

URGENT CALL TO STOP ALL U.S. DEPORTATIONS TO HAITI

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I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

ON OCTOBER 10, 2022, 40-YEAR-OLD HAITIAN NATIONAL ROODY FOGG, WHO HAD LIVED IN THE UNITED STATES (U.S.) SINCE THE AGE OF 12, DIED A PREVENTABLE DEATH. Mr. Fogg died from cholera-like symptoms while illegally detained in the Haitian National Penitentiary. Mr. Fogg was deported to Haiti on April 5, 2022. He was a green card holder and had lived in the U.S. most of his life. While the U.S. has recently redesignated Haitian nationals as eligible for Temporary Protected Status (“TPS”), many people with criminal convictions—including just two misdemeanors—are categorically denied this form of protection from deportation. The exclusion of persons with criminal records has again reached a crisis point in light of recent reports that Haiti has resumed its prior practice—illegal under Haitian law—of automatically detaining individuals with criminal records who have been returned by the U.S. to Haiti (“deported individuals”) in the National Penitentiary and other jails. Immediately upon arrival in Haiti, deported individuals are apprehended by the General Directorate of the Haitian National Police (“DGPNH”) and are indefinitely imprisoned without receiving any charges or being afforded due process. The U.S. has been aware of this practice since at least 2010, yet it continues to deport Haitians ineligible for TPS to face illegal detention, torture, and, in some cases, death.

The University of Miami School of Law Human Rights Clinic (“HRC”), with support from the University of Miami School of Law Immigration Clinic (“IC”), Haitian Bridge Alliance (“HBA”), Alternative Chance/Chans Alternatif, the University of Pennsylvania School of Law Transnational Legal Clinic (“TLC”), and Robert F. Kennedy Human Rights (“RFK”), documented conditions rising to the level of torture in Haitian prisons.

Amidst a dire humanitarian and political crisis, the Haitian government has resumed its practice of automatically and immediately detaining individuals with past criminal records who are deported by the U.S. Michelle Karshan, Executive Director of Alternative Chance, which provides services to Haitians with a criminal record who have been deported, is aware of at least 30 Haitians deported from the U.S. over the last year who have been detained by police upon arrival, held in a police holding cell and/or the National Penitentiary indefinitely, inflicted with severe pain and suffering, and extorted for a series of bribes for release, though she estimates that the numbers are higher. None of these individuals had an open warrant or any legal charges pending against them. Moreover, the Haitian police are also targeting individuals without a U.S. criminal record. Ms. Karshan knows of at least two individuals deported from the U.S. and subsequently jailed in Haiti who did not have a criminal conviction. Haiti has suffered and continues to suffer from political instability, gang violence and natural disasters, which have led to immense terror and hardship for the Haitian people,

especially those illegally detained in Haitian prisons. While gangs are terrorizing Haitian society with kidnappings for ransom on the streets, police are detaining and harming individuals because of their past records (for which they have already served their time in the U.S.).

In the prisons, deported individuals and other detainees are denied basic necessities, including physical safety, food, water, medical supplies, and adequate living conditions. These individuals are held like animals. They are forced to live in cramped 15-foot by 20-foot cells that were meant to hold ten to fifteen inmates, but instead hold upwards of sixty-seven individuals. In addition to the overcrowding, the cells are infested with cockroaches and rats, which run over the detainees' bodies and faces as they sleep. Cells lack space to lay down, and as a result, detained people are forced to sleep standing or sitting up. Prisoners' access to food is restricted to only two to three substandard meals per week unless they are fortunate enough to have family outside the prison to provide them with daily food. Further, the only water available in the prisons stagnantly sits in an uncovered five-gallon drum in their cells. This water is used both for drinking and bathing and notably so, deported individuals have reported that they have to remove dead rats from this water supply daily. Prisoners who protest this horrific treatment are met with **retaliatory physical violence and threats of death** by the prison guards. Guards also target deported individuals with violence, claiming that deported individuals are “messing up their country.”

The deprivation of the most basic human rights, especially amidst ongoing health crises like cholera and COVID-19, have been deadly for deported individuals in Haitian prisons. The egregious mistreatment in the prisons have already resulted in the death of at least one deported individual, Roody Fogg, and the deaths of more than 50 other prisoners. While some of the detained individuals have since been released because of pressure from families, activists, and media coverage regarding their illegal detention, activist pressure for each detained individual is not possible. Individual campaigns are not a sustainable form of long-term protection against the systemic rights abuses facing Haitian deportees. All U.S. deportations to Haiti must stop.

THE U.S. HAS ACTED TO STOP DEPORTATIONS TO HAITI IN THE PAST AND NOW, THE U.S. SHOULD DO SO AGAIN. In January 2011, the Obama-Biden administration (“Obama administration”) learned about the prison abuse in Haiti after the death of Wildrick Guerrier. Mr. Guerrier was deported from the U.S. because of his ineligibility for protection under TPS and died from cholera in a Haitian prison that same month. In October 2022, Roody Fogg met the same terrible fate that Mr. Guerrier did in 2011—a preventable death that would not have occurred if deportations had been halted. In 2011, upon learning about the horrific jailing practices, the Obama administration temporarily halted all deportations to Haiti for two months. Based on the comparably horrific situation in Haitian prisons right now, the Biden administration should follow suit by stopping all deportations to Haiti. Although the Biden Administration redesignated TPS for Haitians in the U.S. on December 6, 2022, those ineligible for TPS because of their past criminal convictions still face grave danger upon return to Haiti. Most recently, on December 13, 2022, the U.S. deported an estimated 26 Haitians to Port-au-Prince, many of them with a past criminal record. The lives and

safety of those returned to Haiti are in dire risk, especially those subject to indefinite detention. By continuing to deport individuals to Haiti, the U.S. is violating the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) and the principle of non-refoulement under customary international law.

THE U.S. SHOULD TAKE THE FOLLOWING STEPS TO STOP THESE ABUSES:

- (1) Immediately cease all deportations to Haiti.
- (2) Take all measures to ensure the immediate release of all Haitians removed by the United States who are being held in the Haitian National Penitentiary and other prisons or police station holding cells.
- (3) Take all measures to ensure due process and full and equal access to the asylum system and other forms of complementary protection, including, but not limited to: agreeing to reopen the deportation cases of individuals facing jailing in Haiti; ensuring access to high quality Haitian Creole interpreters, access to legal presentations, and requiring fear screenings for all Haitians at risk of return to Haiti to protect against violations of refoulement.
- (4) Refrain from placing asylum seekers and other migrants seeking international protection in detention, and instead using proven community-based case support programs for those that need them.
- (5) End discriminatory mistreatment of Haitian asylum seekers and migrants, investigate abuses committed against Haitian nationals, and bring those responsible for abusive actions to justice.
- (6) Ensure consistent enforcement of rules for frontline officials, including law enforcement officials, immigration authorities and asylum officials; forbid racial profiling; and ensure robust systems of monitoring and access to effective remedy for victims.
- (7) Take steps to address racist and xenophobic attitudes and behavior towards non-citizens, or stigmatization based on race, color, descent or national origin by politicians, the media and wider society, as required by international law, for example, by implementing public anti-discrimination campaigns.
- (8) Create long-term policies that support Haitian-led solutions based on the effective participation of Haitian civil society in the process of creating a more equitable Haiti where Haitians will feel less pressures to flee the country.

II. METHODOLOGY

The information contained within this document is the product of fact-finding research conducted by the University of Miami School of Law Human Rights Clinic (“HRC”), with support from the University of Miami School of Law Immigration Clinic (“IC”), Haitian Bridge Alliance (“HBA”), Alternative Chance/Chans Alternativ, the University of Pennsylvania School of Law Transnational Legal Clinic (“TLC”), and Robert F. Kennedy Human Rights (“RFK”). Information in this report was also sourced from reports previously published by these groups and their partners, including the University of Chicago Law School International Human Rights Clinic, Capital Area Immigrants’ Rights (“CAIR”), Black Alliance for Just Immigration, Human Rights First, the Refugee and Immigrant Center for Education and Legal Services, Amnesty International, the Center for Gender and Refugee Studies, and Human Rights Watch. Our fact-finding included interviews with Haitian nationals recently deported from the U.S. and held in or recently released from Haitian prisons, their families and lawyers, and journalists covering Haitian deportations. **This report is not an exhaustive summary of all the human rights violations implicated in deportations to Haiti.** Rather, it focuses on the specific mistreatment experienced by deported individuals in order to implore decisionmakers to take immediate action.

III. HAITI IS FACING THE WORST SECURITY AND GOVERNMENT CRISES IN DECADES¹

YEARS OF POLITICAL INSTABILITY HAVE CULMINATED IN A COMPLETE BREAKDOWN OF HAITIAN DEMOCRACY.² In 2019, former President Jovenel Moïse failed to convene parliamentary elections and began ruling by decree.³ In January 2020, the mandates of all but ten members of Parliament and all mayors terminated due to delayed elections.⁴ This left President Moïse and the Haitian Tèt Kale Party to run the country without legislative oversight and in violation of the Haitian Constitution.⁵ On July 7, 2021, President Moïse was assassinated. The motives and identities of the assassins remain unknown. The power vacuum created by his assassination led to the *de facto* control of Haiti by Dr. Ariel Henry, who was appointed as prime minister a few days before Moïse was assassinated. Dr. Henry now runs the country without any constitutional legitimacy.⁶ Further, Dr. Henry is implicated in the assassination of President Moïse, and several prominent officials have called for him to step down as prime minister.⁷ No date for elections has been set as of the creation of this report.

HAITI'S ECONOMY HAS COLLAPSED. The inflation rate is around 30 percent,⁸ the value of the Gourde dropped 32 percent from January to August 2022,⁹ and the price of food and gas has doubled, and in some cases quadrupled.¹⁰ According to the U.S. Department of State, “the August 2021 earthquake in the south of Haiti, the assassination of the Haitian president, and increasingly emboldened criminal actors further complicate the Haitian government’s capacity to achieve macroeconomic stability, create jobs, and encourage economic development through foreign trade and investment.”¹¹ The failing economy has had painful implications for life in Haiti in recent months, as a gallon of gas has cost as much as thirty U.S. dollars on the black market in Port-au-Prince¹² and Haitians have to spend the majority of their income on food.¹³

MALNUTRITION AND STARVATION

Haitians in and outside of prisons are denied the right to food as enunciated in Article 11 of the International Covenant on Economic, Social and Cultural Rights.¹⁴ For the first time ever in Haiti, as of 2022, 19,000 people are considered to be living in famine (a phase 5 catastrophe on the Integrated Food Security Phase Classification.)¹⁵ Seven million Haitians are facing acute hunger.¹⁶ Gang violence and the gas shortage prevents families, aid organizations, and activists from delivering food to prisons. Haiti also continues to struggle with rising inflation and domestic agricultural production amidst the turmoil.¹⁷ In prisons, detained individuals are unable to access food and there are reports of dozens who have starved to death after being deprived of food for over two months.¹⁸ Alternative Chance Director Michelle Karshan, who works with deported individuals daily, shared that **those who are detained are so emaciated that they evoke images of some of the twentieth century’s most horrific human rights abuses, including victims of concentration camps in the Holocaust.**

ARMED GANGS OUTNUMBER AND OUTGUN HAITIAN POLICE FORCES AND REIGN TERROR ON THE GENERAL POPULATION, PREVENTING THE GOVERNMENT FROM PROVIDING BASIC SERVICES AND HUMANITARIAN GROUPS FROM PROVIDING AID. Gangs, often with political support, have taken control of the country.¹⁹ The gang control of Haiti exacerbates health and safety concerns as gangs terrorize the streets committing acts of sexual and physical violence,²⁰ conducting street blockades, and taking control of crucial resources like gas.²¹ In 2021, Human Rights Watch observed a 333% increase in the number of human rights violations and abuses against the right to life and security of person.²² Haitian women and children are increasingly being targeted for rapes, torture, kidnappings, and killings by gangs.²³ From the lack of access to basic goods and services, survivors struggle to access care services or report their abuse.²⁴ Violence has prompted closures of schools, businesses, markets, and medical facilities. Humanitarian access is a serious challenge and assistance continues to be delayed by ongoing shootings and roadblocks, which have paralyzed the economy, interrupted movement, and restricted essential supplies of food, medicine, and fuel.²⁵ Further, an estimated 1.5 million people in Port-au-Prince live in areas under gang influence and more than 21,500 people have been displaced by gang violence.²⁶

IN JULY 2022, THE U.S. STATE DEPARTMENT REISSUED A LEVEL 4 TRAVEL WARNING IN RESPONSE TO THE WORSENING GANG VIOLENCE IN HAITI.⁴⁴ In response to an announcement on September 11, 2022 that the government would cut fuel subsidies due to their high costs, the gangs dug trenches and littered shipping containers at entrances to the fuel terminal in protest.⁴⁵ It was not until November 2022 that the gangs ended their blockade of the fuel terminal.⁴⁶ The Haitian government, in response to the blockade, requested international aid to create a “specialized armed force” to help resolve its fight for resources with gangs.⁴⁷ The U.S. State Department responded by saying it “will review [the] request . . . and determine how [it] can increase [its] support to address Haiti’s . . . security constraints.”⁴⁸

LACK OF ACCESS TO WATER AND SANITATION²⁷

According to the United Nations Resolution 64/292, **all people have, “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and human rights.”**²⁸ The right to water and sanitation are explicitly referenced by the Convention on the Elimination of All Forms of Discrimination against Women,²⁹ the Convention on the Rights of the Child,³⁰ the U.N. Committee on Economic, Social and Cultural Rights,³¹ and other treaties and their respective bodies.³² Currently, Haiti possesses the most underserved water and sanitation system in the Americas. Access to water worsened after the earthquake in 2010 which destroyed the majority of the water infrastructure.³³ In 2015, the sewer systems and wastewater treatment were almost non-existent.³⁴ The most recent earthquake in August, 2021 demolished and ruined 130,000 buildings and over 80 aqueducts and water systems causing at least 81,000 Haitians to lose water.³⁵ Within the past year, the gas blockade in 2022, prevented water trucks from supplying neighborhoods.³⁶ There are an estimated 3.3 million people that do not have access to safe drinking water in Haiti.³⁷ Furthermore, prisoners are not given potable water in the National Penitentiary which leads to dehydration and worsening symptoms amidst cholera outbreaks in the National Penitentiary.³⁸ Detainees live in poorly lit cells without proper ventilation, clean water, or sanitation facilities.³⁹ Human Rights Watch wrote that, “[prisoners] defecate in buckets that are not regularly emptied.”⁴⁰ The lack of bathrooms force prisoners to defecate and urinate in buckets.⁴¹ There are reports of prisoners in the National Penitentiary “sleeping in a sea of feces.”⁴² Cholera is highly contagious and sharing buckets contained with feces, urine, and vomit increases the rapid rate of spread.⁴³

CONDITIONS IN HAITI HAVE PROMPTED A HEALTH CRISIS AND A CHOLERA OUTBREAK.

According to the World Health Organization (“WHO”), “Between 2 October through 6 December 2022, a cumulative total of 13,672 suspected cholera cases, including 283 deaths . . . have been reported by the Haiti Ministry of Public Health and Population from all ten departments in the country.”⁴⁹

Further, WHO warned that the political, economic, and security crisis in Haiti increases its vulnerability to the ongoing cholera outbreak.⁵⁰ Health Through Walls, an organization that provides incarcerated individuals in low-resource countries with health services, reported that from October 4 through October 11, 2022, at least 21 prisoners died and 147 were hospitalized in the Haitian prisons.⁵¹ After more than three years with no reported cases of cholera in Haiti, the overall risk for a deadly outbreak at a national level is very high.⁵²

U.S. PRESIDENT JOE BIDEN SAYS HAITI FACES “AN ENORMOUS HUMAN CRISIS”⁶¹ THAT REQUIRES IMMEDIATE AND URGENT ATTENTION.

Despite this acknowledgement, the U.S. continues deporting individuals to Haiti to face grave danger upon their return.⁶² On November 3, 2022, the U.N. High Commissioner for Refugees (“UNHCR”) called for countries “to stand in solidarity with Haiti and urge[d] them not to return Haitians to a country that is extremely fragile.”⁶³

Access to Doctors and Medicine⁵³

Haitians in and outside of prisons are denied the right to health as enunciated in Article 12 of the International Covenant on Economic, Social and Cultural Rights. During the recent fuel blockade, Haitian hospitals relying on fuel-power, feared their closure due to the scarcity of fuel in the country.⁵⁴ **Three-quarters of the major hospitals in Haiti are affected by the lack of fuel.**⁵⁵ The fuel-shortage and recent gas blockade prevent ambulances from functioning.⁵⁶ Prisoners are dying due to the lack of access to medical care. At least 12 Haitian prisoners died due to a lack of food and medicine in one month between August and September, 2022.⁵⁷ In most detention centers, inmates do not have adequate medical care and medicines which puts them at risk for a medical emergency.⁵⁸ Concerns grew as Cholera spread through the prisons in October 2022.⁵⁹ **In 2022, the United Nations noted that there is only one doctor for more than 1,000 detainees and drugs deliveries are “rare and limited.”**⁶⁰

IV. THE U.S. SHOULD CEASE DEPORTING HAITIANS TO FACE ILLEGAL DETENTION AND TORTURE

The U.S. is deporting Haitians to danger, and in some cases death. More than 26,000 Haitians were expelled from the U.S. between September 2021 and June 2022 in spite of Haiti experiencing one of the worst political and humanitarian crises in its history.⁶⁴ Most recently, on December 13, 2022, the U.S. deported an estimated 26 Haitians to Port-au-Prince, many of them with a past criminal record.⁶⁵ U.S. deportations of individuals ineligible for TPS are particularly concerning as a result of the Haitian government's resumed practice of automatically—and illegally—detaining individuals who have been returned with criminal records in the National Penitentiary and other jails.⁶⁶ By continuing to deport Haitians in light of this practice, the U.S. government pursues a policy of cruelty that violates international human rights law.

While the ongoing humanitarian crisis in Haiti is horrific, the effects in the prisons are magnified and amount to torture.⁶⁷ The four stories below detail the human rights violations endured by Haitian nationals who have been deported from the U.S. and placed in overcrowded Haitian jails upon their arrival. The stories below detail extreme suffering and death as these returned individuals lack access to the most basic necessities, including food, water, medical supplies, and adequate living conditions, amidst a cholera outbreak and the COVID-19 pandemic.

“America knows of the torture detainees endure once deported to Haiti”

— Bergson Morin, Haitian national recently deported and jailed, in a November 2022 interview with the University of Miami School of Law Human Rights Clinic.

Roody Fogg

“Roody was my friend. I would eat with him, we shared the same cell block, the same living space and we would talk about our dreams and what we were going to do when we were released. He was a great person that just wanted to make people laugh all day – even in situations where there shouldn’t be laughter. To wake up the next morning and see him stiff and lifeless and gone, was just crazy...”

– *Bergson Morin, in a November 2022 interview with the University of Miami School of Law Human Rights Clinic.*

ON OCTOBER 10, 2022, ROODY FOGG, 40, DIED WHILE ILLEGALLY HELD IN A HAITIAN PRISON.⁶⁸ Mr. Fogg was deported to Haiti on April 5, 2022, after being a green card holder and living in the U.S. since the age of 12.⁶⁹ Mr. Fogg was immediately detained upon his arrival and died of cholera-like symptoms in a Haitian prison six months later. After speaking with Mr. Fogg’s cellmates, the managing attorney with CAIR, Eleni Bakst, uncovered that Mr. Fogg suffered diarrhea and vomiting until he felt he could not stand anymore and “*saw black*.”⁷⁰ His cellmates showered him and called for help, but they told Ms. Bakst he never saw a doctor or received medication.⁷¹

In an emailed statement, Mr. Fogg’s mother said: **“There was no medical care for him when he was sick. If there was medicine, he wouldn’t have died ... There, it’s like they threw him in a corner.”**⁷² Cholera poses an extreme risk in facilities where inmates face severe overcrowding, lack of clean water, and medical care.⁷³ Mr. Fogg’s death, and the deaths of more than twenty other prisoners in October 2022, resulted from the inhumane conditions of the Haitian jails during a cholera outbreak.⁷⁴

Mr. Fogg’s mother expressed that she does not want others to suffer like her son stating that **“It is misery they are going through over there.”**⁷⁵ Mr. Fogg’s mother went on and urged to “*keep trying, try for others not to die, I don’t want others to be lost too.*”⁷⁶

Billy Balisage

BILLY BALISAGE WORRIED FOR HIS SURVIVAL IN AN OVERCROWDED PRISON WITH 4,000 PRISONERS, DESPITE BEING BUILT TO HOLD ONLY 800 PRISONERS.⁷⁷ Billy Balisage, a 42-year-old deported individual from Elizabeth, New Jersey, and a father of three, was on the same removal flight to Haiti on April 5, 2022, as Mr. Fogg. When Mr. Balisage first arrived, he was sick and unable to walk, so he was placed in a holding area for sick people.⁷⁸ Mr. Balisage said in a phone interview from prison that **“the situation I’m in, I feel like basically I’m in my death bed, I can’t do nothing. I don’t know anybody in Haiti at all. There’s no nurses, no doctors. If you’re in pain, you’re just going to die.”**⁷⁹

Mr. Balisage served jail time in the U.S. after a 1998 criminal conviction at the age of 18. Today, Mr. Balisage’s life has been uprooted.⁸⁰ He worries about his survival: **“almost every day, somebody is dying in here. At night, you hear the gates banging. People pass out. Last night, it was a couple of people. They were sick real bad and I don’t know if they died or not.”**⁸¹ Following pressure from his family, activists, and media coverage regarding his illegal detention, Mr. Balisage was recently released from jail in Haiti.

Patrick Julney

PATRICK JULNEY WAS TRYING TO SURVIVE IN A HAITIAN PRISON THAT HE DESCRIBED AS A “HELLSCAPE.”⁸² Mr. Julney was deported on June 7, 2022 after a three-year battle to stay in the U.S.⁸³ Upon his forced return to a place he last saw as a toddler, Mr. Julney was jailed upon arrival without an explanation.⁸⁴ When Mr. Julney’s uncle arrived to pick him up after police processing, the police stopped the car before he and his uncle could leave.⁸⁵ The officers said they had to detain Mr. Julney based on *“orders from high up.”*⁸⁶ Haitian police then contacted his wife, Laura McMaster, and demanded \$350 to start paperwork for his release. Two more officers then asked Laura for \$1,500 to release her husband. After a few weeks, Mr. Julney was transferred to the National Penitentiary, where the guards demanded \$6,000 for his release. Each time, the authorities vaguely claimed the money was needed for paperwork to release Mr. Julney.⁸⁷

In a video taken in prison and shared by Mr. Julney’s family and his attorney, Mr. Julney stated **“It’s bad. Medical condition is bad. My ankles are swollen, my legs are swollen. I’ve been sick since I’ve been here. I have no help.”**⁸⁸ The video shows Mr. Julney pointing to a bucket in the corner of his prison cell that he says contains the men’s only supply of drinking and bathing water. The images show his cell has no room to lay down and as a result, the inmates, including Mr. Julney, sleep standing or sitting up.⁸⁹ Families and inmates are extorted for money to receive care, supplies, and release.⁹⁰

Further, Mr. Julney’s “jailers have not provided him with his asthma inhaler or blood pressure medicine.”⁹¹ Mr. Julney’s wife **“lives in fear every day”** and every night she goes to sleep **“not knowing if he’s OK.”** In text messages sent to his wife, **Mr. Julney said he has been beaten, bitten by rats, and has chronic diarrhea.**⁹² Mr. Julney has since been released as a result of pressure from families, activists, and media coverage regarding his illegal detention.

Bergson Morin

BERGSON MORIN, 32, LIVED IN THE U.S. FOR TWENTY-SIX YEARS BEFORE HE WAS TAKEN FROM HIS AUNTS, UNCLES, COUSINS, AND SISTER AND DEPORTED TO HAITI.⁹³ Upon arrival in Haiti, Mr. Morin was apprehended by the DGPNH and placed in a holding cell for individuals who commit violent crimes, which Mr. Morin called a “**deplorable**” hole.⁹⁴ The DGPNH informed Mr. Morin that he had to sign paperwork and they treated Mr. Morin and the other deported individuals as if they were terrorists – threatening to kill them if they ran or moved.⁹⁵ After signing the paperwork, Mr. Morin was taken to a prison and remained there for four days before being sent to the National Penitentiary.⁹⁶ At the National Penitentiary, the inmates were strip searched, completely naked, even in front of the female guards.⁹⁷ Mr. Morin explained *if* he was eating at all, the food would come from his family who would try to visit two to three times a week.⁹⁸ The prison would only give out food two to three times a week and it was usually dirty food, as the kitchen had rats running in and out of it.⁹⁹ Moreover, Mr. Morin has seen other prisoners die from hunger and as a result he learned to stretch his food so he could survive.¹⁰⁰

“I would rather do 15 years in a U.S. prison than one day in a Haitian prison.”

– Bergson Morin in a November 2022 interview with the University of Miami School of Law Human Rights Clinic.

“If you don’t send your loved one money, your loved one is going to die.”¹⁰¹

– Keren Tripodi, Mr. Morin’s sister-in-law who lives in the U.S., stressed in an October 2022 interview with the University of Miami School of Law Human Rights Clinic.

Mr. Morin described the conditions of the prison as “**post-apocalyptic**.”¹⁰² His 15-foot by 20-foot cell, which was probably meant for ten to fifteen people, housed sixty-seven prisoners. Mr. Morin captured images of people shoved and crammed into his jail cell.¹⁰³ The prisons did not provide any of the basic necessities, and it was the prisoners’ responsibility to make the cell slightly livable.¹⁰⁴ For example, Mr. Morin also said the detainees must purchase a thin bed for themselves, otherwise they would have to sleep on cardboard. However, even with the thin bed, detainees have great difficulty sleeping because of the heat and the pests in the prisons, like cockroaches and rats.¹⁰⁵ Mr. Morin also discussed how the jail can go days without power, and that the prison is extremely hot.¹⁰⁶ He also told stories of prisoners’ fingers that were bitten by rats while they slept.¹⁰⁷ Mr. Morin captured the sleeping arrangements in videos where inmates were practically stacked on top of each other.¹⁰⁸ Keren Tripodi, Mr. Morin’s sister-in-law, lamented that **“The stuff that is going on in that jail is inhumane. They are treating them like animals.”¹⁰⁹**

Mr. Morin endured the torture of the prison’s lack of sanitation, lack of clean water, and lack of access to medical care.¹¹⁰ Cholera, a disease spread through drinking water contaminated with feces,¹¹¹ thrives in the Haitian prisons. According to Ms. Tripodi, 42 men died of cholera in the National Penitentiary

on October 25, 2022, and 9 more died on October 26, 2022.¹¹² Mr. Morin shared a video showing an almost empty barrel of water he and his cellmates used for drinking and washing themselves, as well as the bucket they used to defecate, which is not regularly emptied.¹¹³ The reservoir of water for bathing and drinking would have two to four dead rats in it daily—this is the only water available to the prisoners to bathe and drink.¹¹⁴ When Mr. Morin developed an abscess on his face, he had to treat the wound using salt and the water in his cell because he did not have access to medical care. In videos and images captured by Mr. Morin, the bodies of three victims of cholera are sprawled on the dirt floor outside the prison, while the inmates maneuver around them.¹¹⁵

“The
guards
threatened
to kill us.”

— *Bergson Morin, Haitian national recently deported and jailed, in a November 2022 interview with the University of Miami School of Law Human Rights Clinic.*

Deported individuals also experience **mistreatment and violence by the prison guards.**¹¹⁶ In a video, Mr. Morin showed protestors who gathered to fight for their fundamental rights to food and water.¹¹⁷ While protesting, Mr. Morin said the protestors had to have their faces covered because of the gas the prison guards were shooting at them.¹¹⁸ In addition, after Mr. Morin and other deported individuals demanded to speak to the “*person who was holding them in prison for no reason*”¹¹⁹ to express their anger with their current situation,¹²⁰ the guards threatened to kill them. The guards’ Commander backed them up.¹²¹ Mr. Morin explained that the guards “*treated [deported individuals] really, bad, really, really, really bad.*”¹²² The guards pepper sprayed the deported individuals inside a small space and then sent them to a jail block where the prison held Haitian prisoners who committed violent crimes.¹²³ The guards said deported individuals are messing up *their* country; however, Mr. Morin failed to see the correlation because he had not been living in *their* country, so how could the guards hold him responsible?¹²⁴

Mr. Morin was released from prison on October 26, 2022. Prior to his release, his sister-in-law, Ms. Tripodi, was contacted by “*someone in the prison*” to pay a ransom of \$6,000 dollars for Mr. Morin’s release.¹²⁵ However, Mr. Morin luckily received a letter on October 25, 2022, from the Haitian government saying that he will be released from the National Penitentiary.¹²⁶ On the evening of October 26, 2022, Mr. Morin was finally released, but the prison guards were threatening him even as he was leaving the jail.¹²⁷ **The guards said that if they saw Mr. Morin around, they would kill him.**¹²⁸ Mr. Morin explained the process to be released was very long and that he would not have been released if it wasn’t for his connections, his lawyers, and the protesting from his family in both Haiti and the U.S.¹²⁹

Mr. Morin now lives with his uncle and his older sister in Haiti, but because of the gang control in Haiti, he says he is better off staying in the house.¹³⁰ Mr. Morin is worried for his life because Haitian nationals that have previously lived in the U.S. are often a target of violence.

Mr. Morin speaks enough Haitian Creole to get by, but he is ultimately dependent on his family in Haiti as they provide him with clothes, food, and shelter.¹³¹ As Mr. Morin told Ms. Tripodi, at the age of 32, he has to completely start his life over again with nothing.¹³² Mr. Morin knows he might have little to no chance to go back to his family in the U.S., but all he wants is the chance to at least help someone else not go through what he went through.¹³³ Mr. Morin shared that, “God and prayer kept me going. Every day, I put in my mind that it would be the day I went home and saw my family. I would tell myself that I will be out there one day.”¹³⁴

TARGETING OF HAITIANS WHO PREVIOUSLY LIVED IN U.S.

Haitian nationals that have previously lived in the U.S. are easily identifiable and targeted on the streets and in the prisons because of their physical appearance and accent.¹³⁵ Haitian police are known for exhibiting violence against deported individuals. Face tattoos and gold teeth identify them as having spent time in U.S. prisons.¹³⁶ Individuals with past criminal records coming from the U.S. are all perceived as “big killers,” which can result in their death at the hands of others who target them.¹³⁷ Lynching of Haitian nationals who previously lived in the U.S. and present a particular appearance is common and the local police are aware of this practice yet fail to adequately respond.¹³⁸

ILLEGAL DETENTION UNDER HAITIAN LAW

None of the deported individuals have open warrants in Haiti, but more than 30 people are currently in jail without any legal charges pending against them¹³⁹—though Michelle Karshan estimates the numbers are higher. The detention of deported individuals from the U.S. is explicitly illegal under Haitian law.¹⁴⁰ Articles 24 and 24-1 of the Haitian Constitution respectively state that “Individual liberty shall be guaranteed and protected by the State” and that “No one may be prosecuted, arrested or detained except in cases determined by law and in the manner it prescribes.”¹⁴¹ In addition, article 24-2 states that “[N]o one may be arrested or detained other than by order of a legally competent official.”¹⁴²

There is no legal basis for deported individuals’ detention upon arrival.

V. THE U.S. HAS HALTED DEPORTATIONS TO HAITI IN THE PAST AND SHOULD DO SO AGAIN

IN JANUARY 2010, THE OBAMA ADMINISTRATION IMMEDIATELY HALTED DEPORTATIONS TO HAITI FOLLOWING THE DEVASTATING EARTHQUAKE IN 2010.¹⁴³ The U.S. designated Haitians in the U.S. for TPS.¹⁴⁴ This action was taken to avoid the burdening of a country in crisis and avoid placing Haitian immigrants in a life-threatening situation.¹⁴⁵ However, Haitian immigrants with past criminal records did not qualify for TPS, and in the Fall of 2010, Immigration and Customs Enforcement (ICE) authorities resumed detaining Haitian nationals who did not qualify for TPS because they had been convicted of two misdemeanors or one felony.¹⁴⁶ As a result, the Obama administration resumed deportations of individuals ineligible for TPS to Haiti despite international condemnation.¹⁴⁷ A petition filed before the Inter-American Commission of Human Rights in 2011 argued that “deporting people at this moment to Haiti, which is still reeling from the devastating January 2010 earthquake and is burdened with a massive cholera epidemic, political unrest, and rampant street violence, will result in serious human rights violations, including deprivations of the rights to life, family, and due process, and freedom from cruel or unusual punishment.”¹⁴⁸

AFTER THE OBAMA ADMINISTRATION RESTARTED DEPORTATIONS TO HAITI IN JANUARY OF 2011, WILDRICK GUERRIER, A HEALTHY 34-YEAR-OLD MAN, DIED TEN DAYS AFTER BEING JAILED IN HAITI. HE EXHIBITED CHOLERA-LIKE SYMPTOMS.¹⁴⁹ Mr. Guerrier’s deportation occurred while Haiti was in the midst of a humanitarian crisis and cholera epidemic that infected 231,070 people and claimed approximately over 4,500 lives.¹⁵⁰ The Obama administration learned of the dire prison conditions for deported individuals and halted deportations again at the end of January of 2011.¹⁵¹ After two months, the Obama administration resumed deportations of Haitians. Many of these deported individuals had families, suffered from chronic mental and physical illnesses, had permanent disabilities, and had permanent resident status.¹⁵² The U.S. deported over 1,500 people to Haiti between 2010 to 2015 with a criminal record.¹⁵³

TODAY, DESPITE BEING AN ADVOCATE FOR RACIAL JUSTICE AND HUMAN RIGHTS, PRESIDENT BIDEN HAS DEPORTED MORE HAITIAN IMMIGRANTS THAN THE LAST THREE PRESIDENTS COMBINED – TRUMP, OBAMA AND BUSH.¹⁵⁴ On September 23, 2021, the U.S. Special Envoy for Haiti, Lewis Foote, resigned in protest to Biden’s deportations of Haitians.¹⁵⁵ The following day, Biden pledged his commitment to Haiti’s future and apologized for his actions.¹⁵⁶ After these events, President Biden wrote that: “I’m heartbroken by the treatment of Haitian migrants at our border - and I acknowledge it is only the latest of many historic indignities that Haitians have faced. We will continue to help and investigate wrongdoing. I remain committed, as ever, to Haiti’s future.”¹⁵⁷

SINCE BIDEN’S APOLOGY, THE U.S. HAS DEPORTED MORE THAN 25,000 HAITIANS, MOST OF THEM WITHOUT THE CHANCE TO SEEK ASYLUM PROTECTION AS REQUIRED UNDER U.S. LAW.¹⁵⁸ On November 10, 2022, the Biden administration announced that it would reinstate TPS for Haitians.¹⁵⁹ TPS does not apply to those convicted with minor crimes.¹⁶⁰ In an interview with the HRC, Bergson Morin expressed his disappointment that he did not qualify for TPS due to his past and said, **“I guess because we had a felony we weren’t people to them.”** Additionally, in an Op-ed discussing his experience in the ICE facilities after being convicted, Mr. Julney wrote that, “There’s a guy in here with me at Bergen who has cancer, and another who is 65 years old. **These men are not any threat to society in any way. Neither am I. The U.S. is the only home I’ve ever known.** I came here when I was 2. I don’t know who my birth mother is, and after my father and then my stepmother died, my aunt took me in because I was homeless. Why are we all still locked away in these cages?”¹⁶¹

VI. U.S. IMMIGRATION POLICIES ARE ROOTED IN A LONG HISTORY OF RACIAL DISCRIMINATION

Haitians face a double-jeopardy of being both Black and migrants, which plagues their community with over-policing making it more likely for them to be tried with a crime resulting in a **prison-to-deportation pipeline**.¹⁶² The discriminatory treatment of Black migrants causes “racial profiling in immigration enforcement actions; excessive force, medical neglect, and other discriminatory treatment by the US personnel in immigration detention; prolonged and arbitrary detention, including the imposition of higher bonds on Black migrants; inadequate access to legal information, legal counsel or proper interpretation in detention; low rates of successful asylum screenings and approval rates for individuals from Black-majority countries from which many refugees are seeking international protection; and the racially disparate rates of deportation.”¹⁶³ Today, Black immigrants only make up 7% of the immigrant population, but represent 20% of those facing deportation on criminal grounds.¹⁶⁴ Additionally, Black people are equally likely as other Americans to commit crimes, but they are significantly more likely “to be stopped, questioned, arrested, charged, denied bail, convicted and serve longer sentences.”¹⁶⁵ Even a minor criminal charge can derail an immigration process or end in deportation.¹⁶⁶

The U.S. subjects Haitian communities to over-policing and anti-Black discrimination by putting them in jails, detention facilities, and denying their asylum claims.¹⁶⁷ There has been excessive anti-Haitian immigration policies from the executive branch since at least the 1980s including: (1) The Carter administration’s Haitian Program in 1978, which placed newly arrived Haitians in local jails, denied them permission to work, and applied a blanket denial of their asylum claims; (2) The Reagan administration’s practice of intercepting Haitian asylum seeker boats depriving them of their access to asylum claims which the H.W. Bush administration continued; and (3) The Clinton administration’s use of Guantanamo Bay as an offshore detention facility used for the long-term detention of Haitian asylum seekers.¹⁶⁸ Policies like metering, deportations of those with minor non-violent crimes, the Migrant Protection Protocol and Title 42 have a “devastating and disparate effect on Black migrants, refugees, and asylum seekers.”¹⁶⁹

The use of Title 42—a public health statute evoked during the COVID-19 pandemic to allow for the mass expulsion of non-citizens at the border—disproportionately affects Black immigrants and violates U.S. asylum law and international law.¹⁷⁰ In September 2021, U.S. immigration officers demonstrated a “shocking, discriminatory, and excessive use of force” on Haitians attempting to seek refuge in the U.S. near Del Rio, Texas.¹⁷¹ The U.S. placed at least 15,000 Haitians in a make-shift Customs and Border Protection (“CBP”) encampment near Del Rio International Bridge.¹⁷² Photographers and victims documented a Haitian asylum seeker, Mirard Joseph, being attacked by a CBP officer on horseback who was crossing Rio Grande to bring food back to his wife and child; officers on horseback trampling Haitian migrants; use of racial slurs; and the near death of a newborn baby.¹⁷³ The combination of physical violence, verbal threats and intimidation by the immigration officers, “is another emblematic manifestation of the U.S.’s attempts to deter Haitians from seeking asylum in the U.S. and the systematic discrimination Black people, citizen or non-citizen, face in the U.S.”¹⁷⁴ Haitian migrants also faced inhumane and degrading conditions, and lacked proper medical care.¹⁷⁵ At the encampment the migrants faced starvation and dehydration; bathed using water with disease causing bacteria; used overcrowded toilets; battled disease; and did not receive basic shelter like beds, blankets, tents, or shelter of any kind which “exposed [them] to the elements, including triple digit temperatures, dirt, and dust.”¹⁷⁶

Under U.S. law, all individuals who arrive at the border and express fear of being returned to their home country or who express interest in applying for asylum must be provided access to fear hearings before their removal. These laws are consistent with the principle of *non-refoulement*, which was established under article 33 of the 1951 Convention Relating to the Status of Refugees¹⁷⁷ and has since crystalized as a norm of *jus cogens* under international law.¹⁷⁸ Title 42 blatantly violates both U.S. law and international law by deporting Haitians to a country that consistently fails to guarantee its citizens the rights to health, food, water, sanitation, movement, and security of persons.¹⁷⁹ The problems with Title 42 were further noted in the concluding observations of the U.S. by the Committee on the Elimination of Racial Discrimination (“CERD”) on August 24, 2022, recommending that the U.S. swiftly end the policy.¹⁸⁰

VII. THE DEPORTATION OF HAITIANS IS TANTAMOUNT TO TORTURE IN VIOLATION OF U.S. AND INTERNATIONAL LAW

The U.S. is in violation of binding principles of international law. *Non-refoulement*¹⁸¹ is a binding principle of customary international law and should be respected by the U.S. Non-refoulement is enunciated in Article 33(1) of the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees, which the U.S. has ratified. Article 33(1) states that “[n]o 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.”¹⁸² The United Nations High Commissioner for Refugees (“UNHCR”) reiterated the importance of this principle in a November 3, 2022 press release about the crisis in Haiti saying that “forced removal of people to a place where they may face risk of persecution, torture or other serious or irreparable harm would amount to ‘refoulement’, which is explicitly prohibited under international refugee and human rights law.”¹⁸³ Non-refoulement has clear ties to the *jus cogens* peremptory norm of torture, as elaborated on in the sections below.

The U.S. is in violation of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (“CAT”), which the U.S. has ratified. Under article 3.1 of CAT, “no State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹⁸⁴ Statutory and judicial implementation of CAT in the U.S. requires that (1) an act causes severe pain and suffering, (2) the act is intentionally inflicted, (3) the act is inflicted with a proscribed purpose, (4) the act is committed by a public official with custody or control over the victim, and (5) an act cannot arise from lawful sanctions.¹⁸⁵ The practice of jailing individuals upon arrival in Haiti by Haitian government officials meets the requirement of an act that causes “severe pain and suffering.” As for requirements two and three, Haitian officials purposefully inflict severe pain and suffering on deported individuals in the Haitian prisons as punishment for their having a U.S. criminal record. Further, requirement four is met because the Haitian government is directly responsible for detaining deported individuals. Mr. Morin learned of his

release from prison through a letter from the Haitian government, thus showing that the Haitian government is the entity responsible for subjecting deported individuals to detention. Finally, the sanctions used by the Haitian government are not lawful under Haitian law;¹⁸⁶ none of the deported individuals were afforded due process before being detained. In fact, around 82% of the more than 11,000 individuals held in Haitian prisons have not been sentenced for a crime.¹⁸⁷ **Deported individuals are specifically targeted with torture by the Haitian government on account of their status as deportees with past criminal records.** Prison guards target deported individuals for mistreatment—including physical violence and death threats—based on the unfounded beliefs that people deported from the U.S. are to blame for the issues in Haiti. When the U.S. deports Haitians who are ineligible for TPS because of their past criminal convictions, it condemns these individuals to state-sanctioned torture within the definition of CAT as interpreted by U.S. courts.

The U.S. is in violation of the International Covenant on Civil and Political Rights (“ICCPR” or “the Covenant”), which the U.S. has ratified. Article 7 of the ICCPR states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁸⁸ The U.N. Human Rights Committee expanded on Article 7 saying “State parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulment.”¹⁸⁹ Upon ratification of the ICCPR, the U.S. issued a reservation to Article 7 stating that it considers itself bound by the article to the extent that “cruel and unusual treatment or punishment [are] prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”¹⁹⁰ Therefore, the treatment of deported individuals should be viewed in light of the interpretation of the U.S. Constitution by U.S. courts. The Fifth Amendment of the U.S. Constitution “has traditionally been held to prohibit torture.”¹⁹¹ Further, the U.S. Supreme Court has stated that barbaric and torturous punishments are banned, as well as punishments that inflict wanton or unnecessary pain.¹⁹² Given that these are the standards applied to the government of the U.S., it is unreasonable to accept state-sanctioned torture in Haiti. U.S. complacency in the illegal detention and torture of deported individuals frustrates the object and purpose¹⁹³ of the ICCPR, even when interpreting the Covenant in light of U.S. reservations.

VIII. CONCLUSION

It is absolutely necessary for the U.S. to stop all deportations to Haiti because of the current conditions generally and the life-threatening practice of detention. We stress the severity and urgency of this situation and implore the U.S. to take the following actions:

- (1) Immediately cease all deportations to Haiti.
- (2) Take all measures to ensure the immediate release of all Haitians removed by the United States who are being held in the Haitian National Penitentiary and other prisons or police station holding cells.
- (3) Take all measures to ensure due process and full and equal access to the asylum system and other forms of complementary protection, including, but not limited to: agreeing to reopen the deportation cases of individuals facing jailing in Haiti; ensuring access to high quality Haitian Creole interpreters, access to legal presentations, and requiring fear screenings for all Haitians at risk of return to Haiti to protect against violations of refoulement.
- (4) Refrain from placing asylum seekers and other migrants seeking international protection in detention, and instead using proven community-based case support programs for those that need them.
- (5) End discriminatory mistreatment of Haitian asylum seekers and migrants, investigate abuses committed against Haitian nationals, and bring those responsible for abusive actions to justice.
- (6) Ensure consistent enforcement of rules for frontline officials, including law enforcement officials, immigration authorities and asylum officials; forbid racial profiling; and ensure robust systems of monitoring and access to effective remedy for victims.
- (7) Take steps to address racist and xenophobic attitudes and behavior towards non-citizens, or stigmatization based on race, color, descent or national origin by politicians, the media and wider society, as required by international law, for example, by implementing public anti-discrimination campaigns.
- (8) Create long-term policies that support Haitian-led solutions based on the effective participation of Haitian civil society in the process of creating a more equitable Haiti where Haitians will feel less pressures to flee the country.

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