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Box 59, Folder 9, Haitian refugees, 1983.



NOV 14 1983

NATIONAL EMERGENCY COALITION FOR HAITIAN REFUGEES

Rasanbleman Nasyonal pou Refijye Ayisyen

275 Seventh Avenue • Eleventh Floor • New York, New York 10001 • (212) 741-6152,6153

CHAIRMAN

Bishop Anthony J. Bevilacqua
National Conference of Catholic Bishops
Committee on Migration

EXECUTIVE DIRECTOR

Michael S. Hooper

November 4, 1983

VICE CHAIRMAN

Bayard Rustin
A. Philip Randolph Educational Fund

M E M O R A N D U M

EXECUTIVE COMMITTEE

Father Antoine Adrien
Comite Interregional Pour
Les Refugies Haitiens

TO: Coalition Executive Committee and
Membership

Honorable Shirley Chisholm

FROM: Michael Hooper, Mark Murphy

Antoine Eustache
Committee for Haitian Concerns

RE: RECENT COALITION ACTIVITIES, STATUS OF
THE SIMPSON-MAZZOLI BILL, AND RENEWED
EFFORTS TO ACHEIVE LEGAL STATUS FOR
HAITIAN BOAT PEOPLE

Dale de Haan
Church World Service of the
National Council of Churches
American Council of Voluntary Agencies

Ira Gollobin

Donald Hohl
United States Catholic Conference

CONGRATULATIONS TO BISHOP BEVILACQUA

Benjamin Hooks
National Association for the
Advancement of Colored People

The Coalition staff and member organizations are extremely pleased to congratulate Coalition Chairman Bishop Anthony J. Bevilacqua on his recent appointment as the new Roman Catholic Bishop of Pittsburgh. Bishop Bevilacqua serves as head of the National Conference of Catholic Bishops Committee on Migration, working to protect the rights of refugees and immigrants in this country and internationally. His has been a leading voice calling for the observance of the fundamental rights of the Haitian refugee boat people, and we are pleased to announce that the Bishop will continue as Chairman of the Coalition. Bishop Bevilacqua will be installed December 12, at a ceremony in Saint Paul's Cathedral, in Oakland, a section of Pittsburgh.

John Jacob
National Urban League, Inc.

Rulx Jean-Bart
Haitian Refugee Center, Inc.

Lane Kirkland
AFL-CIO

Wells Klein
American Council for
Nationalities Service

Fritz Longchamp
Haitian Refugee Project

Jay Mazur
International Ladies
Garment Workers Union

Atherton Martin
American Friends Service Committee

Rabbi Henry D. Michelman
Synagogue Council of America

Rev. Charles F. Mulligan
National Conference of Catholic Charities

I. COALITION TESTIFIES AT MIAMI HEARING ON PROPOSED PRESIDENTIAL IMMIGRATION EMERGENCY POWERS

Rev. Phillus Nicolas
Haitian Centers Coalition

Michael H. Posner
Lawyers Committee for
International Human Rights

Rabbi Marc Tanenbaum
American Jewish Committee

Ingrid Walter
Lutheran Immigration and
Refugee Service

Coalition Executive Director Michael S. Hooper delivered Coalition testimony on October 28 in Miami, before Senator Simpson's subcommittee on immigration and refugee policy, on the subject of proposed presidential immigration emergency powers legislation. Two bills have been introduced

this year which would grant to the President emergency powers with respect to immigration, the "Immigration Emergency Powers and Procedures Act of 1983", (S.592), introduced by Florida Senator Lawton Chiles, and the "Immigration Emergency Act", (S.1725), introduced by Florida Senator Paula Hawkins.

Both bills would give statutory authority to policies the government has imposed on Haitian boat people, including indefinite detention of asylum seekers pending adjudication of their claims, and interdiction of boats on the high seas. The bills also would grant power to summarily exclude persons seeking entry who are not in possession of valid entry documents.

These measures are of particular concern for the Coalition as the Immigration Service's treatment of Haitian boat people has served as a proto-type and a trial-run for them. The boat people have suffered indefinite detention under intolerable conditions and have been deprived of the fundamental right to consult with counsel and the right to be informed of the right to apply for political asylum in our country. The Haitians' asylum claims have been judged by disparate and improper standards; Haitian boats have been subject to interdiction, and their passengers have been returned to the Haiti from which they fled.

In pursuit of our program objective of assuring due process of law and fundamental fairness in the treatment of Haitian asylum seekers, the Coalition voiced strong opposition before the Senate subcommittee to these policies, and to any contemplated extension or codification of them. A copy of the 27-page testimony of Michael Hooper before the Senate subcommittee on immigration and refugee policy on October 28, is available from the Coalition upon request.

II. POSSIBLE FUTURE ACTION ON THE SIMPSON-MAZZOLI IMMIGRATION BILL, AND FUTURE COALITION ACTIVITIES TO ACHIEVE LEGAL STATUS FOR HAITIAN BOAT PEOPLE

As most of you are aware, House Speaker Thomas P. O'Neill announced at a press conference Thursday, September 29, that the Simpson-Mazzoli immigration legislation would not be considered by the full House of Representatives this year unless the Congressional Hispanic Caucus and the bill's proponents could reach agreement on the content of the legislation. The attitude of Hispanic voters towards the bill increasingly has become an issue for both Democrats and Republicans as we enter a presidential election year.

Speaker O'Neill's hold on the bill applies for this

year only, and it is the opinion of the Coalition staff and many of our member organizations that the bill may be sent to the House floor early in 1984. Proponents of the measure are undertaking an all-out campaign to see that it is acted upon as early as February of next year; their efforts make it imperative that the Coalition and our members remain actively working to see that our concerns with the bill are communicated if it does come up.

Concern has also been voiced that the Simpson-Mazzoli bill is an attempt to address too many issues in one piece of legislation. With the House bill on temporary hold, Coalition members should also be aware that there is a possibility that certain titles of the bill may be offered separately.

As you are aware, the Coalition in cooperation with our Washington Working Group has been focusing efforts on the legalization title of the Simpson-Mazzoli bill. In spite of significant flaws in other aspects of the proposed legislation, we favored a legalization program which would provide a meaningful solution to the tragic plight of Haitian refugee boat people. Therefore, should this bill eventually come to the House floor in 1984, the Coalition could not accept a legalization program with an eligibility date earlier than January 1, 1982. This is the earliest cut-off date that would accord any meaningful benefits to Haitian and other refugee groups. In addition, there must be binding assurances made that this legalization program would not impose restrictive criteria that would disenfranchise otherwise eligible groups of individuals.

As part of our educational efforts on the plight of the refugees and the need for immigration reform, the Coalition has prepared two letters to Congress, one from the Coalition and the other signed by Father Theodore Hesburgh and Honorable Shirley Chisholm, expressing the need for a comprehensive legalization program with an eligibility cut-off date of January 1, 1982. The Coalition will continue to observe closely the future prospects of immigration reform legislation, and our members should remain ready to prepare and distribute your own materials.

In the event that immigration reform legislation does not come up for floor action next year, the Coalition must now simultaneously prepare to begin laying the groundwork for either an executive-administrative solution to the legal status problem, or legislation providing an interim bar to deportations. Several options for a solution barring deportation of deserving refugees occur to us at this time, but these are far from exhaustive:

*EXTENSION OF CUBAN-HAITIAN "ENTRANT" STATUS. Responding to the plight of the boat people and to widespread public sentiment favoring granting them status, President Carter on June 20, 1980, ordered that Haitians seeking asylum who were in the U.S. and known to the Immigration Service prior to that date would be (a) granted "entrant" status, (b) permitted to remain in the U.S. pending legislation granting them residency, and (c) given employment authorization. This date was subsequently extended to October 10, 1980.

Haitians arriving after this date do not differ from those granted "entrant" status, except for the fact that they have suffered even more than previous arrivals by being subject to illegal detention. Fundamental fairness and justice demand that Haitians subject to illegal detention be accorded the same protections from deportation accorded this earlier group. An extension of the Cuban-Haitian "entrant" program to January 1, 1982, would at least protect Haitian boat people from deportation.

*TEMPORARY SAFE HAVEN STATUS, as proposed in several legislative versions this year, which would protect Haitians from deportation until such time that it can be proven that no one returned to Haiti would fear reprisal at the hands of the Haitian government. Such interim legislation would equally benefit other similarly situated refugee groups.

III. MANUAL ON RIGHTS OF REFUGEES AND IMMIGRANTS IN PREPARATION

Member organization Church World Service has asked the Coalition staff to prepare a pocket-sized manual to explain to refugees, immigrants and undocumented persons in the U.S. their immigration rights. The manual is currently being circulated by the Coalition in draft form to selected immigration attorneys and experts for comment. Financial support for the project is being sought so that the manual may be translated and published in Spanish, Creole and French. For more information on how your organization can assist this vital project, please contact the Coalition office.

IV. FUNDRAISING ACTIVITIES

Coalition staff have prepared a new, comprehensive funding appeal letter which we have sent to several foundations who have expressed interest in our work. Also, Executive Committee member Jay Mazur, General Secretary of the International Ladies Garment Workers Union, will send shortly letters detailing the plight of the refugees and requesting contributions to the Coalition to several influential labor leaders and unions. Reaching out to new constituencies in labor, civil and human rights, religious, and other communities for their involvement

in resolving the legal status plight of the Haitian boat people continues to be an important Coalition objective.

The Coalition wishes to thank the United Presbyterian Church, affiliated with the National Council of Churches, as the most recent Coalition member organization to make a generous sustaining contribution of \$5000 or more. A complete listing of donations and membership dues to the Coalition as of August 31, 1983, and the Coalition budget, are included as part of this information packet. MANY MEMBERS, HOWEVER, HAVE AS YET TO CONTRIBUTE THEIR \$500 MEMBERSHIP DUES FOR 1983; WE URGE YOU ALL TO DO SO IMMEDIATELY SO THAT WE CAN CONTINUE TO PROVIDE OUR SERVICES TO THE HAITIAN REFUGEE BOAT PEOPLE.

V. NATIONAL COUNCIL OF CATHOLIC CHARITIES NATIONAL MEETING AND RESOLUTION CALLING FOR LEGAL STATUS

At its annual national meeting last month in Baltimore, the National Council of Catholic Charities adopted a resolution calling for immediate legal status for certain groups of undocumented persons in the U.S. Coalition Executive Committee member Reverend Charles Mulligan, provided with the Coalition position and draft language for a resolution, ensured that the Haitian boat people were included for particular consideration. The N.C.C.C. resolution will be circulated widely by the Coalition in our national campaign to educate constituencies on the necessity of legal status for the refugees.

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EXECUTIVE DIRECTOR

Michael S. Hooper

THE PLIGHT OF THE HAITIAN REFUGEES AND THE RESPONSE OF THE NATIONAL COALITION FOR HAITIAN REFUGEES

Since 1958, approximately one-eighth (1/8) of the population of Haiti has fled from their homeland to escape the cumulative effects of the twenty-five (25) years of Duvalier family rule. A small part of this diaspora has sought haven in the United States. In the last nine years approximately 40,000 refugees have risked their lives across 800 miles of hazardous ocean to seek safety and asylum in the U.S. These are the "boat people" whose total numbers are minuscule when compared to other refugee groups warmly and continuously received by our government. Despite the desperate nature of their plight, confirmed by repeated reports by Amnesty International, the Inter-American Commission on Human Rights of the Organization of American States, and other respected human rights organizations, detailing systematic violations of human rights in Haiti, these refugees have received harsh and discriminatory treatment from our government, unprecedented in the history of the United States.

The NATIONAL COALITION FOR HAITIAN REFUGEES (The Coalition) was formed in response to this emergency, and in particular to the jailing by order of the Attorney General on July 31, 1981, of more than 2000 boat people who had arrived on our shores and claimed political asylum. On March 2, 1982, a number of prominent religious, civil rights, human rights, Haitian, labor, and national voluntary agency organizations formed the Coalition to secure humane treatment, due process of law and the immediate release to sponsors for these refugees who were imprisoned in ten remote locations around the United States.

This emergency continues: pursuant to a Federal Court decision of June 29, 1982, that the imprisonment of the Haitian boat people was unlawful, the refugees were finally released to sponsors in over 20 states by the end of November 1982. On April 12, 1983, the 11th Circuit Court of Appeals in a landmark decision upheld the lower court's finding that the official policy of detaining Haitians was illegal, and went further, finding that the detention program was unconstitutional and discriminatory.

HOWEVER, DESPITE THE UNPRECEDENTED HARSH TREATMENT THEY HAVE SUFFERED IN OUR COUNTRY DURING THE LAST TWO YEARS, THESE REFUGEES STILL FACE THE IMMINENT THREAT OF FORCED DEPORTATION TO HAITI BY THE IMMIGRATION SERVICE.

WHAT ARE THE IMMEDIATE GOALS OF THE NATIONAL COALITION FOR HAITIAN REFUGEES?

1. FURTHERING PUBLIC CONSIDERATION OF THE NECESSITY OF A HUMANE AND CONSTRUCTIVE LEGISLATIVE-ADMINISTRATIVE SOLUTION TO THE STATUS OF HAITIAN REFUGEES.

In pursuance of this program objective the Coalition coordinates a national campaign and a Washington Working Group to educate the American public and policy makers about the terrible plight of the Haitian boat people and other refugee groups.

The NATIONAL CAMPAIGN TO ACHIEVE LEGAL STATUS brings together Coalition staff and member organizations with refugee policy experts, Members of Congress, state and local governments, and community organizations, and also involves other refugee support groups concerned with Central American issues. The campaign includes publications detailing the plight of the refugees and why it is both just and practical to grant them legal status, speaking tours and the organization of local affiliates of Coalition members to enhance the Coalition's ability to educate local communities. The WASHINGTON WORKING GROUP acts to monitor and analyse the ongoing dialog between immigration policy experts, Congress, and effected constituencies.

2. ASSURING THAT THE HAITIAN BOAT PEOPLE RELEASED FROM DETENTION AND ALL OTHER HAITIAN REFUGEES RECEIVE FAIR TREATMENT AND PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW IN THE ADJUDICATION OF THEIR ASYLUM CLAIMS.

In pursuance of this objective, the Coalition:

- * Organizes training sessions for volunteer attorneys concerning human rights conditions in Haiti, and provides suggestions concerning unique aspects of Haitian asylum claims.
- * Provides detailed materials concerning important human rights developments in Haiti, for use in the preparation of claims for political asylum and possible federal litigation in support of the due process rights of the boat people, and as necessary to heighten public consideration of the necessity of legal status for the refugees.
- * Disseminates videotaped presentations analysing human rights conditions in Haiti.
- * Makes available data on Haiti unavailable through conventional sources, including information the Coalition has transmitted to Amnesty International and other major human rights groups for "Urgent Action" requests.
- * Is publishing a pocket-sized manual explaining the rights of refugees, immigrants and undocumented persons in the U.S., to be available in three languages.

3. ASSISTING IN THE COURT-ORDERED HAITIAN INTERIM PLACEMENT PROGRAM.

In June 1982 Federal Judge Eugene Spellman ruled that the Immigration Service's detention of Haitian refugees was illegal and ordered their release under a Haitian Interim Placement Program. The Coalition:

- * Acts as a clearinghouse of information for the legal, voluntary agency, and community groups entrusted by the court to implement the program.
- * Convenes meetings between these groups to discuss the progress of the program.
- * Monitors the program and reports to the Court Committee on Haitian Refugees which was appointed to oversee it.
- * Prepares bi-lingual publications for the released Haitians and their local sponsors, explaining their rights and obligations under the terms of the placement.

4. INVESTIGATING AND PUBLICIZING INFORMATION REGARDING GOVERNMENT POLICIES OF DETENTION AND INTERDICTION, AND ANALYZING THESE AND OTHER ASPECTS OF PROPOSED PRESIDENTIAL "IMMIGRATION EMERGENCY POWERS" WHICH MOST IMMEDIATELY EFFECT HAITIAN REFUGEES AND WHICH EFFECT DETRIMENTALLY OUR COUNTRY'S LONG-TERM POLICY FOR THE RECEPTION OF REFUGEES.

The central focus of this work is to bring an end to policies of detaining political asylum applicants and interdicting their boats on the high seas and returning them to the countries from which they fled. The Coalition:

- * Focuses national attention on freeing the Haitian boat people who have arrived following the order of Judge Spellman and some of whom are currently in indefinite detention.
- * Educates constituencies about the immediate dangers and inadvisability of interdiction and indefinite detention, and other "immigration emergency powers" contemplated as part of proposed legislation.
- * Prepares analysis and testimony based on our experiences with the Haitian boat people opposing these extraordinary powers.
- * Visits and investigates Federal prisons and Immigration Service facilities where Haitians are detained, to substantiate evidence of inadequate and substandard conditions.

WHAT CAN YOU AND YOUR ORGANIZATION DO TO ENCOURAGE GRANTING LEGAL STATUS FOR HAITIAN BOAT PEOPLE, AND ENDING POLICIES OF INTERDICTION AND INDEFINITE DETENTION?

1. HELP THE COALITION PUBLICIZE THE PLIGHT OF REFUGEES FACING DEPORTATION FROM THE UNITED STATES, PARTICULARLY THE HAITIAN BOAT PEOPLE.

- * Conduct public seminars and conferences at which the Coalition and other recognized experts may participate.
- * Disseminate Coalition materials to new constituencies.

- * Write to your congressional representatives and to the administration emphasizing the necessity of a just and immediate solution to the plight of the Haitian boat people. Encourage groups to join your own in joint letters and public statements demanding legal status for the refugees.
2. ANNOUNCE AND PUBLICIZE YOUR SUPPORT FOR THE LEGISLATIVE-ADMINISTRATIVE OPTIONS MOST APPROPRIATE FOR ACHEIVING LEGAL STATUS.
- * A COMPREHENSIVE LEGALIZATION PROGRAM, similar to the one recommended by the House Judiciary Committee as part of the Mazzoli immigration bill, H.R. 1510. For a program legalizing undocumented aliens to be considered truly comprehensive, it must include eligibility for Haitians and other refugees who arrived in the U.S. as of January 1, 1982, thus recognizing their unique suffering. Binding assurances that this legalization program would indeed benefit substantially all those in need of legalization are essential for a program to be truly comprehensive.
 - * EXTENSION OF CUBAN-HAITIAN "ENTRANT" STATUS. Responding to the plight of the boat people and to widespread public sentiment favoring granting them status, President Carter on June 20, 1980, ordered that Haitians seeking asylum who were in the U.S. and known to the Immigration Service prior to that date would be (a) granted "entrant" status, (b) permitted to remain in the U.S. pending legislation granting them residency, and (c) given employment authorization. This date was subsequently extended to October 10, 1980.

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 - * TEMPORARY SAFE HAVEN STATUS, as proposed in several legislative versions this year, which would protect Haitians from deportation until such time that it can be proven that no one returned to Haiti would fear reprisal at the hands of the Haitian Government. Such interim legislation would equally benefit other similarly situated refugee groups.

JOIN US in gaining legal status for Haitian refugee boat people, and ending policies of interdiction and indefinite detention of refugees. PLEASE JOIN THE COALITION, and contact us for additional ways you and your organization can assist in this essential effort.

A P P E N D I X

NATIONAL MEMBER ORGANIZATIONS OF
THE EMERGENCY COALITION FOR HAITIAN REFUGEES

A.F.L.-C.I.O.

A. Philip Randolph Institute

American Civil Liberties Union

American Council for Nationalities Service

American Friends Service Committee

American Jewish Committee

Catholic League for Religious and Civil Rights

Center for the Social Sciences, Columbia University

Church World Service of the National Council of Churches

Comite Interregional Pour Refugies Haitiens, Inc.

Committee for the Defense of Haitian Refugees

International Ladies Garment Workers Union

International Rescue Committee

Lawyers Committee for International Human Rights

Leadership Conference on Civil Rights

Lutheran Immigration and Refugee Service

N.A.A.C.P.

National Catholic Conference for Interracial Justice

National Center for Immigrants Rights, Inc.

National Conference of Catholic Bishops

National Emergency Civil Liberties Committee

National Urban League, Inc.

Synagogue Council of America

Unitarian Universalist Service Committee

United States Catholic Conference

Y.M.C.A. of the U.S.A.

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NATIONAL EMERGENCY COALITION FOR HAITIAN REFUGEES PROPOSED BUDGET FOR PERIOD SEPTEMBER 1983 - SEPTEMBER 1984

I. STAFF COSTS

Executive Director	\$28,000.
Associate Director	21,000.
Payroll taxes and Health Insurance	6,000.
Temporary Typist (estimated)	5,200.
Part-Time Administrative Assistant	5,200.
Total Staff Costs	\$65,400.

II. OFFICE COSTS

Office Rent (\$700/month)	\$ 8,400.
Typewriter Rental (\$60/month)	750.
Photocopying (\$350/month)	4,200.
Telephone (\$400/month)	4,800.
Postage (\$300/month)	3,600.
Total Office Costs	\$21,750.

III. OTHER COSTS

Travel (estimated \$900/month)	\$10,800.
Taxis/Messenger Service (\$250/month)	3,000.
Total Other Costs	\$13,800.

IV. LESS: IN-KIND CONTRIBUTIONS*

Rent	\$ 8,400.
Photocopying	4,200.
Telephone (50%)	2,400.
Typing (50%)	2,600.
Total In-Kind Contributions	\$17,600.

Actual Funds Required \$83,350.

Less: On Hand September 1, 1983 \$22,074.

Additional Funds Needed \$61,276.

*Several Coalition members have made in-kind contributions. Substantial in-kind contributions are currently made by the I.L.G.W.U. of office space, photocopying, telephone and secretarial services.

Volunteer lawyers for the Coalition are now filing for non-profit tax-exempt status, however they advise us that this process will take at least four months. During this period the A. Philip Randolph Educational Fund, a public charity, has generously agreed to receive grants for the Coalition as one of their projects, and to provide necessary accounting services.

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SUMMARY OF INCOME AND EXPENDITURES JANUARY 1, 1983 - AUGUST 31, 1983

I.	RECEIVED JAN. 1, 1983 - AUG. 31, 1983	
	Unitarian Universalist Service Committee	\$ 250.
	New York Friends Group	1,500.
	Joyce Mertz-Gilmore Foundation	15,000.
	L.I.N.K.S. Foundation	2,720.36
	International Rescue Committee	2,000.
	Catholic Migration and Refugee Office	500.
	American Jewish Committee	500.
	U.S. Catholic Conference	10,000.
	Lutheran Immigration and Refugee Service	2,500.
	Alderson Hospitality House	25.
	Local 23-25, I.L.G.W.U.	500.
	American Jewish Congress	250.
	Total Contributions Received, Jan. 1, 1983 - Aug. 31, 1983	<u>\$35,745.36</u>
	Funds Available Prior to Jan. 1, 1983	\$20,865.20
	Interest on Money Market Funds	\$ 724.27
	Total Funds Available	<u>\$57,334.83</u>
II.	EXPENDITURES	
	Staff Costs	\$24,428.24
	Payroll Taxes and Fringe Benefits	3,503.25
	Meetings, Travel and Conferences	4,251.80
	Printing and Mailings	582.43
	Long Distance Toll Charges	1,801.98
	Miscellaneous Expenses	692.73
	Total Expenditures	<u>\$35,260.43</u>
III.	FUNDS AVAILABLE	
	In Citibank Checking Account	\$ 2,250.
	Petty Cash on Hand	50.
	Invested in Intercapital Liquid Asset Fund	19,774.40
	Total Funds on Hand, Aug. 31, 1983	<u>\$22,074.40</u>

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STATEMENT OF

MICHAEL S. HOOPER, ESQ.
EXECUTIVE DIRECTOR

NATIONAL EMERGENCY COALITION FOR HAITIAN REFUGEES

ON THE
AMERICAN JEWISH ARCHIVES
IMMIGRATION EMERGENCY POWERS AND PROCEDURES
ACT OF 1983

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

MIAMI, FLORIDA

OCTOBER 28, 1983

Thank you, Mr. Chairman, for holding these oversight hearings to examine proposed presidential emergency powers with respect to immigration, and for inviting the views of the National Emergency Coalition for Haitian Refugees. Our testimony today specifically considers the "Immigration Emergency Powers and Procedures Act of 1983" (S. 592), proposed by Senator Chiles.

My name is Michael S. Hooper and I am Executive Director of the National Emergency Coalition for Haitian Refugees, which is composed of over 45 prominent civil rights, human rights, labor, Haitian, religious, and other national voluntary organizations. Our membership includes all the Haitian and north American organizations working nationally to ameliorate the desperate plight of the Haitian refugee "boat people", as well as those organizations assisting the refugees locally in both New York and here in southern Florida.

The grave concern of the Coalition and our constituent members with this legislation arises from our specific involvement since 1979 in all aspects of the national crisis created by the unprecedented official treatment that the Haitian boat people have received, and from our deep commitment to the necessary and extremely difficult task of reforming our nation's immigration laws.

This legislation asks Congress to grant to the President extraordinary and ill-defined powers to suspend heretofore guaranteed fundamental rights because of the spectre of a future immigration emergency. We conclude that this grant of

power without congressional oversight to the President and the Attorney General will facilitate wholesale violations of fundamental protections and rights of non-citizens and citizens alike. Provisions of this bill will cause immeasurable and needless suffering to those persons caught in its wake, and it may fuel divisiveness between the people of our country. This bill does not address the underlying problems that have led to refugee emergencies, its implementation may provoke new emergencies, and it is entirely unnecessary as the President arguably possesses many of these powers already under Section 212 (F) of the Immigration and Nationality Act of 1952.*

Before detailing the specific reasons why we oppose this legislation, it is perhaps useful to recall two lessons from the Mariel flotilla of 1980 and the recent "Haitian program" crafted by the Immigration and Naturalization Service (I.N.S.)

In hearings regarding an earlier version of this Act, the Mariel flotilla and its complicated aftermath provided the justification for this extraordinary legislation.**

Senator Chiles has characterized the Mariel flotilla as a war fought by Mr. Castro and as a "deliberate and premeditated

*8 U.S.C. 1182 (F), 212 (F) I.N.A. "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interest of the United States, he may by Proclamation, and for such a period as he shall deem necessary, suspend the entry of all aliens or immigrants or non-immigrants, or impose on the entry of aliens any restrictions that he may deem to be appropriate."

**Hearing before the subcommittee on immigration and refugee policy, U.S. Senate Judiciary Committee, 97th Cong., Sept. 30, 1982.

act of invasion."¹ This convenient scenario is not entirely accurate and should not lead us to ill-considered, "quick-fix" legislation. Mariel was not a natural disaster that happened to the United States, rather it was in part a consequence of our government's insistence on using refugee policy for political purposes. We had perfectly adequate laws on the books that could have controlled the Mariel emergency in an orderly way, had our Federal government acted decisively. In the words of Pulitzer Prize-winning journalist John Crewdson, "The (United States) government's inability to decide whether to denounce the Cuban invasion or to encourage it created a paralyzing schizophrenia."² More than any of the substantive criticisms which follow, the fact that the Mariel flotilla need not have developed into the emergency that it became clearly obviates the need for this extraordinary legislation.

The "Haitian program" devised by the Immigration and Naturalization Service provides us with a convenient "prototype" of the proposed Immigration Emergency Powers Act. Despite the essentially uncontroverted documentation of respected human rights organizations concerning the cumulative abuses of twenty-five years of Duvalier family rule in Haiti, those Haitian boat people who risked their lives to seek political asylum in southern Florida were greeted with harsh and discriminatory treatment unprecedented in our nation's history. As the Federal District Court for the Southern District of

Florida found:

(T)he Haitians came here with the expectation that they should reach a land of freedom... What they found was an Immigration Service which sought to send them back to Haiti without any hearing by an immigration judge on their asylum claims ... and a systematic program designed to deport them irrespective of the merits of their asylum claims... They came to a land where both local officials and private groups were compassionate, indeed where the President had once promised that the government would be as compassionate as its people, and then their applications were arbitrarily denied en masse by a somewhat less than compassionate I.N.S.³

The Haitian asylum claims were prejudged as lacking any merit... An expedited process was set up for the sole purpose of expediting review of Haitian asylum applications, and expelling Haitians from the United States. By its very nature and intent, that process was prejudicial and discriminatory. In its particulars, the process violated the Haitians' due process rights.⁴

This relatively small group of refugees from a government of undeniable harshness suffered innumerable other deprivations:

- * They were indefinitely detained in intolerable conditions;
- * They were deprived of the fundamental right to consult with counsel and the right to be informed of the right to apply for political asylum in our land based on their fear of persecution in Haiti;
- * Their asylum claims were judged by disparate and improper standards;

* And some had their flimsy sailboats returned to the Haiti from which they fled, without being allowed to fully exercise their rights to claim asylum in the United States.

Pursuant to a federal court decision here in Miami on June 29, 1982, the mass detention program announced by the Attorney General on July 31, 1981, was declared unlawful, and the refugees were finally released to sponsors in over 20 states by the end of November 1982. On April 12, 1983, the U.S. Court of Appeals for the 11th Circuit, in a landmark decision, upheld the lower court's finding that the official policy of detaining Haitians was illegal, and went further, finding that the detention program was unconstitutional and discriminatory.

The constituent member organizations of our Coalition are united in our desire to secure substantive and procedural due process of law and humane treatment for the Haitian refugee boat people.* We joined together in the resolve that these boat people have accumulated substantial equities during their illegal detention, and we believe that they must be granted some secure legal status in this country.

*It is well-settled that as excludable aliens these boat people are protected by the due process clause of the Fifth Amendment,⁵ and are thus entitled to due process when pursuing their rights to petition for political asylum.⁶

There already has been a trial-run for this Emergency Powers legislation, as policies recommended by the Act already have been applied to the Haitian boat people with disastrous results. The United States Government's "Haitian program" has been unequivocally condemned by the courts, and by domestic and international public opinion. Indefinite detention, summary exclusion and the interdiction of refugee boats violate our domestic and international legal obligations, cause untold misery, and are vastly expensive. As a nation we can ill afford to institutionalize such a policy.

We additionally are opposed to this legislation because of:

1. The vague authority given to the President to exercise almost limitless discretion to find the existence of triggering criteria necessitating the declaration of an immigration emergency (Sec. 240A (a));
2. The authorization to summarily exclude aliens, including potential asylum applicants, from the United States on the decision of one immigration inspector without special training (Sec. 240B (a)). This proposal appears intended to apply even if the President has not declared an immigration emergency (Sec. 4 amending Sec. 235 (b) (2), I.N.A. (See Section I infra);
3. The excessive authority to detain for an indeterminate period of time persons awaiting asylum hearings or other processing, and, the authority to so detain

- persons at any federal or state facility and to move them from facility to facility at will (Sec. 240B (a) (4) (A)); (See Section II infra);
4. The authority to interdict on the high seas boats carrying potential asylum applicants and to return them to the country from which they fled (Sec. 240B (a)) (See Section III Infra);
 5. The virtual elimination of judicial review in asylum proceedings, and, the "stripping" of the jurisdiction of the courts to review the reasonableness of other provisions of the Act (Sec. 240B (a) 3 (A) (E)); (Section IV)
 6. The excessive grant to the Attorney General of the power to restructure in his complete discretion the rights of asylum applicants and the procedures that apply to them (Sec. 240B (a) 3 (B)).

I

ADVERSE IMPACT OF AUTHORIZING THE
SUMMARY EXCLUSION OF FOREIGN NATIONALS,
INCLUDING POTENTIAL ASYLUM APPLICANTS,
FROM THE UNITED STATES

Section 240B of the proposed Act provides that the executive can utilize various powers, including the power to summarily exclude arriving aliens, with or without a declaration by the President that there is an "immigration

emergency" based upon a determination that a mass influx of undocumented aliens is imminent.*

We are very concerned that the proposed Emergency Powers legislation permits the "summary exclusion" of asylum seekers among others if they attempt to cross the border of the United States and are unable to immediately demonstrate a bonafide claim to asylum. Aliens with valid claims for asylum, but without an understanding of our laws or an opportunity to obtain the assistance of legal counsel, could be summarily excluded from our country and forcibly returned to persecution. Two federal courts have held that notice of the right to claim asylum is fundamental.⁷

Under Section 4 of the Chiles emergency powers bill, (amending Section 235 (b) of the I.N.A.,) the on-the-spot decision of an immigration inspector without any special training could result in the deportation of a bonafide refugee, whether or not an immigration emergency had been declared. Specifically, an alien could arrive at the border and say all the required "magic words" requesting asylum based on a well-founded fear of persecution, but if the alien did not present the appropriate identity documents, or the inspector did not believe his story, the refugee could be summarily deported, possibly to his death, with absolutely no recourse to the courts or any

*The declaration of an "immigration emergency" extends automatically for a period of 120 days, and is extendable for consecutive periods of like duration.

review mechanism. Recent experience has clearly demonstrated that it would be unwise to empower the I.N.S. inspector with the authority to make this type of life and death decision.

The practice of summary exclusion in such cases violates our fundamental traditions of due process and of providing a haven for the persecuted, as well as our legal obligations of non-refoulement under international law.⁸ A refugee fleeing persecution will obviously not possess any documentary resources, and they will normally feel themselves to be in a particularly vulnerable situation in submitting their case to authorities of a foreign country using unknown legal concepts.*

The experience of the Haitian refugees clearly illustrates the genuine dangers involved in barring, even unintentionally, from our country refugees who are unwilling or unable to immediately articulate the basis of their asylum claim because of an absence of the rule of law in their home country. Many observers, including representatives of the Department of Justice and the International Commission of Jurists, have described Haiti alternatively as "the most oppressive regime in the hemisphere" or the

*The Handbook on Procedures and Criteria for Determining Refugee Status of the United Nations High Commissioner on Refugees stresses:

A person, who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case (Paragraph 198).

"most ruthless and oppressive regime in the world."⁹ A Federal District Court in Miami found that for the past twenty-five years the Duvalier family has ruled Haiti through "pervasive oppression of political opposition which uses prisons as its torture chambers and Tonton Macoutes as its enforcers."¹⁰ The regime is based on its secret police forces who have enforced repression and terrorized the population with actual and threatened violence and imprisonment, with complete disregard for the rule of law, legal procedures or fundamental human rights.¹¹ While Haiti is generally recognized to be a miserably poor country, a federal court has found that "much of Haiti's poverty is a result of Duvalier's efforts to maintain power."¹² In the face of these conditions, over one-eighth of Haiti's population has fled from their homeland, and a small part of this diaspora has applied for political asylum in the United States.

The heritage of our country as a haven for refugees seeking safety, and the strength of our beliefs in a system of laws, demand that we not seek refuge in the legal formalism that a quick interview by an untrained immigration agent would guarantee the protection of fundamental rights. It is counter-intuitive to expect a terrified Haitian peasant or opposition politician from Port-au-Prince to confide to the first uniformed American secrets that would have resulted in imprisonment or death in Haiti. Persons fleeing

governments whose only rule of law is the arbitrary terror of the security forces cannot logically be expected to articulate a claim for political asylum immediately upon reaching the United States. The spectre of deserving refugees deported to persecution without cause is reason enough to reject notions of institutionalizing summary exclusion.

II

ADVERSE IMPACT OF AUTHORIZING THE DETENTION FOR
INDEFINITE PERIODS OF FOREIGN NATIONALS
INCLUDING ASYLUM APPLICANTS

Under the proposed Emergency Powers legislation, the prospect of indeterminate or indefinite detention looms as a real possibility for many affected aliens. Section 240B (a) (4) provides the detention of every alien, except those who beyond a reasonable doubt are entitled to be admitted into the country, pending a final determination of admissibility, parole or deportation. Nor is this decision to detain, over which the Attorney General exercises wide discretion, subject to court review except in narrowly defined habeas corpus proceedings.

This extended mass detention policy may result in an inhumane and unnecessary repetition of the recent ordeal of the Haitian refugees. It would also mark a stark

departure from established practice and particularly threaten to undermine the exercise of fundamental rights by those seeking asylum in our country. Such an extended detention policy would also result in scathing attention being paid to those areas where the detention camps were located. Residents of southern Florida already know the impact of the national reputation of being "the place where the Haitians were imprisoned." In a study published in June 1983, the United States General Accounting Office concluded that "the cost and the adverse humanitarian effects of long-term detention do not make it attractive as a normal way of dealing with undocumented aliens seeking asylum."¹³ Yet, this legislation grants the authority to detain persons "in any prison or other detention facility or elsewhere, whether maintained by the Federal Government or otherwise, ..." (Section 240B (a) (4) (a)).

Traditionally, aliens seeking admission to the U.S. have not been detained after a short processing period, unless they were demonstrated to be security risks or likely to abscond. The traditional release policy was recognized in 1950 in an opinion by Justice Clark who had been Attorney General during the drafting of the Immigration and Nationality Act:

The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted... Physical detention of aliens is now the exception, not

the rule, and is generally employed only as to security risks or those likely to abscond... certainly this policy reflects the humane qualities of enlightened civilization.¹⁴

This traditional emphasis on releasing aliens pending the completion of their proceedings is noted in the I.N.S. Field Inspector's Handbook,¹⁵ and was most recently confirmed in sworn testimony by two former I.N.S. General Counsel, Sam Bernsen and Charles Gordon, at the trial of Louis v. Nelson, held in the Southern District of Florida.¹⁶ There is little dispute that a liberal release policy based on obvious and overwhelming humanitarian concerns is well established in the United States.

A policy of indefinite detention further threatens the rights of applicants for political asylum. Detention greatly reduces the possibility that an asylum applicant can benefit from effective assistance of counsel and can adequately complete an application for political asylum. It is clear from the experience of the Haitian boat people that indefinite detention directly interferes with the exercise of the statutory right of aliens to request political asylum in the U.S. This interference may constitute a violation of Article 31 of the Protocol Relating to the Status of Refugees which prohibits the imposition of penalties on asylum applicants "on account of their illegal entry or presence," as well as unnecessary "restrictions" on their movement.

Detention also interferes with an alien's right to apply for political asylum under U.S. and international law, through greatly complicating the process of collecting the necessary identification and documentation to support an asylum claim. There is a great likelihood that the detention power would be used selectively against nationals from some countries and not against those from others. Two federal courts have recently found illegal the detention policy implemented by the I.N.S. in May of 1981 which affected the Haitians disproportionately. In April 1983, the U.S. Court of Appeals for the 11th Circuit went further, finding that this selective detention was unconstitutional and discriminatory.

The treatment of the Haitian refugee boat people since 1979 provides numerous examples of how the conditions of indefinite detention can be so onerous as to force an asylum applicant to waive his or her right to apply for asylum and return home "voluntarily."

Ironically, one of the most eloquent descriptions of why continued detention violates the Protocol Relating to the Status of Refugees and the earlier Convention, was provided by the U.S. Government itself in testimony before Congress while the Protocol was being debated in 1968:

The Protocol - like its predecessor, the 1951 Convention Relating to the Status of Refugees - is a determined effort by the United Nations to secure world-wide agreement that refugees everywhere must be given

the protection and certain basic rights which are essential if they are to be given the chance to live as self-supporting and self-respecting human beings. We are all too familiar with the tragic human and political consequences which derive from situations in which refugees are denied these fundamental human rights, and instead are kept in camps indefinitely, and are thus committed to dependency and denial of meaningful existence.¹⁸

Beginning in May 1981, Haitian asylum applicants arriving in the U.S. were placed in detention, first in the Krome Avenue North Detention Facility in Miami and, as protest concerning the overcrowded and unsanitary conditions there grew, in ten federal prisons and I.N.S. facilities in five states and in Puerto Rico. In July of 1981, Attorney General William French Smith formally announced the Administration's new immigration program and detention policy. By September 1981, over 2,700 Haitians, and only Haitians, were held in ten isolated locations, far from attorneys, interpreters, or any contact with the Haitian community. In all save the most formalistic of worlds they were thus effectively denied the right to apply for asylum in the U.S.

According to one court, indefinite detention appeared "intended to treat Haitians as poorly as permissible during their stay in the United States so that others would be deterred from immigrating."¹⁹ Detention under inhumane conditions that would never be tolerated for convicted criminals was used to simply force the Haitians to leave the U.S. without completing their asylum applications.

The punitive long-term detention of the Haitian refugees was further exacerbated by the sub-standard conditions at the prisons where they were detained for fourteen to eighteen months. I have personally visited most of these facilities as have representatives of our member organizations.

Typically, these facilities -- designed only for short term detention -- were overcrowded and underequipped, often resembling concentration camps. While conditions at the Krome North facility shocked many Floridians in the Fall of 1981, conditions at other facilities were indisputably worse. Citing the Immigration Service and the Public Health Service as authority, the General Accounting Office has concluded that "the Haitian detainees, for the most part, were housed in facilities that were unsuited for long-term care. In addition, services and basic amenities were minimal. The mental health of long-term detainees was perhaps the most serious problem with which the Public Health Service could not effectively deal."²⁰ During the indefinite imprisonment many refugees exhibited symptoms of physical and psychological distress and there were twenty-nine suicide attempts reported by the National Institute of Mental Health. Serious medical conditions like gynecomastia went undiagnosed and untreated. At the Immigration facility in Brooklyn, Haitians who had never been confined indoors for an entire day in their lives were prevented from ever seeing the sun and sky for eighteen months.

The Haitian detention program was predictably expensive for the Federal government, costing many times more than a humane and orderly program providing for the release of the Haitians pending the final determination of their asylum claims. The General Accounting Office estimates that the long-term detention of the Haitians cost the Federal government about \$49 per day per detainee, although the cost varied between \$35 and \$65 depending on the detention facility.²¹

Haitians were detained in remote regions in substandard conditions not because they were likely to abscond or because they were security risks. The Haitian boat people were detained without any consideration of individual circumstances as a punishment to discourage them from asserting or pursuing asylum claims and to deter their fellow nationals from seeking refuge in the U.S.*

III

ADVERSE IMPACT OF "INTERDICTION" OF PERSONS INCLUDING ASYLUM APPLICANTS

The Immigration Emergency Powers Act authorizes the forcible interception or interdiction on the high seas of boats carrying potential asylum applicants, and it authorizes *This treatment impermissibly imposes "penalties" on aliens because of their illegal entry (in violation of Article 31, Convention on Refugees), unnecessarily restricts the movement of refugees (in violation of Art. 31, Convention), and the conditions of detention in inadequate facilities violates the refugees' right to humane treatment during their custody (in violation of Art. 25, American Declaration of the Rights of Man).

their return to the country from which they fled (Section 240B (a)). This interdiction provision is a radical departure from established practice which allows an alien to present his or her case to an immigration judge through counsel, and it disregards the minimal norms of international law. Article 33 of the Protocol Relating to the Status of Refugees and Section 243 (h) of the Immigration and Nationality Act impose a clear duty not to expel or return a potential refugee to a territory where his or her life or freedom may be in danger. It is irrational to believe that a terrified refugee from a repressive government will articulate the basis of an asylum claim, or even know of the existence of legal protections and the right to claim political asylum, when undergoing an abbreviated interview with unknown American military personnel, on the high seas, in the presence of shipmates.

An interdiction program similar to that proposed in the Act is already in effect against the flimsy sailboats of the Haitian refugees, and based on our experience, concerns about a further institutionalization of such a program are more than justified.

On September 29, 1981, President Reagan signed an Executive Order authorizing the interdiction of Haitian sailboats in the Caribbean by the U.S. Coast Guard pursuant to an agreement with the Government of Haiti and acting in cooperation with the Haitian Navy. It is somewhat ironic that only months

before this announcement that the United States was giving stern official lectures to the Malaysian government about its obligations under international law not to turn away any refugee boats from Vietnam. Instead of working to ameliorate the repression and corruption in Haiti which causes refugee flight to the United States, our government has insisted on a policy of preventing Haitians from filing asylum claims by intercepting and returning to Haiti their small, often overcrowded boats.

The State Department has announced that all persons would receive the full and fair hearing on their claims on the high seas that they are guaranteed under international law. But how is this possible when they are on a crowded Coast Guard cutter, three miles off Haiti, in the presence of Haitian military personnel, and without any access to lawyers?

Finally, our government has resorted to an anaemic legal fiction to justify this policy of interdiction and to evade domestic and international legal obligations of the U.S. not to return legitimate refugees to countries where their lives are in danger, and to provide them with basic legal safeguards in determining their eligibility for asylum. Technically, we are told, the U.S. Coast Guard is not intercepting Haitian refugees and returning them to Haiti because of domestic legal imperatives. Rather, according to the State Department, we are only helping the Haitian Government

to enforce its own immigration law. This legalistic sleight of hand is not only an affront to Americans and Haitians alike, but it also results in increasingly scarce revenues collected from the U.S. taxpayer being used to enforce the laws of a regime generally accepted to be the most corrupt and repressive in the hemisphere.

Our experience indicates that mass influxes of persons requesting refugee status can be handled in an orderly manner. Interdiction is an entirely unacceptable method of policing our borders by denying to those persons entitled to refugee status a fair opportunity to have their claims determined. Although both the Executive Order which established the Haitian interdiction program and the U.S.-Haitian bi-lateral accord stipulate that no person who is a bonafide refugee may be returned without his consent to the country from which he fled, as a practical matter, the procedures under which the program is carried out preclude any meaningful or effective screening of refugees. Unless potential applicants for political asylum are asked probing questions concerning their reasons for fearing persecution, in a private setting, by legally trained specialists, with the assistance of skilled interpreters, interviews on board Coast Guard vessels are empty legal formalisms or, in the words of a New York Times editorial, are "walrus courts" designed to deport all those interdicted.

IV

ADVERSE IMPACT OF SEVERE RESTRICTIONS
OF THE FUNDAMENTAL RIGHT TO JUDICIAL REVIEW
OF ADMINISTRATIVE DETERMINATIONS

Under the proposed Immigration Emergency Act, judicial review would be impermissibly restricted. Perhaps the most manifest symptom of the distorted priorities of this legislation involves its recognition that ships seized under this Act should benefit from traditional rights of judicial review (Section 240D (a) (2)), although refugees fleeing to our country in fear for their lives are completely denied the fundamental right of judicial review of denials of claims for political asylum in our country (Section 240B (a)).

This Act also gives the unreviewable power of life or death to an immigration inspector without special training as to a claim for political asylum or other claim, when the applicant does not present lawful entry documents to support the claim of admissibility (Section 4, amending Section 235 (b) of the I.N.A.).

The Act also proposes restrictions on the jurisdiction of the courts to review decisions made pursuant to the Act, virtually guaranteeing that violations of fundamental due process rights will occur. Only habeas corpus proceedings would be available on the issue of whether the individual in question falls within the category of aliens subject to the coverage of the Act. Section 204B completely eliminates

court jurisdiction over determinations of admissibility or determinations of applications for political asylum in this country.

We strenuously object to these restrictions both because of the hallowed place that judicial review occupies in our entire system of government, and because it is precisely in times of emergency that the prospects of procedural violations are greater and that serious mistakes are made requiring access to the courts and the ultimate protection of the checks and balances of judicial review. We believe that this right of judicial review is mandated not only because of domestic and international legal norms, but that it is essential to our entire nation's sense of fundamental justice and fairness and as a necessary corrective feature of our system of laws.

Our constitutional system of checks and balances demands that every governmental action or administrative act be subject to a degree of judicial scrutiny, and it is fundamentally incompatible with our system of government for a department of the Executive to be the sole judge of its own acts. Judicial scrutiny is especially crucial in the context of claims for political asylum because the stakes are so very high, and miscarriages of justice may well have grave consequences that can never be corrected. Federal court jurisdiction over determinations of the Immigration inspectors must be maintained not only to protect refugees seeking

haven in the U.S., but because access to the courts is a fundamental right of all persons in this country. Depriving the relatively small number of asylum seekers of their day in court will not deter refugees from fleeing to our shores, and will only undermine our own constitutional protections and the intricate balance that is basic to our system of government.

Proposals of streamlined adjudication processes appear to be based on the idea that courts are the major bottleneck in immigration matters. We ask the Subcommittee to consider that backlogs where they exist have far more to do with administrative inefficiency and with ill-conceived government-sponsored encroachments on the due process rights of aliens. Predictably, the courts have repeatedly sustained class action challenges to correct fundamental violations.

V

CONCLUSIONS

This presidential emergency powers legislation is a radical and dangerous departure from prior practice and due process protections fundamental to our system of laws, and unnecessary since the President arguably possesses many of these powers already. The provisions authorizing summary exclusion, indefinite detention, and the interdiction of refugee boats violate our constitutional requirements and contravene international legal norms embodied in existing statutes. This legislation is legally untenable, and finds its moral rationale in a vengeful notion of deterrence.

- A. The "Haitian program" of the Immigration Service has been a trial-run for this legislation, and courts have repeatedly found that it violated statutory and constitutional requirements. As a nation we can ill-afford to institutionalize such a policy.
- B. Recent experience with the "Haitian Program" also demonstrates that it is unwise to construct new detention facilities for aliens including applicants for political asylum in this country. Indefinite detention in isolated areas often prevents access to

attorneys and translators thereby greatly increasing the possibility of miscarriages of justice with the fateful consequences of returning bonafide refugees to torture and even death. Detention in remote prisons or camps often prevents access to relatives and friends causing serious and unnecessary suffering and extensive delay in the adjudication of asylum claims. Recent experience has demonstrated that such facilities are very expensive to operate.

VI

RECOMMENDATIONS

Our testimony has detailed specific reasons why we oppose this proposed legislation. We also recognize a responsibility to facilitate public consideration of these fundamental issues by suggesting some policy considerations:

1. Clarification of these issues will be furthered if we insist on preserving a clear distinction between the rights of asylum seekers as contrasted with the rights of immigrants.

2. More effective measures should be taken to internationalize the refugee burden. International cooperation is essential to determine temporary protection and ultimate resettlement responsibility for refugees. Greater cooperation should be accorded international assistance agencies, like the United Nations High Commissioner for Refugees, to participate in refugee and asylum determinations and administer short-term transit camps.
3. In good conscience, we can only conclude that persons are migrants unqualified for entry and return them if we have first applied our refugee laws without discrimination, and guaranteed respect for the fundamental rights of all asylum seekers.
4. The dramatic increase in recent years in the number of refugees demonstrates that the only effective solution to refugee emergencies in the long-term is the eradication of the repression and the sheer misery that is the daily reality in many countries in our hemisphere. We encourage the public and private sectors to cooperate in encouraging the establishment of the rule of law and human rights protections in these countries.
5. We should adopt an even-handed temporary sanctuary policy, similar in concept to the historical grant of "Extended Voluntary Departure." Safe haven would provide temporary

protection from deportation for persons fleeing civil strife in their homelands, but would not make them eligible for future legal residency in the U.S. This policy is presently practiced by Mexico and Honduras, with regard to persons fleeing civil war in El Salvador, and a broader regional approach would appear worthy of consideration. Such a temporary sanctuary or safe haven policy would complement, but could not replace, an even-handed refugee policy permitting qualified refugees to remain here permanently.

6. The catalyst for the request to Congress to grant the President emergency immigration powers, was the Mariel flotilla of 1980, involving 125,000 Cubans, and the arrival of a much smaller number (approximately 25,000) of Haitian refugees between 1979 and 1982. Yet, the very refugees involved in these emergencies still are suspended in a legal limbo. Both these groups of "boat people" have risked their lives in coming to the U.S., and have established such considerable equities in our society that their presence here should be legally confirmed immediately.

In the absence of a comprehensive legalization program with an eligibility cut-off date of January 1, 1982, as recommended by the Judiciary Committee of the House of Representatives, Congress should enact special legislation granting some permanent status to these deserving persons.

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