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The Honorable Janet Napolitano
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Madam Secretary:

I write on behalf of Catholic Legal Services, Archdiocese of Miami, Inc (CLS) in response to the Department of Homeland Security's (hereafter, "DHS" or the Department) Policy for Resumed Removals to Haiti which DHS made available for public comment on Monday, March 7, 2011. More than one thousand individuals seek the services of CLS each month: individuals seeking to reunite with their families; political and religious refugees seeking safety and security, many of whom have experienced persecution and torture; battered spouses and their children; and long-term residents of the U.S. with significant family and community ties who face deportation. CLS is a nationally recognized agency with an experienced team of attorneys and immigration professionals. Haitians comprise almost 40% of our staff. CLS maintains a strong relationship with South Florida's Haitian Community, a traditionally under-served population. In response to the designation of Haitians for Temporary Protected Status, CLS provided intensive outreach and pro bono services to the Haitian Community in South Florida. Our office has processed nearly 5% of Haitian TPS applications nationally (one out of every twenty). The office consistently represents 8% of all successful Haitian asylum applications before the Executive Office of Immigration Review (one out of every twelve). I offer this detailed agency description to emphasize the agency's keen interest in the proposed policy, its professional competence in reviewing the policy, and its unique qualification to communicate its impact on Haitian-American and Haitian refugee communities of South Florida.

In the strongest terms possible allowed by the constraints of public discourse, I offer my opposition to the proposed policy. In doing so, I endorse and incorporate, by reference, the comments submitted previously by the United States Conference of Catholic Bishops (USCCB) and the American Immigration Lawyers Association (AILA). However, I write separately for four reasons: 1) to present my personal reflections on the DHS "process" in promulgating this policy, as someone who has participated extensively in the on-going public discourse over the policy; 2) to provide the perspective from the Haitian Community in Miami, the community most impacted by this policy; 3) to offer the professional expertise and resources of our office and its network of pro bono partners to assist DHS, at a more propitious and practicable time, "to resume removals in as safe, humane, and minimally disruptive a manner as possible;" 4) to encourage DHS to adopt a comprehensive policy towards Haiti and Haiti migrants, including a meaningful re-designation of Temporary Protected Status and the creation of a Haitian Family Reunification Program.

I. Lack of Good Faith Dialogue

First, after engaging in a three-month dialogue with representatives from various Administration entities, including ICE, DHS headquarters, the White House, the national Security Council and others, I must comment on my surprise and disappointment in the proposed policy *as presented*. For approximately twenty years, I have interacted with personnel from the DHS and its predecessor INS. The agency I represent maintains a respectful and productive working relationship with local ICE officials in Florida. Through the years, I have formed a high opinion of the diligence, commitment, and knowledge of the law exhibited by the dedicated public servants of the Department. I am extremely surprised that the proposed policy fails to meet even the minimal standards I have come to know and expect from Department work products. Other comments have characterized the proposed policy as “vague,” “inconsistent,” “contradictory,” “overly broad.” I affirm these comments. Frankly, the proposed policy constitutes little more than a re-edited, retrofitted and reformulated summary of various dissembling conference calls. Where it does add new detail, the additions create more confusion than clarity. For example:

- 1) For the first time in this context, the Department acknowledges that exceptions exist to the “remove or release” legal requirement which the Department had relied on to justify the resumed removals. In light of this acknowledgement, resumed deportations to Haiti must be accompanied by an explanation as to why these exceptions do not apply to the delineated population. No such explanation has been attempted;
- 2) For the first time, the Department confirmed that the policy applies to non-criminals; to wit those that “are determined to be a significant national security threat.” Yet, this population clearly falls within the exceptions referenced above. Why did the Department include this population on the basis that the law requires release or removal when it clearly does not?
- 3) In the list of crimes triggering application of the policy, the Department lists a variety of various serious, violent crimes, but the policy also references larceny. This crime does not seem to comport with the others in the list. How does DHS determine which crimes trigger deportation? Does DHS have an overarching policy regarding the nature of crimes which comprise “serious criminal offense or history?” Or, did the Department simply describe a list of those it had already decided to remove? Is this an example of the proverbial tail wagging the policy “dog?”

Further, I remain disappointed in the lack of specificity provided by the proposed policy and the opaque posture taken by DHS. At no time, including the present, has DHS addressed these substantive concerns raised repeatedly by advocates. Others have characterized the posture of DHS as lacking in transparency. I consider it obfuscatory. DHS failed to announce its decision to remove Haitians. It was only discovered coincidentally by CLS attorneys in the course of their routine work at Krome, *after the decision had been made*. For three months, advocates have asked relevant, probative questions. The DHS response has been contradictory, dissembling, or simply non-existent. The proposed policy continues this conduct. Advocates had hoped that posting the proposed policy would finally provide answers. Instead, DHS provided more of the same. The short time period provided for comments underscores the Department’s unwillingness to engage in any meaningful dialogue whatsoever. Clearly, the DHS timeline attempts to suppress the number of comments and to rush towards the resumption of removals at its earliest convenience, without carefully considering comments. Any citizen in a functioning democracy would find this posture disappointing. To find it so blatant within the current Administration, which has made competent, transparent government a hallmark, is truly disturbing.

The talented professionals at DHS should produce a policy statement worthy of their efforts. [Though I suspect the reason they have not done so, is because no cogent policy could justify removals to Haiti at this time.] In any event, an effective policy statement should include, at a minimum, a discussion of the questions consistently raised by advocates. For example:

- 1) In that one individual has died, needlessly and senselessly, as a result of this policy in the first removal attempt, what has changed to ensure such a tragedy will not recur?
- 2) What is the *actual* underlying policy objective?
- 3) Is this policy narrowly tailored to achieve this objective?
- 4) What role has country conditions played in removals? If none, why has ICE sent letters to detainees indicating that country conditions have changed sufficiently to allow for deportations? Why did ICE personnel cite “changed country conditions?” as the motivation for resumed deportations in response to Congressional staff inquiries?
- 5) If public safety is the issue, why does DHS seek to remove aliens with relatively minor, non-violent crimes, including misdemeanors?
- 6) If it is the so-called legal requirement to release or remove within six months, why does DHS include categories of individuals who clearly fall within the exception to this rule such as national security risks and the mentally ill?
- 7) Why does DHS seek to remove the mentally ill and other vulnerable populations? Case law indicates that removal of individuals with such “special needs” to Haiti violates the Convention Against Torture.
- 8) If DHS will exclude vulnerable populations from this policy, what safeguards will it implement to ensure that such groups will not be deported?
- 9) What criteria will DHS use to determine who is amenable to removal? What safeguards will DHS implement to ensure that the criteria are being met before removal?
- 10) What safeguards will DHS implement to ensure that “all legal remedies” have been exhausted before removal? This is a significant issue for this group. Many Haitians took final orders rather than pursue relief from removal based on DHS promises that they would be released more quickly. Relying on DHS assertions, they now find themselves pending removal, yet may not be amenable to such removal.
- 11) What is the posture of DHS counsel regarding joint motions to reopen which have legal merit, but fall beyond the normal timeframe or permitted number given the inaccurate assertions made by DHS?
- 12) Why does DHS refuse to allow advocates or detainees to challenge the pending removal through some type of review process?
- 13) What resources have been made available in Haiti to facilitate removals “in as safe, humane, and minimally disruptive a manner as possible”?
- 14) Why did DHS previously remove individuals without providing resources as promised?
- 15) What assurances will DHS provide that removals will not take place until the promised resources have been provided, in view of the fact that, to date, DHS promises have proven empty?
- 16) What specific steps has DHS taken to ensure the “security needs of ... Haiti?”
- 17) What alternatives to removal has the Department explored?
- 18) If any alternatives have been considered, why has the Department rejected them?
- 19) Why does DHS refuse to implement measures similar to those for Cuban Criminal Aliens, who also cannot be removed, but which address public safety concerns without physically removing

individuals?

- 20) What is the basis for the timing of the decision to remove, both in December, 2010 when initially made and now?

II. Insensitivity to the Haitian Community

The last two questions remain extremely pertinent to the Haitian Community in Miami and its perception of the proposed policy. The December, 2010, decision to resume removals to Haiti can be characterized as nothing less than insensitive to this bereft community. The Haitian community, less than eleven months after one of the most cataclysmic disasters in history, remained a community in mourning. It perceived the announcement of resumed removals as a clear signal that the United States had abandoned relief efforts, had abandoned Haiti, had abandoned them. In December 2010, the full extent of the cholera epidemic had just been made known. Yet, DHS pushed forward its decision to resume deportations with full knowledge that thousands of Haitians had already died of cholera and that the disease had spread to the Haitian prison system, the destination of the returning deportees. On the very day the decision became public, news stories were replete with coverage of political violence on the streets in Haiti. That December decision came barely six weeks in advance of the deadline for Temporary Protected Status. Many Haitians remained fearful of applying for TPS, not trusting the United States Government to offer the promised protection. The announcement legitimated this fear and caused many to forego applying for TPS.

Now, even after the death of one of deportees, DHS renews its attempt to remove Haitians. The Haitian Community can only wonder at this inhumane decision and ask why DHS does not value Haitian lives. The United States government, with very limited exception, has not removed or deported similarly situated Cubans for fifty years. Yet, DHS gave only eleven months to Haiti and Haitians to return to "normalcy." In the Cuban context, DHS has established an effective method of addressing public safety concerns without removing individuals. Not so for Haitians. There is no indication that DHS even tried to implement such mechanism. The Haitian Community legitimately asks why does the United States perpetuate this double standard? Like so many questions, the proposed policy fails to answer these as well.

III. Conditions Precedent for Resumption of Removals

It is axiomatic that conditions in Haiti remain horrific. Others have provided overwhelming evidence for this. It is equally axiomatic that nothing has changed so as to overturn the humanitarian decision made by DHS to suspend removals after the earthquake. *It is a fact that one of the deportees died*, as predicted by advocacy groups. Yet DHS seeks to renew this deadly policy without indicating how it will effect removals "as safe, humane, and minimally disruptive a manner as possible." Certainly, it failed to do so in January, 2011.

"There is a time for everything, and a season for every activity under heaven." Ecclesiastes 3:1
There will come a time for resumed removals to Haiti. Now is not that time; this is not that season. DHS should use this time to establish and meet conditions for the resumption of removals. Such conditions include, but are not limited to:

- 1) A thorough legal review to ensure that all cases pending removal are in fact amenable to removable (necessary because many Haitians took final orders rather than pursue relief in

response to assurances of release made by DHS officials). This could be accomplished by providing meaningful legal access to non-profit groups such as CLS and other pro bono attorneys.

- 2) A comprehensive case review of each prospective deportee to ensure that they do not present special needs or fall within a vulnerable population like the "mentally ill. This could be accomplished by providing "reasonable fear" interviews to all Haitian pending removal.
- 3) The identification and use of secure alternatives to detention where appropriate.
- 4) A reintegration plan for those persons being deported to Haiti that will ensure their safe and humane repatriation.
- 5) Guarantees from the Haitian government that deportees will not be detained upon their arrival in Haiti.
- 6) The inauguration of a stable, viable and functioning Government in Haiti to make such guarantee and to meaningfully assist with any reintegration plan.
- 7) Adequate and sufficient resources placed in, and fully operational, to implement such a plan. Previously, resources had been pledged but never provided.
- 8) Effective health measures to reduce the likelihood of the spread of cholera.
- 9) Demonstrable improvement in Country Conditions, such as a reduction in the amount of violence in the camps and the countryside.
- 10) A *meaningful* dialogue with all community, governmental and Haitian stakeholders regarding the best way forward to effect removals in a "safe, humane, and minimally disruptive a manner as possible," as well as to address public safety concerns here in the United states and Haiti.

CLS pledges to assist DHS in achieving the first two items by offering its own internal resources and those of its pro bono partners in implementing such safeguards. In doing so, CLS urges the Department to transfer the detainees from rural Louisiana to more accessible facilities such as Krome. In reaching other necessary, CLS recommends strongly that DHS work closely, not only with the Haitian Government, but NGO partners, such as Catholic Relief Services and Alternative Chance, among others. *Until such time as DHS has adequately documented that it can effect removals in as safe, humane, and minimally disruptive a manner as possible, DHS should continue its temporary moratorium on all removals to Haiti.*

IV. Necessary and Beneficial Ancillary Policies

In addition to a continued temporary moratorium on all removals to Haiti, DHS should suspend any further round-ups and detention of Haitians for deportation and halt the processing of those presently detained who are suitable for supervised release. As part of a more comprehensive response to the needs of the Haitian Community, DHS should re-designate Haiti for TPS so that Haitians who entered after the earthquake may access its benefits. Such re-designation would also allow those who failed to apply in reaction to the ominous announcement that DHS would resume removals to Haiti. I hasten to add that the re-designation should be meaningful and derive from actual conditions in Haiti. For example, the cholera epidemic provides a legally sufficient trigger for TPS designation in and of itself; thereby, it provides a rational date for re-designation, as well. Finally, DHS should implement a family reunification parole program to parole Haitians with approved I-130 petitions into the U.S. to await their priority dates becoming current. Currently, DHS administers a similar, successful program for Cuban nationals.

For all of the above reasons, for all those provided by the many, many stakeholders who submitted articulate, well-reasoned comments, on behalf of an ill-treated and bereaving Haitian Community and in memory of Wildrick Guerrier, who senselessly died as a result of this policy, I ask that DHS continue its temporary moratorium on all removals to Haiti and rethink the senseless and ill-conceived policy proposal.

Sincerely,

Randolph P. McGrorty
Executive Director,
Catholic Legal Services,
Archdiocese of Miami, Inc

Cc: Honorable Hillary Clinton, Secretary of State
Melody Barnes, Domestic Policy Council
Dennis McDonough, National Security Council
John Morton, Assistant Secretary for Immigration and Customs Enforcement
Alejandro Mayorkas, Assistant Secretary for Citizenship and Immigration Services