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BEYOND/BETWEEN COLORS: InterGroup Coalitions and Immigration Politics: The Haitian Experience in Florida

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SUMMARY: ... Lamar Smith, a Republican from Texas who chairs the House Immigration Subcommittee, has gone on the offensive recently in an effort to block any legislative effort to provide Haitians relief similar to that accorded various groups last year under the Nicaraguan Adjustment and Central American Relief Act (NACARA). ... INS Interdiction Chief Leon Jeannings admitted that most of the intercepted Haitian boats were destroyed so other Haitians wouldn't use them to leave. ... Television footage of a demonstration across from the INS building showed Haitian protestors being brutally beaten by police and at least five bloody Haitians being carried away. ... Haitian leaders protested that such a policy violated the First Amendment and ultimately Miami Mayor Xavier L. Suarez reversed the questionable restriction on the Haitians' celebration. ... In a matter of forty-eight hours after NACARA's passage, Haitians collected 20,000 signatures on a petition asking for equal treatment. ... Moreover, Haitians and their advocates are calling for equal treatment for the Guatemalans, Salvadorans, Hondurans and others similarly situated as well. ... Congresswoman Carrie Meek (D-FL) has long led the battle to provide equal treatment for the Haitians. ... These Haitians are protected from deportation for one year while Haitian advocates work to obtain more permanent, legislative relief. ... The battle to provide equal treatment for the Haitians is far from over. ... His revisionist version of events should not be an excuse for denying Haitians equal treatment now. ...

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Lamar Smith, a Republican from Texas who chairs the House Immigration Subcommittee, has gone on the offensive recently in an effort to block any legislative effort to provide Haitians relief similar to that accorded various groups last year under the Nicaraguan Adjustment and Central American Relief Act (NACARA). NACARA benefits nationals of Nicaragua, Cuba, El Salvador, Guatemala, the former Soviet Union and Warsaw pact countries. According to Congressman Smith, Haitians should not be provided similar relief because "Haitians have been treated better by the United States than refugees from almost any other nation."

Nothing could be further from the truth. Despite the well-documented political repression in Haiti during the Duvalier regime and military governments that followed, refugees from Haiti, the world's first Black Republic, have been singled out for special discriminatory treatment and the fundamental principles of refugee protection abandoned time and again.

The first boatload of Haitians claiming persecution in Haiti arrived in the United States in September 1963. All twenty-three refugees were denied political asylum and deported, signaling the wave of rejection to come.

Despite the bloody outcome of the aborted election in Haiti in 1987, not a single Haitian was granted asylum that year by the INS. Between June 1983 and March 1991, only 1.8 percent of Haitian applicants in the United States were granted asylum by the INS, the lowest approval rate among nationalities submitting

the largest number of applications. n1 Those fleeing communist regimes fared much better: the approval rate during that period for China was 69.0 percent and for the former Soviet Union, 74.5 percent. The overall approval rate for all applicants was 23.6 percent. Even when approval rates for Haitians increased after reform of the asylum system in the early 1990's and the [*718] 1991 coup d'etat that ousted President Aristide, they remained far below the approval rates for other nationalities. n2

In the early 1980's, a landmark suit was filed on behalf of over 4,000 Haitians requesting political asylum. The INS, through procedures in effect at that time, had denied all 4,000 applications. The court found that United States government agencies had set up a "Haitian Program" designed specifically to adjudicate, and to deny, as quickly as possible, the asylum claims of Haitians. The program "in its planning and executing [was] offensive to every notion of constitutional due process and equal protection."

The Court concluded that the backlog of 6000-7000 Haitian cases - which the government had argued constituted the reasons for instituting the Haitian Program - was not a result of a massive influx of Haitians to South Florida over a short period, but rather was primarily attributable to a slow trickle of Haitians over a ten-year period, and to the confessed inaction of the INS in dealing with these cases. Moreover, the court concluded that the INS was engaging in scare tactics, noting that the INS Deputy Commissioner encouraged government attorneys to point out "THE DIMENSIONS OF THE HAITIAN THREAT" and called the Haitian cases a threat to the community's social and economic well-being. The court also found that the discriminatory treatment of Haitians was nothing new, but rather that it was part of a pattern of discrimination which began in 1964.

In late May, 1981, the INS began to systematically detain Haitians entering the United States. This was a fundamental change from the established policy of detaining only those persons deemed likely to abscond or pose a threat to national security.

In July, 1981, the State of Florida brought an action against the Federal Government due to the overcrowded conditions at Krome Service Processing Center, the INS detention facility in Miami. During litigation, the government promised that efforts would be made to keep the population at Krome at or under one-thousand people. In order to abide by this representation, the INS transferred Haitians out of Krome whenever the population exceeded one-thousand.

Advocates for the Haitian refugees again turned to the courts for help, and again the courts noted the INS's callous disregard for the [*719] rights of Haitian refugees. A federal court judge in 1982 characterized the transfers as "a human shell game in which the arbitrary Immigration and Naturalization Service has sought to scatter [Haitians] to locations that ... are all in desolate, remote, hostile, culturally diverse areas, containing a paucity of available legal support and few, if any, Creole interpreters."

A successor judge in the same case subsequently ruled that the Haitians were "impacted to a greater degree by the new detention policy than aliens of any other nationality...." Unlike other aliens, the Haitians were subject to mass exclusion hearings behind closed doors, improperly denied access to their attorneys, and deported in a manner INS itself admitted was faulty. The detention policy was found to be invalid and the court ordered the release of over one-thousand Haitians, provided they were deemed neither a security risk nor likely to abscond.

The government appealed the district court decision and in an historic decision, an Eleventh Circuit Court of Appeals panel found that statistical evidence disclosed that the federal government had engaged in a "stark pattern" of discrimination against the Haitian asylum seekers. This was the first time in the history of American law that the federal government was found to have discriminated on the basis of race or national origin under the Constitution in a non-employment context. Although the Court of Appeals en banc later vacated the decision on the grounds that the Haitians had no constitutional rights, they never disturbed the factual findings of the panel opinion.

Moreover, despite the court's order that the INS stop illegal transfers of Haitians to remote areas of the country, such transfers continued. In May 1989, a federal judge in Miami blocked the forced transfer of dozens of Haitians, this time from Krome to Louisiana and Texas during a "lock down" of the INS facility. The judge found that the circumstances under which the transfers took place violated the Haitians' due process rights.

Even when INS Commissioner Gene McNary implemented a more liberal parole policy in May 1990, the Haitians failed to benefit. "Nearly one month into the program no Haitians had been approved for parole in Miami even though Haitians constituted nearly two-thirds of those detained in the district," reads a section of the report written by the Lawyers Committee for Human Rights in New York.

Haitians have also carefully documented their mistreatment at Krome, which led to a 1990 FBI and Justice Department investigation into allegations of physical and sexual abuse by Krome officers. While Justice Department officials claimed in March 1991 that the investigation was completed, to date no findings have been made public. ³ Two New York Times articles in June 1992 addressed the ongoing abuses directed against the Haitians at Krome, reporting that "during a hunger strike ... to protest the death of one such detainee, 185 Haitians interned at Krome charged that they had been beaten, harassed, and deprived of medical care, of their Bibles, and of contact with their lawyers and relatives." ⁴ Some Krome guards even told the Haitians "you are all HIV- positive anyway" ⁵ A Justice Department news release in January, 1996 announced that a Krome officer had pled guilty to one felony count of depriving a Haitian detainee of his civil rights by beating and kicking him and trying to cover up what he had done.

In a letter written by Haitian detainees at Krome following the September, 1991 military coup in Haiti, they pleaded with INS officials to ensure that their asylum claims be fairly considered:

"Today we do not want to be demanding or to arouse anyone's anger but we want to make known our patriotic thoughts, the testimony of our feelings concerning the loss of our relatives and our ancestors who are being abused and murdered by the recent events. Look at the life of the Haitian people; there is a law for all people: in the eyes of God they are all equal, and they all have the same liberty and the same privileges, which are owed to every one of them... We wish to emphasize ... that right now we are living in the most difficult and painful times of human life... We prefer to die than to live in the uncertainty that drowns our thoughts."

Earlier in the year, Florida Senators Bob Graham and Connie Mack unsuccessfully pushed for legislation to limit detention at Krome to ninety days. In late September, 1992, Amnesty International, USA, criticized the lengthy detention of Haitians at Krome, claiming that governments should reveal legitimate grounds for any detention of asylum seekers. In 1993, Miami Mayor Xavier Suarez, a Cuban American, requested the closing of Krome, calling it an unnecessary burden on tax payers and an insult to Haitian asylum seekers. Suarez said it would make more sense to release the Haitians from Krome into the custody of relatives or church groups, and allow them to work and support themselves. Suarez estimated the average cost of detaining two-hundred individuals for nine months to be about five million dollars.

Haitians at Krome have engaged in serious hunger strikes to protest their treatment. One of these occurred in January, 1993 following the arrival of fifty-two Cubans who had "commandeered" a Cuban commuter flight from Havana to Varadero, Cuba, diverting it to Miami. All the Cubans were released from Krome within forty-eight hours, while the Haitians remained in custody. To the Haitians, this was a painful reminder of the double standard of treatment.

The following year, hundreds of Haitians were housed in tents at Krome, including many women and children, leading to widespread complaints of inadequate and oppressive living conditions. A lawsuit was filed in 1995 on behalf of a number of detained Haitians, which resulted in improved access to attorneys and medical care. The INS, however, failed to live up to the settlement agreement and attorneys for the

Haitians have had to continue to fight on the Haitians' behalf. In May, 1998 attorneys attempting to help dozens of Haitians at Krome were denied access to them for ten days. The INS said it was waiting for test results to confirm the Haitians were disease free, even though the head of the medical unit at Krome said the Haitians did not need to be quarantined.

Haitians outside the United States who wished to apply for refugee status or who tried to reach the United States to apply for asylum faced even greater obstacles. As a result of a 1981 agreement between US and Haitian officials, Haitians attempting to flee Haiti and seek asylum were not permitted to reach the United States. The Haitian interdiction program was established by the Reagan Administration in September, 1981 after determining that undocumented Haitians coming to the United States had "threatened the welfare and safety of [our] communities," even though Haitians comprised less than two percent of the undocumented population of the United States at that time. Haiti was the only foreign government with which the United States had such an agreement and it was entered into under United States' threats to remove economic aid to Haiti. Critics of the Haitian interdiction program frequently referred to it as the "floating Berlin wall."

[*722] Interdicted Haitian refugees were conveniently termed "economic immigrants" by United States authorities, despite overwhelming evidence of gross violations under "Baby Doc" Duvalier, who assured United States officials that the refugees would not be persecuted. n6 And while the 1981 agreement clearly specified that bona fide refugees were not to be returned to Haiti, and the INS's own instructions cautioned INS officers to be "keenly attuned" to any evidence that someone was fleeing political persecution, the INS determined that only twenty-eight of the more than 24,000 Haitians intercepted in the decade following the program's inception were qualified to apply for asylum in the United States. Twenty of these were brought to the United States after the United States INS instituted several changes in the pre-screening interdiction process, which took effect March 1, 1991, after President Aristide took power. Consequently, almost three times more Haitians were deemed political refugees under a democratic government than during an entire decade marked by human rights abuses and tyranny.

In the decade preceding President Aristide's election, Haitians sent back to their country were often persecuted. Even the courts found that Haitians deported back to Haiti during this time were sometimes subject to surveillance, arrest, questioning, jailing and beatings, all without due process of the law.

In June, 1989, the National Coalition for Haitian Refugees presented an affidavit to the United States House of Representatives Subcommittee on Immigration, Refugees, and International Law. The affidavit was from returned Haitians who alleged that their stated fears of political persecution in Haiti were ignored by United States immigration authorities. One politically active Haitian, who was interdicted and returned to Haiti in March, 1989, told of Haitian soldiers having shot him four times in the legs at the time of his arrest in January, 1988 and his ten anguishing months in prison. Referring to his interview aboard the Coast Guard cutter, after he managed to flee Haiti, he stated: "I told them of my circumstances and specifically said that I preferred to kill myself instead of returning to Haiti. They returned me anyway."

During Aristide's tenure, prior to the coup, the number of refugees attempting to reach the United States dropped dramatically. The Coast Guard reported that during some months of Aristide's term, they did not encounter a single Haitian vessel. United States officials reportedly attributed this to the new hope Haitians had for improved conditions under the newly elected government. This supports other statistics indicating that the number of Haitians fleeing by boat in large measure reflects the political climate in Haiti. [*723]

Shortly after the 1991 coup d'etat in Haiti, and amid widespread reports of brutal attacks on Aristide supporters, attorneys at the Haitian Refugee Center (HRC) in Miami learned that the United States Coast Guard was about to forcibly return 538 "screened out" Haitians who had been found not to have a credible fear of return to Haiti. n7 One day later, on November 19, 1991, HRC filed a lawsuit challenging the forced repatriation of Haitians without any meaningful consideration of their asylum claims. At the time the suit was filed, only about fifty of the more than eighteen-hundred Haitians interviewed had been

"screened in." Testimony revealed that the pre-screening interviews were a complete sham - a formal validation of a predetermined result.

The interviews, many of which had been conducted on board Coast Guard cutters before Haitians had time to rest or recover from illness, often lasted no more than five minutes. The INS officers interviewing the Haitians had virtually no knowledge of Haitian politics or culture and could not name or recognize the following: The President and Prime Minister of the de facto regime, the General (Cedras) at the head of the military coup, the popular name for President Aristide (Titid), Ti- Legliz (church movement of President Aristide), Lafanmi Selavi (orphanage established by President Aristide), and many others. A high- ranking government official at one point even said the interviews were so defective they needed to be halted.

The HRC lawsuit did not challenge the interdiction program or ask the court to bring all interdicted Haitians to the United States. It simply asked that the Haitians receive fair screening interviews before repatriation continued.

Although District Court Judge Clyde C. Atkins issued three separate restraining orders in favor of the Haitians, three times the Eleventh Circuit Court of Appeals stayed or vacated the judge's orders. The Appeals Court found that the Haitians had no legally enforceable rights in the United States because they were outside United States territory. The "catch-22" nature of this finding was not lost on Judge Hatchett, the one African-American judge on the Appeals panel, who remarked in a dissenting opinion: "Haitians, unlike other aliens from anywhere in the world, are prevented from freely reaching the continental United States.

In a brief two sentence order issued without comment on January 31, 1992, the Supreme Court voted to permit repatriations. Justice [*724] Blackmun alone wrote: "If indeed the Haitians are to be returned to an uncertain future in their strife-torn homeland, that ruling should come from this Court after full and careful consideration of the merits of their claims."

Lawyers for the Haitians argued that the legal issues took a back seat to political maneuvering. Indeed, the government sent then Solicitor General Kenneth W. Starr to argue its position before the District Court in Miami, although Solicitors General generally only argue cases in particularly important United States Supreme Court cases. The argument signaled the effort United States officials would engage in to keep Haitians out of the United States. More specifically, the Haitians' attorneys argued that government lawyers manufactured affidavits, rushed courts to judgment, and deliberately misled the courts with false claims of national emergency and military necessity. On January 28, 1992, for example, the government filed an emergency petition for a stay of the ban on repatriations with the Eleventh Circuit, alleging that 20,000 Haitians "were massed" on the Haitian beaches and waiting to head for Guantanamo, and that the naval base could not accommodate such numbers. Three days later, and before the Eleventh Circuit had ruled, the government went to the Supreme Court with the same allegations. Attorneys for the Haitians argued that this was a "self created" crisis and that Guantanamo had a far greater capacity to hold people than the Administration claimed. They charged that Under Secretary Bernard Aronson admitted that the term "massing" was ambiguous and retracted his use of the word; contrary to the statements in his declaration to the Supreme Court, he admitted that he was quite unsure of the number of Haitians preparing to leave. Independent observers, including the Coast Guard attache in Port-au-Prince who flew over the Haitian shores of La Gonave, the point of departure for many Haitians, concluded there was no evidence of Haitians "massing." Moreover, during 1994-1995, Guantanamo held over 32,000 Cubans and over 21,000 Haitians and United States officials claimed they could facilitate an endless number of arrivals.

In their brief to the Supreme Court, lawyers for the Haitians also referred to the government reliance on the declaration of Robert K. Wolthuis, whom the government presented as the Assistant Secretary of Defense. Mr. Wolthuis, according to the Haitians' lawyers, had assumed that position for one day only - the day he signed the declaration. Mr. Wolthuis readily admitted that most of the facts he swore to in his declaration

were what the lawyers who had drafted it told him. The declaration was so defective that attorneys for the Haitians filed a separate memorandum concerning it.

[*725] In denying attorneys for the Haitians access to Guantanamo and the Coast Guard cutters, the government claimed that it would seriously interfere with military operations. Judge Atkins noted, however, the portions of the military base to which the attorneys sought access were not used for military purposes. Furthermore, Coast Guard Admiral William P. Leahy acknowledged in his deposition that press members, VIPs, and a host of other persons had access to Guantanamo, and he admitted that family members of Coast Guard members periodically traveled on Coast Guard cutters, including his fourteen year old son who spent two weeks on a cutter during a law enforcement mission.

Lawyers also charged that summary dismissals on critical decisions were issued, affidavits not a part of the record were treated as if they were, and key parts of the record were ignored. At one point Judge Hatchett, the Eleventh Circuit Court's dissenting judge, felt compelled to claim that the panel majority was deciding the case under "some procedures here before unknown to the law" and that "the majority's actions, ruling, and holdings ... are inconsistent with its actions, holdings and rulings of two days ago"

Indeed, the State Department and Bush Administration did an excellent job of diverting attention away from the legal issues and convincing the courts and the public that denying the Haitians their legal rights was in the best interest of everyone. n8 From day one of the coup, United States government officials were predicting that hundreds of thousands of Haitians would leave their country and head for the United States. Although when running for The Presidency, Bill Clinton said he was "appalled" at Bush's policy of forcibly repatriating the Haitians, once elected his Administration began predicting the Haitian exodus would make the Cuban Mariel exodus "look like a picnic." Yet only about 40,000 Haitians fled their country following the 1991 coup up until Bush's Kennebunkport order, eight months later. That is far less [*726] than the 125,000 Cubans who arrived in four months during the Mariel Boat lift in 1980. n9

Government officials claimed their effort to forcibly return the Haitians was inspired by the desire to save the lives of those who would otherwise be encouraged to take to the sea in unworthy vessels (the so-called "magnet" effect). But as Appeals Court Judge Hatchett pointed out: "The primary purpose of the [interdiction] program was, and has continued to be, to keep Haitians out of the United States." n10

When repatriations began again on February 1, 1992, more than 11,000 Haitians were held at Guantanamo Bay, Cuba. Amnesty International expressed outrage at the forced returns. In a January, 1992 report, Amnesty International said it had received reports of grave human rights violations after the coup d'etat. Amnesty stated they knew of "several cases in the past years where asylum-seekers who were refused asylum in the United States and returned to Haiti were imprisoned and in some cases ill-treated on their return."

The United Nations High Commissioner for Refugees (UNHCR) similarly condemned the repatriations, expressing fear that those returned would be exposed to real danger. Just before the Supreme Court decision allowing repatriations to continue, UNHCR confirmed that dozens of Haitian refugees returned to Haiti due to faulty procedures were persecuted upon their return and forced to flee a second time. The UNHCR said that they and United States government officials had documents detailing the harassment, beating, torture, and murder of [*727] returned Haitians for the "crime" of having fled. n11 After the UNHCR publicly confirmed that they had such evidence, they were informed they could no longer conduct interviews of the Haitians at Guantanamo without a military presence.

To exacerbate matters, testimony by a senior official of the General Accounting Office before a House subcommittee revealed that the INS had lost at least twenty-five hundred files at Guantanamo due to disorganization and disarray, mistook "screened-in" Haitians for "screened-out" Haitians, and apparently rescreened and even repatriated previously "screened-in" Haitians. Those erroneously returned included at

least thirty-eight unaccompanied children and a 16-year old girl, Marie Zette, who was killed in her bed by Tonton Macoutes the first night after her forced return.

Attorneys for the Haitians argued that many of the Haitians interdicted after the September coup were not headed to the United States in the first place, but to the Bahamas, Cuba or other destinations. The government advanced no explanation, the attorneys said, as to their authority or justification in interfering with those Haitians attempting to escape political persecution in Haiti, let alone to forcibly return them to Haiti.ⁿ¹²

The decision by the high court not to review the HRC case paved the way for further abuses of Haitian refugees. Indeed, after the Supreme Court order, the INS was free to "screen in" all light-skinned Haitians and "screen out" all dark-skinned Haitians, since this would not be subject to legal challenge. Yet many were surprised when President Bush issued his May 24, 1992 Executive Order stopping all Haitian interviews and permitting the INS to repatriate Haitians interdicted at sea without any investigation into the likelihood of their persecution in Haiti ("Kennebunkport Order").ⁿ¹³

The United States government's response to the widespread condemnation of the Kennebunkport Order was to claim that Haitians in [*728] fear for their lives could apply for asylum at the United States Embassy in Port-au-Prince, and in January, 1992 announced the opening of an office there to process refugee applications. Haitian refugee advocates argued that to expect Haitian refugees to openly approach the United States Embassy - just a block away from the police station and surrounded by military personnel - was preposterous. Indeed, the Secretary General of Amnesty International United States remarked in June, 1992:

"The idea that people suffering repression and at risk of human rights violations, at risk of arbitrary detention, at risk of beating, at risk of torture, and perhaps even death ... the idea that such people should contemplate visiting the United States Embassy in Port-au-Prince, should dare to stroll down the boulevard under the gaze of men in dark glasses who lounge on street corners, such an idea is ridiculous."

Haitian advocates pointed out as well that Haitians in the rural areas, where most of the severe repression was taking place, had no way of getting to the capital and that there was such a high threshold for approval of cases and such extensive documentary proof required of Haitians that very few qualified for refugee status. In fact, many Haitians who sought protection at the United States Embassy were subsequently arrested or otherwise mistreated by military authorities and, in some cases, killed.

In June, 1992, Americas Watch and the National Coalition for Haitian Refugees criticized the skewed United States monitoring of Haitians repatriated since the coup, alleging it had served a public relations purpose only and had utterly failed to discover whether repatriates encountered persecution. Florida Senator Connie Mack, a Republican, was an outspoken critic of the Bush Administration's Haitian policy, calling it "morally wrong" and "a disgrace." Republican Congresswoman Ileana Ros-Lehtinen at one point labeled the forced return an "unfair situation." Still, in early October, 1992, lacking the political clout of their Cuban counterparts, Haitian refugees suffered one final blow under the 102d Congress when legislation to reverse President Bush's Kennebunkport order failed to reach a vote of the full Congress.ⁿ¹⁴

According to a report by the Lawyers Committee for Human Rights, Coast Guard cutters which once figured so heavily in drug interdiction were subsequently diverted to capture and return people [*729] fleeing one of the most dreaded tyrannies in the Caribbean. INSⁿ¹⁵ Interdiction Chief Leon Jeannings admitted that most of the intercepted Haitian boats were destroyed so other Haitians wouldn't use them to leave. This prompted Miami Mayor Xavier Suarez to distribute bumper stickers in 1992 that read "Interdict Drugs, Not Haitians." Congressman Claude Pepper, shortly before his death, had unsuccessfully attempted to pass a bill that directed the United States to bring Haitians ashore for their asylum interviews.

Representative Lamar Smith's recent assertion that the Guantánamo Haitians were "paroled into the United States ..., spared deportation proceedings and allowed to pursue asylum," belies the fact that those Haitians

who were "screened-in" at Guantanamo in 1991 and 1992 were only allowed to come to the United States after a federal judge issued a temporary injunction prohibiting their forcible return. More over, as mentioned earlier, thousands more were forcibly returned, often to face additional persecution.

Indeed, the INS conducted 36,596 screening interviews at Guantanamo between October, 1991 and June, 1992 and "screened-in" only 28 percent of these Haitians. n16 And screening rates fluctuated widely despite the fact that political conditions did not significantly change. In mid-January, 1992, for example, the INS "screened-in" 85 percent of the Haitians, but only about 40 percent were "screened in" in February. n17 In April, after the Court allowed repatriations to continue, the rate dropped to a record low of two percent. This drop began raising concerns in Congress.

Several interpreters at Guantanamo provided sworn statements detailing a pattern of heavy pressure by U.S. State department Officials on asylum officers to decrease the number of Haitians "screened-in". A 1992 Harvard Law School report on the asylum process expressed concern that "special foreign policy pressures" had been influencing treatment of the Haitian cases. n18

In addition, the more than 10,000 Haitians "screened-in" the United States from Guantanamo, after INS officials found they had a credible fear of persecution continued to be in real danger of being denied asylum. Even before asylum officers had interviewed many of them after their arrival in the United States, the INS Deputy Commissioner publicly stated that 90 percent of these cases would probably be denied, a self-fulfilling prophecy.

Indeed, preliminary assessments by asylum officers in Miami recommended grants of asylum in thirty-three of the first forty-three Haitian cases. Yet, in a May 26, 1992 memorandum to the Associate Deputy Attorney General, the Director and Assistant Director of the Asylum Policy and Review Unit ("APRU") in Washington disagreed with eighteen of the recommendations to approve, but with only one recommendation to deny. He also expressed concern that the grant rate was "higher than expected." To combat this, special incentives were given to asylum officers to deny these cases, specifying that the "INS could be encouraged to...[count] a completed denial as a double case completion and a completed grant as a single case completion for the purposes of ... officer evaluations."

Many Haitians screened in from Guantanamo who clearly deserved asylum have been denied such relief. For example, a young woman who was beaten and repeatedly raped by a member of the Haitian military because of her political activity following the 1991 coup d'etat was nonetheless denied asylum. On December 5, 1997 the Miami Asylum Office Director stated that the current approval rate for Haitian applicants was less than 15 percent. n19

In 1994, after mounting pressure from the Congressional Black Caucus and other groups, President Clinton permitted intercepted Haitians to again be taken to Guantanamo rather than forcibly repatriated. According to United States Government officials, Guantanamo's facilities at peak times during 1994-95 held as many as 32,362 Cubans and 21,638 Haitians. While the United States Government paroled into the United States virtually all of Guantanamo's Cuban refugees during this [*731] time, it forcibly returned to Haiti virtually all of Guantanamo's Haitian refugees.

Among Guantanamo's Haitian refugees were 356 children who arrived there unaccompanied by an adult. Most of these children had witnessed close family members being murdered by Haiti's paramilitary forces, and some of them had barely escaped Haiti with their own lives. Many of the children's closest living relatives were in the United States. While all of their Cuban counterparts had long been admitted to the United States, by the end of April, 1995 the United States Government had granted parole to only twenty-three of these Haitian children. Even in the months before it decided to return President Aristide to power, the United States Government never seemed to have seriously considered allowing these children, as a group, to enter the United States. n20

The unaccompanied Haitian minors were held at Guantanamo under extremely distressing conditions. They were largely isolated from their family and friends in the outside world, as well as from journalists and attorneys. They lived largely without information about the outside world, especially about Haiti, living in several cases without access to proper medical care or counseling for health-threatening complaints. The children were housed in leaking tents where many suffered damage to their few belongings. Some lived without shoes or a change of clothes, and were awakened at 6 a.m. daily, even on weekends.

Several Haitian children attempted suicide. These attempts included drinking clorox, hanging by the neck from a tree and inserting fence wire into the vagina. In response to complaints made by attorneys who visited the Haitian children in January, 1995, the United States Atlantic Command acknowledged in March, 1994, that some of its soldiers had subjected Haitian children to physical and verbal abuse. ["Two soldiers were found to have been involved in isolated cases of mistreatment. They used excessive force in subduing a number of adolescent Haitians... The force used included ... flexible plastic hand cuffs, and forcing the minors to kneel on the ground for several hours. Some instances of verbal abuse also occurred."]

Although the United States Government claimed to be acting in the [*732] "best interests" of Guantanamo's unaccompanied Haitian children, it never explored the strong support system available to these children in the United States. At the same time, its preparation of a support system for these children within Haiti seems to have been both indifferent and incompetent. n21 In March of 1995 Amnesty International USA criticized the United States government for denying the unaccompanied Haitian children a fair INS screening interview and the right to apply for political asylum.

By June, 1995 the majority of these children had been forcibly repatriated, prompting protests by members of the Congressional Black Caucus and a number of Hollywood notables. n22 The Attorney General finally ordered the parole into the United States of most of the remaining Haitian children at Guantanamo, a measure that to many seemed too little, too late. n23 Many of the children who were forcibly returned are living on the streets in Haiti today and are at great risk. At least one young Haitian girl was brutally raped following her forcible return.

In its 1996 Annual Report, the Inter-American Commission on Human Rights, Organization of American States, concluded that the United States's interdiction and repatriation policy toward Haitians violated the following provisions of the American Declaration of the Rights and Duties of Man: (1) the right to life, (2) the right to liberty, (3) the right to security of the person, (4) the right to equality before the law, (5) the right to resort to the courts, and, (6) the right to seek and receive asylum.

The United States' interdiction, detention and parole policies aptly call attention to the disparities between our treatment of Cuban and Haitian refugees. In many ways, immigration practices toward Cubans and Haitians have represented the extremes of United States policy. While immigration policy toward Cubans tends to be generous and humanitarian, even with recent repatriation, immigration policy toward Haitians tends to be stringent and inhumane.

[*733] Cubans have constituted a migration stream far larger than Haitians, yet Cubans are routinely paroled into the United States and freed from detention, while Haitians are not. While Cubans are authorized to work and eventually obtain permanent resident status, Haitians are systematically detained and deported. Even when Haitians are released from detention, they are frequently denied work permits.

The Cuban Refugee Adjustment Act (CAA) of 1966, which permits Cubans who are paroled or admitted to the United States to apply for permanent residency one year later, accounts in large measure for the stark difference in treatment between the two groups. But what makes this law so remarkable is that it is open-ended, has no cut-off date, and has not been repealed. Because Cubans are eligible for residency under the CAA, few have even needed to apply for asylum.

Additionally, Cubans have been eligible to enter the United States as part of the government-sponsored Refugee Resettlement Program, or through the sponsorship of the Cuban-American National Foundation. n24 No comparable program exists for Haitians.

Although in the past few years the United States has begun interdicting and returning Cubans attempting to come to the United States by boat, Cubans have immigration options open to them that are denied to Haitians. Shipboard screening procedures, while far from perfect, are in place for interdicted Cubans, while Haitians are automatically returned without screening. In addition, under an agreement with the Cuban government, at least 20,000 visas must be given to Cubans to come to the United States each year. n25 As mentioned earlier, Cubans who are admitted or paroled into the United States may apply for permanent resident status after one year under the Cuban Adjustment Act even if they came to the United States for purely economic reasons. None of these options are open to Haitians. Cubans are also exempt from the recently implemented expedited removal provisions of the immigration law that passed in 1996.

In the South Florida community, the striking disparity of treatment between the Cubans and Haitians is frequently evident, and often borders on the incomprehensible. For example, in July, 1991, an old [*734] wooden boat, overloaded with 161 Haitians, came upon two Cubans bobbing on an inner tube raft. The Haitians rescued the Cubans and steered towards Miami. The United States Coast Guard stopped the boat, offering refuge to the two Cubans in Miami and returning the Haitians to Haiti. To exacerbate matters, two days later, five young Haitian boys who were "stowaways" on board a Honduran freighter arriving in Miami. The captain, warned by the INS that he would be responsible should the Haitians escape. n26 Were put in heavy chains and cages and left for hours on the deck of the ship in the parching sun because the captain had been warned.

Similarly, when in late February, 1993, a Haitian commandeered a plane to West Palm Beach, claiming he was fleeing political oppression in Haiti, he was met by an FBI SWAT team, arrested and charged with air piracy. Federal public defenders argued that their Haitian client should be treated like Cuban nationals who had not been prosecuted, even when they had used force, kidnaping, and hijacking to find freedom in the United States. The Haitian man was eventually released on bond pending his trial.

Perhaps the most visible example of the discriminatory treatment of Haitians in Miami occurred in 1990. Television footage of a demonstration across from the INS building showed Haitian protestors being brutally beaten by police and at least five bloody Haitians being carried away. In early February, 1993, as a result of these acts, the City of Miami agreed to pay \$ 650,000 to fifty-six of these Haitians. Under the agreement, the City did not admit any guilt in the case.

Lamar Smith has argued that Nicaraguans and Cubans were granted amnesty because they were allies in the Cold War fight against communism. This did not surprise attorneys who represent asylum applicants of different nationalities and are familiar with the differences in treatment accorded to Haitians and other fleeing brutal dictatorships compared to those from communist countries. Relatively mild mistreatment of Cubans in their homeland, for example, may result in a grant of asylum, while gross mistreatment of Haitians does not.

Historically, State Department opinion letters and reports relied upon by the INS have minimized the extent of political oppression in Haiti and taken an unreasonably optimistic view of the political situation there. The INS has relied upon State Department reports on Haiti even [*735] when they are contradicted by human rights organizations such as Amnesty International and Human Rights Watch. n27 Ironically, shortly after Baby Doc Duvalier fled Haiti, a high ranking State Department official appearing on "Nightline" claimed that the Tonton Macoute - who had repeatedly been dismissed by The State Department as a non-government entity whose brutal attacks on innocent Haitians therefore did not rise to the level of political opinion - were Duvalier's own personal henchmen. Since Aristide's return to Haiti, State Department reports concluded that country conditions there have changed to such an extent that asylum should now be routinely denied to Haitians, even for those who have suffered past persecution and clearly

warrant relief. Congressman Lamar Smith likewise asserts that Haitians who fled Haiti following the 1991 coup d'etat should no longer fear to return since Haiti is now a democracy.

Unfortunately, however, Haiti today is a fragile democracy at best. Those who terrorized the masses during the have never been arrested and human rights groups recognize the deteriorating political situation there. In testimony before the Senate Judiciary Subcommittee on Immigration on December 17, 1997, Amnesty International officials indicated that the situation in Haiti is unstable and has worsened in recent months. "Any one returning to Haiti cannot be assumed that they will be protected by the existing Haitian justice system... Any blanket assessment that the change in government can allow all who fled the country to return without fear of harm is... incorrect in our view." The United Nations High Commissioner for Refugees similarly concluded in August, 1997 that "the weakness of Haiti's institutions, inherited from decades of political repression, undermine the capacity of the State to meet the basic obligation to protect its citizens... This office believes it would be inappropriate to conclude generally that Haitian asylum seekers would no longer face persecution upon return to Haiti."

United States relations with Haiti over the years bears mentioning. American domination of Haiti was first established in 1915 when United States Marines began a nineteen year occupation of the country. During the Duvalier family era, the United States supported their rule, money, weapons, and training flowed from Washington to the Haitian National Palace.

And even with glaring evidence of abuses committed by the Duvaliers, United States economic support continued. One week after [*736] jailing almost every opponent of Jean Claude Duvalier's government, Haitian officials sat down with representatives from the United States and other Western countries, who were the primary donors to the Duvalier coffers. Despite these abuses, Haiti continued to receive about 137 million dollars in multi-lateral and bi-lateral aid, the United States remaining by far, the largest contributor to the Haitian budget. United States aid continued to flow despite the fact that the Haitian government broke every promise made to the United States in accepting aid. Development experts have said that the bottom line regarding foreign assistance to Haiti is it resulted in somewhat less hunger for the poor, but above all, more prosperity for the ruling families in the Duvalier dynasty. n28

Perhaps the most blatant example of the extent to which politics affects our treatment of immigrant groups in South Florida followed Aristide's election, when Haitians requested a permit to celebrate in a local park and were told by Miami officials that they could do so only so long as Fidel Castro was not invited to the inauguration in Haiti. Haitian leaders protested that such a policy violated the First Amendment and ultimately Miami Mayor Xavier L. Suarez reversed the questionable restriction on the Haitians' celebration.

Historically, Haitian refugees have had few powerful supporters in Washington. However, following the 1991 coup in Haiti, both Republicans and Democrats forcefully spoke out on their behalf. But, even with bipartisan backing for legislation that will grant Haitians relief similar to that given to those groups who benefited from the Nicaraguan legislation (NACARA), they have thus far come up short. n29

Florida is home to many persons from Central and South America and the Caribbean who fled political turmoil in their native countries. Under NACARA, Nicaraguans who arrived as recently as December 1, 1995 are able to apply for permanent residence, regardless of their reasons for coming to the United States. That arrival date is five years after the Sandinistas were voted out of office. Similarly, Cubans who arrived before December 1, 1995 will be eligible for permanent residency. This is an extraordinary victory, because even under the old, more generous suspension of deportation rules, Nicaraguans and Cubans had to prove 7 [*737] years of continuous residence in the United States and extreme hardship if deported to be allowed to remain here.

Salvadorans and Guatemalans fared less well under the new law. Although their mistreatment by the United States government in the asylum process led to a landmark legal settlement requiring reconsideration of their cases, they will have only the possibility (but no guarantee) of suspension of

deportation under prior immigration rules. Similarly, people from eastern Europe and the former Soviet Union who have been in the United States since December 31, 1990 will only be eligible for suspension of deportation under the old rules. They too will have to convince judges, on a case-by-case basis, that they, or family members, will suffer extreme hardship if deported. If denied, they may be deported.

Haitians received neither residence nor the possibility of the suspension of deportation under NACARA, yet many arrived years before Nicaraguans and Cubans, who will soon be granted residence.

Representative Lamar Smith's argument that, unlike the Haitians, Nicaraguans and Cubans are deserving of amnesty because their nations were seized by communist dictators flies in the face of Congress' attempts to discard favoritism toward those fleeing communist regimes and to depoliticize refugee policy. The Refugee Act of 1980 was designed to bring United States law into conformity with international treaty obligations and to establish objective criteria for determining refugee status.

Even the United States government admits that many Haitians fled oppression. Thousands are in the United States with the government's permission after they proved a credible fear of persecution.

Not surprisingly, NACARA - still called the 'Victims of Communism Relief Act' by some members of Congress - has an ideological bias which negates the suffering of victims of right-wing regimes. Its official title, The Nicaraguan Adjustment and Central American Relief Act, belies the sweep of its provisions. Benefits for Cubans slipped into the provisions for Nicaraguans, and benefits for those from Eastern Europe and the former Soviet Union are tucked into the provisions for Central Americans. It is estimated that 153,000 Nicaraguans and Cubans, most of whom reside in South Florida, will get their green cards as a result of this law.

But, the new law does not just deliver an extraordinarily good deal to some; it also makes things worse for all those not specifically included in its provisions.

Last summer, Attorney General Janet Reno vacated a harsh Board of Immigration Appeals decision which had changed the rules for persons applying for suspension of deportation and made new, harsh provisions retroactive. This was an across-the-board decision, which applied equally to all nationalities. The new NACARA legislation cancels the Attorney General's decision and makes the harsh provisions of the new immigration law passed in 1996 retroactive. For example, Alexandra Charles, a nineteen year old Haitian girl who witnessed her parents' murder in Haiti, would have been eligible for suspension of deportation under the Attorney General's decision but now, as a price of the new legislation, she is not.

Nicaraguans and Cubans are certainly deserving of amnesty and justified in celebrating their good fortune. It is important, however, to look at how legislation that is so beneficial to them, at the same time, hurts others. The new law is divisive and discriminatory. It pits one group against the other, and gives benefits to some nationalities at the expense of others. This has an especially large impact upon a community like South Florida which is home to so many similarly situated groups who have fled political oppression and established lives here.

The Haitians responded passionately to their omission in the new laws in large part because they believed they were going to be included. In a matter of forty-eight hours after NACARA's passage, Haitians collected 20,000 signatures on a petition asking for equal treatment. A number of rallies, in which thousands participated, followed.

As a partial explanation for the disparate treatment, Haitians were told that Nicaraguan government officials had urged the Clinton Administration to grant the Nicaraguans amnesty because, if tens of thousands of Nicaraguans were deported, it would create enormous economic instability in Nicaragua. To Haitians this only strengthened their own case, as Haiti's fragile economic situation is no secret. Haitians in the United States reportedly send up to \$ 500 million to Haiti a year. So like his Central American

counterparts, Haiti's President Rene Preval wrote to President Clinton, highlighting the destabilizing effect the return of thousands of Haitians would have on Haiti and asking for equal treatment.

Congress also claimed that despite the recent establishment of democratically elected governments in Nicaragua, Cuba, El Salvador, Guatemala, and specified Eastern European nations, many of these nationals had built equities here, and therefore deserved an opportunity to remain. The Haitians argued that they too built businesses, paid taxes, and raised their families in South Florida. They contribute to our communities and enrich the ethnic diversity of our state. So too have Hondurans, Asians and others excluded in NACARA.

Haitians excluded from this latest round of amnesty provisions were reminded of an earlier time when they had to struggle against effort [*739] to deny them U.S. residency. In a decision subsequently upheld by the United States Supreme Court in February, 1991, a federal district court judge ruled that Haitians who sought to legalize their status under the farm worker amnesty program of 1986 were denied a "meaningful opportunity to be heard." Based on the largest, most ambitious fraud investigation ever undertaken by the INS, the United States government charged mostly poor, uneducated Haitian farm workers with committing fraud in their applications for residency under the amnesty program ("Operation Cucumber"). Federal judges hearing criminal charges against the Haitians criticized the government for bringing the charges, and the government was forced to dismiss all of the cases.

If there is a silver lining here, it is that in South Florida, Nicaraguans, Cubans, African Americans, and others, have raised their voices on behalf of the Haitians. Groups that seldom, if ever, communicated in any meaningful way before, in part because each group was so busy trying to deal with its own problems, are now doing so and learning they have far more in common than differences, and that there is strength in unity. Moreover, Haitians and their advocates are calling for equal treatment for the Guatemalans, Salvadorans, Hondurans and others similarly situated as well.

Democrats and Republicans have also renewed their efforts in recent months on behalf of the Haitians. Al Cardenas, Vice Chairman of the Florida Republican Party, along with Ana Navarro, a leading Nicaraguan American activist, and African American County Commissioners have called upon legislative officials "to do the right thing" for the Haitians, pointing to the many benefits such legislation would provide for South Florida. The Greater Miami Chamber of Commerce introduced a resolution on August 18, 1998, endorsing legislation to grant relief to the Haitians, claiming that the wholesale deportation of Haitians "would upset the balance of our diverse citizenry which gives us our strength in the global economy." This deportation, they argued, would further destabilize Haiti's fragile political and economic situation, thereby increasing the number of Haitian refugees fleeing Haiti in the future.

On June 18, 1998, the Roman Catholic Bishops of Florida asked for compassionate and just treatment of the Haitians for similar reasons. The Congressional Black Caucus and leaders of the Hispanic Caucus have also called for equal treatment.

Congresswoman Carrie Meek (D-FL) has long led the battle to provide equal treatment for the Haitians. Her latest effort began in the spring of 1997, when she and members of a Miami-Dade delegation met with Attorney General Janet Reno to discuss including Haitians in proposed changes to the Illegal Immigration and Reform and Immigrant [*740] Responsibility Act of 1996. NACARA's architects maintained that if the Haitians were included the bill would die, and supporters of the Haitians in Congress agreed to permit the Central American refugee relief legislation to move forward without including them. The Administration then agreed, in December, 1997, to provide temporary relief for Haitian nationals pending further Congressional action and granted Deferred Enforced Departure (DED) to Haitians who were paroled into the United States or applied for asylum prior to December 31, 1995. These Haitians are protected from deportation for one year while Haitian advocates work to obtain more permanent, legislative relief.

On April 23, 1998, the Senate Judiciary Committee approved the Haitian Refugee Immigration Fairness Act, 1504, which was introduced by Florida Senators Graham (D-FL) and Mack (R-FL). This bill would grant permanent residency to an estimated 40,000 Haitians who were paroled into the United States or who applied for asylum prior to December 31, 1995. (Approximately 10,490 Haitians were paroled into the United States between 1990-1997 and 42,856 Haitians applied for political asylum). At the mark up of this bill, Senators Spencer Abraham (R-MI) and Edward Kennedy (D-MA) introduced a substitute bill similar to the Graham-Mack bill but which would also include a small group (about one thousand to two thousand) of unaccompanied children and orphans. The substitute bill was passed by unanimous vote and now moves to the full Senate for consideration. The Senators were assured by the Administration that Haitians will not be deported while Congress considers this measure.

The Senate bill is one of several that has been introduced to provide relief to Haitians who currently find themselves in legal limbo. On the House side there are three additional bills, none of which have yet been marked up in subcommittee or committee. Representative Carrie Meek introduced the most generous bill, HR 3033, which would give "green cards" to any Haitian in the United States as of December 31, 1995. It is estimated that some 100,000 Haitians, many in South Florida, would be affected. Only this bill provides equity for the Haitians. ⁿ³⁰ But even Representative Meek has conceded it has little chance of passing. Representative John Conyers (D-MI) has introduced a companion bill (HR 3049) to Senators Graham and Meek's bill. Another bill, introduced by Representative Luis Gutierrez (D-IL), HR 3054, would grant permanent residency to Salvadorans and Guatemalans who were covered in [*741] NACARA and to Haitians in the United States as of December 31, 1995. [A delegation of Guatemalans from South Florida traveled to Washington in July of this year to ask Congress to grant permanent residence to more than 180,000 undocumented Guatemalans now subject to deportation].

The battle to provide equal treatment for the Haitians is far from over. While it is heartening that key Republicans such as Senators Connie Mack, Spencer Abraham, and Alfonse D'Amato, and Representatives Jack Kemp, Ileana Ros-Lehtinen and Lincoln Diaz-Balart have taken up the cause, Lamar Smith's persistent efforts to convince the public that the Haitians do not deserve help poses a serious problem.

Next year is an election year which means immigrant bashing may again become popular. The White House's commitment to new legislation is unclear and the United States military action in Haiti has made it hard for the United States to acknowledge the desperate political and economic situation there.

Representative Smith has misrepresented the history of the United States policy toward Haitians. His revisionist version of events should not be an excuse for denying Haitians equal treatment now. The Reverend Jesse Jackson more aptly described the plight of the Haitians when he claimed that they have been "trapped between the tyranny at home and the abandonment and rejection of the American people."

Nicaraguan activists have said that Republican members of Congress carried out a jihad in obtaining legal status for them. Let's hope they do that now for Haitians and others excluded and punished by the new law.

Our responsibility to protect persons among us who have fled political persecution should not depend on politics. Similarly situated immigrant groups should be treated equally. Nicaraguans and Cubans who arrived in the United States as of December, 1995 will be given residence under the new law. Haitians deserve no less than that.

FOOTNOTE-1:

n1. Between 1986 and 1991, only 28 Haitians were granted asylum. In 1986, 5 Haitians were granted asylum; in 1988, 8; in 1989, 11; in 1990, 3; and in 1991, 1. These figures are generous,

since many other Haitians who would have applied for asylum did not do so because the odds were so great against their claims being fairly considered.

n2. Given the grave political situation in Haiti following the 1991 ouster of President Aristide, the number of Haitians granted asylum in the aftermath of the coup was alarmingly low. In 1992, 120 Haitians were granted asylum by the INS, representing a 30.6 percent approval rate, which still lagged far behind the approval rate in 1992 for Chinese applicants (84.8 percent) and applicants from the former Soviet Union (49.8 percent). In 1993, 636 Haitians were granted asylum; in 1994, 1060; in 1995, 749; and in 1996, 1,491. Moreover, any meaningful increase in the approval rate was temporary.

n3. Over two-hundred written and videotaped statements of Krome detainees, ex-detainees, former Krome employees, attorneys, and paralegals were collected by attorneys at the Haitian Refugee Center in Miami between 1989 and early 1991, painting a picture of cycles of humiliation and abuse directed in large part against the Haitians at the whim of certain guards. In the spring of 1990, Florida Representative Dante Fascell, who headed the House Foreign Affairs Committee, called for an FBI investigation, labeling the documentation of wrongdoing against Haitians at Krome "disturbing and indicating that longstanding abuses at the center remain uncorrected." Less than a year later, a Haitian woman detained at Krome was allegedly raped by a guard. She remained in detention for another two months, claiming her attacker was still on the job, although the INS knew of her charges shortly after the incident in question. INS's reaction to the public airing of allegations of abuse at Krome was not encouraging. A teacher and a nurse who spoke to reporters about such abuses were subsequently dismissed. Another teacher was let go after complaining to Miami INS officials about confiscation disposal of Haitian detainees' belongings, including Bibles and books.

n4. Larry Rohter, "Processing for Haitians is Time in a Rural Prison," N.Y. Times, June 21, 1992, at 18.

n5. Larry Rohter, "U.S. Accused of Abuse of Haitians at a Center," N.Y. Times, June 5, 1992, at A10.

n6. Former Haitian President Prosper Avril has stated that he believes the Haiti interdiction agreement is illegal under Haitian law, since an exchange of diplomatic letters is not a proper method of entering into a bilateral agreement with another country.

n7. From October 29, 1991 until November 18, 1991, the United States refrained from repatriating the Haitians and brought them to Guantanamo. On November 18, 1991, the government resumed repatriations.

n8. It has been suggested that the media played a role in influencing public opinion. One report indicated that newspaper stories in four major American newspapers "systematically distorted the human rights record of President Aristide while underplaying the terror practiced by the coup government." *The Press and Haiti: Systematic Distortions and Omissions*, September 1991 - June 1992, HAITI COMMUNICATIONS PROJECT (Boston Media Action, Somerville, Mass.), Feb. 1993, at 1. The four newspapers evaluated were the N.Y. Times, the Boston Globe, the Washington Post, and the Miami Herald. A public opinion poll conducted by the Miami Herald and a local Miami television station in December 1992 also revealed that 57 percent of Florida residents believed that Haitians should be allowed to stay in the United States until it was safe to return to Haiti. Elizabeth Grudzinski, "Bush, Florida Split on Haitians; 57% in State Poll Favor Letting Refugees Stay - For Now," Miami Herald, December 13, 1991, at 1A. However, a Mason Dixon poll conducted about six months later, from May 29 to 31, 1992, indicated that Florida voters overwhelmingly felt the United States could not afford to let

the Haitians in and concluded they were simply economic refugees. Lizette Alvarez, Florida Split on Haiti Policy, Miami Herald, June 5, 1992, at 1A.

n9. Over 200,000 Cubans also came to the United States in an organized airlift between 1959 and 1962.

n10. A look at our treatment of those Haitians who were "screened-in" at Guantanamo but who allegedly tested positive for the HIV virus unfortunately supports the argument that we are not interested in saving the lives of Haitians. In late 1991, United States government officials began testing these Haitians for the HIV virus. Prior to 1992, no person who applied for asylum at a border or in the United States was ever excluded for being HIV-positive, and Cubans interdicted at the same time and literally in the same boat as Haitians were immediately transported to the United States and allowed to enter the asylum program without ever being medically screened for HIV. The Haitians were housed at Guantanamo in tin-roofed shacks surrounded by barbed wire, denied adequate legal representation, and occasionally suffered punitive measures handed out without any procedural rights. Doctors from the Center for Disease Control warned the Navy that the Haitians should not be crowded together in a camp such as Guantanamo because that could exacerbate their medical condition, and senior Health and Human Service officials, including former Secretary Sullivan, wanted the restriction on the Haitians lifted, as did international health authorities. In reviewing the legality of the confinement of these Haitians, the court found that "The Haitians' plight is a tragedy of immense proportion and their continued detainment is totally unacceptable ..." On June 8, 1993 the court ordered the government to release the approximately two-hundred screened-in Haitians immediately from Guantanamo Bay "to anywhere but Haiti" and to allow them access to counsel after almost two years of imprisonment at Guantanamo Bay. In response to the court order, the government allowed those remaining at Guantanamo Bay to enter the United States and pursue asylum claims.

n11. Attorneys for the Haitians learned of this less than fifty-six hours before filing their petitions for writ of certiorari with the Supreme Court. The Haitians' attorneys claimed that the government precluded them from obtaining this information in a timely fashion.

n12. Haitians and their advocates were aware that the same Coast Guard that searched for Haitians also searched for Cubans, but that regardless of what the individual Cubans and Haitians had to say, the Coast Guard operated with the intention of returning Haitians to Haiti, and with the intention of bringing all the Cubans they found safely to the United States. In 1991, 2203 Cubans came to the United States on boats or rafts, and in 1992, 2205 did. At the same time that Haitians were being forcibly repatriated from Guantanamo in 1991 and 1992, Cubans who made it to the United States Naval Base were flown to the United States and paroled into the community.

n13. The Bush Administration's handling of the Haitian refugee crisis was a striking contrast to the Cuban freedom flotillas in the early 1960's and United States' handling of the Vietnamese in the 1970's. Indeed, the United States vehemently criticized the forced return by British Hong Kong of the Vietnamese Boat People.

n14. Given the failure of several broader Haiti-focused bills to progress during 1992, H.R. 5360 sought only to make explicit the United States obligation under international law not to forcibly return political refugees found at sea as well as within United States territory. See H.R. 5360, 102d Cong., 2d Sess. (1992). President Bush had threatened to veto any bill protecting the Haitians that passed Congress.

n15. Despite a December, 1988 presidential proclamation extending the United States territorial waters from three to twelve miles, Haitians interdicted had to make it to within the three mile limit.

n16. It is believed that about 85 percent of these Haitians reside in South Florida. Less than a dozen pro bono attorneys were available to work on these cases and many of them could not devote their time exclusively to the Guantanamo caseload.

n17. Asylum officers informally stated that on certain days the "screen-in" rate was close to 100 percent.

n18. Even INS officials acknowledged that 10-15 percent of the "screened out" Haitians may nonetheless be at risk if returned.

n19. In a National Asylum Study Project prepared by the Harvard Law School Immigration and Refugee Program after the forcible return of the Guantanamo Haitians, it was found that the "screened in" Haitians were victims of special scrutiny of their asylum claims upon arrival in the United States, including heightened legal scrutiny, that Special Department of State investigations of their asylum claims jeopardized their family members and threatened the confidentiality of their asylum applications, and that asylum officers often turned what should have been an impartial, non-adversarial hearing into a hostile credibility examination. One particularly alarming example of the unfair treatment of these Haitian cases was the following statement in a Notice of Intent to Deny about the lure of "the luxuries at Guantanamo Bay":

Your testimony is just not plausible. What is more likely is that word had gotten to your hometown of the free food, medical care, clothing, the chance to get to the United States, and other luxuries at Guantanamo Bay and you took a chance by getting on a boat with many other people who were leaving the poverty of Haiti.

n20. Even Haitian children attempting to come to the United States legally have not been spared discriminatory treatment. Haitian children eligible for family-sponsored visas were stranded in Haiti for months following the 1991 coup d'etat, while their applications were subjected to heightened scrutiny imposed on no other nationality. This group included children who had lived with their parents in the U.S. for years, attended school here, and had little familiarity with Haiti or its language. Following a report prepared by attorneys at Florida Rural Legal Services and at the urging of Congresswoman Carrie Meek (D-FL), Attorney General Janet Reno granted humanitarian parole to ninety-eight of these children. For more details, see "Haitian Children Awaiting Visas: A Plea for Help," a report prepared by Cheryl Little and on file with the Florida Immigrant Advocacy Center.

n21. For further details, see "Not in Their Best Interest: A Report on the U.S. Government's Forcible Repatriation of Guantanamo's Unaccompanied Haitian Children" and supplemental report, "Unaccompanied Haitian Children Repatriated from Guantanamo: Stories of Trauma and Despair," on file at the Florida Immigrant Advocacy Center.

n22. Hollywood notables included, among others, Danny Glover, Susan Sarandon, Julia Roberts, Harry Belafonte, Michelle Pfeiffer, Jack Lemmon, Jonathan Demme, and Gregory Peck. Even those children fortunate enough to have made it to the United States now find themselves in a quandary. Absent a grant of political asylum - very difficult to obtain in Haitian cases - most will be subject to deportation when their parole expires. This is in marked contrast to the Cuban children paroled from Guantanamo who are eligible for legal United States residency under the Cuban Adjustment Act a year and a day after their parole.

n23. At the urging of attorneys from the Florida Immigrant Advocacy Center and others, Attorney General Janet Reno eventually paroled five of these children into the United States, including the young rape victim.

n24. Under the Refugee Resettlement Program, 1070 Cubans were admitted through the first eight months of fiscal 1991; under the Cuban-American National Foundation, 1734 Cubans were admitted as of the end of May, and more than 8500 since the programs' inception in 1988 until 1992. The number of Cubans requesting non-immigrant visas for travel to the United States also increased steadily over the years. A total of 14,000 Cubans arrived in Florida by plane with tourist visas in 1990. The United States Immigration and Naturalization Service statistics show that 30 to 40 percent of these Cubans did not return to Cuba.

n25. United States immigration laws also provide annual ceilings for refugee admissions. Most of the slots for those in Latin America and the Caribbean have gone to the Cubans.

n26. The following year, at the same time politicians in South Florida were screaming about the prospects of another Mariel and our county's inability to handle any further crisis as a result of Hurricane Andrew, the Greater Miami Chamber of Commerce hosted a two-day conference attended by federal, state, county, and city officials, to develop a working plan for absorbing hundreds of thousands of Cuban refugees should Castro fall.

n27. In assessing the claims of Haitians "screened in" at Guantanamo upon their arrival in the United States, asylum officers relied on State Department opinion letters, which at times contradicted Department of State materials, INS Haiti memos, non-governmental source of documentation, and other State Department opinion letters.

n28. After Duvalier fled Haiti, lawyers in Miami filed a lawsuit against him and his cohorts, and a Federal District Court in Miami found that they had pilfered over \$ 500 million in aid meant for the Haitian people. While this money to date has not been collected, the decision in this case indicates the extent to which United States financial support to Haiti was misused.

n29. Two of Florida's Republican members of Congress, Ileana Ros-Lehtinen and Lincoln Diaz-Balart, are Cuban immigrants, and, unlike many of their Republican counterparts, have fought for the rights of immigrants.

n30. While the number of Haitians who would obtain relief if they were granted equal treatment with the Cubans and Nicaraguans under NACARA is somewhat larger than what is proposed in the Haitian Refugee Immigration Fairness Act, that number is still far fewer than the number of Cubans and Nicaraguans granted amnesty.