

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

HAITIAN CENTERS COUNCIL, INC.,  
et al.,

Plaintiffs,

v.

GENE MC NARY, Commissioner,  
Immigration and Naturalization  
Service, et al.,

Defendants.

Civil Action No.  
92-1258 (Johnson, J.)

MOTION FOR SANCTIONS

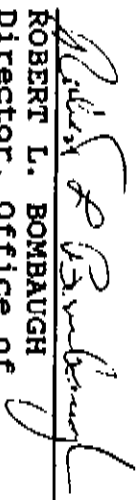
Pursuant to Rule 11 of the Federal Rules of Civil Procedure, defendants move for sanctions against plaintiffs and their attorneys on the grounds that plaintiffs' complaint is frivolous and that the filing of such pleading and the accompanying motion for injunctive relief violates the duties imposed by such rule.

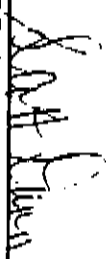
In support of this motion, the Court is respectfully referred to the accompanying memorandum of points and authorities.

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF DEFENDANTS' MOTION FOR SANCTIONS

Preliminary Statement

Plaintiffs bring this action seeking to enjoin the repatriation of certain Haitian nationals encountered by federal officers outside the United States, and to modify the procedures by which defendants determine who among the interdicted Haitians should be permitted to proceed to the United States to advance their asylum claims.<sup>1</sup> Plaintiffs assert seven causes of action, including constitutional and statutory claims regarding their alleged interests in "access" to the interdicted Haitians for purposes of communications and counsel, violations of the Administrative Procedure Act, violations of international law, and denial of equal protection. Complaint, pp. 16-20. Plaintiffs raise these claims on behalf on all Haitians detained at Guantánamo Bay or elsewhere outside the United States, and all

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<sup>1</sup> For a more complete statement of the facts, the Court is respectfully referred to the memorandum and exhibits filed in support of defendants' accompanying motion to dismiss.

Haitians who have retained or in the future may retain "plaintiff Haitian Service Organizations."<sup>2</sup> *Id.*, pp. 15-16.

Last month the Supreme Court refused to stay and denied certiorari from a decision and judgment rejecting virtually identical challenges to the Haitian interdiction and repatriation program. In a suit brought by the "Haitian Refugee Center, Inc." to enjoin repatriation of Haitian nationals interdicted by federal officers on the high seas and to compel "access" by the Haitian Refugee Center ("HRC") to Haitians detained at Guantanamo or elsewhere outside the United States, plaintiffs asserted causes of action based on the same constitutional and statutory provisions and principles of international law raised by the present plaintiffs.<sup>3</sup> Haitian Refugee Center, Inc. v. Baker, 949 F.2d 1109 (11th Cir. 1991), cert. denied, 60 U.S.L.W. 2513 (U.S., February 24, 1992). The Eleventh Circuit Court of Appeals found that neither the First Amendment, nor the Immigration and Nationality Act and the Refugee Act, nor the Administrative Procedure Act, nor international law provides any basis for

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<sup>2</sup> "Haitian Service Organizations" does not appear as a party plaintiff in the caption but apparently includes the "Haitian Centers Council, Inc.", the "National Coalition for Haitian Refugees, Inc.", and the "Immigration Law Clinic of the Jerome N. Frank Legal Services Organization of New Haven." Complaint, p. 1. Plaintiffs offer no explanation regarding any relationship they may have with the Haitian Refugee Center, Inc.

<sup>3</sup> In Haitian Refugee Center the claims were asserted on behalf of all Haitians "detained or who in the future will be detained" at Guantanamo or elsewhere outside the United States. HRC Complaint, ¶ 62. Thus, there appears to be substantial overlap between the plaintiff class in Haitian Refugee Center and the presently proffered class. Compare HCC Complaint, ¶ 36-41.

Judicial intervention in the Haitian interdiction and repatriation program. 949 F.2d at 1110-11. Although the appeal to the Eleventh Circuit was from the entry of a preliminary injunction, the appeals court not only vacated the injunction but also ordered the district court to dismiss each and all of the HRC claims for failure to state a claim upon which relief can be granted and directed that the mandate issue immediately. *Id.* Further demonstrating the total lack of merit in the claims asserted, the Supreme Court took the highly unusual action of entering a stay which removed the district court's injunctive bar to repatriation before the Eleventh circuit ruled on the merits. Order of January 31, 1992, No. A-551 (Ex. 39). The Eleventh Circuit and the Supreme Court decisions have not been vacated, modified, or otherwise challenged, and defendants are aware of no case in which any court has recognized a cause of action on behalf of aliens outside the United States or by parties seeking "access" to such aliens. See Ukrainian-American Bar Ass'n v. Baker, 893 F.2d 1374 (D.C. Cir. 1990).

By separate papers, defendants have opposed plaintiffs' motion for injunctive relief and moved for dismissal of this action based, *inter alia*, on the conclusive and preclusive effect of the Haitian Refugee Center decision and judgment on the claims that plaintiffs raise to this Court. As shown in such opposition and motion, there is no basis in law for any of plaintiffs' asserted causes of action. Because the complaint and injunctive motion are frivolous and not warranted by existing law, defen-

dants are entitled to sanctions under Rule 11 against plaintiffs and their attorneys.

Argument

PLAINTIFFS AND THEIR ATTORNEYS SHOULD BE  
SANCTIONED FOR THEIR FRIVOLOUS ACTION

Rule 11 of the Federal Rules of Civil Procedure obligates the parties and their attorneys to assure that each pleading, motion, or other paper is

well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law . . . .

Rule 11 further provides that,

If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

See Cooter & Gell v. Hartmarx Corp., --- U.S. ---, 110 S. Ct.

2447 (1990). Because it is clear that plaintiffs' assertions are contrary to law and that their complaint and motion offer nothing other than an attempt to reassert previously rejected claims, defendants are entitled to sanctions including the expense of defending this action.

A. Plaintiffs' Complaint And Motion Violate Rule 11

Rule 11 requires that reasonable inquiry be made to assure that each claim brought before the Court is supported by existing law or by a good faith argument for a change in such law. However, application of the rule does not turn on the subjective

good faith of the person submitting the pleading, motion, or paper, but involves an objective assessment of the submission under the pertinent law. Brasport, S.A. v. Hoechst Celanese Corp., 134 F.R.D. 45, 46-47 (S.D.N.Y. 1991). Where there is no chance of success and no reasonable argument can be made in support of the asserted position, the claim is frivolous and warrants sanctions. International Shipping Co., S.A. v. Hydra Offshore, Inc., 875 F.2d 388, 390 (2d Cir.), cert. denied, 110 S. Ct. 563 (1989); West Indian Sea Island Cotton Ass'n, Inc. v. Treadtex, Inc., 761 F. Supp. 1041, 1054-55 (S.D.N.Y. 1991).

It is clear that plaintiffs have no chance of success on any of their claims. At the time their complaint and motion were filed, no court had recognized any of their proffered causes of action and each of their claims had been examined and rejected by the Eleventh Circuit and the Supreme Court. See Borowski v. Depuy, Inc., 850 F.2d 297, 304-05 (7th Cir. 1988) ("ostrich-like" denial of dispositive authority warrants sanctions). This is not a matter of open issues or unsettled areas of the law. Compare Mareno v. Rowe, 910 F.2d 1043, 1047 (2d Cir. 1990), cert. denied, 111 S. Ct. 681 (1991), with Securities Industry Ass'n v. Clarke, 898 F.2d 318, 321-22 (2d Cir. 1990).

It is equally clear that no reasonable argument can be made in support of plaintiffs' position. Cf. Dennis v. Pan American World Airway, Inc., 746 F. Supp. 288, 291-92 (E.D.N.Y. 1990). Plaintiffs' demand for judicial intervention in the Haitian interdiction and repatriation program cannot be sustained without

contradicting the judgment reached in Haitian Refugee Center, and such judgment cannot properly be ignored or circumvented. It is not enough for plaintiffs to assert that circumstances have changed since the Eleventh Circuit and Supreme Court examined the Haitian program. The judgment in Haitian Refugee Center held that there was no basis in law for claims against defendants' interdiction and repatriation of Haitian nationals. A change in facts cannot create a cause of action that as a matter of law does not exist.

The courts have recognized that Rule 11 sanctions may be appropriate where parties seek to raise successive or repetitious claims. Zaldivar v. City of Los Angeles, 780 F.2d 823, 830-32 (9th Cir. 1986); Cook v. Peter Kiewit Sons Co., 775 F.2d 1030, 1036 (9th Cir. 1985), cert. denied, 476 U.S. 1183 (1986); Seal-tite Corp. v. General Services Administration, 614 F. Supp. 352 (D. Col. 1985). Compare Stern v. Leucadia National Corp., 844 F.2d 997, 1005-06 (2d Cir.), cert. denied, 488 U.S. 852 (1988). This Court has imposed sanctions for bringing a complaint barred by collateral estoppel or res judicata. Neustein v. Orbach, 130 F.R.D. 12, 15-16 (E.D.N.Y. 1990). See also Truck Treads, Inc. v. Armstrong Rubber Co., 129 F.R.D. 143, 151-52 (W.D. Tex. 1988), aff'd as modified, 868 F.2d 1472 (5th Cir. 1989). However, Rule 11 is not limited to cases involving an identity of parties and suits; sanctions may be imposed for the re-assertion of claims previously rejected on similar facts where the proponent surely knew that the complaint had no hope of success. Damino v.

Barrell, 702 F. Supp. 954, 957 (E.D.N.Y. 1988), aff'd, 875 F.2d 307 (2d Cir.), cert. denied, 110 S. Ct. 69 (1989); G & T Terminal Packaging Co., Inc. v. Consolidated Rail Corp., 719 F. Supp. 153, 160-61 (S.D.N.Y. 1989). See also Peregoy v. Amoco Production Co., 929 F.2d 196, 197 (5th Cir. 1991), cert. denied, 112 S. Ct. 188 (1991). Moreover, pleadings that invite the Court to disregard controlling precedent or decisions by superior tribunals warrant sanctions. Howard v. Liberty Memorial Hospital, 752 F. Supp. 1074, 1080 (S.D. Ga. 1990); Thompson v. Sundholm, 726 F. Supp. 147, 150-51 (S.D. Tex. 1989).

Even if the present plaintiffs somehow can distinguish their case from that decided by the Eleventh Circuit and Supreme Court, the fact that they filed their complaint and motion without proper legal support and in the teeth of the previous decision and judgment is sufficient to warrant sanctions. Measured by the objective, competent attorney standards applied in this circuit, it was patently clear that plaintiffs' claims had absolutely no chance of success. See International Shipping Co., 875 F.2d at 390 (sanctions for failure to inquire as to jurisdiction). Plaintiffs' attempt to relitigate the HRC claims and issues is frivolous and violates Rule 11. Damino v. Barrell, supra.

B. Defendants Are Entitled To Sanctions Awarding The Reasonable Expenses Incurred Because Of The Filing Of Plaintiffs' Complaint And Injunctive Motion

Where, as here, a pleading or motion violates Rule 11, sanctions must be imposed. O'Malley v. New York City Transit Authority, 896 F.2d 704, 709 (2d Cir. 1990); City of Yonkers v.

Otis Elevator Co., 844 F.2d 42, 49 (2d Cir. 1988). It is immaterial that the offending submissions were made with good intentions or that the claims purportedly were raised toward a worthy objective. West Indian Sea Island Cotton Ass'n, 761 F. Supp. at 1055; see also Dreis & Krump Mfg. Co. v. International Ass'n of Machinists, etc., 802 F.2d 247, 255 (7th Cir. 1986) (passion for vindication no defense to Rule 11 sanctions). Defendants need not show injury or justification, for Rule 11 sanctions are mandatory and aimed toward curbing and deterring abuse of our legal system. See Business Guides, Inc. v. Chroma-tic Communications Enterprises, Inc., --- U.S. ---, 111 S. Ct. 922 (1991).

While sanctions are mandatory for violations of Rule 11, the courts retain discretion as to the extent of monetary and other relief to be awarded. See Anschutz Petroleum Marketing Corp. v. E.W. Saybolt & Co., 112 F.R.D. 355 (S.D.N.Y. 1986). Here, with little explanation and no justification, plaintiffs have burdened the Court and the government with virtually the same case that was so recently rejected by Eleventh Circuit and Supreme Court. Moreover, plaintiffs have disregarded the settled and substantial law reserving matters of foreign and immigration policy to the political branches of government (see, e.g., Kleindienst v. Mandel, 408 U.S. 753, 765-770 (1972)), willfully seeking to assert their claims before the wrong forum. See Saltany v. Reagan, 886 F.2d 438 (D.C. Cir. 1989), cert. denied, 110 S. Ct. 2172 (1990) (sanctions appropriate where attorney surely knew complaint

challenging use of foreign bases to bomb Libya had no hope of success). Under these circumstances, plaintiffs and their attorneys should be ordered to pay the full costs and expenses of government's response to their complaint and motion, including reasonable attorneys' fees. See Neustein v. Orbach, 130 F.R.D. at 16; see also Becker v. NLRB, 678 F. Supp. 406 (E.D.N.Y. 1987).

While good faith may shield a party from the sanctions earned by his attorney (see Greenberg v. Hilton International Co., 870 F.2d 926, 934 (2d Cir. 1989)), at least as to the institutional plaintiffs in this case the present circumstances suggest no principled basis to draw such a distinction. See O'Malley v. New York City Transit Authority, 896 F.2d at 710. In accordance with applicable law, defendants ask for a judgment that plaintiffs and their attorneys, jointly and severally, are liable for the government's costs and reasonable attorneys' fees. See Damingo v. Barrell, supra; Cedar Crest Health Center, Inc. v. Bowen, 129 F.R.D. 519, 527 (S.D. Ind. 1989). Plaintiffs should not be permitted to burden the courts or the public fisc with their continued dissatisfaction with the Haitian interdiction and repatriation program.

Conclusion

For the foregoing reasons, defendants' motion for sanctions should be granted.

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