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HAITIAN EMIGRATION

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
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LETTER OF TRANSMITTAL

To the Members of the House Committee on the Judiciary:

There is transmitted herewith a report of the Subcommittee on Immigration, Citizenship, and International Law concerning the claims for asylum and requests for administrative relief under the Immigration and Nationality Act which have been made by certain natives of Haiti. This report is part of a continuing review of problems which have developed within the context of that Act by the Subcommittee. This study is based on an examination of this specific problem during general oversight hearings and on an investigative trip of the staff of the Subcommittee to Haiti in February 1976.

It is my hope that this report and the information and recommendations contained herein will be of value to the Members of the Committee on the Judiciary.

JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law.

July 1, 1976.

FOREWORD

Over the past few years, my Subcommittee on Immigration, Citizenship, and International Law has received numerous complaints from Members of Congress, religious and civic organizations, and private citizens regarding our Government's treatment of certain natives of Haiti who are in the United States. More specifically, criticism has centered around claims made by several hundred Haitians, who have been found to be excludable or deportable under the Immigration and Nationality Act, and who claim that they will be subject to persecution if returned to Haiti.

The Subcommittee has followed closely all developments relating to this group of aliens and the subject has been raised with officials from the Departments of State and Justice during general oversight hearings on the administration of our immigration laws. In addition, I have personally discussed this matter with representatives from these Departments and in June 1974 I met with the Honorable Clinton Knox, U.S. Ambassador to Haiti (1969–73) to obtain his impression of the problem.

Due to a continuing concern for this problem and in an effort to fully discharge our oversight responsibilities under the Rules of the House, I instructed my staff, in February of this year, to travel to Haiti and Miami, Florida to review the entire situation, with emphasis on the procedures followed by our Government in processing claims for asylum or for administrative relief under section 243(h) of the Immigration and Nationality Act (which authorizes the Attorney General to withhold deportation if an alien would be subject to persecution on account of race, religion or political opinion).

The purpose of this investigative trip was to assemble background information to assist in the preparation of this report to the Committee. This report will not discuss specific cases (many of which are still pending in the courts) but instead will describe and evaluate the general situation and will make various administrative and legislative recommendations to improve the current procedures for submitting and adjudicating the claims which have been made by these Haitians. In addition, staff was directed to ascertain, to the extent possible, current political and economic conditions in Haiti, in order to assist the Committee in understanding the various "pressures" to emigrate from Haiti to the United States.

In an effort to accomplish this objective, staff met with the following individuals during their five day trip to Haiti:

Heyward Isham, U.S. Ambassador to Haiti;

David R. Thompson, Deputy Chief of Mission, U.S. Embassy;

Walter S. Burke, Consul, U.S. Embassy;

John Vincent, Second Secretary, U.S. Embassy;

Edner Brutus, Secretary of State for Foreign Affairs, Government of Haiti;

Paul Blanchet, Secretary of State for Interior and National Defense, Government of Haiti (accompanied by Gerard Dorceley, Under Secretary of State for Foreign Affairs, and Guy Malary, Legal Advisor for Foreign Affairs);
Wilford Agner, Charge de Affaires of Canada, Embassy of Canada;
Msgr. Luigi Conti, Papal Nuncio;
Christof Scheiffele, CARE-Haiti;
Gary Ambrose, Church World Service;
Matthew Heim, Catholic Relief Service.

In Miami, staff met with:
Louis Gidel, Deputy District Director;
C. A. Rogerson, Assistant District Director, Travel Control;
William Tillman, INS investigator and Haitian Coordinator;
Jacques Mompremier, Director, Haitian Refugee Information Center.

Staff also met with two Haitians whose claim for asylum had been denied, and another Haitian who had been indicted for reentry after deportation under 8 U.S.C. 1326. In addition, an asylum interview with a Haitian was observed.

In every meeting both in Haiti and Miami, the relevant provisions of the Immigration and Nationality Act and the U.N. Convention and Protocol Relating to the Status of Refugees were discussed. More importantly, the applicability of these provisions to the Haitians, as well as the procedures established by the Departments of State and Justice for their implementation were reviewed in detail.

The attached study, based on the Subcommittee's continuing review of this issue and on staff's investigative trip has been prepared to acquaint the members of the Committee on the Judiciary with the various aspects of this problem.

JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship, and International Law.

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I. Background Information

The United States experience with Haitians claiming asylum actually dates back to September 1963, when the first boatload of Haitian aliens arrived at West Palm Beach, Florida and claimed they would be persecuted if returned to their native country.

Their claims were rejected by the Immigration and Naturalization Service (hereinafter INS) and INS's findings were upheld by the Board of Immigration Appeals. The aliens then sought judicial review of their deportation order and it was likewise unsuccessful.

Subsequently, asylum was granted to 118 members of the Haitian Coast Guard who had engaged in a revolt against the Duvalier Government.

The current problem however stems from those Haitians who entered the United States in 1972 and thereafter and who have claimed they would be subject to persecution if sent back to Haiti. Some 1700 such cases have come to the attention of INS and, according to INS, many of these aliens actually resided in the Bahamas for 6 to 10 years prior to their arrival in the United States.

Their requests for asylum or for administrative relief under section 243(h) of the Immigration and Nationality Act (hereafter referred to as the Act or the INA) have been generally denied by INS. Further, the courts, without exception, have refused to reverse these administrative findings denying relief.

The general position of INS was expressed by Commissioner Leonard Chapman in the following manner:

> Unlike other large alien nationality groups which have fled sudden and intolerable political changes in their respective countries—for example, Hungary, Cuba and Vietnam—almost all of the Haitian claimants seek to enter the United States or to remain here for the purpose of obtaining employment, as do the many thousand of other aliens who come to this country illegally.

The Department of State concurs with INS's general view that most Haitians seeking asylum are "economic" rather than "political" refugees, although they have expressed reservations about the "state of human rights" in Haiti.

Over 500 Haitian aliens are currently seeking judicial review of their final orders of deportation or exclusion. All of the aliens involved in this litigation have raised the issue of a claim to asylum.

II. Brief Summary of Existing Law—United States and International

A. Section 243(h) of the Immigration and Nationality Act—Asylum

Section 243(h) of the Immigration and Nationality Act authorizes the Attorney General to temporarily withhold deportation of an alien who "would be subject to persecution on account of race, religion, or political opinion." The decision to withhold deportation by the At-

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torney General is entirely discretionary and the burden of proof rests upon the alien applying for this administrative relief.

The granting of asylum, on the other hand, is exclusively an administrative procedure. Nevertheless, in order to comprehend the concept of asylum, one must refer to both section 243(h) of the Act and the provisions of international law on the subject.

The standard of proof required, and procedures followed, in 243(h) cases and requests for asylum are very similar. It must be noted that a decision on one is not conclusive with respect to the other; and, in fact, these two claims are sometimes adjudicated in a consecutive fashion.

It is clear from the administrative opinions and court decisions which have interpreted section 243(h), that the alien's burden of proof in establishing the possibility of "persecution" is extremely difficult to satisfy and that general statements will not suffice.

Administrative relief regarding the possibility of persecution under Section 243(h) and grants of asylum have been granted infrequently and generally to those who have been members of dissident political groups, active political figures, or those who have been highly critical of the government currently in power in the alien's native country.

At the same time, the courts have consistently indicated that an applicant for relief under section 243(h) or for asylum must be given a reasonable opportunity to present his claim and each claim must be adjudicated individually based on all of the facts in the case.

B. U.N. CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES

Articles 32 and 33 of the Protocol Relating to the Status of Refugees deal with the expulsion or return of refugees. Article 32 specifically prohibits expulsion of a "refugee lawfully" within the party's territory except on "grounds of national security or public order." It also requires that "the expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law." Article 33 prohibits the expulsion of a refugee to a country "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion."

In testifying before the Senate Foreign Relations Committee which was considering the 1967 Protocol, State Department officials maintained that Section 241 and 243(h) of the Immigration and Nationality Act were consistent with and satisfied the provisions of the Protocol and that additional legislation was not required to implement its provision.

While the United States was not a signatory to the UN Convention Relating to the Status of Refugees, the United States deposited its accession to the Protocol Relating to the Status of Refugees November 1, 1968 which incorporated Articles 2 through 35 of the Convention. Haiti neither signed nor acceded to either the Convention or the Protocol Relating to the Status of Refugees.

III. Processing Procedures

A. INS

Under 8 CFR 108.2 an asylum applicant in the United States is required to appear before an Immigration officer to present his application. INS is required to obtain the views of the Department of State on the application unless in the opinion of the District Director "the application is clearly meritorious or clearly lacking in substance." In other words, in "doubtful" cases, the Department of State is contacted for an opinion as to whether the alien would be subject to persecution in his home country. At the same time, if a claim is considered to be "clearly lacking in substance" the Department of State is given an opportunity to provide information within 30 days which may be favorable to the asylum applicant.

If an applicant for admission to the United States requests asylum, his request is considered by the INS district director even if the request is initially made after the alien has been referred for an exclusion hearing before a special inquiry officer (immigration judge). If the request is made during an exclusion or deportation hearing, postponement of the hearing is sought for a decision by the district director on the asylum request.

INS regulations also specifically provide that denial of an asylum application "shall not preclude the alien, in a subsequent expulsion hearing, from applying for the benefits" of Section 243(h) and of the Convention and Protocol Relating to the Status of Refugees.

Exclusion proceedings

Exclusion proceedings are initiated in the cases of Haitians who are apprehended at the time of their arrival in the United States. They have not "entered" the United States in the legal sense of the term, but are allowed to physically remain in the United States, while the exclusion proceedings are conducted before a special inquiry officer.

If asylum is requested by such an alien, he is interviewed by an INS inspector or border patrol agent through an interpreter in his native Creole language, as soon as possible after his apprehension.

The interview is recorded and lasts approximately twenty minutes to an hour covering all the information on the Form I–589. The interviewer advises the Haitian briefly of the nature of asylum and explores any allegations which are made concerning past persecution or possible future persecution in Haiti. Following the interview, the Form I–589 is completed based upon the statements which have been made by the asylum applicant and the interpreter then translates to the applicant the completed form which is then signed by the applicant.

At no time is the asylum applicant advised of his right to counsel, or in this particular case, of the availability of counsel. Counsel is permitted upon the Haitian's request.

The asylum request is then adjudicated by an Immigration Examiner in the Travel Control Section (in the Miami District Office). Three possible courses of action can be recommended to the District Director, who is responsible for making the final decision: (1) ap-

proval of the asylum application; (2) deferral of a decision in "doubtful" cases until the Department of State has rendered an advisory opinion; and (3) denial of the application for lack of substance.

Deportation proceedings

Deportation or expulsion proceedings are initiated when an alien is apprehended after his arrival into the United States. At the time of apprehension, or as soon as an interpreter is available, the Haitian is advised of his legal rights, including the right to counsel at his own expense.

According to INS, the Haitians usually waive their right to legal representation by executing Form I–214. The apprehending officer also normally obtains a brief statement from the Haitian indicating method of entry into the United States and whether or not the alien desires to apply for asylum.

The actual asylum interview is almost identical to the interview earlier described in the exclusion proceeding except that it is conducted by a criminal investigator rather than an Immigration Inspector or Border Patrol agent.

Another difference is that the asylum applicant is advised of his right to counsel; not, however, the availability of counsel.

As in an exclusion proceeding, the asylum request in a deportation proceeding is also adjudicated by an Immigration Examiner in the Travel Control Section and the procedures followed are identical. More detailed information concerning the procedures was prepared and submitted by the INS District Office in Miami and it can be found in the appendix.

B. OFFICE OF REFUGEE AND MIGRATION AFFAIRS

As noted earlier two categories of cases are referred to the Department of State for information on the possibility of persecution in Haiti. The first category of cases are the "doubtful" cases (commonly referred to as Category II) in which an advisory opinion is requested of the Department of State on the persecution issue. The Category III cases include those cases which INS feels are "clearly lacking in substance," and the Department of State is provided an opportunity to submit any information within a thirty day period which may be favorable to the asylum claimant.

In both categories of cases, INS forwards to ORM the completed Form I–589, a transcript of the interview [1] with the asylum claimant, and any supporting documentation which has been submitted. Upon receipt of this information, the following alternatives are available to ORM:

(1) a final recommendation may be reached in coordination with the Haitian desk;

(2) an advisory opinion may be requested from the Haitian desk before a recommendation is finalized;

(3) additional information may be requested, and an advisory opinion may be sought, from the U.S. Embassy in Haiti: or

(4) a request may be made to INS to re-interview the applicant to obtain more information on specific allegations or statements made by him.

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[1] INS instructions only require a summary of the interview to be sent to ORM and it was unclear which was the usual procedure.

It should be noted that a decision to approach the Embassy is reviewable by the Haitian Desk. In some cases, the Desk has overrulled ORM's decision not to go to the field in a particular case, but staff was advised that the Desk has never reversed an ORM decision to go to the field in a particular case. Estimates vary from one percent to ten percent with regard to the number of Category II and Category III cases in which the assistance of the Embassy is requested. The Department of State officials revealed that there are no guidelines or criteria to govern the types of cases which are referred to the Embassy for their comments and recommendations but that these decisions are made on a case-by-case basis.

If the Embassy is approached, the entire record, staff was told, is generally forwarded to the Embassy. This does not appear to be the case in fact.

State Department officials claim that every attempt is made by the Embassy in Port au Prince to verify the factual allegations which are raised by the asylum claimant. In addition, according to the State Department, efforts are made to verify addresses, employment, and to corroborate the occurrence or events which are mentioned in the asylum claim.

The State Department recommendation, whether or not the Embassy is consulted, is made with the concurrence of ORM and the Haitian desk and it is forwarded to the INS district office along with any memoranda which have been prepared.

C. EMBASSY IN PORT AU PRINCE

In a small percentage of cases, the Embassy in Port au Prince is contacted for its advice and a recommendation with regard to the persecution issue in a particular case. This information is forwarded to ORM as soon as possible, but, as will be discussed later, serious problems have occurred with regard to verifying the factual allegations contained in the caim for asylum.

Embassy officials also attempt to monitor the return and debriefing by Haitian officials of those Haitians who are deported from the United States. This monitoring is a recent development and has been accomplished in response to an invitation extended by the Government of Haiti to observe the debriefing of these returnees.

IV. Evaluation of Procedures for Processing Asylum and 243(h) Claims

Brief background

Section 243(h) of the Act and the administrative procedures to implement that section have been in existence for many years. On the other hand, despite ratification of the Protocol Relating to the Status of Refugees in 1968, formal State Department guidelines and a general policy relating to asylum were only issued on January 4, 1972, and INS regulations were not promulgated until December 3, 1974. Similarly, a detailed application form for asylum (I–589) was not prepared until September 1974.

In short, development of this country's asylum policy has been sporadic. In fact, there has been no uniform or systematic establishment of asylum policies and procedures by either the Department of State or Justice. It appears that they have been adopted only in response to emergent situations, such as the attempted defection of a

Lithuanian seaman, Simas Kudirka, and the Haitian refugee situation in Florida.

It should be remembered that during Senate consideration of the U.N. Protocol on Refugees in 1968, the Department of State noted that legislation was not required to implement the protocol and that flexibility was desirable. Regrettably, this flexibility has resulted in an ad hoc approach to refugees claiming asylum and only in recent years have efforts been made to regularize or to insert elements of due process into these procedures.

On the other hand, there is a substantial body of case law and numerous administrative interpretations concerning the "political persecution" provisions set forth in section 243(h) of the Immigration and Nationality Act.

A. INS PROCEDURES

1. *Interview of asylum claimant.*—At the current time INS officers make every effort to interview persons claiming asylum as soon as possible after their apprehension or when the alien voluntarily appears and requests asylum. It is questionable whether this procedure provides a sufficient opportunity for the alien to fully and fairly present his asylum claim. An interview was observed in which it was apparent that the alien was extremely nervous and did not fully comprehend the nature and meaning of asylum. It was evident that because of his emotional condition some information was being withheld and it has been suggested that often withheld information relates to a prior record of imprisonment or other difficulties with the Government in Haiti—facts which are relevant to the asylum claim.

In order for the alien seeking asylum to obtain a better appreciation of the meaning of asylum prior to making a formal statement, it appears that he or she should be entitled to consult with an attorney, with members of the Haitian community in the area, and with any voluntary agencies which have offered assistance.

On the other hand, it has been argued that such an opportunity may enable some individuals to "coach" the alien and thereby increase the possibility of misrepresentation in the form of "patterned" asylum statements. This possibility should not preclude an alien from fully understanding and documenting his asylum claim.

This objective can be better realized by allowing consultation with counsel or voluntary agencies prior to the asylum interview as long as such a procedure would not greatly delay the presentation and consideration of the asylum claim. It is felt that unnecessary delay would not result since claimants are currently afforded an opportunity to submit additional documentation or evidence at any time prior to their deportation.

Furthermore, the current situation has resulted in inconsistent statements and significant time is already being expended in order to reconcile some of these statements.

In short, the opportunity to consult with counsel, church representatives, and friends, may actually expedite and not delay the adjudication of these claims.

The actual asylum statements are recorded in their entirety with the assistance of an interpreter who is fluent in the Haitians' native creole language. The desirability of utilizing the services of a

native-born Haitian who is a naturalized United States citizen should be considered. Such a step might conceivably inject a significant "confidence factor" into the interview, and possibly produce a more candid and forthright statement on the part of the claimant.

During the interview with persons seeking asylum, the INS officer usually propounds a series of questions, based upon the newly-developed Form I–589. It should be emphasized, however, that the parameters of the "question and answer" session should not be established by the form and every effort should be made to delve into additional issues which could relate to the applicant's claim for asylum (i.e. the risks he encountered in departing from Haiti and travelling to the United States; educational and employment background; and other activities which may be considered "political" in the Haitian sense of the word). In order to accomplish this objective, those conducting the interview should be familiar with the social, political and cultural background of Haiti; and in order to promote uniformity it may be desirable to have specialized individuals conducting the interviews. At the current time interviews are conducted by several different INS officers depending on whether it is an exclusion or deportation case. This practice should be terminated.

Admittedly, it is extremely difficult for an alien to substantiate his asylum claim. However, in order to facilitate this process a format should be adopted in which the interview by INS officers is keyed to verifiable facts. In addition, the interviewee should elicit from the claimant the names of individuals or any relatives in Haiti who may be in a position to corroborate any events or activities which have been given to support the asylum claim. This would have the effect of transferring the emphasis from general statements of prior or possible future persecution to specific events which may have given rise to a "well-founded fear of persecution."

2. *Adjudication of asylum claim.*—At the present time the final decision on the asylum claim is made by the INS District Director based on the facts of each case and upon the recommendation submitted by the Department of State in the event it is a category II or III case.

It is surprising that general guidelines or criteria have not been established by the INS Central Office to govern the exercise of the District Director's authority in asylum cases. The Central Office, in fact, has not been involved to any degree in the decision-making process. Likewise, no guidelines exist concerning when the District Office should approach the State Department for an advisory opinion. Because of this lack of participation by the Central Office there is no central index or cumulative listing of those cases in which asylum has been granted. It seems obvious that such a list would be most helpful in order to provide some guidance to the various District Directors as to the types of cases which have been favorably decided. In addition, there is no systematic review of asylum denials by the Central Office.

It should be noted that a final decision on an asylum request does not have a "res judicata" effect on a later request for relief under section 243(h) of the Immigration and Nationality Act. While these two requests are based on different sets of laws—one domestic and one international—consideration should be given to combining certain elements of these procedures in order to prevent dilatory tactics and duplication of work.

Under existing law and procedures (and administrative and judicial interpretations thereof), the applicant for asylum or for a stay of deportation under 243(h) bears a heavy burden of proof and this burden is properly placed on the applicant. On the other hand, the government should not summarily dispose of his claim or make blanket decisions that applicants from a particular country would not be subject to persecution based upon generalizations relating to the economic or political situation in the applicant's home country. In other words, each case should be reviewed on its individual merits and the claimant should be given the benefit of the doubt in marginal cases.

3. *Decisionmaking authority and review of asylum cases.*—As noted above, there is no system for internal, administrative review of asylum denials and the District Directors appear to operate autonomously.

In view of the serious nature of the asylum claim and the heavy responsibilities imposed by international law, consideration should be given by INS to the establishment of a uniform and centralized review system.

In the event such a system is deemed impractical, expensive, or unworkable, consideration should be given to placing the decisionmaking authority for asylum claims in the Commissioner of INS or an appropriate designee in the INS Central Office.

By concentrating such authority in the Commissioner or by establishing an administrative review mechanism, "uniformity of decisionmaking" would be promoted and it would greatly facilitate coordination with the State Department.

B. ORM PROCEDURES

No guidelines or procedures have been adopted to assist ORM officials in determining when to approach the Embassy on a particular asylum request. It is felt that general procedures or criteria should be established and that the Embassy should be approached whenever a factual allegation is made which could possibly be verified by the Embassy.

Likewise, it is questionable whether the Haitian Desk should be given such a substantial role in determining when to approach the Embassy. Surprisingly, only a small percentage of cases are actually referred to the Embassy and serious questions naturally arise as to whether the State Department is satisfactorily performing its international responsibilities, particularly when one considers the severe consequences that may flow from an erroneous decision.

Finally, a review of a number of reports which have been submitted by ORM to INS' District Office in Miami revealed that in most instances ORM reports were grossly inadequate in that they fail to respond to the specific allegations contained in the asylum request. In general, they constituted arbitrary denials, based apparently on the socioeconomic status of the applicant.

However, it should be noted that the vast majority of cases reviewed were somewhat dated and the State Department has indicated that recent efforts have been made to improve the quality of their responses to INS.

C. EMBASSY IN PORT AU PRINCE

Assurances have been given by the State Department on several occasions that Embassy officials in Port au Prince make every effort to

substantiate or refute the factual allegations made by the asylum claimant as well as to monitor the well being of deportees, after their return.

These assurances which have been given to Members of Congress and to Committees of Congress are not warranted. Little time has been expended by Embassy officials in verifying allegations or in monitoring the safety of the deportee after his arrival in Haiti. In fact, with the assistance of an Embassy official an attempt was made by staff to locate several deportees, including twenty-five who were returned from Guantanamo Naval Base. It was unsuccessful. Apparently assurances relating to the well being of these deportees are based entirely upon the viewing by Embassy officials of the deplaning and deprocessing of deportees.

In this regard, one Haitian in Miami had previously been deported and upon his return to Haiti had been incarcerated for between one and eight months, depending on which sources is to be believed (the Embassy estimated one month incarceration; and the deportee indicated incarceration for an eight month period). Although State Department officials were apparently aware that the man had been in prison for some period of time based on his illegal departure from Haiti they failed to mention it during the visit. In fact, State Department officials and officials of the Haitian Government reiterated several times during discussions that Haitian returnees had not experienced any reprisals or recriminations.

Admittedly, there are difficult manpower, logistical, and foreign policy problems associated with follow-up procedures to insure the safety and well being of these returnees. Moreover, these returnees have little incentive to maintain contacts with the U.S. Embassy, particularly since few will ever be eligible for legal immigration to the United States.

Nevertheless, the success of the Canadian follow-up effort should be noted. As a result of individual monitoring of the situations of two dozen returnees—which demonstrated no reprisals—the Canadian government was able to demonstrate to the satisfaction of its citizenry that illegal Haitians in Canada have little reason to fear persecution if returned to Haiti. Greatly expanded follow-up efforts by our Embassy in Haiti will be necessary if we are to be sufficiently informed in these cases.

Economic Versus Political Refugees

It is not possible nor proper to make generalizations as to the motivations of those Haitians who have entered the United States and claimed asylum. It is evident that a variety (and in some instances a combination) of social, economic, demographic and political factors are responsible for this phenomenon.

A. BACKGROUND

A 1973 Senate Report (Sen. Rept. 93–620) described the economic situation in that country in the following manner:

> Haiti is the poorest country in the Western Hemisphere, with a per capita income of about $70.00 per year. From 80 percent to 90 percent of her population is illiterate. About nine out of ten Haitians live in desperate poverty in rural areas, earning $25 to $35 each year and facing a life expectancy of about 33 years. Only a small urbanized elite enjoy opportunities for education or em-

ployment. Yet an estimated 50 percent of the 200,000 to 300,000 work force living in urban areas are unemployed. Thus the needs of the 4.8 million Haitian people are painfully obvious.

On November 18, 1975, William Luers, Deputy Assistant Secretary for Inter-American Affairs, Department of State, presented a similar picture of the drastic situation in Haiti. He stated that:

> Life is hard in this country. Per capita annual GNP is below $150. Per capita caloric intake is the second lowest in the world, lower than even Bangladesh. Population density per square kilometer of arable land is over 490 which means that in many cases there is less than an acre for a family farm.

Recent testimony submitted to this Subcommittee indicates that Haiti has the highest infant mortality rate in the Western Hemisphere (150 per 1,000 births) and the second lowest life expectancy rate (age 50).

Furthermore, the level of development in Haiti is so rudimentary and most human needs so pressing that it is impossible to list these needs on a priority basis. United States assistance to Haiti, in order to encourage economic development and to assist the poorest segments of the Haitian population, is currently running at approximately $19 million for fiscal year 1976.

With regard to political conditions in Haiti, there has been exclusive testimony before Committees of Congress and extensive discussion of this subject in various Committee reports.

In April of 1974 Senator Brooks issued a report based upon a trip to Haiti. In that report Senator Brooke made the following observations—

> Political conditions have improved in Haiti during the past 2½ years. While the regime continues to function on authoritarian lines, it has greatly diminished, if not abandoned, the use of force characteristics of the previous regime in implementing its political objectives. The political apparatus, although authoritarian. . . . neither has the capacity nor apparently the desire to obtain absolute mastery over the lives of the Haitians.

It is evident that a large number of individuals remain imprisoned for "political reasons", although several "amnesties" have significnatly reduced this figure in recent years.

In addition, both the Human Rights Commission of OAS and Amnesty International have strongly criticized the repression and continued violation of human rights in Haiti.

In 1973 the Senate Appropriations Committee observed in a report (Sen. Rept. 93–620) that:

> While there is some evidence to indicate that the grim visible terror of Francois Duvalier's regime may have subsided, it seems that autocratic rule, characterized by an unflinching willingness to suppress people has not.

In a 1975 Report (Sen. Rept. 94–39) the same Senate Committee expressed "strong reservations as regards the character of the Haitian Government" and further noted that "we recognize that the extremes of the previous government have been attenuated, but we anxiously await further evidence that the Government of Haiti is, indeed, moving away from authoritarian rule."

B. NATURE OF HAITIAN EMIGRATION

A substantial amount of time in Haiti was spent soliciting the opinions of U.S. and Haitian officials and private citizens as to the reasons for the large scale, illegal emigration from Haiti to the United States.

There was a definite consensus that the vast majority of Haitians depart—legally and illegally—from that country primarily as the result of economic pressures.

When queried concerning possible politically-motivated departures, most responded that the political climate had improved under President Jean Claude Duvalier and that the "excesses" and "vulgarities" of Papa Doc's regime had been curtailed. It was indicated that although the Tonton-Macoutes remain a powerful force in the Haitian system of government, they no longer enjoy unlimited authority to engage in terroristics and repressive tactics against the Haitian citizenry. In other words, the "grim visible terror" has subsided, but according to some, it has been replaced by a more subtle and systematic suppression of the civil liberties of Haitians.

Unquestionably, individuals continue to suffer in Haiti because of their political views or beliefs, as evidenced by the fact that an estimated 100 political prisoners remain incarcerated. Nevertheless, most persons interviewed maintain that positive political changes have taken place in recent years and some noted that grants of amnesty to several hundred political prisoners are an indication that the Government of Haiti has abandoned the use of force and overt repression in advancing its political objectives.

With regard to differentiating between the various emigration pressures, some individuals argued that there is little distinction between economic and political considerations, when a person has been deprived of a decent way of life in his homeland. It was argued further that since the government has failed to provide most Haitians "with the means to survive", that this is a form of "political oppression".

While it is difficult to distinguish or categorize the various "push" factors that lead to a decision to emigrate, it is quite clear that U.S. immigration law and international law concerning refugees does not extend to those who are economically oppressed. Such a classification would include most persons in developing countries around the world.

On the other hand, if a person can demonstrate that he has suffered unique economic hardship (i.e., distinct from the general population of his country) and that his situation is the direct result of his political views, these economic factors should be considered in determining whether such person is a political refugee.

For example, if a particular Haitian could demonstrate that he has been the victim of politically-motivated employment discrimination; or that if returned to Haiti the Government would deprive him of his capacity to earn a living, then he would qualify as a political refugee.

In other words, while economic factors can properly be considered in determining the type of persecution or the consequences of the persecution, it is the motivation behind the persecution that is important.

Similarly, because of the subjective element inherent in the language "fear of persecution, based on race, religion . . ." an individual's perception of that persecution is most significant. More specifically, one's "motivation for emigration" or "fear of returning" must relate directly to or be based on his race, religion, or political opinion.

Consequently, a fear that one would be subject to criminal prosecution in his homeland, or that he would face economic distress there is not relevant under 243(h) of the INA or Articles 32 and 33 of the

UN Convention, which are only concerned with a limited class of refugees. However, fear of criminal prosecution would be relevant if the offense were political in nature, or if one's illegal departure from a country was politically-motivated.

For example, in *Kovacs* v. *INS*, 407 F. 2d 102 (1969), it was held that even though punishment against a Yugoslavian crewman on return to his native country might take the form of punishment for having deserted his ship, a 243(h) stay was proper if the punishment was a result of his having sought political asylum in the U.S. and punishment on return was political in nature.

With regard to the general issue of Haitian emigration, Senator Brooke concluded in an April 1974 trip report, after detailed consideration of the matter, that:

> Many of the Haitian exiles, however, are more "economic" than "political" refugees. Conditions in Haiti are such as to create a desire in the educated classes to migrate to the United States and elsewhere in order to improve their standard of living. However, entry visas into the United States are difficult to obtain. The only other way to gain entry is to claim to be a "political refugee" as "economic refugees" are not accorded sanctuary. Hence, the only alternative is to claim "political refugee" status even though the true reason for leaving Haiti is an economic one. This is what has happened in the cases of many Haitian exiles seeking permanent residence in the United States.

Most persons interviewed agreed with this assessment of the situation. However, whether an individual would be persecuted based upon "race, religion, or political opinion" or in terms of the Convention, "race, religion, nationality, membership of a particular social group or political opinion," is a question of fact which must be decided on a case-by-case basis.

As noted previously, it is often very difficult for a claimant to assemble the evidence to substantiate his claim and it was stated in the *Kovacs* case that "It is particularly important that an applicant for relief under Section 243(h) have a reasonable opportunity to present his proofs, for the stakes are high."

The decision in this case also relied upon the fact that the claimant did not fully understand the nature of the proceedings and as a result was unable "to convey the full basis of his fear of persecution."

In this regard, Haitians should be made fully aware that the following factual information may be most important in establishing their claim for relief: prior instances of political persecution; prior activities protesting repressive measures which may have been taken by the Haitian Government, anti-government public statements or publications; prior political activities and prior convictions for "political" crimes.

Because of the difficult burden of proof and the difficult question of fact presented, both the claimant and the decision-maker must be provided a great degree of flexibility in discharging their respective responsibilities.

Reportedly, the departure of many Haitians may simply be the result of differences of opinion with local officials; feuds with neighbors or members of the Tonton-Macoutes or personal difficulties with local law enforcement officials (law enforcement is totally a decentralized function and in many cases local laws and customs are enforced by persons who possess no official authority).

In summary, it is evident that the reasons for emigrating from Haiti vary considerably from case to case and no conclusionary statements

can be made with regard to whether Haitians, as a class, are economic or political refugees.

Furthermore, decisions by our government—both by the Executive and Judicial Branch—that an individual Haitian is not entitled to the status of a "political refugee" cannot be summarily dismissed as having no foundation in fact.

Consequently, it would appear to be in the best interests of all concerned if every effort is made to insure that the Haitians fully comprehend the concept of asylum and an adequate opportunity is provided for the full and fair presentation of their claims.

At the same time, it must be recognized that the Federal Government has a legitimate interest in assuring that the asylum and 243(h) procedures are not abused for the purpose of delaying one's departure from the United States.

VI. Findings and Recommendations

Several observations and recommendations have been made earlier in this report and these should be considered as well as those findings and recommendations which are set forth below:

A. General findings and recommendations

1. The burden of proof to establish a claim for relief under the UN Protocol and Convention Relating to the Status of Refugees and 243(h) of the Act is, and should be, upon the claimant. However, since the applicant for relief is often unable to document his claim or produce witnesses to substantiate it, it often becomes extremely difficult for him to effectively discharge this heavy burden of proof. In fact, it is often simply a question of the claimant's credibility. Because of this situation, those requesting relief must be provided every opportunity to fully present their claims.

2. Experience has demonstrated that the asylum and 243(h) procedures have been abused and consideration should be given to developing procedures to preclude such dilatory tactics.

3. Accredited voluntary agencies operating in Haiti should play some role or assume some responsibility for insuring the safetv and well-being of those Haitians who have been expelled from the United States. In addition, the voluntary agencies could provide transportation, vocational training, employment, and other services to the returned Haitians.

4. Because of the UNHCR's experience in determining whether persons are "political refugees" within the meaning of the U.N. Convention and Protocol Relating to the Status of Refugees, the Department of State should consult the UNHCR prior to rendering any advisory opinions to INS on a particular case.

5. The Department of State should seek formal assurances from the Government of Haiti that returnees will not be subject to reprisals or recrimination.

6. Due to the uniqueness of the situation, and recognizing that some Haitians have been detained in the United States for long periods of time, INS and the voluntary agencies should consider the establishment of procedures providing for the supervised release of these detainees. Despite the fact that there is a high abscondee rate, humani-

tarian consideration would seem to dictate that the Haitians be released into the custody of the voluntary agencies, if such agencies are agreeable to providing for their care pending administrative and judicial review of their cases.

B. LEGISLATIVE RECOMMENDATIONS

1. Consideration should be given to amending section 243(h) of the INA to conform that provision with the UN Protocol and Convention Relating to the Status of Refugees.

2. Consideration should be given to the elimination of existing distinctions between exclusion and deportation proceedings, particularly insofar as asylum procedures and the availability of 243(h) relief are concerned. Experience has demonstrated that some of the current legal distinctions between exclusion and deportation proceedings are arbitrary and artificial and this matter should be reviewed by the Congress to determine whether remedial legislation is required or whether uniform procedures should be established for both types of proceedings.

3. The refugee provisions of the INA should be expanded to include natives of countries of the Western Hemisphere.

C. PROCEDURAL RECOMMENDATIONS

INS

1. INS should establish a centralized system for administrative review of all asylum and 243(h) cases; or alternatively the authority for such decisions could be vested in the Commissioner or another individual within the Central Office.

2. A special asylum unit should be created within the Immigration and Naturalization Service Central Office for the purpose of maintaining a central registry of all persons who have sought and who have been granted or denied asylum or 243(h) relief. Such a unit could also be charged with the responsibility of developing and disseminating information within the Central Office and to the various district offices.

3. Any alien seeking asylum or 243(h) relief should be provided with the right to counsel at his own expense and be advised of this right.

4. INS interviews of asylum and 243(h) applicants should be keyed to verifiable facts and should attempt to elicit the names of corroborating witnesses or persons or relatives in Haiti who are in a position to substantiate allegations that are made during the interview.

State

1. There should be greater supervision and control over the advisory opinion process by the Director of the Office of Refugee and Migration Affairs and the Coordinator for Humanitarian Affairs, Department of State.

2. ORM or Embassy advisory opinions must be more detailed and should respond to every specific allegation made by the claimant where such response is possible. If necessary, additional personnel should be provided to accomplish this objective.

3. The Embassy at Port au Prince should be approached in a greater number of questionable cases and sufficient staff should be provided to that Embassy in order to process these cases.

4. Greater efforts must be made by the Embassy in Port au Prince to follow-up the cases of those who have been denied asylum or 243(h) relief and who have been returned to Haiti.

INS/State

1. There should be greater coordination and communication between the Department of State and INS with regard to the processing of asylums and 243(h) cases.

2. INS personnel conducting asylum or 243(h) interviews should be familiar with the social, economic, and political situation in Haiti both past and present, and State Department officials should provide detailed briefings to accomplish this objective.

3. The Embassy in Port au Prince should be advised of the final action which is taken by INS on each and every case where the Embassy has been contacted for an advisory opinion.

APPENDIXES

Appendix 1

DEPARTMENT OF STATE,
Washington, D.C., January 4, 1972.[1]

General Policy for Dealing With Requests for Asylum by Foreign Nationals

POLICY

Both within the United States and abroad, foreign nationals who request asylum of the United States Government owing to persecution or fear of pesecution should be given full opportunity to have their requests considered on their merits. The request of a person for asylum or temporary refuge shall not be arbitrarily or summarily refused by U.S. personnel. Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, applicable laws and other factors.

In the cases of such requests occurring within foreign jurisdiction, the ability of the United States Government to give assistance will vary with location and circumstances of the request.

U.S. OBJECTIVES

A basic objective of the United States is to promote institutional and individual freedom and humanitarian concern for the treatment of the individual.

Through the implementation of generous policies of asylum and assitance for political refugees, the United States provides leadership toward resolving refugee problems.

BACKGROUND

A primary consideration in U.S. asylum policy is the *Protocol Relating to the Status of Refugees* (19 United States Treaties and Other International Agreements 6223), to which the United States is a party. The principle of asylum inherent in this international treaty (and in the 1951 Refugee Convention whose substantive provisions are by reference incorporated in the Protocol) and its explicit prohibition against the forcible return of refugees to conditions of prosecution, have solidified these concepts further in international law. As a party to the Protocol, the United States has an international treaty obligation for its implementation within areas subject to jurisdiction of the United States.

United States participation in assistance programs for the relief of refugees outside United States jurisdiction and for their permanent resettlement in asylum or other countries helps resolve existing refugee problems. It also avoids extensive accumulation of refugees in asylum countries and promotes the willingness of the latter to maintain policies of asylum for other arriving refugees.

The President has reemphasized the United States commitment to the provision of asylum for refugees and directed appropriate Departments and Agencies of the U.S. Government, under the coordination of the Department of State, to take steps to bring to every echelon of the U.S. Government which could possibly be involved with persons seeking asylum a sense of the depth and urgency of our commitment.

Part Two—Handling Asylum Requests by Persons in the United States or in Other Areas Outside Any Foreign Jurisdiction

All U.S. Government personnel who may receive a request from a foreign national for asylum within territory under the jurisdiction of the United States,

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[1] Updated January 10, 1973 to conform with the Foreign Affairs Manual.

or aboard a U.S. vessel or aircraft in or over U.S. territory waters or on or over the high seas, should become thooughly familiar with procedures for the handling of such requests. Implementing instructions issued by Government agencies to establish these procedures should receive the widest dissemination among such personnel.

PROCEDURES

A. Upon receipt of a request for asylum from a foreign national or an indication that a request from a foreign national is imminent, U.S. Government agencies should immediately notify the Department Operations Officer at the Operations Center of the Department of State (telephone area code 202, 632–1512). The Department Operations Officer will refer any request to the appropriate offices in the Department of State and will maintain contact with the U.S. agency involved until the designated action officer in the Department of State assumes charge of the case.

The following information should be forwarded to the Department Operations Officer at the Operations Center when available but the initial report must not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in the individual's possession.
4. What foreign authorities are aware that the individual is seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, estimated time of arrival at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

Telephone notification to the Operations Center should be confirmed as soon as possible with an immediate precedence telegram to the Department of State summarizing all available information.

B. Safe protective custody will be provided to the asylum seeker and, where indicated, appropriate law enforcement or security authorities will be brought in as early as possible. Interim measures taken to assure safe custody may include the use of force against attempts at forcible repatriation where means of resistance are available, taking into account the safety of U.S. personnel and using no greater force than necessary to protect the individual. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to headquarters for instructions.

C. U.S. Government agencies should also immediately inform the nearest office of the U.S. Immigration and Naturalization Service (INS) of any request for asylum, furnish all details known, and arrange to transfer the case to INS as soon as feasible. Agencies should continue to follow any procedures already in effect between themselves and INS. (*For INS only:* Where INS has received a direct request for asylum and has assumed jurisdiction over a routine case in which forcible repatriation or deportation is not indicated, INS may follow existing notification procedures in lieu of the special alerting procedure to the Department of State described above.)

Part Three—Handling Asylum Requests by Persons Within Foreign Jurisdictions

I. GENERAL PROCEDURES

These regulations set forth procedures for all U.S. Government agencies abroad in dealing with asylum requests at U.S. installations, vessels or aircraft in foreign jurisdictions.

A. Granting Asylum

While it is the policy of the U.S. not to grant asylum at its units or installations within the territorial jurisdiction of a foreign state, any requests for U.S. asylum should be reported in accordance with the procedures set forth herein.

B. Granting temporary refuge

Immediate temporary refuge for humanitarian reasons, however, may be granted (except to board aircraft because of their vulnerability to hijacking) in extreme or exceptional circumstances wherein the life of safety of a person is put in danger, such as pursuit by a mob.

When such temporary refuge is granted, the U.S. Embassy or consular post having jurisdiction, the Washington headquarters of the concerned agency, and the Department of State should be immediately notified. Military units under direct Embassy jurisdiction will report through the Embassy, unless the senior diplomatic official determines otherwise.

To the extent circumstances permit, persons given temporary refuge should be afforded every reasonable care and protection. The measures which can be afforded every reasonable care and protection. The measures which can prudently be utilized in providing this protection must be a matter for decision of the senior U.S. official present at the scene, taking into consideration the safety of U.S. personnel and the established security procedures for the unit or installation concerned.

Protection shall be terminated when the period of active danger is ended, except that authority to do so shall be obtained from the Department of State. Where a military installation not under direct Embassy jurisdiction is involved, such authority shall be obtained from its Washington headquarters upon concurrence of the Department of State. Any inquiries from interested foreign authorities will be met by the senior official present with a response that the case has been referred to Washington.

C. Notification to Department of State of asylum requests

Upon receipt of a request for U.S. asylum made by any foreign national, U.S. personnel within foreign jurisdiction should noitfy immediately the nearest U.S. diplomatic or consular post in the country in which the request is made. Embassies or consulates will forward this information to the Department of State by an immediate precedence telegram. Agencies having their own rapid communications systems with direct contact with their headquarters in the U.S. may notify those headquarters, with information copies to the nearest Embassy or consular post and the Department of State, by immediate precedence message.

D. Information to be transmitted

With respect to requests for temporary refuge (whether or not granted) or for asylum, the following information should be furnished when available, but the initial report should not be delayed pending its development:

1. Name and nationality of the individual seeking asylum.
2. Date, place of birth, and occupation.
3. Description of any documentation in the individual's possession.
4. What foreign authorities are aware that the individual is seeking asylum.
5. Circumstances surrounding the request for asylum.
6. Exact location. If aboard vessel or aircraft, estimated time of arrival at next intended port or airport.
7. Reason for claiming asylum.
8. Description of any criminal charges known or alleged to be pending against the asylum seeker. Indicate also any piracy at sea, air piracy, or hijacking background.
9. Any Communist Party affiliation or affiliation with other political party; any government office now held or previously occupied.

II. DIPLOMATIC AND CONSULAR ESTABLISHMENTS

A. Requests for asylum (restrictions on extending asylum)

As a rule, a diplomatic or consular officer shall not extend asylum to persons outside of the officer's official or personal household. Refuge may be afforded to uninvited persons who are in danger of serious harm, as from mob violence, but only for the period during which active danger continues. With the concurrence of the Department, refuge shall be terminated on receipt of satisfactory assurances from the established national government that the refugee's personal safety is guaranteed against lawless or arbitrary actions and that the refugee will be accorded due process of law.

B. Routine requests

Requests of third country nationals for asylum made to diplomatic and consular posts need not be reported immediately to the Department of State when all of the following conditions exist:

(a) Adequate host government machinery is well established which, in the opinion of the Embassy, assures satisfactory protection of the asylum seeker's rights.

(b) There is no evidence of danger of forcible repatriation.

(c) Local authorities can be expected to assume responsibility for the asylum seeker.

C. Coordination with host country authorities

Action with regard to third country nationals seeking asylum should normally be taken within the over-all policy that the granting of asylum is the right and responsibility of the government of the country in whose territory the request is made. Unless the Embassy deems that there are cogent reasons for not doing so, these authorities should be informed by the Embassy as soon as practicable of the request for asylum.

Activities should also be coordinated by the Embassy with the representative of the United Nations High Commissioner for Refugees (UNHCR), where such a representative is resident and the Embassy deems it appropriate. The UNHCR is a valuable instrument for providing international protection and securing adequate legal and political status for refugees. In addition to providing guarantees against forcible repatriation, the UNHCR seeks to secure for refugees legal, political, economic and social rights within asylum countries.

D. Available U.S. assistance

The United States is prepared in the cases of selected refugees to provide care and maintenance, and to assist in local settlement in the country of first asylum or in another country of resettlement, including the United States. Such assistance is normally provided through voluntary agencies under a contract with the Department of State. In case where the Embassy or consular post has determined that U.S. assistance is warranted, it should telegraph the Department of State recommending the type and extent of initial aid and ultimate resettlement considered most suitable.

Appendix 2

Code of Federal Regulations Relating to Aliens and Nationality—Asylum (8 CFR 108)

PART 108—ASYLUM

Sec.

108.1 Application.
108.2 Decision.

Authority: Sec. 103; 66 Stat. 173 (8 U.S.C. 1103).
Source: 39 FR 41832, Dec. 3, 1974, unless otherwise noted.

§ 108.1 Application.

An application for asylum by an alien who is seeking admission to the United States at a land border port or preclearance station shall be referred to the nearest American consul. An application for asylum by any other alien who is within the United States or who is applying for admission to the United States at an airport or seaport of entry shall be submitted on Form I–589 to the district director having jurisdiction over his place of residence in the United States or over the port of entry. The applicant's accompanying spouse and unmarried children under the age of 18 years may be included in the application.

§ 108.2 Decision.

The applicant shall appear in person before an immigration officer prior to adjudication of the application, except that the personal appearance of any children included in the application may be waived by the district director. The district director shall request the views of the Department of State before making his decision unless in his opinion the application is clearly meritorious or clearly lacking in substance. The district director may approve or deny the application in the exercise of discretion. The district director's decision shall be in writing,

and no appeal shall lie therefrom. If an application is denied for the reason that that it is clearly lacking in substance, notification shall be given to the Department of State, with opportunity to supply a statement containing matter favorable to the application, and departure shall not be enforced until 30 days following the date of notification unless a reply has been received from the Department of State prior to that time. A case shall be certified to the regional commissioner for final decision if the Department of State has made a favorable statement, but, notwithstanding, the district director has chosen to deny the application. If any decision will be based in whole or in part upon a statement furnished by the Department of State, the statement shall be made a part of the record of proceeding, and the applicant shall have an opportunity for inspection, explanation, and rebuttal thereof as prescribed in § 103.2(b)(2) of this chapter. A denial under this part shall not preclude the alien, in a subsequent expulsion hearing, from applying for the benefits of section 243(h) of the Act and of Articles 32 and 33 of the Convention Relating to the Status of Refugees.

[39 FR 41832, Dec. 3, 1974, as amended at 40 FR 3408, Jan. 22, 1975]

IMMIGRATION AND NATURALIZATION SERVICE OPERATION INSTRUCTIONS

Operations Instructions

108.1 *Requests for asylum.* (a) *General.*—An alien who requests asylum shall be interviewed by an immigration officer and given an opportunity to fully present his case. Form I–589 shall be used, unless in the interest of obtaining an expeditious decision the district director determines that the Form should be waived. If Form I–589 is used, it shall be reviewed to insure that all questions have been answered and that the applicant has no additional factors he may wish to have considered. In the case of an alien not required to submit Form I–589, the oral interview should cover the questions set forth in the Form. In every case, the original Form I–589 or a summary of the alien's oral statement, with the district director's decision, shall be included in the subject's "A" file. Form G–325A checks shall be conducted, if deemed appropriate.

In general, asylum requests will fall into one of the following three classes:

Class 1. *Cases clearly meriting asylum.*—These requests may be granted without referral to the Department of State. However, a copy of the approved Form I–589 or a summary of the alien's oral statement, as appropriate, shall be promptly sent to the Director, Officer of Refugee and Migration Affairs, Department of State, for information and statistical purposes.

Class 2. *Doubtful cases.*—Where the information furnished is insufficient to clearly warrant approval or denial, a copy of Form I–589 or a summary of the alien's oral statement, as appropriate, and supporting evidence shall be sent to the Office of Refugee and Migration Affairs for its consideration. No further action shall be taken in the case until the views of the Office of Refugee and Migration Affairs have been received.

Class 3. *Asylum requests that do not appear to have substance.*—Cases determined by the district director not to have substance will be denied and the applicant so informed and a copy of Form I–589 or a summary of the alien's oral statement, as appropriate, with relating documentation will be airmailed to the Office of Refugee and Migration Affairs. If no recommendation is received from the Office of Refugee and Migration Affairs within 30 days, action will be taken to enforce departure, if appropriate. If an unfavorable reply is received prior to the expiration of 30 days, action to enforce departure may be taken immediately.

In any instance in which the Department of State recommends favorably but an adverse decision has been entered or is contemplated, the case shall be certified to the Regional Commissioner for final decision. If the Regional Commissioner concurs in the decision of the district director he shall refer the matter to the Associate Commissioner, Examinations, Central Office, for advisory opinion.

In any case within class 2 or 3 in which the district director has denied the application for asylum, the applicant shall be notified that if expulsion proceedings are instituted he may be represented by counsel and may apply for withholding of deportation under section 243(h) of the Immigration and Nationality Act and for the benefits of Articles 32 and 33 of the Convention Relating to the

Status of Refugees in the course of such proceedings, if he so desires. If an expulsion hearing has been concluded prior to submission of such application, the alien shall be advised that he may move to reopen the proceedings to apply for the benefits of section 243(h) of the Act and of Articles 32 and 33 of the Convention Relating to the Status of Refugees if such application was not made during the hearing.

(*OI 108.1(a) Revised*)

(b) *Applicants at border ports and preclearance stations.*—An applicant for admission at a border port or preclearance station who requests asylum shall ordinarily be referred to the nearest American consulate. However, ports of entry and preclearance stations must remain alert to unusual cases which may involve sensitive factors. In any such case the circumstances shall be furnished telephonically to the Associate Commissioner, Examinations, Central Office. Central Office will furnish specific instructions in these special cases. (*Revised.*)

(c) *Applicants at seaports or airports in the United States.*—An alien who requests asylum at time of application for admission at a seaport or airport of entry, before or during an exclusion hearing, or subsequent to such a hearing, shall execute Form I–589, if requested by the district director, and shall be interviewed by an immigration officer to determine the basis for his request. If the district director is satisfied as to the validity of the alien's contention that he would be subject to persecution if he returns to his home country, the alien shall be paroled or reparoled in increments of a year with permission to work. In the case of an alien who requests asylum during an exclusion hearing, the special inquiry officer shall be requested to postpone the hearing. Further action in the case shall be held in abeyance pending decision on the asylum request. Each case in which a request for asylum has been granted shall be reviewed annually to determine if the need for asylum continues, and if administrative remedy is available in the circumstances. (*Revised.*)

(d) *Crewmen.*—A crewman requesting asylum shall be handled pursuant to to 8CFR 253.1(f) and OI 253.2. However, in every case in which the crewman normally would not be granted parole thereunder, the request shall be processed in accordance with class 2 or 3, OI 108.1(a). If the vessel departs, the alien shall be paroled until his case can be resolved, unless the district director, in his discretion, determines that the alien should be detained. (*Revised.*)

(e) *Stowaways.*—When an alien who arrived as a stowaway requests asylum, full particulars as required by Form I–589 shall be furnished telephonically to the Associate Commissioner, Examinations, Central Office, who will obtain the views of the Department of State and furnish instructions to the reporting office. (*Revised.*)

(f) *Aliens within the United States.* (1) *Asylum request prior to deportation hearings.*—Any alien within the United States who requests asylum, including a crewman or stowaway, shall be interviewed as set forth in OI 108.1(a).

If the district director is satisfied as to the validity of an alien's contention that he would be subject to persecution if he returns to his home country, the alien shall, if eligible therefor, be granted extension of stay or adjustment of status. If extension or adjustment is not available to him, voluntary departure in increments of a year with permission to work shall be granted. If an alien is not eligible to adjust to permanent resident status, such as a crewman or native of the Western Hemisphere, he shall be furnished appropriate advice concerning the procedure for obtaining an immigrant visa. Each case shall be reviewed on an annual basis to determine if the facts surrounding the alien's claim to political asylum continue to exist. If so, his eligibility for administrative relief shall again be reviewed.

A qualified alien from a Communist or Communist-dominated country or a country within the general area of the Middle East as defined in section 203(a)(7) of the Act should be considered for the benefits of the proviso to that section, and if it appears he will become eligible thereunder, he shall be placed in voluntary departure status until he acquires the necessary residence in the United States.

In any case in which, after preliminary interview, it appears that there is clearly no basis for the alien's contention that he would be persecuted if he returns to his home country, he shall be so informed. However, he shall be given an opportunity to apply for extension of stay or adjustment of status, if otherwise eligible. In any case in which the alien does not withdraw his request

for asylum the district director shall process the request in accordance with class 2 or class 3, OI 108.1(a). (*Revised.*)

If after issuance of an order to show cause and prior to commencement of hearing an alien requests asylum, the procedures set forth in the immediately preceding paragraphs shall apply, and a hearing shall not be scheduled until action on the request has been completed.

(2) *Asylum request during course of deportation proceedings.*—In any case in which deportation proceedings have been initiated and the alien or his representative introduces a request for asylum, the special inquiry officer shall postpone the hearing to enable the district director to fully consider the bona fides of the request. If the district director determines that asylum should be granted, the special inquiry officer shall be requested to terminate the proceedings and the alien shall be granted voluntary departure in increments of a year with permission to work. Each case shall be reviewed annually to determine if the need for asylum continues to exist and if any administrative remedy may be available to the subject.

In any case in which, after preliminary interview, it appears that the alien's contention that he would be persecuted if he returns to his home country is questionable, he shall be so informed, advised that he may present an application to the special inquiry officer for withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention Relating to the Status of Refugees, and asked if he wishes to withdraw his request for asylum. He shall also be advised that, if the district director should deny his request for asylum, he may still pursue an application for the benefits of section 243(h) and of Articles 32 and 33 of the Convention Relating to the Status of Refugees before the special inquiry officer. In any such case in which the alien does not withdraw his initial request for asylum, the district director shall process the request in accordance with class 2 or 3, OI 108.1(a). (*Revised.*)

(3) *Asylum request after completion of deportation hearing.*—In any case in which an alien requests asylum after completion of a deportation hearing, the district director shall fully consider the bona fides of the request. If the district director determines that asylum should be granted, the alien should be granted extension of voluntary departure or stay of deportation in increments of a year with permission to work. Each such case shall be reviewed annually to determine if the need for asylum continues to exist and if any administrative remedy may be available to the subject.

On the other hand, if it appears after preliminary interview that there is clearly no basis for the alien's contention that he will be persecuted if he returns to his home country, he shall be so informed. If the alien has not availed himself of the opportunity to present a claim of persecution during a deportation hearing, the request for asylum shall be regarded as a last minute delaying tactic unless the alien satisfactorily explains why he is making the claim of persecution for the first time, and no further review of the case shall be made although the Office of Refugee and Migration Affairs will be informed of the facts of the cases and the finding of the district director. (*Revised.*)

(g) *Definition of "home country".*—The term "home country", as used in this OI, means the country of birth or nationality or country in which firmly resettled.

APPENDIX 3

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Form Approved
OMB No. 043-R0560

REQUEST FOR ASYLUM IN THE UNITED STATES

INS Office:
Date:
A#

(Execute in Duplicate)

INSTRUCTIONS: This form must be presented to the office of the Immigration and Naturalization Service having jurisdiction over your place of address.

NOTE: If additional space is needed to complete answers, use a separate sheet and identify your answer with the number of the corresponding question.

1. NAME (Last, in CAPS) (First) (Middle)				2. Nationality
3. Address in United States		4. City & Country of Birth		5. Date of Birth (Mo./Day/Year)
6. All other names used at any time				
7. Family Members (Names of Spouse and Children)	Place of Birth	Date of Birth	Country Where Located	Included in Asylum Request, if in U.S.? (Yes or No)
8. Social Security Number	9. Occupation			10. ☐ Male ☐ Female
11. Addresses for Past Five Years:				
12. Other Relatives in U.S. (Names)	(Address)		Relationship	Immigration Status
13. Last Arrival In U.S. (Date)	Place	Type of Entry	Date to Which Admitted or Last Extended:	
United States Visa Issued (Date)	Place		Type	
14. Travel Document: Type and Number		Date Issued	Valid to: (Date)	
Restrictions on Travel Document		Cost	Obtained by: ☐ Self ☐ Other If "Other" explain:	Any difficulty obtaining? ☐ Yes ☐ No Explain:
15. Was Exit Document Required from Home Country? ☐ Yes ☐ No If "Yes" explain:		16. Are you admissible to any other country? ☐ Yes ☐ No If "Yes" explain:		

Form I-589
(9-1-74)

(OVER)

17. If you return to your country, for what specific reasons do you believe you will be persecuted?

☐ Race ☐ Religion ☐ Nationality ☐ Political Opinion ☐ Membership in a particular social group
☐ Other

18. Have you or any member of your family ever been detained, interrogated, arrested, convicted and sentenced, or imprisoned because of the above?
☐ Yes ☐ No If "Yes", cite instances:

Have you ever been arrested for any other reasons? ☐ Yes ☐ No If "Yes", please list:

19. Why in your opinion were the actions cited in Item 18 above taken against you?

20. Did you belong to any organization(s) which were considered hostile to the interests of your Home Country?
☐ Yes ☐ No
If "Yes", explain

21. Have you ever expressed political opinions or acted in a manner which was regarded by the authorities as opposed to the interests of your Home Government? ☐ Yes ☐ No If "Yes", explain:

22. If you base your claim for asylum on current conditions in your country, do these conditions affect your freedom more than the rest of that country's population? ☐ Yes ☐ No If "Yes", explain:

23. Have you taken any actions that you believe will result in persecution in your Home Country? ☐ Yes ☐ No If "Yes", explain:

24. Has your family suffered or been intimidated in any way because of your absence or your actions? ☐ Yes ☐ No
If "Yes", explain:

25. Do you base your claim for asylum on the fact that you overstayed your leave abroad? ☐ Yes ☐ No If "Yes", explain:

26. Has your request for asylum become known to the authorities of your Home Country? ☐ Yes ☐ No If "Yes", how has this become known?

What do you think would happen to you if you return?

Why?

27. Have you ever applied for asylum in any other country? ☐ Yes ☐ No If "Yes", explain what happened:

(OVER)

28. Can you provide any documentation or evidence (letters, newspapers, court orders, etc.) in support of your request? ☐ Yes ☐ No
If "Yes", list and attach:

29. Is there any other information relative to your case not covered by the above questions? ☐ Yes ☐ No If "Yes", explain.

30. I do swear (affirm) that I know the contents of this application signed by me and that the statements herein are true and correct.

_____
(Signature of applicant)

Subscribed and sworn to (affirmed) before me this _____ day of _____, A.D. 19____

at _____

_____ _____
(Signature of Immigration Officer administering oath) *(Title)*

(To be executed at time of interview)

Action by District Director:

☐ Granted ☐ Denied

_____ _____
(Interviewing Officer) *(District Director)*

Date: _____ Date: _____

(4) GPO 880-556

APPENDIX 4

IMMIGRATION AND NATURALIZATION SERVICE, MIAMI DISTRICT OFFICE SUBMISSION RELATING TO PROCESSING OF HAITIAN ASYLUM APPLICANTS

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Miami, Fla.

PROCESSING HAITIAN ASYLUM APPLICANTS

The procedures we follow in processing a typical Haitian asylum applicant vary significantly depending on whether the application is handled in exclusion or deportation proceedings.

EXCLUSION PROCEEDINGS

Exclusion proceedings always begin at the time a Haitian arrives in the United States. An Immigration Inspector meets the boat bringing the Haitians and, after establishing that the occupants are Haitian, in good health and without proper entry documents, he arranges to transport the group immediately from the point of arrival to our District Office in Miami.

At the District Office, Inspectors register each Haitian. They complete an arrival document (Form I–94), take a photograph and fingerprints and assign a Service "A" number.

With the assistance of a Service interpreter, the Inspectors then interview the Haitians. Each interview is taped and lasts anywhere from 20 minutes to about one hour. It covers all of the information needed to complete a request for asylum (Form I-589) and a biographical background statement (Form G–325a). The interviewing Inspector explores in detail any allegations the Haitian makes concerning persecution or possible persecution in Haiti.

At the conclusion of the interviews, Haitian women and children are given copies of their arrival documents (Form I–94) and released, usually into the custody of the Haitian Refugee Information Center. Adult male Haitians are detained in lieu of a $500 bond.

From the tape made of each interview, the Travel Control Section prepares a typed transcript. They also complete a request for asylum (Form I–589), a biographical background statement (Form G–325a) and an asylum control card (Form SE–180).

An Immigration Inspector then re-interviews the Haitians with the assistance of a Service interpreter. The interpreter translates to each Haitian his completed request for asylum (Form I–589), his biographical background statement (Form G–325a) and the typed transcript of his original interview. The Inspector makes any necessary corrections and additions and has the Haitian sign each of the three documents in his presence.

An Immigration Examiner in our Travel Control Section then adjudicates each Haitian's request for asylum. The Examiner reviews the documents signed by the Haitian and recommends one of three possible actions to the District Director. The three possible actions, as outlined in 8 CFR 108, are: (1) to grant the request; (2) to obtain a recommendation from the State Department before deciding the merits of the request; (3) to deny the request for lack of substance.

The Service immediately informs the State Department of the decision reached by the District Director. At the same time, we forward to the State Department copies of the request for asylum (Form I–589) and all relating documents, including the typed transcript of the asylum interview.

When the Service denies an asylum request for lack of substance, we inform the asylum applicant at the same time that we inform the State Department, and we take no further action to enforce departure for thirty days, unless in the meantime we receive confirmation of our decision from the State Department. The thirty-day waiting period allows the State Department an opportunity to review our decision, and, if necessary, recommend reversal.

After thirty days, the Examiner who has adjudicated the asylum requests arranges an exclusion hearing. He sends to each Haitian whose asylum request has been denied a notice to appear (Form I–122) for a hearing in exclusion proceedings.

At the exclusion hearing, an Immigration Judge has always ordered the Haitians excluded and deported from the United States on the grounds that they lack proper entry documents. Normally, the Haitians appeal the decision to the Board of Immigration Appeals, and the B.I.A. usually dismisses the appeal within about three months. Having exhausted all administrative remedies, the Haitians may then file a petition for a writ of habeas corpus in the United States District Court as outlined in Section 106(b), to prevent the Service from carrying out its order of deportation. If the District Court denies their petition, the Haitians may appeal that decision to the United States Court of Appeals.

DEPORTATION PROCEEDINGS

Deportation or expulsion proceedings, in contrast to exclusion proceedings, always begin sometime after a Haitian has entered the United States. Typically, a Border Patrol Agent arrests a Haitian who is here illegally and transports him to Border Patrol Headquarters for processing.

At Border Patrol Headquarters, with the assistance of a Service interpreter, the Agent first establishes that the Haitian understands his legal rights. The Agent can usually then obtain from the Haitian a written waiver of his right to legal representation (Form I–214).

The Agent next registers the Haitian. This involves completing a record of a deportable alien (Form I–213), taking a photograph and fingerprints and assigning a Service "A" number. Often, the Agent also obtains a brief affidavit from the Haitian describing his entry into the United States and indicating whether or not he wishes to request asylum.

If the Agent believes the Haitian is likely to abscond, he immediately requests that the District Director issue an Order to Show Cause and a Warrant of Arrest. These documents, always fully explained to the Haitian through a Service interpreter, tell the Haitian why he is detained and what terms have been set for his release.

In deportation proceedings, Criminal Investigators, rather than Immigration Inspectors or Border Patrol Agents, conduct asylum interviews. Otherwise, there is no difference between an asylum interview in a deportation case and that in an exclusion case.

The interviews are taped, last about an hour and cover all of the information needed to complete a request for asylum (Form I–589) and a biographical background statement (Form G–325a). A Service interpreter always participates, and the interviewing Investigator explores in detail any allegations the Haitian makes concerning persecution or possible persecution in Haiti.

From the tape made of each interview, the Investigations Section prepares a typed transcript. They also complete a request for asylum (Form I–589), a biographical background statement (Form G–325a) and an asylum control card (Form SE–180).

The interviewing Investigator then re-interviews the Haitian with the assistance of a Service interpreter. The interpreter translates to the Haitian his completed request for asylum (Form I–589), his biographical background statement (Form G–325a) and the typed transcript of his original interview. The Investigator makes any necessary corrections and additions and has the Haitian sign each of the three documents in his presence.

In deportation proceedings, as in exclusion proceedings, an Immigration Examiner in our Travel Control Section adjudicates the asylum request. He follows exactly the same procedure that he follows in an exclusion case, reviewing the documents signed by the Haitian and recommending one of three possible actions to the District Director. The three possible actions, as outlined in 8 CFR 108, are: 1) to grant the request; 2) to obtain a recommendation from the State Department before deciding the merits of the request; 3) to deny the request for lack of substance.

The Service immediately informs the State Department of the decision reached by the District Director. At the same time, we forward to the State Department copies of the request for asylum (Form I–589) and all relating documents, including the typed transcript of the asylum interview.

When the Service denies an asylum request for lack of substance, we inform the asylum applicant at the same time that we inform the State Department. We take no further action to enforce departure for thirty days, unless in the meantime we receive confirmation of our decision from the State Department. The thirty-day waiting period allows the State Department an opportunity to review our decision and, if necessary, recommend reversal.

After thirty days, the Examiner who has adjudicated the asylum request informs the Trial Attorney that the Haitian is now ready for a deportation hearing. The Trial Attorney arranges the hearing and notifies the Haitian when and where to appear.

A hearing in deportation proceedings usually involves two stages. In the initial stage, the Immigration Judge decides the question of deportability and gives the Haitian an opportunity to apply for withholding of deportation under Section 243(h). This Section, not applicable in exclusion proceedings, allows the Judge to stay deportation because of possible persecution in Haiti.

The Judge usually allows ten days for the Haitian to file a written brief in support of an application under Section 243(h). Then the Judge conducts a hearing at which the Haitian can testify and present witnesses. Judges in Miami have granted withholding of deportation to five Haitians in the past three years. They have denied hundreds of other applications under the same Section.

The Haitian may appeal the decision of the Immigration Judge to the Board of Immigration Appeals, and if the B.I.A. dismisses the appeal, the Haitian may then file a petition for judicial review directly in the United States Court of Appeals under Section 106(a).

Appendix 5

Chronology of Events Relating to Asylum

November 1, 1968	United States deposited its accession to the Protocol Relating to the Status of Refugees (incorporates Articles 2–34 of the 1951 Convention Relating to the Status of Refugees). The Protocol was signed in New York January 31, 1967 and the Senate ratified October 4, 1968, thereby entering into force for the United States, November 1, 1968.
November 23, 1970	Attempted Defection by Simas Kudirka from *Sovetskaya Litva* to CGC *Vigilant*.
December 1, 1970	State Department issued policy statement reaffirming there has been no change in U.S. refugee policy.
	Interim instructions issued by Department of State to other agencies regarding handling of requests for political asylum.
January 4, 1972	Secretary of State issued general policy for dealing with requests for asylum (updated January 10, 1973, to conform with Foreign Affairs Manual).
January 29, 1973	Immigration and Naturalization Service proposes rulemaking relating to refugee travel documents.
March 30, 1973	Final regulations issued by Immigration and Naturalization Service relating to refugee travel documents effective June 1, 1973.
August 7, 1974	Immigration and Naturalization Service proposes rulemaking regarding asylum application.
December 3, 1974	Final regulations issued by Immigration and Naturalization Service concerning asylum application (8 CFR 108); effective date January 2, 1975.
January 22, 1975	Immigration and Naturalization Service issued clarifying regulations on asylum.
February 25, 1976	Immigration and Naturalization Service issued a notice of proposed rulemaking concerning enforced departure of an alien whose application for asylum has been denied for the reason that it is clearly lacking in substance.

Appendix 6

1968 UN Protocol Relating to the Status of Refugees and Pertinent Articles (32 and 33) of the 1951 Convention Relatings to the Status of Refugees

PROTOCOL RELATING TO THE STATUS OF REFUGEES

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not wall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

ARTICLE I—GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and * * *" and the words "* * * as a result of such events", in article 1A(2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1B(1)(*a*) of the Convention, shall, unless extended under article 1B(2) thereof, apply also under the present Protocol.

ARTICLE II—COOPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The States Parties to the present Protocol undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

(*a*) The condition of refugees;

(*b*) The implementation of the present Protocol;

(*c*) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

ARTICLE III—INFORMATION ON NATIONAL LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

ARTICLE IV—SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

ARTICLE V—ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE VI—FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(*a*) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come

within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(*b*) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(*c*) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE VII—RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary General of the United Nations.

4. Declaration made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

ARTICLE VIII—ENTRY INTO FORCE

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

ARTICLE IX—DENUNCIATION

1. Any State Party hereto may denounce this Protocol at anytime by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

ARTICLE X—NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

ARTICLE XI—DEPOSIT IN THE ARCHIVES OF THE SECRETARY OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General

Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.

In accordance with article XI of the Protocol, we have appended our signatures this thirty-first day of January one thousand nine hundred and sixty-seven.

A. R. PAZHWAK,
President of the General Assembly of the United Nations.
U THANT,
Secretary-General of the United Nations.

ARTICLES 32 AND 33 OF THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES

ARTICLE 32—EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

ARTICLE 33—PROHIBITION OF EXPULSION OR RETURN ("REFOULEMENT")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

APPENDIX 7

JANUARY 28, 1976.

Hon. LEONARD F. CHAPMAN,
Commissioner, Immigration and Naturalization Service, Washington, D.C.

DEAR MR. COMMISSIONER: As you know, my Subcommittee on Immigration, Citizenship and International Law has closely followed the developments relating to those Haitians who have illegally entered the United States and thereafter claimed asylum.

In this regard, numerous allegations have been made that the Immigration and Naturalization Service has violated the due process rights and civil liberties of these individuals.

I would, therefore, request a detailed report regarding the steps which were taken by the Service in receiving and processing their claims for asylum. I would also appreciate a summary of the procedures followed or actions taken by the Immigration Service since the apprehension on these Haitians.

I would certainly appreciate a prompt response to this request.

With kindest regards,

Sincerely,

JOSHUA EILBERG,
Chairman.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., June 29, 1976.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to my letter to you dated December 16, 1975, concerning natives of Haiti under exclusion or deportation proceedings at our Miami, Florida office. For your information we have up-dated some of the information contained in our referenced report.

As of Monday, June 28, 1976, we have 163 pending asylum cases. There are 70 natives of Haiti detained. At the present time there are 525 Haitians involved in court cases, none of whom are detained. The number on bond is 487. There have been 467 abscondees, 93 or whom absconded under bond and the bond has been forfeited. In the last six months a total of 10 Haitians have been deported. During the past year, 123 Haitians have arrived, without proper documents, and placed under exclusion proceedings. The number of Haitians whose court cases have been concluded is 46. Of that number 2 have been deported, 2 are presently permitted to remain the the United States while relative visa petitions filed in their behalf are being processed, and 42 have absconded.

At the present time our records show that 84 Haitians have been given permission to work and their forms I–94 (Arrival-Departure Record) appropriately noted. Since the early part of this year there have been 6 grants of asylum. The number of Haitians who have agreed to depart voluntarily in the past years is 172, 38 departures of this group have actually been verified.

Returning to the question of detention of Haitians our records show that the average period of detention is six to eight months. The maximum period of detention for any one individual has been about 14 months, that individual is not now detained.

Sincerely,

L. F. CHAPMAN, JR.
Commissioner.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 7, 1976.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship, and International Law, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR JOSH: This is in reference to your Subcommittee's continuing investigation of the various issues relating to those Haitians in the United States who claim they will be subject to persecuion if returned to Haiti.

As you know, based on our numerous discussions and previous correspondence, this problem has deeply troubled me for some time. On several occasions I have communicated my concerns to the Departments of State and Justice; and I have attempted to keep abreast of all developments relating to the Haitian situation.

Therefore, I wish to commend you for conducting an in-depth review of this problem and I am gratified that your Subcommittee will be preparing a comprehensive report to the Committee in the near future.

I am certain that this study will be of immense assistance to the members of this Committee, and I am hopeful that your Subcommittee will continue to monitor the situation in order to insure that our laws, policies, and procedures relating to asylum are adhered to by the Execuive Branch.

Sincerely,

PETER W. RODINO, JR.,
Chairman.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., September 16, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Following is a current report on the status of Haitians who are illegally in the United States:

From December 1972 until August 30, 1974, approximately 1158 Haitians have attempted entry to the United States without proper documentation or have gained illegal entry and have been located subsequently by Service officers. Service records indicate that 1024 of these Haitians are presently in the United States.

Only those Haitians who are believed likely to abscond are being detained. Over 100 Haitians previously released without bond have disappeared. The Service is prepared to release the detained Haitians upon the posting of a delivery bond for each. As of August 30, 1974, forty-four (44) of the 1024 Haitians were in detention. None are women or children.

Two hundred and eighty-eight (288) of the 1024 Haitians have not requested asylum. Those who have requested asylum have been processed in the same manner as nationals of any other country seeking that benefit. Each alien has been afforded an opportunity to present his asylum claim individually for our careful review. Before denying any request, the Service has consulted the Office of Refugee and Migration Affairs, Department of State.

At the present time there are 35 Haitians in asylum status in the United States. One hundred fifty-eight (158) applications for political asylum are pending.

Five hundred forty-three (543) applications for political asylum have been denied to date. In these cases, the Office of Refugee and Migration Affairs recommended, and the District Director of this Service at Miami concluded on the basis of all the evidence at hand, that the aliens' requests for asylum should be denied. The denials were predicated upon the finding that the requests were based upon economic factors, and that the aliens were not refugees within the meaning of the United Nations Convention Relating to the Status of Refugees (of July 28, 1951), as modified by the Protocol Relating to the Status of Refugees of January 31, 1967 to which the United States is signatory.

Those Haitians whose requests for asylum have been denied, and their counsel, have been informed that they are free to request reconsideration if they have additional evidence to present.

On October 29, 1973, a substantial number of Haitian aliens petitioned the United States District Court, Southern District of Florida, under Sec. 106(b), Immigration and Nationality Act (8 USC 1105(b)), for judicial review of final administrative orders of exclusion. On December 28, 1973, the court denied the petition. The aliens' appeal is now pending before the Fifth Circuit Court of Appeals. Pierre v. U.S., Case No. 74–1371. The original petitioners, together with others joined at request of counsel, number 250.

To date 19 Haitians have been deported. Others have departed voluntarily. The Department of State has asked our Embassy in Port-au-Prince to closely watch the situation in Haiti and attempt to follow-up on Haitians who have returned to their country. Officers from the Office of Refugee and Migration Affairs have visited Haiti for a first-hand look at the situation. While it is difficult to follow-up on returned Haitians as they return individually, contact was established with some 16 returned Haitians. They have suffered no reprisals by the Haitian Government. Other cases are being checked by Embassy officials.

Sincerely,

L. F. CHAPMAN, Jr.,
Commissioner.

DEPARTMENT OF STATE,
Washington, D.C., June 12, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Secretary Kissinger has asked me to reply to your letter of April 26, concerning Haitians in the United States who have asked for refugee status.

The situation remains generally as it was last November when former Assistant Secretary Marshall Wright wrote to you. Some additional boatloads have arrived; individual cases are still being adjudicated. Some Haitians have been granted asylum but the majority of these people are still coming to the United States in search of better economic opportunities and are properly classifiable as immigrants rather than refugees. The cases of over 200 are being heard in the Fifth Circuit Court of Appeals, after having lost in District Court.

You will be interested to know that Ambassador Frank L. Kellogg personally visited Haiti recently for a first-hand look at the situation. In addition, our officer who directly handles the individual Haitian cases referred to us by the Immigration Service, also visited Haiti. Both confirmed the fact that the Haiti of today is not similar to the Haiti under the previous regime. Although Haiti still has an authoritarian government, the excesses of the past regime have been curbed.

We will continue to carefully follow the political situation in Haiti and will be sensitive to any changes. Requests for refugee status will be sympathetically and carefully considered. Those Haitians who have a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group will be permitted to remain in the United States.

I hope the above information is helpful to you and the Committee. The Immigration Service should be able to provide you with additional details concerning numbers and status of cases.

With best wishes,

Cordially,

LINWOOD HOLTON,
Assistant Secretary
for Congressional Relations.

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