

**Statement of Leslie E. Vélez, Lutheran Immigration and Refugee Service
Congressional Briefing, February 4, 2010
After the Earthquake: Haitian Migration and the U.S. Response.**

Good afternoon. My name is Leslie E. Vélez and I am the Director for Access to Justice at Lutheran Immigration and Refugee Service (LIRS). LIRS is one of the nation's leading agencies serving refugees and immigrants since 1939.

The January 12, 2010 earthquake in Haiti resulted in an estimated 200,000 deaths and the displacement of up to 1 million people. This disaster has created a migration challenge for Haitian survivors both in Haiti and in the United States. The United States has an opportunity to use its migration laws and policy as a part of the response to this disaster and the plights of our Haitian neighbors. We believe that a thoughtful and effective migration policy can support the humanitarian response during this initial response phase. This statement is intended to inform Congress of the realm of policy tools that are at our disposal and to make key recommendations for implementing these policies.

The U.S. immigration code and regulations are a complex body of law, shaped by three principles: family unity, humanitarian response to crisis, and ensuring enough workers to meet the U.S. labor demand. My comments will speak to the first two.

Migration Tools to Ensure Family Reunification

The current legal immigration system dates back to 1965 and when immigration laws were updated to abolish the country quota system that favored immigrants from Western Europe. The 1965 laws created categorical preferences for relatives of U.S. Citizens and Lawful Permanent Residents and for immigrants with job skills that were deemed useful to the United States. This system allocates a certain number of visas every year based on the family relationship between the petitioner and the family member. These visa caps can only be adjusted through congressional action.

The number of family visas available each year is less than the number of immigrants waiting in line for a visa. This type of backlog can exceed twenty years for some family members. In some cases, the backlogs are so long that immigrants move from one preference category to another as they age or get married. Our laws also mandate per-country caps that prohibit any one country from using more than 7% of the visas in the family preference categories, with few exceptions.

An estimated 55,000 Haitians are beneficiaries of approved family petitions but are waiting in Haiti for a visa to become available. Before the earthquake, there were 19,000 pending petitions

with U.S. Citizenship and Immigration Service (CIS) of the Department of Homeland Security (DHS). In addition to these petitions, we do not know how many more eligible Haitians will be anxious to apply for their family in light of the changed circumstances in Haiti. In response to this urgent need, CIS announced that they are expediting the process for the pending visa petitions. However, this is only the first step in the process. An approved immigrant petition does not mean that the visa will necessarily be delivered more quickly. After CIS approves a petition, those individuals may wait years, depending on the preference category availability. The second step in the process for individuals outside the U.S. is getting a visa appointment at the consulate. In Haiti, the consulate is in the U.S. Embassy in Port-Au-Prince.

Let me share with you one example from a man we met last week in Florida. Mr. Ducarmel, a U.S. resident living in Florida, has been separated from his wife and two young daughters who were living in Haiti and anxiously anticipating their visa appointment at the consular section scheduled for January 21, 2010. After the earthquake, he was left worrying if they were dead or injured. After 5 days he heard the good news that they are alive and safe. His family is now among the displaced, without shelter or economic resources and without anyone to receive them at the U.S. consular section on the day of their long-awaited appointment. He hopes to be reunited with them under the same roof and asks us for any help we can give them. He underscores that they are suffering much more than he.

How will the government respond to him? Possible options include sending more Department of State (DOS) officers to resume the appointment process for all applications where a visa is currently available. This may help a small percentage of the 55,000 Haitian individuals with approved petitions waiting in line.

To expedite the reunification of these families, the government should extend humanitarian parole to Haitians with approved family petitions waiting in the family visa backlog. This would not require congressional action and the government already uses this administrative authority for the purpose of family unity.

Humanitarian parole is used to admit someone who is otherwise inadmissible into the United States for a temporary period of time due to a compelling circumstance. For example, it has been used on an individual basis within refugee processing to keep family members together and on a larger scale in order to respond to a migration emergency, such as the parole of Haitians in 1992 in order to seek asylum. This statutory authority can be found in section 212(d)(5) of the Immigration and Nationality Act.

Humanitarian parole would allow these individuals to join their families in the United States while they wait for their visas to become available. A similar program, known as the Cuban Family Reunification Parole Program was created by DHS under President George W. Bush in 2007. This program allows Cuban nationals who are beneficiaries of approved family-based immigrant visa petitions, for which no visa is currently available, an opportunity to come to the United States to apply for lawful permanent resident status rather than remain in Cuba during the long wait for a visa.

Given the magnitude of the destruction and displacement following the earthquake and in the interest of keeping families together, we urge replication of this successful program for Haitians

who have been waiting their turn to legally reunite with their close family members in the United States.

Moreover, many Haitians are in the United States in legal temporary status, even though they may not be U.S. Citizens or Legal Permanent Residents. We recommend extending humanitarian parole to the family members of temporary visa holders *already* in the United States.

LIRS applauds the establishment of the current Temporary Protected Status (TPS) program for Haitians as an appropriate response to Haitians residing in the United States on the date of the earthquake, making approximately 30,000 individuals eligible for work permits and an 18-month reprieve from deportation. Under the regulations, a grant of TPS does not extend any family reunification ability to beneficiaries. The administration is authorized to deepen the pool for people eligible for this status with a new TPS designation.

Further measures need to be put in place to ensure that children who have surviving family (in Haiti or the United States) have the ability to locate and be reunited with their families. One such measure could grant derivative TPS to minors who were not present in the United States on the day of the earthquake, but whose parents or legal guardians have received TPS.

We are particularly concerned about the separated and unaccompanied children—both those who have lost their parents through death or the chaos inherent in forced migration and those who have intentionally migrated alone. While LIRS recognizes the swift efforts of the partnership between DHS and DOS to unify orphan children with their already approved adoptive parents, concerns remain that require focused attention.

The government should prioritize efforts, particularly over the next few months, to reunify any unaccompanied child with family members within Haiti or the United States *prior to* referring these children to other permanency options. Careful screening of all separated children before relocation abates the risks of unnecessary familial separation and child trafficking. U.S. citizen minors in Haiti should be allowed to return to the United States accompanied by their parents, regardless of their parents' status or nationality. For more information on our children's recommendations, please refer to pages 12-13 in the briefing book.

There are an estimated 500 Haitians in ICE custody since before the earthquake that the Administration cannot deport while Haiti is a designated country under the TPS regulations. All detained Haitians, including those released on an alternative to detention program, should be made aware that they may be eligible for TPS. Haitians in removal (deportation) proceedings in the United States should be immediately considered for parole from detention and be reunited with their loved ones here in the United States at this time of national crisis. Detention in the immigration context is only authorized by law to effect deportation, a legal impossibility for at least the next 18 months.

Using U.S. migration policy to expedite family reunification through safe and orderly migration channels as recommended here would keep families together and help to mitigate spontaneous and dangerous maritime migration.

Creative Uses of Migration Policy to Abate Spontaneous Migration

The responses from the international community and the United States to the potential for mass migration after emergency situations typically take two forms: formal evacuation programs or planned migration programs. When neither of these responses are proactively developed, the inevitable result is spontaneous and uncontrolled migration. The U.S. government, in consultation with international and non-governmental organizations and others with expertise in migration and in particular Haitian migration, should explore creative ways to meet the migration needs of Haitians in the wake of this tragedy. A look to recent history unfolds lessons for the future.

Humanitarian parole has been used *reactively* in response to sporadic emigration of well over 200,000 Cubans from 1980 through 1994. In 1995, the U.S. adopted a lottery system that allowed individuals who do not qualify as refugees or immigrants could seek to enter the United States with humanitarian parole. The goal was to discourage sporadic migration flow headed to the United States, move individuals from Guantanamo to the United States in an orderly fashion, and meet the U.S. self-imposed commitment to allow 20,000 entrants per year. The criteria for lottery registration reinforced these goals by making the lottery addressing the primary population fleeing Cuba. A person had to meet two of the following criteria: high school education, three or more years' work experience, relatives living in the United States. The number of Cubans registering reached into the hundreds of thousands and significantly reduced the number of Cubans fleeing by sea.

A formal parole program, if implemented proactively, would promote orderly and controlled migration from Haiti that directly responds to the changes in circumstances in Haiti caused by the earthquake, creates a means to prioritize the humanitarian response and abates unnecessary deaths at sea.

Finally, I'd like to turn to the service needs of the Haitian survivors who are being evacuated. Yesterday, the Department of Health and Human Services (HHS) activated a "National Disaster Medical System" to help U.S. hospitals treat survivors of the earthquake. The current USAID administrator announced that it would use humanitarian parole to bring into the U.S. those patients that have medical needs that could not be met in Haiti. The HHS initiative reflects an appropriate prioritizing with the use of humanitarian parole, and it can be improved by ensuring family unity.

While this "disaster medical system" allows for a way to get to a hospital and pays for the medical expenses, it does not address what is to be done for these individuals after they are released.

Lutheran Services Florida (LSF), an LIRS refugee resettlement partner, is headquartered in Tampa, FL. It is a large, statewide social service agency that provides a wide array of services to vulnerable children and families. It is also a disaster responding agency affiliated with the national Voluntary Organizations Active in Disaster, Lutheran Disaster Response.

LSF is currently responding to the needs of repatriated evacuees in Orlando (nearly 10,000 to date) and Humanitarian Parolees who have been medically evacuated in Tampa and Orlando (approximately 60 to date). Three individuals have already been discharged from Tampa area hospitals without family or resources. Yesterday, we also received word of the first casualty. LSF is providing or coordinating services to meet the needs of these individuals, including

funeral arrangements, through volunteers and charitable contributions but the need for services will continue to grow.

A meaningful response to Haitian migration to the United States should be informed by the national and local expertise of agencies like LIRS and LSF, who have experience in disaster response and child and family services.

Final Recommendations

In closing, here is a summary of our policy recommendations to the federal government:

- 1) Prioritize family unity and reunification in all migration policies developed in response to Haitian migration to the United States.
- 2) Provide humanitarian parole where necessary to maintain family integrity of medical evacuees. In addition to the evacuees, the United States should immediately extend humanitarian parole to Haitians waiting in the family visa backlog, to *both* parents of U.S. citizen and lawful permanent resident children and to family members of individuals in non-immigrant status in the United States.
- 3) Parole and release Haitians in U.S. detention so that they, too, can be with their families during this time.
- 4) Promote all registration and tracing efforts to reunify any unaccompanied or separated children with family members within Haiti.
- 5) Recognize, anticipate and proactively respond to the likely mass migration of Haitians to the United States. The U.S. government should create a lottery system as soon as possible to dissuade Haitians from putting their lives at risk by setting out on boats.

Thank you for your time and interest and I look forward to answering any questions you may have.