



## **Haitians and the Federal Prisons**

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**CRIMINAL JUSTICE**

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*Haitians and the Federal Prisons*

### ***Introduction***

There is a secret, or more to the point a fact that few people have cared about, regarding people who have come to this country from Haiti without documentation. For years they have either been immediately deported back to Haiti or they have been placed in federal detention centers and prisons. The imprisonment occurs when the person seeks political asylum and is turned down but cannot return to Haiti because he or she would be killed.

So, there have been a tremendous number of Haitians being held in maximum security federal detention centers and prisons basically for immigration reasons. They are locked down 23 hours a day and they are treated just like murderers. Welcome to America. This has been going on for years and, with the earthquake disaster, it was thought there might be a change of policy.

There has been a temporary reprieve for some as a result of a decree in January of 2010, which allowed parole into the community pending an asylum determination but no discernible change in the asylum policies.

### ***The Immigration Policies***

We know something about this because in the late 80's, we were confronted here in Santa Barbara with the transfer of the "Marielitos" - that is the people who came over from Cuba in the Mariel boatlift in 1980. They were housed in the United States Prison in Lompoc. You may recall that during this boatlift, it was said that Castro had emptied the Cuban prisons and let the prisoners leave with other refugees. There was a lot of confusion as to who the people were who ended up coming over here and what criminal or psychiatric record they actually had, if any. Many of them ended up not being allowed to enter the United States or they were allowed to enter and then were arrested for a petty offense and placed in federal prison for life.

It turned out that I was asked by the American Bar Association, through the State Bar, to head a committee to find representation for these individuals. Concurrently, the ACLU contacted our Santa Barbara Chapter, of which I happened to be the President at the time. The handwriting seemed to be on the wall so my office coordinated the *pro bono* representation of approximately 200 individuals. We had very few lawyer volunteers and most of the people who actually did the work were law students or lay people who worked under the supervision of a law professor or myself. In the end, I personally supervised well over 100 cases and handled dozens. In the first waive, we secured the release of over 100 people.

These people, Marielitos, were given hearings by the Department of Justice after long protests that predated their transfer to Lompoc. We were given a chance to put together a case for release. This involved interviewing the client, reviewing his prison files, contacting relatives, if any, or securing the sponsorship of an individual or organization. It often meant arranging for a job and a place to live. We would then do a brief and appear at a hearing in front of an INS Officer (now ICE), who

sometimes was not too sympathetic. The hearing officer would write up his recommendations and send them to the DOJ from which there would be a written decision.

Due to the wonderful efforts of the volunteer lawyers, the law professors, the many law students and the lay people - and members of our staff - we had remarkable results. People went from years of being held in maximum security facilities to homes and jobs around the country.

Well, that fight took years. All the while, there were Haitians who were also in custody, under the same circumstances. They could not be returned to their country because they would be killed and the United States government would not parole them into society. There was no special hearing procedure like there was for the Marielitos. So they continued to stay in federal prison and some have remained there to this day.

### ***Temporary Protective Status***

Haitian asylum seekers began arriving in the United States by boat in appreciable numbers as early as 1963. The numbers started becoming more significant in the 1970s and increased dramatically in 1980 and 1981. The Haitians were fleeing persecution and poverty. In response to the increase, in 1981 President Reagan entered into an agreement with the Haitian government and clamped down on undocumented Haitians. The Immigration and Naturalization Service, now Immigration, Customs Enforcement (ICE), changed its policy towards Haitians claiming asylum.

Refugees from many countries in turmoil qualify for Temporary Protective Status while their asylum claims are being processed. This results in release into the community for a period of up to 18 months during the processing period with the hope of a more permanent release. The Haitian government requested but was denied temporary protected status for its citizens in the U.S. after a series of hurricanes in 2008. Refugees from five nations can be granted temporary protected status. According to the Congressional Research Service, 300 Somalis have had that status since 1991, 500 Sudanese since 1997, 70,000 Hondurans and 3,500 Nicaraguans since

1998, and 229,000 people from El Salvador received protection after a 2001 earthquake. The status is granted for 18 months or less but has been extended repeatedly because of insufficient recovery in those countries.

Refugees from Haiti have not qualified for this Status for years. Only on January 13, 2010 did Janet Napolitano, head of Homeland Security, grant Temporary Protective Status to Haitians who meet certain requirements. Nevertheless, this does not mean that there will be any change in the granting of asylum just that some people will be paroled into the country pending that determination.

Despite this change, Haitians currently coming to this country for relief are for the most part immediately turned back. There is little effort to determine if they qualify for asylum or, when there is an effort, it is perfunctory. People currently making it to shore who successfully make a prima facie claim for asylum are kept in custody if they are not summarily returned to Haiti.

### *The Criminal Justice System*

The criminal justice system is impacted by the incarceration of Haitian detainees. Just like the Cubans from the Mariel boat lift, they are often housed in federal prisons or in contract county jails. They are often subject to conditions that are marginal even for convicted murderers. They sometimes have only one hour out of their cells each day. There are stories of local jails which contract with the federal government who leave Haitian refugees sitting in windowless cells to be subjected to indignities that might well violate international law.

As of this writing, the federal government is contemplating opening part of Guantanamo Bay for Haitian refugees. It is claimed that the refugees will not be housed in the prison there and actually will be across the bay from the infamous "Gitmo" facility holding "enemy combatants." The relocation is intended to be temporary to deal with the results of the earthquake but, who knows?

The United States has been a major donor of funds to support the United Nations High Commission on Refugees but on an absolute dollar level. On a per capita level, Norway and Sweden contribute much more. However, the worst part of it is that the United States has one of the most restrictive policies for actually taking refugees into the country and granting asylum. Even the number set by the President has not been realized by ICE.

Most of the Haitians retained in custody are not guilty of a crime but many are kept in federal custody in a federal prison or local contract facility. In addition to the inhumanity of this process, it also adversely impacts the overcrowded prison and jail facilities around the country. The federal government has been aware of the fact that both Cuba and Haiti are in physical proximity to the United States and, while the voyage is dangerous, it is a journey likely to be taken, especially in times of emergency. The recent earthquake disaster has tested this premise.

### ***Conclusion***

This is not a Criminal Justice issue *per se* and is an issue better addressed in practice by an immigration attorney. Nevertheless, as lawyers in this community, we should be aware of any governmental action which restricts the liberty of people in this country. Without challenging the concept of national borders, and in particular, the borders of this country, we should look critically upon any system where a person seeking refuge is met with summary denial of a hearing or other basic rights. And we should look especially critically upon locking people up in maximum security facilities who are not convicted and sentenced for a violent crime.