

“THIS LAND CANNOT DIE”: U.S. INVOLVEMENT IN THE REBUILDING HAITI

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I. INTRODUCTION

On January 12, 2010, Haiti suffered an earthquake that registered a catastrophic 7.0 on the Richter scale.¹ The earthquake and its dozens of aftershocks claimed tens of thousands of lives.² In the immediate aftermath, the United Nations estimated at least 30% of Haiti's capital city, Port-au-Prince, had been destroyed and nearly half the buildings in some neighborhoods had been leveled.³ The earthquake is only the latest tragedy to hit Haiti, which has suffered through natural disasters, political strife, and other hardships for most of the last decade.⁴

The initial global humanitarian response to the earthquake was tremendous. Almost immediately, the World Food Programme was on the ground, feeding approximately 8000 people a day.⁵ Medical nonprofit Doctors Without Borders and teams from Argentina, Brazil, Colombia, Israel, Jordan, and Russia set up makeshift clinics.⁶ The Dominican Republic, which shares the island of Hispaniola with Haiti, has been treating those Haitian refugees with medical emergencies.⁷

1. Deborah Sontag, *A Month After the Quake, Haiti Takes Stock*, N.Y. TIMES, Feb. 13, 2010, at A8.

2. Marc Lacey, *Patience Wears Thin as Desperation Grows*, N.Y. TIMES, Jan. 15, 2010, at A1 [hereinafter *Patience Wears Thin*].

3. *Id.*

4. Nick Caistor, *Haiti's History of Misery*, BBC NEWS, Jan. 13, 2010, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/8456728.stm>.

5. Allan Cowell & Sharon Otterman, *Relief Groups Seek Alternative Routes to Get Aid Moving*, N.Y. TIMES, Jan. 16, 2010, <http://www.nytimes.com/2010/01/16/world/americas/16relief.html>.

6. *Logistical Nightmare Hampers Aid Effort*, BBC NEWS, Jan. 22, 2010, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/8460787.stm>; Mark Silva, *U.S. is Flying Doctors and Food to Haiti in Massive Earthquake Relief Effort*, L.A. TIMES, Jan. 16, 2010, <http://www.latimes.com/news/nation-and-world/la-fg-haiti-rescue-us17-2010jan17,0,6375484,print.story>.

7. James C. McKinley, Jr., *Homeless Haitians Told Not to Try to Flee to U.S.*, N.Y. TIMES, Jan. 19, 2010, at A11.

The United States emerged as the early leader in the recovery efforts.⁸ The morning after the earthquake, President Barack Obama pledged support, noting that the tragedy

reminded [us] of the common humanity that we all share. With just a few hundred miles of ocean between us and a long history that binds us together, Haitians are neighbors of the Americas and here at home. So we have to be there for them in their hour of need . . . I pledge to the people of Haiti that you will have a friend and partner in the United States of America today and going forward.⁹

Just three days later, the White House sent a search and rescue team of more than 400 firefighters to help comb through the ruins for survivors.¹⁰ Ten thousand U.S. troops were deployed to aid the relief effort by providing support with security and logistics, both on the ground and at sea.¹¹ In addition to committing \$100 million in aid, the United States sent a Navy medical ship, helicopters, medical teams, food, and much-needed drinking water.¹² Former President Bill Clinton has been instrumental in his role as acting U.N. Special Envoy to Haiti.¹³ He, along with former President George W. Bush and President Obama, has set up a national fund for earthquake victims.¹⁴

The United States has also taken domestic measures to help Haiti.¹⁵ Haitian advocates praised the Obama Administration for granting Temporary Protected Status (TPS) to Haitians who have continuously resided in the United States since

8. Ginger Thompson & Damien Cave, *Officials Strain to Distribute Aid to Haiti as Violence Rises*, N.Y. TIMES, Jan. 17, 2010, at A1.

9. President Barack Obama, Remarks by the President on Rescue Efforts in Haiti (Jan. 13, 2010).

10. Silva, *supra* note 6.

11. *Patience Wears Thin*, *supra* note 2.

12. Silva, *supra* note 6.

13. See Vanessa Buschschluter, *Troubled History: Haiti and US*, BBC NEWS, Jan. 16, 2010, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/8460185.stm>.

14. *Id.*

15. See Julia Preston, *U.S. Will Protect Illegal Haitian Residents From Deportation for 18 Months*, N.Y. TIMES, Jan. 16, 2010, at A9 [hereinafter *U.S. Will Protect*].

January 12, 2010.¹⁶ The push for TPS was an uphill battle that predated the quake's devastation: In 2008, Haiti was battered by four violent storms that claimed the lives of 800 people, and the country was no in condition to receive the 30,000 Haitians who had been issued deportation orders at the end of President Bush's second term in office.¹⁷ Granting TPS will allow Haitian immigrants in the United States to continue to send remittances to Haiti; those remittances total nearly \$1 billion each year and are crucial to the Haitian government's efforts to rebuild and recover.¹⁸

Under the Immigration and Nationality Act (INA), the Attorney General is authorized to grant temporary protection from removal to aliens from a designated foreign state that has experienced severe natural disasters or persisting conflict.¹⁹ Congress created TPS relief through the 1990 Immigration Act and intended it to provide safe haven for aliens who are within U.S. borders and cannot be returned to their country of origin because of unsafe conditions.²⁰

In order to receive TPS, nationals from designated states must be "continuously physically present in the United States since the effective date of the most recent designation of that state . . ." ²¹ Aliens who are otherwise inadmissible for entry into the United States may still be eligible for TPS.²² The Attorney General may waive certain grounds of inadmissibility under the Act "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."²³

Aliens who are granted TPS are spared deportation and authorized to work for six to eighteen months.²⁴ Unlike asylum

16. *Id.*; Sontag, *supra* note 1.

17. *U.S. Will Protect*, *supra* note 15.

18. Haitian Protection Act of 2009, H.R. 144, 111th Cong. (2009).

19. Immigration and Nationality Act § 244A(b), 8 U.S.C. § 1254a (2009).

20. Peter C. Diamond, *Temporary Protected Status Under the Immigration Act of 1990*, 28 WILLAMETTE L. REV. 857, 861 (1992).

21. 8 U.S.C. § 1254a.

22. *Id.*

23. *Id.*

24. *Id.*

or refugee status, TPS does not result in a permanent status.²⁵ It lasts only for the duration of a crisis that is taking place in the alien's country of origin.²⁶ Once the crisis subsides and the Attorney General determines the alien's country of origin no longer warrants designation, the aliens are returned to their country.²⁷ However,

[i]f the Attorney General does not determine . . . that a foreign state (or part of such foreign state) no longer meets the conditions for designation . . . the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).²⁸

Granting Haitians TPS is consistent with U.S. policy because immigrants from other countries in similar situations have benefited from this form of immigration relief.²⁹ "Tens of thousands of Nicaraguans, Hondurans, Salvadorans[,] and others whose countries have been hit by war, earthquakes and hurricanes have routinely been granted protected status in 18-month increments."³⁰

The aforementioned relief efforts have further solidified America's ties to the impoverished nation situated nearly 700 miles off the coast of Florida³¹—ties that were formed during the U.S. naval occupation of Haiti from 1915 to 1934³² and ties that have lasted through a U.S. embargo implemented for most of the

25. *See id.*

26. *See id.*

27. *Id.*

28. *Id.*

29. *See* Editorial, *Haiti's Despair, Continued*, N.Y. TIMES, Mar. 10, 2009, at A26.

30. *Id.*; *see also U.S. Will Protect*, *supra* note 15 (noting that TPS has recently been granted to Sudanese and Somali citizens arriving in the United States).

31. Janice D. Villiers, *Closed Borders, Closed Ports: The Plight of Haitians Seeking Political Asylum in the United States*, 60 BROOK. L. REV. 841, 913 (1994) ("[U.S.] antipathy [toward] Haitians can be traced to the Haitian Revolution of 1804.").

32. Lori A. Nessel, *Externalized Borders and the Invisible Refugee*, 40 COLUM. HUM. RTS. L. REV. 625, 692 (2009); *see* Villiers, *supra* note 31, at 913–14 ("The 1915 U.S. occupation of Haiti presented an opportunity to relive the paternalistic myth of the Southern plantation: the United States could justify its blatant imperialist motives in Haiti by claiming the excuse of a civilizing mission.") (footnotes and internal citations omitted).

1990s and U.S. involvement in the coup-d'état that overthrew former President Aristide in 2004.³³ The United States has made steps in the right direction, both with Temporary Protected Status and the swift deployment of resources on the ground, but the U.S. can still do more for its neighbor in need, namely by reforming its systematically cruel and unusual immigration policies towards Haitian migrants and fostering a meaningful partnership with the Haitian government for Haiti's recovery.

First, this paper will evaluate the complex history of U.S.–Haiti relations. Second, this paper will recommend short- and long-term immigration policy reform and aid measures for sustainable development.

II. HISTORY OF U.S.–HAITI RELATIONS

A. *The Haitian Revolution and the Early Days of the Black Republic*

The United States has had a heavy hand in the state of Haitian domestic affairs, beginning with the Haitian Revolution and continuing to the present.³⁴ The United States sent troops and \$750,000 in military aid to help France suppress the Revolution and defend white colonists' interests.³⁵

When Haiti successfully overthrew its oppressors in 1804, the freed slaves suddenly found themselves in a world where slavery largely endured.³⁶ Worried about its own slave-holding interests, the United States refused to recognize Haiti as a sovereign nation until 1862.³⁷ Despite its refusal to recognize Haiti's sovereignty, the United States was one of Haiti's leading trading partners for most of the 19th Century.³⁸

33. See Jordan E. Dollar, *Haiti is Black! Racial Essentialism and United States Involvement in the 2004 Removal of President Aristide*, 20 ST. THOMAS L. REV. 642, 651, 659 (2008).

34. Villiers, *supra* note 31, at 913; see PAUL FARMER, *THE USES OF HAITI* 46–47 (1994).

35. FARMER, *supra* note 34, at 68.

36. *Id.* at 72.

37. *Id.* at 75.

38. *Id.* at 57–58.

B. U.S. Occupation

The U.S. share of the Haitian market doubled between 1870 and 1913; by the end of that period, the United States controlled about 60% of the Haitian economy.³⁹ In 1915, when persistent political instability threatened U.S. economic interests, the U.S. Marine Corps invaded Haiti.⁴⁰

The United States heralded the invasion as an altruistic deed, teaching the wayward island nation the ways of democracy and governmental efficiency,⁴¹ but in reality,

[the soldiers stationed in Haiti during] Woodrow Wilson's invasion . . . murdered and destroyed, reinstated virtual slavery, dismantled the constitutional system because the backward Haitians were unwilling to turn their country into a U.S. plantation, and established the National Guards that ran the country by violence and terror after the Marines finally left.⁴²

Despite U.S. assertions that progress had been made, nineteen years of U.S. occupation led to Haiti's most ruthless dictatorship: the Francois Duvalier regime.⁴³

C. Duvalierism

During his thirteen-year presidency, Francois Duvalier ruled Haiti largely through fear, and he unleashed his street army, the *Tonton Macoutes*, to silence any opposition through torture, disappearances, and murder.⁴⁴ The U.S. government heavily financed Duvalier's reign of terror.⁴⁵ Washington sent Duvalier \$40 million dollars during his first four years in office, and U.S. investors reaped the rewards.⁴⁶ In exchange for a

39. *Id.* at 85.

40. *Id.* at 90–91.

41. *Id.* at 17–18.

42. *Id.* at 17.

43. *See id.* at 107.

44. *Id.* at 108.

45. *Id.*

46. *Id.* at 108. “Duvalier’s Haiti offered enormous benefits for offshore assembly—generous tax holidays, a franchise granting tariff exemption, tame unions, a minimum wage that was but a tiny fraction of that in the United States.” *Id.* at 115. Duvalier

cheap, exploitable labor force, the United States turned a blind eye to Duvalier's systematic human rights abuses.⁴⁷

Duvalier's son, Jean-Claude Duvalier, took over when the elder Duvalier passed away in 1971.⁴⁸ "Baby Doc," as he came to be called,⁴⁹ continued his father's use of violence to suppress political dissidence.⁵⁰ As the killings and disappearances escalated, the Haitian economy weakened.⁵¹ "In just seven years, Haiti's external public debt increased seven fold: from \$53 million in 1973 to \$366 million in 1980. This represents almost twice the rate of growth of external indebtedness in Latin America, as a whole, over the same period of time."⁵²

The young dictator's short-lived reign was fraught with chaos and violence and led large numbers of Haitian refugees to flee to the United States.⁵³ The era brought about the first U.S. efforts to ebb the flow of Haitian refugees to U.S. shores through targeted initiatives.⁵⁴ In 1978, the "Haitian Program" began, in which the U.S. government accelerated deportation proceedings and effectively deprived Haitians of due process.⁵⁵ The speed of the trials denied asylum to nearly all Haitians who applied.⁵⁶ Between 1972 and 1980, only twenty-five of the 50,000 Haitians seeking asylum were successful.⁵⁷

extolled Haiti's potential as "a vast reservoir of man-power for Americans establishing re-exportation industries closer, safer, and more convenient than Hong Kong." *Id.* (quoting Francois Duvalier, Welcome Address to New York Governor Nelson Rockefeller (1969)).

47. *See id.* at 115, 116. *See id.* at 115; *see also* Lt. Col. Susan S. Gibson, *Misplaced Reliance on Free and Fair Elections in Nation Building: The Role of Constitutional Democracy and the Rule of Law*, 21 HOUS. J. INT'L L. 1, 17-18 (1998).

48. FARMER, *supra* note 34, at 20, 113.

49. *Id.* at 20.

50. *Id.* at 114.

51. *Id.* at 20-21.

52. FARMER, *supra* note 34, at 117 (quoting ROBERT LAWLESS, HAITI'S BAD PRESS 116 (1992)).

53. *See id.* at 118.

54. *See* Malissia Lennox, *Refugees, Racism, and Reparations: A Critique of the United States' Haitian Immigration Policy*, 45 STAN L. REV. 687, 700 (1993).

55. *Id.*

56. *Id.* at 700-01.

57. *Id.* at 700.

In 1981, President Ronald Reagan implemented the interdiction program,⁵⁸ despite U.S. obligations under domestic and international law.⁵⁹ The interdiction policy utilized actions prohibited by the 1980 Refugee Act,⁶⁰ passed just a year earlier, and the 1967 U.N. Protocol Relating to the Status of Refugees (1967 Protocol), which incorporates the 1951 U.N. Convention Relating to the Status of Refugees (1951 Convention).⁶¹ U.S. interdiction policy clashed directly with Article 33 of the 1951 Convention, as adopted by the 1967 Protocol, which was almost identical to the language used in the 1980 Refugee Act.⁶²

“Under [the interdiction] program, [U.S.] Coast Guard vessels were to stop and board suspicious Haitian or unflagged vessels on the high seas, determine if their passengers were undocumented Haitians bound for the United States, and if so, return them to Haiti.”⁶³ Human rights advocates immediately contested interdiction for failing to provide full, fair, and adequate hearings.⁶⁴ Interviews conducted to determine asylum claims were rudimentary at best and were often not conducted

58. Joe Villarreal, Note, *Sale v. Haitian Centers Council, Inc.: Low Water Mark on the High Seas*, 17 HOUS. J. INT'L L. 335, 338 (1994).

59. Arthur C. Helton, *The United States Government Program of Intercepting and Forcibly Returning Haitian Boat People to Haiti: Policy Implications and Prospects*, 10 N.Y.L. SCH. J. HUM. RTS. 325, 325–26 (1993).

60. Refugee Act of 1980, Pub. L. No. 96–212, 94 Stat. 102 (1980) (amending the Immigration and Nationality Act to prohibit the Attorney General from deporting and forcibly returning an alien to a country if “such alien’s life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion”); see 8 U.S.C. § 1253h(i).

61. Protocol Relating to the Status of Refugees art. I(1), Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter 1967 Protocol] (“The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.”); Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Refugee Convention]. Though the United States was not a party to the 1951 Convention, it is bound by the Convention’s terms through its accession to the 1967 Protocol, which incorporates those terms.

62. 1951 Convention art. 33 (prohibiting the expulsion or return of refugees to 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”); see *supra* note 60 and accompanying text.

63. Helton, *supra* note 59, at 326.

64. Stephen H. Legomsky, *The USA and the Caribbean Interdiction Program*, 18 INT'L J. REFUGEE L. 677, 679–80 (2006).

at all.⁶⁵ Between 1981 and 1990, the United States returned about 21,000 Haitians, finding only six of them to have credible persecution claims.⁶⁶

Meanwhile, a popular uprising against the ruling elite was brewing in Haiti.⁶⁷ Students held protests, and assembly workers went on strike across the country.⁶⁸ The political pressure, along with U.S. threats of aid cuts, proved to be too much for Baby Doc.⁶⁹ The last of the Duvaliers left Haiti on an American cargo plane in 1986.⁷⁰

A Duvalier no longer ruled Haiti, but political instability lingered until the end of the decade.⁷¹ The dire political situation did nothing to increase Haitians' chances for refugee relief: "Despite the bloody outcome of the aborted election in Haiti in 1987, not a single Haitian was granted asylum that year."⁷² A mere 1.8% of Haitian applications for asylum were granted during this period, while 69% of Chinese applications and 74.5% of applications from the former Soviet Union were granted.⁷³ Even after an early-1990s increase in approval rates for Haitian applicants, Haitians were granted asylum far less frequently than applicants from other countries.⁷⁴

D. The First Democratically Elected President of Haiti, Father Jean-Bertrand Aristide

In 1991, the international community was stunned when a young priest won the popular vote and was sworn in as Haiti's first democratically elected president, despite running against a

65. *See id.*

66. *Id.* at 679.

67. FARMER, *supra* note 34, at 122–23.

68. *Id.* at 123–24.

69. *Id.* at 124.

70. *Id.*

71. *See id.* at 126–29.

72. Cheryl Little, *InterGroup Coalitions and Immigration Politics: The Haitian Experience in Florida*, 53 U. MIAMI L. REV. 717, 717 (1999) (citing statistics for the time period between June 1983 and March 1991).

73. *Id.*

74. *Id.* at 717–18.

candidate endorsed and financed by the United States.⁷⁵ To Haitians, 67% of whom had cast their vote for Aristide, the election was a signal that the “impoverished majority” finally had a voice in the Haitian government and that the “corrupt politics of the elite governing class and vicious militia had come to an end.”⁷⁶

Aristide worked to reform the Haitian army and to loosen the minority elite’s control over the Haitian economy.⁷⁷ U.S. disdain toward Aristide’s progressive policies was immediately apparent.⁷⁸ For example, Aristide’s attempt to raise the minimum wage to about \$3 a day was met with stiff resistance from the U.S. Agency for International Development (USAID), “which had invested millions . . . in keeping Haitian wages low.”⁷⁹

External and internal forces combined to undermine Aristide’s presidency, and a military coup forced Aristide out of office just eight months after he was elected.⁸⁰ With support from the Organization of American States (OAS) and the U.N. Security Council,⁸¹ a U.S.-led intervention attempted to quell the unrest and ensure a swift return of constitutional government.⁸² The United States and the OAS jointly imposed a

75. See FARMER, *supra* note 34, at 139, 155–56.

76. See Lennox, *supra* note 55, at 698.

77. See FARMER, *supra* note 34, at 179.

78. See *id.* at 174–75.

79. *Id.* at 172 (“Though the new minimum wage under the Aristide government would have still been less than one-eleventh of the average U.S. apparel wage (50 cents versus \$5.85 an hour), USAID opposed this increase and orchestrated opposition to it.” (quoting Charles Kernaghan, *Haiti after the Coup: Sweatshop or Real Development*, NAT’L LABOR COMM., (1993) available at <http://www.nlcnet.org/reports?id=0019> (last visited Oct. 3, 2010))).

80. See *id.* at 180–81.

81. Neither the OAS nor the United Nations recognized the military government as valid, and both organizations continued to treat Aristide as Haiti’s only legitimate representative. See David Wippman, *Defending Democracy through Foreign Intervention*, 19 HOUS. J. INT’L L. 659, 676 (1997).

82. Richard Falk, *The Haiti Intervention: A Dangerous World Order Precedent for the United Nations*, 36 HARV. INT’L L.J. 341, 344 (1995); see Lynn N. Hughes, *Realism Intrudes: Law, Politics, and War*, 25 HOUS. J. INT’L L. 415, 433 (2003) (“The United States furnished 20,000 troops; twelve other nations supplied an aggregate of [2000] soldiers.”).

trade embargo on Haiti, but the embargo was unevenly applied and ineffective.⁸³ It ended up hurting the Haitian people and fueling the military government.⁸⁴

With the collapse of the democratic government came the return of political violence.⁸⁵ Once again, Haitian refugees seeking respite from the violence flocked to the seas, hoping to find safe haven in the United States.⁸⁶ And once again, the United States resumed its forced repatriation program,⁸⁷ committing numerous human rights violations in the process.⁸⁸ In 1992, President George H. W. Bush issued the “Kennebunkport Order,” which mandated that all interdicted Haitians be directly repatriated without the opportunity for an asylum hearing.⁸⁹

A group of law students and Haitian rights advocates challenged this policy in *Haitian Centers Council, Inc. v. Sale*.⁹⁰ The case was filed on behalf of refugees who tested positive for HIV and who were being detained indefinitely in squalid conditions on Guantanamo Bay, Cuba with virtually no constitutional protections.⁹¹ The Second Circuit Court of Appeals ruled that the Constitution’s Due Process Clause applied.⁹² Based on that precedent, a federal district judge examined U.S. policies regarding Haitians:

83. Harold Hongju Koh, *The “Haiti Paradigm” in United States Human Rights Policy*, 103 *YALE L.J.* 2391, 2393–94 (1994); see Alexander Layton & Angharad M. Parry, *Extraterritorial Jurisdiction—European Responses*, 26 *HOUS. J. INT’L L.* 309, 315 n.22 (2004) (noting foreign opposition to the U.S. embargo).

84. BRANDT GOLDSTEIN, *STORMING THE COURT: HOW A BAND OF YALE LAW STUDENTS SUED THE PRESIDENT—AND WON* 13 (2005); see also Klinton W. Alexander, *NATO’s Intervention in Kosovo: The Legal Case for Violating Yugoslavia’s National Sovereignty in the Absence of Security Council Approval*, 22 *HOUS. J. INT’L L.* 403, 425 (2000), (noting that the embargo also resulted in a surge of refugees).

85. GOLDSTEIN, *supra* note 84, at 12.

86. *Id.* at 301.

87. See Villarreal, *supra* note 58, at 339.

88. See GOLDSTEIN, *supra* note 84, at 129.

89. *Id.*

90. *Haitian Ctrs. Council, Inc. v. Sale*, 823 F. Supp. 1028, 1032–33 (E.D.N.Y. 1993); see GOLDSTEIN, *supra* note 84, at 286 (describing the legal battle in more detail).

91. GOLDSTEIN, *supra* note 84, at 57, 286–87.

92. See *id.* at 111.

The government had seized the refugees on the ocean and taken them to territory controlled exclusively by the United States . . . In those circumstances, [U.S.] authorities were unquestionably constrained by U.S. law. Yet they had been deliberately indifferent to the refugees' medical needs and had locked them up indefinitely for no legitimate reason . . . "[T]he detained Haitians . . . are neither criminals nor national security risks. Some are pregnant mothers and others are children. Simply put, they are merely the unfortunate victims of a fatal disease. The Government has failed to demonstrate to this Court's satisfaction that the detainees' illness warrants the kind of indefinite detention usually reserved for spies and murderers."⁹³

The Supreme Court reversed the Second Circuit's decision and held that the interdiction and repatriation policies did not conflict with U.S. domestic or international obligations, a decision that remains good law to this day.⁹⁴

E. Aristide's Restoration to Power and Second Removal From Office

After the imposition of a U.N. oil and arms embargo, coup leader Lieutenant Raul Cedras agreed to negotiate a deal for Aristide's return.⁹⁵ The United States and the United Nations brokered a deal between Cedras and Aristide, and Aristide was restored to power in 1994.⁹⁶ The "Governor's Island Agreement", as the deal was known, granted amnesty to the perpetrators of the coup, a provision that Aristide unsuccessfully opposed.⁹⁷

93. *Id.* at 286–87 (quoting *Sale*, 823 F. Supp. at 1045).

94. *Id.* at 291; see also RUTH ELLEN WASEM, CONG. RESEARCH SERV., U.S. IMMIGRATION POLICY ON HAITIAN MIGRANTS 1–2 (2010) (citing annual Haitian interdiction figures from 1982 through 2010). The Supreme Court reversed the Second Circuit's holdings and sided with the government, holding that the Refugee Act of 1980 and Article 33 did not apply overseas. *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 159 (1993). "The president could deal with the Haitians however he saw fit if he found them out on the ocean. Beyond American borders, at least when it came to foreigners fleeing persecution, he was bound by no law at all." GOLDSTEIN, *supra* note 84, at 291.

95. See Dollar, *supra* note 33, at 651.

96. *Id.* at 651–52.

97. *Id.* at 651; see San Wook Daniel Han, *Transitional Justice: When Justice Strikes Back—Case Studies of Delayed Justice in Argentina and South Korea*; 30 Hous.

U.S. troops arrived to see Aristide back into office, but did little to reinforce his strength as the leader of the country.⁹⁸

The international community failed to commit the aid necessary to reverse the devastation of the coup and the embargo, and most Haitians remained in misery. Struggling to navigate between World Bank officials demanding harsh reforms and a citizenry desperate to survive, the president avoided difficult economic decisions—and lost much of his foreign support.⁹⁹

Cognizant of its deficient Haitian immigration policy, the United States passed the Haitian Refugee Immigration Fairness Act (HRIFA) in 1998,¹⁰⁰ a year after similar legislation was passed to provide relief for Nicaraguans and nationals of other Central American countries.¹⁰¹ Congress enacted HRIFA for humanitarian reasons: to provide permanent relief to Haitians who fled horrific conditions at home and to ensure that Haitians received better treatment under U.S. immigration laws.¹⁰² Upon the urging of advocates and the Congressional Black Caucus, Congress made an attempt to treat Haitian refugees more consistently with refugees from other similarly situated countries.¹⁰³ HRIFA enabled Haitians to adjust their status to become permanent residents if they (1) filed claims before December 31, 1995; (2) had been continuously present in the United States; and (3) were otherwise admissible as permanent residents.¹⁰⁴ Eligible immigrants had to apply before March 31,

J. INT'L L. 653, 682 (2008).

98. See GOLDSTEIN, *supra* note 84, at 306.

99. *Id.*

100. Haitian Refugee Immigration Fairness Act of 1998, Pub. L. No. 105–277, Title IX, 112 Stat. 2681, 2681–538 (1998) [hereinafter HRIFA].

101. Shayna S. Cook, *The Exclusion of HIV-Positive Immigrants Under the Nicaraguan Adjustment and Central American Relief Act and the Haitian Refugee Immigration Fairness Act*, 99 MICH. L. REV. 452, 454 (2000). The Nicaraguan Adjustment and Central American Relief Act (NACARA) is similar to HRIFA, but there are substantial differences between the two as well. See *id.* at 478–87 (comparing NACARA and HRIFA to other immigration relief measures).

102. *Id.* at 471–72.

103. *Id.*

104. Lynda L. Ford, *HIV Afflicted Haitians: New Hope When Seeking Asylum*, 36 U. MIAMI INTER-AM. L. REV. 293, 296–97 (2005). See also Adjustment of Status of Certain Haitian Nationals Under the HRIFA, 8 C.F.R. § 245.15(b)(1) (2002).

2000, in order to be able to adjust their status under the Act.¹⁰⁵ After the deadline passed, only dependents of principal applicants could adjust their status.¹⁰⁶ HRIFA was a nice gesture, but it was also flawed and did very little to remedy extremely oppressive—and constitutionally questionable—U.S. immigration practices.¹⁰⁷

Relief under HRIFA was limited.¹⁰⁸ The Act only applied to Haitians who arrived in the United States by boat—an undoubtedly small number, given the longstanding U.S. practice of interdiction.¹⁰⁹ Those who escaped Haiti by plane were ineligible for status adjustment under HRIFA.¹¹⁰ The Act waived certain grounds for inadmissibility, but one key ground for inadmissibility continued to be enforced: testing positive for HIV.¹¹¹ President Obama finally ended HIV-based inadmissibility in September 2009, but before that, HRIFA required Haitians to submit to HIV testing when they submitted their applications.¹¹² The INA provided two possible waivers if an alien tested positive for the virus: an alien would be allowed to remain within the United States (1) if he had U.S. familial ties or (2) for humanitarian reasons.¹¹³ Because of the narrow scope of these waivers, HIV-positive applicants who met all

105. Ford, *supra* note 104, at 297.

106. Delegation of Authority to Accept and Adjudicate Certain Requests for Advance Parole in Connection with the HRIFA Adjustment Program, 65 Fed. Reg. 15924 (Mar. 24, 2000).

107. Ford, *supra* note 104, at 297–99.

108. See Laura Figueroa, *Immigration Point Plan Won't Help Many in S. Florida*, MIAMI HERALD, June 2, 2007, available at 2007 WLNR 10306135.

109. *Id.* See also *supra* notes 58–66 and accompanying text (discussing the U.S. interdiction program begun under President Reagan).

110. Figueroa, *supra* note 108.

111. HRIFA § 902, Pub. L. No. 105–277, Title IX, 112 Stat. 2681, 2681–538 (1998) (declaring that “the grounds for inadmissibility specified in paragraphs (4) [the chance of becoming a public charge], (5) [failure to obtain labor certification], (6)(A) [previous deportation], (7)(A) [failure to comply with documentary requirements for entry], and (9)(B) [guardians accompanying excluded persons] of section 212(a) of the Immigration and Nationality Act shall not apply”); see Ford, *supra* note 104, at 297; see also Cook, *supra* note 101, at 460.

112. Ford, *supra* note 104, at 297; Jon Feere, *Obama Lifts HIV Immigration Ban*, CTR. FOR IMMIGR. STUD., Nov. 1, 2009, <http://www.cis.org/feere/hivban>.

113. Ford, *supra* note 104, at 298.

admissibility requirements but did not have family members in the United States were deported.¹¹⁴ Further, HRIFA did not provide an exception for those migrant dependents who “aged out,” or turned twenty-one years old before their status could be adjusted.¹¹⁵

Aristide was re-elected in 2000.¹¹⁶ His political party won the vote by an overwhelming margin.¹¹⁷ Rumors of voting fraud swirled after the victory and persisted throughout that presidential term.¹¹⁸ The United States responded to the allegations by blocking humanitarian loans to Haiti from the Inter-American Development Bank and the World Bank.¹¹⁹ The economic drain and allegations of election wrongdoing fostered anti-government activity, and the popular political movement quickly lost steam.¹²⁰

On February 29, 2004, a group of U.S. Special Forces soldiers escorted President Aristide and his family onto a plane heading toward the Central African Republic, effectively terminating his presidency.¹²¹ There have been allegations that the United States armed the rebels that forced Aristide to abdicate his presidency.¹²² Senator Chris Dodd has said that “it is indisputable, based on everything we know, that the [United States] played a very direct and public role in pressuring [Aristide] to leave office by making it clear that the United States would do nothing to protect him from the armed thugs who [were] threatening to kill him.”¹²³

114. *Id.*

115. See Ana Menendez, Op-Ed., *Immigration Being Unfair to Haitians*, MIAMI HERALD, May 4, 2008, at B1.

116. Dollar, *supra* note 33, at 654.

117. *Id.*

118. *Id.*

119. *Id.* at 656.

120. See *id.* at 658.

121. *Id.* at 665.

122. *Id.* at 661.

123. *Id.* at 666. See also *ARISTIDE AND THE ENDLESS REVOLUTION* (Baraka Productions 2005) (Senator Maxine Waters, Former U.S. Ambassador Roger Noriega, Paul Farmer, and Noam Chomsky commenting on Aristide’s removal from office).

F. Political Unrest, Tropical Storms, and the State of U.S.–Haiti Relations Today

Aristide's departure in 2004 sent Haiti into a tailspin.¹²⁴ Conditions worsened in the years that followed when the country experienced a series of devastating storms.¹²⁵ The Haitian government and economy are still recovering from the inflation, crime, and shortages of both food and housing that flourished in the wake of these natural disasters.¹²⁶ As a result, foreign aid currently accounts for 60% of Haiti's national budget.¹²⁷

In 2004, tropical storm Jeanne struck Gonaives, Haiti's third-largest city.¹²⁸ The storm displaced more than 250,000 people and left 3000 dead.¹²⁹ Another round of storms hit the island nation in 2008, destroying 15% of Haiti's gross domestic product and eviscerating its food crops.¹³⁰ Gonaives was eventually "rendered uninhabitable due to massive flooding

124. Irwin P. Stotzky, *Constitutionalism and Democracy: An Essay in Honor of Stanley N. Katz*, 63 U. MIAMI L. REV. 83, 93–94 (2008).

That day, the insurgents released thousands of prisoners from Haitian jails. The insurgents and their allies conducted widespread attacks on supporters of President Aristide and on nonpolitical innocent peasants, which triggered an epidemic of violence. They murdered hundreds, perhaps thousands of people. There are no reliable statistics for total deaths, but the state morgue reported disposing of [more than] 1000 bodies in the month of March 2004 alone. Many of the bodies showed the signs of summary execution.

Id.

125. Resolution Urging Temporary Protected Status or Deferred Enforced Departure for Haitians in the United States, Res. No. 2009–14, NATIONAL BAR ASSOCIATION (Aug. 7, 2009) [hereinafter Resolution Urging TPS].

126. See Mark Landler, *Clinton, in Visit to Haiti, Brings Aid and Promises Support*, N.Y. TIMES, Apr. 17, 2009, at A12.

127. *Id.*; see also Luis E. Cuervo, *The Uncertain Fate of Venezuela's Black Pearl: The Petrostate and its Ambiguous Oil and Gas Legislation*, 32 HOUS. J. INT'L L. 637, 688 n.346 (2010).

128. *Floods, Floating Coffins Left in Jeanne's Wake*, CNN, Sept. 29, 2004, <http://web.archive.org/web/20050204133343/http://www.cnn.com/2004/WEATHER/09/28/jeanne/index.html>; see also Resolution Urging TPS, *supra* note 125.

129. See Resolution Urging TPS, *supra* note 125; *Floods, Floating Coffins Left in Jeanne's Wake*, *supra* note 128.

130. See Resolution Urging TPS, *supra* note 125.

caused by the storms[,] and hundreds of thousands were left homeless.”¹³¹

Despite the state of turmoil that Haiti found itself in at the start of the new millennium, U.S. immigration policy remained the same; forced repatriations and violations of basic human rights.¹³² On October 30, 2002, more than 200 Haitians made it to the shores of Key Biscayne, Florida in a harrowing escape attempt captured on television for the entire world to see.¹³³ In those fleeting moments, the international community witnessed the plight of Haitian refugees firsthand: Desperate parents threw their children from the wooden boat to other rescue workers; others, cold and dehydrated after eight days at sea, sprinted into rush-hour traffic and begged passing motorists for rides into Miami.¹³⁴

Television cameras brought the scene on Florida’s coast to viewers across the globe:

It’s not uncommon for Haitians to grab their children and leap off a smuggler’s boat to evade capture by the Coast Guard. But usually these heart-rending scenes unfold hundreds of miles out at sea, not in the shadow of Miami’s skyline with a bee-swarm of news helicopters overhead. Live television is powerful, and in this case no sensationalizing was necessary. The pictures said it all: More than 200 frantic souls struggling ashore, some running from car to car on the Rickenbacker Causeway, begging for a lift to freedom. Watching the replay over and over, it was impossible not to be touched and at the same time jolted. The immigration dilemma has always been easier to contemplate in the abstract than in flesh-and-blood reality.¹³⁵

131. *Id.*

132. See Stephen Lendman, Commentary, *US Discriminatory Immigration Policy Toward Haitians*, BALTIMORE CHRONICLE, Feb. 27, 2009, available at <http://www.baltimorechronicle.com/2009/022709Lendman.html>.

133. Dana Canedy, *As TV Cameras Roll, Haitians Dash From Stranded Boat to the Florida Shore*, N.Y. TIMES, Oct. 30, 2002, at A20.

134. *Id.*

135. Carl Hiaasen, *What if Asylum Seekers were Norwegian?*, MIAMI HERALD, Nov. 3, 2002, at 7L.

Despite the immediate protests of Haitian advocacy groups, the refugees from that day were processed and bused to detention centers for deportation proceedings.¹³⁶

On December 14, 2002, the Bush Administration ordered that Haitians with valid asylum claims who were intercepted off of the Florida coast be detained during the length of their asylum hearing.¹³⁷ The government reasoned that migration by sea was absorbing precious homeland security resources that needed to be put to use elsewhere.¹³⁸ Yet the policy only applied to Haitians and was a departure from common asylum practice, which allows an asylum seeker to be released to a sponsor or a relative for the duration of the proceeding.¹³⁹

Best-selling author Edwidge Danticat told the story of her uncle Joseph's harrowing experience at the hands of the Immigration and Naturalization Service (INS).¹⁴⁰ After Aristide left office in 2004, Haitian police received U.N. support to combat rampant gang violence.¹⁴¹ Joseph, an eighty-one-year-old minister, found himself in the midst of the escalating conflict when U.N. forces and Haitian police stormed his church one Sunday morning.¹⁴²

Acting on the orders of the provisional government that had replaced Aristide, about three hundred [U.N.] soldiers and Haitian riot police had come together in a joint operation to root out the most violent gangs in Bel Air that Sunday morning. Arriving at three thirty a.m., the U.N. soldiers had stormed the neighborhood, flattening makeshift barricades with bulldozers. They'd knocked down walls on corner buildings that could be used to shield snipers, cleared away piles of torched

136. See Canedy, *supra* note 133.

137. Marjorie Valbrun, *Coalition Builds to Fight Bush Over Move to Detain Haitians*, WALL ST. J., Apr. 29, 2002, at A6.

138. See WASEM, *supra* note 94, at 4–5; see also Maria V. Morris, *supra* note 94, at 295–96.

139. Valbrun, *supra* note 137.

140. EDWIDGE DANTICAT, *BROTHER, I'M DYING* (2007).

141. See *id.* at 168.

142. *Id.* at 174.

cars that had been blocking traffic for weeks and picked up some neighborhood men.¹⁴³

Local gang members believed—mistakenly—that Joseph was acting in concert with the U.N. troops, and they threatened the pastor's life and burned his home and church to the ground.¹⁴⁴

Joseph filed a complaint with the United Nations and fled to Miami, where he thought he would be safe.¹⁴⁵ However, he was held up in Customs and sent to the Krome Detention Center when he could not provide his identification papers and visitor's visa, both of which had perished in his house fire.¹⁴⁶ While he was detained, Joseph was denied access to life-saving medications, and he died in Krome.¹⁴⁷ Danticat was able to publish Joseph's tragic story, but his journey is just one example of the numerous injustices Haitians suffer at the hands of U.S. immigration officials.¹⁴⁸

The tragic consequences of failed U.S. immigration policies continue to make news headlines as more boats carrying desperate Haitian refugees continue to make their way across the perilous sea toward Florida.¹⁴⁹ In July 2009, an overcrowded boat carrying Haitian immigrants capsized off the coast of Turks and Caicos.¹⁵⁰ The boat had taken on about 200 passengers before it hit a coral reef and sank.¹⁵¹ After a two-day search covering 1600 square miles, the U.S. Coast Guard managed to find just 118 survivors, and initial Coast Guard projections indicated the incident had the highest death toll of any Haitian

143. *Id.* at 171–72.

144. *Id.* at 192.

145. *Id.* at 202–03.

146. *Id.* at 217–23.

147. *See id.* at 226–27.

148. *See* Bliss Broyard, *So Far Away: Edwidge Danticat Recalls a Childhood Split Between Two Fathers and Two Countries*, WASH. POST BOOK WORLD 2, Oct. 14–20, 2007.

149. *See generally* Valbrun, *supra* note 137; Canedy, *supra* note 133 (discussing Haitians' difficult passage to the United States).

150. Damien Cave, *Rescuers Search Atlantic After Haitian Boat Sinks*, N.Y. TIMES, July 29, 2009, at A9.

151. *Id.*

boat accident since a similar capsizing claimed the lives of eighty Haitians in 2007.¹⁵²

During his second term in office, President Bush ordered the deportation of 30,000 Haitian citizens.¹⁵³ Many of those to be deported had been in the United States for years and had homes, families, and new lives in the United States.¹⁵⁴ In 2008, the Haitian government asked the White House to suspend the orders after 1000 Haitians were killed in devastating mudslides.¹⁵⁵

The Bush Administration suspended the deportations in September, only to resume the orders in December.¹⁵⁶ Hundreds were detained, and others were forced to wear monitoring devices.¹⁵⁷ The policy wreaked havoc on the Haitian immigrant community; deportations threatened to tear parents away from their children and uproot entire generations.¹⁵⁸ Human rights advocates protested the plans, worried that the Haitian government would collapse into further chaos upon the return of 30,000 jobless, homeless Haitians.¹⁵⁹ It was not until January's devastating earthquake that President Obama halted all deportation orders to Haiti and designated Haiti for TPS.¹⁶⁰

On November 13, 2009, Secretary of Homeland Security Janet Napolitano announced a plan to seek legalization for nearly 12 million of the aliens present without admission or parole in the United States.¹⁶¹ Under the proposed plan, aliens "who hope to gain legal status would have to register, pay fines

152. *Id.*

153. See Ginger Thompson, *Haitians Look for Shift in Immigration Policy*, N.Y. TIMES, Feb. 28, 2009, at A13.

154. *See id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *See Haiti's Despair, Continued, supra note 29.*

160. Press Release, U.S. Dept. of Homeland Security, Statement from Homeland Security Sec'y Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals (Jan. 15, 2010) available at http://www.dhs.gov/ynews/releases/pr_1263595952516.shtm.

161. Julia Preston, *White House Plan on Immigration Includes Legal Status*, N.Y. TIMES, Nov. 14, 2009, at A10.

and all taxes they owe, pass a criminal background check and learn English.”¹⁶² The impending immigration reform and designation of TPS are encouraging shifts in policy, but they are only a start. Below is a detailed list of short-term and long-term immigration and development policies that would ensure a strong, stable future for Haiti.

III. POLICY RECOMMENDATIONS

A. *Short-term Legislation*

1. *Humanitarian Parole*

After the earthquake, hundreds of evacuees streamed into the United States from Haiti.¹⁶³ Most were U.S. citizens, but a substantial number were U.S. permanent residents and adults accompanying young U.S. citizens.¹⁶⁴ Although the adult non-citizens were undoubtedly grateful to find themselves in more stable conditions, their futures remain uncertain.¹⁶⁵ Many have come to the United States without authorization to find work and with tourist visas that will expire in six months.¹⁶⁶ Unable to support their families, Haitian non-citizens in the United States who survived the earthquake now face a new set of difficulties.¹⁶⁷

To prevent such shortsighted issues in the future, the United States should grant humanitarian parole to Haitians who are able to come here through petitions filed by U.S. citizen family members.¹⁶⁸ The Homeland Security Secretary may grant parole to aliens “on a case-by-case basis for ‘urgent humanitarian reasons’ or ‘significant public benefit.’”¹⁶⁹ Parole

162. *Id.*

163. See Shaila Dewan, *For Disaster-Struck Haitians, Arrival in U.S. Does Not Mean an End to Problems*, N.Y. TIMES, Jan. 28, 2010, at A12.

164. *Id.*

165. *See id.*

166. *See id.*

167. *See id.*

168. *See id.*

169. Parole of Aliens into the United States, 8 C.F.R. § 212.5 (2010).

does not confer an immigration status on the parolee;¹⁷⁰ it is merely a means to allow a person to be present in the United States.¹⁷¹

Humanitarian parole cannot be given to a person who is already within U.S. borders, and thus must be granted before the person leaves Haiti.¹⁷² Haitians arriving in the U.S. in the coming years will clearly be eligible for humanitarian parole, having just survived one of the most severe natural disasters the Western Hemisphere has seen in two centuries.¹⁷³ It will be key to ensure that Haitians are given humanitarian parole in a timely fashion prior to arrival in the United States, before it is too late.¹⁷⁴

2. *End the Detention Policy*

Since December 3, 2001, inadmissible Haitians who reach U.S. shores are not paroled without Justice Department authorization.¹⁷⁵ Instead, Haitians who reach the United States are detained—even if they meet the credible fear requirement for asylum.¹⁷⁶ Only Haitians are subjected to this detention policy.¹⁷⁷ Non-Haitian immigrants who meet the statutory requirements for asylum are typically paroled and released to relatives or sponsors for the duration of a removal proceeding.¹⁷⁸

This policy of singling out Haitians in the immigration process is appalling for a number of reasons, including its inherent unfairness:

170. *Id.* § 212.5(e)(2)(ii).

171. *See id.*

172. Dewan, *supra* note 163.

173. *See generally Patience Wears Thin*, *supra* note 2 (describing the magnitude of the crisis).

174. *See* Dewan, *supra* note 163.

175. *See* WASEM, *supra* note 94, at 6.

176. *Id.* at 4–5.

177. *Id.* at 7 (“Critics maintained that the Haitians were being singled out for more restrictive treatment. They challenged the view that Haitians pose a risk to national security and asserted that the term was being construed too broadly, being applied arbitrarily to Haitian asylum seekers, and wasting limited resources.”); *see also* 107 CONG. REC. 2038 (2002) (statement of Rep. Meek).

178. Statement of Rep. Meek, *supra* note 177.

No other group of asylum seekers [is] treated this way. Non-Haitians are routinely released into their communities shortly following their initial asylum interviews and remain free throughout the adjudication process to meet with their counsels and prepare their strongest petitions. There is no other group of asylum seekers to whom a blanket indefinite detention policy is applied.¹⁷⁹

The detention policy also restricts attorney access to clients and places unnecessary hurdles in the way of lawyers' ability to provide effective and adequate representation.¹⁸⁰ Lawyers who work with the detainees must go through a drawn-out process before they can see their clients, and even then, they face obstacles "including restricted hours to meet with clients and a serious lack of adequate visitation space."¹⁸¹

Further, the detainees are separated from their loved ones and unable to support their immediate family members financially while in jail. Our immigration system stresses family reunification, and yet it goes to great lengths to keep Haitians who are facing deportation isolated and away from their families.¹⁸² To ensure effective legal counsel for Haitian immigrants facing deportation, and to advance the important goal of family reunification, the United States must discontinue this biased detention policy.

B. Long-term Legislation

Congress has several options for long-term immigration reform: updating HRIFA, extending relief to Haitians under the Cuban Adjustment Act (CAA), and reallocating visas to meet Haiti's current need.

179. *Id.*

180. WASEM, *supra* note 94, at 6.

181. *Id.*

182. THOMAS ALEXANDER ALEINIKOFF ET AL., *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 326 (6th ed. 2008) ("The dominant feature of current arrangements for permanent immigration to the United States is family reunification.").

1. Update HRIFA

HRIFA was originally passed in 1998 and permitted Haitians who had been in the United States since before 1995 to apply to adjust their status to that of a lawful permanent resident.¹⁸³ “It allowed Haitians who were in the country at the end of 1995 and who were paroled into the country, filed for asylum, or who were orphaned children to receive green cards.”¹⁸⁴ Applicants could receive work authorization while their applications were pending.¹⁸⁵ Applicants were required to file an employment authorization form either concurrently with or subsequent to filing their HRIFA application.¹⁸⁶

Spouses, children, and unmarried sons or daughters of a principal applicant¹⁸⁷ could be eligible for adjustment of status as dependents under HRIFA.¹⁸⁸ The dependent alien had to be physically present in the United States at the time the application was filed, properly file the application as a dependent, and be otherwise admissible for U.S. permanent residence.¹⁸⁹ The Act laid out special requirements for the

183. Adjustment of Status of Certain Haitian Nationals Under the HRIFA, 8 C.F.R. § 245.15(c) (2002); *see also supra* notes 100–15 and accompanying text.

184. Statement of Rep. Meek, *supra* note 177.

185. 8 C.F.R. § 245.15(n).

186. *Id.*

187. Under section 902 of HRIFA, an alien could apply as a “principal applicant” only when he

was physically present in the United States on December 31, 1995[.] . . . filed for asylum before December 31, 1995; . . . was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest; . . . at the time of arrival in the United States and on December 31, 1995, was unmarried and under 21 years of age and who . . . arrived in the United States without parents in the United States and has remained, without parents, in the United States since his or her arrival [or] became orphaned subsequent to arrival in the United States [or] was abandoned by parents or guardians prior to April 1, 1998, and . . . remained abandoned since such abandonment.

8 C.F.R. § 245.15(b)(1).

188. *Id.* § 245.15(b)(2).

189. *Id.* § 245.15(d).

dependent himself as well as the relationship between the principal and dependent.¹⁹⁰

Haitians who fulfilled the basic physical presence requirements could apply for HRIFA benefits.¹⁹¹ Those in the midst of removal proceedings or who were subject to a final removal order could also apply.¹⁹² If granted HRIFA benefits, Haitians subject to a final removal order could move to reopen their original immigration proceeding.¹⁹³

Certain grounds for inadmissibility could be waived under the Act.¹⁹⁴ An inadmissible applicant could apply for immigrant waivers by properly filing an Application for Waiver of Grounds of Excludability.¹⁹⁵ The waiveability of one of those grounds for inadmissibility was especially important: wrongly acquiring immigration through willful misrepresentation.¹⁹⁶ In determining whether to grant the waiver, immigration officials were ordered to

take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.¹⁹⁷

Congress can take steps to revive HRIFA and make it a useful tool for providing relief to Haitian immigrants in the United States. Because the application dates have expired,¹⁹⁸ Congress should first renew the application period under HRIFA and update the physical residence date to the time when the most recent crisis, the 2010 earthquake, occurred. Congress

190. *Id.* § 245.15(d)(4)–(5).

191. *See supra* note 104 and accompanying text.

192. *Id.* § 245.15(g)(3)(i).

193. *Id.* § 245.15(g)(3)(ii).

194. *Id.* § 245.15(e)(3). *See also* Waiver of Certain Grounds of Inadmissibility, 8 C.F.R. § 212.7 (2010).

195. 8 C.F.R. § 245.15(e)(3).

196. *Id.* § 245.15(e)(2).

197. *Id.*

198. *Id.* § 245.15(e)(4).

should also create a new catchall category of aliens eligible for relief under HRIFA to meet the needs of immediate relatives who have aged out of the requirements currently included.¹⁹⁹

2. *Extend to Haitians Relief Under the Cuban Adjustment Act*

Alternatively, Congress could elect to extend relief under the CAA to Haitians. The CAA was enacted in 1966 and offers far more generous relief than HRIFA.²⁰⁰ Cuba and Haiti share “a history of repressive governments with documented human rights violations,” and “a history of sending asylum seekers to the [United States] by boats,” yet “Cuban migrants receive more generous treatment under U.S. law than Haitians or foreign nationals from any other country.”²⁰¹

Under the CAA, the Attorney General has the discretion to admit Cubans who have been present in the United States for one year or more.²⁰² An informal “wet foot/dry foot” policy has evolved around those who flee Cuba for the United States: If they are intercepted en route somewhere in the ocean, they are most often returned to Cuba, but if they complete their journey and set foot on U.S. soil, they are often permitted to stay.²⁰³

Cubans face a streamlined process that, for example, applies directly to the applicant’s spouse and children without any additional paperwork.²⁰⁴ The CAA also removes the immigration ceiling for Cuban nationals, placing Cuba among a small list of nations that have no limit on the number of nationals that can immigrate each year to the United States.²⁰⁵

199. An example of such legislation is the V non-immigrant visa, which is used for spouses and children of U.S. residents with family-based immigration petitions pending. *See, e.g.*, U.S. Citizenship and Immigration Services V Nonimmigrant Visas, <http://www.uscis.gov/portal/site/uscis> (enter “V Nonimmigrant Visas” into the search bar; then follow “V Nonimmigrant Visas” hyperlink).

200. Cuban Adjustment Act, Pub. L. No. 89–732, 80 Stat. 1161 (1966) (codified as amended at 8 U.S.C. § 1255 (2003)).

201. WASEM, *supra* note 94, at 6.

202. Cuban Adjustment Act § 1.

203. WASEM, *supra* note 94, at 6; *see* Cuban Adjustment Act § 1.

204. *See* Cuban Adjustment Act § 1.

205. *See* Statement of Rep. Meek, *supra* note 177; *see also* Cuban Adjustment Act § 5.

Haiti, like Cuba, deserves favorable targeted policies.²⁰⁶ In 2002, former Representative Carrie P. Meek of Florida, one of the main architects of HRIFA, introduced a bill in Congress titled The Haitian Immigrant Equitable Adjustment Act.²⁰⁷ The bill proposed amending the CAA to grant legal rights to Haitian immigrants identical to those currently enjoyed by Cuban immigrants.²⁰⁸ Representative Meek explained:

Since the [CAA] became law, the Attorney General has used his discretion to allow [more than] 600,000 Cubans to become permanent, lawful residents of the United States—making it possible for them to eventually become U.S. citizens. During that period, [more than] 400,000 Haitians have come to the United States, but [more than] half were returned to Haiti. Under my bill, these Haitians, like the Cubans, would be allowed to remain in this country.²⁰⁹

As with the CAA, Congress would only be requesting that the Attorney General use measures within the scope of its powers to aid Haitians.²¹⁰

3. *Introduce the Golden Door Visa*

Advocated by researcher Michael Clemens, the “Golden Door Visa” would reallocate visas within the current per-country ceiling limitations to people from Haiti and other countries around the world in desperate need of opportunities not available in their homelands.²¹¹ “This small adjustment to U.S. immigration policy would have a big impact by improving the lives of poor immigrants and those who remain in their home countries through remittances.”²¹² The new visa allocations would also promote the principal goals of U.S. immigration

206. See Statement of Rep. Meek, *supra* note 177.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. Michael A. Clemens, *Let Them Leave: Why Migration Is the Best Solution for Haiti's Recovery*, FOREIGN POLICY, Jan. 27, 2010, available at http://www.foreignpolicy.com/articles/2010/01/27/let_them_leave.

212. *Id.*

policy: reuniting families, supplying employers' workforce needs, providing refuge to those fleeing persecution, and extending U.S. prosperity to those born into less fortunate circumstances.²¹³ "A golden door visa would simply recognize in law what the United States has done since its founding."²¹⁴

4. *End the Interdiction and the "Territorial Non-refoulement" Doctrines*

Comprehensive long-term immigration reform cannot happen without an end to the interdiction and "territorial *non-refoulement*" doctrines. The 1951 U.N. Convention Relating to the Status of Refugees provides: "No contracting state shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."²¹⁵ Article 33 is binding on the United States, "not only because the United States acceded to the 1967 Protocol, but also because it is customary international law that it is binding irrespective of accession."²¹⁶

The U.S. Supreme Court has also spoken on this issue, and interprets *non-refoulement* as a mandatory U.S. obligation, though the Court defines the obligation differently than do most other countries.²¹⁷ The U.S. has interpreted its *non-refoulement* obligation as only pertaining to asylum seekers who reach U.S. shores.²¹⁸ Thus, in the Court's view, intercepting aliens en route to the United States without review of credible fear of persecution is lawful and does not run afoul of the 1951 Refugee Convention.²¹⁹

213. Michael A. Clemens, *To Help Haiti's Victims, Let Them Leave*, WASH. POST, Jan. 24, 2010, at B2.

214. *Id.*

215. 1951 Convention art. 33.

216. Helton, *supra* note 59, at 337–38.

217. *See id.* at 335–36; *see also* Villarreal, *supra* note 58, at 342–47 (providing a brief analysis of the majority opinion's reasoning in the *Sale* case).

218. *See* Villarreal, *supra* note 58, at 342–47.

219. *See id.* at 345–46.

This view originated in the late 1970s, when large numbers of Haitian refugees began to flock to the United States attempting to escape political persecution under the Duvalier regime.²²⁰ A tension arose between the government's goals of balancing immigration control and refugee protection.²²¹ Ultimately, this conflict led to the U.S. interdiction program, which remains in effect today.²²² The U.S. government claims that the program was instituted with the hopes of discouraging Haitians from making the arduous journey across the Atlantic in the first place.²²³

Interdiction began in 1981, and although the Reagan Administration instructed the Coast Guard not to return people who might be refugees,²²⁴ the procedures in place for identifying potential refugees aboard Coast Guard vessels made it extremely difficult for anyone to qualify for asylum in the United States.²²⁵

The 1993 *Sale* decision made it clear to the world that the United States did not believe its Article 33 obligations extended into the high seas, where Haitians were often intercepted.²²⁶ *Sale* contradicted the U.N. High Commissioner for Refugees (UNHCR), which interprets the international doctrine of *non-refoulement* to apply "wherever states may act."²²⁷ The international community has long been at odds with the U.S. interpretation of its *non-refoulement* obligation.²²⁸ The former commissioner of the UNHCR wrote in 2000 that, "[g]iven the practice of States to intercept persons at great distance from their own territory, the international refugee protection regime would be rendered ineffective if States' agents abroad were free

220. See THE STATE OF THE WORLD'S REFUGEES: FIFTY YEARS OF HUMANITARIAN ACTION 177 (U.N. High Comm'r for Refugees et al. eds., 2000).

221. See *id.*

222. *Id.*

223. See *id.*

224. *Id.*

225. *Id.* at 177.

226. 509 U.S. at 159.

227. THE STATE OF THE WORLD'S REFUGEES, *supra* note 220, at 176.

228. See Legomsky, *supra* note 64, at 692–93.

to act at variance with obligations under international refugee law and human rights law”.²²⁹

In light of these different interpretations, statistics concerning the numbers of Haitian refugees admitted into the United States are especially damning.²³⁰ As mentioned above, during an eleven-year period, just six Haitians were granted full asylum proceedings while 21,000 were forcibly returned to Haiti.²³¹ The extreme disparity in those numbers is alarming:

Given the high incidence of serious human rights violations in Haiti during that period, there was ample reason to worry that the rarity of cases found to justify full hearings said more about the procedural adequacy of the interviews than about the merits of the claims. Descriptions of the shipboard conditions under which the interviews were conducted lent further credence to those concerns.²³²

Interdiction is inherently self-defeating because it is nearly impossible for Haitians seeking asylum to reach U.S. shores.²³³ Along with being blatantly contradictory to the fundamental tenets of U.S. governance—liberty and freedom from oppression—forced repatriation of Haitians is a direct violation of the Refugee Act of 1980 and customary international law.²³⁴ The practice is hypocritical because the United States “correctly condemned the forced repatriation of Vietnamese asylum-seekers from Hong Kong following flawed screening procedures and also criticized the Malaysian and Thai governments for pushing back boats filled with Vietnamese asylum-seekers.”²³⁵ In addition to violating human rights and international law, the U.S. policy of forced repatriation

229. *Id.* at 692.

230. *See id.* at 679.

231. *See supra* notes 63–66 and accompanying text.

232. *See Legomsky, supra* note 64, at 679. These facts are even more alarming alongside the marked increases in the number of interdicted Haitians following the 1991 coup. *See Villarreal, supra* note 58, at 339 n.33. (noting that, between November 1991 and April 1992, 34,000 Haitians were processed via interdiction).

233. *Id.*

234. *See id.* at 692–93.

235. *See FARMER, supra* note 34, at 290 (quoting William O’Neill, *The Roots of Human Rights Violations in Haiti*, 7 *Geo. Immigr. L.J.* 87, 117 (1993)).

potentially undermines asylum law elsewhere in the world.²³⁶ The same countries in Southeast Asia condemned by the United States for forcibly returning Vietnamese refugees defended their actions as “no different from what the United States was doing to Haitians.”²³⁷ This U.S. doublespeak may also be evidence of an additional violation of the 1951 Convention. Because article 3 requires application of its provisions “to refugees without discrimination as to race, religion or country of origin,”²³⁸ U.S. interdiction policies targeting Haitians are inherently at odds with U.S. international obligations.²³⁹

Further, it is a grave disservice to the rule of law to continue echoing the legal fiction that Haitian migrants are purely economic refugees, undeserving of asylum.²⁴⁰ As one federal court has recognized, “Haitian economics [are] a function of the political system.”²⁴¹ Additionally, historical patterns show that migration from Haiti surges in the wake of political coups and natural disasters.²⁴²

5. *Work to End Violations of Fundamental Human Rights in Haiti*

In addition to loosening biased and restrictive immigration policies, long-term aid measures should address the reasons Haitians risk their lives and make the perilous journey across the Atlantic to the United States in the first place. The U.S. government must work with Haiti to tackle its humanitarian problems at the source through significant investment in the country’s marketplace and its political economy.²⁴³ It is crucial to recognize that the chief causes for the plight of Haitian refugees are a non-functioning government and widespread human rights abuses committed against the civilian population

236. See THE STATE OF THE WORLD’S REFUGEES, *supra* note 220, at 176.

237. *Id.*

238. 1951 Convention art. 3.

239. Legomsky, *supra* note 64, at 692–93.

240. Haitian Refugee Ctr. v. Civiletti, 503 F. Supp. 442, 509 (S.D. Fla. 1980).

241. *Id.*

242. See Legomsky, *supra* note 64, at 680.

243. See *Haiti’s Despair, Continued*, *supra* note 29.

by security forces and peacekeeping authorities.²⁴⁴ Ensuring that basic human rights are respected and that the rule of law is followed is the most effective way to stem the flow of immigration; conjuring a series of half-baked political policies like interdiction and territorial *non-refoulement* is not.²⁴⁵

Harold Koh, Yale law professor and counsel for the Haitian Refugee Center in the *Sale* case, recommends steps that the United States can take to combat human rights violations in Haiti.²⁴⁶ He proposes that the United States take domestic action, “without the help or assistance of other nations, to condemn human rights abuses abroad.”²⁴⁷ Koh provides examples of policy steps to consider, such as “(1) adopting international human rights standards as U.S. domestic law by treaty or statute; (2) maintaining consistent public moral outrage and condemnation of human rights abuses abroad; (3) accurately monitoring, reporting, and certifying those abuses; and (4) providing temporary safe haven for refugees”²⁴⁸ Koh also recommends that the United States take actions in Haiti, including diplomatic intervention, regional collaboration with other states, and economic intervention.²⁴⁹

The United States should incorporate international law standards into its relief efforts in Haiti. This will ensure that all parties involved maintain an internationally recognized level of respect for human rights, and that all parties will be held accountable when that level is not met. The U.N. Guiding Principles on Internal Displacement (the “U.N. Guiding Principles”) outline key ways in which states can best protect and aid internally displaced persons—those persons who are forced to flee from their homes because of conflict or natural disasters within their state’s borders.²⁵⁰ Although the U.N.

244. See Villiers, *supra* note 31, at 927–28.

245. See Gibson, *supra* note 47, at 18–19.

246. See Koh, *supra* note 83, at 2427.

247. *Id.*

248. *Id.*

249. *Id.* at 2427–28.

250. See Francis Deng, *Introductory Note to UN High Commissioner for Refugees, Guiding Principles on Internal Displacement*, July 22, 1998, U.N. Doc. E/CN.4/1998/53/Add.2, available at www.internal-displacement.org/8025708F004BE3B1/

Guiding Principles are non-binding “soft law,” they are “surprisingly influential in shaping how countries and international organizations regard and treat internally displaced populations.”²⁵¹ The Principles have been adopted to address humanitarian crises in Darfur, and some countries, including Uganda and Sri Lanka, have made them a part of their domestic laws.²⁵²

The principles stress equality and protection of fundamental human rights.²⁵³ The first principle provides: “Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”²⁵⁴

The U.N. Guiding Principles also emphasize human “dignity and physical, mental and moral integrity,”²⁵⁵ by mandating that everyone, including internally displaced persons, be able to enjoy the universal human right of adequate living standards:

All internally displaced persons have the right to an adequate standard of living. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: essential food and potable water; basic shelter and housing; appropriate clothing; and essential medical services and sanitation.²⁵⁶

In order to prevent human rights abuses, Koh says the United States should not stand idly by while its neighbor suffers and should “[display] nonneutrality in the face of gross

.../GPsEnglish.pdf.

251. Hannah Entwisle, *Tracing Cascades: The Normative Development of the U.N. Guiding Principles on Internal Displacement*, 19 *GEO. IMMIGR. L.J.* 369, 371 (2005).

252. *Id.*

253. UN High Commissioner for Refugees, *Guiding Principles on Internal Displacement*, at Introduction ¶ 3, Principle 1, July 22, 1998, U.N. Doc. E/CN.4/1998/53/Add.2, available at www.internal-displacement.org/8025708F004BE3B1/.../GPsEnglish.pdf.

254. *Id.* at Principle 1(1).

255. *Id.* at Principle 11(1).

256. *Id.* at Principle 18(1)–(2).

violations of human rights. Even if the United States is not prepared to intervene to stop the abuses, it should not act as a neutral broker between perpetrators and victims of gross human rights abuses.”²⁵⁷ In leading the post-earthquake relief effort, the United States must both combat abuse and hold all actors accountable for their abuses. The Haitian government must be held accountable for corruption, and U.N. peacekeepers and other aid workers must be held accountable for their abuses, as well.

In 2007, 114 U.N. peacekeepers from Sri Lanka were expelled from Haiti after they were charged with sexual exploitation and abuse of young Haitian women and girls.²⁵⁸ The soldiers took advantage of the dire poverty in Haiti and traded sex for food or small amounts of cash.²⁵⁹ “Girls as young as [thirteen] were having sex with U.N. peacekeepers for as little as \$1.”²⁶⁰ Olga Benoit, leader of Haitian Women’s Solidarity, said of the vulnerable situation, “[t]hese are men, soldiers in big vehicles, carrying weapons—that has a lot of power in a patriarchal society like ours.”²⁶¹ The U.N. Stabilization Mission in Haiti has been in the country for six years already and will likely remain there while Haiti recovers from the earthquake.²⁶² It is imperative that the aid workers stationed in Haiti are part of the solution, not the problem. The United States must establish early on that corruption will not be tolerated in the relief effort.

Koh’s next recommendation is to offer Haitians safe haven:

The refugee outflow from Haiti is not the problem, but the symptom. While Aristide was in power, few Haitians fled. To solve the human rights crisis, a nation must first address the democracy crisis. But at the

257. Koh, *supra* note 83, at 2428.

258. Carol J. Williams, *U.N. Confronts Another Sex Scandal*, L.A. TIMES, Dec. 15, 2007, at A14.

259. *Id.*

260. *Id.*

261. *Id.*

262. See Peter Yeo, *The United Nations is on the Job in Haiti*, MIAMI HERALD, Feb. 5, 2010, available at <http://www.miamiherald.com/2010/02/05/v-print/1465147/the-united-nations-is-on-the-job.html>.

same time, it must show the refugees minimal compassion by offering them some form of refuge until democracy is restored.²⁶³

Granting TPS was a promising gesture toward Haitians already living in the United States, but international law mandates that the United States respect the basic human rights of newly arrived Haitians who seek asylum as well.²⁶⁴ The U.S. detention policy toward Haitian migrants must end because it constitutes arbitrary deprivation of liberty in direct violation of international human rights law.²⁶⁵

Per Koh's diplomatic intervention recommendation,²⁶⁶ the United States can develop a task force to help the Haitian government get back on its feet. A month after South Asia was ravaged by the 2005 tsunami, a coalition of Sri Lankan government representatives and Tamil Tigers rebels came together to work toward recovery.²⁶⁷ Calling themselves the Tidal Wave Task Force, the two sides set aside their decades-old war, "reaching across the country's festering ethnic divides and delivering donated food and aid to rival ethnic groups."²⁶⁸ When a reporter asked a Sinhalese man why he delivered food to his ethnic rivals, he replied, "[b]ecause of the incidents, we have to get together [W]e have to get together."²⁶⁹ The United States and other foreign relief workers must unite Haitian politicians and community representatives in a leadership role in the recovery process early on to lay the foundation for self-governance and self-reliance. Haitians want to rule Haiti, and it is important for the United States and other aid missions

263. Koh, *supra* note 83, at 2428.

264. See *Haiti's Despair, Continued*, *supra* note 29; Legomsky, *supra* note 64, at 692–93.

265. Michael Rowan, *The Latest Chapter in the Saga of a Spiritless Law: Detaining Haitian Asylum Seekers as a Violation of the Spirit and the Letter of International Law*, 3 *MARGINS: MD. L.J. RACE, RELIGION, GEND. & CLASS* 371, 397 (2003).

266. Koh, *supra* note 83, at 2427.

267. David Rohde, *Asia's Deadly Waves: Cooperation; In Sri Lanka's Time of Agony, a Moment of Peace*, *N.Y. TIMES*, Jan. 4, 2005, available at <http://query.nytimes.com/gst/fullpage.html?res=9800E1D61239F937A35752C0A9639C8B63>.

268. *Id.*

269. *Id.*

to foster a return to democratic rule and to help put an end to divisions brought about by years of political strife.

Additionally, Koh calls for cooperation between the United States and other countries.²⁷⁰ The United States should pursue a regional solution to what is essentially a regional problem:

[B]oth refugee policy and the restoration of democracy in Haiti are *American*, not exclusively [U.S.], problems. Both issues affect all nations in the region, and should be addressed by short- and long-term multilateral solutions agreed to by the member states of Organization of American States (OAS) and the United Nations. The goal of any effective [U.S.] policy should thus be to develop long-term regional burden-sharing solutions to the democracy problems, while initiating interim measures to address the refugee problem humanely and to mobilize public and multilateral support for both efforts.²⁷¹

The United States can achieve this feat by instituting long-term sustainable development measures. Before the earthquake, steps to rebuild Haiti were already in motion.²⁷² In June 2009, the World Bank and the International Monetary Fund approved \$1.2 billion dollars in debt relief for Haiti.²⁷³ Haiti was awarded the relief after carrying out a rigorous set of reforms including tax and debt management in order to strengthen its macro-economy and decrease poverty.²⁷⁴ In February 2010, the U.S. Treasury Department announced that it would work with its G-7 partners to cancel all of Haiti's debts owed to international institutions, including the Inter-American Development Bank, the International Fund for Agricultural Development, and the International Development Association.²⁷⁵

270. Koh, *supra* note 83, at 2429.

271. *Id.*

272. *See, e.g.*, Press Release, The World Bank, Haiti Gets US\$1.2 Billion of Debt Relief (June 30, 2009), *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/HAITIEXTN/0,,contentMDK:22232346~menuPK:50003484~pagePK:2865066~piPK:2865079~theSitePK:338165,00.html>.

273. *Id.*

274. *Id.*

275. Press Release, U.S. Dept. of the Treasury, Secretary Geithner Voices Support

However, in the wake of the earthquake's destruction, debt relief is not enough. For Haiti's long-term sustainability, the United States must foster global collaboration. This can be done through a grant fund. The World Bank provides grant assistance for developing countries through a grant fund set up by a group of states for a common purpose.²⁷⁶ In the past, the Bank has set up grant funds for countries distressed after natural disasters or economic deterioration, and it should do the same for Haiti now.²⁷⁷ Grant funds are tailored to fit specific situations:

The Aceh and Nias Fund [providing assistance to Indonesia following the 2005 tsunami] has focused on grants to rebuild housing and other physical assets and infrastructure and creation of a government-led Economic Development Financing Facility to foster job creation. The Afghanistan Reconstruction Trust Fund recently made a grant of several million dollars to the government of Afghanistan's National Solidarity Program for water, road, and other small infrastructure projects. The projects were designed with input from a network of non-government organizations and rural community representatives. On a smaller scale, the Post-Conflict Fund recently made a grant of \$50,000 to the Iraqi Widow's Organization for a project aimed to boost widows' incomes by providing them with small loans to start their own businesses.²⁷⁸

Haiti could use a grant fund to combat environmental degradation and to build schools, adequate housing, and medical centers.²⁷⁹

The United States can also use its status as a global economic leader to ensure that countries make good on their aid pledges. In 2009, Secretary of State Hillary Clinton pledged U.S.

for International Debt Relief for Haiti, Financing of Recovery Through Grants (Feb. 5, 2010), available at <http://www.ustreas.gov/press/releases/tfg537.htm>.

276. Sophie Smyth, *World Bank Grants in a Changed World Order: How Do We Referee this New Paradigm?*, 30 U. PA. J. INT'L L. 483, 501 (2008).

277. *Id.* at 521–22.

278. *Id.* at 522–23.

279. See Bill Clinton, *What We Can Do to Help Haiti, Now and Beyond*, WASH. POST, Jan. 14, 2010, at A19.

aid of more than \$300 million to Haiti.²⁸⁰ That aid package included \$2 million to combat drug trafficking; an extension of the HOPE Act, which would give Haitian-made garments tariff-free access to U.S. markets for another decade; \$287 million in relief assistance, \$20 million of which is to be used for creating jobs and rebuilding infrastructure; \$20 million toward Haiti's debt obligations; a \$15 million food donation; and a renewed commitment from U.N. peacekeeping forces.²⁸¹

It is imperative that aid commitments are honored. A U.N. official in Sudan explained in a 2005 interview with the *New York Times*:

“In the south of Sudan, the world has really achieved something fantastic in putting an end to the bloodiest war in this region,” said the official, Jan Egeland. “But now it is not willing to foot the bill of building the peace and providing for the return of refugees.” . . . Mr. Egeland said that only \$25 million of the \$500 million pledged . . . for the south had been received and that the half dozen United Nations agencies and 30 outside aid groups had underused capacity because of the shortfall.²⁸²

The United States was one of a few countries to make its aid payments on time, but twenty wealthy nations in Asia and Europe defaulted.²⁸³ By following through with its own aid commitments, the United States will likely inspire other states to do the same.

Finally, by encouraging development in the private sector, the United States can foster enterprise and economic growth and ensure a swift return to some degree of normalcy and human dignity.²⁸⁴ Before the earthquake, U.S. companies

280. Hillary Clinton, U.S. Sec'y of State, Remarks at the Haiti Donors Conference (Apr. 14, 2009), available at <http://www.state.gov/secretary/rm/2009a/04/121674.htm>.

281. *Id.*

282. Warren Hoge, *Unpaid Aid Pledges Endanger Sudan Peace Pact*, U.N. SAYS, N.Y. TIMES, Mar. 7, 2005, <http://www.nytimes.com/2005/03/07/international/africa/07nations.html>.

283. *Id.*

284. See Marc Lacey, *Still Fragile, Haiti Makes Sales Pitch*, N.Y. TIMES, Oct. 5, 2009, at A4 [hereinafter *Still Fragile*] (noting the pre-earthquake renewed interest in foreign investment in Haiti); Ban Ki-Moon, *Haiti's Big Chance*, N.Y. TIMES, Mar. 30,

including Gap and American Eagle Outfitters were among the businesses considering investment in Haiti that attended a two-day investor conference in Port-au-Prince.²⁸⁵ Investors and banks met to discuss potential projects, eager to take advantage of low labor costs and potential changes to U.S. legislation that would make apparel manufactured duty-free in Haiti.²⁸⁶ The United States should use its market share to encourage these companies to maintain interest in Haiti and to entice other enterprises to invest in Haiti. This will provide jobs and give Haitians a chance to reclaim their humanity.

IV. CONCLUSION

Last year, I visited Haiti for the first time on a student service trip. Stepping out of the airport, I was taken off guard. I saw nothing like the images of crime-riddled, poverty-stricken neighborhoods utilized by the Western media in virtually every news story on Haiti. I saw something else. Haiti was beautiful. There were mountains in the distance that seemed to disappear into a mass of trees. Within markets bustling with activity, I saw hard-working people making their living selling paintings and sweet-smelling fruit on the side of the road. Everything was a work of art, from the colorful street murals and graffiti, to the elaborate paintings on the Tap Tap taxis. That first night, I fell asleep to the drums of the Rara bands parading in the streets during Holy Week. I immediately felt at home.

In my grief, I am also hopeful for Haiti. We cannot forget our Haitian brothers and sisters, not just because of what their struggle means for the oppressed and voiceless, but also because of what their struggle means for us all.

This land cannot die: this magnificent field devastated by sacrilegious hands. Devastated, but only on the surface. Its depths are swelled and rich with the blood and corpses of men nobly fallen: our fathers. These men passed away. But after them remained that living

2009, http://www.nytimes.com/2009/03/31/opinion/31iht-edmoon.html?_r=1 (discussing the U.S. trade legislation known as HOPE II, passed in 2008, and its potential to create jobs for Haitians).

285. *Still Fragile*, *supra* note 284.

286. *Id.*

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thing, that flame: their sacrifices . . . The ancestors are that deeply rooted tree of which Louverture spoke, and its powerful sap has risen even to us and has fortified us. We have heard the voice of the dead Heroes. Their call has sounded upon our hearts like a bell sounding the alarm.²⁸⁷

287. Jacques Roumain, *This Land Cannot Die*, in *A KNOT IN THE THREAD: THE LIFE AND WORKS OF JACQUES ROUMAIN* 46 (Carolyn Fowler trans., 1980).