hemisphere where the military has pitched out an elected government, and the source of a "massive outflow" of refugees.

But almost every argument he gives applies far more strongly to Cuba. Isn't this just gunboat diplomacy as a substitute for real diplomacy? Is an invasion of Haiti simply a test-run for an invasion of Cuba?

Mr. Clinton's spokesmen admitted long ago that the embargo is a stop-gap. Yet even as we condemn the Port-au-Prince thugs for oppressing the Haitian people, we promote a policy that is further crushing an already devastated island economy and making life ever more miserable for the vast majority of Haitians.

Remember in Panama, how for 2½ years in the late 1980s the United States imposed an embargo to bring down our former ally, the goon Manuel Antonio Noriega? By December 1989 we had flattened the Panamanian economy as well as lower- and middle-class Panamanians — but not Noriega — and backed ourselves and Noriega so far into corners that we didn't have any choice but to capitulate or invade. George Bush invaded.

Mr. Clinton is offering the same scenario for Haiti and Jean-Bertrand Aristide has cited the 1989 invasion of Panama as a precedent for U.S. military action that would restore him to power. If we would drop Jean-Bertrand Aristide as the centerpiece of our Haitian policy, measured progress might be possible over time. But everything suggests Mr. Clinton would rather invade than "capitulate" on Mr. Aristide.

At least Panama was of strategic importance to the United States and the region. But Haiti? The president's justifications notwithstanding, Haiti becomes more of a strategic problem if we do get militarily involved than if we don't.

Recent U.S. intelligence studies have reported the obvious: Haiti is a virtually hopeless morass that will remain largely so with the generals there, with Mr. Aristide there, with whomever is there.

Of course we can throw the thugs out. But what then? Are we going to occupy a country that has gone nowhere in two centuries of independence until it is peaceful and on its feet? We were in Haiti for almost two decades at the beginning of the century without success.

And if we do go in for the longer term, will Mr. Aristide support our efforts? Will anyone, including the American people, for more than a weekend? Don't bet on it.

And what does this direction in foreign policy portend for future U.S. policy toward Cuba? After all, Cuba is in our "backyard" too, is far more important to the United States and the region than Haiti, has been a staging area for drugs, is the source of far more refugees

— recent events there suggest another Mariel exodus may be coming — and a country with a very strong constituency in the United States.

More than three decades of embargo on Cuba did not bring Fidel Castro down. So when the Cold

War ended, in response to domestic pressures, we tightened the squeeze with the Cuban Democracy Act. And what is this policy — which the rest of the world opposes — actually doing?

Just what embargoes usually do. Mr. Castro is still there and probably will be for quite a while. But we are making the Cuban people far more miserable, which is of course our medium term objective as an incentive to getting them to throw Fidel out. We are also helping to polarize society, increasing the prospects for both massive violence when the showdown with Mr. Castro comes, and upping the likelihood of widespread reprisals thereafter.

And if tensions we have promoted bring a civil war, what will the United States do? Intervene militarily? That is the logic of Mr. Clinton's policy suggestions with regard to Haiti, following the example of Panama, though the loss of American and Cuban lives in Cuba would be appalling.

So it is with embargoes, invasions and the "feel-good" policies politicians use when they refuse to understand or accept the practical limitations on U.S. power and commitment abroad. Or when they try to convince their constituents they are "doing something," even if that means clobbering innocent people abroad, who already have enough problems, "for their own good."

William Ratliff is a senior research fellow at the Hoover Institution, Stanford University.

Status of Persons Who Emigrate for Economic Reasons Under the Refugee Act of 1980

Under the Refugee Act of 1980, a "refugee" is defined as a victim of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion; economic hardship by itself is not a basis for eligibility as a refugee under the Act.

Refugee status under the Refugee Act of 1980 should normally be considered on an individual basis. While the Immigration and Naturalization Service may apply commonly known circumstances to people falling within particular groups without requiring the facts necessary to determine eligibility to be proved individually in each and every case, group determinations should generally be reserved for situations in which the need to provide assistance is extremely urgent and political reasons preclude an individual determination of status.

Fear of prosecution for departing a country in violation of its travel laws is not sufficient to entitle an individual to refugee status, unless it can be shown that such prosecution would be motivated by one of the proscribed reasons. If the country treats departure as a political act and punishes that act in a harsh and oppressive manner, such circumstances would qualify as "persecution on account of . . . political opinion" under the Act.

MEMORANDUM OPINION FOR THE GENERAL COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE

August 24, 1981

This responds to your request for our views on the memorandum prepared by your Office titled "Processing of Refugees of Special Humanitarian Concern," dated June 23, 1981 (Memorandum). We generally agree with the conclusions set forth in that Memorandum, but add the following comments regarding whether persons who leave a country for economic reasons may be considered refugees under the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (Act) because they are threatened with harsh treatment upon return to their country. The answer to this question depends on what constitutes a refugee under the Act.

The Act created a new category of aliens called "refugee[s]." Under the existing law prior to the adoption of the Act, admission was limited to "conditional entrants" who were fleeing from persecution "on account of race, religion, or political opinion" in the Middle East or a Communist country or who had been "impacted by catastrophic natural calamity." 8 U.S.C. § 1153(e)(7)(Supp. III 1979). Ending these geographic and ideological limits was one of the major reforms intended

by the Act. The comments of Representative Holtzman, chairwoman of the House subcommittee in charge of the bill, are typical: "The new definition . . . will give our Government the flexibility to deal with crises such as the evacuation of Vietnam in 1975 and to respond as well to situations in countries such as Cuba or Chile today where there are political detainees or prisoners of conscience." 126 Cong. Rec. 4499 (1980).

As a result, the status of "conditional entrant" was eliminated and that of "refugee" was created. Section 201(a) of the Act, (to be codified at 8 U.S.C. § 1101(a)(42)), defines a refugee as

any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. . . .

The expansion of the definition to eliminate ideological and geographical restrictions was intended to conform our law to the definition found in the United Nations Convention and Protocol Relating to the Status of Refugees (Convention), Jan. 31, 1967, 19 U.S.T. 6223, 6259 T.I.A.S. No. 6577.¹

[T]he new definition will bring United States law into conformity with our international treaty obligations under the United Nations Protocol Relating to the Status of Refugees which the United States ratified in November 1968, and the United Nations Convention Relating to the Status of Refugees which is incorporated by reference into United States law through the Protocol.

S. Rep. No. 256, 96th Cong., 1st Sess. 4 (1979). See also S. Rep. No. 590, 96th Cong., 2d Sess. 19 (1980); H.R. Rep. No. 781, 96th Cong., 2d Sess. 19 (1980); H.R. Rep. No. 608, 96th Cong., 1st Sess. 9 (1979); 126 Cong. Rec. 23,232 (1979) (remarks of Sen. Kennedy, floor manager); *id.* at 4499, 4503 (1980); *id.* at 3757 (1980). It was not intended to require us to accept for admission the millions of individuals who might qualify as refugees. H.R. Rep. No. 608, *supra*, at 10; 126 Cong. Rec. 23,232 (1979); *id.* at 4507 (1980). Instead, a cap of 50,000 was placed on annual admissions through 1982. Act, § 207(a)(1) to be codified at 8 U.S.C. § 1157(a)(1).² Further, all refugee admissions must "be allocated among

¹ The exception contained in the prior law for victims of natural calamities—who are likely to become economic migrants—was eliminated.

² After 1982, the President will set the limit. In an emergency situation, the President may now, after consultation with Congress, admit a fixed number of additional refugees. Act, § 207(b), to be codified at 8 U.S.C. § 1157(b).

refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation [with Congress]." *Id.*, § 207(a)(3), to be codified at 8 U.S.C. § 1157(a)(3). See also *id.*, § 207 (b), (c)(1) to be codified at 8 U.S.C. § 1157, (b), (c)(1).

There are three aids that can be used to determine whether Congress intended to allow purely economic migrants to claim refugee status under the Act.³ First is the legislative history of the Protocol when it was ratified by the Senate in 1968, thereby automatically adopting the Convention. Second is the U.N.'s interpretation of the Convention. Third is the courts' interpretations over the years of 8 U.S.C. § 1253(h).

A basic rule of statutory construction is that a statute based upon another statute, even that of a foreign state, "generally is presumed to be adopted with the construction which it has received." *James v. Appel*, 192 U.S. 129, 135 (1904).⁴ In 1979, the United Nations High Commissioner for Refugees (UNHCR) issued a nonbinding guide to aid the Convention's signatory states in determining whether someone was a refugee. Handbook on Procedures and Criteria for Determining Refugee Status Under the Convention and Protocol (Handbook). We assume that Congress was aware of the criteria articulated in the Handbook when it passed the Act in 1980, and that it is appropriate to consider the guidelines in the Handbook as an aid to the construction of the Act.⁵

A second relevant rule of statutory construction is that provisions of a statute that are repeated in an amendment to the statute, either in the same or equivalent words, are considered a continuation of the original law. 1A Sands, Sutherland on Statutory Construction § 22.33 (4th ed. 1972) (Sands). "[W]here, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." *Lorillard v. Pons*, 434 U.S. 575, 581 (1978).

Prior to its amendment in 1980, 8 U.S.C. § 1253(h) authorized the Attorney General to suspend the deportation of any alien who "would be subject to persecution on account of race, religion or political opinion."⁶ Numerous cases have discussed the meaning of "persecution on account of . . . political opinion." Section 203(e) of the Act added "nationality" and "membership in a particular social group," so that

³ The legislative history of the Act contains no aid to interpretation beyond repeated statements that it is adopting the Convention's definition of "refugee."

⁴ See also *Willis v. Eastern Trust & Banking Co.*, 169 U.S. 295, 307-08 (1898); *Cathcart v. Robinson*, 30 U.S. (5 Pet.) 264, 280 (1831); *Roberto v. Aguon*, 519 F.2d 754, 755 (9th Cir. 1975); *Chauffeurs, Local Union No. 364 v. Ruan Transport Corp.*, 473 F. Supp. 298, 302-03 (N.D. Ind. 1979).

⁵ The guidelines from the Handbook are just that—guidelines. They may be accepted or rejected with respect to a signatory state's interpretation of the Convention, and, more importantly, with respect to your interpretation of the Act.

⁶ Prior to 1965, the section referred only to "physical persecution." 8 U.S.C. § 1253(h) (1964).

§ 1253(h) now tracks the definition of "refugee" found in § 1101(a)(42). These two provisions should be construed together. 2A Sands, *supra*, § 51.02. The earlier cases remain relevant, therefore, for a discussion of persecution based on political opinion.

We believe that the definition of "refugee" is limited by both its plain language and these interpretive aids to those who are victims of persecution based on one of the five bases named: race, religion, nationality, membership in a particular social group, or political opinion. Political persecution may take the form of economic reprisals, such as denying individuals the opportunity to work.⁷ Likewise, an individual suffering economic hardship may also become the victim of political persecution because of political upheavals. Economic hardship itself, however, is not a basis for eligibility as a refugee under the Act. This interpretation is supported by all the sources consulted. See, e.g., S. Ex. Rep. No. 14, 90th Cong., 2d Sess. 13 (1968). Economic migrants, who are moved "exclusively" by economic conditions, are not refugees. Handbook, ¶ 62. See also *Cheng Kai Fu v. INS*, 386 F.2d 750, 753 (2d Cir. 1967), *cert. denied*, 390 U.S. 1003 (1968) ("[P]hysical hardship or economic difficulties . . . shared by many others . . . do not amount to . . . particularized persecution.")

The Bureau for Refugee Programs has argued that all persons who leave Laos, Kampuchea, and Vietnam are, regardless of their motivation for leaving, treated as political opponents on their return and will probably suffer political persecution.⁸ The Bureau "contends that there is no need to examine individual cases, as blanket refugee status for all these [refugees] is mandated. . . . The act of leaving will be all that is necessary to become a refugee." Memorandum, at 6. You have expressed disagreement with this position, on both legal and policy grounds. Memorandum, at 5-9. We agree with you that applications for refugee status should be considered on an individual basis, but suggest that the law allows considerable discretion in means by which these determinations are made and certainly does not foreclose your application of commonly known circumstances to people falling within particular groups. For example, where it has been shown to your satisfaction that a particular country persecutes all individuals with particular political views, it would not seem necessary for you to require that fact to be proved individually in each and every case.

We also concur with you that the "act of leaving" in and of itself is not alone sufficient to entitle an individual to refugee status. Nor do we feel that the fact of prosecution for the violation of a nation's travel

⁷ "The denial of an opportunity to earn a livelihood in a country such as the one involved here is the equivalent of a sentence to death by means of slow starvation and none the less final because it is gradual." *Dunat v. Hurney*, 297 F.2d 744, 746 (3d Cir. 1961). See also *Soric v. Flagg*, 303 F.2d 289, 290 (7th Cir. 1962); Handbook, ¶ 63.

⁸ Letter from the Acting Director, Bureau for Refugee Programs, to the Acting Commissioner, Immigration and Naturalization Service, Feb. 27, 1981.

laws rises to the level of "persecution on account of . . . political opinion." However, systematic and harsh punishment for the act of leaving a country may, in some circumstances, meet this standard. Whether a particular situation meets this standard is largely a factual matter which must be determined in individual situations depending upon the extent to which a country punishes those who attempt to leave.

This latter conclusion is reflected in the source material. Our courts, the U.N., and the Immigration and Naturalization Service (INS) have recognized that the threat of prosecution for violations of travel laws does not in itself constitute persecution.⁹ It is when the prosecution is politically motivated that the courts have said they will intervene. *Berdo v. INS*, 432 F.2d 824, 845-47 (6th Cir. 1970); *Kovac v. INS*, 407 F.2d 102, 104-05 (9th Cir. 1969); *Kalatjis v. Rosenberg*, 305 F.2d 249, 252 (9th Cir. 1962); *In re Nagy*, 11 I. & N. Dec. 888, 891-92 (1966); Handbook, ¶ 61.¹⁰ If individuals leave a country for economic reasons, their behavior may be condemned by their country, but their disagreement with the state is presumably based on economics, not politics. Prosecution for violation of the state's travel laws when they return is not persecution unless the laws are applied for one of the proscribed reasons. *In re Chumpitazi*, 16 I. & N. Dec. 629, 633-34 (1978); *In re Janus and Janek*, 12 I. & N. Dec. 866, 876 (1968); Handbook, ¶ 61. Once the alien has proved that the laws are being applied for a proscribed reason, however, he is eligible to be recognized as a refugee. If the country treats the departure as a political act and punishes that act in a harsh and oppressive manner, we believe that such circumstances fall within the definition of the Act. *Henry v. INS*, 552 F.2d 130, 131 (5th Cir. 1977) (Petitioners alleged that "anyone who had fled the regime [in Haiti], would be received with hostility by the present government. If proved, such an allegation might form a sound basis for fear of persecution regardless of the placidity of an individual's political past.")

You have questioned whether this is a proper interpretation because "a foreign government could in effect create 'political' opponents for opportunistic reasons" by simply declaring that citizens who leave will be deemed to be political opponents. However, we believe that such a declaration would not be sufficient proof that an individual had a well-

⁹ West Germany and Austria have adopted a somewhat broader interpretation. Prosecution for leaving certain countries will be deemed to be persecution if the alien left because of his political opinions. Memorandum to UNHCR Branch Office for the United States, from Director of Protection, Jan. 21, 1981, ¶¶ 27-29, 32.

¹⁰ In *Sovich v. Esperdy*, 319 F.2d 21, 28-29 (2d Cir. 1963), the court stated that imprisonment for illegal departure was punishment and only became persecution if it was excessive. "However repugnant to our own concept of justice, a brief confinement for illegal departure or for political opposition to a totalitarian regime would not necessarily fall within the ambit of [§ 243(h)]. We are unwilling to believe, however, that Congress has precluded from relief under § 243(h) an alien threatened with long years of imprisonment, perhaps even life imprisonment. . . ." *Accord, In re Dunar*, 14 I. & N. Dec. 310, 324 (1973).

founded fear that he would be persecuted on his return. Issues of fact cannot be resolved in the absence of information about factors such as whether the government is really enforcing the policy, whether the policy is being applied against all returnees or just some, whether the policy involves application of longstanding domestic travel laws or new restrictions, and whether it is likely that the alien's departure and subsequent return will be noticed by his country. *Compare Fleurinor v. INS*, 585 F.2d 129, 132-33 (5th Cir. 1978) with *Coriolan v. INS*, 559 F.2d 993, 1002-04 (5th Cir. 1977). As the drafters of the Convention said, the definition of refugee is meant to cover a person who "has either been actually a victim of persecution or can show good reason why he fears persecution," U.N. Doc. E/1618 and Corr. 1, at 11 (1950), and the signatory state is the ultimate judge of the validity of that fear. Moreover, as noted earlier, the law does not require the United States to accept an individual even if he does qualify as a refugee. Act, § 207(a)(3), (b), (c)(1).¹¹

Furthermore, your concern that a foreign government could "create 'political' opponents for opportunistic reasons" arises from the language of the Act itself. A foreign nation may do so whenever it determines to persecute particular groups and may single out virtually any social group or political view to implement its "opportunistic reasons." If this possibility is to be eliminated, Congress has the means at its disposal to do so.

As noted above, an application for refugee status should normally be reviewed on an individual basis. One of the major purposes of the Act was to allow the President to select those refugees for admission who were of "special humanitarian concern to the United States." Act, § 207(a)(3), to be codified at 8 U.S.C. § 1157(a)(3). Individual interviews would seem to be the easiest and best way to identify those who have an especially strong claim on us as well as to determine how "well-founded" the fear is in differently situated individuals. See Handbook, ¶¶ 44-45. A country may produce political refugees as well as economic migrants and the Act requires that the two groups be distinguished. *In re Williams*, 16 I. & N. Dec. 697, 703 (1979) (Haiti). Group determinations are usually reserved for situations in which the need to provide assistance is extremely urgent and political reasons preclude an individual determination of status.

We are not in a position to evaluate the situation that now exists in Southeast Asia with regard to whether Laos, Kampuchea, and Vietnam are persecuting those who leave because departure is viewed as a political act.¹² We do believe, as the courts have recognized, that an

¹¹ You have expressed concern that the government will be swamped with asylees, 8 U.S.C. § 1253(h), if a country close to the United States adopts such a policy. Memorandum, at 8-9. We believe that a solution to such a problem, to the extent it exists, must come from the Legislative Branch.

¹² Letter from the Acting Director, Bureau for Refugee Programs, to the Acting Commissioner, Immigration and Naturalization Service, Feb. 27, 1981, at 3.

alien outside his country may have a well-founded fear of persecution if his country is persecuting departure as a political act. *Henry, supra*. Whether the fear exists should, except in exceptional circumstances, be evaluated on an individual basis.

THEODORE B. OLSON
Assistant Attorney General
Office of Legal Counsel

Constitutionality of Legislation Authorizing Permanent Resident Status for Certain Nonimmigrant Aliens

Legislation which would grant permanent residence status to certain nonimmigrant alien workers residing in the Virgin Islands, and at the same time restrict these individuals' ability to obtain the entry of relatives under otherwise applicable provisions of the Immigrant and Nationality Act, does not violate the Equal Protection Clause.

The application of the equal protection principle to aliens is subject to the special powers of Congress over immigration and naturalization, and even the constitutional rights of citizens must yield where they clash with the paramount power of Congress over the admission and exclusion of aliens.

August 24, 1981

MEMORANDUM OPINION FOR THE GENERAL COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE

This responds to your request for our opinion regarding the constitutionality of H.R. 3517 (97th Cong. 1st Sess.), particularly § 2(c)(2) & (3). H.R. 3517 would provide generally that certain persons originally admitted temporarily to the Virgin Islands as nonimmigrant alien workers under § 101(a)(15)(H)(ii) of the Immigration and Nationality Act (Act) 8 U.S.C. § 1101(a)(15)(H)(ii) (H-2 workers), may have their status adjusted to that of aliens lawfully admitted for permanent residence. The bill, would, as will be explained, restrict the ability of its beneficiaries to facilitate the immigration of some of their relatives under the preference provisions of § 203 of the Act. Your inquiry is addressed to the constitutionality of those restrictions. It is our conclusion that the courts would uphold the constitutionality of § 2(c)(2) & (3).

I.

The background of the bill, as explained in the testimony of Associate Commissioner Carmichael of the Immigration and Naturalization Service (INS) before the House Judiciary Committee, is as follows: In the 1950s and 1960s during an acute labor shortage in the Virgin Islands, over 13,000 alien workers entered the Virgin Islands under the H-2 program. Most of those workers left the Virgin Islands during the 1970s, but about 2000 of them and their dependents remain there. Although they were admitted as temporary workers, their work has been of a permanent nature and over the years they have made valuable

~~CONFIDENTIAL~~

STATEMENT BY BILL GRAY

The flow of boat migrants from Haiti highlights the continued political repression in that country. The United States, along with several other regional nations and the UN High Commissioner for Refugees (UNHCR) are determined to provide protection to those Haitians who are at risk of ~~political~~ persecution.

Toward that end, the United States has established an in-country processing system in Haiti. It is one of only four such programs that we operate worldwide. Three thousand Haitians have entered the United States through this program since February, 1993. Those Haitians who apply in Haiti and are given refugee status will continue to be admitted to the United States.

The United States remains concerned that migration by boat places Haitians at risk of loss of life. The boats are often unseaworthy and are usually overcrowded. This morning's report of a loss of over 100 boat people at sea confirms the risks of boat departures.

There are large numbers of Haitian asylum seekers who ~~are~~ ^{may be} in need of protection. To provide for those large numbers, the United States, acting with other regional nations, and the UNHCR will establish safehavens in several Caribbean area states.

The first of these safehaven camps will be established in Panama. Initially at US Defense Department facilities and later at a new camp run by the Government of Panama. ^{UNHCR and} Those Haitian asylum seekers in need of protection will be allowed to stay ~~until such time as political conditions in Haiti permit their return~~. We pledge our continued vigorous efforts to insure that those political conditions improve in the near future.

Thus, Haitians who ^{are} determined to be refugees at our three in-country processing sites will continue to be brought to the United States. Boat migrants will continue to be ~~interdicted~~ ^{rescued} by the US Coast Guard. Those boat people who are in need of ~~political~~ protection will be given the opportunity to obtain it in safehaven camps, initially in Panama, Antigua and Dominica. We remain committed to the early end of the sources of ~~political~~ persecution in Haiti, the return of democracy there, and the restoration of President Aristide.

and the
U.S. Navy

DECLASSIFIED E.O. 13526
Department of State Guidelines,
September 11, 2006

By N1 NARA, Date 4/21/16

2011-189-F



By Deputy Attorney General

Washington, DC 20530

TO: SAMUEL BERGER
Deputy National Security Advisor

FROM: JAMIE S. GORELICK
Deputy Attorney General

RE: Safe Haven Without U.S. Refugee Processing for Resettlement

DATE: July 4, 1994

The Department of Justice believes that the agreement by the Government of Panama to support the United States' lead effort to provide a humanitarian alternative to those fleeing Haiti by boat establishes the basis for implementing safe haven with international screening, in place of U.S. refugee processing for resettlement.

The attached paper outlines the rationale for safe haven without U.S. processing. This cover memo sets forth the broader policy argument as we see it.

* In May, the President changed the policy of interdiction to a policy of refugee processing for resettlement in response to growing levels of violence and human rights abuse in Haiti. At that time, he appealed for hemispheric cooperation in taking up the humanitarian alternative offered by the United States.

* Since that time, the United States has had discussions with many countries in the region and has been able to win broad-based cooperation with our initiative.

* At the same time, we have seen very large numbers of Haitians fleeing Haiti, among whom an average 30 percent have been found to have a well-founded fear of persecution, thus entitling them to refugee status under U.S. screening standards. U.S. resettlement is being arranged for those refugees.

* Consistent with the President's effort to provide a humanitarian alternative for the boat migrants while sanctions work to secure a return to democracy in

Haiti, we believe the next logical step is a safe-haven policy that suspends U.S. processing for resettlement of Haitians fleeing by boat in favor of safe haven for those who need or desire protection. This broader humanitarian response acknowledges deteriorating human rights conditions in Haiti while also recognizing that U.S. policy seeks to alter these conditions so that those who have been forced to flee can one day return.

* Under this formulation, persons found to be refugees through in-country processing could continue to come to the U.S. However, boat migrants would be given protection without the option of U.S. or third-country resettlement. They would be screened and counseled by UNHCR personnel as occurs in other parts of the world. Those wishing voluntarily to return to Haiti would be assisted in returning.

* This formulation achieves the following:

1. It continues to emphasize in-country processing as the basis for U.S. resettlement;
2. It broadens the humanitarian alternative for boat migrants consistent with the sanctions policy and hemispheric cooperation, while decreasing the incentive of U.S. resettlement;
3. It establishes consistency with international practice in other parts of the world; and, finally,
4. It avoids the legal, political, and moral dilemma of people determined by the U.S. to be refugees who are not bound for U.S. resettlement.

DISCUSSION POINTS RE U.S. REFUGEE PROCESSING

1. Processing continues the magnet. Historically, processing -- especially processing on GTMO -- has meant resettlement in the United States. As long as processing continues at GTMO, Haitians and their U.S. relatives will maintain the hope of U.S. resettlement and continue to flee on boats. This hope will be reinforced by the fact that at least 395 of the Haitians recently interdicted are going to be resettled in the U.S.
2. Processing may well produce no gain in capacity at GTMO. Best estimates are that when GTMO is fully operational, 500 cases a day can be processed -- 350 at GTMO and 150 in Jamaica. At an approval rate of 30%, GTMO capacity could benefit by the repatriation of approximately 350 Haitians per day. However, this apparent gain will be illusory if continued processing perpetuates the magnet and increases the overall number of departures from Haiti. Indeed, it may well be that a policy of refugee processing will result in less capacity at GTMO.¹
3. Refugee processing without resettlement is unprecedented. The United States has never before conducted refugee processing without settling approved refugees in the United States. For example, we do not process Soviet Jews without offering those refugees resettlement in the United States. Processing Haitians and sending those adjudicated as refugees to safe haven in a third country will be viewed as discriminatory.
4. Processing will also raise a long-term issue over admissions. If Haitians are processed at GTMO and those who pass refugee screening are not immediately resettled, but instead are held at GTMO or sent on to third-country safe haven, the status of these refugees will remain unsettled. It is very unclear when conditions in Haiti will improve to the point at which it will be safe to return people screened in as refugees. Providing safe haven but granting no status or entitlement will simplify decisions regarding return.
5. Offering third-party safe haven to all who flee Haiti will more likely satisfy advocacy groups. Haitian advocates have long maintained that their principal concern is to provide protection to all Haitians fleeing oppression -- at least until the conditions of oppression continued. A policy of safe-haven

¹ In 1992, Honduras accepted 200+ Haitians from GTMO and placed them in a refugee camp. Within two months, 70% had returned home. Similar results obtained when Venezuela accepted Haitians in a camp facility.

to all who flee, even absent resettlement, will be viewed as more generous, and thus more positively, than a policy of "process and hold."

6. Processing on GTMO will engender a significant risk of litigation. The last round of Haitian litigation involved due process rights associated with land-based processing at GTMO: advocates argued that, once "screened-in", Haitians achieved a "liberty" interest requiring heightened due process procedures. This time as well, requests by advocates and the UNHCR for enhanced procedures will be a source of contention. Once processing begins, attempts will be made to challenge the procedures under the due process clause and the first amendment. In addition, the unprecedented policy of "screen and hold" may provoke litigation. In this respect, a safe-haven policy involving no processing or minimal processing at GTMO is much more likely to avoid litigation.

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New Haitian Boat People Surge Challenges Clinton's Policy

PORT-AU-PRINCE, Haiti (AP) The interception of 1,330 Haitians on the high seas has stunned U.S. officials and taxed America's ability to handle the refugees.

The Haitians picked up Monday, combined with 786 Haitians apprehended over the weekend, nearly equal the 2,239 intercepted in all of 1993.

The surge, which is expected to continue, could dramatically increase pressure on the Clinton administration to quickly resolve Haiti's festering political crisis.

U.S. Coast Guard officials, who stationed about 15 cutters and patrol craft off Haiti after the new policy was announced, hinted the new Clinton policy caused the refugee tide.

The policy, which took effect June 16, allows boat people a hearing aboard a U.S. vessel to see if they are fleeing persecution from Haiti's military-installed government and may deserve asylum.

Refugee advocates say there is no reason for Haitians, suffering repression and economic devastation since a 1991 coup ousted elected President Jean-Bertrand Aristide, to stay.

The Haitians have little choice but to leave, said Roman Catholic Rev. Rene Giroux, a Canadian minister who works in a Port-au-Prince slum.

"People are just totally discouraged. They just don't see any future," he said. "They have no jobs, the cost of living is killing them, and they're living in an absolute prison."

U.S.-led economic sanctions, aimed at restoring Aristide to power, have banned air traffic and most financial dealings with America. The administration is also poised to revoke U.S. visas of all Haitians in Haiti.

Tens of thousands of Haitians have fled their troubled homeland since Aristide's ouster. The Coast Guard has intercepted 47,844 at sea.

U.S. Embassy spokesman Stanley Schrager said the new refugee surge "is hard to believe. We're very concerned."

The increase will complicate efforts to give boat people offshore hearings. Ston, Jamaica, for processing. The ship can hold about 1,000 people, and Austin said 400 of the 786 people intercepted over the weekend remained on the INS-run ship.

Along with the Haitian outflow, the INS and Coast Guard are handling the biggest exodus of Cuban refugees since the Mariel boat lift of 1980. As of Monday, 3,665 Cubans had been rescued in 1994.

Most Haitians captured recently have been in small boats unlikely to make the 600-mile sea journey to Florida. But the Haitians may not be trying to evade the Coast Guard anymore, since their chances for political asylum have increased fivefold under Clinton's new policy.

"Eventually the people of Haiti will know what the acceptance rate is, and the outflow will increase," said Cmdr. David Breuninger, Coast Guard liaison at the U.S. Embassy.

"It is my opinion that they are going out there specifically to get picked up," he said.

At least one Coast Guard cutter was steaming back to Port-au-Prince to repatriate 170 boat people today, Breuninger said.

Thousands of military-tolerated killings and torture cases since the coup have prompted many to leave, said Steve Forester, lead attorney for the Haitian Refugee Center in Miami.

Clinton has not ruled out military intervention in Haiti, which many refugee advocates say may be the only way to stop the