

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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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, Pascal :
Henry, Lauriton Guneau, Medilieu Sorel St. Fleur, et :
Dieu Renel, Milot Baptiste, Jean Doe, and Roges Noel :
on behalf of themselves and all others similarly :
situated; A. Iris Vilnor on behalf of herself and :
all others similarly situated; Mireille Berger, :
Yvrose Pierre and Mathieu Noel on behalf of :
themselves and all others similarly situated, :

Plaintiffs, :

vs. :

Gene McNary, Commissioner, Immigration and :
Naturalization Service; William P. Barr, Attorney :
General; Immigration and Naturalization Service; :
James Baker, III, Secretary of State; Rear Admiral :
Robert Kramek and Admiral Kime, Commandants, :
United States Coast Guard; and Commander, U.S. :
Naval Base, Guantanamo Bay, :

Defendants. :

COMPLAINT
CV - 92 - 1258
92 Civ.

JOHNSON, J.

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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, Pascal Henry,
Lauriton Guneau, Medilieu Sorel St. Fleur, Dieu Renel, Milot Baptiste, Jean Doe, and Roges Noel on
behalf of themselves and all others similarly situated (hereinafter "screened in plaintiffs"); A. Iris
Vilnor on behalf of herself and all others similarly situated (hereinafter "screened out plaintiffs"); and
Mireille Berger, Yvrose Pierre and Mathieu Noel on behalf of themselves and all others similarly
situated (hereinafter "immediate relative plaintiffs"), 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 refugees to freedom. Defendants have detained those refugees at Guantanamo Bay Naval Base and subjected them to screening procedures nowhere mentioned in the Immigration and Nationality Act (INA). Refugees who have been "screened out" are then forcibly repatriated to Haiti to face death, injury or political persecution. Those who have been "screened in" remain detained and uncounseled for the most part, even as they await further proceedings that may lead to their forced repatriation.

2. Although the First Amendment protects the right of lawyers to talk with their clients, defendant officials have barred plaintiff legal and advocacy groups from speaking to Haitian refugees held incommunicado within U.S. jurisdiction, based solely upon the content of the message those representatives would communicate. Defendants simultaneously have barred plaintiff Haitian refugees from communicating with their retained counsel, even while subjecting those refugees to screening and exclusion proceedings that may lead to their death or serious injury. 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

3. 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, 5 U.S.C. §§ 551 et seq., Executive Order No. 12324 of September 1981, 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.

4. 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. Individual named plaintiff Yvrose Pierre is a resident of Brooklyn, N.Y. No real property is involved in this action.

PARTIES

A. Plaintiffs

5. 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 that have fled Haiti by boat. Among its services HCC provides 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 represents 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.

6. 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.

7. 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.

8. The individual named plaintiffs Dr. Frantz Guerrier, Pascal Henry, Lauriton Guneau, Medilieu Sorel St. Fleur, Dieu Renel, Milot Baptiste and Roges Noel, on information and belief, are Haitian refugees who have been "screened in" and are being held in detention at Guantanamo Bay Naval Base. They have retained plaintiff Haitian Service Organizations as their counsel. These named plaintiffs also represent other similarly situated persons detained within U.S. jurisdiction on Coast Guard cutters or at Guantanamo Bay Naval Base (the "screened in plaintiffs"). On information and belief, defendants have screened in some 6,000 Haitian detainees as having credible claims for political asylum. Although the "screened in" Haitians were supposed to be brought to the United States and afforded full procedural safeguards, including the right to counsel, many of them have languished at Guantanamo Bay and have not been informed of their screened-in status or of their procedural rights. They seek, and are entitled to seek, political asylum in the United States. 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 the enforcement of the U.S. government's obligations under domestic and international law. Plaintiff Haitian Service Organizations consider the above named plaintiffs and similarly situated persons to be clients of their organizations by virtue of their seeking asylum status. These "screened in" Haitians are being detained incommunicado at Guantanamo and denied their right to communicate with retained counsel and/or to communicate with counsel they wish to retain. Contrary to defendants' previous assertions that asylum processing would take place in the United States with

lawfully guaranteed procedures, including right to counsel, some of these "screened in" Haitians are being processed for political asylum on Guantanamo.

9. Jean Doe, a Haitian presently detained on Guantanamo, is one of the "screened in" plaintiffs who, along with at least 200 others, is being processed by INS asylum officers for political asylum at Guantanamo. This processing is taking place contrary to defendants' previous assertion that such processing would take place in the United States where plaintiffs would clearly have substantial 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 he is being processed for political asylum, plaintiff is not being provided with any counsel, any right of rebuttal or any of the other procedural safeguards required by the Immigration and Nationality Act, regulations and due process. On information and belief, plaintiff wishes to challenge the arbitrary and ad hoc procedure which he confronts, and has made a written objection to defendants or their agents regarding the additional tier(s) of screening to which he is being subjected. On information and belief, he has refused to be "rescreened," on the grounds that defendants or their agents promised that he and others similarly situated would be processed for asylum on Guantanamo, and that to be rescreened on Guantanamo deprives him of the right to consult with counsel regarding his rights in such a proceeding. Plaintiff Haitian Service Organizations consider the above-named plaintiff and similarly situated persons to be clients and constituents of Haitian Service Organizations by virtue of their seeking refugee or asylum status. The above-named plaintiff sues under a pseudonym because, on information and belief, he fears retaliation against himself and/or his family for participation in this legal challenge. He sues on behalf of himself and other detainees similarly situated.

10. The individual named plaintiff A. Iris Vilnor is, on information and belief, a Haitian being held in detention on Guantanamo who has been "screened out" by the INS. By being screened out, she will be returned forcibly to Haiti without further proceedings to face likely persecution and possible injury or death. On information and belief, approximately 8,000 Haitian

detainees have been screened out by defendants. On information and belief, less than 1,000 now remain at Guantanamo Bay Naval Base. The named plaintiff also represents other similarly situated persons (the "screened out plaintiffs") detained within U.S. jurisdiction on cutters or at Guantanamo Bay Naval Base who seek, and are entitled to seek, political asylum in the United States. The named plaintiff has retained the Haitian Service Organizations as her advocate and legal counsel and represents the interests of others who have retained legal counsel or who seek to retain such counsel. The plaintiff wishes to consult with her counsel in order to pursue her right to apply for political asylum and to have her legal options explained to her. She has a substantive right not to be forcibly returned to Haiti, where she faces persecution because of her political opinions and the risk of unlawful arrest, detention, persecution and possible death. She also seeks the enforcement of the U.S. government's obligations under domestic and international law. Because of the arbitrary and capricious program instituted by defendants, plaintiff has not had a meaningful opportunity to present her asylum claim. The Haitian Service Organizations consider the above named plaintiff and similarly situated persons to be their clients by virtue of their seeking refugee or asylum status. The intercepted Haitians are entitled to seek effective assistance from the Haitian Service Organizations, and likewise, the Haitian Service Organizations would assist the interdicted Haitians regarding their desires to seek asylum status if so permitted by defendants.

11. Plaintiff Mireille Berger is a lawful permanent resident of the United States living in Brooklyn, New York. She was born in Haiti and is a Haitian citizen. Three of her first cousins are Haitian citizens who presently are being detained on Guantanamo. She sues on her own behalf and on behalf of other Haitians in the United States who have relatives detained on Guantanamo (the "relative plaintiffs"). This plaintiff and the class she represents are being denied their First Amendment associational rights 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.

12. Plaintiff Yvrose Pierre is a lawful permanent resident of the United States living in Brooklyn, New York. Her two daughters, both minors, now aged sixteen and seventeen, fled from Haiti in November or December 1991, were interdicted by the U.S. Coast Guard and detained by defendants at Guantanamo Bay. The older of the two daughters was forcibly repatriated to Haiti at the end of January. On information and belief, the younger daughter is still being detained on Guantanamo by defendants. This plaintiff and the class she represents (the "immediate relative plaintiffs") are being denied First Amendment associational rights and their interest in having the United States immigration laws applied without discrimination on the basis of national origin.

13. Plaintiff Mathieu Noel is a naturalized citizen of the United States living in Waterford, Connecticut. His brother, aged 27, fled from Haiti in late February 1992, was interdicted by the U.S. Coast Guard and on information and belief now is being detained at Guantanamo Bay. He sues on his own behalf and on behalf of other Haitians in the United States who have relatives detained on Guantanamo. This plaintiff and the class he represents are being denied First Amendment associational rights and their interest in having the United States immigration laws applied without discrimination on the basis of national origin.

B. Defendants

14. Defendant Gene McNary is the Commissioner of the Immigration and Naturalization Service ("INS"). He is in charge of implementing the practices and procedures under which plaintiffs are denied their statutory and constitutional rights. The INS officers on board the United States Coast Guard cutters and at the U.S. Naval Base at Guantanamo Bay are acting under his direction and supervision. Defendant McNary is being sued in his official capacity.

15. Defendant William P. Barr, III, 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 Barr is being sued in his official capacity.

16. Defendant James Baker, III, 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 directed other United States agencies forcibly to repatriate Haitian refugees. Defendant Baker 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 operations at Guantanamo.

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. On information and belief, in the past five months, over fifteen hundred Haitians, many of them 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 16,000 Haitians from these vessels have been detained 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." The "screened out" detainees thereby lost any opportunity to demonstrate that they were political refugees who should not be forcibly returned to Haiti because of a well-founded fear of persecution. 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, although only a small number have apparently been so treated.

26. Well over 14,000 Haitians have been taken to the United States Naval Base at Guantanamo Bay, where they have been detained incommunicado week after week. Guantanamo Naval Base and the Coast Guard cutters on which the Haitians were originally detained are wholly within the jurisdiction 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, defendants have barred such access completely. At the same time, however, defendants have granted access to numerous other individuals, including clergy and church groups, the press, and even piano-tuners.

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 26, 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, defendants changed their screening policy by resuming screening on Coast Guard cutters and forcing some "screened in" Haitian refugees to undergo multiple layers of review before being brought to the United States. At present, defendants are purporting to adjudicate fully some Haitians' political asylum claims on Guantanamo while denying them access to counsel, the opportunity to rebut and submit evidence and other procedural safeguards. As a direct result of these procedural changes, the percentage of Haitians "screened in" has dropped precipitously. Defendants have provided no public notice in the Federal Register or otherwise to plaintiff Haitian Service Organizations, to plaintiff Haitian refugees, or to any one else in the United States or elsewhere of these drastic changes in procedure that directly affect the life and liberty of plaintiff Haitian refugees and that continue to thwart the organizational purposes of plaintiff Haitian Service Organizations.

IMMEDIATE EVENTS GIVING RISE TO THIS LAWSUIT

30. With the removal of judicial oversight, defendants have resumed their total ban on the access of legal advocacy organizations to Haitian refugees being held incommunicado on Guantanamo or the cutters.

31. On March 11, 1992, plaintiffs' counsel wrote defendant 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 currently being held 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 named plaintiffs Dr. Frantz Guerrier, Pascal Henry, Lauriton Guneau, Medilieu Sorel St. Fleur, Dieu Renel, Milot Baptiste, 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. As of that date and time, no response has been received by plaintiffs' counsel. On information and belief, defendants have denied the requests of all legal and advocacy groups seeking such access.

32. During this same period, defendants have denied detained refugees any rights to obtain or communicate with counsel regarding their legal rights and options.

33. 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.*, thus rendering them void. These altered substantive rules include, but are not limited to, rescreening of Guantanamo refugees already "screened in"; forcing such refugees into asylum proceedings on Guantanamo; and interviewing Haitian refugees on cutters.

34. Since the September 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 wilfully relying upon false information and prejudicial biases to effect forced repatriations. These practices include, but are not limited to:

- a. Barring plaintiff "screened in" Haitian refugees who have been or will be screened again from communicating with counsel, while forcing them to undergo multiple tiers of screening, including, on information and belief, final adjudication 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 Immigration and Naturalization Service continues to rely on inaccurate and misleading State Department reports regarding the situation in 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 issued a directive to defendant Immigration and Naturalization Service instructing such defendants to include factors in their asylum determinations that are contrary to law.**

- f. United States officials have declared that all Haitian detainees on Guantanamo who have been "screened in" would be sent expeditiously to the United States for adjudication of their claims to asylum. As the defendants have 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 § 118(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.

- Op. Cert., HRC v. Baker, at 3. 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 adjudicate the asylum claims of some Haitians who already have been "screened in." This adjudication is being carried out without counsel or any other procedural protections.
- g. As of March 10, 1992, approximately 20 asylum officers were at Guantanamo Bay Naval Base. On information and belief, additional asylum officers are on their way or have already arrived at Guantanamo. These asylum officers have already begun to decide asylum claims of some of the

"screened in" Haitians. The INS intends to treat the decisions of asylum officers as final and binding, resulting in either asylee/refugee status or immediate forcible repatriation for the plaintiff Haitians whose claims they decide.

- h. Defendants have sought to discourage plaintiffs from pursuing their lawful asylum claims by publishing false and misleading stories in the Guantanamo camp newspaper suggesting that plaintiffs' chances for asylum are remote and implying that conditions in Haiti are now safe.
- i. Defendants ask questions of Haitian plaintiffs that are designed to confuse and trick them, and to inhibit them from raising their valid claims to asylum. Defendants are additionally ignoring evidence that might support plaintiffs' claims.

35. Defendant officials intentionally have created and operated, because of the national origin and race of plaintiff Haitian refugees, an unauthorized, separate and unequal asylum track for Haitians only, which denies Haitian refugees the equal protection of the law, to wit: the substantive and procedural rights enjoyed by asylum applicants of other racial and national groups; and the associational rights of the refugees' family members.

CLASS ACTION ALLEGATIONS

36. The named Haitian plaintiffs bring this action pursuant to Rule 23(a) and (b)(1)(2) on behalf of ~~themselves~~ and all other persons similarly situated in the following presently ascertainable classes:

37. All Haitian refugees who previously have been "screened in" and are now detained on Guantanamo, including those who may face or who have faced additional screening procedures, including but not limited to, those whose political asylum status defendants are purporting

to adjudicate fully on Guantanamo, without right to counsel or other protections as required by law (hereinafter "screened in plaintiffs"). On information and belief, this group currently numbers over 6,000.

38. All Haitian refugees who have retained plaintiff Haitian Service Organizations as counsel, who may retain plaintiff organizations as counsel in the future, or who have the right to obtain assistance of counsel from other persons (hereinafter "Haitian Service Organization clients"). On information and belief, this group currently numbers over 6,000.

39. All Haitian refugees who are awaiting screening or have been "screened out" and currently are awaiting forcible repatriation, while being detained within territory subject to U.S. jurisdiction, whether on Coast Guard cutters, on Guantanamo Bay Naval Base, or outside the continental U.S. (hereinafter "screened out plaintiffs"). On information and belief, this group currently numbers approximately 200.

40. All fathers, mothers, sons, daughters, siblings, cousins and close relatives of members of any of the above classes 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 1,000.

41. 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-Based Denial of First Amendment Rights)

42. Plaintiffs repeat, reallege and incorporate paragraphs 1 through 41 above as though fully set forth herein.

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

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

45. Defendants' refusal to allow plaintiff Haitian Service Organizations to have access to communicate with Haitian refugees being detained by the U.S. government at the U.S. Naval Base at Guantanamo Bay on Coast Guard cutters and elsewhere, denies plaintiffs' First Amendment rights. Defendants' allowing other individuals and organizations who are not competent to counsel plaintiff Haitian refugees on their asylum claims to gain access to those refugees, is a content-based restriction on the free speech and association rights of plaintiff Haitian Service Organizations and therefore violates plaintiffs' rights under the First Amendment of the U.S. Constitution.

SECOND CLAIM FOR RELIEF

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

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

47. Defendants have stopped, forcibly detained, and involuntarily transported the Haitian plaintiffs to Guantanamo Bay Naval Base, territory subject to U.S. jurisdiction and over which the United States exercises full jurisdiction and control in perpetuity. Defendants' actions constitute "inspections" for purposes of § 235 of the INA.

48. By detaining, interrogating, and "screening" Haitian plaintiffs, immigration officers have placed plaintiffs into the legal status of persons entitled to full exclusion proceedings as defined in §§ 235 and 236 of the INA. 8 U.S.C. §§ 1225, 1226.

49. Defendants' denial of Haitian plaintiffs' rights and the rights of the classes they represent to obtain counsel or to communicate with retained counsel in pursuing their claim for political asylum or in their exclusion proceedings violates plaintiffs' rights under INA § 292 8 U.S.C. § 1362.

50. Defendants' failure to notify Haitian plaintiffs of their statutory rights, including their right to obtain counsel or to communicate with counsel during screening, violates 8 C.F.R. § 242.1(c) (1990), requiring immigration officers to notify aliens of their right to counsel and the availability of free legal services programs. 8 C.F.R. § 242.1(c) (1990).

51. The determination at Guantanamo Bay Naval Base of plaintiff Haitians' asylum claims by INS asylum officers violates plaintiffs' right to submit documentation, testimony, and affidavits of witnesses, as well as their right to counsel, as provided in INS agency regulations, 8 C.F.R. § 208.9 (1990), and Agency operating guidelines. INS Procedure Manual, at 17-19.

52. Defendants' intention to repatriate plaintiff "screened in" Haitians following the negative determination of their asylum claims by INS asylum officers violates plaintiffs' right to have 30 days to present affidavits of witnesses and additional evidence to rebut the denial of an asylum claim. INS Draft O.I. 208.12(a) (1991).

THIRD CLAIM FOR RELIEF

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

53. Plaintiffs repeat and reallege paragraphs 1 through 52 as though fully set forth herein.

54. 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 their exclusion proceedings violates the First and Fifth Amendment rights of Haitians plaintiff on Guantanamo to obtain counsel and to communicate with retained counsel.

FOURTH CLAIM FOR RELIEF

(Failure to Follow Rulemaking Procedures)

55. Plaintiffs repeat and reallege paragraphs 1 through 54 as if fully set forth herein.

56. The policies and practices recently initiated by the INS 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.

57. Defendants' failure to publish these policy changes in the Federal Register and 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)

58. Plaintiffs repeat and reallege paragraphs 1 through 57 as though fully set forth herein.

59. Defendants' pattern and practice of intimidating and coercing plaintiffs, of discouraging and diminishing their rights to asylum and to alternative-country placement, and of wilfully relying upon false information and prejudicial biases to effect forced repatriations and to deny individual asylum claims on their merits 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.

SIXTH CLAIM FOR RELIEF

(Judicial Enforceability of Duty of Non-Refoulement)

60. Plaintiff Haitian refugees repeat and reallege paragraphs 1 through 59 as if fully set forth herein.

61. Defendant executive officials have a mandatory duty under domestic and international law not to return political refugees to a country where they will face persecution, and to provide adequate procedures to examine colorable asylum claims.

62. Defendants' duties are imposed by all treaties, domestic law, and executive directives that govern the Haitian interdiction program, including Article 33 of the United Nations Convention Relating to 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), 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.

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

SEVENTH CLAIM FOR RELIEF

(Equal Protection)

64. Plaintiffs repeat and reallege paragraphs 1 through 63 as though fully set forth herein.

65. Since the September 1991 coup, defendant officials have denied plaintiffs the equal protection of the laws by creating and operating an unauthorized, separate and unequal, asylum track for Haitians only. This second-class asylum regime denies both "screened in" and "screened out" Haitian refugees the substantive and procedural rights enjoyed by asylum applicants from other racial and national groups, injures the associational rights of the refugees' family members, and violates the intent of Congress, whose power is plenary in the immigration field.

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 guidelines promulgated pursuant to the Executive Order, the interdiction agreement between the United States and Haiti, 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 the denial of asylum claims or the agency action "screening out" members of the plaintiffs' class as being arbitrary and capricious, not in accordance with law, and not in accordance with procedural requirements;
- (e) Preliminary and permanent injunctive relief:
 - (i) Granting immediate access to plaintiff Haitian Service Organizations, their attorneys, employees, and members, to communicate with the Haitian plaintiffs detained at the Guantanamo Bay Naval Base and on Coast Guard cutters in order to advise these plaintiffs of their legal rights and options in the asylum process, as well as of the Organizations' interest in providing representation and assistance to them in furtherance of organizational goals;
 - (ii) Ordering defendants to ensure that plaintiff refugees are accorded their statutory and constitutional rights to communicate with counsel, so that they may have a full and fair

opportunity to present the merits of their political asylum claims and to obtain advice about their legal options; and to render fair and regular determination of plaintiffs' asylum claims free from caprice and discrimination;

(iii) To refrain from sending back to Haiti those Haitians who have not been "screened in" as candidates for asylum until such time as procedures are implemented and followed which adequately protect and recognize the rights of these persons under the Executive Order, the INS guidelines promulgated pursuant thereto, the APA, and international law, as well as the privileges ordinarily afforded potential asylum applicants under the Refugee Act of 1980 and the Immigration and Nationality Act;

(iv) Ordering defendants to cease and desist immediately from conducting interviewing, screening, exclusion proceedings or asylum hearings on Guantanamo and to transport all "screened in" plaintiffs expeditiously to the United States so that they may be accorded asylum hearings with the full panoply of statutory rights.

(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 A.P.A. and restoring all rights and privileges that plaintiffs and the classes named herein may have been denied while these policies were in effect;

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

Respectfully submitted,

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