UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Haitian Centers Council, Inc., National Coalition for Haitian Refugees, Inc., Immigration Law Clinic of the Jerome N. Frank Legal Services Organization, of New Haven, Connecticut; Dr. Frantz Guerrier, Milot Baptiste, Kennedy Augustin, and Yolande Jean, on behalf of themselves and all others similarly situated; Lener Miclis and Claud Kenol, on behalf of themselves and all others similarly situated, Plaintiffs, vs. Chris Sale, Acting Commissioner, Immigration and Naturalization Service; Janet Reno, Attorney General; Immigration and Naturalization Service; Warren Christopher, Secretary of State; Rear Admiral Robert Kramek and Admiral Kime, Commandants, United States Coast Guard; and Commander, U.S. Naval Base, Guantanamo Bay, Defendants.	**AMENDED COMPLAINT** No. 92-CV-1258

Plaintiffs Haitian Centers Council, Inc., National Coalition for Haitian Refugees, Inc., Immigration Law Clinic of the Jerome N. Frank Legal Services Organization, of New Haven, Connecticut (hereinafter "Haitian Service Organizations"); Dr. Frantz Guerrier, Milot Baptiste, Kennedy Augustin, and Yolande Jean, on behalf of themselves and all others similarly situated (hereinafter "screened-in plaintiffs"); and Lener Miclis and Claud Kenol, on behalf of themselves and all others similarly situated, by their undersigned attorneys, as and for their complaint, allege as follows:

PRELIMINARY STATEMENT

1. This is a complaint for declaratory and injunctive relief arising from defendants' illegal and arbitrary actions against Haitians and Haitian Service Organizations following the military coup that overthrew the government of Jean-Bertrand Aristide on September 30, 1991. Following the coup, many Haitians fled their country because of a well-founded fear of political persecution. Defendants have all but ignored those fears. Although binding domestic and international law mandates that refugees, such as the Haitian plaintiffs in this action, shall not be returned to countries where they face death and political persecution, defendants have interdicted numerous vessels on the high seas carrying the Haitian asylum seekers to freedom. Until May 24, 1992, defendants followed the practice of detaining those asylum seekers at Guantanamo Bay Naval Base and subjecting them to screening procedures nowhere mentioned in the Immigration and Nationality Act (INA). Refugees who were "screened out" after those screening procedures were then forcibly repatriated to Haiti. Many of those "screened-in" were ultimately transported to the United States to pursue their claims for asylum, in accordance with longstanding United States policy. But even after May 24, 1992, some of those who were "screened-in" have remained detained and for the most part uncounseled at Guantanamo for many months, based solely on their alleged medical status or that of their family members, even as they await further proceedings that may lead to their forced repatriation.

2. From May 1992 until the present time, defendants have failed to employ any screening procedure whatsoever to identify those Haitians on interdicted boats who face political persecution if they are returned to Haiti. All Haitians on interdicted boats are summarily returned to Haiti without process of any kind. Defendants have forcibly repatriated a large number of "screened-in" refugee plaintiffs from Guantanamo without any determination that those Haitians are not bona fide political refugees. Many of these "screened-in" refugees would attempt to flee political

persecution in Haiti again by boat, but for defendants' lawless policy, which cuts off their avenue of escape.

3. Although the First Amendment protects the right of lawyers to associate with their clients, defendant officials have barred plaintiff legal and advocacy groups from counseling and representing Haitian refugees held within U.S. jurisdiction in connection with those refugees' claims for political asylum and to resist wrongful repatriation, based solely upon the content and viewpoint of the message those representatives would communicate. Defendants simultaneously have barred plaintiff Haitian refugees from communicating with their retained counsel with respect to those same claims, although defendants plan to adjudicate those claims in proceedings that may lead to their repatriation to death or serious injury. For months, defendants prohibited communication of any sort between plaintiff refugees and their retained counsel, and may at any time resume that prohibition.

4. Since the September coup, lower executive officials have acted arbitrarily and capriciously and in violation of unambiguous constitutional, statutory, presidential, and administrative mandates to coerce and detain plaintiff refugees and to diminish their right to resist forced repatriation to a brutal regime the United States Government has called illegitimate. In so doing, defendants have ignored binding international obligations that have been executed as United States law and which deny them discretion to return political refugees to a country where those refugees have a well-founded fear of political persecution. Finally, defendants impermissibly have applied these unauthorized, ad hoc procedures solely against Haitian refugees, based on their race and national origin.

JURISDICTION AND VENUE

5. Plaintiffs' claims arise under the Immigration and Nationality Act, 8 U.S.C. Sections 1101(a)(43), 1157(c), 1158, 1182, 1225, 1226, 1253(h), 1362, the Refugee Act of 1980, 8 U.S.C. Section 1521, regulations promulgated thereunder, the Administrative Procedure Act (APA), 5 U.S.C. §§ 551 et seq., Executive Order No. 12324 of September 1981, Executive Order No. 12807

of May 1992, 46 Fed. Reg. 48107, the INS's Interdiction Guidelines and Operations Instructions of October 6, 1981, the First and Fifth Amendments to the United States Constitution, the Agreement Effected by Exchange of Notes Between the United States and the Republic of Haiti of September 23, 1981, the United Nations Protocol Relating to the Status of Refugees, and principles of customary international law. Jurisdiction is based on 28 U.S.C. § 1331, as a civil action arising under the Constitution, laws, or treaties of the United States; 8 U.S.C. § 1329, as a civil action arising under the Immigration and Nationality Act, as amended; 5 U.S.C. § 702 as a civil action arising under the Administrative Procedure Act; and 28 U.S.C. §§ 2201, 2202 as a civil action seeking, in addition to other remedies, a declaratory judgment.

6. Venue is proper in this district under 28 U.S.C. Section 1391(e)(3) because the defendants include officers and employees of the United States and agencies thereof acting in their official capacity, and because plaintiff Haitian Centers Council, Inc. ("HCC") is a not-for-profit corporation organized and existing under the laws of the State of New York and has its principal place of business in Brooklyn, New York. No real property is involved in this action.

PARTIES

A. Plaintiffs

7. Plaintiff Haitian Centers Council ("HCC") is a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal place of business at 50 Court Street, Brooklyn, New York. It provides a variety of services to the Haitian community, particularly the refugee community. Its clients have included thousands of Haitian refugees, including many who have fled Haiti by boat. Among its services HCC arranges pro bono legal counsel on immigration questions for refugees seeking political asylum. HCC also provides services concerning employment, family counseling, job placement, AIDS education and prevention, education and health. It assists all Haitians that need its services, and part of its mission is advocacy on behalf of Haitian

refugees. It has sought and continues to seek to provide services, legal and otherwise, to Haitians who have fled Haiti and been interdicted by defendants since the September 1991 coup. Defendants have denied HCC access to its clients on Guantanamo Bay Naval Base, thereby hindering its ability to provide effective representation to its interdicted clients.

8. Plaintiff National Coalition for Haitian Refugees, Inc. ("NCHR") is a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal place of business in New York City. NCHR is comprised of prominent labor, religious, immigrant and refugee organizations. Formed in 1982, NCHR was designed to respond expressly to the plight of refugees fleeing repression in Haiti and seeking new lives in the United States. NCHR monitors and advocates for the rights of Haitians and provides legal and other services to Haitian asylum seekers – its clients -- both within and outside the United States. NCHR seeks to represent those clients' interests in this lawsuit. Defendants have denied NCHR access to its clients on Guantanamo Bay Naval Base, thereby hindering its ability to provide effective representation to its interdicted clients.

9. The Immigration Law Clinic of the Jerome N. Frank Legal Services Organization, of New Haven, Connecticut was organized in 1989 at the Yale Law School as a faculty-supervised clinical course designed to render pro bono legal assistance to refugees filing asylum claims. Clinic members currently are counseling Haitian refugees in the United States who previously were detained by defendants at Guantanamo Bay Naval Base or on Coast Guard cutters.

10. The individual named plaintiffs Dr. Frantz Guerrier, Milot Baptiste, Kennedy Augustin and Yolande Jean are Haitian citizens who fled Haiti due to their fear of political persecution. They were interdicted by the Coast Guard and "screened in" by defendant INS as having credible fears of political persecution.

11. The individual named plaintiffs Dr. Frantz Guerrier and Milot Baptiste were held in detention at Guantanamo Bay Naval Base after being "screened in." They were subsequently involuntarily returned to Haiti without any determination by defendants that they lack bona fide asylum claims. While held at Guantanamo, they retained plaintiff Haitian Service Organizations to provide them with representation and advocacy, and they sought to exercise their procedural and other due process rights. These named plaintiffs also represent other similarly situated persons who were (a) detained within U.S. jurisdiction on Coast Guard cutters or at Guantanamo Bay Naval Base, (b) "screened in," and (c) involuntarily returned to Haiti without any determination that they lacked well-founded fears of persecution (the "repatriated screened-in plaintiffs"). On information and belief, this group numbers over 150. Although these Haitians were supposed to be brought to the United States and afforded full procedural safeguards, including the right to counsel, in pursuing their asylum claims, many of them languished at Guantanamo Bay for months on end before being forcibly repatriated, without being informed of their legal status or of their procedural rights. On information and belief, they again wish to flee political persecution, and would do so but for defendants' practice of summary repatriation.

12. Kennedy Augustin, a Haitian presently detained on Guantanamo who was identified in the initial complaint as "Jean Doe," and Yolande Jean, are Haitian refugees who have been "screened in" and are presently detained at the Guantanamo Bay Naval Base. These named plaintiffs also represent other similarly situated persons detained within exclusive U.S. jurisdiction on Coast Guard cutters or at Guantanamo Bay Naval Base (the "screened-in plaintiffs at Guantanamo"). On information and belief, this group numbers over 250. Although these "screened-in" Haitians were supposed to be brought to the United States and afforded full procedural safeguards, including the right to counsel, in pursuing their asylum claims, members of the plaintiff class have languished at Guantanamo for many months. They seek, and are entitled to seek, political asylum in the United

States and/or in third countries. They have a substantive right not to be forcibly returned to Haiti, where they face persecution because of their political opinions and risk unlawful arrest, detention, persecution and possible death. They also seek enforcement of the United States' government's obligations under domestic and international law. These "screened-in" Haitians are being denied their right to be advised and represented by their retained counsel regarding their claims for political asylum, and their right to communicate with their retained counsel they wish to retain. Defendants have sought to dispose of these "screened-in" Haitians' political asylum claims on Guantanamo with none of the lawfully guaranteed procedures and protections appropriate to an asylum adjudication, despite previous assertions that such processing would take place in the United States with statutory procedural rights, including the right to counsel. This change in policy and practice occurred on or about March 10, 1992. Despite the fact that defendants plan to adjudicate their claims for political asylum, plaintiffs have not been allowed representation by counsel regarding those proceedings, any right of rebuttal or review, or any of the other procedural safeguards required by the Immigration and Nationality Act, regulations and due process. The above-named plaintiffs wish to challenge the arbitrary and ad hoc procedures which they confront, and have repeatedly lodged objections with defendants or their agents regarding the additional tier(s) of screening and the indefinite detention to which they are being subjected. Plaintiff Augustin initially refused to be "rescreened," on the grounds that defendants or their agents promised that he and others similarly situated would be processed for asylum in the United States, and that to be rescreened on Guantanamo deprives him of important rights due him in such a proceeding. Plaintiff Haitian Service Organizations consider the above-named plaintiffs and similarly situated persons to be clients and constituents of Haitian Service Organizations by virtue of their seeking asylum status. They have retained plaintiff Haitian Service Organizations to provide them with representation and advocacy. The above-named plaintiffs sue on behalf of themselves and other detainees similarly situated.

13. The individual named plaintiffs Lener Miclis and Claud Kenol are, respectively, the husband and father of refugees presently detained at Guantanamo. Lener Miclis is a resident of Miami, Florida, and is a United States citizen. Claud Kenol resides in Lakewood, Florida, and is a permanent resident of the United States. They sue on their own behalf and on behalf of other Haitians in the United States who have relatives detained on Guantanamo (the "immediate relative plaintiffs"). These plaintiffs and the class they represent are being denied their constitutional right to associate with their detained relatives and their interest in having the United States immigration laws applied to their relatives without discrimination on the basis of national origin.

B. Defendants

14. Defendant Chris Sale is the Acting Commissioner of the Immigration and Naturalization Service ("INS"). She is in charge of implementing the practices and procedures under which plaintiffs are denied their statutory and constitutional rights. The INS officers involved in determining plaintiff refugees' situation and status are acting under her direction and supervision. Defendant Sale is being sued in her official capacity.

15. Defendant Janet Reno is the United States Attorney General and in that capacity has ultimate responsibility for the enforcement of the immigration laws of the United States. Defendant Reno is being sued in her official capacity.

16. Defendant Warren Christopher is the United States Secretary of State and in that capacity has the final decision-making authority within his department. Upon information and belief, the State Department has participated with other United States agencies in determining the status and situation of the "screened-in" refugees at Guantanamo, and since May 24, 1992, has participated in the decision that interdicted refugees should not be identified as credible asylum-seekers and brought to the United States. Defendant Christopher is being sued in his official capacity.

17. Defendants Kramek and Kime are Commandants of the United States Coast Guard. Other Coast Guard officers implementing the interdiction program are acting under their direction and command. These defendants are being sued in their official capacity.

18. Defendant Commander of the United States Naval Base has general jurisdiction over the United States' military operation at Guantanamo. He is being sued in his official capacity.

19. Defendant Immigration and Naturalization Service (INS) is the agency charged with direct responsibility for enforcing the immigration laws of the United States.

STATEMENT OF FACTS

20. On September 30, 1991, a military coup ousted Haitian President Jean-Bertrand Aristide. President Aristide had been elected in December 1990 in the first fully democratic elections to take place in Haiti in over 200 years.

21. The United States government refused to recognize the military junta which succeeded President Aristide. President Bush issued Executive Orders freezing all assets of Haiti in the United States and prohibiting U.S. citizens from transacting any business with the military junta. In Executive Order 12779, the President recognized that "the grave events in the Republic of Haiti . . . are continuing to disrupt the legitimate exercise of power by the democratically elected government of that country."

22. The September 1991 coup triggered a continuing, widely publicized reign of terror in Haiti. In the past seventeen months, thousands of Haitians, many of them democratic activists and supporters of the Aristide government, have been killed or subjected to violence and destruction of their property because of their political beliefs and affiliations, producing fear and desperation throughout the country.

23. As a result of these grave conditions, thousands of Haitians have fled the brutality of the illegal Haitian regime. Thousands of refugees have fled to the Dominican Republic.

Thousands more have set out in small boats that are often overloaded, unseaworthy, lacking basic safety equipment, and operated by inexperienced persons, braving the hazards of a prolonged journey over high seas in search of safety and freedom.

24. United States Coast Guard cutters on patrol in the international waters of the Windward Passage near Haiti have intercepted and are intercepting vessels carrying Haitians fleeing political persecution, many of whom have no desire to enter the United States and either have no specific destination in mind or are fleeing to a particular third country.

25. To date, countless vessels carrying Haitian refugees have been intercepted and more than 40,000 Haitians from these vessels have been interdicted and taken into United States custody since the coup. Initially, interdicted Haitians were taken to Guantanamo, where, after being denied procedural safeguards, including the right to counsel, the Haitian detainees were interviewed summarily and classified as "screened-in" or "screened-out." Those "screened out" were repatriated. The "screened-in" detainees were supposed to be brought to the United States and afforded the full panoply of procedural safeguards in asserting their political asylum claims, including the right to counsel, but the "screened-in" plaintiffs who remain at Guantanamo have not been so treated.

26. Approximately 40,000 Haitians were taken to the United States Naval Base at Guantanamo Bay between October 1991 and May 1992, where most were detained incommunicado for weeks or months. Guantanamo Bay Naval Base and the Coast Guard cutters on which the Haitians were originally detained are wholly within the jurisdiction and control of the United States.

27. Despite repeated attempts by legal and advocacy groups to gain access to Haitian refugees on the Coast Guard cutters or at Guantanamo Bay, for many months defendants barred such access completely. At the same time, however, defendants granted access to numerous other individuals, including clergy and church groups, the press, and even a piano-tuner.

28. Although the forcible repatriation of the "screened-out" Haitian detainees was for a period preliminarily enjoined by the United States District Court for the Southern District of Florida, the United States Court of Appeals for the Eleventh Circuit ultimately vacated all injunctions on February 4, 1992. On February 24, 1992, the Supreme Court denied certiorari, permitting the forcible repatriation of the "screened-out" Haitian detainees to continue unchecked.

29. After the Supreme Court's denial of certiorari in the Florida litigation, defendants changed their screening policy by resuming screening on Coast Guard cutters. As a direct result of these changes, the percentage of Haitians "screened in" dropped precipitously, then plummeted further after preliminary relief was granted in this case protecting the due process rights of "screened-in" Haitians, whereupon defendants processed large numbers of interdictees rapidly. Defendants provided no public notice in the Federal Register or otherwise to plaintiff Haitian Service Organizations, to plaintiff Haitian refugees, or to anyone else in the United States or elsewhere of these changes in procedure that directly affected the life and liberty of plaintiff Haitian refugees and that continued to thwart the organizational purposes of plaintiff Haitian Service Organizations.

30. Early in 1992, defendants began a new policy of medically testing "screened-in" Haitian refugees before they were physically transferred to the United States to pursue their asylum claims. Defendants have not subjected any other interdicted aliens to medical testing prior to their transfer to the United States. Defendants did not obtain the consent of the refugees before performing the medical tests, including blood tests. Days after the Supreme Court's denial of certiorari in the Florida litigation, defendants initiated a new policy of forcing some "screened-in" Haitian refugees to undergo multiple layers of review based on the refugees' alleged medical status, abandoning the prior practice of bringing such refugees directly to the United States for standard asylum adjudications. But for the preliminary injunction now entered in this case, defendants would be disposing of the political

asylum claims of the "screened-in" Haitians who remain on Guantanamo, while denying them access to counsel, the opportunity to rebut and submit evidence and other procedural safeguards.

31. Between April and June 1992, defendants forcibly repatriated at least 150 "screened-in" plaintiffs to Haiti against their will, either (a) as a result of error, (b) because a number of plaintiffs refused to submit to final asylum adjudications without counsel on Guantanamo, or (c) as a result of the inferior asylum processing system without procedural safeguards which defendants applied to those "screened-in" refugees who allegedly tested positive for HIV. Defendants repatriated many of these "screened-in" plaintiffs without ever determining that they lacked well-founded fears of persecution upon return to Haiti.

32. From May 24, 1992, until the present time, defendants have summarily repatriated without any process whatsoever all Haitians interdicted as they attempt to leave Haiti by boat. Defendants have entirely ceased screening for political refugees. This change in policy has prevented the "repatriated screened-in" plaintiffs in Haiti from fleeing persecution by boat, as they otherwise would do.

IMMEDIATE EVENTS GIVING RISE TO THIS LAWSUIT

33. With the removal of judicial oversight at the end of the Florida litigation, defendants resumed their total ban on the access of legal advocacy organizations to Haitian refugees being held incommunicado on Guantanamo or the Coast Guard cutters.

34. On March 11, 1992, plaintiffs' counsel wrote then-INS Commissioner McNary and the Commanding Officer of the U.S. Naval Air Station, Guantanamo Bay, requesting access on behalf of plaintiff Haitian Service Organizations to Haitian citizens held at that time at the United States Naval Base on Guantanamo Bay and on Coast Guard cutters off Guantanamo, for the purpose of providing them legal counsel, advocacy, and representation. In particular, plaintiffs' counsel requested access to communicate with initial named plaintiffs Dr. Frantz Guerrier, Pascal Henry,

Lauriton Guneau, Medilieu Sorel St. Fleur, Dieu Renel, Milot Baptiste, and A. Iris Vilnor, and with the leaders of the organization known as the Association of Haitian Political Exiles. Plaintiffs' counsel requested that plaintiff Haitian Service Organizations be given immediate access to these Haitian individuals on such terms and conditions as might be reasonable to the Government, before 9 a.m. Monday, March 16, 1992. Defendants did not allow plaintiffs' counsel access. On information and belief, defendants denied the requests of all legal and advocacy groups seeking such access.

35. Although defendants have from time to time permitted plaintiffs' counsel access to their clients, defendants have expressly reserved the right to deny access at will. Moreover, defendants have never permitted the "screened-in" Haitians access to counsel in connection with the well-founded fear interviews many of them have been forced to undergo.

36. Defendant INS has altered substantive rules which have a substantial impact on the individuals regulated without following the rulemaking procedures set out in the Administrative Procedure Act, 5 U.S.C. § 551, et seq. These altered substantive rules include, but are not limited to, medical testing of "screened-in" Haitians before they are allowed to pursue their asylum applications in the United States; rescreening of Guantanamo refugees already "screened-in"; and forcing such refugees into asylum proceedings or proceedings which may dispose of their asylum claim on Guantanamo.

37. Since the September 1991 coup, defendants have engaged in a pattern and practice of intimidating and coercing plaintiffs, of discouraging and diminishing their rights to asylum and to alternative-country placement, and of willfully relying upon false information and prejudicial biases to effect forced repatriations and to deny them parole from detention and parole into the United States. These practices include, but are not limited to:

a. Barring plaintiff "screened-in" Haitian refugees who have been or will be screened again from being represented by counsel regarding their asylum

claims, while forcing them to undergo multiple tiers of screening, including final disposition of their political asylum claims on Guantanamo itself.

b. On information and belief, when defendants determined that improved screening procedures had raised the rate of Haitian refugees being "screened in," defendants, including officers of the State Department, developed new policies and new instructions for INS screening personnel, directing that fewer Haitians be "screened in" or deemed to have credible asylum claims. This directive was given without reference to the particular circumstances of any individual cases; defendant INS simply made known that the State Department and/or various Executive officers desired to see fewer asylum applicants from Haiti "screened in."

c. Defendant officials have prepared, and in processing plaintiffs' asylum claims have relied on, inaccurate and misleading reports regarding the situation in Haiti and the credibility of persons fleeing Haiti.

d. On information and belief, defendant INS has urged greater reliance by its officials on State Department reports in preference to the reports of internationally-recognized human rights agencies.

e. On information and belief, defendant State Department has directed or led defendant INS to include factors in its asylum determinations that are contrary to law.

f. United States officials declared that all Haitian detainees on Guantanamo who were "screened in" would be sent expeditiously to the United States for adjudication of their claims for asylum. As defendants represented in prior litigation:

> Under current practice, any aliens who satisfy the threshold standard are to be brought to the United States so that they can file an application for asylum under Section 208.02 of the Immigration and Nationality Act (INA), 80 SL § IJ8(a). These 'screened in' individuals then have the opportunity for a full adjudicatory determination of whether they satisfy the statutory standard of being a 'refugee' and otherwise qualify for the discretionary relief of asylum.

In direct contradiction to these public assurances of United States officials, following the end of judicial oversight, on February 29, 1992, Grover Joseph Rees, General Counsel of the INS, circulated a memorandum setting forth agency policy not to bring all "screened-in" plaintiffs to the U.S., but to send additional INS asylum officers to Guantanamo in order to dispose of the asylum claims of some Haitians who already have been "screened in." This adjudication was to be carried out without counsel or any other procedural protections which lawfully obtain in asylum processing. While an unfavorable outcome during rescreening was intended to lead to repatriation under the new program, a favorable outcome would not necessarily result in a grant of asylum or lead to plaintiffs' being released from detention and/or being brought to the United States to pursue their application for asylum.

g. Defendants have sought to discourage plaintiffs from pursuing their lawful asylum claims by (i) circulating false and misleading information suggesting that plaintiffs' chances for asylum are remote, (ii) implying that conditions in Haiti are now safe; and (iii) suggesting that plaintiffs have no right to obtain

political asylum by virtue of their alleged medical condition and will remain confined at Guantanamo for years unless they agree to return to Haiti.

38. In the Refugee Act of 1980, Congress acted to limit executive discretion in granting asylum or refugee status, and to prohibit the discriminatory administration of parole or asylum programs by executive agencies. Subsequent regulations reaffirmed the obligation of executive agencies to apply the asylum and parole laws without discrimination based on race or national origin.

39. Nonetheless, defendants have excluded plaintiff refugees entirely from the Congressionally-mandated asylum processing program solely on the basis of their national origin. Rather than permit the plaintiff refugees to apply for asylum under the standard procedures and with the standard protections afforded members of other national groups, defendants have forced them into an inferior asylum processing track imposed only upon Haitians who are HIV-positive and their family members.

40. Members of no other national group besides Haitians are tested for HIV or for any other medical condition before being allowed to apply for political asylum under INA §208. Cuban nationals whom defendants interdict in the same circumstances as plaintiff Haitian refugees, or who make their way to the Guantanamo Naval Base and identify themselves as asylum-seekers, are not medically screened before being brought to the United States to pursue their asylum claims.

41. United States officials declared that Haitians fleeing by boat would not be returned to Haiti if they were genuine political refugees. As defendants represented in prior litigation, "[T]he United States remains committed to . . . ensuring that interdictees who truly are refugees under established legal standards are not returned to Haiti without their consent . . .". In direct contradiction to these public assurances of United States officials, on May 24, 1992, the President issued the "Kennebunkport Order," which permits lower government officials to "return" all

interdictees directly to Haiti without determining whether they had claims of political persecution in Haiti. That order purported to delegate to the Attorney General "unreviewable discretion" to return refugees to Haiti without their consent.

CLASS ACTION ALLEGATIONS

42. The named Haitian plaintiffs bring this action pursuant to Rule 23(a) and (b)(2) on behalf of themselves and all other persons similarly situated in the following presently ascertainable classes:

43. All Haitian citizens who have been or will be "screened in" -- including those who have been or may be subject to or who have resisted additional screening procedures -- who are now, will be or have been detained on Guantanamo Bay Naval Base, or any other territory subject to United States jurisdiction or Coast Guard cutters (hereinafter "screened-in" plaintiffs). On information and belief, this group currently numbers over 11,000.

44. All parents, children, spouses, siblings, and other close relatives of members of the "screened-in" class who have been legally admitted to the United States or who are United States citizens, who have been deprived of their rights to associate with their relatives because of defendants' actions (hereinafter "immediate relative plaintiffs"). On information and belief, this group currently numbers over 200.

45. Plaintiff classes warrant class action treatment because: they are sufficiently numerous; defendants have acted or threatened to act on grounds generally applicable to each member of each class, thus making final declaratory and injunctive relief with respect to each class as a whole appropriate; the plaintiffs are adequate representatives of their classes and the claims of the named plaintiffs are both common to and typical of the claims of members of each class.

FIRST CLAIM FOR RELIEF

(Content and Viewpoints-Based Denial of First Amendment Rights)

46. Plaintiffs repeat, reallege and incorporate paragraphs 1 through 45 above as though fully set forth herein.

47. Plaintiff Haitian Service Organizations are legal and advocacy groups formed for the organizational purpose of providing or securing counseling, advocacy, and legal representation, without remuneration, to refugees, including Haitian refugees.

48. In furtherance of their organizational purposes, plaintiff Haitian Service Organizations seek to associate with Haitian citizens, including the individual named plaintiffs who are held at the United States Naval Base on Guantanamo Bay, for the purpose of providing them legal counsel, advocacy, and representation.

49. Plaintiff Haitian Service Organizations have been retained by the Haitian refugees detained at Guantanamo in connection with those refugees' attempts to resist involuntary repatriation to Haiti and to gain political asylum. Members of the plaintiff class have sought representation by plaintiff organizations, and regard themselves as clients of plaintiff organizations.

50. Without compelling justification, defendants have denied and continue to deny plaintiff organizations reasonable access to their clients and members on Guantanamo for the purpose of representation, advocacy and association, thus injuring plaintiff organizations' speech and associational rights under the First Amendment.

51. While preventing plaintiff organizations from associating with their clients and members, defendants have provided the refugees detained on Guantanamo with information regarding their rights and legal status which plaintiff organizations believe to be wrong, incomplete and/or misleading, and which plaintiff organizations wish to answer or counter by associating with their

members. Defendants have provided such information with the purpose and/or effect of interfering with the attorney-client relationship.

52. Defendants have permitted others, including foreign nationals, to have access to the refugee camp at Guantanamo, and have discriminated against plaintiff organizations in denying them access because of the content and the viewpoint of the speech they would engage in.

53. Defendants have taken advantage of their exclusion of plaintiff organizations from the refugee camp at Guantanamo to propagate their own unopposed views, both in and outside the refugee camp, as to the legal status of the refugees confined there and the propriety of their confinement.

54. Defendants have interfered with the relationship between plaintiff organizations and their clients detained at Guantanamo, and thus violated their associational rights, by misrepresenting to those clients the intentions and opinions of plaintiff organizations and the status of the legal proceeding commenced by plaintiff organizations, while preventing plaintiff organizations from effectively communicating truthful information to their refugee clients.

SECOND CLAIM FOR RELIEF

(Denial of Constitutional Rights
to Obtain and Communicate with Counsel)

55. The "screened-in" plaintiffs at Guantanamo repeat and reallege paragraphs 1 through 54 as though fully set forth herein.

56. Defendants have denied and continue to deny plaintiff refugees detained on Guantanamo reasonable access to class counsel and to plaintiff Haitian Service Organizations. Defendants also have denied and continue to deny plaintiff refugees any meaningful opportunity to retain and receive assistance from other counsel or advocates of their choice.

57. Plaintiff refugees are detained in the custody of the United States government, on territory subject to exclusive United States control and jurisdiction. The laws of the United States and

of no other country apply on Guantanamo. Plaintiff refugees have been "screened in" by defendants and enjoy liberty or property interests in avoiding wrongful return to persecution and in effectively applying for political asylum.

58. U.S. law provides that applicants for political asylum in the United States have access to counsel at every stage of the asylum application and review process, including during preparation for application and hearings. Applicants are far less likely to be granted political asylum without than with the effective assistance of counsel.

59. Without access to counsel or other independent advocates, plaintiff refugees have been, and at any time may be, subjected to abuses and arbitrary deprivations of rights and liberty. These abuses have included, but are not limited to: interviews by INS asylum officers without the assistance of counsel, which denies the Haitian refugees a meaningful opportunity to present effectively their asylum claims; indefinite incarceration in the brig or a separate camp designed to punish those refugees whom the military decided, without any process whatsoever, were "guilty" of some unspecified infraction; physical beatings; and misinformation about their legal status and legal prospects.

60. Defendants' denial of Haitian plaintiffs' rights and the rights of the class whom they represent to obtain counsel or to communicate with retained counsel in pursuing their claims for political asylum or in avoiding wrongful repatriation violates the First and Fifth Amendment rights of Haitians plaintiff on Guantanamo to obtain counsel and to associate with retained counsel.

THIRD CLAIM FOR RELIEF

(Other Denial of Constitutional Due Process Rights)

61. The "screened-in" plaintiffs at Guantanamo repeat and reallege paragraphs 1 through 60 as though fully set forth herein.

62. Defendants have intercepted and indefinitely detained plaintiff refugees, who have committed no crime, under an extra-statutory legal regime without fixed or knowable procedures, timetables or standards for resolution of the detention, violating plaintiffs' right to be free of indefinite detention.

63. Plaintiff refugees have been, and at any time may be, arbitrarily subjected to beatings, incarceration and other punishments, without process of any sort, violating plaintiffs' right to be free of arbitrary punishment.

64. Plaintiff refugees have been subjected to interviews by INS asylum officers without the assistance of counsel, denying them a meaningful opportunity to present effectively their asylum claims, violating plaintiffs' right to present in an effective manner their claim for political asylum and for such claim not to be improperly denied.

65. Under defendants' policies challenged herein, plaintiff refugees have been and are denied the right to submit supplementary evidence, testimony and affidavits within thirty days after their asylum interview.

66. Under defendants' policies challenged herein, plaintiff refugees have been and are denied the right to a written Notice of Intent to Deny their claims to political asylum, stating the reasons for the intended denial, an assessment of the applicant's credibility, and information from sources other than those the applicant relied upon in reaching the negative determination.

67. Plaintiff refugees are denied the right to submit a response or rebuttal to a Notice of Intent to Deny.

68. Under defendants' policies challenged herein, plaintiff refugees have been and are denied the right to renew an application for political asylum to an immigration judge and to appeal an adverse determination to the Board of Immigration Appeals and to the federal courts.

69. Defendants have subjected and may at any time subject members of the plaintiff class to medical testing against their will, and have prescribed treatment for medical conditions notwithstanding plaintiff refugees' inability to consent or refuse consent to treatment on an informed basis due to inadequate counseling, violating plaintiffs' right to refuse medical testing and/or treatment.

70. Plaintiff refugees have been denied adequate medical care, by defendants' actions in failing to provide effective counseling regarding diagnosis and treatment of plaintiffs' medical conditions; in detaining members of the plaintiff class whose medical condition has so deteriorated that they cannot be properly cared for at facilities on Guantanamo; and in failing to provide specialist treatment for a number of medical problems suffered by plaintiff refugees, violating plaintiffs' right to adequate medical treatment while in defendants' custody.

71. By concentrating a large number of immune-suppressed individuals in a single detention facility, defendants have placed plaintiff refugees at needless risk of medical deterioration and disease infection, violating plaintiffs' right not to be confined in inherently unhealthful and life-threatening conditions.

FOURTH CLAIM FOR RELIEF

(Failure to Follow Rulemaking Procedures)

72. Plaintiffs repeat and reallege paragraphs 1 through 71 as though fully set forth herein.

73. The policies and practices initiated by the INS in early 1992, including medically testing "screened-in" Haitians, excluding HIV-positive Haitians from the standard political asylum program, and subjecting HIV-positive Haitians to an inferior asylum processing program on Guantanamo, constitute substantive rules that have a substantial impact on the individuals regulated,

on their family members lawfully in this country, on their legal representatives and political advocates, and on the general public.

74. Defendants' failure to publish these policy changes in the Federal Register and to allow for notice and comment violates the rulemaking procedures set out in the Administrative Procedure Act, 5 U.S.C. § 551, et seq., and renders them void.

FIFTH CLAIM FOR RELIEF

(Arbitrary and Capricious Agency Action
Not in Accordance With Law)

75. Plaintiffs repeat and reallege paragraphs 1 through 74 as though fully set forth herein.

76. Defendants have created and implemented an extra-statutory, unauthorized program through which to process the political asylum claims of the "screened-in" plaintiffs at Guantanamo. This program is not governed by readily ascertainable rules, procedures, timetables or standards. It is entirely inferior to those programs for processing asylum claims provided by Congress and implemented by duly-promulgated regulations.

77. Defendants have in various ways and at various times attempted to ensure that only a predetermined, maximum number of Haitians detained on Guantanamo would be brought to the United States, and/or would be granted asylum, for reasons wholly unrelated to the merits of such Haitians' individual asylum claims.

78. Defendants, while detaining plaintiffs indefinitely at Guantanamo, have subjected class members to a regime of arbitrary, capricious and degrading deprivations of liberty and basic rights, without acknowledging or observing any legal constraints on their authority to regulate and punish plaintiff class members.

79. In the past Defendants have processed -- and, absent the present injunction, may recommence at any time, processing -- plaintiff Haitian refugees without adequate safeguards to ensure against mistake and erroneous repatriations or threats thereof.

80. Defendants have subjected the allegedly HIV-positive "screened-in" plaintiffs and their family members at Guantanamo to a separate asylum track solely because of their national origin, and are denying parole to plaintiff refugees based on their alleged HIV-positive status, despite the fact that such policies were was not followed in connection with the Haitian interdiction program for many years, is not followed today with regard to interdicted Cubans, and has no legitimate basis.

81. Defendants' policy and practice of subjecting the "screened-in" plaintiffs at Guantanamo to an unauthorized and inferior asylum processing program, of refusing to parole plaintiffs from detention and/or into the United States based on their medical status, and of subjecting plaintiffs to detention and punishment without legal constraint, are arbitrary and capricious, an abuse of discretion, not in accordance with law, and reviewable by this Court under the Administrative Procedure Act, 5 U.S.C. Sec. 701 et seq.

82. Defendants' policy and practice of summarily repatriating interdicted Haitians without any process whatsoever to determine whether such Haitians possess credible or well-founded fears of persecution lacks any authority in law, is not in accordance with law, and is reviewable by this Court under the Administrative Procedure Act, 5 U.S.C. Sec. 701 et seq.

SIXTH CLAIM FOR RELIEF

(Judicial Enforceability of Duty of Non-Refoulement)

83. Plaintiffs repeat and reallege paragraphs 1 through 82 as though fully set forth herein.

84. Defendant executive officials have a mandatory duty under domestic and international law, including Article 33 of the United Nations Convention on the Status of Refugees,

189 U.N.T.S. 150 (July 28, 1951); the Refugee Act of 1980, Pub. Law. No. 96-212, 94 Stat. 102 (1980); § 243(h) of the Immigration and Nationality Act, 8 U.S.C. § 1253(h); Executive Order 12324, the "U.S.-Haiti Agreement", Agreement Effected by Exchange of Notes, signed at Port-au-Prince September 23, 1981; and the INS guidelines, INS Role in and Guidelines for Interdiction at Sea, Oct. 6, 1981, not to return bona fide political refugees to conditions of persecution, and to provide adequate procedures to examine colorable asylum claims.

85. Defendants have repatriated and, but for the present injunction, would continue to repatriate, from Guantanamo "screened-in" refugees who have a well-founded fear of persecution in Haiti. These repatriations have come about through defendants' error, when "screened-in" refugees were misidentified as "screened-out"; and intentionally, when defendants forcibly returned screened-in refugees who refused to undergo final asylum processing without the benefit of counsel and other standard procedural protections. In addition, these repatriations have come about -- and, but for the present injunction, would again take place -- as an inevitable result of defendants' inferior asylum processing program for HIV-positive Haitians, -- whereby refugees who submitted to second interviews without counsel, appeal or other protections were or would be repatriated.

86. Since May 24, 1992 and until the present time, defendants have repatriated or rendered futile the flight of Haitians with credible and well-founded fears of future political persecution in Haiti, including the "repatriated screened-in" plaintiffs.

87. Plaintiffs may secure judicial enforcement by injunction and declaratory judgment of those executive directives, statutes, and international agreements that execute our international obligations as domestic law.

SEVENTH CLAIM FOR RELIEF

(Equal Protection)

88. Plaintiffs repeat and reallege paragraphs 1 through 87 as though fully set forth herein.

89. Since the September 1991 coup, defendant officials have denied the "screened-in" plaintiffs at Guantanamo the equal protection of the laws by creating and operating an unauthorized, separate and unequal, asylum track for HIV-positive Haitians and their relatives only. This second-class asylum regime; denies both "screened-in" HIV-positive Haitian refugees and their relatives the substantive and procedural rights enjoyed by asylum applicants from other racial and national groups, regardless of their medical status; injures the associational rights of the refugees' family members; and violates the intent of Congress, whose power is plenary in the immigration field, to establish a non-discriminatory asylum program.

90. Since May 24, 1992, defendant officials have denied the "repatriated screened-in" plaintiffs the equal protection of the laws by seeking out, interdicting and summarily repatriating without process all Haitians who flee by boat, including all those with well-founded fears of political persecution. Members of no other national group are similarly barred from reaching U.S. borders and there claiming statutory and constitutional protections in connection with their efforts to avoid wrongful repatriation and to obtain political asylum.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the members of the classes they represent pray for declaratory and injunctive relief as follows:

(a) Certification of each class;

(b) A declaratory judgment that the defendants' practices alleged above violate the terms of Executive Order 12324, the INS Guidelines promulgated pursuant to that Executive Order,

the U.S. - Haiti Agreement, the Refugee Act of 1980, the Immigration and Nationality Act Sections 101(a)(43), 208 and 243(h), the Administrative Procedure Act, the United Nations Protocol Relating to Status of Refugees, the First and Fifth Amendments to the United States Constitution, customary international law, and other provisions of law;

(c) A declaratory judgment that the defendants' changes in practice violate the rulemaking requirements of the Administrative Procedure Act, and further declaring the actions taken or determinations made pursuant to defendants' recently instituted policies to be void;

(d) Setting aside defendants' denial of asylum claims, refusal to parole plaintiffs from detention, agency action "screening out" members of the plaintiff classes, or defendants' actions summarily repatriating fleeing asylum-seekers without process as being arbitrary and capricious, not in accordance with law, and not in accordance with procedural requirements;

(e) Preliminary and permanent injunctive relief:

(i) Ordering defendants: to cease and desist immediately from interviewing, processing or screening the "screened-in" plaintiffs on Guantanamo, and from disposing of asylum claims on Guantanamo; to cease denying or delaying the grant of parole from detention for "screened-in" plaintiffs on Guantanamo based on their medical condition and national origin; to release "screened-in" plaintiffs from detention; to expeditiously accord "screened-in" plaintiffs standard asylum hearings in the United States with the attendant rights and protections;

(ii) Ordering defendants to refrain from returning to Haiti any interdicted Haitian whose life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion;

(iii) Granting immediate access to plaintiff Haitian Service Organizations, their attorneys, employees, and members, to communicate and associate with the Haitian plaintiffs detained at the Guantanamo Bay Naval Base and on Coast Guard cutters in order to advise those plaintiffs of

their legal rights and options in the asylum process, and to represent them in further processing or negotiations;

(iv) Ordering defendants to ensure that the "screened-in" plaintiffs at Guantanamo are accorded their rights: to communicate and associate with counsel, so that they may have a full and fair opportunity to present the merits of their political asylum claims; to consult regarding the circumstances of their detention and medical care and to obtain advice about their legal options; and to render fair and regular determination of plaintiffs' asylum claims free from caprice and discrimination;

(v) Ordering defendants to refrain from taking any action pursuant to policies instituted in violation of the rulemaking requirements of the Administrative Procedure Act unless and until such policies are properly promulgated pursuant to the APA, and restoring all rights and privileges that plaintiffs and the classes named herein may have been denied while these policies were in effect; and

(f) Such other and further relief as the Court may deem just and proper, including reasonable attorneys' fees and costs.

Dated: March 16, 1993
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