

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 10th Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Borough President Stanger - Jimmy Yan

Address: 1 Centre Street

I represent: Manhattan Borough president

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 548 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Daniel Coates

Address: oversight + #548

I represent: Make the Road NY

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 548/648

in favor  in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Gabriela Villaverde

Address: 137-139 W. 25th St., 12th Fl NY 10001

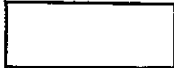
I represent: NYIC

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 548

in favor  in opposition

Date: Feb 18 2011

(PLEASE PRINT)

Name: Lili Salmerson

Address: 70 E 8th St #26 BKLYN NY 11218

I represent: NMCIR

Address: 665 W 182nd St NY NY 10038

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 548

in favor  in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: BARBARA J. BRANNON

Address: 225 Broadway Suite 900 NY NY 10007

I represent: many immigration clients, member of ALZA

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 548 Res. No. 648

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: GETACHEW FIKREMARIAM

Address: 429 W. 127th St. NY NY 10027

I represent: African Services Committee

Address: 429 W. 127th St. NY NY 10027

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 548 Res. No. 648  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Jojo Annobil  
Address: Legal Aid Society 199 Wake St  
I represent: Legal Aid Society  
Address: 199 Wake St NY NY 10032

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 548  
 in favor  in opposition

Date: 2/18/11

(PLEASE PRINT)

Name: Joshua Epstein  
Address: 3124 35<sup>th</sup> St Apt 3B, Astoria, NY 11606  
I represent: Immigrant Defense Project  
Address: 3 W. 29<sup>th</sup> St. Ste. 803, NY, NY 10001

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 548  
 in favor  in opposition

Date: FEB 18-2011

(PLEASE PRINT)

Name: DENNY JEREZ  
Address: 3393 Ford Independence St B+, NY, 10443  
I represent: NMCIR  
Address: 665 W 182 ND ST NY, NY 10033

◆ Please complete this card and return to the Sergeant-at-Arms ◆

# BARBARA J. BRANDES & ASSOCIATES, ESQS.



ATTORNEYS AT LAW  
SUITE 900  
225 BROADWAY  
NEW YORK, NY 10007-3001

BARBARA J. BRANDES, MANAGING ATTORNEY  
BRYAN C. JOHNSON ESQ., ASSOCIATE

TEL: (212) 406-0150  
FAX: (212) 556-2488

Dear Sir or Madam:

I am an attorney having practiced exclusively in the area of immigration law in the State of New York for more than 30 years. Thank you for allowing me to address the New York City Council regarding Res. No.548 calling on Governor Andrew Cuomo to continue and expand the Immigrant Pardon Board.

A continuation and expansion of the Immigrant Pardon Board is warranted and desperately needed for the following reasons:

1—Many persons who could have benefited from the Immigrant Pardon Board were unaware of its existence or the deadline to file for the pardon. The attorneys in our office, who represent many criminal aliens, only learned of the Board's deadline two days before it expired.

2--Many immigration laws, changed subsequent to convictions, are being applied retroactively despite constitutional prohibitions against ex post facto laws and bills of attainder.

3— Many attorneys had failed to ask the immigration status of criminal defendants, and/or failed to advise or misadvised defendants of the immigration consequences of their convictions. Since the US Supreme Court case of *Padilla v. Kentucky*, (which held that a person's Sixth Amendment right to counsel is violated when an attorney fails to advise a defendant of the immigration consequences of a plea/conviction), the New York State Courts are being flooded with Padilla motions to reopen.

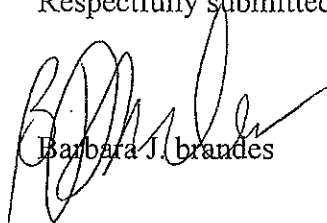
4—Since 1996, immigration judges have lost the ability to grant discretionary relief to many Respondents who heretofore including at the time of the convictions were eligible to apply for discretionary relief.

5---Many of the convicted persons who would benefit from a pardon paid their debt to society many years ago, have no subsequent arrests and have become model citizens with substantial family ties. Studies have confirmed that removal of family members causes significant disruptions of family life which could impact on the welfare of society, stability of children, financial drain on the government, etc.

7—For many persons, the Immigrant Pardon Board is their only chance to remain in the US.

Thank you for allowing me to address this board and I am open to answering any questions you may have relating to the immigration consequences of criminal convictions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barbara J. Brandes', written in a cursive style.

Barbara J. Brandes

# Northern Manhattan

## COALITION FOR IMMIGRANT RIGHTS

Testimony to New York City Council Immigration Committee  
February 18, 2010

Good Morning.

My name is Denny Jerez. I am an active member of the Northern Manhattan Coalition for Immigrant Rights and I am here today to support the resolution to continue and expand the Governor's Pardon Panel as an important step in dealing with the terrible effects of deportation. When Governor Paterson announced his Pardon Panel last year, many of us in the community who have so few opportunities to fight deportation were so hopeful. I believe that Governor Cuomo will continue the Pardon Panel, because it is the right thing to do—it gives New Yorkers a chance to make their case on why they should be able to stay with their families and communities.

I am 38-years-old, a legal permanent resident of the United States, the father of two U.S. citizen children, and a very active member of my church. I moved to New York from the Dominican Republic in March, 1992 when I was 20 years old, and I have spent close to half my life here in New York. My life has not been easy for me. I have struggled with depression since I was young. It was during a period of deep depression that I made a bad choice—I was arrested for the attempted sale of a small amount of drugs. For this act, I am now deportable. Since then, I have worked hard to rebuild my life and be a productive citizen of this society.

Because of this conviction, I am not able to travel without taking the risk of not being able to come back. I have not been able to visit my mother since 1994. It has been 17 long years since I have seen my mother. It is a dream of mine to see her again. But it is also a dream of mine to be able to continue to live here in New York.

New York is where I have built my life. I am a key support for my sisters, my nieces and nephews, and of course for my sons. I feel very connected to the society here—to the cultural diversity and the opportunities. It fills me with pride to have the goal of someday becoming an American citizen so that I can vote and participate fully in our society. In my situation, a pardon is the only thing that would allow me to become a U.S. citizen because I am permanently barred from citizenship due to my one small attempted drug sale in 1996.

Last year, I applied for a pardon to ask for a second chance. I know that there are many who will say, "Well, you are an immigrant and you committed a crime, so you should be deported." It does not make sense that there is such a drastic difference in consequences because someone is not a citizen. It does not make sense that most people would not even have a chance to present their case to be able to stay in the U.S. I received a sentence of 5 years probation for my conviction. Yet immigration tells me that I should be deported as

well. Deportation in most cases is permanent exile. This is an injustice that we have to challenge and that we have to change.

Even though I was not given a pardon, I am so glad Governor Paterson saw that people should be given another chance. It is my deep hope that Governor Cuomo will also see that people like me, and the thousands of other New Yorkers who are caught in the middle of harsh, unforgiving immigration laws, also deserve a second chance.

Thank You.

# Northern Manhattan

## COALITION FOR IMMIGRANT RIGHTS

Testimony to New York City Council Immigration Committee  
February 18, 2010

Good Afternoon.

My name is Lili Salmeron. I am a community advocate for the Northern Manhattan Coalition for Immigrant Rights, an organization that has been providing immigration related legal services for over 25 years. We are based in the largely Dominican community of Washington Heights, which has been disproportionately impacted by the punitive and inflexible immigration laws passed by Congress in 1996. These laws further expanded the list of crimes that triggered mandatory deportation for non-citizens and severely restricted the ability for the vast majority of immigrants to have a fair day in court to fight their deportation. As a result, we have seen the number of deportations grow rapidly—the US has deported over 40,000 Dominicans since 1996.

Hundreds of legal permanent residents come to our office each year seeking guidance on whether they are in danger of being deported if they decide to naturalize, renew their green card, or travel out of the country. Because of the combination of harsh immigration laws and the history of crime enforcement in our communities, we unfortunately need to advise them that a past criminal conviction on their record—many of them minor and non-violent—would subject them to mandatory deportation proceedings.

When Governor Paterson announced his pardon panel, we received a tremendous amount of phone calls from past and new clients requesting help in this process. Many of the individuals who called us are legal permanent residents who have US citizen spouses and children, who contribute positively to their communities, and who are 100% rehabilitated. A pardon would offer these individuals an opportunity that they would not have otherwise, to fight their deportation case and be able to stay with their families and their communities.

We are working at NMCIR to build momentum in Congress to change the laws that so severely restrict the ability of our community members to challenge deportation orders and the permanent exiles of so many of our loved ones. The fight for an immigration system that upholds due process rights, that gives immigrants a fair day in court, and allows judges to judge is critical for our families and our communities.

Governor Paterson's Pardon Panel was a crucial step toward addressing the devastating consequences of deportation. We urge Governor Cuomo to continue and expand the Pardon Panel for it will provide opportunities for New Yorkers to have a fair chance to stay united with their families as we continue to fight for just immigration reform.

Thank you.

665 West 182<sup>nd</sup> Street, NY, NY 10033 (212) 781-0355 ext 300  
2715 Bainbridge Avenue, Bronx, NY 10458 (718) 484-8294  
[info@nmcir.org](mailto:info@nmcir.org)  
[www.nmcir.org](http://www.nmcir.org)





February 18, 2011

New York City Council-Immigration Committee  
250 Broadway  
New York, NY 10007-2594

Re: Oversight: Resources Available to Protect the City's Immigrants from  
Deportation

Dear Members of the Immigration Committee:

My name is Joshua Epstein and I am a Staff Attorney at the Immigrant Defense Project. Thank you for this opportunity to present comments about calling on Governor Cuomo to continue and expand Governor Paterson's immigrant pardon panel. We believe that this panel presented important opportunities for immigrant New Yorkers who are at risk of deportation. And continuing this panel will help stop the exile of immigrants from their families and communities here in the United States. Governor Cuomo also has the opportunity to expand the breadth of the pardon panel so even more New Yorkers, in varying immigration statuses, can participate in the program.

As you know all too well, the 1996 immigration laws (AEDPA and IIRAIRA) dramatically increased ways in which immigrants – documented and undocumented – can get deported. Among other things, these laws took away immigration judges' discretion and reduced forms of relief in immigration court, expanded criminal grounds of deportation and broadened "aggravated felonies," changed the definitions of "conviction" and "sentence" so that these terms go beyond what the criminal justice system intended, made it harder to come back to the U.S. after deportation, and limited how the courts can review immigration judge decisions.

As a result, deportations have been dramatically increasing. In fact, more than 2.5 million immigrants have been deported since 1997. They are forced to return to countries where they often don't know the language, have no family ties, cannot find a job, and fear for their lives. Meanwhile, their loved ones are often stripped of breadwinners and support systems.



Immigration and Customs Enforcement thinks it can easily sweep these problems under the rug by simply labeling many of those that are deported "criminal aliens" – a term that is misleading, inaccurate, and offensive. But we should not so facily accept this ugly propaganda. As a country, state, and city, we should recognize that immigrants, just like everyone else, are more than the sum of their mistakes. They form the backbone of our families, workplaces, communities. They should not face deportation as a second – and often surprise – punishment after paying their dues through a criminal justice system that has already put them through the ringer.

That's why we so strongly applauded Governor Paterson for establishing an immigrant pardon panel that recognized that we must take steps to right the wrongs we have perpetrated against immigrants and their families and communities. We think the pardon panel created great promise for so many who have been devastated by the possibility of deportation.

In reviewing pardon applications, Governor Paterson stated that the pardon panel will examine cases of legal immigrants who have shown rehabilitation and positive contributions to society. It is clear that the panel did examine individual facts and circumstances and how old or minor a conviction is.

We think looking at these considerations make all the sense in the world. In fact, this inquiry had been considered the appropriate course of action in considering deportation for decades before the 1996 laws got rammed through Congress. And it's what immigration judges, among others, have bluntly said they wish they could still engage in, rather than having their hands tied.

But we also think Governor Cuomo can do more for a second phase of the immigration pardon panel. Governor Paterson welcomed applications from immigrants who, for example, had convictions that were more recent or more serious. In addition, although the immigration laws have been interpreted to mean that gun and controlled substances offenses cannot be pardoned, Governor Paterson still encouraged applicants to present pardons. And Governor Paterson granted pardons for individuals who had convictions for controlled substance offenses.

We hope that the Immigration Committee will help ensure that Governor Cuomo not only continues his predecessor's immigration pardon panel but also grants more pardons for New Yorkers. We also urge Governor Cuomo to expand the pardon panel and consider applications from immigrants in other statuses who could still benefit tremendously from a pardon.



**IMMIGRANT  
DEFENSE  
PROJECT**

3 West 29th Street, Suite 803, New York, NY 10001

Tel: 212.725.6422 • Fax: 800.391.5713

[www.ImmigrantDefenseProject.org](http://www.ImmigrantDefenseProject.org)

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We hope the New York City Council will help Governor Cuomo extend the pardon panel and help keep thousands upon thousands of New York families and communities united.

Sincerely,

Joshua Epstein,  
Staff Attorney



**African Services Committee**

**Testimony on Resources Available to Protect the City's Immigrants from Deportation, on Res**

**No. 548 and Res. No, 648**

**Committee on Immigration**

**New York City Council**

**February 18, 2011**

For more than 25 years, African Services Committee has focused its work on promoting the health and self-sufficiency of the African Diaspora in New York City. African immigrants are the fastest growing segment of the black population in the United States and they are the fastest growing immigrant community in New York City. When we first opened our doors our efforts were targeted towards Ethiopian and other refugees who were newly entering the country and needed a helping hand. Overtime our focus shifted to Francophone West Africans, then to the rest of Africa and now our program included Caribbean immigrants as well.

Our Harlem-based office provides a number of services to community members including English classes, medical interpretation, food pantry, HIV and other STD testing, case management and housing assistance for HIV + individuals, and range of civil legal services both for HIV+ individuals and for community members as whole.



The greatest demand for our services comes in the area of immigration. Almost every single client who walks in the door, whether they come for English classes or for case management or for our women's support group, also needs immigration assistance. This is in addition to the large number of individuals who contact us exclusively for immigration assistance. We provide clients with immigration legal consultations, educating individuals about immigration law and procedure and assist them in getting released from detention, help them with obtaining immigration benefits by filing applications for asylum, permanent residency, naturalization, VAWA self-petitions and temporary status like TPS, extensions of non-immigrant status. Clients also receive representation during USCIS interviews and before immigration judges.

In the past we took and succeeded in winning good number of asylum cases on behalf of our clients from Guinea, Ivory Coast, Sierra Leone, Ethiopia. At the moment, most of these clients have become tax-paying good citizens. More recently we have focused on gender based asylum claims and VAWA self-petitions in addition to political asylum cases we took on behalf of clients from Eritrea, Zimbabwe, Congo, Cameroon, Gambia, Burkina Faso. Our success rate in winning these cases on behalf of our clients has been very high. This is in addition to the large number of marriage and family based adjustments cases we have handled and enabled our clients to obtain Lawful Permanent Resident status over the years.

The considerable demand for immigration services creates two related challenges for us. First is our limited capacity to take on cases. The majority of our funding is restricted to non-immigration civil services; we only have a small stream of funding towards immigration work.



However there are few agencies to whom we can refer our clients; both because other agencies are similarly strapped for resources and also there are no agencies in New York that are able to provide comparable level of linguistic, and culturally appropriate services. Many immigrants who we turn people down, either because we cannot have a space for them or because they do not have options for regularizing their status, unwittingly hire they turn to deceptive "immigration consultants" who promise to get their papers and charge a lot of money . We find that a number of our clients actually lose their money and are actually put at increased risk of deportation due to the unregulated careless work of these" immigration consultants" who prey upon immigrant communities.

Next continuing and expanding the Immigration Pardon Board ( Res. No. 548) would be a blessing for a number of our clients. One good example is a client from Haiti who came as child with an immigrant visa. He came to our agency to seek immigration legal advice to see if it was wise to proceed with his US citizenship application. However because of the crimes he committed as a disoriented and angry young man, he would have faced deportation if he had applied for citizenship. At this stage in his life, he has completed his college education and has rehabilitated himself beyond imagination. He has become such a mature, decent professional with all his emotions under control. He has completely changed. So a pardon by the board will be renewal of his immigrant life.

Federal immigration laws enacted in 1996 greatly expanded the categories of legal immigrants subject to mandatory deportation as "aggravated felons" including people who had pleaded



guilty to misdemeanor drug possession. So many legal permanent residents are being arrested and detained based on trivial convictions – Immigrants being deported for swiping a Metro card when they fell on hard times or immigrants who repeatedly shoplifted in a moment of weakness. Many immigrants pleaded guilty to criminal charges in exchange for probation or no jail time, without having been advised by their lawyers that the plea made them subject to deportation. Now because of stepped-up immigration enforcement they are facing deportation for old convictions. Only a governor pardon can prevent such deportation in such cases .

Finally Res. No. 648 The TPS status gives a good number of Haitian here in the US temporary immigration status and allows them to get employment authorization and become productive, tax- paying members of their community here in America. It also protects them from being forced to go back to Haiti and face devastating conditions created by the recent earth quake in their home country. The devastation is so real and so sad. We learned a lot about the devastating condition when we were attempting to expedite the visa processing of one of our client's children whose priority dates were not current. As the result of the devastating 7.0 earthquake the house of the client and her family was destroyed. Since that date, the family has no place to live and no prospect of rebuilding their home and their lives. There is a lot of violence in Haiti. There is a lot of kidnapping and robbery that put their lives in danger. In fact, just recently her daughter called her mother from Haiti and told her that she was attacked by robbers. This is sad situation in Haiti and TPS saves a number Haitians from facing this harsh realty.



**AFRICAN SERVICES**  
COMMITTEE

5

429 West 127th Street  
New York, New York 10027  
T: 212-222-3882  
F: 212-222-7067  
www.africanservices.org

Further for some of our HIV+ Haitian clients who are critically ill TPS allows them to access medical and other benefits to sustain their lives and take care of themselves.

Hence we fully support Res. 648 which calls upon the Secretary of the Department of Homeland Security to extend the Temporary Protected Status designation of Haiti and eligible Haitians beyond the July 22, 2011 expiry date.

Presented by Getachew Fikremariam

Client Legal Advocate & BIA Accredited Representative

African Services committee

[getachewf@africanservices.org](mailto:getachewf@africanservices.org)

212-222-3882 ext. 108



For the Record

**PRESENTATION BY COLIN A. MOORE  
AT CITY COUNCIL HEARING ON IMMIGRATION ON FRIDAY,  
FEBRUARY 18, 2011  
AT 250 BROADWAY, NEW YORK, NEW YORK**

**INTRODUCTION**

My name is Colin Moore. I am the Editor-in-Chief of the Immigrant's Journal and Senior Editor of the Caribbean American Weekly.

The Immigrant's Journal is a free monthly publication whose mission is to inform the historically underserved immigrant community in New York City and the Tri-State area of the latest legislative initiatives and policies pertaining to immigrants. In the twelve years since our initial publication, we have provided information on immigration laws such as the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"), Comprehensive Immigration Reform Acts of 2007 the DREAM Act of 2010 and other statutes.

We have also discussed policies such as the elimination of 212(c) relief, Mandatory and Expedited Deportation, Aggravated Felonies and Crimes of Moral Turpitude. We have held workshops and seminars on filing for LPR status, Asylum, U.S. citizenship, and other special immigration status such as the U or T Visas. We have provided application assistance to immigrants including applications for permanent residence, applications for TPS and executive pardons. We have also provided referral assistance and advocacy to facilitate immigrant access to Government benefits and services such as the earned income tax credit, food stamps, subsidized housing, school programs, health services, ESOL classes, and other essential support services.

We have provided also domestic violence prevention and intervention services to immigrant victims and their families directly or through referrals so that they could secure a safe environment and their family situation is stabilized. We also help immigrant victims of domestic violence or trafficking and other crimes to attain lawful immigration status through VAWA self petitions or to apply for a U or T Visa under VTVPA.

We also organize call in radio programs to answer questions on immigration related problems. Our approach is multi-cultural. Our publication appears in

English, Spanish and Creole. We also publish a free bi-weekly publication called the Caribbean American Weekly which provides not only immigration issues, but social, economic and political issues of concern to the Caribbean community. Colin A. Moore is also an adjunct professor of Public Administration and Constitutional Law at Brooklyn College.

### **A. IMMIGRANT PARDON BOARD**

On November 17, 2010, the City Council passed a Resolution, Res. 0548-2010, which **called on NY State Governor elect Andrew Cuomo to continue and expand the Immigrant Pardon Board established by former Governor David Paterson, to ensure that legal permanent residents who were once convicted of non-violent criminal offenses and are now productive members of society can have their removal proceedings vacated and can continue to reside in the United States.** The sponsors and co-sponsors of the resolution were Ydanis A. Rodriguez, Fernando Cabrera, Daniel Dromm, Helen D. Foster, Letitia James, G. Oliver Koppell, Brad S. Lander, Deborah L. Rose, James Sanders, Jr., Jumaane D. Williams and Inez D. Dickens. Governor Paterson stated that “the mission of the Special Immigration Pardon Board was to collect information and provide recommendations on pardons for deserving individuals to assist them in avoiding deportation. The initiative was designed to mitigate the harsh aspects of immigration laws that often remove legal immigrants from the United States, often tearing them away from their children and spouses, and repatriating them to a country that they had left as a child, where they have no relatives, may not be able to speak the language of the nation, have no place to live, and have no sustainable means to support themselves or their family. Governor Paterson blasted the immigration services for their failure to credit rehabilitation. Former Governor Paterson claimed that the pardons exemplify the values of New York State and civilized society- the values of **atonement, forgiveness, compassion** and social justice.

The Governor’s decision to grant full and unconditional pardon to these individuals was intended to counter and mitigate the harsh effects of AEDPA and IIRAIRA which were enacted in 1996 by the Republican majority in the House and Senate. These were the most significant anti-immigrant legislation in more than 100 years and were unfortunately signed into law by a Democratic President Bill Clinton, over the passionate objection of many human rights advocates, community activists and liberal Democrats. Their concerns about this legislation have proven to be a self-fulfilling prophecy. In the decade since the enactment of these two pieces of legislation, over 1 million aliens have been deported. Even though the

Democrats retained control of the House, Senate and the White House in 2008, there have been no attempts to repeal this barbaric legislation.

### **The Anti-Terrorism and Effective Death Penalty Act (“AEDPA”) of 1996**

- **Established** summary exclusion procedures for persons deemed inadmissible
- **Allowed** for limited screening for persons who articulate a “credible fear of persecution” and severely restricts judicial and administrative review of Asylum determinations by IJ’s
- **Expanded** the criteria for crimes of moral turpitude by including persons who were convicted of crimes where a sentence of one year or more could be imposed
- **Allowed** for deportation of non-violent offenders prior to completion of their sentences
- **Eliminated** judicial review for person convicted of most crimes that are deportable offenses
- **Reinstated** provisions resulting in incarceration of any persons including LPR’s convicted of most crimes that are deportable offenses, without possibility of bond
- **Broaden** the definition of aggravated felonies to include crimes such as turn stile jumping, bouncing a check or failing to pay a fare on the subway
- **Eliminated** 212(c) relief for persons facing deportation
- **Broadened** expedited and summary deportation provisions

### **Illegal Immigration Reform and Immigrant Responsibility Act of 1996** **(“IIRAIRA”)**

- **Enhanced** enforcement procedures at Border Crossing and ports of entry including the establishment of automatic entry and exit control systems to determine overstays; the establishment of biometric machinery readable identifiers for border crossings; the right of the Attorney General to contract with State and Local law enforcement officials to investigate and apprehend undocumented persons; the substantial enhancement of criminal penalties, for smuggling, document fraud, unlawful entry and unauthorized employment; the establishment of criminal penalties for anyone including attorneys and notaries who present an application or affidavit which fails to contain any reasonable basis in law or fact

- **Established** new and far-reaching grounds of inadmissibility, including (a) unlawful presence in the U.S. for more than 6 months, (b) presence in the U.S. If a person does not have vaccination against preventable diseases, (c) if a person engages in excitement to terrorism, (d) if a person claims U.S. citizenship or falsely votes in an election, (e) if a student violates a term or condition of his student status, (f) if a person seeks LPR status based on family relations he must have a sponsor
- **Established** new grounds of deportation including (a) conviction for high speed flight from an immigration check point, (b) conviction for domestic violence, stalking, child abuse and child neglect or for violating an order of protection to prevent domestic violence, (c) falsely voting or falsely claiming U.S. citizenship, (d) incitement to terrorism,
- **Eliminated** Relief from deportation and waivers of exclusion were altered. Section 212(c) relief and 244 suspension of deportation were eliminated and were replaced by Cancellation of Removal. Aggravated felons are barred from both provisions.
- **Provided** for mandatory detention
- **Eliminated** Judicial Review for persons convicted of certain crimes.
- **Eliminated** judicial of discretionary relief except in limited circumstances.
- **Eliminated** Judicial Review of discretionary Bond or detention determination
- **Eliminated** Judicial Review of summary exclusion except in limited circumstances
- **Eliminated** automatic stay pending appeal
- **Expedited** schedule of appeal
- **Redefined** Aggravated Felonies redefined. Virtually all felonies are aggravated felonies including any crime of theft or violence for which the sentence is one year or more

Governor Paterson's decision to Immigrant Pardon Board not only served the purpose of mitigating the harsh effects of these two pieces legislation, but also came at a time when other States such as Arizona was seeking to restrict the entry of immigrants by enacting racial profiling statutes. Other Restrictionists in the Republican Party were re-interpreting the 14<sup>th</sup> Amendment, seeking to exclude the children of illegal immigrants from claiming birthright citizenship. Governor Paterson's decision must be hailed as a courageous attempt to expand the rights of immigrants at a time when other states and municipalities were seeking to eviscerate those rights of immigrants.

During its seven months of existence, the Immigrant Pardon Board received **1,100** pardon applications and granted pardons to **24** applicants. In most cases the beneficiaries of the pardons were LPR's who had committed a non-violent crime some time ago during their adolescence, the crimes involved the possession of a controlled substance or some act of larceny, and they were sentenced to varying periods of incarceration or probation. After their incarceration they have made significant efforts to rehabilitate themselves, either by pursuing academic studies, or by becoming involved in community activities. Most of the beneficiaries were married to U.S. citizen spouses and had U.S. citizen children. It was felt that the deportation to a foreign country would take a significant emotional toll or impose a significant financial burden on the U.S. citizen spouses and children.

The criteria articulated by Gov. Paterson for granting a pardon bore a striking similarity to the discretionary factors articulated by the Immigration Judges and by the Board of Immigration Appeals in determining eligibility for 212(c) relief. In these judicial determinations, there is a balancing test between the positive and negative factors. The positive factors outlined by the BIA include:

- Family ties in the United States
- Residency of long duration
- Hardship to the Respondent and family as a result of deportation
- Service in the armed forces
- History of employment
- Property or business ties
- Community service
- Proof of genuine rehabilitation
- General evidence attesting to a person's good character

The individual was granted 212(c) relief if he could establish, by a preponderance of credible evidence, that the positive factors outweigh the negative factors.

The pardon power is based upon sound statutory precedence. INA § 241(a)(2)(a)(iv) states in pertinent part, that "an aggravated felony, as well as a crime involving moral turpitude, will be eliminated for immigration purposes if the non-citizen have been granted a full and unconditional pardon by the President of the U.S. or by the Governor of any of the several States". In *Taylor v United States*, 231 F.2d 856 (5<sup>th</sup> Cir. 1956), the 5<sup>th</sup> circuit stated that "**the Pardon must be full and unconditional**" and that "**it must executive**". That is, it must be granted

by the Governor, as chief executive of the state and not by his State Board, acting on the Governor's behalf or by the State Legislature.

Governor-elect Cuomo should maintain and expand the Immigrant Pardon Board established by former Governor Patterson for several reasons. Firstly, because it would not involve any additional appropriation of funds. Governor Patterson was able to establish the executive clemency unit as part of the New York State Division of Parole. Creating this unit would probably involve additional work by the employees of the State Division of Parole and would probably involve additional personnel. But it would not require the lavish expenditure of resources necessary to establish a new state agency. In this era of fiscal restraint there can be significant savings by retaining the Immigrant Pardon Board within the parameters of the State Division of Parole.

Secondly, as Governor Patterson so eloquently stated, the pardon power exemplified the values of New York State and of the United States of America – the ethical values of atonement, forgiveness, compassion and social justice which are reflected in our founding documents, the Declaration of Independence and Constitution of the United States, and are reflected in the sacred texts of most religions- Christian Jewish and Muslim.

Thirdly, the pardon power is one of the few prerogatives which the chief executive of the state can utilize to mitigate the harsh effects of unjust federal immigration laws. It is predicated on federal statute and cannot be challenged in any court of law. The adjudicative principles used by Governor Patterson to grant relief are also based on some federal precedence. It is based upon the principles utilized by immigration judges and the Board of Immigration Appeals to grant relief in deportation cases.

New York State has a large immigrant population. There are **3 million** immigrants living in New York City. They represent **37%** of the population and **43%** of the City's workforce. They play critical roles in the City's economy. Immigrants make a powerful contribution to NY's economic growth. Immigrant workers are represented in almost every sector of the economy, and at almost all job levels. They constitute nearly **50%** of all physicians and surgeons in NYC. **60%** of registered nurses. **70%** of nursing aides, **25%** of all chief executive officers, **50%** of all accountants, **25%** of financial services, **1/3** of financial managers and registered brokers, **40%** of all property managers and architects, **1/3** of office clerks and receptionists, **70%** of construction laborers, **50%** of all building cleaners, **75%** of cooks and **75%** of carpenters.

They have lower unemployment and poverty rates compared to US born residents. They are highly entrepreneurial. Nevertheless, they face serious challenges. Their vulnerability stems from a variety of factors, including poverty, limited English proficiency, and lower educational attainment, lack of information about legal rights and support services, the complexity of the US immigration laws and other barriers that make it hard to gain permanent resident status.

- One of the serious challenges faced by immigrant in NYS has been the harsh immigration laws of 1996 which led to deportation of over one million immigrants during the last decade. The establishment of an Immigrant Pardon Board responds to an overwhelming need to bring rationality and compassion to harsh and inhumane laws that have brought many productive immigrants within the ambit of the deportation system. There is thus an overwhelming need to establish an administrative system which will provide relief to those placed in removal proceedings for non-violent crimes they may have committed during their youth.
- The 1,100 pardon applications received by Governor Patterson in 2010 is merely the “tip of the iceberg”. If information about the Immigrant Pardon Board is properly communicated to the immigrant community through the ethnic immigrant media, there is likely to be a more massive response to the pardon process. There will likely to be thousands of pardon applications, and a significantly larger number of individuals will benefit from these pardons.
- Governor Cuomo should also use his power of “moral suasion” to persuade Governors in other states with large immigrant populations, such as New Jersey, Connecticut, Massachusetts, Florida, California, and Nevada, to replicate the New York model of executive pardons and establish Pardon Boards in their states as well. He can do this through agencies such as the National Governor’s Association. Over 20 states were willing to replicate the Arizona model of racial profiling. Perhaps an equal number of states will be willing to replicate the New York model of compassion to immigrants.

## **B. TPS FOR HAITI**

On April 22, 2009, by a unanimous vote of 51 to zero, the city council passed a resolution by councilman Dr. Mathieu Eugene (D-Brooklyn 40<sup>th</sup> district) **supporting the Congressional Protection Act of 2009 (HR144) which urged the**

**US government to designate the nationals of Haiti as eligible for TPS (Temporary Protected Status) under section 244A of the INA.** TPS would permit eligible Haitian nationals, to live in the US temporarily while Haiti recuperates from the natural catastrophe of January 12, 2010.

Section 244a of the Immigration and Nationality Act states, in pertinent part, that the secretary of homeland security, after consultation with appropriate agencies of the government, may designate any foreign States' (eligibility for TPS) if the secretary finds that:

1. There has been an earthquake, flood, drought, epidemic or other environmental disaster resulting in substantial but temporary disruptions in living conditions of areas affected.
2. The foreign state is unable, temporarily, to handle adequately, the return to the state of aliens who are nationals of the state.

Even before the devastating earthquake of January 12, 2010 Haiti has been an economic basket case. The following is a chronology of the natural disasters that afflicted Haiti in the last five decades;

- In 1954 hurricane **Hazel** killed **1000 Haitians**
- In 1963 hurricane **Flora** killed **8000 Haitians**
- In 1994 hurricane **Gordon** killed **1000 Haitians**
- In 1994 hurricane **Georges** killed **400 Haitians** and divested 80% of crops
- In 2004 hurricane **Heanne** killed **3000 Haitians**
- In 2008 hurricanes, **Fay, Gustav, Hannah and Ike** killed **793 Haitians**, displaced 800,000 residences and destroyed 70% of the crops. Total hurricane damages were estimated 1 billion dollars 5% of the GDP

### **2010 Haiti earthquake**

The 2010 Haiti earthquake was a catastrophic earthquake magnitude 7.0 on the Richter scale. Its epicenter was the town of Leogane, approximately 25km west of Port-au-Prince, Haiti's capital. By January 24, 2010 there were 52 aftershocks measuring 4.5 on the Richter scale. The Haitian government estimated that 3 million people were affected by the earthquake, an estimated the **230,000** people had died, **300,000** had been injured and **1,000,000** made homeless. It is also estimated that **250,000** private residences and **30,0000** commercial property's had been severely damaged. The earthquake caused major damage in Port-au-Prince, Jacmel, Leogane and other cities in the region. Many landmark buildings were



destroyed including the Presidential Palace the National Assembly Building the Port-au-Prince Cathedral and main penitentiary. Among those killed were Joseph Serge Miot Arch bishop of Port-au-Prince, Micha Gaillard the opposition leader and Hedi Annabi, the UN chief of mission. The Inter-American Development Bank estimated that the total cost of the disaster was between 7.2 billion dollars to 13.2 billion dollars. One day after the quake, Haiti's President, Rene Preval called the destruction "unimaginable". The earthquake left the country in shambles, without electricity and phone service, without running water and sanitation services, without transportation and food. Thousands of residents fled the capital Port-au-Prince to seek refuge in the country side. Thousands of people were trap in the rubble of private homes, government buildings, and shanty towns. Survivors squatted in the streets without food and water on piles of rotting corpses. At a conference in New York on March 31, 2010 International donors promised 5.3 billion dollars over the next 18 months. The Haitian Parliament created the Interim Haitian Reconstruction Commission (IHRIC) lead by former President Bill Clinton, the United Nations special envoy to Haiti and Jean-Max Bellerive, Prime Minister of Haiti to disburse the fund.

### **Haiti's macro-economic profile**

Long before the earthquake of January 12, 2010 Haiti was and faced serious economic challenges. With an income per capita of **\$240.00**, Haiti ranks as the poorest country in the western hemisphere, and one of the 25 poorest countries in the world. It has the most inequitable distribution of wealth in the world, **% 70** of the population, or estimated **7.2 million** people, live in abject poverty. Nearly **% 50** of the population has no access to health services, less than **1/3** have access to safe drinking water, more than **1/4** of the children suffer from a variety of diseases- malnutrition, diarrheal diseases, growth retardation, acute respiratory infection, pneumonia, meningitis, gastro-enteritis, hepatitis B, and type 1 diabetes, and **% 10** of the people depend on daily food rations provided by the international relief agencies. Haiti has the worst health indicators, the lowest school enrollment, and the highest illiteracy rate in the western hemisphere.

### **Benefits of (TPS)**

The TPS designation will provide Haitian national with certain clear benefits.

- It will suspend any deportation proceeding against Haitians national and allow them to remain in the in the United state for a specified period of time. Prior to the TPS designation, ICE had prepared plans to deport over **30,000**

Haitians. Those deportation proceedings have now been deferred and there will be no further deportation proceedings during the period of the TPS designation.

- TPS designation will provide Haitian nationals with the opportunity to acquire Employment Authorization Documents (EAD). It will permit Haitians to obtain social security numbers and obtain legal employment. It will allow them to join unions and to earn a sustainable wage.
- The provision of Employment Authorization is important in a country where remittances from Haitians abroad provide a vital source of income to their dependents in Haiti and constitute a substantial portion of the GDP. It is estimated that there are between **800,000** and **1,000,000** Haitians living in the US, primary in the states of Florida and New York. Remittances of Haitians in the United States to Haitians in Haiti, total over 1 billion dollars per year, and constitute between **25** and **30** percent of the GDP.
- Remittances from Haitians in the United States constitute the largest source of foreign exchange in Haiti. It is larger than the total amount of foreign direct investment, larger than the total amount of foreign aid in Haiti, larger than the total value of Haitian exports.
- TPS will also provide Haitians with travel documents. They can return temporarily to Haiti to visit relatives, take home gifts, spend money in Haiti, and hopefully, participate in the work of reconstruction. They can also return to the US without problems.
- TPS also permits Haitian nationals who enter legally on non-immigrant visas such as a visitor visas (B1) or a student visas (F1) to retain these non-immigrant visas, while obtaining TPS. This will allow them to convert their non-immigrant status to legal permanent status at a later date.
- One of the main disadvantages to TPS is that it does not create a path to legal permanent status or citizenship. The beneficiaries of TPS remain frozen in a state of “suspended animation” until the grace period ends. At the end of the grace period they will revert to their status quo ante of unlawful status, and can be placed in deportation proceedings.

## **Tepid response to TPS**

The Orlando Sentinel reported that officials of USCIS were disappointed at the low number of applications for TPS by Haitians nationals. The USCIS officials initially predicted that between **100,000 to 200,000** Haitians nationals will be eligible for TPS. However there were only **13,000** applications nationwide. They were said to be three reasons for the tepid response.

Firstly, many Haitians were reluctant to “come out of the shadows” because they felt that when the grace period expires, they will be rounded up and deported to Haiti. This suspicion of the immigration service is not without justification. In the 1960’s, applications for asylum by Haitians refugees were routinely denied by immigration judges and the BIA. It was not until the Haitian Refugee Center in Miami obtains a Preliminary Injunction from the circuit court of appeals that the INS desisted from its discriminatory practice and granted favorable consideration to the petitions from Haitians refugees. Just before the earthquake of January 12, 2010 ICE had made plans to deport over 30,000 Haitians to Haiti. There are still fears among the residents in Florida that the earthquake would force thousands of Haitians to abandon their homeland take to the sea and inundate the state of Florida with hordes of refugees.

Secondly, Haitians found it difficult to afford the filing fee of \$470.00 for the TPS application. To many Haitians wage earners this represented an entire paycheck.

Thirdly, many Haitians found it difficult to complete the application form. The **I-821**(Application for Temporary Protective Status) consists of eight parts and asks fairly intrusive questions about an individual’s entire life history. For many Haitian immigrants who have limited education, and English proficiency skill this is a formidable undertaking and can only be achieved with the assistance of an attorney and a Creole interpreter.

Fourthly, many Haitians feel that the answers they provide could be later used to track them down, and place them in deportation proceedings. Ali Mayorkas the Director of the USCIS admits that there is a ‘trust issue’. He acknowledged that the trust issue may be dulling the anticipated response rate among Haitians.

It is clear that one of the reasons for the low response rate among Haitians is the fact that the Federal, State and Municipal agencies have not invested adequate

public relations resources in the immigrant community, to stimulate a strong response to the TPS application process. In 1986 for example, when the INS wanted to market the Amnesty Program, they invested millions of dollars in advertisements in the immigrant media to publicize the program. They also recruited thousands of attorneys, community activists and immigrant rights groups to assist in the application process. The result was that there was an overwhelming response to the program and millions of illegal immigrants received legal status. The USCIS, the New York State agencies involved in Immigrant Affairs and the Mayor's office of Immigrant Affairs should be prepared to invest resources, to publicize the TPS program in the Haitian community.

I would support the proposal to extend the TPS designation program which is due to expire July 22, 2011. I would support an extension for another 18 months on the ground that the situation in Haiti today is almost as catastrophic as it was on January 12, 2010. The millions of dollars promised by the United States and the international community have not materialized and the vast reconstruction program has not been implemented.

The Associated Press reports that only **2 percent** of the rubble has been removed in Port-au-Prince and only **13, 000** temporary shelters have been constructed. Not **one cent** of the US aid pledged for rebuilding has been sent to Haiti and only **15 percent** of the aid pledged by countries and organizations around the world has reached the country. The most fortunate families live in modest plastic tents, the less fortunate families, and there are many of them, live on faded sheets stretched between wooded poles made from tree branches.

There is **no electricity** in the camps, there is **little food** in the camps, there is **no security** at nights and **violence against women** and girls is widespread. Nine months after the quake over **1 million** people are still homeless in Haiti. It is obvious that subdivision 2 of section 244a of the Immigration and Nationality Act has not been complied with. Haiti is "**unable temporarily to handle adequately the return to the state of its Haitian nationals**". Hence the TPS designation should be extended on the ground that the economic situation in Haiti does not constitute of a safe and sustainable environment for the return of its nationals. The demand for an extension of the designation period is not unprecedented. In fact, extensions have been routinely granted to many Central American countries that faced political or ecological disasters such as Nicaragua, El Salvador and Guatemala. There is no reason why an extension should not be granted to Haiti.

However, because of limitations of the TPS system I would recommend that City Council ask for a grant of **Lawful Permanent Status** rather than **Temporary Status** to the nationals of Haiti. This is similar to the Nicaragua and Central American Relief Act of 1997 (NACARA) which provided for adjustment of status for all Nicaraguans and Cubans who were present in the US since December 1, 1995. It also includes the spouses, children and unmarried sons and daughters of these immigrants. I would propose that the city council urge the immigration committee of the house to sponsor this legislation. In light of the fact that Haitian nationals have always been suspicious of the actions of the immigration authorities, and are justifiably afraid that they would be placed in deportation proceedings after the expiration of the grace period on **July 22, 2011**. I would recommend that Lawful Permanent Status be granted for all Haitians who were present in the US since January 12, 2010 it should also be extended to the spouses, children and unmarried sons and daughter of the eligible Haitians.

Yours respectfully,

.....  
Colin Moore.



137-139 West 25th Street  
12th Floor  
New York, NY 10001  
(212) 627-2227  
[www.thenyic.org](http://www.thenyic.org)

Hearing RE: Res. No. 548, a Resolution calling on New York State Governor-Elect Andrew Cuomo to continue and expand the Immigrant Pardon Board to ensure that legal permanent residents who paid their debts to, and are now productive members of, society can continue to contribute to our great State.

Res. No. 648, a Resolution calling upon the Secretary of the Department of Homeland Security to extend the Temporary Protected Status designation of Haiti and eligible Haitians, which is now set to expire on July 22, 2011.

2/18/2011

Committee on Immigration  
New York City Council

Testimony of  
Gabriela Villareal

Immigration Advocacy Policy Coordinator  
New York Immigration Coalition

America's immigration system is broken and is a national shame. Immigrant workers and families are under siege. Workers are being exploited. Families are being divided. Immigrants feel unsafe and vulnerable in their own homes and workplaces. Last year alone, nearly 400,000 immigrants were deported. The government sets narrow quotas limiting how many immigrants can come to America lawfully—and the result is an estimated 11 million undocumented immigrants<sup>1</sup> living in the shadows, with minimal protection. The immigration system as it now stands is simply out of step with the nation's needs and values, which makes the continued emphasis over the past many years on enforcement an exercise in futility, cruelty, and squandered resources.

Current immigration enforcement policies create fear among immigrant and nonimmigrant communities alike, and are ineffectual, as they are attempting to implement a system that is unworkable. We can no longer afford the human and financial costs of taking an "enforcement-only" approach. The U.S. government has wasted resources on ineffective and failed attempts at enforcing dysfunctional immigration laws.

While the resolutions being addressed today are directed towards the federal and state governments, we appreciate the New York City Council's efforts to be at the forefront of

protecting immigrant populations in the consideration of the following decrees:

**Continue and expand the work of the Immigrant Pardon Board in the Governor's Office to prevent the deportation of legal permanent residents** with minor criminal records from the past, who have served their time, and have since made positive contributions to the community.

Federal immigration law has greatly expanded categories of legal immigrants subject to mandatory deportation. With increasing immigration enforcement, more individuals are facing removal proceedings despite contributing to New York's economies and being productive members of our society. Such a state policy to grant pardons to legal permanent residents for minor criminal convictions would be an innovative effort to prevent them from being deported, and warrants continuation and expansion.

In order for this policy to demonstrate the most impact, there must be clear guidelines accompanied by an open review process. The Immigrant Pardon Board should function at a higher capacity to process legitimate applications and would greatly benefit from a coordinated outreach strategy to educate the community and immigrant legal service providers about the granting of such pardons.

**Calling upon the Secretary of the Department of Homeland Security to extend the Temporary Protected Status (TPS) designation of Haiti and eligible Haitians.**

By not extending the Temporary Protected Status designation of Haiti and eligible Haitians, the U.S. Department of Homeland Security may be putting immigrants at risk for deportation to a devastated country. This is not the message to send to the Haitian people – both here in the United States and in their home country. The widespread destruction from the earthquake, the cholera pandemic, and the upheaval and violence after the presidential elections demonstrates the need for the extension. A Department of Homeland Security decision to designate Haiti for extended protection under TPS will help Haitian nationals reside and work legally in the United States and to send much needed remittances back to relatives in Haiti.

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<sup>1</sup> U.S. Department of Homeland Security, "Secretary Napolitano Announces Record-Breaking Immigration Enforcement Statistics Achieved Under the Obama Administration" (Washington, D.C. October 2010)

<sup>2</sup> Pew Hispanic Center, "Unauthorized Immigrant Population: National and State Trends, 2010." 2011.



THE CITY OF NEW YORK  
OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN

**SCOTT M. STRINGER**  
BOROUGH PRESIDENT

**TESTIMONY OF MANHATTAN BOROUGH PRESIDENT  
SCOTT M. STRINGER**

**BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION**

**Hearing on Resolution to support the extension of Temporary Protected Status  
to Haitian Nationals in the United States**

**Friday, February 18, 2011**

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Thank you Chairman Dromm and members of the New York City Council Committee on Immigration for holding this important hearing on the proposed resolution to encourage the extension of Temporary Protected Status (TPS) to Haitian nationals living in the United States. And thank you Council Member Eugene for introducing this important resolution.

The earthquake in Haiti that occurred on January 12, 2010 left over 300,000 Haitians dead and over 250,000 homes and buildings collapsed or severely damaged. More than one million Haitians were rendered homeless in a matter of seconds, forced to live on the streets until emergency shelter camps were set up.

The grant of TPS in 2010 to Haitian nationals in the wake of that tragedy provided much needed relief to individuals who have been prevented from safely returning to their homeland. Displaced Haitians have been able to lead safe and healthy lives in the United States because of the TPS grant of short term residence, work authorization and authorization for temporary travel. The upcoming expiration of TPS scheduled for July 22, 2011 comes at a time when Haiti is still suffering from the effects of the 2010 earthquake as well as political upheaval and a string of past natural disasters.

While the news coverage of the situation in Haiti has dwindled since the devastating earthquake last year, the troubles Haitians face continue to be dire. To date, regrettably not much has improved in Haiti as it pertains to the reconstruction process, much of the rubble has not been removed and there are still over 1.3 million Haitians living in encampments with no potable water or sewage system.

Haiti also faces a new threat with the recent cholera epidemic that has spread rampantly since October 2010 and has already struck 7 of the 10 provinces in the country. In just four short



months, over 3,500 people have died as a result of the cholera epidemic and it is estimated that over 300,000 will be infected within the coming months.

As President of the Borough of Manhattan, I proudly represent the historical entryway for generations of immigrants in the U.S. and over a half million immigrants who constitute thirty percent of our borough's residents. Our city and country continue to flourish because of the positive contributions of immigrants in our economic, cultural, social, and civic life. In order to move our city and country forward in a global society, we must advance practical policies of inclusion and integration, not of fear and division.

Allowing TPS to expire for those Haitian nationals now in the U.S. in the face of all the facts we know about their current needs would be a tragic mistake. Widespread devastation, disease, and a challenging political climate prevent the safe return of nationals to Haiti at this time. I am encouraged by, and strongly support, the positions taken by Senator Kirsten Gillibrand and Congresswoman Yvette Clarke in their bicameral efforts to urge the extension of TPS for an additional year through 2012. I also support their effort to bring 35,000 Haitians with currently pending U.S. government approved family immigrant petitions to the U.S. This initiative will allow spouses and children of U.S. citizens and permanent residents to avoid the visa backlogs that are keeping them in Haiti, permitting them to come to the U.S. to work and live with their families. We must continue to provide hope and stability for Haiti's displaced citizens while they await their chance to return home as well as help those in Haiti who should be safe with their families here in the United States.

Thank you again for allowing me the opportunity to testify at this important hearing. I look forward to working with the Committee on Immigration, and the rest of the City Council to continue to support policies that allow our great city to support those most in need.



THE CITY OF NEW YORK  
OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN

SCOTT M. STRINGER  
BOROUGH PRESIDENT

TESTIMONY OF MANHATTAN BOROUGH PRESIDENT  
SCOTT M. STRINGER

BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION

Hearing on resolution to continue and expand the Immigrant Pardon Board  
and to discuss the resources available to protect the City's immigrants from deportation

Friday, February 18, 2011

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Thank you Chairman Dromm and members of the New York City Council Committee on Immigration for holding this important hearing on the resources available to protect the city's immigrants from deportation. I have long been concerned with these critical issues and would like to offer my support for the proposed resolution to encourage the continuation and expansion of the Immigrant Pardon Board. Thank you Council Member Rodriguez for introducing this important resolution. I would additionally like to raise other concerns I believe are key to protecting immigrant communities from unjust and inhumane deportation.

We live in a city where generations of immigrants to the U.S. got their start, and many have remained to make New York their home. Our city and country continue to flourish because of the positive contributions these immigrants have made in every facet of our lives. Forty percent of our city's population is foreign born and approximately half of those 3.3 million people are noncitizens at constant risk of deportation. With 20% of the city's population directly affected by risk of deportation any time they are arrested, we cannot afford to overlook the dire consequences of deportation for so many New Yorkers, their families, and our great city.

There are a number of important initiatives that can protect the city's immigrants from deportation. First, is the resolution you are discussing today; to support the continuation and expansion of the Immigrant Pardon Board. The creation of the Board last May was a significant step in the direction of fairness and justice in the application of immigration law in our state. The Board has served as an essential step in the review of deportation cases that had been previously overlooked. Each year pardon petitions are filed through the Executive Clemency Unit with the intention of preventing unjust deportation of legal permanent residents with minor convictions. Prior to the creation of the Immigrant Pardon Board, systematic review of these pardon applications was all but impossible due to the number of requests the Executive Clemency Unit is tasked with processing.

The Immigrant Pardon Board has been able to infuse the process of review with fairness by gathering information on pardon applications and determining in which cases a pardon would affect a deportation judgment. The Board has also made important recommendations to the Governor on the particular facts and circumstances of each case that may warrant further review for potential pardon. The Board has been able to note, for example, when a permanent resident has made continuous positive contributions to society, when their deportation may tear them away from a U.S. citizen child or spouse, or when their deportation is the result of an unjust application of retroactivity by federal immigration law. The process utilized by the Board allows the Governor's Office to avoid the arbitrary application of review that has harmed many of our state's permanent residents in the past.

In addition to this Resolution, I believe it is imperative for our city to recognize the importance of injecting fairness and justice at the initial crossroad of immigration and criminal law. In March of 2010, the Supreme Court took a major step in this direction with the landmark case *Padilla v. Kentucky*. The Court recognized the overlap of immigration and criminal law and the severe immigration consequences that even a minor criminal charge could play in the life of an immigrant. To help prevent the injustice that many immigrants have faced, the Court held that criminal defense counsel, under the Sixth Amendment, have a duty to investigate and advise their clients of the potential immigration consequences of their criminal proceedings.

It is essential that we ensure that sufficient immigration assistance is guaranteed by our city's criminal defense organizations that are serving one of our most vulnerable populations. The city must formalize and clarify requirements in its contracts for criminal defense services and should take two important steps to achieve the goal set forth in *Padilla*. First, the city should require each contracting defender organization to have a written immigration plan to outline how it will fulfill its responsibilities under *Padilla*. The city should consult with defenders and experts in developing the standard of service that is expected under these plans. Second, the city should provide an appropriate amount of additional funding necessary to ensure these immigration plans can be effectively implemented. Investigating and advising on such issues requires significant expertise and we must support our community public defenders, who already have limited resources, in fulfilling this critical constitutional requirement. I understand the Criminal Justice Coordinator has shown strong commitment to this issue and we hope they can further strengthen these protections.

The other issues I would like to address today are New York's participation and cooperation with the U.S. Immigration and Customs Enforcement (ICE) agency and the Department of Homeland Security (DHS) in the Secure Communities program (S-Comm) and the Criminal Alien program. The S-Comm program requires state and local law enforcement authorities to provide fingerprints of all arrestees to federal immigration authorities in order to identify immigrants eligible for deportation. The program highlights an association between law enforcement and federal immigration authorities that creates a sense of fear and distrust of police amongst immigrant communities. As a result, this segment of the population will be hesitant to call upon the police for assistance, creating a serious threat to public safety. Additionally, a recent study has shown that a vast majority (79%) of people deported due to S-Comm are non-criminals or people picked up for lower level offenses. This raises concerns that S-Comm may be facilitating racial and ethnic profiling by local law enforcement. As ICE has made clear, states and localities will bear any additional costs associated with the program, including liability for challenged police actions. New York can ill afford these unnecessary expenditures that do not benefit our community. It is vital that we support the rescinding of the Memorandum of Agreement (MOA)

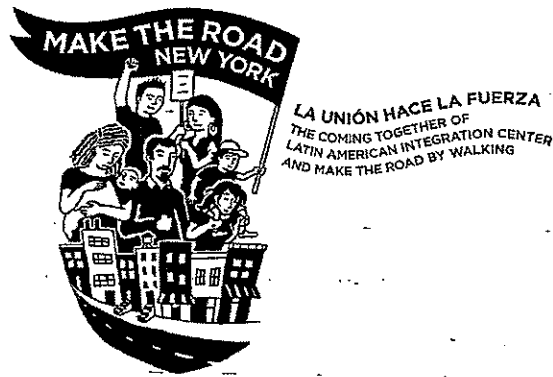
with ICE and DHS authorizing S-Comm in New York in order to eliminate serious public safety, civil rights and cost concerns. In December of last year I, along with Chairman Dromm, Council Member Rodriguez, as well as several other members of this committee, and dozens of city, state, and federal elected officials sent a letter to Governor Paterson – urging him to rescind the MOA.

Similarly, the participation in the Criminal Alien Program at Riker's Island has had an adverse effect on the city's immigrant population. The Department of Correction's (DOC) voluntary cooperation with ICE through the Program has led to the annual transfer of three to four thousand New Yorkers into inhumane immigration detention conditions leading to eventual deportation. The current practice of collaborating with ICE and allowing them expansive access to Riker's facilities is a wasteful expenditure of our city's already strained resources. Our city cannot afford to be involved in a system lacking accountability and transparency; a system that has been separating long time immigrant residents who have contributed to our city from their families. It is critical that the city adopt a policy clearly separating ICE operations from Riker's Island ensuring that our local police will not be in the business of immigration enforcement.

New York City should use its resources properly - not to deport New Yorkers, but rather to keep NY families together, promote public safety, limit unnecessary costs and liabilities, and protect the right of its most vulnerable residents. Adopting the current resolution regarding the Pardon Panel is an important step in protecting the city's immigrants from deportation but it is not enough. I urge you to consider the other policy initiatives I have raised today as an important way to protect our city's immigrants and manage resources appropriately.

Thank you again for allowing me the opportunity to testify at this important hearing. I look forward to working with the Committee on Immigration, and the rest of the City Council to continue to support policies that better our great city.





## Oversight Hearing Testimony

February 18, 2011

My name is Daniel Coates, and I am an Institutional Organizer with Make the Road New York. Thank you, Chairman Dromm and Council Members, for giving me the opportunity to speak about this important issue today.

The resolution before the Immigration Committee today must be considered while keeping a clear vision of the backdrop in which the Pardon Board operates. It is well recognized that the current deportation system is fundamentally broken. The effects of this broken system are tremendous on a City like NY where nearly 40% of residents are foreign born. Seven percent of children nationally, and certainly more in New York, have at least one undocumented immigrant parent – though 75% of such children are themselves citizens. Even children of lawful immigrants (green card holders) are at risk of losing a parent to deportation as Immigration and Customs Enforcement (ICE) deported the lawful permanent resident mother or father of approximately 90,000 children over the last decade, 86% of such children being United States citizens.

Many of the parents being ripped away from their families have lived in this country legally for years, even decades, and the offenses they are guilty of may be as minor as jumping a turnstile. ICE will often delve into an individual's past to find a conviction from their youth in order to make them eligible for deportation. They do not consider an individual's contribution to the City or for the family that every person who is deported leaves behind.

We commend your committee for holding this hearing today, calling on Governor Cuomo to expand the Pardon Board to help protect more immigrants from arbitrary efforts by federal officials to banish them from this country. However, New York City has the power to do more to protect our immigrant communities than the Pardon Board ever could.

Currently 3,500 New Yorkers are being funneled into ICE custody each year through New York City jails. The New York City Department of Corrections (DOC) facilitates ICE's civil immigration enforcement efforts, even though it has no legal obligation to do so, and despite the fact that the cost to the City of this collaboration is estimated at tens of millions of dollars per year.

DOC is participating in ICE immigration investigations by identifying all foreign born New Yorkers for ICE and providing them special access to DOC databases. ICE issues immigration detainers for any of these individuals who it thinks it can deport. Immigration detainers are requests that DOC hold an individual at DOC's expense, to facilitate the detainee's transfer into immigration detention when they would otherwise have been

released. Detainers are requests and not legal obligations – something ICE has repeatedly confirmed.

Once these individuals land in ICE custody, many of them are sent far away to detention centers in Texas, Louisiana, and Alabama, where they are isolated from their families and the resources necessary to mount a defense. This includes New Yorkers who have no criminal record, asylum seekers, victims of human trafficking, long term permanent residents, juveniles, and persons seeking protection under the Violence Against Women Act. Only a lucky few have access to lawyers while 84% remain unrepresented because you have no right to an attorney during in deportation proceedings.

The destructive nature of current DOC practices can be felt in three main ways. First, it destroys New York families. In addition to the emotional costs, many become reliant on some form of public assistance as their primary breadwinner is no longer there. Secondly, it undermines public safety by weakening our City's policing efforts by making immigrants more fearful of contact with the police. It forces victims, especially those in domestic violence situations, to suffer in silence because they fear that contacting the police is a direct pipeline to deportation for themselves or their loved ones. Finally, as previously mentioned, the City is spending tens of millions of dollars to accommodate ICE. And the financial and social costs of this unnecessary collaboration will only rise as ICE rolls out its latest enforcement program, Secure Communities, ensnaring even more families in the fatally flawed net of immigration enforcement.

It does not have to be this way. The solution to the problem is for DOC to exercise discretion on which detainers the City will honor. New York City has the legal authority to decide when and if it wants to hold people at taxpayers' expense on immigration detainers. ICE, and its parent agency, the Department of Homeland Security, have made it crystal clear time and again that detainers are mere requests and do not impose any obligation on localities such as New York.

Numerous immigrant's rights and advocacy groups representing affected individuals have been fighting to reform this policy for years, and our campaign has been well documented and supported by members of the City Council. Other jurisdictions have begun to implement or are working towards implementing similar detainer discretion policies.

It is time for New York City to stop being a gateway into immigration detention for New Yorkers at the City's own expense. The City should stop DOC's practice of subsidizing the federal government's misguided deportation policy and focus the City's limited resources on other areas that desperately need support. News of the Mayor's plan to cut teacher's jobs in this year's budget comes to mind. We support the Council's resolution to expand the Immigration Pardon Board's authority. However we also urge the Council to take the action that it can take and use the power the it has to make New York a city that stands by its immigrant community and a national leader in the fight for a more just society.

Thank you again for hearing us today and for your consideration of these issues.

# TESTIMONY

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*Resources Available to Protect the City's Immigrants from Deportation:*

*The Immigration Pardon Panel and  
Extending Haitian Temporary Protected Status*

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NEW YORK CITY COUNCIL

COMMITTEE ON IMMIGRATION



199 Water Street, 3<sup>rd</sup> Floor  
New York, NY 10038

February 18, 2011

Contact: Jojo Annobil (212-577-3292; [jannobil@legal-aid.org](mailto:jannobil@legal-aid.org))  
The Legal Aid Society, Civil Practice, Immigration Law Unit





My name is Jojo Annobil and I am the Attorney in Charge of the Immigration Law Unit at the Legal Aid Society. I submit this testimony on behalf of the Legal Aid Society and want to thank the Committee on Immigration for taking the initiative to pass resolutions 548 and 648. The resolutions call on Governor Cuomo to continue and expand the Immigration Pardon Board so as to ensure that legal permanent residents who paid their debts to, and who are now productive members of, society can continue to contribute to our great State and also request the Secretary of the Department of Homeland Security ("DHS") to extend the Temporary Protected Status ("TPS") designation for Haitian nationals. I would also like to thank the Committee for inviting us to participate in this hearing.

The Legal Aid Society enthusiastically supports the New York City Council's proposed resolutions. New York City has always been cognizant of the needs of its vibrant but vulnerable immigrant population. Immigrants add to the creativity and the social and economic fabric of this City and the Society is pleased that the City Council is seeking to protect Haitian nationals who find themselves in the US and are unable to return to their devastated island, and also urging the continuation of the Immigration Pardon Board.



TESTIMONY  
PRESENTED ON 2/18/2011

The Legal Aid Society is the nation's oldest and largest not-for-profit public interest law firm for low-income families and individuals. Founded 135 years ago, the Society has earned the prestigious reputation as an institution profoundly committed to the immigrant communities of New York City. The Society is organized into three practice areas: civil, criminal and juvenile rights. Every year, the Society's staff provides direct legal assistance to low-income families and individuals in approximately 300,000 cases and legal matters in all three practice areas.

The Society's Civil Practice also operates 14 neighborhood and courthouse offices and 23 City-wide units servicing residents of all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance, immigration, family law and other civil areas of primary concern to low-income families and individuals. By contract with the City, the Society's Criminal Practice serves as the primary defender of indigent people prosecuted in the State court system. The Criminal Practice handles over 240, 000 trial and post-conviction cases each year for persons accused of crimes in New York City.

For several decades the Society has maintained a robust immigration law unit within the Civil Practice. The Immigration Law Unit specializes in representing non-citizens with criminal convictions in removal proceedings in New York

immigration courts. It is frequently the only source of information and free lawyers for such persons who are detained by Immigration officials. The Immigration Law Unit's experienced staff also provide low income New Yorkers, adults and children, with free immigration advice and high caliber representation in cases that range from obtaining legal permanent residency to US citizenship applications. In addition, the Unit advises criminal defense attorneys on the immigration consequences of arrests and criminal convictions, conducts outreach in immigrant communities and at immigration detention centers, and trains service providers from community-based organizations, State and local agencies and legislative staff.

### **The Immigration Pardon Board**

The Legal Aid Society strongly supports Resolution No. 548, which calls on Governor Cuomo to continue and to expand the Immigration Pardon Board created by Governor Paterson so as to allow certain qualifying Legal Permanent Residents who paid their debts to, and who are now productive members of society, to continue to contribute to our great state.<sup>1</sup>

The Immigration Pardon Board was created to address some of the harm that results from the application of unfair immigration laws to individuals who were convicted in the past of offenses that are very often petty in nature, and who have long since paid their debt to society.<sup>2</sup> In many cases, the crime had little or no

immigration consequences at the time of the conviction. The retroactive application of changes to the Immigration Act has since created very serious immigration consequences that have the potential to destroy lives and separate entire families forever. These severe consequences are often suffered by individuals who have turned their lives around and now make positive contributions to our State and society.

Governor Paterson created last year a five member Immigration Pardon Board in recognition of the fact that many legal permanent residents are subject to removal due to criminal convictions, irrespective of how long ago they were convicted, their family ties to this country, or whether they were rehabilitated.<sup>3</sup> Many immigrants are also subject to mandatory deportation because of past criminal convictions and only a grant of a pardon will make them eligible to seek discretionary relief from deportation. While a pardon will not waive a conviction for all offenses, such as controlled substances, domestic violence or firearms, it can provide substantial relief for many people subject to deportation and removal in a way that dramatically improves the person's chances of remaining in this country or at least enables them to have their day in court.

The purpose of the Board is to address shortcomings in our immigration laws relating to deportation. Federal immigration laws are often inflexible, arbitrarily applied and excessively harsh, resulting in the deportation of individuals who are making positive contributions to our society. The pardons are issued in an effort to restore a sense of fairness and justice to the deportation practice.

It is undeniable that the immigration laws of this country are flawed. Congress acknowledges this fact, yet does not seem to want to assume the task of repairing the systems problems. The inherent flaws of the 1996 Anti-terrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act continue to impact the lives of long-time lawful permanent residents. These laws inflict draconian consequences on non-citizens with criminal convictions. Convictions for a broad range of crimes, including relatively minor offenses such as misdemeanor turnstile jumping, marijuana violations and petty larceny can lead to automatic deportation for non-citizens regardless of their legal status, family ties, length of residence in the United States, and long work history. The laws also took away judicial discretion and made immigrants who have committed certain crimes subject to mandatory detention without bond throughout

their immigration proceedings, even if they are eligible for relief or waivers from removal.

The impact of these punitive laws has been devastating. Immigrants are being deported for minor and even insignificant criminal convictions even if they have U.S. citizen children, are long term legal residents of the U.S., have serious health concerns, or would be subject to harm in their home countries. These removals/deportations are destroying nuclear families forever. Bread winners who have resided in this country since their infancy are deported to countries they barely know, and whose language they might not even speak, leaving spouses behind to juggle the daunting challenges of single-parenting. Children are left unsupervised and without father figures, often turning to truancy, and many times delinquency. Families that ordinarily would not access public benefits are being forced to apply for State and City aid, adding to the financial burdens on this City.

The statistics are staggering. Twenty years ago, approximately 5,500 people were detained on an average day by immigration authorities and approximately 1,900 were deported annually because of criminal convictions. As of early 2010, approximately 30,000 non-citizens were detained on any given day, and in 2009, over 380, 000 individuals were detained over the course of the year.<sup>4</sup> In 2009, a

record 393,289 non-citizens were removed; 128,345 of those individuals were deported because of criminal convictions.<sup>5</sup>

Despite the complexity of immigration laws and of the removal process itself, non-citizens facing removal have a right to obtain counsel but not at government expense. Since access to free immigration counsel is very limited, many non-citizens facing deportation are unrepresented, unprotected and uninformed throughout their immigration proceedings. Of the immigrants whose proceedings were completed in 2009, fifty-two per cent did not have counsel. Within the group of those who were detained more than eighty-four per cent were not represented in their removal proceedings. Legal representation makes a tremendous difference in whether a non-citizen is able to avoid deportation.

The Pardon Board offers a beacon of hope to non-citizens who have at one time or another committed crimes but have since reformed and rehabilitated themselves. By all accounts, the Pardon Board has functioned very well. With considerable input from the Immigration Pardon Board, Governor Paterson pardoned 30 of the approximately 1,100 people who applied for consideration.<sup>6</sup> Among those the Governor selected was a Dominican immigrant who is the current assistant director of finance for CUNY's Graduate School and University Center,



who was convicted of a drug sale in 1988 and spent three years in prison. Also pardoned were a 36-year-old Jamaican immigrant who was being held in a New Jersey immigration jail because of a misdemeanor drug possession conviction that occurred when he was fifteen years old, and a 41-year-old Nigerian immigrant who faced deportation for old crimes in spite of the fact that she is now supporting her college-age and 6 year-old autistic sons.<sup>7</sup>

The continuation of a Pardon Board would impose a sense of fairness on the particularly inflexible and harsh federal immigration laws that subject immigrants to mandatory detention and deportation for a wide range of often minor and nonviolent offenses many of which occurred decades ago. Current law ties immigration judges' hands and requires deportation in many complex cases that deserve a careful weighing of the individual facts by an independent adjudicator. Such a Board could provide much-needed relief to many New York families facing the prospect of losing a parent, child or sibling to our imperfect immigration system.

### **Extending Designation of Haitian TPS**

Extending Haitian TPS (a temporary immigration status) is not only humane but a continuation of the United States government's pledged commitment to assist the Haitian people recover from last year's devastating earthquake.<sup>8</sup> In January

2010, after the federal government announced the designation of TPS for Haitian nationals,<sup>9</sup> the Society's Immigration Law Unit was the first legal services provider to prepare and disseminate outreach materials in English, French and Creole to New York's Haitian community on TPS eligibility and to provide guidelines and checklists for completing and filing TPS applications.<sup>10</sup> The Unit was also the first to hold a clinic to assist Haitian nationals complete TPS applications.<sup>11</sup> A week after Haiti's designation for TPS, the Society, partnered with the City University of New York, to train approximately 580 volunteers (lawyers, advocates, non legal staff, paralegals and translators) through a webinar.

During the year long registration period, the Unit's dedicated and committed attorneys and paralegals, with the generous support of the Robin Hood Foundation and the support of *pro bono* attorneys and volunteers, staffed more than 60 clinics throughout the five boroughs, advised approximately 1500 Haitian nationals and assisted approximately 925 Haitian nationals apply for TPS. The Unit also had a free telephone Hotline staffed by volunteers to answer calls and direct TPS eligible clients to clinics and other resources. Legal Aid staff also handled many of the cases involving complex issues such as determining TPS eligibility for applicants with criminal convictions and provided technical assistance on admissibility issues.

Furthermore, because of the breadth and depth of the Society's civil legal practice, some of the Haitian nationals seeking TPS application assistance were also referred to the Society's neighborhood offices and city-wide units for a full range of civil legal assistance, including housing, public benefits, disability, health, domestic violence, family law or tax representation.

Providing assistance to Haitians during the recently completed registration period was rewarding and fulfilling. Almost everyone we met had lost a loved one or knew someone who had perished in the earthquake. However, the possibility of attaining TPS status gave many the hope of finally coming out of the shadows, obtaining lawful employment and sending money back home, contributing to their community.

The designation of Haiti for TPS has tremendously benefited Haiti and the Haitian people. TPS has allowed record numbers of Haitians to send remittances to family members in Haiti. It is estimated that the TPS program will bring an estimated 20% increase in remittances to the island that could reach one billion dollars if TPS is extended.<sup>12</sup> The estimated amount of remittances exceeds the total amount of international aid provided over the same period. The remittances

account for an estimated one third of Haiti's gross national product and a majority of the island's population rely on remittances from abroad for their daily survival.<sup>13</sup>

If the government decides not to extend the TPS designation for Haitians it will result in human tragedy. Haiti is simply not safe for the return of thousands of Haitians with or without TPS status. It has been more than a year since Haiti was ravaged by the devastating earthquake. Yet Haiti remains in deep crisis. Deporting thousands of Haitians who benefited from TPS will worsen the situation in Haiti and put a tremendous strain on the already limited supplies of food, water, medicine and housing.<sup>14</sup> There is no infrastructure to integrate these Haitian nationals back into their homeland. It is estimated that it will take 10 years to rebuild Haiti.<sup>15</sup>

The requirements for designating a country for TPS still applies to Haiti. The crisis culminating from the earthquake is ongoing. It is still unsafe for Haitians to return to their homeland. Governments around the world have warned their nationals against non-essential travel to Haiti.<sup>16</sup> It has been more than a year since that devastating earthquake, yet Haiti has by no measure recovered. Thousands of Haitians are still homeless and living in makeshift tents, where rape and violence are rampant. Sanitation is very poor leading to an outbreak of cholera in October, which is continuing unabated today.<sup>17</sup> Security is precarious and unpredictable. The

political situation is not much better; the result of the presidential elections held on November 28, 2010 are still in dispute.<sup>18</sup>

While The Legal Aid Society commends the City Council for resolution 648, we respectfully recommend the following additions to the Council's resolution:

**(1) Suspend Deportations to Haiti:**

Soon after the earthquake, the Secretary of the Department of Homeland Security ("DHS") announced the suspension of deportations to Haiti. Surprisingly, however, on December 9, 2010, with daily reports of a cholera outbreak in several Haitian cities, DHS announced that it would resume the deportation of Haitians with final orders of deportation.<sup>19</sup> DHS soon began rounding up Haitian nationals with final orders of removal entered on account of serious criminal convictions.<sup>20</sup> DHS ignored desperate pleas from the Legal Aid Society, other immigration advocates, the Catholic Bishops Council and the Inter American Commission for Human Rights to halt the resumption of deportations.

The Society was dismayed to learn that on January 20, 2011 DHS sent 27 Haitians back to earthquake ravaged Haiti.<sup>21</sup> The deportees were jailed in the local penitentiary, described as "reminiscent of a slave ship," upon arrival in Port au Prince.<sup>22</sup> Within days one such deportee died of cholera-like symptoms and a

second individual was reportedly on the brink of death.<sup>23</sup> Because of the immediate detention of criminal deportees upon their arrival in Haiti, deportation to Haiti has historically been controversial. Deportation to Haiti under current conditions is absolutely inhumane and unconscionable, and can be tantamount to a death sentence. It is contrary to the purpose of TPS designation to return nationals to an unsafe country. Deporting Haitian nationals to Haiti, and condemning them to suffer there, amounts to cruel and inhuman treatment. The City Council should send a strong message to the DHS to suspend deportations to Haiti indefinitely.

**(2) Grant Deferred Action to Haitian parents and adults who accompanied US citizen children to the United States after the earthquake.**

The Council should also include in its resolution a request for Haitian national parents and adults who accompanied United States citizen children to the US after the earthquake to be granted Deferred Action status. Soon after the earthquake, the United States government evacuated hundreds of US citizen children then living in Haiti. A majority of these children were accompanied by parents or adult relatives who were granted non-immigrant tourist visas. The parents and relatives were granted a permitted stay of six months upon arrival. Many have applied for extensions of these visas. While the US children are eligible for food stamps and other social support programs, the parents and adult relatives are

not eligible to work and have had to rely on other relatives for basic needs. It was therefore a welcome relief when USCIS announced that it would consider Deferred Action for these parents and adult relatives.

Deferred Action is a form of prosecutorial discretion where DHS indicates that it is not actively seeking to return persons who are present in violation of immigration laws to their native countries. Deferred Action also allows a person to obtain authorization to work and can be granted for a period of up to two years. After granting a few applications for Deferred Action, USCIS has suspended adjudication of additional applications leaving hundreds in limbo. Indeed, based on a communication from USCIS, some of the parents and relatives allowed their non-immigrant visas to expire to be eligible to apply for Deferred Action. The City Council should request that the Secretary of DHS reconsider the decision to suspend adjudication of Deferred Action applications.

In conclusion, The Legal Aid Society supports the City Council's resolutions for an extension of TPS designation to Haiti and the continuation and expansion of the Immigration Pardon Board that provides hope to long-time residents of New York and an opportunity to avoid or defend against removal from this country.

Thank you and I welcome any questions from the panel.

<sup>1</sup> See Danny Hakim & Nina Bernstein, *New Paterson Policy May Reduce Deportations*, THE NEW YORK TIMES, May 3, 2010, available at <http://www.nytimes.com/2010/05/04/nyregion/04deport.html>.

<sup>2</sup> See *id.*

<sup>3</sup> *Id.*

<sup>4</sup> Immigration Enforcement Actions: 2009, Annual Report, Office of Immigration Statistics (2010), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement\\_ar\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_2009.pdf)

<sup>5</sup> *Id.*

<sup>6</sup> See Celeste Katz, *Gov. Paterson Grants 24 Pardons to Immigrants*, NEW YORK DAILY NEWS, Dec. 24, 2010, available at <http://www.nydailynews.com/blogs/dailypolitics/2010/12/gov-paterson-grants-24-pardons-to-immigrants>.

<sup>7</sup> See *id.*

<sup>8</sup> See Jennifer Kay, *Hillary Clinton in Haiti: Secretary of State Lands, Pledges Cooperative Effort*, THE HUFFINGTON POST, Jan. 16, 2010, available at [http://www.huffingtonpost.com/2010/01/16/hillary-clinton-in-haiti-n\\_426014.html](http://www.huffingtonpost.com/2010/01/16/hillary-clinton-in-haiti-n_426014.html); Lesley Clark, *Obama pledges continued support to Haiti*, THE DENVER POST, Mar 11, 2010, available at [http://www.denverpost.com/nationworld/ci\\_14652107](http://www.denverpost.com/nationworld/ci_14652107).

<sup>9</sup> Statement from Homeland Security Secretary Janet Napolitano on Temporary Protected Status (TPS) for Haitian Nationals, Office of the Press Secretary, Jan. 15, 2010, available at [http://www.dhs.gov/ynews/releases/pr\\_1263595952516.shtm](http://www.dhs.gov/ynews/releases/pr_1263595952516.shtm)

<sup>10</sup> Examples of materials available at <http://www.legal-aid.org/en/las/haitiregistration.aspx>

<sup>11</sup> Erica Pearson, *Free Brooklyn clinic helps hundreds of Haitian immigrants fill out refugee applications*, NYDAILYNEWS.COM, Jan. 31, 2010, available at [http://www.nydailynews.com/ny\\_local/brooklyn/2010/01/31/2010-01-31-free-brooklyn-clinic-helps-hundreds-of-haitian-immigrants-fill-out-refugee-appli.html](http://www.nydailynews.com/ny_local/brooklyn/2010/01/31/2010-01-31-free-brooklyn-clinic-helps-hundreds-of-haitian-immigrants-fill-out-refugee-appli.html)

<sup>12</sup> Posting of Dilap Ratha, *Helping Haiti through migration and remittance*, BLOGS.WORLDBANK.ORG, Jan. 19, 2010, available at <http://blogs.worldbank.org/peoplemove/helping-haiti-through-migration-and-remittances>

<sup>13</sup> See Elliot Abrams, *What Haiti needs: A Haitian diaspora*, THE WASHINGTON POST, Jan. 22, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/21/AR2010012103508.html>

<sup>14</sup> See Albor Ruiz, *Despite Obama administration's promise, deportations to Haiti have resumed far too soon*, NEW YORK DAILY NEWS, Jan. 30, 2011, available at [http://www.nydailynews.com/ny\\_local/bronx/2011/01/30/2011-01-30-deportations-to-haiti-resume-too-soon.html](http://www.nydailynews.com/ny_local/bronx/2011/01/30/2011-01-30-deportations-to-haiti-resume-too-soon.html)

<sup>15</sup> Anne Kiremidjian, *It could take 10 years to rebuild Haiti*, CNN OPINION, Jan. 18, 2010, available at [http://articles.cnn.com/2010-01-18/opinion/kiremidjian.haiti.damage.rebuild\\_1\\_earthquake-haiti-structures?s=PM:OPINION](http://articles.cnn.com/2010-01-18/opinion/kiremidjian.haiti.damage.rebuild_1_earthquake-haiti-structures?s=PM:OPINION)

<sup>16</sup> See, e.g., Travel Warning, U.S. Department of State, Bureau of Consular Affairs, Dec. 9, 2010, available at [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_4632.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_4632.html) (announcing the United States warning against non-essential travel to Haiti).



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<sup>17</sup> Cholera Confirmed in Haiti, October 21, 2010, Center for Disease Control and Prevention, *available at* <http://www.cdc.gov/haiticholera/situation/>

<sup>18</sup> See Mark Doyle, *Haiti orders recount of disputed presidential election*, BBC NEWS, Dec. 10, 2010, *available at* <http://www.bbc.co.uk/news/world-latin-america-11964180>

<sup>19</sup> *Deportations Loom as Deadline for Haitians Nears*, CBS NEWS, Dec. 20, 2010, *available at* <http://www.cbsnews.com/stories/2010/12/20/world/main7169831.shtml>

<sup>20</sup> *Id.*

<sup>21</sup> *Death by Deportation*, FLORIDA IMMIGRANT ADVOCACY CENTER, Jan 31, 2011, *available at* [http://campaign.r20.constantcontact.com/render?llr=ioct7zcab&v=001yqHNAgdI3XjCYgipbMd2y\\_6HVMPMbNgn\\_t9QvckOpsED7ZPjepBa6A0XKbIXCXZFRj0nhtShtrqYWaRze5xrWd7-p4aUd1rh3wujhvgJIMb6K0Pr0ovHoPVIhzJxKUvhQUI26M4h\\_ZBgfHoUUQwRlbu8EP9a\\_n-3tZkRdgHcXisG\\_FmAzzfnRxw%3D%3D](http://campaign.r20.constantcontact.com/render?llr=ioct7zcab&v=001yqHNAgdI3XjCYgipbMd2y_6HVMPMbNgn_t9QvckOpsED7ZPjepBa6A0XKbIXCXZFRj0nhtShtrqYWaRze5xrWd7-p4aUd1rh3wujhvgJIMb6K0Pr0ovHoPVIhzJxKUvhQUI26M4h_ZBgfHoUUQwRlbu8EP9a_n-3tZkRdgHcXisG_FmAzzfnRxw%3D%3D)

<sup>22</sup> *Auguste v. Ridge*, 395 F.3d 123,129 (3d Cir. 2005).

<sup>23</sup> *Id.*