

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

HAITIAN CENTERS COUNCIL, INC., et al.,

Plaintiffs,

v.

GENE McNARY, Commissioner, Immigration
and Naturalization Service, et al.,

Defendants.

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) _____
)
) Civil Action No.
) 92-1258 (Johnson, J.)
)
)
)
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**ORDER TO SHOW CAUSE WHY
EXPEDITED DISCOVERY SHOULD NOT BE GRANTED**

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK
APR 17 3 45 PM '92

RECEIVED

UPON the affirmations of Harold Hongju Koh and Howard L. Berman, based upon the Federal Rules of Civil Procedure ("Federal Rule") 30(b)(3) and 34(b), this Court's Order of March 27, 1992, granting, inter alia, expedited discovery; and this Court's Order of April 6, 1992, granting preliminary injunctive relief, it is hereby:

ORDERED, that the defendants or their attorneys show cause before Judge Sterling Johnson, Jr., U.S. District Court, Eastern District of New York, at the United States Courthouse, Cadman Plaza, New York, New York, in Courtroom ____ at ____m. on April __, 1992, or as soon thereafter as counsel may be heard, why an order should not be entered granting Plaintiffs' request for Expedited Discovery 1thereby:

(i) Requiring defendants' production of documents for inspection and copying on or before April __, 1992;

(ii) Granting plaintiffs leave to serve notices of depositions on defendants

on shortened notice to take oral depositions of defendants;

(iii) Granting such other further and different relief as may be just and proper; and it is further

ORDERED, that sufficient reason having been shown therefore, expedited discovery be granted as set forth above; and it is further

ORDERED, that a copy of this Order together with the papers upon which it is granted be served by hand upon the United States Attorney for the Eastern District of New York on or before __.m. on April __, 1992.

Sterling Johnson, Jr.
United States District Judge

Dated: April __, 1992.

COMMITTEES:

FOREIGN AFFAIRS

CHAIRMAN, SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS

BUDGET

JUDICIARY

Congress of the United States

House of Representatives

Washington, DC 20515

HOWARD L. BERMAN

137 CANNON HOUSE OFFICE BUILDING
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April 14, 1992

AFFIRMATION OF HOWARD L. BERMAN

1. I, Howard L. Berman, affirm under penalty of perjury that the following is true. I am a member of Congress representing the 26th District of California. I am Chairman of the Subcommittee on International Operations of the House Foreign Affairs Committee and a member of the House Judiciary Subcommittee on International Law, Immigration and Refugees. I regularly request information from the State Department and the Immigration and Naturalization Service during the course of business on those subcommittees.

2. Officials at the U.S. State Department and the Immigration and Naturalization Service routinely provide my office with statistics reflecting the current total numbers of Haitians interdicted, interviewed, screened-in and repatriated when requested.

3. According to figures from both agencies, of all Haitians interdicted since the coup in Haiti, 39% had been screened-in as of April 1.

4. According to the same sets of figures, the screen-in rate has fallen drastically over the period beginning April 1, 1992 and ending April 13, 1992. State Department and INS figures indicate that in the last week only 2-10% of Haitians interviewed were screened-in.

5. State Department officials provided my office with the following statistics:

DATE	INTERVIEWED <u>TO DATE</u>	SCREENED-IN <u>TO DATE</u>	
4/1/92	15,748	6614	
4/8/92	16,214	6659	
4/12/92	18,135	6707	
INTERVAL	NUMBER <u>INTERVIEWED</u>	NUMBER <u>SCREENED-IN</u>	PERCENTAGE <u>SCREENED-IN</u>
4/1-4/8	466	45	10%
4/8-4/12	1921	48	2%

6. INS officials provided my office with the following statistics over the phone (summary chart attached):

DATE	<u>INTERVIEWED TO DATE</u>	<u>SCREENED-IN TO DATE</u>	
4/6	19,131	6659	
4/13	19,967	6723	
INTERVAL	<u>NUMBER INTERVIEWED</u>	<u>NUMBER SCREENED-IN</u>	<u>PERCENTAGE SCREENED-IN</u>
4/6-4/13	836	64	8%

7. If the Haitians interviewed between April 1 and 12, 1992 had been screened-in at the prior rate of 39%, 930 would have been "screened-in." Instead, at most only 109 Haitians were "screened-in" during this period according to the Administration figures given to my office.



HOWARD L. BERMAN
Member of Congress

Affirmed this 14th day of April 1992

Exhibit One
Screening Rates for Haitians Interdicted

DATE	<u>INTERVIEWED TO DATE</u>	<u>SCREENED-IN TO DATE</u>	<u>SCREENED-OUT TO DATE</u>	<u>NUMBER TO BE SCREENED</u>
4/6	19,131	6,659	12,493	522
4/8	19,362	6,670	12,713	645
4/9	19,471	6,683	12,809	762
4/11	19,719	6,707	13,033	1,119
4/12	19,834	6,718	13,137	1,019
4/13	19,967	6,723	13,265	1,032

Source: INS

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 GENE McNARY, Commissioner, Immigration)
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)
 Defendants.)

AFFIRMATION OF HAROLD HONGJU KOH IN SUPPORT OF
TO SHOW CAUSE WHY EXPEDITED DISCOVERY SHOULD NOT BE GRANTED

Harold Hongju Koh, under penalty of perjury, hereby affirms:

1. I am one of the attorneys for the plaintiffs in the above-captioned case and make this affirmation in support of plaintiffs' order to show cause why expedited discovery should not be granted.

2. This Court's Temporary Restraining Order of March 27, 1992, afforded "screened-in" Haitians on Guantanamo access to counsel. Almost immediately, the rate at which defendant INS "screened-in" interdicted Haitians began to drop precipitously. According to figures supplied by State Department officials to Congressman Howard Berman, Haitians were being "screened-in" at a rate of 39 percent before April 1, 1992. The rate between April 1 and April 8, however, declined to 10 percent. Between April 8 and April 12, a mere 2 percent of interviewed Haitians were being "screened in." During those five days, defendants interviewed 1921 Haitians, but "screened in" only 48. See attached Affirmation of Congressman Howard

out, including those who have been or may be subject to or who have resisted additional screening procedures, and are now or will be detained on Guantanamo Bay Naval Base, any other territory subject to United States jurisdiction or Coast Guard cutters.

(See Plaintiffs Motion for Provisional Class Certification) (emphasis added).

7. Defendants' actions since April 1 thus constitute a deliberate effort to avoid the Court's preliminary injunction by eviscerating the certified class of "screened-in" plaintiffs who are subject to the protection of the Court's order. Defendants apparently seek to divest the Court of jurisdiction by completely eliminating the class of screened-in plaintiffs.

8. Pursuant to Rule 34(b), the plaintiffs request that the Court accept plaintiffs' proposed deposition schedule and allow ten days for defendants to respond to all document requests. The shorter time period is necessitated by the potential prejudice to the plaintiff class due to defendants' recent actions giving rise to this motion.

9. Pursuant to Local Rule 3(c)(4) of the Southern and Eastern Districts of New York, an order to show cause is necessary in the instant case because of the good and sufficient reasons that thousands of uncounseled Haitians, many of whom may have credible fears of persecution, have been repatriated to Haiti in the days following issuance of this Court's Temporary Restraining Order and Preliminary Injunction Order. See Wright & Miller, 1195 at n. 1. See also, Westhemco Ltd. v. New Hampshire, 82 F.R.D. 702, 705 n. 1 (S.D.N.Y. 1979). Any of these repatriated Haitians who had a credible fear of political persecution upon return to Haiti were members of the provisionally certified plaintiff class and would have remained under this Court's jurisdiction but for defendants' action of wrongfully repatriating them. The motivations

for and extent of defendants' actions can best be known through granting expedited discovery.

10. No other request for this relief has been made to any other judge of this Court.

Conclusion

It is of deep concern to the plaintiffs that defendants' response to this Court's orders may be to screen out hundreds of refugees who have a credible fear of persecution. Such actions would foreclose the possibility that the protections this Court has ensured to the plaintiffs' class can extend to future screened-in refugees.

By effectively ceasing screening in Haitian refugees who may have a credible fear of persecution, the defendants are making final asylum determinations on the Coast Guard Cutters; they may be repatriating Haitians with a credible fear of persecution to face torture or death; and they have decided that such proceedings do not warrant the protection of counsel. All of these actions run contrary to this Court's Order of April 6 which assumed that no Haitian with a credible fear of persecution would be "screened out" and required that those "screened in" would be given protection of counsel before they could be sent back to Haiti.

Based on this new information, the possibility that defendants are circumventing the order of the Court, and the inherent powers of this Court to protect its ability to issue binding judgments, this Court should immediately grant the requested discovery.



Harold Hongju Koh

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Haitian Centers Council, Inc., et. al.

Plaintiffs,

vs.

Gene McNary, Commissioner, Immigration
and Naturalization Service, et. al.,

Defendants.
----- X

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NOTICE TO TAKE
DEPOSITIONS UPON
ORAL EXAMINATION

92 Civ. 1258
(Johnson, J.)

S I R S :

PLEASE TAKE NOTICE, that plaintiffs, Haitian Centers Council, et. al., will take the depositions upon oral examination of the defendants and plaintiffs, before a notary public duly authorized to administer oaths and take testimony, at Guantanamo Bay Naval Base, Miami, Florida, Washington, D.C. or wherever they may reside, at the times and dates set forth below:

<u>Deponent</u>	<u>Time and Date</u>
Scott Busby	10:00 a.m., April 20, 1992
Tina McCoy	2:00 p.m., April 20, 1992
Gregg Beyer	10:00 a.m., April 21, 1992
Donna Hrinak	2:00 p.m., April 21, 1992
Gunter Wagner	10:00 a.m., April 22, 1992
James McClean	2:00 p.m., April 22, 1992
Brunson McKinley	9:00 a.m., April 24, 1992

The military officer best in
a position to have knowledge
of any directive from military
or national security personel
regarding screen-in rates or procedures

3:00 p.m., April 24, 1992

Gene McNary

10:00 a.m., April 27, 28, 1992

PLEASE TAKE FURTHER NOTICE, that the aforesaid depositions will
continue from day to day until completed. You are invited to attend and cross-
examine.

Dated: New Haven, Connecticut
April 16, 1992

LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC

By: 
Harold Hongju Koh

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(203) 432-4932

Attorneys for Plaintiffs
Haitian Centers Council, Inc., et. al.

To: United States Attorney for the
Eastern District of New York
Attorneys for Defendants
Cadmyn Plaza East
Brooklyn, NY 11210

UNITED STATES DISTRICT COURT
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PLAINTIFF'S SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that pursuant to Rule 34 of the Federal Rules of Civil Procedure, plaintiffs hereby request and demand that defendants produce and permit plaintiffs to inspect and copy the documents listed below commencing at 10:00 a.m. on the 17th of April, 1992, at such place as agreed to by counsel.

DEFINITIONS

Plaintiffs incorporate the definitions from their First Request for Production of Documents as if set forth fully herein.

INSTRUCTIONS

Plaintiffs incorporate the definitions from their First Request for Production of Documents as if set forth fully herein.

DOCUMENTS TO BE PRODUCED

1. On the most expedited basis, all documents directing or otherwise relating or referring to the fact that the screened-in rate for Haitians should be, was, or is capped at a certain level or is, has been, or should be lowered.

2. On the most expedited basis, all documents dated after February 24, 1992 which refer or relate to country reports, situation reports, or the Resources Information Center, regarding Haiti or information on which defendants rely on or have relied on, in making screening determinations about Haitians.

3. On the most expedited basis, all documents dated after January 1, 1991 which refer or relate to State Department evaluations, including but not limited to evaluations written by officials and staff members of the Bureau of Human Rights and Humanitarian Affairs, that refer or relate to conditions in Haiti.

4. On an expedited basis, all documents dated after the filing of the complaint in this lawsuit on March 18, 1992 which refer or relate to United States government practices regarding the screening or interviewing of Haitians detained at Guantanamo Naval Base, on United States Coast Guard cutters, or elsewhere in territory subject to United States jurisdiction.

5. To the extent that defendants have failed to produce all the documents earlier requested by plaintiffs, plaintiffs renew their First Request for Production of Documents, and renew the request for documents set forth in Harold Hongju Koh's letter to Lauri Steven Filppu dated March 28, 1992 memorializing the major points of the status conference with Judge Sterling Johnson held on March 28, 1992.

6. All documents which refer or relate to lost records of Haitians.

7. All documents which refer or relate to computer errors, hardcopy errors, mistaken identification of refugees having been screened-in or screened-out.

8. All documents containing statements by defendants expressing the belief that repatriated Haitians would suffer or had suffered persecution on their return to Haiti.

9. All documents which refer or relate to investigations by defendants of persecution suffered by repatriated Haitians.

10. All interagency documents which refer or relate to the screening or re-screening process taking place on Guantanamo Bay or on Coast Guard cutters or elsewhere in territory subject to U.S. jurisdiction.

11. All documents which refer or relate to country conditions in Haiti relied upon by defendants in making screening and asylum determinations for Haitians since October 1991.

12. All documents which refer or relate to refusal or granting of access to lawyers to Guantanamo Bay Naval Base since October 1991.

13. All documents which refer or relate to changes in rates of Haitians being screened-in and screened-out.

14. All documents dated August-December 1981 which refer or relate to the U.S.-Haitian Agreement, Executive Order 12,324 establishing the Alien Migrant Interdiction Operation or the Haitian Migrant Interdiction Program or that program as otherwise referred to.

15. All documents which refer or relate to the interdiction of non-Haitians pursuant to Executive Order 12,324.

16. All Executive Agreements entered into pursuant to the President's

directive in Executive Order 12,324.

17. All documents, not otherwise specifically called for above, which refer or relate to the allegations set forth in plaintiffs' complaint.

Dated: New York, New York
April 16, 1992

LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC

By: Harold Hongju Koh
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