

Testimony of Marleine Bastien, Executive Director
Fanm Ayisyen Nan Miyami/Haitian Women of Miami, Inc.

Before the U.S. House of Representatives Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International
Law
May 22, 2007

Madame Chairwoman, members of the subcommittee, thank you for inviting me to testify before you. Haitian communities are comprised of decent, hard-working, tax-paying refugees and immigrants, seeking the American dream, whose U.S.-born children are our future, and whose remittances sustain their relatives in Haiti. Haitians have suffered from discriminatory U.S. immigration policies for decades. Despite fleeing harsh dictatorships, they have been interdicted at sea and summarily repatriated without asylum screenings, indefinitely detained often for years, and repeatedly denied fair asylum proceedings and determinations.¹ Three weeks ago, Temporary Protected Status was again properly renewed for 18 months for affected Honduran, Nicaraguan, and Salvadoran nationals, extending a halt of their deportations, due to still-incomplete recovery from Hurricane Mitch in 1998 and earthquakes in 2001. But Haitians, despite broad recognition that they fully qualify, have never been granted such protection.²

The failure to grant Haitians TPS, continuing to deport good people who have been here for years, endangers U.S. borders. Haitians in the United States remit \$1.17 billion annually which supports nearly a million adults in Haiti.³ When long-resident hard-working people are deported to this hemisphere's poorest country, it not only rips them

¹ See "Successes and Challenges for U.S. Policy to Haiti," Hearing Before the Committee on Foreign Relations, United States Senate, 108th Congress First Session, July 15, 2003, Testimony of Steven David Forester, Esq., Senior Policy Advocate, Haitian Women of Miami, which I incorporate herein by reference. That testimony describes this history of discrimination in detail, citing statistics, federal court cases, and facts, and thoroughly outlines the pressing need for legislation to correct or "fix" flaws in the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). As discussed infra, such HRIFA Improvement legislation has been introduced thrice in the House of Representatives since 2003 and currently comprises Section 519 of the STRIVE Act. Although it was included in S. 2611, the comprehensive immigration reform bill which passed the Senate last May, one glaring defect of the current Senate proposal is that it does not currently contain such HRIFA Improvement legislation, a defect which should be remedied.

² See "If only they had a golden arm," Carl Hiaasen, *Miami Herald*, April 8, 2007; editorial, "Haitians in America Meet Requirements for TPS," *South Florida Sun-Sentinel*, August 25, 2006; editorial, "Straight to the Point: TPS for Haitians," *Miami Herald*, January 25, 2006; "Haitians deserve protected status," Steven David Forester, *South Florida Sun-Sentinel*, September 25, 2006; "Policy is 'white foot, black foot'," Carl Hiaasen, *Miami Herald*, February 5, 2006; "Thousands march for Haitian rights," *Miami Herald*, April 23, 2006; Haitian Protection Act of 2007, H.R. 522; press release and letter to President Bush of Rep. Alcee L. Hastings, May 3, 2007, "The continuation of unfair and discriminatory immigration policies toward Haitians has not allowed Haiti to obtain the sense of normalcy that its Central American counterparts are being given the opportunity to achieve."

³ See "Remittances to Haiti topped \$1.65 billion in 2006, says IDB fund," press release, Inter-American Development Bank, March 5, 2007. "About 1.1 million adults in Haiti receive remittances, typically 10 times a year, at an average of \$150 at a time. About half the families that receive money from abroad have incomes of less than \$500 a year.... Most Haitians who receive remittances use the money to cover basic expenses. However, many families manage to save a portion of their money or invest it in small businesses, home improvements or the education of their children." *Id.*

away from their U.S.-born children, forcing those children to make the wrenching choice between the only parents they have ever known and the only country they have ever known -- the United States -- it also instantly cuts off the flow of money which sustains their relatives in Haiti, thereby causing the very desperation which a sound Haiti policy should seek to prevent and leading many Haitians, all of whom love their country, to attempt dangerous, often deadly 700 mile sea voyages which so unnecessarily tax U.S. Coast Guard, Border Patrol, detention, and judicial resources. To protect our children and our borders, we should keep these parents with their children and their remittances flowing to their relatives.⁴

This year the deportations of good people with no criminal record have accelerated: Joseme Charles, here since 2000, leaving two asthmatic U.S.-born children behind; Alexandre Nicolas, here since 1994, despite an approved I-130, U.S.-citizen wife, and U.S.-born daughter; Marie Thelusma, here since 2000, deported despite U.S.-citizen husband and son and *a scheduled adjustment interview to actually become a legal permanent resident*.⁵ This isn't right or sensible. And it's the tip of the iceberg; most cases we don't even hear about. ICE took these parents away from their spouses and children in about five minutes during unannounced pre-dawn raids on their apartments, leaving no time even for goodbyes.

We need a fair and workable path to legalization but have serious misgivings about the Senate proposal, which is many ways is much worse than what the Senate passed last year. The historic principle of family reunification must remain a core value of our immigration laws. The proposal's elimination of four of five family-based categories, and its arbitrary slashing of the number of visas available for parents of U.S. citizens, is radically inconsistent with American history and traditions and undermines the hopes of millions. Whatever happened to family values? Skilled or unskilled, all human beings are of equal worth and dignity in the sight of God. Have we forgotten what it means to be an American? Haitians, like all immigrants, work very hard, two and even three jobs, and the child of today's waitress or taxi driver may be tomorrow's brain surgeon or president of a major corporation. Have we forgotten "rags to riches", "only in America", and where Abe Lincoln came from?

Many provisions are onerous, unreasonable, unnecessary, or unworkable. These include the touch-back requirement; the prohibitively high fees and penalties which discriminate

⁴ See "Sweat, generosity of emigrants Haiti's lifeline," op-ed by Ana Menendez, *Miami Herald*, April 8, 2007. See also the IDB report cited in footnote 3 and many of the items cited in footnote 2.

⁵ See "She's the face of immigration policy," by Ana Menendez, *Miami Herald* (front page), April 11, 2007; "Immigration chaos tears a family apart," by Ana Menendez, *Miami Herald*, March 7, 2007; "Split decision: Deportation redefines families, As more longtime residents are deported, many are forced to choose whether to leave their U.S.-born children behind," by Ruth Morris, *South Florida Sun-Sentinel*, February 25, 2007; "U.S. adding fugitive squads that target immigrants who ignore expulsion orders," by Ruth Morris, *South Florida Sun-Sentinel*, February 26, 2007; "Increased deportations targeting all illegal immigrants," by Victor Ramos, *Orlando Sentinel*, May 14, 2007 (focusing on Alexandre Nicolas); "Family apart as immigration debate goes on," by Ana Menendez, *Miami Herald*, December 14, 2005; "A father is gone, guilty of being Haitian," by Ana Menendez, *Miami Herald*, September 10, 2005.

against the poor and may bar millions for lack of funds from even attempting to legalize, defeating the plan's purpose and keeping families living in fear and hiding; and the 8 to 15 year wait to become a legal permanent resident. The touchback provision serves no purpose except to penalize and endanger people, who shouldn't have to pay the added cost nor be forced to go back to unsafe conditions. The State Department, for example, has issued an advisory warning Americans that it is unsafe to travel to Haiti, given the kidnappings and other turmoil. This is true of other lands from which refugees have fled.

The temporary worker program's restrictions against regularizing one's status devalues the worker and will result in a new undocumented population.

Legalization must include persons with final orders of removal. Haitians disproportionately fall into this category, as they usually were paroled into the country or came forward soon after arrival in compliance with the law. Especially given a well-documented history of discrimination in denying Haitian asylum claims, it would be unfair to exclude persons with final orders, and devastating to long-established, hard-working families with U.S.-born children. If there is no criminal record, persons with final orders should not have to seek waivers of any kind which, unless a pure formality – in which case they are unnecessary -- may bar deserving applicants.

My colleagues will expand on these and other fundamentally flawed provisions in the Senate proposal. Permit me to focus on an omission which must be remedied if Haitian-American needs are even minimally to be met. This is the Senate proposal's omission of a HRIFA Improvement provision to fix unintended flaws in the Haitian Refugee Immigration Fairness Act of 1998, referred to by its acronym, HRIFA.

In contrast to the Senate proposal, HRIFA Improvement is included in the STRIVE Act as Section 519; was part of S. 2611, the immigration bill which passed the Senate last year; and was previously introduced in the Senate in 2004 and thrice in the House since 2003 by Representative Kendrick Meek.

The need for this specific corrective legislation to protect unquestionably deserving families and children has received extensive national media coverage and editorial support from 1999 to the present. This includes a top-of-the-front-page *New York Times* expose; a Ted Koppel Nightline half-hour; ABC and NBC national news segments; repeated editorial and op-ed support, etc.⁶

⁶ See e.g., three CBS local South Florida reports by Jennifer Santiago, 2005-2006; editorial, "Immigration Issue: A loophole leaves Haitians eligible for safe harbor facing deportation," *South Florida Sun-Sentinel*, October 16, 2005; editorial, "Haitian immigrants merit fair relief Our opinion: Congress should approve law to end mistreatment," *Miami Herald*, October 10, 2005; "Unintended Consequences: After thirteen years in Miami, Omila Foufoune Cesaïre faces deportation to the Haiti she fled in fear," by Tristram Korten, *Miami New Times*, September 15, 2005; "Dividing Families: Approximately 3,000 Haitians who have been living, working, and raising families in the United States for more than 10 years face deportation because of a legislative oversight," by Paige Stein, *Boca Raton News*, July 19, 2004; editorial, "A remedy for Haitians Our opinion: Press for approval of Rep. Meek's bill," *Miami Herald*, January 13, 2004; "Flaw in immigration law threatens deportation for some Haitian refugees," by Ken Thomas, *Associated Press*, *San Francisco Chronicle*, December 29, 2003, *Naples Daily News*, December 30, 2003, and many other

HRIFA's sponsor, former Senator Bob Graham, praising one of the *Miami Herald's* many editorials urging such relief, wrote in a letter to the paper's editor on May 13, 2000, "We shouldn't punish Haitians who fled tyranny and came here seeking refuge, freedom, and justice. To ensure that they have the opportunity to embrace these protections, Congress passed HRIFA in 1998.... We should do everything possible to fulfill our commitment and keep families from being torn apart."⁷ Senator Graham introduced a HRIFA Improvement bill in 2004.

Miami-Dade County's mayor and commissioners have urged enactment of HRIFA Improvement legislation in repeated delegations to Washington since 2003, most recently just three weeks ago.

Despite the equities and support, those the Senate meant to protect by including and passing such a provision in last year's bill are still being deported. These include children placed in removal proceedings after having aged out of derivative eligibility due to unconscionable, years-long government delays in processing their parents' eventually-successful HRIFA applications, and otherwise-HRIFA-eligible "airplane refugees" who escaped murderous repression⁸ during the 1991-1994 coup years in Haiti but who were

papers; "Haitian Immigrants in U. S. Face a Wrenching Choice," *New York Times* (top of front page), March 29, 2000; lead editorial, "No room for 5,000 Elians," *San Francisco Chronicle*, April 3, 2000; *NBC Nightly News with Tom Brokaw* segment, April 6, 2000; *ABC Evening News* segment, July 4, 2000; *ABC's Nightline with Ted Koppel* (program, "Equal Justice?"), May 25, 2000; *ABC's Nightline with Ted Koppel* (segment of Miami townhall meeting), April 7, 2000; editorial, "A cruel choice for Haitian parents," *Tampa Tribune*, April 10, 2000; op-ed, "Elian's Case Should Shed New Light on Haitians' Plight," by Mike Harden, *Columbus Dispatch*, April 12, 2000; "Haitian parents facing deportation fearful for U.S.-born children," by Jody Benjamin, *South Florida Sun-Sentinel* (front page, local), April 16, 2000; *The Tavis Smiley Show*, Black Entertainment Television (hour program), April 24, 2000; lead editorial, "Haitian Parents of U.S. Kids Deserve to Remain Here Together," *Miami Herald*, May 4, 2000; op-ed, "Protect 5,000 American Children, Don't Deport Parents," by Steven Forester, *Miami Herald*, May 5, 2000; editorial, "The harassment of Haitian refugees," *Tampa Tribune*, August 16, 1999; and see previous footnotes.

⁷ HRIFA's intent and purpose was to end "two decades of discrimination against the Haitians," 144 Cong. Rec. S 13003 (Nov. 12, 1998), and to provide a semblance of equal treatment for Haitians following the previous year's enactment of the Nicaraguan Adjustment and Central American Relief Act ("NACARA").

⁸ In 1994 President Clinton accurately said, "They're chopping people's faces off, killing and mutilating innocent civilians, people not even directly involved in politics." He referred to them in his September 1994 television address justifying U.S. intervention. Secretary of State Christopher on July 10, 1994 said Haiti's military was raping the wives of Aristide supporters, and respected human rights groups documented the regime's use of rape as an instrument of political terror. Assistant Secretary of State John Shattuck wrote:

Beginning last summer, politically motivated killings in Port- au-Prince rose sharply, . . .

Human rights abuses have qualitatively and quantitatively worsened in recent months. Soldiers and armed thugs stage almost nightly raids on neighborhoods where many Aristide supporters, live, raping the wives and children of political activists and critics of the regime, abducting young people, and disfiguring victims' faces.

Raids have been conducted on clergy, fires set in private homes, and the bodies of men shot with their hands tied behind their backs are appearing on the streets of Port-au-Prince, part of a new practice designed to terrorize the people.

excluded from HRIFA coverage by a technical flaw in the original legislation.⁹ All were paroled into the United States by INS in 1995 or earlier and have always been law-abiding citizens.

The merits of the case were thoroughly reviewed in the July 15, 2003 Senate Foreign Relations Committee testimony of Steven David Forester, my organization's Senior Policy Director, and I respectfully ask permission for his testimony to be included in the record at this time.

These deportations of long-resident deserving refugees devastate their lives and those of their spouses and U.S.-born children, and endanger our borders by drying up the remittances which sustain their relatives in Haiti.

As a community spokesperson who is privileged to serve not only as Executive Director of Haitian Women of Miami but as President of the Florida Immigrant Coalition and Vice-Chair of the Haitian-American Grassroots Coalition, we cannot support legislation which does not contain a HRIFA Improvement provision.

Separately, there are also a small number, at most a few hundred, HIV-positive Haitians who were paroled into the United States from Guantanamo Bay, Cuba before 1996 who also need protection. So many of them now lead healthy and productive lives through life-giving treatment available in the United States, but not in Haiti. Unless they are covered, their deportation will amount to a death sentence.

In sum, permit me to express my thanks for the honor of addressing this august subcommittee. We share the prayer that Congress shall enact comprehensive immigration reform legislation which will provide a fair and workable path to legalization for all immigrants, without the Senate proposal's unwise jettisoning of family reunification values in favor of an untested and discriminatory theory and its prohibitively and unnecessarily costly, delayed, and onerous legalization provisions. Those aspects of the Senate proposal would embody a radical departure from humane American principles and may hurt or exclude millions of immigrants and their families, many of whom live in the Haitian-American community I represent here today.

Thank you very much.

A delegation from the IACHR [Inter-American Commission on Human Rights] has identified 133 cases of extrajudicial killings between February and May alone, and attributed full responsibility for those and other atrocities to the de facto authorities, i.e. the military and their supporters. The US government fully shares this conclusion.

Haiti today presents a picture of brutality and lawlessness--in the unaccountability of the regime and its wide scale violations of human rights. . . .

"Human rights abuses in Haiti worsen," op-ed, *Miami Herald*, July 14, 1994. See also contemporary human rights and media reports, e.g. "How U.S. error sent Haitian to his death," by Susan Benesch, *Miami Herald*, April 18, 1994.

⁹ See footnote 6 and former Senator Bob Graham's letter above.