



UNITED STATES MISSION
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

September 11, 2015

Mr. Gustavo Gallón
Independent Expert on the Situation
of Human Rights in Haiti
Geneva, Switzerland

Mr. Dainius Puras
Special Rapporteur on the Right of everyone
to the Enjoyment of the Highest Attainable
Standard of Physical and Mental health
Geneva, Switzerland

Mr. François Crépeau
Special Rapporteur on the Human Rights
of Migrants
Geneva, Switzerland

Mr. Juan E. Méndez
Special Rapporteur on Torture and Other Cruel,
Inhuman or Degrading Treatment or
Punishment
Geneva, Switzerland

Dear Mr. Gallón, Mr. Puras, Mr. Crépeau, and Mr. Méndez:

Thank you for your letter dated July 10, 2015, concerning information you have received related to the return of Haitian nationals to Haiti since 2010. In response to your inquiry, the United States provides the information on the attached pages.

Sincerely,

Keith M. Harper
Ambassador
U.S. Representative to the United Nations
Human Rights Council

OHCHR REGISTRY

15 SEP 2015

Recipients: SPB
Americas
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1. *Please provide any additional information or comments you may have on the above-mentioned allegations.*

United States Immigration and Customs Enforcement (ICE) conducts removals of Haitian nationals in accordance with its April 2011 Policy for Resumed Removals to Haiti, under which priority is placed on the removal of those with convictions for either "aggravated felonies," as defined in section 101(a)(43) of the Immigration and Nationality Act (INA), at the time of the conviction, or two or more crimes, each punishable by more than one year. ICE also removes Haitian nationals pursuant to the expedited removal provisions of section 235(b) of the INA.

Many of the concerns raised in your letter are based on the erroneous assumption that Haitians removed from the United States are automatically detained by the Haitian government upon arrival in Haiti. Due in part to the efforts of ICE Enforcement and Removal Operations (ERO), since 2012, Haitians removed from the United States are no longer detained as a matter of course by the Government of Haiti. In addition, upon arrival in Haiti, ICE ERO provides the returnees with the use of cell phones to contact family members, who generally pick up the returnees the same afternoon that they arrive. This practice expedites reunification with friends or family members. Also, bottled water and sack lunches are provided to the returnees as they are processed into the country. Furthermore, ICE ERO provides a copy of the returnees' medical file, along with at least a 60-day supply of any relevant medications. Overall, the United States believes that reintegration conditions in Haiti are significantly better today than they were in 2010.

2. *Please provide information on measures taken to ensure the principle of non-refoulement as well as the right to life, physical, and mental integrity of deportees, in particular those medically vulnerable.*

As with all non-citizens in the United States, Haitian nationals subject to removal proceedings may seek protection from removal based on a fear of persecution or torture, whether they are being removed through removal proceedings before an immigration judge or through expedited removal proceedings.

In removal proceedings before an immigration judge, individuals may apply for asylum (with limited exceptions) under section 208 of the INA, withholding of removal under section 241(b)(3) of the INA, and/or protection from removal under immigration regulations implementing U.S. obligations under Article 3 of the Convention Against Torture (CAT). The immigration judge's decision is appealable to the Board of Immigration Appeals, and the Board's decision, with limited exception, is subject to judicial review by a federal court of appeals.

Any individual subject to expedited removal proceedings under section 235(b) of the INA who indicates an intention to apply for asylum or expresses fear of persecution or torture, or fear of return to his or her country, is referred to a U.S. Citizenship and Immigration Services (USCIS) asylum officer for a "credible fear" interview. If the asylum officer determines that the individual has a credible fear of persecution or torture, the individual

is referred for removal proceedings before an immigration judge, where the individual may apply for asylum or other forms of relief or protection from removal. If the asylum officer determines that the individual does not have a credible fear, the individual may request review of that adverse determination by an immigration judge.

In cases of reinstatement of removal or administrative removal, individuals who have expressed a fear of return are referred to a USCIS asylum officer for a "reasonable fear" interview. If the USCIS officer determines that the individual has a reasonable fear of persecution or torture, the individual is referred for proceedings before an immigration judge to decide whether the individual qualifies for withholding of removal or protection under the CAT.

The United States is committed to maintaining an immigration detention system that prioritizes the health, safety, and welfare of all those detained in its custody. Since 2009, the United States, through ICE, has taken a number of important steps to reform the immigration detention system, consistent with its civil, rather than penal, purpose, including with regard to reducing transfers between facilities, improving access to counsel and visitation, promoting recreation, improving conditions of confinement, protecting vulnerable populations, and ensuring the availability of medical and mental health care. All individuals detained in ICE custody have access to appropriate and necessary medical, dental, and mental health care, including emergency services. Detainees have access to a full spectrum of services, including screening, prevention, health education, diagnosis, and treatment. Of note, all individuals detained in ICE custody receive a comprehensive medical and mental health screening shortly after arrival at a facility, and a comprehensive health assessment, including a physical examination and mental health screening, by a qualified, licensed health care professional within two weeks of arrival. The authority and responsibility of the U.S. government with regard to medical care are limited to those detained in its custody.

With respect to your letter's characterization of relevant legal principles, the United States has accepted non-refoulement obligations as a party to the 1967 Protocol to the 1951 Convention relating to the Status of Refugees, and the CAT. The United States is not a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). In addition, the United States has previously explained its position to the Human Rights Committee that the International Covenant on Civil and Political Rights (ICCPR) does not impose a non-refoulement obligation upon States Parties.

3. *Please explain how the implementation of the Policy for Resumed Removals to Haiti, U.S. Immigration and Customs Enforcement (April 2011) weights (sic) access to medical care, including specialized treatment, medicines, nutrition and stable living while determining deportations.*

Every Haitian national subject to removal undergoes a thorough medical screening to ensure fitness for travel and to complete medical clearance by the ICE Health Service Corps (IHSC) prior to removal; those who are acutely ill are not cleared for removal. If a Haitian national requires medication, IHSC takes steps to ensure that this medication is also available in Haiti, and if the medication is not available, ICE ensures that the returnee is transitioned to an appropriate and available substitute prior to return.

Additionally, IHSC provides Haitian nationals with at least a 60-day supply of medication on their arrival to Haiti, and the individual's medical file is given to a representative of the Haitian Ministry of Public Security in order to assist with continuity of care.

4. *Please explain how the implementation of (sic) above mentioned Policy assesses detention conditions and the overall situation in Haiti to determine that a potential deportees physical or mental health conditions can be adequately treated in Haiti over time.*

Since August 2012, Haitian nationals are no longer subject to automatic detention upon arrival in Haiti. Since the 2010 earthquake, the U.S. government has made substantial investments to build the capacity of the Government of Haiti to reintegrate Haitian nationals who are removed from the United States. From April 2011 until April 2014, USAID funded a program, implemented by the International Organization for Migration (IOM), to facilitate the socio-economic reintegration of criminal deportees

from the United States. Through this program, criminal deportees were offered services such as 12 months of medical insurance coverage for those with the most serious health needs; onward transportation assistance for those resettling outside of Port-au-Prince; up to one month of temporary accommodation for those without family; and distribution of mobile telephones to criminal deportees to facilitate contact with the program and service providers. It is important to note that in addition to the services mentioned above, under this USAID program, IOM worked to build the capacity of the Office of National Migration (ONM) and the staff of four local non-governmental organizations to provide essential reception and reintegration services to criminal deportees. Since its inception, this project's objective was to build the capacity of the Haitian government to assume reception and reintegration responsibilities. Despite having to contend with budget shortfalls, the Government of Haiti has demonstrated its intention to manage the return of its citizens in a safe and humane manner.

5. *Please explain how the implementation of (sic) above mentioned Policy assesses the near-certain deterioration of the physical and mental integrity of a potential deportee to Haiti when determining deportations.*

The United States does not believe that there is a "near-certain deterioration of the physical and mental integrity of a potential deportee to Haiti," and goes to great lengths to ensure deportees are clinically stable upon return, including by supporting the physical and mental integrity of deportees once they arrive in the country.

6. *Please provide information about the manner in which deportation procedures assess that Haiti is able to guarantee that detention conditions and access to adequate medical care, including specialized treatment, in compliance with applicable medical standards.*

Historically, many returnees were detained without apparent cause for extended periods by the Government of Haiti upon arrival in Haiti. However, as previously stated, Haitian nationals are no longer subject to arbitrary detention upon their arrival in Haiti.

7. *Please subscribe legislative or other measures that have been put in place to guarantee the realization of the right to the highest attainable standard of physical and mental health of medically vulnerable individuals with criminal convictions that are returned to Haiti.*

This question is best addressed by the Government of Haiti. As such, the United States defers to the Government of Haiti regarding such measures.