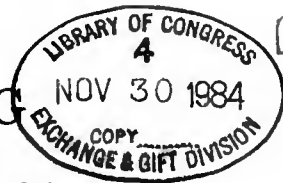


United States Congress, House of Representatives

CUBAN/HAITIAN ADJUSTMENT

Judiciary, Subcommittee on Immigration, Refugees, and International Law



HEARING

BEFORE THE

SUBCOMMITTEE ON

IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 4853

CUBAN/HAITIAN ADJUSTMENT

MAY 9, 1984

Serial No. 64



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CONTENTS

TEXT OF BILL

	Page
H.R. 4853.....	3

WITNESSES

Audige, Jerome, executive director, New Jersey Haitian/American Cultural Foundation	128
Prepared statement	143
Bevilacqua, Bishop Anthony, chairman, Committee on Migration, National Conference of Catholic Bishops	46
Prepared statement	48
Hill, Norman, president, A Philip Randolph Institute	67
Hooper, Michael S., executive director, National Coalition for Haitian Refugees	67
Prepared statement	85
Kurzban, Ira, general counsel, Haitian Refugee Center	128
Prepared statement	131
Mazur, Jay, secretary-treasurer, International Ladies Garment Workers Union	67
Prepared statement	78
Michel, James H., Deputy Assistant Secretary, Bureau of Inter-American Affairs, Department of State	7
Prepared statement	20
Nelson, Alan C., Commissioner, Immigration and Naturalization Service	7
Prepared statement	12
Padron, Eduardo, cochairman, Greater Miami United	67
Prepared statement	122
Payne, Donald, councilman, Newark Municipal Council, on behalf of the National Council of Churches	46
Tanenbaum, Rabbi Marc H., director, international relations, American Jewish Committee	46
Prepared statement	63

APPENDIXES

APPENDIX 1.—CORRESPONDENCE

Letters to Hon. Peter W. Rodino, Jr.:	
de Haan, Dale S., chairman, Committee on Migration and Refugee Affairs, March 20, 1984	150
Hooks, Benjamin L., chairman, Leadership Conference on Civil Rights, March 27, 1984	153
Hooks, Benjamin L., executive director, NAACP, February 17, 1984	151
Hoye, Rev. Msgr. Daniel F., general secretary, United States Catholic Conference, February 22, 1984	149
Kirkland, Lane, president, AFL-CIO	154
Leiden, Warren, executive director, American Immigration Lawyers Association, March 3, 1984	155
Rustin, Bayard, vice chairman, National Coalition for Haitian Refugees, February 15, 1984	153
Tanenbaum, Rabbi Marc H., director, International Relations, the American Jewish Committee, March 5, 1984	149

IV

	Page
Letters to Hon. Peter W. Rodino, Jr.—Continued	
Torres, Arnold S., National Executive Director, League of United Latin American Citizens, February 28, 1984.....	151
Walter, Ingrid, Lutheran Council in the U.S.A., March 1, 1984.....	155
Yzaguirre, Raul, president, National Council of La Raza, February 28, 1984	151
APPENDIX 2.—STATE DEPARTMENT'S EFFORT REGARDING EXCLUDABLE CUBANS	
Michel, James H., Deputy Assistant Secretary for Inter-American Affairs, Department of State, June 18, 1984, to Hon. Romano L. Mazzoli	156
APPENDIX 3.—STATE DEPARTMENT'S RESPONSES TO SUPPLEMENTAL QUESTIONS	
Michel, James H., Deputy Assistant Secretary for Inter-American Affairs, Department of State, June 1, 1984, to Hon. Peter W. Rodino, Jr.....	159
APPENDIX 4.—ADDITIONAL STATEMENTS	
Craige Tito, director, Cuban/Haitian Entrant Program, Farmworker English Language School, Migrant and Seasonal Farmworkers Association, Inc., May 22, 1984.....	161
Gomez, Manuel R., president, Cuban-American Committee, May 17, 1984.....	167
Fauntroy, Hon. Walter E., chairman, Congressional Black Caucus, Task Force on Haitian Refugees, prepared statement.....	163
McCarthy, Rev. Edward A., Archbishop of Miami, May 3, 1984	162
Statement of Greater Miami United.....	166
APPENDIX 5.—SUPPLEMENTAL QUESTIONS	
Michael S. Hooper's responses to supplemental questions	170

CUBAN/HAITIAN ADJUSTMENT

WEDNESDAY, MAY 9, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, REFUGEES,
AND INTERNATIONAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 8 a.m., in room 2226, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Hall, Frank, Crockett, Smith, Lungren, McCollum, and Fish.

Also present: Representative Rodino.

Staff present: Arthur P. Endres, Jr., counsel; Lynn Conway, assistant counsel; Eugene Pugliese, assistant counsel; Peter Regis, legislative assistant; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. The subcommittee will come to order.

The gentleman from Texas is recognized for a motion.

Mr. HALL. Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part by television broadcast, radio broadcast, or still photography in accordance with committee rule 5.

Mr. MAZZOLI. Is there any objection? The Chair hearing none, the gentleman's unanimous consent request is agreed to.

I have a short opening statement, but let me first apologize to my panelists, as well as all the witnesses who are with us now and will join us, for this early hour. Since the time we had originally announced the hearings, the Democratic caucus was called at 9:30 this morning which will take up some very important business and many of us want to be there, so we will try to get our hearings disposed of. I appreciate everybody's cooperation.

On behalf of the subcommittee, I welcome all of our panelists here this morning. Today we will receive testimony from various panels on H.R. 4853, a bill introduced by Representative Peter Rodino, our chairman of the Judiciary Committee, which would grant permanent residence status to Cubans and Haitians who entered our country seeking asylum in the early 1980's.

We have many witnesses here today who will attest to the fact that these people suffered much to reach the shores of our country. They were welcomed to our country and given a new immigration status, that of Cuban/Haitian entrants, status pending. Their status has been pending since 1981.

My subcommittee recognized the equities of this situation 2 years ago and included a provision regularizing the status of some of



98TH CONGRESS
2D SESSION

H. R. 4853

To authorize the creation of a record of admission for permanent residence in the cases of certain natives of Cuba and Haiti, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1984

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize the creation of a record of admission for permanent residence in the cases of certain natives of Cuba and Haiti, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) the status of any alien described in subsection (b)
4 may be adjusted by the Attorney General, in the Attorney
5 General's discretion and under such regulations as the Attor-
6 ney General may prescribe, to that of an alien lawfully ad-
7 mitted for permanent residence if—

8 (1) the alien makes application for such adjust-
9 ment within two years after the date of the enactment
10 of this section;

1 (2) the alien is otherwise eligible to receive an im-
2 migrant visa and is otherwise admissible to the United
3 States for permanent residence, except in determining
4 such admissibility the grounds for exclusion specified in
5 paragraphs (14), (15), (20), (21), (25), and (32) of sec-
6 tion 212(a) of the Immigration and Nationality Act (8
7 U.S.C. 1182(a)) shall not apply;

8 (3) the alien is not an alien described in section
9 243(h)(2) of such Act (8 U.S.C. 1253(h)(2)); and

10 (4) the alien is physically present in the United
11 States on the date the application for such adjustment
12 is filed.

13 (b) The benefits provided by subsection (a) shall apply to
14 any alien (other than an alien described in subsection (c))—

15 (1) who has received an immigration designation
16 as a Cuban/Haitian entrant (status pending), or

17 (2) who is a national of Cuba or Haiti, arrived in
18 the United States before January 1, 1982, and with
19 respect to whom any record was established by the
20 Immigration and Naturalization Service before January
21 1, 1982.

22 (c) The benefits provided by subsection (a) shall not
23 apply to an alien who was admitted to the United States as a
24 nonimmigrant, unless the alien filed an application for asylum

1 with the Immigration and Naturalization Service before Jan-
2 uary 1, 1982.

3 (d) Aliens granted permanent resident status under this
4 Act shall be considered to be granted the special status re-
5 ferred to in section 501(d)(1) of Public Law 96-422.

6 (e) Upon approval of an alien's application for adjust-
7 ment of status under subsection (a), the Attorney General
8 shall establish a record of the alien's admission for permanent
9 residence as of January 1, 1982.

10 (f) When an alien is granted the status of having been
11 lawfully admitted for permanent residence pursuant to this
12 section, the Secretary of State shall not be required to reduce
13 the number of immigrant visas authorized to be issued under
14 the Immigration and Nationality Act and the Attorney Gen-
15 eral shall not be required to charge the alien any fee.

16 (g) Except as otherwise specifically provided in this sec-
17 tion, the definitions contained in the Immigration and Nation-
18 ality Act shall apply in the administration of this section.
19 Nothing contained in this section shall be held to repeal,
20 amend, alter, modify, effect, or restrict the powers, duties,
21 functions, or authority of the Attorney General in the admin-
22 istration and enforcement of the Immigration and Nationality
23 Act or any other law relating to immigration, nationality, or
24 naturalization. The fact that an alien may be eligible to be
25 granted the status of having been lawfully admitted for per-

1 manent residence under this section shall not preclude the
2 alien from seeking such status under any other provision of
3 law for which the alien may be eligible.

4 SEC. 2. Consular officers shall provide for the issuance
5 of immigrant visas to aliens who are nationals, citizens, sub-
6 jects, or residents of Cuba and who have qualified for issu-
7 ance of the visas under section 203 of the Immigration and
8 Nationality Act (8 U.S.C. 1153) without regard to section
9 243(g) of such Act (8 U.S.C. 1253(g)).

Mr. MAZZOLI. Because of the real time constraints we have today, I have asked each of our witnesses to limit their statement to 5 minutes and then we will have plenty of time for questions.

Mr. Nelson, you may proceed.

TESTIMONY OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, AND JAMES H. MICHEL, DEPUTY ASSISTANT SECRETARY, BUREAU OF INTER-AMERICAN AFFAIRS, DEPARTMENT OF STATE

Mr. NELSON. Thank you. It is a pleasure to be before you and the committee at this early hour, but we are pleased to get off to a good start.

We have submitted our written testimony on this matter——

Mr. MAZZOLI. Which will be made a part of the record.

Mr. NELSON. And would like that if the committee would so order. Also, I make reference to the letter to Chairman Rodino from the Department of Justice of May 8, which parallels our testimony; we would like that to be part of the record also.

Mr. MAZZOLI. Without objection.

[The letter referred to follows:]



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

8 MAY 1984

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter is in response to your request for the views of the Department of Justice on H.R. 4853, a bill to authorize the creation of a record of admission for permanent residence in the cases of certain natives of Cuba and Haiti, and for other purposes. The Department of Justice recommends consideration of this legislation, if amended as noted below, only if H.R. 1510 is not enacted in this session of Congress.

The Department of Justice, as has been stated to the Committee on previous occasions, prefers the provisions contained in H.R. 1510 regarding an adjustment of status of these particular individuals. We have consistently favored the same treatment for Cuban/Haitian Entrants with regard to adjustment of status and concur with the approach in S. 529 which establishes more recent legalization dates for this group from that of other illegal aliens because of the circumstances and period of their arrival in the United States. As you will recall, the Administration's immigration reform proposals submitted in 1981 addressed this issue in a similar fashion.

We believe strongly that immigration reform and relief for illegal alien groups should not be done piecemeal. We endorse the trend away from nationality specific determinations by the Legislative Branch. This legislation would run counter to efforts to apply immigration statutes evenly without regard for nationality or country of origin. The Simpson/Mazzoli bill is the appropriate vehicle for dealing with the Cuban/Haitian group as well as with other manifestations of illegal immigration. Until the outcome of the House's consideration of the bill is established, we believe it is premature to take a position on H.R. 4853. If Simpson/Mazzoli is unsuccessful, H.R. 4853 might be in order.

The bill would allow those nationals of Cuba or Haiti, commonly designated as Cuban/Haitian Entrants (status pending), to have their status adjusted, at the discretion of the Attorney General, to that of an alien lawfully admitted for permanent residence, under the conditions stated in the bill.

However, the bill does not repeal P.L. 89-732, as amended (the Cuban Adjustment Act of 1966), and, indeed, specifically provides that the fact that an alien may be eligible to be granted lawful permanent residence status under the instant legislation shall not preclude such alien from seeking such status under any law. We believe that nationals of Cuba who are able to adjust will choose to apply for adjustment under the provisions of P.L. 89-732. The provisions of that Act are more beneficial than the instant legislation; for example, an earlier record of the alien's admission for permanent residence would be made; the spouse and child may be adjusted, and the benefits of that Act do apply to an alien admitted as a nonimmigrant, where the instant legislation (section 1(c)) specifically exempts such aliens. Therefore, Cubans and Haitians would continue to have somewhat different treatment under the two provisions of law.


We would also like to raise two technical concerns with the language of H.R. 4853. One concern revolves around the wording of subsection (b) (2) of section 1 of H.R. 4853. This section provides permanent residence for an alien who "is a national of Cuba or Haiti, arrived in the United States before January 1, 1982, and with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982." It is our feeling that the term "any record" is ambiguous, and the subcommittee's clear intention as to what is to be interpreted as a "record" should be included in the proposal.

We also direct the Committee's attention to subsection (d) of the first section. This provision states that aliens granted permanent residence under this section shall be considered to be granted the special status referred to in section 501(d)(1) of Public Law 96-422, which we assume was intended to be a reference to section 501(e)(1) of the Refugee Education Assistance Act. The intended effect of granting the status to a permanent resident is unclear, and we urge that the provision be redrafted to state explicitly the result to be achieved so that it may receive careful consideration.

The Department of Justice also has some concern about Section 2 of the proposed legislation. While we defer to the Department of State on this issue, the Committee should be aware that the Attorney General has notified the Secretary of State, pursuant to Section 243(g) of the INA, that Cuba has denied and unduly delayed acceptance of the return of its nationals. This is an issue between the Government of the United States and the Government of Cuba in the matter of the return of certain Cuban nationals who have been found excludable.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,


Robert A. McConnell
Assistant Attorney General

for

Mr. NELSON. I think the administration's position has been clear, Mr. Chairman, that the concept embodied in this bill of a parity-type treatment for Cuban and Haitian entrants during this particular timeframe is desirable. We have supported that; clearly, the Administration has supported that concept in the position of the Reagan Task Force which was set up after the President came into office. It was a provision of the initial Reagan bill that there should be some special treatment of these two groups because of the unique circumstances. All along we have supported the Simpson/Mazzoli versions of the bill at various stages through the Senate and the House; there is justification for it.

So, I don't think there should be any doubt on the record or in the public that the Administration has favored a concept of equal treatment, even though it raises some differences with other illegal alien groups.

But also, in balance, as we indicate, it is very, very important, and I think goes back to this House's action on the Refugee Act, among other things, that there not be a piecemeal approach to immigration issues. There is danger in that approach.

Therefore, as you have indicated in your opening remarks, Mr. Chairman, the clearly preferable response to this issue and this bill before us is not a separate piece of legislation such as H.R. 4853, but, in fact, the passage of the immigration reform legislation that is so close in this House. We just hope that the delays are over, and that we can get it to the floor and pass it. This is the answer. It is, therefore, premature to take a position—the administration will not take a formal position on H.R. 4853 at this time, because we feel that the answer is in Simpson-Mazzoli. That will resolve the issue; we should go forward.

Therefore, we think it would clearly be a mistake to push separately, at least at this time, this bill, but the concepts are certainly approved.

In our testimony, Mr. Chairman, we have raised several technical and policy types of issues that are worthy of pointing out. One thing is that this bill, H.R. 4853, does not repeal the Cuban Adjustment Act. We think that is something that has to be dealt with. We can't keep leaving this on the books for the future. We need to resolve it, hopefully with comprehensive reform legislation, repeal is something that clearly needs to be addressed.

There is some language in the bill containing the words "any record," regarding the arrival. It is confusing and ambiguous; there certainly needs to be clarification. There are some concerns about the application of assistance to this group, and we think, again, there are some unclear provisions in the bill. At least, it ought to be very explicit as to whether the entitlement program will apply.

One other point that is not in our testimony, but which I think is important to raise at this time, and again, I will put it on a technical basis because I think we have explained that our basic position on the bill is that it is premature at this time—the January 1, 1982 date. As you recall, Mr. Chairman, members of the committee, the President of the United States, in the summer of 1981, announced that we would vigorously enforce our immigration laws and particularly the statute that required detention of illegal aliens. That did commence in the summer of 1981, followed in the early fall by

the interdiction program. I think everybody has been well aware that this has been a very successful application of our immigration laws. So, therefore, to talk about a January 1982 date we think is a mistake. We really ought to be thinking, if we are getting into dates, of a June or July 1981 date, a date consistent with the President's policy. To do otherwise, would be somewhat undercutting the Administration position, the legislative position in the law, and the judicial position that has upheld very clearly the actions of the administration in that regard.

Mr. Michel will testify on the section 2 issues. There are certainly some foreign policy, executive, legislative branch issues there, and we certainly would join in with the State Department's position.

If I might—one last item, Mr. Chairman, again, that isn't in the testimony but which I think is worthy to bring up before the committee at this time. I will be brief; we know that we are followed today by a number of people, many of whom I know and respect, of interest groups and church groups, that will be testifying on this bill. I have not seen any of their testimony and I would hope what I am saying is wrong, but the likelihood is that there will be many people testifying, repeating allegations of discrimination by this administration regarding racial bias because they are black, the overall problems that are asserted in this program that I alluded to.

I think, again, the record should be very clear, Mr. Chairman. I noted a minute ago, this action was taken beginning in the summer of 1981 by the President and by the Attorney General. We complied with the statutory language that Congress passed in the immigration laws despite a lot of court battles over the last few years that I have been involved with, and Mr. Kurzban, who will testify later and others here have been involved with.

The trial before Judge Spellman several years ago clearly showed on the trial basis, after the evidence was heard, that there was no discrimination. Unfortunately, people made so many accusations for such a long period of time that that sort of became the factual foundation for media and others. That issue continues to be raised by many, but if you look at the record, the court held there was no discrimination by the government.

We know now, of course, that the Court of Appeals and the full 11th Circuit decision has fully ratified the legal posture of this administration. So, I can say as a matter of fact, there has not been discrimination against the Haitians as a matter of legislative policy. We have carried out the law that Congress has enacted. As a matter of good public policy, it has been done well, effectively and fairly and as a matter of judicial determination, it has been fully ratified.

So I would hope that my colleagues whom I respect who will testify to these issues, would keep that in mind. I would hope that we would not get these kinds of rancorous and completely inaccurate comments that have characterized this debate more than they should have.

I think we all favor the equitable treatment here and I hope we can accomplish—

[The prepared statement of Mr. Nelson follows:]

**PREPARED STATEMENT OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND
NATURALIZATION SERVICE**

Mr. Chairman, members of the subcommittee:

I am pleased to be here today to offer the views of the Department of Justice on H.R. 4853.

The bill proposes to authorize the creation of a record of admission for permanent residence in the cases of certain nationals of Cuba and Haiti.

The Department of Justice strongly believes that immigration reform and relief for specific groups of illegal entrants should not be accomplished in a piecemeal fashion. We endorse the trend that this subcommittee and Congress as a whole have followed away from nationality-specific legislation. This Administration holds, as I believe you do, that our immigration statutes must be applied evenly without regard to nationality or country of origin. For these reasons, while we support the intent of H.R. 4853 to provide residence for Cuban and Haitian nationals, we continue to take the position that the preferable response rests with enactment of the immigration reform legislation currently being considered by Congress. Until the outcome of the House's consideration of such legislation is established, we believe it is premature to take a position on H.R. 4853.

This Administration has consistently supported the concept of comparable relief for Cuban and Haitian nationals who entered the country illegally and were given the administrative designation, Cuban-Haitian entrants. The Administration's immigration reform bill introduced in 1981 contained provisions for the legalization of these Cuban Haitian entrants. We have continued to support similar provisions for legalization contained in the reform legislation now before Congress.

I would also like to raise several technical concerns with the language of H.R. 4853. The Department of Justice takes the position that the nationals of Cuba who would be covered by the provisions of this bill are also potentially eligible for the provisions of Public Law 89-732, the Cuban Refugee Adjustment Act of 1966. H.R. 4853 does not repeal P.L. 89-732, and therefore would afford nationals of Cuba an opportunity to choose between the two pieces of legislation. We believe nationals of Cuba would choose adjustment under the provisions of P.L. 89-732 as those provisions are more beneficial in terms of effective date of permanent residence. To implement H.R. 4853 without the repeal of P.L. 89-732 would treat nationals of Cuba differently than nationals of Haiti.

Another concern revolves around the wording of subsection (b) (2) of section 1 of H.R. 4853. This section provides permanent residence for an alien who "is a national of Cuba or Haiti, arrived in the United States before January 1, 1982, and with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982." It is our feeling that the term "any record" is ambiguous, and the subcommittee's clear intention as to what is to be interpreted as a "record" should be included in the proposal.

We also direct the Committee's attention to subsection (d) of the first section. This provision states that aliens granted permanent residence under this section shall be considered to be granted the special status referred to in section 501 (d) (1) of Public Law 96-422, which we assume was intended to be a reference to section 501(e) (1) of the Refugee Education Assistance Act. The intended effect of granting that status to a permanent resident is unclear, and we urge that the provision be redrafted to state explicitly the result to be achieved so that it may receive careful consideration.

The Department of Justice also has some concern about section 2 of the proposed legislation. While we defer to the Department of State on this issue generally, the Committee should also be aware that the Attorney General has notified the Secretary of State, pursuant to section 243(g) of the INA, that Cuba has denied and unduly delayed acceptance of the return of its nationals. This is an issue between the Government of the United States and the Government of Cuba in the matter of the return of certain Cuban nationals who have been found excludable.

This completes my prepared testimony. I would be glad to respond to any questions which you may have.

Mr. MAZZOLI. The gentleman's time is expired. I have to share Commissioner Nelson's disappointment. I have read some of the statements which will succeed yours and I am disappointed in their tenor, content and tone. I don't think they add much to the opportunities we have to pass a piece of legislation. I think they dredge up a lot of very difficult situations and I think they don't really add to the opportunity we have of doing anything.

So for those whose statements contain that kind of reference, to the extent they could excise those references, at least in their verbal presentation, that, I think, would add a lot to the opportunities that we have to proceed with our bill.

Mr. Michel, you are recognized for 5 minutes.

Mr. MICHEL. Thank you, Mr. Chairman. I, too, have a prepared statement and the Department of State has submitted a letter to the committee and would ask that those be—

Mr. MAZZOLI. Which is made a part of the record.

[The letter referred to follows:]



United States Department of State

Washington, D.C. 20520

MAY 7 1984

Dear Mr. Chairman:

The Secretary has asked me to reply to your recent letter enclosing for the Department's study and report a copy of H.R. 4853, "A bill to authorize the creation of a record of admission for permanent residence in the cases of certain natives of Cuba and Haiti, and for other purposes."

Section 1(a) of the bill would authorize the Attorney General to grant adjustment of status to permanent resident to an alien described in section 1(b) of the bill if the alien applied for adjustment of status within two years following enactment of the bill and was in the United States at the time of filing the application for adjustment of status. In addition, the alien would have to establish his admissibility for permanent residence; except that in determining such admissibility the provisions relating to labor certification, public charge, immigrant visa and passport documentation, illiteracy and the exclusion of certain foreign medical graduates would not apply. Finally, an otherwise eligible beneficiary could not benefit from this provision if he were determined to be an alien (1) who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) who constitutes a danger to the community of the United States because of a conviction of a particularly serious crime; (3) who there are serious reasons for believing has committed a serious nonpolitical crime outside the United States prior to arrival in the United States; or (4) whom there are reasonable grounds for regarding as a danger to the security of the United States.

Section 1(b) defines the beneficiary class as (1) any alien who has received an immigration designation as a Cuban/Haitian entrant (status pending), or (2) any other national of Cuba or

The Honorable
Peter W. Rodino, Jr., Chairman,
Committee on the Judiciary,
House of Representatives.

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JUDICIARY COMMITTEE

Haiti who arrived in the United States before January 1, 1982, and for whom any record was established by the Immigration and Naturalization Service before that date.

Section 1(c) of the bill would deny the benefits of section 1(a) of the bill to an alien who otherwise qualified as a member of the beneficiary class if the alien was inspected and admitted as a nonimmigrant alien unless the alien filed an application for asylum prior to January 1, 1982.

Section 1(d) would provide that aliens granted permanent residence under the provisions of the bill would nonetheless retain the special status provided for them in section 501(d)(1) of Public Law 96-422.

Section 1(e) of the bill would direct the Attorney General to record the admission for permanent residence of any alien granted permanent residence pursuant to section 1(a) of the bill as of January 1, 1982. This provision would expedite the eligibility for naturalization of such aliens by fixing their date of admission at a time which could be more than four years in the past by the time the statutory period for seeking the benefits of section 1(a) had run.

Section 1(f) would exempt grants of adjustment of status under section 1(a) of the bill from the numerical limitations on immigration.

Section 1(g) of the bill would make the standard references to the applicability of the provisions of the Immigration and Nationality Act and would specify that a member of the beneficiary class of this bill also remains entitled to acquire permanent residence under any other provision of law pursuant to which he might qualify for such status.

Many of these provisions are substantially identical with the provisions of S. 529 or H.R. 1510 for granting a retroactive date of admission for permanent residence. The Department of State strongly believes that immigration reform and relief for specific groups of illegal entrants should not be accomplished in a piecemeal fashion. Instead, such measures must be carried out evenhandedly without regard to nationality or country of origin. For these reasons, while we have no objection to the intent of section 1 of H.R. 4853 to provide residence for Cuban and Haitian nationals, we take the position that the preferable response rests with enactment of immigration reform legislation currently being considered by the Congress. In addition, the Department has reservations about the retroactive aspect of section 1 of the bill, but will defer to the comments of the Department of Justice with respect thereto.

Section 2 of the bill would direct consular officers stationed at the United States Interests Section (USINT) at Havana, Cuba, to process immigrant visa applications pending at that office notwithstanding the provisions of section 243(g) of the Act. As you are aware, the Attorney General has notified the Secretary of State pursuant to section 243(g) of the Act that Cuba has denied or unduly delayed acceptance of the return of aliens who are nationals, citizens, subjects or residents of Cuba. As provided for by section 243(g), the Department has directed consular officers at USINT Havana to cease processing immigrant visa applications, except those which have been exempted from this prohibition by regulations of the Immigration and Naturalization Service (i.e., applications of immediate relatives as defined in section 201(b) of the Act and of returning resident immigrants as defined in section 101(a)(27)(A) of the Act).

Section 2 of the bill would have the effect of nullifying section 243(g) of the Act insofar as it relates to Cuba. As the Department interprets section 2, it would afford no special benefits to the aliens concerned but would rather direct only that their applications be processed in accordance with world-wide requirements and procedures which would apply absent the Attorney General's notification.

The Department strongly opposes enactment of section 2 of the bill. As you know, the United States last summer proposed to the Government of Cuba the expeditious return to that country of those Mariel Cubans who are excludable from the United States for substantive reasons. This initiative is being actively pursued with Cuba and enactment of section 2 of the bill would have a most detrimental effect by removing an important element in the negotiating process. It is the Department's judgment that enactment of this provision could eliminate any possibility for reaching an acceptable agreement with Cuba on this matter. Accordingly, the Department urges that section 2 of the bill not be enacted.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

W. Tapley Bennett, Jr.
Assistant Secretary

Legislative and Intergovernmental Affairs

Mr. MICHEL. Thank you, sir.

I would first of all just confirm that the Department of State, of course, shares the views of the Department of Justice as to the administration's position on section 1 of the bill and I would like to confine my testimony to section 2.

In that regard, we do strongly oppose the enactment of that section. Existing law, section 243(g) of the Immigration and Nationality Act, requires that we stop issuing visas in a country where the Attorney General has informed the Secretary of State that the government of that country has refused to accept the return of its nationals or residents. We believe that the exodus of Cubans from Mariel in 1980 represents the most egregious case in which a foreign government expelled its citizens without their consent, without our consent, without regard to our laws or international law and has subsequently refused to accept their return.

It seems anomalous that this bill would leave section 243(g) on the books as the general policy and then make an exception to that policy for this most egregious case in our history.

Second, we are concerned because we have raised this subject with the Government of Cuba on several occasions, initially in the end of 1980, beginning of 1981, with a view to seeking the return to Cuba of those inadmissible aliens who were included among the more than 100,000 Cubans who migrated to the United States in the Mariel boatlift.

Now, I would emphasize, for the record, Mr. Chairman, that the vast majority of the individuals who have arrived in the United States as a result of Mariel have made a positive contribution to our society. But there is a small number of people who have imposed a great burden on our society. These are people who are known criminals, people who have committed criminal acts in the United States and people who are institutionalized, requiring substantial costs for their care.

The Government of Cuba has received a benefit by not incurring those social and economic costs. The Government of Cuba would receive a further benefit if this bill were enacted into law that the Government of Cuba, through the normal resumption of visa issuance by the United States in Cuba, would collect the substantial exit fees that it charges individuals who wish to leave that country.

We think that the matter of the return of the small number of excludables remains a subject for discussion, that the economic benefit of the visa issuance, normal visa issuance, is an issue to be held for those discussions.

We cannot say that the discussions will succeed. I think we can predict accurately that if we were unilaterally to make this concession to Cuba by legislation, there would be no prospect for negotiations on the return of the Mariel excludables.

Mr. Chairman, I would not want in public testimony to discuss the steps that have been taken since May of last year when we presented a note to Cuba asking it to accept the return of some of the Marielitos. I have, however, had prepared a classified written summary of events since that date on this subject, which I would be happy to make available for the committee's consideration on a confidential basis.

Mr. MAZZOLI. We appreciate that offer and we will take you up on it in some secure way if you could get that to our staff members, it would help.

Mr. MICHEL. I would be happy to do that, sir.

[The prepared statement of Mr. Michel follows:]

PREPARED STATEMENT OF JAMES H. MICHEL, DEPUTY ASSISTANT SECRETARY, BUREAU OF
INTER-AMERICAN AFFAIRS, DEPARTMENT OF STATE

MR. CHAIRMAN, IT IS A PLEASURE TO ACCEPT YOUR INVITATION TO PRESENT THE VIEWS OF THE DEPARTMENT OF STATE ON H.R. 4853, "A BILL TO AUTHORIZE THE CREATION OF A RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASES OF CERTAIN NATIVES OF CUBA AND HAITI, AND FOR OTHER PURPOSES."

YOU WILL ALREADY HAVE RECEIVED FROM ASSISTANT SECRETARY W. TAPLEY BENNETT A REPORT OF THE POSITION OF THE DEPARTMENT OF STATE ON BOTH SECTIONS OF THE PROPOSED LEGISLATION. IF I MAY BE PERMITTED TO SUM UP THE SENSE OF THAT REPORT, IT WAS TO INFORM THE COMMITTEE THAT IN OUR VIEW THE PROVISIONS OF SECTION 1 OF H.R. 4853 ARE SUBSTANTIALLY IDENTICAL TO PROVISIONS OF IMMIGRATION REFORM LEGISLATION CURRENTLY BEING CONSIDERED BY THE CONGRESS INSOFAR AS THEY RELATE TO HAITIANS AND CUBANS, EXCEPT THAT H.R. 4853 CONTAINS AN ADDITIONAL PROVISION GRANTING A RETROACTIVE DATE OF ADMISSION--JANUARY 1, 1982--FOR PERMANENT RESIDENCE. THE DEPARTMENT OF STATE HAS RESERVATIONS ABOUT THE RETROACTIVE ASPECT OF SECTION 1 OF H.R. 4853. ALTHOUGH RETROACTIVE DATES OF ADMISSION HAVE BEEN APPROVED IN CERTAIN PAST INSTANCES, IN THIS CASE THE RETROACTIVE ADMISSION WOULD BE AVAILABLE ONLY TO THE HAITIANS AND CUBANS BUT NOT TO ANY OF THE OTHER NATIONALITIES WHICH WOULD BE

LEGALIZED UNDER PENDING IMMIGRANT REFORM LEGISLATION. THE DEPARTMENT OF STATE BELIEVES THAT IMMIGRATION REFORM AND RELIEF FOR SPECIFIC GROUPS OF ILLEGAL ENTRANTS SHOULD NOT BE ACCOMPLISHED IN PIECEMEAL FASHION. INSTEAD, SUCH IMMIGRATION STATUTES MUST BE APPLIED EVENLY, WITHOUT REGARD TO NATIONALITY OR COUNTRY OF ORIGIN. FOR THESE REASONS, WHILE WE HAVE NO OBJECTION TO THE INTENT OF H.R. 4853 TO PROVIDE RESIDENCE FOR CUBAN AND HAITIAN NATIONALS, WE TAKE THE POSITION THAT THE PREFERABLE RESPONSE RESTS WITH ENACTMENT OF IMMIGRATION REFORM LEGISLATION CURRENTLY BEING CONSIDERED BY THE CONGRESS. IN ADDITION, SECTION 1(D) OF THE BILL, WHICH REFERENCES THE SPECIAL STATUS FO SECTION 501 (D)(1) OF PL SE-422 (WHICH WE ASSUME TO MEAN 501 (C)(1) IS AMBIGUOUS. CONGRESS SHOULD CLARIFY WHAT RESULT IS INTENDED BY GRANTING SPECIAL STATUS TO ALIENS WHO WOULD ALSO BE GRANTED PERMANENT RESIDENT STATUS UNDER THE PROVISIONS OF THIS BILL. OTHERWISE WE HAVE NO SUBSTANTIVE OBJECTION TO SECTION 1, BUT WE DEFER TO THE COMMENTS OF THE DEPARTMENT OF JUSTICE.

THE DEPARTMENT STRONGLY OPPOSES THE ENACTMENT OF SECTION 2 OF H.R. 4853. THIS SECTION WOULD DIRECT CONSULAR OFFICERS AT THE UNITED STATES INTERESTS SECTION IN HAVANA, CUBA, TO PROCESS IMMIGRANT VISA APPLICATIONS NOTWITHSTANDING THE PROVISIONS OF SECTION 243(G) OF THE IMMIGRATION AND NATIONALITY ACT. MR. CHAIRMAN, AS THIS COMMITTEE IS AWARE, THE ATTORNEY GENERAL HAS NOTIFIED THE SECRETARY OF STATE PURSUANT TO SECTION 243(G) OF THE ACT THAT CUBA HAS DENIED OR UNDULY DELAYED ACCEPTANCE OF THE RETURN

OF ALIENS WHO ARE NATIONALS, CITIZENS, SUBJECTS OR RESIDENTS OF CUBA. AS PROVIDED FOR BY SECTION 243(G) THE DEPARTMENT HAS DIRECTED CONSULAR OFFICERS AT THE U.S. INTERESTS SECTION IN HAVANA NOT TO PROCESS IMMIGRANT VISA APPLICATIONS, EXCEPT THOSE WHICH HAVE BEEN EXEMPTED FROM THIS PROHIBITION BY REGULATIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE. BY THIS I MEAN THAT THE INTERESTS SECTION IS CONTINUING TO PROCESS APPLICATIONS OF IMMEDIATE RELATIVES AS DEFINED IN SECTION 201(B) OF THE ACT AND OF RETURNING RESIDENT IMMIGRANTS AS DEFINED IN SECTION 101(A) (27) (A) OF THE ACT.

SECTION 2 OF H.R. 4853 WOULD HAVE THE EFFECT OF NULLIFYING SECTION 243(G) OF THE ACT INsofar AS IT RELATES TO CUBA.

MR. CHAIRMAN, THE QUESTION OF THE ISSUANCE OF IMMIGRANT VISAS IN THE U.S. INTERESTS SECTION IN HAVANA IS CLOSELY RELATED TO THE ACTION OF THE CUBAN GOVERNMENT IN 1980 WHEN IT PERMITTED THE MASS EXODUS OF PERSONS FROM MARIEL, CUBA, AND RELEASED FROM DETENTION COMMON CRIMINALS AND MENTALLY ILL PERSONS FOR THE PURPOSE OF EXPELLING THEM TO THE UNITED STATES WITHOUT THE KNOWLEDGE OR CONSENT OF OUR GOVERNMENT. THIS ACTION BY THE GOVERNMENT OF CUBA HAS DONE CONSIDERABLE HARM TO THE SOCIAL FABRIC OF THE UNITED STATES, PARTICULARLY IN THOSE COMMUNITIES TO WHICH LARGE NUMBERS OF THESE EXCLUDABLE ALIENS MIGRATED. THE COST TO FEDERAL, STATE AND LOCAL GOVERNMENTAL AGENCIES IN THE UNITED STATES HAS BEEN IMMENSE, NOT TO MENTION

THE BURDEN BORNE BY THE VICTIMS OF CRIMES WHICH HAVE BEEN COMMITTED IN THE UNITED STATES. SECTION 1 OF H.R. 4853 TAKES ACCOUNT OF THESE PERSONS AND PROVIDES THAT AN OTHERWISE ELIGIBLE BENEFICIARY COULD NOT BENEFIT FROM THE LAW IF HE WERE DETERMINED TO BE AN ALIEN WHO CONSTITUTES A DANGER TO THE COMMUNITY OF THE UNITED STATES BECAUSE OF PAST CRIMINAL ACTIVITY OR WHERE THERE EXIST REASONABLE GROUNDS FOR REGARDING HIM AS A DANGER TO THE SECURITY OF THE UNITED STATES.

MR. CHAIRMAN DURING THE LAST MONTH OF THE CARTER ADMINISTRATION THERE WERE TWO ROUNDS OF TALKS BETWEEN REPRESENTATIVES OF THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF CUBA CONCERNING THE REQUEST OF THE UNITED STATES THAT CUBA TAKE BACK ITS NATIONALS, CITIZENS, SUBJECTS OR RESIDENTS WHO WERE INELIGIBLE TO REMAIN IN THE UNITED STATES FOR SUBSTANTIVE REASONS. THE GOVERNMENT OF CUBA, WHICH DID NOT ACKNOWLEDGE ANY RESPONSIBILITY TO TAKE BACK THESE PERSONS, ESTABLISHED TWO CONDITIONS FOR TAKING BACK ANY OF THEM: FIRST, THE CUBAN GOVERNMENT WOULD CONSIDER THE ACCEPTANCE OF ONLY THOSE WHO WISHED TO RETURN VOLUNTARILY, AND SECOND THE RETURN OF ANY SUCH INDIVIDUALS WOULD BE SUBJECT TO APPROVAL BY THE GOVERNMENT OF CUBA ON A CASE-BY-CASE BASIS. ALTHOUGH THE UNITED STATES WAS WILLING AT THAT TIME TO RESUME ISSUANCE OF IMMIGRANT VISAS IN THE U.S. INTERESTS SECTION IN HAVANA IF AN AGREEMENT HAD BEEN REACHED, IT COULD NOT ACCEPT THE CONDITIONS ESTABLISHED BY CUBA. WHILE I DO NOT WISH TO GO INTO DETAIL WHY

THE CUBAN CONDITIONS WERE NOT ACCEPTABLE. I SHOULD LIKE TO POINT OUT, MR. CHAIRMAN, THAT ONLY A MINUSCULE MINORITY OF THE 129,000 PERSONS WHO CAME WITH THE MARIEL BOATLIFT HAVE EVER INDICATED THAT THEY WISH TO RETURN TO CUBA. TO HAVE ACCEPTED THE CUBAN CONDITIONS WOULD NOT HAVE SOLVED THE PROBLEM OF THE MARIEL EXCLUDABLES.

WHEN THE SUBJECT OF RETURNING THE MARIEL BOATLIFT EXCLUDABLES WAS RAISED THROUGH DIPLOMATIC CHANNELS WITH CUBA IN THE PERIOD AFTER JANUARY, 1981, THE CUBAN GOVERNMENT INITIALLY MADE KNOWN THAT THERE HAD BEEN NO CHANGE IN THE CUBAN POSITION ON THE TWO CONDITIONS.

NEVERTHELESS, THE DEPARTMENT OF STATE ON MAY 25, 1983, ASKED CUBA FORMALLY TO TAKE BACK THOSE PERSONS FROM THE MARIEL BOATLIFT FOUND INELIGIBLE TO REMAIN IN THE UNITED STATES FOR SUBSTANTIVE REASONS, ALONG WITH THOSE PERSONS WHO MIGHT WISH TO RETURN TO CUBA VOLUNTARILY. AT THE SAME TIME CUBA WAS FORMALLY GIVEN A LIST OF THE 769 SUCH PERSONS AGAINST WHOM FINAL ORDERS OF EXCLUSION HAD BEEN ENTERED AT THAT TIME AND WAS TOLD THAT ONCE THOSE PERSONS HAD BEEN RETURNED, MORE SUCH LISTS WOULD FOLLOW. IN RETURN, CUBA WAS TOLD, THE UNITED STATES WOULD BE PREPARED TO RENEW THE PROCESSING OF IMMIGRANT VISAS IN THE U.S. INTERESTS SECTION IN HAVANA.

MR. CHAIRMAN, SINCE THE POSSIBLE RETURN OF THESE PERSONS TO CUBA IS STILL A SUBJECT FOR DISCUSSION BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND CUBA, I DO NOT WISH TO MAKE FURTHER PUBLIC COMMENT ON THIS ISSUE. THE DEPARTMENT OF STATE IS PREPARED TO PROVIDE YOUR COMMITTEE WITH A CLASSIFIED COMMENTARY ON DEVELOPMENTS SINCE MAY, 1963, IN THIS REGARD. I DO WISH TO MAKE CLEAR FOR THE RECORD, HOWEVER, THAT THERE REMAINS A DIRECT AND VITAL LINK BETWEEN THE POSSIBLE RETURN OF THE EXCLUDABLES TO CUBA AND THE RESUMPTION OF THE ISSUANCE OF IMMIGRANT VISAS BY THE U.S. INTERESTS SECTION IN HAVANA.

I CAN UNFORTUNATELY GIVE NO ASSURANCE THAT CUBA WILL PROVE ANY MORE WILLING TO ACCEPT THE RETURN OF ITS NATIONALS AT THE REQUEST OF THE UNITED STATES THAN IT WAS IN DECEMBER 1980 AND JANUARY 1981. I CAN STATE, HOWEVER, THAT IF SECTION 2 OF H.R. 4853 WERE TO BE ENACTED INTO LAW, THE CHANCE THAT WE COULD PERSUADE CUBA TO ACCEPT THE RETURN OF THE MARIEL EXCLUDABLES WOULD BE VIRTUALLY NON-EXISTENT.

IT MAY BE ARGUED THAT INNOCENT PERSONS IN THE UNITED STATES AND CUBA, THE SPONSORS OF WOULD-BE IMMIGRANTS AND THE IMMIGRANTS THEMSELVES, SHOULD NOT BE ASKED TO PAY FOR THE MISDEEDS OF THE GOVERNMENT OF CUBA. I CAN WELL UNDERSTAND AND SYMPATHIZE WITH THAT POINT OF VIEW. SOME OF THESE PERSONS ARE PRESENTLY ENTERING THE UNITED STATES THROUGH ISSUANCE OF VISAS BY OUR EMBASSIES IN THIRD COUNTRIES, BUT OF COURSE THIS IS ONLY A MINORITY OF THOSE WHO WOULD OTHERWISE BE ELIGIBLE.

THE FACT IS, HOWEVER, MR. CHAIRMAN, THAT THE GOVERNMENT OF CUBA STANDS TO DERIVE CONSIDERABLE ECONOMIC ADVANTAGE IF THE UNITED STATES RESUMES THE PROCESSING OF IMMIGRANT VISAS IN HAVANA. IN PARTICULAR, THE CUBAN GOVERNMENT, WHICH CHARGES VERY HIGH FEES IN CONVERTIBLE CURRENCY FOR THE NECESSARY DOCUMENTATION TO LEAVE CUBA, WOULD STAND TO GAIN SIGNIFICANT REVENUES. IF EMIGRATION FROM CUBA TO THE UNITED STATES WERE TO RISE TO 20,000 PERSONS PER YEAR, WE ESTIMATE THAT CUBA MIGHT WELL EXPECT TO EARN 30 MILLION DOLLARS IN CONVERTIBLE CURRENCY PER ANNUM FROM CHARGES FOR EXIT PERMITS AND OTHER DOCUMENTS. THUS CUBA HAS A VERY REAL STAKE IN THIS ISSUE.

IT IS CLEAR THAT CONGRESS, WHEN IT ENACTED THE IMMIGRATION AND NATIONALITY ACT, INTENDED THAT THE UNITED STATES SHOULD NOT ISSUE IMMIGRANT VISAS IN THOSE STATES WHICH REFUSE UPON REQUEST TO TAKE BACK THEIR NATIONALS, CITIZENS, SUBJECTS OR RESIDENTS WHO ARE NOT ADMISSIBLE TO THE UNITED STATES, OR WHO DELAY SUCH ACTION. THE INTENT OF SECTION 2 OF H.R. 4853, TO RESUME NORMAL IMMIGRANT VISA PROCESSING IN HAVANA, IS AN OBJECTIVE WHICH THE ADMINISTRATION SHARES. BUT SUCH RESUMPTION SHOULD FOLLOW, NOT PRECEDE, A DECISION BY THE GOVERNMENT OF CUBA TO ACCEPT THE RETURN OF THE MARIEL EXCLUDABLES AS PROPOSED BY THE GOVERNMENT OF THE UNITED STATES.

FOR THESE REASONS, MR. CHAIRMAN, THE DEPARTMENT OF STATE IS STRONGLY OPPOSED TO SECTION 2 OF H.R. 4853 AND URGES THAT IT BE REMOVED FROM THE BILL.

Mr. MAZZOLI. The gentleman's time is expired and I appreciate both of you keeping well within your time. It helps us to move along.

Let me yield myself 5 minutes to begin some questions. Mr. Nelson, if I understand correctly, the Department of Justice and the Immigration Service agree conceptually with the idea of trying to balance the equities that exist between these two groups of people, the Cubans and the Haitians. You have differences of opinion with respect to the date. You think the January 1, 1982, date is too proximate; it should be what date?

Mr. NELSON. I would say July just to round it off; probably a July 1, 1981, date.

Mr. MAZZOLI. July 1, which is when the administration began its policy, July 1, 1981.

In your prepared testimony and also in your statement, Mr. Nelson, you mention concern about what "any record" means because the bill specifically says, if you came in, you have to either be an entrant or if you came in after the entrance status ended, that you have to make a record.

Could you give me just the best judgment of what you think might constitute a record.

Mr. NELSON. I am sorry, Mr. Chairman, I really can't. I think our point there was that we felt that language was ambiguous. We did not attempt to rewrite it. It is just a matter of concern. If we reached the point where this language was incorporated in Simpson-Mazzoli, we would be happy to work with the committee to try to get some clarification.

Mr. MAZZOLI. Let me ask you this, then, Mr. Nelson. I believe that this bill does give a retroactive residency. I think that it accepts January 1, 1982 as the beginning of residency. Is that correct?

Mr. NELSON. I am not sure of that, either.

Mr. MAZZOLI. I believe in the—Mr. Michel, perhaps you might help, too, if you are familiar with this—I believe in the immigration reform bill, the bill does not grant retroactive residency, is that your understanding?

Mr. MICHEL. That is my understanding.

Mr. MAZZOLI. And in this bill, there is a retroactive grant, is that correct?

Mr. MICHEL. Yes.

Mr. MAZZOLI. Does the State Department have any position? Or is that a matter for the INS and the Justice Department?

Mr. MICHEL. This is something I think is primarily a Department of Justice and INS issue. I think that we have joined in a consensus that does not favor these retroactive—

Mr. MAZZOLI. Thank you.

Mr. Michel, let me ask you this question. Has there ever been a situation where the United States has granted to people like the Cubans who are now in Cuba, but who could otherwise qualify as immigrants because they fit into a classification, a preference category; has there been any other situation where America has granted people in that category an opportunity to come into the country and have visas issued to them, despite the situation that you described?

Mr. MICHEL. I believe that there have been situations involving the Soviet Union and one other Soviet bloc country, Czechoslovakia, where there were incidents of a failure to return and where, pursuant to regulations, the constraints of section 243(g) were waived.

Mr. MAZZOLI. Waived.

Mr. MICHEL. Let me point out, Mr. Chairman, first that we have, I think, an entirely different order of scale here involving the Mariel boatlift; and second, that in the case of Cubans who do leave Cuba, that they can get a visa; that is, that we do not issue a visa in Cuba—

Mr. MAZZOLI. But if they got to some other country, then the State Department's program is to issue visas? If they, for example, went to Spain or if they went to some Central American country—

Mr. MICHEL. What we do not do is issue a visa in Cuba that results in a hard currency payment to Cuba for the exit permits to allow the Cuban national to leave. Now, they may collect something—I don't know if they collect as much for someone going to a third—

Mr. MAZZOLI. You said something like \$30 million might be somehow involved in hard currency—

Mr. MICHEL. That is right.

Mr. MAZZOLI. If the full number were to be granted.

Mr. MICHEL. That is right.

Mr. MAZZOLI. Now, if I understand correctly, and to flesh out the record, the State Department does, despite this provision of section 243(g) issue visas to spouses and to minor children of people who are in the United States, correct?

Mr. MICHEL. That is correct, Mr. Chairman. We do issue visas to immediate family members as a humanitarian matter and that is done on the same basis as the exceptions to section 243(g) that we have done in the Eastern European cases.

Mr. MAZZOLI. In the time past.

Very fine, my time is exactly expired and I yield to the gentleman from California for 5 minutes for his questions.

Mr. LUNGREN. Thank you, Mr. Chairman.

Mr. Nelson, I understand that the administration has this preference to have this question dealt with in the Simpson-Mazzoli bill. I share that preference. However, do you agree that if the House rolls back the January 1, 1982 legalization date—as may very well be the case, particularly judging from the results in Texas this last week—a specific provision should be included for Cuban and Haitians who either have the entrant designation or who arrived before 1982, or as you suggest, June or July 1981?

Mr. NELSON. Yes; we would agree with that, and that certainly, as you know, Mr. Lungren, has been the administration's position throughout the Simpson-Mazzoli debate. We do favor the Cuban/Haitian special treatment in that regard.

Mr. LUNGREN. The House leadership, as you know, has indicated on numerous occasions that we are going to deal with Simpson-Mazzoli. I could recite them but since I only have 5 minutes, I won't.

In view of this experience, at what point do you think it would be reasonable for the committee to take action on H.R. 4853, rather than to continue to wait—hopefully not holding your breath—for Simpson-Mazzoli to be scheduled?

Mr. NELSON. Well, we—the administration has, of course, shared the disappointment, I know, of all Members on both sides of the aisle on the delays on 1510, but we are not ready to give up and we know the Speaker has made it clear that this was the last delay. We take the man at his word and we will hold him to that. We are looking forward to that debate on the House floor coming up, in fact, in the middle of June.

Mr. FRANK. You are the only one who is. [Laughter.]

Mr. NELSON. And therefore, I will defer any answer as to 4853 until we—

Mr. MAZZOLI. Let me say to my friend from Massachusetts, I look forward to that debate. He may not, but I do, and I think that the country does and I think that we could have ourselves, as we had back in—

Mr. FRANK. If I could explain, Mr. Chairman, briefly, I am for the bill coming up and I am going to do everything I can, but I am not looking forward to it. [Laughter.]

Mr. MAZZOLI. You can't get a bill unless you have the debate, so I am looking forward to the debate.

Mr. LUNGREN. Mr. Commissioner, I share your hope that the Mondale intervention will be the last reason for us to delay this and I hope that we can move on it because it does cause a problem. I agree with you; this ought to be part of the Simpson-Mazzoli bill, but if they are just going to continue to dance with us and never have us finally deal with it, then I think this subcommittee is going to act on this piece of legislation.

Mr. NELSON. But this is, Mr. Lungren, piecemeal legislation and I think, as many equities as it might have, there are a lot of other equities. Let's look at Florida right now. There is a lot of pressure from a lot of Nicaraguan exiles saying, "Well, we ought to get some kind of treatment." We clearly face the issue with the El Salvadorans, and many others. So if you don't deal with the Cuban/Haitian issue as part of comprehensive immigration reform, we have some real problems, both in the Congress and the administration, of piecemeal legislation on nationality groups.

I think that raises some very serious problems. We feel very strongly about the issue. We are going to hope for the best on the debate and enactment of comprehensive legislation and will defer dealing with this issue until that is resolved.

Mr. LUNGREN. Thank you, Mr. Commissioner.

I yield back.

Mr. MAZZOLI. Thank you.

The gentleman from Texas is recognized for 5 minutes.

Mr. HALL. How many people would be covered by this 4853 if it was passed?

Mr. NELSON. Our best estimate, Mr. Hall, is there are approximately 131,000, about 100,000 Cuban nationals and 31,000 Haitian nationals. Those are our best estimates.

Mr. MAZZOLI. Where are the majority of those people today?

Mr. NELSON. The majority are in Florida, approximately 60 percent. Again, these are rough estimates, but, of course, we think they are relatively accurate: about 60 percent in Florida, about 20 percent in the New York/Newark area, about 8 percent in the Los Angeles area, 2 percent in the Chicago area, and 5 percent throughout the rest of the United States.

Mr. HALL. Are those people working?

Mr. NELSON. I think, as indicated by Mr. Michel, that a great number of them are, that they are productive people in society. The 5,000, just to round out, of the hardcore Mariel Cuban criminals, certainly cast a spell over this whole issue. The whole number of these, of course, are excluded from any consideration. No person with a criminal record, et cetera, would be entitled to this adjustment. This would only apply to those who could meet the various requirements of the law as to no criminal background and ability to maintain themselves, et cetera.

So we are thinking of maybe 5,000 or so that are in this excludable category. As Mr. Michel says, efforts are under way and we are certainly hopeful of effecting a return to Cuba of that group.

Mr. HALL. Well, you don't really think that is going to happen, do you? You don't think that Castro is going to accept those people, do you?

Mr. NELSON. Let me ask Mr. Michel to respond to that.

Mr. MICHEL. Excuse me, Mr. Hall, I really would hope that you would study the classified material that we have offered to provide and will provide this morning to the committee and would—

Mr. HALL. Does it go into that question?

Mr. MICHEL. Would respectfully request your indulgence in not pressing us on what the Government of Cuba might or might not do in this public forum.

Mr. HALL. All right.

The people who are working and leading productive lives, they have been kind of dangled and had on a string for what, 4½ years, 5 years, some of them?

Mr. NELSON. I don't know that I would necessarily accept the "dangled on a string" analogy, but that is the period of time we are talking about, 1980, roughly.

Mr. HALL. Now, if we are talking about Simpson-Mazzoli getting up for discussion and maybe a vote, suppose it doesn't pass? Where does that leave these people?

Mr. NELSON. Well, I think the comment, Mr. Hall, that I made a moment ago is that we have a lot of balancing to do. We have the real problem, as I said and won't repeat it all, with the piecemeal legislation. So I think it is proper that we defer a formal position until we determine whether Simpson-Mazzoli passes.

If it passes, that answers the question. If it doesn't, then we have to face that. But we have a problem with piecemeal legislation. Also, on the books now is the Cuban Adjustment Act which Congress passed in 1966. It has been our legal determination by many reviews of the Justice Department, and others, that the Cubans, by and large, are entitled to relief under that act. There are some legal questions; there is now pending litigation brought by Cuban interest groups that raise some questions—mainly, why haven't you processed under the Cuban Adjustment Act—but that group,

in our opinion, certainly would prima facie qualify for relief under the existing legislation.

The problem, of course, is that the Cuban Adjustment Act does not, by its terms, relate to Haitians.

Mr. HALL. Well, now, there is a very strong editorial, I think, that will be presented in testimony that follows from the Miami paper, which strongly follows and backs this legislation. Of course, those people have had the brunt of this. They have looked at it day-in and day-out for 4½ years, more or less.

Mr. NELSON. Of course, I might have seen the editorial; I am not sure that I am aware of the one you are referring to, but the Miami Herald, among all the major newspapers in the United States, even more strongly backs Simpson-Mazzoli as the best answer.

Mr. HALL. Well, I don't think these people have been handled exactly right; on the other hand, I can see the position you are taking to try to get it all in one fell swoop, but the one fell swoop may not come forth as rapidly as we may think it will.

If it doesn't, are we going to then—you suggest—come back to this bill and pass it?

Mr. NELSON. I would suggest that we definitely ought to come back to it and that we put all our efforts at this point in the Simpson-Mazzoli bill which basically encompasses the same principles that are in the 4853 bill. So, that is the area to concentrate on because you get the positive benefits from it without the negative aspects of the piecemeal legislation. So, if it does not pass, then I think we have to face these other issues. They are difficult ones.

Mr. HALL. Thank you.

I yield back.

Mr. MAZZOLI. The gentleman's time has expired.
The gentleman from Florida.

Mr. McCOLLUM. Thank you.

Mr. Nelson, I am concerned about the 31,000 Haitians that you described that are in here now. If we go forward with this legislation and grant them a status of permanent residents, in essence, aren't we going to be encouraging more economic folks to come over here; people who are not eligible for political asylum because they are not in a reasonable fear of persecution, but instead, simply having problems in an economic situation back home?

Mr. NELSON. No question, Mr. McCollum, that is a very valid concern and that is part of the whole balancing factor that we have to consider in this situation. That is a definite concern.

Mr. McCOLLUM. If we were not—

Mr. NELSON. Excuse me, that is why, again, I think the comprehensive legislation is really the answer because it deals with many, many issues and it properly encompasses this issue. That is the way to resolve it. If you have to deal with it piecemeal, the point you raise is a definite factor to consider.

Mr. McCOLLUM. Isn't it also true that if we deal with it piecemeal like this instead of in a comprehensive fashion, that we have got a lot of other nationality considerations here, such as the Salvadorans who have been here for longer than January 1, 1982, who might very well not be in reasonable fear, although that is a great

debate among many Congressmen, if they were to be sent back. Aren't we raising a specter of acting very unevenhandedly?

Mr. NELSON. Yes, sir, absolutely right. You stated it better than I can. And I think you are all aware that the Nicaraguans particularly in the Miami area, have been very active in picketing and claiming this same kind of consideration so, we definitely have the result that different nationality groups may use this, saying, "You did it for the Cubans and the Haitians; now, what about us?" Then you have that precedent to follow.

Mr. McCOLLUM. Aren't we still having some boat people come over from Haiti and occasionally making it now?

Mr. NELSON. Yes, there are, but it is certainly greatly limited. Since the interdiction; since the detention policy, and everything, the numbers have dramatically dropped. Still, some get through—not many. We still have some flow from the Bahamas. That still is probably the bigger area where the bigger number get across from Bimini in very small boats; that is hard to stop.

Mr. McCOLLUM. But if we pass this bill alone, without the regular legalization provision in the immigration bill, we might be stirring up a bigger flow than we have got now, right?

Mr. NELSON. That is definitely a possibility.

Mr. McCOLLUM. Mr. Michel, I have got a question. I have never understood how we thought that we were going to advance our policies—and I haven't read the classified material on this question of the return of the criminals to Cuba, but I have never understood how we thought we could advance our policies by denying visas to the people who want to come over here from Cuba to match up with their relatives. I have never understood that because it seems to me the only people we are hurting in this process are the Cuban-Americans and the Cuban-Americans' relatives who want to come over here.

Castro could care less, from what it appears to me. Why did he want to send a whole bunch of those people over here?

Mr. MICHEL. For two reasons, Mr. McCollum, and I think they are both economic—well, there is also a third reason and that is political. This is an outlet for him and for the Government of Cuba. The same reason that he sent 130,000 people in 1980, he would like to send 20,000 a year more to relieve social strains within Cuba. People who have ties, perhaps, to the United States because of relatives here who might, from his standpoint, be less supportive of the Communist policies of the Cuban Government.

Second, I mentioned earlier the substantial fees that the Government of Cuba charges for exit from that country, and it demands that those fees be paid in hard currency, which Cuba desperately needs. It is dependent upon a subsidy of about \$4.5 billion a year from the Soviet Union and would like to have an additional source of hard currency revenues.

Third, the number of people to whom the exit permits might be granted in exchange for these fees might be people who are not in the most productive years of their lives and making the greatest contribution to Cuba. So the Government of Cuba would benefit in a number of respects from a resumption of the normal immigrant visa policy and practice that obtained prior to the Mariel boatlift.

We recognize that there is a cost to individuals as well, and we regret that. At the same time, we know of no other policy that we could maintain that would preserve the opportunity for a possible negotiated return of the Mariel excludables—

Mr. McCOLLUM. How long has this been going on now? Quite a long time, several years, hasn't it?

Mr. MICHEL. October 1980, I guess.

Mr. McCOLLUM. I know we aren't privileged to discuss, and I don't want to, whatever classified status we may have currently in these negotiations, but the point I want to make is it has been a long time. We have not been successful with this and it seems to me patently ridiculous that we haven't taken one of two steps on either end of that accord. I think it is outrageous, first of all, that we are holding these individuals captive—that is, the people who are in Cuba who could come back here for unification if Castro really wants to send them over there; and second, I think that we are really remiss, greatly remiss, in not forcibly returning those criminals and shoving them down his throat.

If that would anger him; if that would tick him off; if that would make this whole situation even more hostile, so be it. We ought to take those Cuban Marielitos out of the prison—at least the 1,800-and-some-odd, however many there are eligible in Atlanta right now, by a boat, by a ship, by whatever means are necessary and ship them into Cuba. I have advocated this and, this Congress has; and I think that whoever is deciding this policy is just absolutely absurd and ludicrous.

Mr. MAZZOLI. I am sorry, the gentleman's time has expired.

The gentleman from Massachusetts is recognized for 5 minutes.

Mr. FRANK. I want to begin by agreeing with much of what the gentleman from Florida has said—not the last eight or nine sentences, but we can start back before that.

I haven't read the classified material. I now feel obligated to read it. I have been here 3½ years. I have never read classified material that materially changed my information on anything, but I will read it.

I don't see any justification in the world for us punishing innocent, freedom-loving Cubans who may be dissidents from the Castro regime, but Fidel Castro won't take back the Marielitos. That is the policy of the American Government and the gentleman from Florida has accurately characterized it.

I don't understand it, even it has got some remote bargaining leverage—and I am very skeptical that it does. I think we are going to see a lot of speculative cables about maybe and wouldn't it be possible and none of it is going to mean very much in the classified stuff, but the basic point, it seems to me, is undeniable.

We have this Communist dictatorship; we criticize places like that for refusing people the freedom to travel; we signed the Helsinki accords and say that we are for the freedom to travel; we are a bastion of freedom; there are people in Cuba who could come here, we are told; Castro might be willing to let them out; maybe he is bluffing but we will never know that; and we are now in what seems to me the intolerable moral position of the United States saying to those people:

Because of other policies of your government which we don't like, we are going to deny you the change to escape, to get away from your dissident status and to come here and be reunified which you might otherwise be legally eligible to do. We are not even going to give you a visa.

I just don't understand how this administration can carry out that kind of position. It seems to me to be directly in contrast to our basic positions.

I will go and read your classified material, but I will be astounded if I find anything in there that can remotely justify the position. I just think the gentleman from Florida has characterized it accurately.

We are in the position, unfortunately, of denying to some people in Cuba the chance at freedom which they may have, and I just think that that is not only wrong morally, but in terms of international political positions that undercuts us substantially.

Mr. MICHEL. Well, Mr. Frank, let me just comment that the policy is not intended to punish individuals—

Mr. FRANK. Do you think they care what the intent is when the effect is to keep them locked up?

Mr. MICHEL. I understand that it has that effect and that is unfortunate and I can sympathize with a lot of what you say, but I would also wish to reiterate that those who are allowed to leave Cuba and go to a third country are admitted to the United States and those who are immediate family members of residents of the United States are presently being—

Mr. FRANK. You are saying it doesn't make any difference, then, if we have the restriction? Then why do we have it? I mean, if they can get out and go to a third country and come here, then what is the point of it? Is this all something—

Mr. MICHEL. The numbers are different.

Mr. FRANK. OK, so it does make a substantial difference. All right, let me get on to the subject of this, if I can.

First, let me explain my comment, Commissioner. You said you did not like being characterized the way the Department was with regard to this legislation. That is what I mean when I said I wasn't looking forward to the debate.

I will continue to be for this bill, but if you think you were unfairly characterized in this business, you wait until the debate comes up and hear what they say about all of us. So we will be through that now, but we will all be there.

I just want to make sure I understand your position, because I understand the legislative strategies. As I understand your position, you have no objection to, in effect, a January 1982 cutoff date for Haitians and Cubans; is that correct?

Mr. NELSON. Well, we would amend that to, say, July 1, 1981.

Mr. FRANK. Why? What are we talking about—

Mr. NELSON. Maybe you hadn't arrived when I made the comment. I think, first of all, remember the context of our position is that it really is premature to push this bill forward. We ought to wait and—

Mr. FRANK. I understand. We are all for Simpson-Mazzoli and because it is purely hypothetical, we will make all the appropriate—

Mr. NELSON. And it is the spirit of it that we do concur with. We have made that clear and that has been envisioned—

Mr. FRANK. Let me put it this way: We are going to deal with this either in Simpson-Mazzoli or not, so the question is what is the date in whichever piece of legislation we address it?

Mr. NELSON. Obviously, within Simpson-Mazzoli, we are for the concept. It makes sense. We have supported it all along and—

Mr. FRANK. With what cutoff date?

Mr. NELSON. We hope the record makes it clear. Now, I think on the cutoff date, and this was the point that really hadn't come up—it was not in our testimony, but it seemed a little incongruous that we talk about a January 1982 cutoff date when the President of the United States and the Attorney General announced, and we start implementing the law, the detention law that is in the statute, and backing that up with our judicial position, which has been fully vindicated, and that all started in the summer of 1981. It seems that it doesn't make a lot of sense to then have a January 1982 cutoff date.

Our recommendation, if we get down to a date situation, that it be moved back—

Mr. FRANK. How many people are we talking about—

Mr. NELSON [continuing]. To the middle of 1981.

Mr. FRANK. How many people would get caught in the 6-month window?

Mr. NELSON. I think there are—I am not positive, but maybe in the range of 10,000.

Mr. FRANK. We are talking about 10,000 people, then, who would be in that 6-month period?

Mr. NELSON. At the most.

Mr. FRANK. And your position would be with them, to send them back?

Mr. NELSON. Sure, if they do not otherwise qualify for admission to the United States, either as legal immigrants or as—

Mr. FRANK. Wait, let me just ask my last question. There is a lot of concern that we are going to be dealing with this, we hope, the problem of the deportations now going ahead, and I realize it has been in litigation. I would hope that there could be some forbearance with regard to people—I would hate to see people who would qualify under this legislation be deported in the interim if we know the legislation is coming.

What is the Service's position with regard to those people who might be the beneficiary of this legislation? Wouldn't it be reasonable to hold off until at least the summer comes and we get a sense of what we are doing, either with the Mazzoli bill or with this bill?

Mr. NELSON. Mr. Frank, you can certainly make a lot of equitable arguments that we ought to do that, but I think we have seen what has happened in the last 2 years with Simpson-Mazzoli and all the delays. We had the problem with the silva letterholder issue where we did defer action pending likely resolution. It didn't happen. People would like all the benefits on the one hand, but yet are fighting the bill—many of the people that are asking for the special benefit are doing everything they can to kill the overall bill.

So the bottom line is that, absent some very special considerations, we would not be willing, pending potential legislation.

Mr. FRANK. Commissioner, I have been supportive of a lot of what you do and you have been supportive of some of my concerns and I appreciate it, but that disappoints me. Like with the Cuba thing, I just don't like that idea of holding innocent people hostages because we don't like what third parties are doing. It seems to me that in both cases, there is a tendency to do that.

Mr. MAZZOLI. Thank you. The gentleman's time is up. I appreciate his understanding.

The gentleman from New York is recognized for 5 minutes.

Mr. FISH. Thank you, Mr. Chairman.

I think the record ought to show, Mr. Chairman, that every member of the subcommittee is present at the ungodly hour that you called this meeting—

Mr. MAZZOLI. Sorry, I was—

Mr. FISH. You have got 100 percent attendance, which is, I think—

Mr. MAZZOLI. I appreciate your bringing it up. It is an honor to chair a panel like this because we probably have, as a group, worked together better and had better attendance than almost any other panel on this committee—

Mr. FRANK. This subcommittee probably does better at ungodly hours.

Mr. MAZZOLI. I don't know. Maybe, Ham, we are all insomniacs. Maybe that is part of it; I am not sure.

Mr. FISH. I ask unanimous consent that my 5 minutes commence now—

Mr. MAZZOLI. Your time has expired, I am sorry. [Laughter.]

Mr. FISH. Mr. Commissioner, I welcome you both here, of course, this morning and I wonder if you could comment on the 1966 Cuban Adjustment Act. Earlier in your testimony, you made reference to the fact that the measure we are considering this morning does not deal with it, whereas the Simpson-Mazzoli bill does.

Could you tell us why you prefer the repeal of that act?

Mr. NELSON. It seems again, Mr. Fish, that we are confronted with the Cuban Adjustment Act; it has been on the books since 1966 and I have a feeling from the committee that in the light of some of the events that have occurred since, that it would have been better not to have it there at this point. It seems, again, the idea of the comprehensive approach that Simpson-Mazzoli advances is the way to deal with it. Not only could the Cuban/Haitian issue be dealt with in that manner, but we probably shouldn't have that act on the books; should something happen in the future, then we are still facing it.

It seems to me we ought to sort of clear the decks.

Mr. FISH. Thank you, and, of course, I want to commend you and support your comments about the administration's efforts for comprehensive immigration reform. The administration has been particularly supportive of Simpson-Mazzoli. That has been a strong effort on the part of the administration for the last several years.

Mr. Michel, as I recall, it was sometime in the spring of 1980 that our interests section in Cuba stopped processing immigration visas for the very people that are still there in preference categories. So negotiations have been going on—as you said, they started the fall of that year—so they have been going on almost 4 years.

Now it is difficult, since you presented this subcommittee the classified material that we haven't had a chance to look at, but I want to ask you this: Have the negotiations with the Cuban Government been on the narrow issue, the humanitarian issue of the exchange of the excludable Marielitos for the issuance of visas to people with established preferences, or are we insisting—as we did when Secretary Haig was in charge—that a much broader range of political issues be negotiated at the same time?

Mr. MICHEL. We are not insisting on a broad range of political issues, Mr. Fish. In the material that I have for the committee, there is a description of the exchanges and developments that have occurred since our note of last May, in which we asked the Government of Cuba to accept the return of a specified list of individuals against whom final orders of exclusion had been issued.

I would prefer to ask you to read the description of these developments, rather than describe them.

Mr. FISH. Right. A few of us did have an opportunity to discuss this issue with Premier Castro in 1982 solely on the humanitarian basis of an exchange, and he said he was perfectly willing to talk about that in that context and on that single narrow issue.

You have testified that there have been instances when 249(g) has been waived, and we have heard about the economic and political benefits for the Government of Cuba, but I can't help but echo what my colleague from Florida said and my colleague from Massachusetts, that it does seem to me that we are penalizing the wrong people. We are penalizing the U.S. citizens and lawful permanent residents who are seeking family reunification. We are penalizing those in Cuba who have qualified under a preference category for 4 years.

Inasmuch as negotiations have proceeded for 4 years so far, it would seem to me that we should start thinking in a broader vein here about what we are doing. As money is being brought up, we could also bring up the cost of incarceration to the United States as a major factor here.

Mr. MAZZOLI. I am sorry, the gentleman's time has expired. I apologize, but the clock doesn't lie.

Mr. FISH. That is all right, I am finished.

Mr. MAZZOLI. With the indulgence of my further remaining panelists, I would like to yield to our distinguished chairman of the full committee and the author of the bill for any statements he might want to make or any observations.

The gentleman from New Jersey, Mr. Rodino, is recognized for 5 minutes.

Mr. RODINO. Thank you very much, Mr. Chairman, and members of the committee. First of all, Mr. Chairman, I want to commend you for scheduling this committee hearing this morning. I also thank the other subcommittee members for being here on a matter that I consider to be of tremendous urgency. I appreciate the fact that the Commissioner is present here this morning in order to present views of the Immigration Service, together with the State Department.

I believe there is definitely a situation here that cries out for immediate action. I have been discussing this matter for a long period of time with the Immigration Service and the State Department.

It seems that our administrative enforcement policies, while not deliberately, have discriminated against the beneficiaries of this bill. For this reason, it became incumbent on us—if you remember, Mr. Chairman, to address this problem legislatively, first of all, in H.R. 1510, which is the proposal that is still pending before the Congress. Second, I thought it necessary to introduce this separate legislative proposal H.R. 4853—as a safety net in the event the Immigration reform bill is not scheduled for floor action. I would ask unanimous consent that you include in the record a copy of the bill and my prepared testimony.

Mr. MAZZOLI. Without objection.

[H.R. 4853 is printed on p. 3.]

[The prepared statement of Hon. Peter W. Rodino, Jr., follows:]

March 9, 1984

PREPARED STATEMENT
OF THE
HONORABLE PETER W. RODINO, JR.

I WISH TO COMMEND THE SUBCOMMITTEE AND ITS CHAIRMAN FOR SCHEDULING HEARINGS ON THIS MOST IMPORTANT LEGISLATION AND I AM MOST HOPEFUL THAT THIS BILL OR THE COMPANION PROVISION IN H.R. 1510 WILL BE ENACTED INTO LAW THIS YEAR.

THIS SUBCOMMITTEE IS OFTEN CALLED UPON TO PROVIDE SOME SORT OF RELIEF TO ALIENS IN THE UNITED STATES WHO DO NOT FIT NEATLY INTO THE PARAMETERS OF EXISTING LAWS. OFTEN WE ARE CONFRONTED BY COUNTERVAILING PRESSURES AND INTERESTS, AND SOMETIMES OUR COMPASSION FOR THOSE WHO WISH TO MAKE THE UNITED STATES THEIR HOME MUST BE TEMPERED BY THE REALIZATION THAT EVEN THE UNITED STATES, WITH ITS VAST SPACES AND BOUNTIFUL RESOURCES, CANNOT ACCOMMODATE EVERYONE.

IN SOME CASES, HOWEVER, THE EQUITIES ARE SO OBVIOUS, THE NEED FOR JUSTICE SO EVIDENT, AND THE DICTATES OF FUNDAMENTAL FAIRNESS SO COMPELLING THAT SPECIAL LEGISLATIVE RELIEF MUST BE PROVIDED. THE CASE OF THE CUBAN/HAITIAN ENTRANTS IS JUST THAT TYPE OF CASE.

FOUR YEARS AGO TODAY THE SO-CALLED MARIEL BOATLIFT WAS IN FULL SWING. THEY CAME BY THE THOUSANDS DURING THAT PERIOD NOT ONLY FROM CUBA BUT ALSO FROM HAITI. THEY CAME IN ALL TYPES OF BOATS, INCLUDING SOME THAT WERE NOT SEA-WORTHY. SOME DID NOT MAKE IT, AND FOR THEM THE AMERICAN DREAM ENDED EITHER ON THE HIGH SEAS OR ON THE BEACHES OF FLORIDA, WHERE THEIR BODIES WERE FOUND.

BUT THOSE WHO DID MAKE IT WERE FILLED WITH HOPES OF A NEW LIFE, OF A SECOND CHANCE. THE CUBANS WERE TOLD THAT THEY WOULD BE WELCOMED WITH "OPEN HEARTS" AND "OPEN ARMS," AND INDEED THOSE WHO ARRIVED IN THE SPRING AND SUMMER OF 1980 WERE QUICKLY PROCESSED AND RESETTLED. BUT FOR MANY OF THOSE WHO ARRIVED FROM HAITI IN 1981 THE WELCOME WAS NOT SO WARM. UNLIKE THEIR HAITIAN PREDECESSORS AND THE CUBAN ARRIVALS ONLY MONTHS BEFORE, THEY FOUND THEMSELVES INDEFINITELY DETAINED IN INS DETENTION CENTERS. DAYS TURNED INTO WEEKS, AND WEEKS TURNED INTO MONTHS. MEANWHILE, A FEDERAL DISTRICT COURT IN MIAMI, AND LATER TWO FEDERAL CIRCUIT COURTS, WERE REVIEWING THE EPISODE. ALL THREE COURTS CONCLUDED THAT THE PROCESSING OF HAITIAN NATIONALS IN THE UNITED STATES HAD BEEN PREJUDICIAL AND UNLAWFUL. THE LITIGATION CONTINUES.

IT HAS BEEN FOUR YEARS SINCE CUBAN/HAITIAN ENTRANTS WERE FIRST PAROLED INTO THE UNITED STATES. DESPITE THE FACT THAT BOTH THE CARTER AND REAGAN ADMINISTRATIONS SUBMITTED LEGISLATION TO ALLOW THEM TO ADJUST STATUS, AND DESPITE THE FACT THAT THE IMMIGRATION REFORM AND CONTROL ACTS OF 1982 AND 1983 INCLUDED PROVISIONS FOR ADJUSTMENT, THEY ARE STILL WAITING.

HOW LONG MUST THEY CONTINUE TO WAIT? HOW LONG WILL THEY BE DENIED THE OPPORTUNITY TO PETITION FOR THE ADMISSION OF THEIR FAMILIES? HOW LONG WILL THEY BE DENIED THE OPPORTUNITY TO BECOME PERMANENT RESIDENTS AND EVENTUALLY CITIZENS OF THE UNITED STATES? HOW LONG WILL THEY BE SUBJECTED TO STATE LAWS THAT LIMIT EMPLOYMENT IN CERTAIN OCCUPATIONS TO PERSONS WHO ARE U.S. CITIZENS OR LAWFUL PERMANENT RESIDENT ALIENS? HOW LONG WILL THEY BE REQUIRED TO ENDURE UNCERTAINTY AND CONFUSION REGARDING THEIR FUTURE IN THIS COUNTRY?

FOR THEIR SAKE AND FOR OUR NATION'S SAKE WE MUST SETTLE THIS MATTER AND WE MUST SETTLE IT NOW. THAT IS WHAT MY BILL, H.R. 4853, WOULD DO.

LIKE MANY OTHERS, I HAD HOPED, AND I CONTINUE TO HOPE, THAT THIS MATTER WILL BE RESOLVED BY PASSAGE OF THE IMMIGRATION REFORM AND CONTROL ACT. I INTRODUCED H.R. 4853 NOT BECAUSE I BELIEVE THE IMMIGRATION REFORM AND CONTROL ACT WILL NOT PASS, BUT BECAUSE I BELIEVE THAT THE ADMINISTRATIVE ADJUSTMENT OF CUBAN NATIONALS UNDER THE 1966 ACT WOULD SEVER THE LINK BETWEEN TWO GROUPS OF PEOPLE -- CUBANS AND HAITIANS -- WHO ARRIVED HERE UNDER SIMILAR -- IF NOT IDENTICAL -- CIRCUMSTANCES.

IT IS CLEAR THAT THE CUBAN ENTRANTS HAVE BEEN VERY PATIENT IN WAITING FOR THE CONGRESS TO ACT. IT IS EQUALLY CLEAR THAT THEY ARE JUSTIFIED IN SEEKING ADJUSTMENT UNDER THE 1966 ACT. MY FEAR, HOWEVER, IS THAT THE HAITIANS, IF FORCED TO STAND ALONE, MAY BE PASSED OVER, NEGLECTED AND FORGOTTEN FOREVER. THAT IS WHY I HAVE INTRODUCED AND SOUGHT URGENT CONSIDERATION OF THIS URGENTLY-NEEDED REMEDIAL LEGISLATION.

I HAVE SAID THAT THE CUBAN AND HAITIAN NATIONALS COVERED BY MY BILL ARRIVED IN THE UNITED STATES DURING THE SAME TIME AND UNDER SIMILAR CIRCUMSTANCES. LET ME ELABORATE. SINCE THE EARLY 1960'S THE CUBAN PEOPLE HAVE DEMONSTRATED THEIR DISDAIN FOR THE REGIME OF FIDEL CASTRO. THEY HAVE FLED TO EUROPE, TO OTHER NATIONS IN THE CARIBBEAN, AND OF COURSE, TO THE UNITED STATES WHERE THEY HAVE ALWAYS BEEN WILLINGLY ACCEPTED. IN FACT, SINCE CASTRO CAME TO POWER NEARLY TEN PERCENT OF THE CUBAN POPULATION -- OR ONE MILLION PEOPLE -- HAVE COME AS REFUGEES TO THE UNITED STATES. THE RECENT ENTRANTS, THEN, ARE SIMPLY THE LATEST MANIFESTATION OF THE HISTORICAL MIGRATION FROM THAT COUNTRY.

HAITIANS, ON THE OTHER HAND, DESPITE THE FACT THAT THEY WERE ALSO FLEEING POVERTY AND PERSECUTION, HAVE NEVER BEEN THE BENEFICIARIES OF SPECIALLY ENACTED U.S. REFUGEE LAWS. THERE CAN BE LITTLE DOUBT, HOWEVER, THAT THE QUALITY OF LIFE IN HAITI IS AS BAD, IF NOT WORSE THAN, THAT IN CUBA.

THE PEOPLE OF HAITI HAVE THE LOWEST PER CAPITA INCOME OF ANY PEOPLE IN THE WESTERN HEMISPHERE, AND THEIR UNEMPLOYMENT RATE IS OVER FIFTY PERCENT. IN SHORT, MOST OF THEM LIVE A LIFE OF RELENTLESS, GRINDING POVERTY. AND ALTHOUGH MANY OF THE HAITIANS MAY NOT, IN THE STRICTEST SENSE, BE POLITICAL REFUGEES, WE MUST RECOGNIZE THAT FREQUENTLY THE LINE SEPARATING POLITICAL EXILES FROM ECONOMIC MIGRANTS IS SO VAGUE AND IMPERCEPTIBLE AS TO BE, FOR ALL PRACTICAL PURPOSES, MEANINGLESS.

THE HAITIAN BOAT PEOPLE, LIKE THE MOST RECENT FLOW OF CUBANS TO THIS COUNTRY, REPRESENT THE LOWEST SOCIOECONOMIC SECTOR OF THE POPULATION OF THEIR COUNTRY TO HAVE COME TO THE UNITED STATES THUS FAR. LIKE THE CUBANS, MANY OF THEM HAVE COME NOT SO MUCH TO ESCAPE PHYSICAL TORTURE AND IMPRISONMENT AS TO ESCAPE THE SPIRITUAL TORTURE AND IMPRISONMENT THAT PERMEATES THEIR LIVES. THE EXTENT TO WHICH THE HAITIAN PEOPLE HAVE GONE TO ESCAPE THAT KIND OF LIFE -- TO THE POINT OF RISKING DEATH ON THE HIGH SEAS -- CONSTITUTES A MORE COMPELLING TESTIMONY CONCERNING THE CONDITIONS IN HAITI THAN ANY SET OF FACTS AND FIGURES COULD EVER PRODUCE.

MR. CHAIRMAN, THE LEGISLATION BEFORE US IS NOT WITHOUT PRECEDENT. IN 1958, FOR EXAMPLE, CONGRESS PASSED SPECIAL LEGISLATION TO ALLOW THE ADJUSTMENT OF HUNGARIAN REFUGEES WHO HAD BEEN PAROLED INTO THE UNITED STATES. SIMILARLY, IN 1960, 1966, AND AGAIN IN 1975 SPECIAL LEGISLATION WAS PASSED TO ALLOW THE ADJUSTMENT OF EASTERN EUROPEAN REFUGEES, CUBAN PAROLEES, AND INDOCHINESE PAROLEES, RESPECTIVELY. IT IS CLEAR, THEN, THAT WHEN COMPELLING NEED HAS BEEN DEMONSTRATED, CONGRESS HAS NOT BEEN UNWILLING TO ACT.

IN CONCLUSION, MR. CHAIRMAN, WE ARE DEALING HERE TODAY WITH A SITUATION THAT CRIES OUT FOR IMMEDIATE ACTION. IN MY MIND THERE IS NO DOUBT AS TO WHAT WE MUST DO.

BY PASSING H.R. 4853 WE WILL ALLOW THOUSANDS OF CUBANS AND HAITIANS WHO ARE HERE AND ARE ALREADY CONTRIBUTING TO OUR SOCIETY TO LIVE FREE AND SECURE IN THE KNOWLEDGE THAT THEY ARE WELCOME HERE AND WILL NOT BE FORCED TO RETURN. WE WILL ALLOW THEM TO GET ON WITH THEIR LIVES. AND WE WILL PUT BEHIND US ONCE AND FOR ALL THIS TARNISHED EPISODE IN OUR IMMIGRATION HISTORY.

I WOULD ASK THAT THE CORRESPONDENCE ATTACHED TO THIS STATEMENT BE INCLUDED IN THE HEARING RECORD. THESE LETTERS ARE INDICATIVE OF THE WIDESPREAD SUPPORT FOR THIS HUMANITARIAN LEGISLATION.

(See app. 1 at p. 149.)

Mr. RODINO. There is precedent for the kind of action that we need to take, especially in a situation such as this. My recollection is that back in 1958, when we dealt with the Hungarian refugee problems, we immediately, as a Congress, recognized the need to legalize their status and we did so. We did again in 1966 for Cuban refugees and we did so in 1975 when we dealt with the Indo-Chinese refugees.

Almost 4 years ago this month we were dealing with the question of the Mariel boatlift and we found that there were people who, responding to the invitation to come to this country, because we opened up our hearts and arms, did so. I think that it would behoove us to recognize that their plight has been brought to our attention time and again by so many people who have come to us and many of these people are here today. There will be present this morning a distinguished member of the council from the city of Newark, Mr. Donald Payne, Bishop Bevilacqua, speaking for the people who have been ignored and neglected for so long and Mr. Hill, who represents Bayard Rustin. They, together with many other civic labor and religious groups have long been interested in the plight of these people.

I think that we can do no less than recognize that this is a situation where people who came here before 1982 have been left, as I have described it, in legal limbo.

I think that we need to do something about it. I haven't been privy to some of the statements that have been made by the representatives of the Government here, but I have heard them time and time again. Very frankly, they don't square with what I believe to be the kind of commitment we should make to resolving the uncertain status of these people.

I don't believe that there are people who deserve more just treatment than the Haitians and Cuban entrants. I think that it is high time, Mr. Chairman, that this committee takes action by approving this legislation.

Again, I want to applaud you and the ranking member of our full committee Mr. Fish, who has always been very responsive, together with the your ranking minority member on the subcommittee, Mr. Lungren, and the other subcommittee members for their attention and participation here this morning.

Mr. MAZZOLI. Thank you very much, Mr. Chairman. You will be pleased to know that everyone spoke highly about the concept of your bill and the attitude it displays and the charity and compassion. There have been some differences, perhaps, with the second section of the bill which deals with the issuance of the visas to Cubans who are in Cuba and there has been some evidence of some technical difficulty with some of the words, but conceptually, I think that everyone certainly supports the bill.

The gentleman from Michigan is recognized for 5 minutes.

Mr. CROCKETT. Thank you, Mr. Chairman.

I want to join those in complementing the chairman of our full committee for his thoughtfulness and generosity in introducing H.R. 4853 and also for the impassioned plea he just made in support of that bill.

Most of the comments and questions that I would have have already been anticipated by my colleague, the gentleman from Texas. The position of the two departments, I take it, is that we should wait and let this whole question be covered by Simpson-Mazzoli; and yet I think the general tenor of thinking in the House is that there won't be any Simpson-Mazzoli any time soon. So to say leave it to Simpson-Mazzoli is just another way of saying, don't do anything about the question.

If I understand your testimony, Mr. Nelson, and also Mr. Michel's testimony, you both agree that there is no problem as far as the Cuban refugees are concerned, because what is attempted in H.R. 4853 is already available to Cuban refugees under the Cuban Adjustment Act.

If that is so, then it necessarily follows that H.R. 4853 is really intended to correct the situation as far as Haitians are concerned and to put Haitians in essentially the same position that the Cuban Adjustment Act puts the Cubans.

So the substance of your position, gentlemen, is that you are just opposed to bringing about the kind of equality of treatment that the chairman of the full committee was just speaking about. Now, when I consider that conclusion against the background of your impassioned denials that there has been any racial discrimination with respect to the treatment of Haitian refugees, I wonder how much sense it makes to say, on the one hand that there has been no discrimination against Haitians—and to condemn those who have pointed out the existence of that discrimination—and on the other hand, to say the Cubans are already being treated fairly under the Cuban Adjustment Act, but we don't want the Haitians to be given the same fair treatment that this bill would provide.

Do you wish to comment on that?

Mr. NELSON. Yes, Mr. Crockett, I do. I think our earlier comments, and I certainly won't repeat them all, but I would summarize several, are responsive. As pointed out by Mr. Michel and myself, this administration, since the time it has been in office, and even prior to the introduction of Simpson-Mazzoli, has favored some—if you can call it special treatment for the Cuban/Haitians, recognizing there are some unique situations there, but in context of the overall immigration reform.

Now, I am disappointed to hear what seems to be a negative prediction on the Simpson-Mazzoli bill coming up. We are all very interested in watching that; remember, it is 95 percent down the track, needing only a final rule after full Rules Committee, and floor action. We know very well, with Chairman Rodino and Chairman Mazzoli and other able members of this subcommittee and Senator Simpson and counterparts, that there will be a successful conference I think the President and the administration made it clear that we want a bill and we expect that there will be a bill.

So, while we know there are roadblocks, and it is certainly very unfortunate that there seems to be a politicalization lately, and I hope that that doesn't continue and that we can get a vote, as we are very far down the track. To start all over with this one part, we think, is the wrong way to go. So we are not saying we won't deal with this issue, but let's put all our attention and efforts into the comprehensive bill and do all we can, as Members of both sides of the aisle, to get that bill up.

That answers it, and it also voids, as I have testified earlier, the other problem of the piecemeal legislation. I think even Chairman Rodino and others would recognize that while everybody would like to do some balancing for the Haitians, in context with the Cubans—there is no argument with that—but it does open up, as Mr. McCollum's questions and others indicate—it does open up a problem of the nationality-specific legislation that will then be carried on by other nationality groups in saying, "If you did it for the Haitians, you do it for the others."

The Cuban legislation has been on the books for almost 20 years. That has been there. That is a fact of life, but I think that is why we need the comprehensive bill approach—and I think all would agree with that.

Now, the question is, if that does not pass, then what do we do? That is a tough question and I think we have to face it, but it is premature at this point and it is certainly not correct, sir, to say that that is the way of saying we oppose it.

I will only comment very briefly because of the time constraints. I think I have made my point on the discrimination issue. I think it has been very, very unfortunate, Mr. Crockett, that a lot of media, a lot of interest groups, have really not been too responsible in their comments, because the law on the books that has been enforced, in the relevant court decisions the facts indicate that there has not been discrimination.

Remember, too, that there are many thousands of Haitians, 20,000-or-so, that are here; and there is no effort from this administration to deport them, and they would not. So I think that that has to be—

Mr. MAZZOLI. I apologize and I apologize to the gentleman from Michigan but time has expired. Our subcommittee will try to complete one more panel before 9:30. Actually, at 9, both the Republican conference and the Democratic caucus start. Our members here may feel free to leave if they have to.

I am hoping we can continue until 9:30 and finish one more panel and maybe take a break and then come back and finish up our day.

So we thank you, gentlemen.

Mr. MAZZOLI. I would like to call forward the next panel, which is actually listed as panel No. 2, and that is Bishop Anthony Bevilacqua, chairman of the Bishops' Committee on Migration, National Conference of Catholic Bishops; Bishop Phillip Cousin, president of the National Council of Churches; and Rabbi Marc Tanenbaum, director of the American Jewish Committee.

Excuse me, I am just reminded that Councilman Donald Payne is appearing for Bishop Cousin of the National Council of Churches.

Bishop Bevilacqua, we again are on a very short time so you are recognized for 5 minutes.

TESTIMONY OF BISHOP ANTHONY J. BEVILACQUA, CHAIRMAN, COMMITTEE ON MIGRATION, NATIONAL CONFERENCE OF CATHOLIC BISHOPS; DONALD PAYNE, COUNCILMAN, NEWARK MUNICIPAL COUNCIL, ON BEHALF OF THE NATIONAL COUNCIL OF CHURCHES; AND RABBI MARC H. TANENBAUM, DIRECTOR OF INTERNATIONAL RELATIONS, AMERICAN JEWISH COMMITTEE

Bishop BEVILACQUA. Mr. Chairman and members of the subcommittee, I am Bishop Anthony J. Bevilacqua, Roman Catholic Bishop of Pittsburgh. I am the chairman of the Committee on Migration of the National Conference of Catholic Bishops and I am delighted to appear today on behalf of the U.S. Catholic Conference to express our enthusiastic and unequivocal support for H.R. 4853, the Cuban/Haitian Act of 1984, as introduced by Judiciary Committee Chairman Peter W. Rodino, Jr.

It is a distinct pleasure to have this opportunity to personally thank all of you on this subcommittee who have had the courage and vision to support this bill to end the suffering of the Haitian and Cuban boat people.

Mr. Chairman, H.R. 4853 is a just, carefully crafted and long-awaited solution to the plight of this limited group of Cuban and Haitian refugees. Chairman Rodino's bill will grant permanent residence to approximately 125,000 Cuban and approximately 131,000 Haitian boat people who arrived during the comparable periods in 1980 and 1981.

These Cuban and Haitian refugees risked their lives to flee from misery and repression. However, it is the unconscionable treatment that they received on arrival and the still unfulfilled promises of our Government to regularize their status that makes their situation unique. The vast majority of the Cubans from Mariel and the comparable and smaller group of Haitian refugees have been repeatedly promised that their entrant status would be converted to permanent residency through legislation.

We applaud the long-awaited regularization of status for Cuban and Haitian entrants, but the true humanity and sophistication of this bill is that it includes as beneficiaries a relatively small group of additional refugees, those arriving subsequent to the entrant program, but before January 1, 1982. The U.S. Catholic Conference is committed to having this later group included, since in many cases, they have suffered even more than the previous arrivals.

Of particular and perhaps even a primary concern to us is the group of over 2,000 Haitian refugees who were detained for up to 18 months in isolated locations around our country as part of a detention program that is universally regretted.

Now is the time for us to find the human compassion to recognize the suffering of the Cuban and Haitian refugees who arrived on our shores before 1982; recognize the equities that they have accumulated in our communities; and to finally grant them permanent residence here.

Mr. Chairman, it is essential that the subcommittee formally confirm the comprehensive coverage of H.R. 4853 with regard to two subgroups. Clearly this bill—the bill is intended to grant permanent residency to Cuban/Haitian entrants.

Subsection (c) of the bill, however, excludes from coverage nonimmigrants who are lawfully admitted to the United States and who subsequently overstayed their visas while never having made application for political asylum in our country. Unfortunately, a rigid application of subsection (c) could arguably undermine the spirit of the bill.

A number of the entrants have previously been admitted to the United States before 1980 and never applied for political asylum because of the official assurances that their status would be regularized. A merely formalistic reading of subsection (c) unfairly might make ineligible this group of entrants.

A second ambiguity in coverage of H.R. 4853 involves the eligibility of certain Haitians whose files were lost by the Immigration Service. During the INS Haitian program, a significant number of files were misplaced as Haitian refugees were transferred from prison to isolated prison around the country. Clearly, coverage under this legislation must be available to those Haitians whose original records were lost or destroyed through no fault of their own.

In conclusion, Mr. Chairman, we enthusiastically support the clear intent of this legislation to grant permanent residence on an equal basis to these Cuban and Haitian boat people in order to implement past promises and to correct past injustices.

The time is now for the U.S. Congress to reaffirm this country's commitment to remain a safe haven for the oppressed and we ask that this bill be passed into law immediately.

[The prepared statement of Bishop Bevilacqua follows:]

**PREPARED STATEMENT OF BISHOP ANTHONY J. BEVILACQUA, CHAIRMAN, COMMITTEE
ON MIGRATION, NATIONAL CONFERENCE OF CATHOLIC BISHOPS**

Mr. Chairman, Members of the Subcommittee:

I am Bishop Anthony J. Bevilacqua, Roman Catholic Bishop of Pittsburgh. I am the Chairman of the Committee on Migration of the National Conference of Catholic Bishops. I am delighted to have this opportunity to appear before this Subcommittee on behalf of the United States Catholic Conference to express our enthusiastic and unequivocal support for H.R. 4853, commonly called the Cuban/Haitian Adjustment Act of 1984, as introduced by Judiciary Committee Chairman Peter W. Rodino, Jr.

Mr. Chairman and other distinguished Members of the Subcommittee, I am grateful for your consideration of and support for this legislation. It is a distinct pleasure to have this opportunity to personally thank all of those who have had the courage and vision to support this bill to end the suffering of the Haitian and Cuban boat people. I am particularly grateful to Chairman Rodino for introducing this legislation, and to Chairman Mezzoli, Chairman Pepper, Chairman Fascell, Chairman Barnes, Representatives Fauntroy, Dixon, and the other distinguished Members of the Congressional Black Caucus, for their sustained

leadership on this question.

For many years the United States Catholic Conference has been actively involved in seeking substantive and procedural due process of law for the Haitian, and later the Cuban, boat people. We are grateful and proud that such a wide range of nationally-known civil rights organizations have joined us during the last several years in this effort, and we are pleased to unite our voices crying for justice for these refugees again today. It gives me particular personal pleasure to be joined today by my colleagues Bayard Rustin and Michael Hooper, who have worked tirelessly to end the tragic civil and human rights plight, and the legal limbo, of the Haitian refugees through the National Coalition for Haitian Refugees, on which I am also proud to serve.

For many years the United States Catholic Conference has participated with deep interest in the national debate about immigration legislation. This reflects the Church's pastoral concern for immigrants and refugees, both the documented and the undocumented, whatever their origin, manner of entry, or present status. It reflects the fact that, through its Office of Migration and Refugee Services working in conjunction with its diocesan counterparts, the United States Catholic Conference conducts the nation's largest voluntary program of assistance to immigrants and refugees. It reflects sensitivity to the ethnic and nationality groups most directly affected by immigration policy, notably including the large and growing Hispanic

population of the United States. And it reflects concern for the nation itself as a community of diverse origins committed by its history, its best values, and its own self-interest to liberty and justice for all.

Soon after Chairman Rodino took the initiative to introduce this essential legislation to grant permanent residence to a well-defined group of deserving refugees, the General Secretary of the United States Catholic Conference, Monsignor Daniel F. Hoye, applauded the bill and pledged Conference support in obtaining its passage. Monsignor Hoye stated that through this bill:

"...the plight of our Haitian brothers and sisters who have fled poverty and persecution, only to find imprisonment and deprivation upon arrival in this country, will finally be relieved. These good people are of special concern to the Church which has sought for so long to relieve their misery and to open the door to a life filled with hope rather than despair."

Monsignor Hoye added:

"The thousands of Cubans who came to the U.S. during the Mariel boat lift of 1980 have made a remarkable record of adjustment since their entry. Despite this, they have been deprived of any opportunity to obtain the benefits accorded permanent resident aliens. Among such benefits is the right to send for family members including spouses and children from whom they have been separated for well over three years. This legislation will make it possible for families to be reunited, a cornerstone of our basic U.S. immigration policy."

Mr. Chairman, H.R. 4853 is a just, carefully-crafted, and long-awaited solution to the plight of this limited group of Cubans and Haitians. The United States Catholic Conference congratulates Chairman Rodino on both the spirit and on the technical substance of this legislation. The Cuban/Haitian

Adjustment Act of 1984 is not compromised by rigid legalisms or narrow formalities, yet it restricts the benefits of this legislation to the most meritorious Haitians and Cubans.

Chairman Rodino's legislation will grant permanent residence to approximately 125,000 Cuban, and approximately 31,000 Haitian boat people who arrived during the comparable periods in 1980 and 1981. These Cuban and Haitian refugees risked their lives to flee from misery and repression to this country. However, it is the unconscionable treatment that they received on arrival and the still-unfulfilled promises of our government to regularize their status that makes their situation unique. The vast majority of the Cubans from Mariel and the comparable and smaller group of Haitian refugees have been repeatedly promised that their "entrant" status would be converted to permanent residency through legislation.

While we applaud this long overdue regularization of the status of the Haitian and Cuban "entrants," Chairman Rodino's bill intends to include as beneficiaries a relatively small group of additional refugees, and herein lies the real sophistication and humanity of this bill. Without greatly increasing the number of beneficiaries, this legislation eliminates the arbitrariness and other limitations that a rigid application of the definition of the term "entrant" would entail. The United States Catholic Conference is absolutely committed to the proposition that the small group of Cubans and Haitians who arrived subsequent to the initial granting of "entrant" status should also be regularized,

since they, in many cases, suffered far more than those who happened to arrive in the United States before the formation of this "entrant" status.

Of particular, and perhaps even of primary concern to the United States Catholic Conference, is the group of over two thousand Haitian refugees who were detained for up to 18 months in isolated locations around the United States as part of a detention program that was universally condemned and that is now universally regretted. These Haitian boat people have been subjected to repeated harsh and discriminatory treatment since their arrival on our shores. Now is the time to find the courage and compassion to recognize their suffering and the equities that they have accumulated in our communities and grant them permanent residence status. It is absolutely essential that the bill's definition of eligible applicant be preserved as it is now stated. This definition is not only equitable, but is also clearly understood and easily applied. It is the clear intent of the bill to include all those who fall within these commonsense parameters.

An exhaustive study* recently published by Florida International University supported by a grant from the United States Catholic Conference states, in part:

"This study reveals that the Haitians who are in South Florida have the education, training, and skills to

* "Haitians Released From Krome: Their Prospects For Adaptation And Integration In South Florida", Latin American and Caribbean Center, Florida International University, Occasional Papers Series Dialogues, #24, March 2, 1984, pp. 34, 35.

potentially contribute to American society. Moreover they are firmly committed to remaining in the U.S. Only the most dramatic changes in both political and economic conditions might entice them to return to Haiti. Other evidence further indicates that if they were to return to Haiti they have a high likelihood of facing persecution by Haitian officials. Because many of them left Haiti illegally, Haitian officials interrogate them closely and may imprison them upon return."

"The U.S. government, however, has had a consistent, continuing policy of deterring Haitians from coming to or remaining in the U.S. The imprisonment of Haitians in Krome was part of this. For the Entrants, Congress has yet to act upon President Carter's promise to provide a permanent immigration status to the Cubans and Haitians who arrived in 1980. Most of the Krome Haitians are still having their applications to remain in the U.S. adjudicated by the Immigration and Naturalization Service (INS). The uncertainty of their status has undeniably impeded their adaptation and integration. In many cases the impediment is direct--employers refuse to hire them. In most cases it is less direct--psychological and emotional stress for the individual. They cannot return to their homeland to see their wives or husbands or children left behind. Also, because they have no permanent immigration status in the U.S., the INS will not allow them to re-enter the U.S."

"Provision of permanent immigration status would protect them from abuse in Haiti and greatly help the Haitians' efforts to adapt to and integrate into U.S. society."

This study concludes:

"Permanent resident status for Krome Haitians and Haitian Entrants should be provided by the U.S. Congress. Returning Haitians to Haiti would likely subject them to persecution by Haitian officials. Moreover, permanent resident status would assist in the adaptation of Haitians by alleviating the psychological uncertainty they currently face, promoting family development and bringing many Haitians out from the underground. Moreover, if a large population exists which is afraid of the law because of their uncertain legal status, then enforcing the law, including labor law, becomes more difficult. It would further deter others from exploiting Haitians because of their uncertain legal status. Congressman Rodino with support from Greater Miami United along with the National Coalition for Haitian Refugees, the Congressional Black Caucus and others has recently proposed legislation which would legalize the status of both the Krome and Entrant Haitians. Passage of this legislation would significantly aid the Haitians in their efforts to adapt to and integrate into U.S. society."

Finally, Mr. Chairman, it is essential that this Subcommittee clarify all potential ambiguities that could arise in the application of this proposed legislation. I ask that your Subcommittee formally confirm the clear intent of this legislation in its application to include as eligible to apply two distinct sub-groups of Cubans and Haitians whose numbers are small, but who simply must be included in the coverage of this legislation for reasons of justice, humanity and administrative simplicity.

The clear purpose of this bill is that persons who received the immigration designation of "Cuban-Haitian entrant (status pending)" are to receive permanent residence along with other Cubans and Haitians (subsection (b)(1)). Similarly, the intent of subsection (c) is to exclude from coverage nonimmigrants who were lawfully admitted to the United States and who subsequently overstayed their visas while never making application for political asylum in the United States. Unfortunately, a rigid application of subsection (c) could arguably undermine the clear-on-its-face spirit of this bill. A number of those persons officially designated by the Carter Administration as "entrants" had previously been admitted to the United States as nonimmigrants before 1980 and never applied for political asylum because of the official assurances of status that they had received. A merely formalistic reading of subsection (c) could be seen to support the position that these "entrants" could not be adjusted under H.R. 4853.

This clearly unintended result can be avoided by reaffirming the initial intent of this legislation that the class to be the recipients of permanent residence status under this legislation include all "entrants". This can be done by adding one clause to subsection (c) which would then read:

"The benefits provided by subsection (a) shall not apply to an alien who was admitted to the United States as a nonimmigrant, unless the alien has filed an application for asylum with, or was accorded Cuban-Haitian entrant (status pending) by the Immigration and Naturalization Service before January 1, 1982 (addition underlined)."

The second potential ambiguity in coverage in H.R. 4853 involves the small group of Haitians who would have clearly been beneficiaries of this legislation if their files had not been lost or misplaced by the Immigration and Naturalization Service. The Act does provide benefits to all otherwise eligible Cubans and Haitians "...with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982 (emphasis added)." However, during the Immigration and Naturalization Service's "Haitian Program," a significant number of files were misplaced as Haitian refugees were transferred from prison to isolated prison around the country. Clearly, coverage under this legislation must be available to those Haitians whose original records were destroyed or lost, for whom other evidence of eligibility exists.

In conclusion, Mr. Chairman, we enthusiastically support the clear intent of this legislation to grant permanent residence on an equal basis to these Cuban and Haitian refugee boat people in

order to implement past promises and to correct past injustices. We thank all of you who have encouraged and supported this legislation for your humanity and sense of justice. The bill that we have before us today is the just, carefully-crafted, and long-overdue solution to the unconscionable plight of a relatively small group of Cubans and Haitians. The time is now for the United States Congress to reaffirm this country's commitment to remain a safe haven for the oppressed, and we ask that this bill be passed into law immediately.

Mr. MAZZOLI. Thank you, Bishop.

Councilman Donald Payne is recognized for 5 minutes.

Mr. PAYNE. Thank you, Mr. Chairman. My name is Donald Payne and I am representing Bishop Philip Cousin, president of the National Council of Churches and I am presenting his statement.

Bishop Cousin sends his sincerest regret that he was unavoidably detained today. I would ask that his statement be included in the hearing record.

Mr. MAZZOLI. Without objection.

Mr. PAYNE. For further introduction, Mr. Chairman, I am a member of the Newark Municipal Council. I have known and worked with the Church World Service and its parent body, the National Council of Churches for a number of years through my position as a board member of the International Division of the YMCA, which is also a member of the Church World Service.

I have also had the privilege for the past 12 years to serve as a member of the World Alliance of YMCA's Committee on Refugee and Rehabilitation, out of Geneva, Switzerland, and serve as its immediate past chairman.

Church World Service and its 31-member denominations are strongly supportive of H.R. 4853, the Honorable Chairman Rodino's Cuban/Haitian adjustment bill. We support it strongly.

I was going to say that as a member of the 10th Congressional District of New Jersey, Congressman Rodino is my Congressman and I feel privileged to be before this committee supporting his legislation.

Mr. MAZZOLI. Mr. Payne, I say parenthetically, he is a Congressman to many of us who don't live in the 10th District of New Jersey as well.

Mr. PAYNE. Thank you.

It is really unfortunate that this legislation is even necessary at this time. It rights wrongs which should have been addressed a long time ago. This bill is important for a number of reasons, as you will see in Bishop's statement—Bishop Cousin's statement, and points out the following: First, it provides long-awaited permanent residence to Cubans and Haitians who find themselves currently in a legal limbo.

We in the church circles call it an immigration purgatory. The Cubans and Haitians covered by Chairman Rodino's bill have done well. We have many Cubans and Haitians in Newark and we are very proud of their accomplishments and achievements. They are very proud people and they are certainly a positive influence in our community.

With all due respect to the members from Florida and elsewhere, we in Newark like to think of this as our bill, benefitting our residents in Newark and East Orange, which is another community which borders on us and has a tremendous number of Haitians.

We feel it appropriate and desirable that the Cubans and Haitians in Newark and elsewhere receive permanent residence. We want them not only to have the opportunity to be contributing members of our communities, which they already are, but we also want them to be on track to becoming good citizens some day.

Second, this bill is also extremely important for its inclusion of those who entered the United States after the so-called 1980

Cuban/Haitian entrant program. We think it absolutely essential that this class be included in this legislation and I commend Chairman Rodino for doing so.

There are few more shameful episodes in our immigration history than the treatment given Haitians in 1981 and 1982. As you know better than me, they were thrown into our jails for a year and a half, were run through mass proceedings without legal counsel in closed-door, so-called kangaroo courts, and it is high time we set the record straight with H.R. 4853.

We have a lot of Haitians in Newark and this provision is extremely important to them and the rest of us in the city.

The third and final point is that I would just like to strongly urge this committee to report this bill out favorably and quickly. I am told that it is perhaps the intention of those concerned to offer this bill as an amendment to H.R. 1510 if necessary.

This would be appropriate, in our view, as it would provide for an adjustment, rather than legalization for this group. As Bishop Cousin's statement indicates, we are dealing with a class whose members are already known to the Immigration Service and whose equities in the system are well known. Their adjustment can and should be made to take effect as of January 1, 1982.

Again, Mr. Chairman, I appreciate this opportunity to appear before the subcommittee in support of H.R. 4853. The subcommittee is to be commended for taking the time to consider this very important issue.

Thank you, again, Mr. Chairman.

[The prepared statement of Bishop Cousin follows:]

PREPARED STATEMENT OF BISHOP PHILIP R. COUSIN, PRESIDENT, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.

Mr. Chairman, I am pleased to have the opportunity to testify in support of Chairman Peter Rodino's bill (H.R. 4853) to adjust the status of certain Cubans and Haitians to permanent residence. As you know, the National Council of Churches of Christ, of which I am President, and its 31 member national Protestant communions, have over the years maintained a considerable ministry to Cubans and Haitians seeking haven in this country. Our work with and on behalf of these refugees primarily has been conducted through out relief, development, and immigration arm, Church World Service. Our ministry includes sponsorship, pastoral care, legal aid, and advocacy for due process and justice for these refugees. Chairman Rodino's bill is long-awaited relief for all of us, especially the Cubans and Haitians who have suffered so much.

OVERVIEW OF PROTESTANT CHURCH INVOLVEMENT

Church World Service (CWS) of the National Council of Churches has over the years sponsored some 65,000 Cuban and Haitian refugees. As the bulk of these refugees entered the United States through South Florida, CWS has maintained an office in Miami since the early 1960s. This office continues to this day to provide assistance to refugees in that area, and sponsors those few Haitians, Cubans, and other nationalities being released from the INS Krome North detention facility.

The record of this country in responding to the Cuban influx of the 1960s is truly remarkable. Our churches in New York, Chicago, Miami, and other parts of the country offered in large scale sponsorship and support for the Cubans entering the country, contributing to the now-celebrated success of the Cuban community in this country. To this day, we can walk through major cities in America and point to thriving business establishment which were begun with support from churches and made to succeed with Cuban determination.

In that decade was passed the Cuban Adjustment Act of 1966. We strongly supported that legislation—just as we have similar legislation pertaining to other refu-

gee groups—as we felt it an important step in permitting the Cubans to become fully part of the American policy and on the track toward citizenship.

The decade of the 1970s was a different story. In late 1972, the first boat of refugees from Haiti arrived on our shores. An editorial in *The Miami News* of December 12, 1972, proved to be hauntingly prophetic when it stated:

“A moment of truth has arrived for our local immigration officials who so casually go about their almost daily task of processing Cuban citizens landing in South Florida after having escaped the Castro regime. Should the procedure be any different for the dark-skinned Haitians?”

Certainly, discrimination has been a theme consistently raised by critics of our government's response over the past dozen years to the Haitian boat people. It was first our Black churches which raised this accusation, and it was further cited officially in a resolution passed by the Governing Board of the National Council of Churches of Christ in February 1974.

Additionally, arguments noting the discriminatory treatment of the Haitians have made up an important part of the legal suits filed on behalf of the Haitians. Indeed, financial and other support from our churches for such cases as *Louis v. Nelson* was considerable.

It is undeniable, for example, that until the last year there has been no other national group to suffer such prolonged detention. In the 1970s, Haitians were held in county prisons for months on end. And in the 1980s, the so-called “Spellman class” was held in detention for a year and a half until Federal Judge Eugene Spellman ordered their release.

Further, the denial of such due process rights as access to legal counsel, notification of the right to apply for asylum, and more was for many years commonplace when it came to the Haitians. As early as 1974, *The Miami Herald* (3/15/74) decried what the newspaper termed the INS “20-minute interview” of Haitian asylum applicants, in which *The Herald* noted that no attorney was present, there were no hearings conducted before immigration judges, no opportunity existed to present witnesses, and there was no chance to present documentation of persecution. These practices were continually challenged by our churches.

In November 1977, the National Council of Churches of Christ was unsuccessful in reaching an agreement with the Immigration and Naturalization Service which temporarily ameliorated many of these conditions. The INS agreed to release Haitians from detention and to grant them work authorization. The INS altered its procedures so as to permit Haitian hearings before an immigration judge. This agreement came at a time in which court battle against the INS on these matters had reached the U.S. Supreme Court. However, by the summer of 1978, the Service revoked employment authorization for Haitians and began hurried deportation proceedings. This led the following summer, on July 23, to a decision by Federal Judge King in Miami to issue a temporary restraining order against further deportations of Haitian asylum seekers. His decision was followed a few days later by a preliminary injunction by Federal Judge Hoevela, also of Miami, against the revocation of work permits.

The basis for church concern for the Haitians was a belief that their claims for asylum were generally legitimate and nonfrivolous. In fact, the National Council of Churches of Christ, and its Church World Service department, in 1974 and 1975 engaged in an exercise of collecting from 300 detained Haitians in the United States affidavits which substantiate this belief. The affidavits note political imprisonment in Haiti, torture, and maltreatment by the “Ton Ton Macoutes” and other government authorities.

The human rights problems in Haiti have been well chronicled since the accession to power of Francois “Papa Doc” Duvalier in 1957, and persisting to date under his son, President-for-life “Baby Doc” Duvalier. As early as 1962, President John F. Kennedy recognized this, and suspended aid to that country until Haiti holds legitimate and free elections, curtails the Ton Ton Macoutes, and discloses fully the uses by the government of U.S. Government assistance. Assistance to Haiti was then resumed in 1964.

Since that time, a number of groups, including Amnesty International, the Lawyers Committee for International Human Rights, and others, have been consistent reporters of the human rights problems in Haiti. Numerous delegation visits to that country, including one most recently by representatives of the Congressional Black Caucus, have highlighted some of the human rights problems there. These actions led to such important court cases as *Jean v. Meisner* and, later, *Louis v. Nelson*.

As the Subcommittee is well aware, the decade of the 1980s has been a problematic one in the area of first asylum, beginning with the Cuban-Haitian “Mariel” boat lift of 1980. Members of the Subcommittee—in particular those from Florida—know

well the problems Florida, as well as the nation, faced in that year. All of us, the churches included, were not adequately prepared to meet the need for emergency food, clothing, shelter, and other services which the boat lift demanded. The problems which the Cubans and Haitians faced on top of the trauma of their journeys on the high seas were ones no human being should have to endure.

However, the problems which these refugees encountered did not encompass only shortcomings in service delivery. The classification of the 1980 arrivals as "entrants" placed these individuals in a kind of immigration purgatory, what the press has widely termed a "legal limbo." This has meant that for four years now, these persons have found it much more difficult than other legal residents or legally-recognized refugees to obtain jobs and to integrate into U.S. communities, and they have also been unable to pursue permanent residence and citizenship.

Mr. Rodino's bill rightly rectifies this injustice.

Those who came in 1981 bring additional equities and merits to bear. They arrived by identical means as their compatriots who came the previous year, i.e., by boat going primarily to South Florida. However, rather than receive entrant status, many were imprisoned and deported.

It became apparent by the spring of 1981 that the INS had implemented a new policy with respect to the Haitians of detaining them while they applied for asylum. As the Krome North detention camp outside Miami filled to capacity, the INS began using other Service facilities and federal prisons to hold the Haitians, generally in remote areas away from legal counsel and immigration judges. By the end of 1981, 2000 Haitians were held in New York, West Virginia, Texas, Louisiana, Kentucky, Puerto Rico, and, of course, Florida.

Concerned about their plight, religious and other groups began meeting to consider their situation. What emerged in March 1982, was the National Emergency Coalition for Haitian Refugees, of which we are a founding member. While maintaining our interest in ensuring general due process for the detained Haitians, our primary focus—and that of the Coalition—became one of gaining release for the Haitians. Finally, in the summer of 1982, Judge Eugene Spellman ordered the Haitians released from detention while they pursued their asylum claims.

Voluntary agencies, including Church World Service, cooperated with the court in the release program. The Haitians were placed with sponsors in areas in which, for the most part, they could receive competent legal counsel and in which there existed a Haitian community.

The trauma which this population faced did not end with their release from eighteen-months imprisonment. They and their sponsors faced the difficult task of locating employment, with employers reticent to hire Haitians given their tenuous immigration status. Also, the imminent possibility of deportation to Haiti left many of the Haitians in a state of uncertainty. Indeed, a few from among the Spellman class have been deported.

THE NECESSITY OF THE RODINO BILL

Chairman Rodino's bill is essential for a number of reasons.

First, it appropriately ends the ad hoc "entrant" status in favor of permanent residence.—For the past four years, these Cubans and Haitians have had stamped to their I-94 entry document "Cuban-Haitian Entrant (Status Pending)." The "pending" designation remains as a reminder that then-President Jimmy Carter, whose administration coined the term "entrant," promised these refugees that their status would soon be adjusted to permanent residence.

Thus, H.R. 4853 represents a promise fulfilled for those entrants who, as described in paragraph (a)(2), are "otherwise eligible to receive an immigrant visa" with the relevant exclusions of the law applicable.

Second, the bill recognizes the necessity of encompassing those Haitians and Cubans who arrived after the entrants program, but before January 1, 1982.—The conditions which this class of individuals faced are unprecedented and we cannot adequately underscore how absolutely critical it is that this legislation covers the class.

The treatment which these individuals received was briefly described above. They arrived, just as their compatriots in 1980, seeking asylum in the United States. However, unlike the 1980 entrants, they were imprisoned for a year and a half. Almost every member of this subcommittee had Haitians incarcerated in his state. Federal courts have found their detention unlawful and discriminatory.

Some among the class were shipped back to Haiti after hurried, back room mass hearings, without benefit of counsel, in what the press appropriately dubbed "kangaroo courts." Again, the courts had to put a halt to this practice.

These are but a few of the merits and equities which pertain to this class. We commend Chairman Rodino for recognizing them. As a result, again, we support as absolutely essential the inclusion in this legislation of Cubans and Haitians up to January 1, 1982.

Third, the bill provides for an "adjustment" rather than a "legalization."—This difference here, in our view, is not mere semantics.

The individuals which this legislation encompasses came here, we would argue, seeking asylum, a legitimate basis for entry into the United States. This Subcommittee is on record, as of last year, with respect to the Cuban-Haitian entrants, agreeing that their entry was legal. So, in that sense a "relegalization" or amnesty is not appropriate.

Furthermore, this population has records with and is known to the Immigration and Naturalization Service. In this sense, H.R. 4853 is not a legitimization of the presence of an unknown population. Unlike the population which would benefit from a legalization, the INS already has the records for this class documenting their continuous residence, their admissibility or inadmissibility, and more.

Finally, an adjustment of this sort appropriately confers benefits different from the beneficiaries of a legalization, whose legal presence in the United States would begin only upon legalization.

Primary among these is that the adjustment program in H.R. 4853 establishes the record of permanent residence as of January 1, 1982, rather than as of the date of application. We commend Chairman Rodino for including this provision in his bill. Such a provision recognizes that the beneficiaries of the bill are known to the INS to have been continuously resident since 1980 and 1981. It does not inordinately delay the ability of the class members to gain permanent residence and to be on the track toward citizenship.

Finally, the bill is desirable for not closing the Cuban Adjustment Act of 1966.—Appropriately, the Rodino bill is a measure to benefit a specific class over a specific time frame. The Cuban Adjustment Act, on the other hand, is law designed to deal with the potentially ongoing situation of arrivals in the U.S. from Cuba, and therefore should be retained. Granted, the Adjustment Act itself could use some adjustments, but the basic law we believe should remain intact.

Mr. Chairman, I want again to convey to the Subcommittee the strong support which H.R. 4853 has received from Protestant Churches across the country. We stand fully behind the bill, and urge the subcommittee to report it favorably and soon.

Mr. MAZZOLI. Thank you, Councilman Payne.
Now, Rabbi Tanenbaum.

Rabbi TANENBAUM. Thank you, Mr. Chairman, and other distinguished members of the subcommittee for inviting the views of the American Jewish Committee on H.R. 4853, the Cuban/Haitian Adjustment Act of 1984.

My name is Rabbi Marc H. Tanenbaum. I am the director of international relations for the American Jewish Committee. It is a privilege to appear before you today to express my strongest support for the Cuban/Haitian Adjustment Act of 1984, as introduced by Judiciary Chairman Peter Rodino.

The American Jewish Committee has long advocated the necessity of granting permanent residence to the limited group of Haitian and Cuban boat people defined in Chairman Rodino's bill, and at our annual meeting in New York last year, we adopted a strongly worded resolution urging the early passage of this legislation.

Mr. Chairman, American Jewish organizations, the American Jewish people in this society, are particularly sensitive to and concerned with the plight of refugees stranded without a homeland. The Jewish people know only too well the human consequences of policies of indefinite detention and the interdiction of boats in international waters.

In 1939, just prior to the Second World War, oppressed Jews from Germany also took to the sea in search of refuge and were

denied entry to the United States. That indifference to human suffering resulted in the death of thousands and became a moral blotch on the escutcheon of liberty of this great democracy.

The American Jewish Committee has, for the last 3 years, placed a very high priority on finding a just and equitable solution that would end the horrible dilemma and suffering experienced by the Haitian refugee boat people. We have actively been involved in the defense of the fundamental legal and human rights of these Haitians since the first boatload of fearful refugees landed in southern Florida in 1972.

We applaud the efforts of Chairman Rodino and other cosponsors of this long-awaited legislation, both because of its comprehensive coverage and because of its humane spirit and formed by respect for the fundamental principles of equal treatment before the law.

We are convinced that no lesser coverage would rectify the continuing tragedy of these boat people and we congratulate the bill's sponsors for their precise wording of these provisions.

The American Jewish Committee is particularly supportive of the legislation, precisely because its comprehensive class definition provides for Cubans and Haitians who entered our country before 1982. This coverage is not restricted solely to the regularization of narrower Cuban/Haitian entering class of refugees. It is essential to fully correct the discriminatory treatment that all the refugees have thus far received.

In addition to endorsing the spirit of fundamental fairness and humanitarian concern in this legislation, the American Jewish Committee agrees with its provisions as absolutely essential to grant permanent residency to both entrants and to persons with respect to whom any record was established by the Immigration Service before January 1, 1982.

A more restrictive class definition will simply not correct the injustices suffered by the Haitian boat people.

Mr. Chairman, we are proud of our association with the cause of the Haitian and Cuban boat people and we are pleased to state our unequivocal support for this legislation. However, we are particularly concerned that it must be as comprehensive as possible in the breadth of its coverage.

Mr. Chairman, we affirm these views, not as a matter of charity or being nice to these unfortunate victims of injustice. We do so because in an issue such as this, the quality of the soul of our great Republic is at stake.

Thank you again for this welcome opportunity to appear and express the views of my organization on this issue of great concern to all of those who wish justice to prevail in our treatment of refugees from all parts of the world.

[The prepared statement of Rabbi Tanenbaum follows:]

PREPARED STATEMENT OF RABBI MARC H. TANENBAUM, DIRECTOR OF INTERNATIONAL
RELATIONS, AMERICAN JEWISH COMMITTEE

Thank you, Mr. Chairman and other distinguished Members of the Subcommittee for inviting the views of the American Jewish Committee on H.R. 4853, the Cuban-Haitian Adjustment Act of 1984. My name is Rabbi Marc H. Tanenbaum and I am the Director of International Relations for the American Jewish Committee. I am honored to appear before you today to express my strongest support for the Cuban-Haitian Adjustment Act of 1984 as introduced by Judiciary Committee Chairman Peter Rodino. The A.J.C. has long advocated the necessity of granting permanent residence to the limited group of Haitian and Cuban boat people defined in Chairman Rodino's bill, and at our annual meeting in New York last week we adopted a strongly worded resolution urging the early passage of this legislation.

Mr. Chairman, American Jewish organizations are particularly sensitive to and concerned with the plight of refugees stranded without a homeland. The Jewish people know only too well the human consequences of policies of indefinite detention, and the interdiction of boats in international waters. In 1939, just prior to the Second World War, oppressed Jews from Germany also took to the sea in search of refuge and were denied entry to the United States. That callousness to human suffering resulted in the death of thousands, and became a moral blotch on the escutcheon of liberty of this great democracy.

The A.J.C. has for the last three years placed a very high priority on finding a just and equitable solution that would end the horrible dilemma and suffering experienced by the Haitian refugee boat people. We have actively been involved in the defense of the fundamental legal and human rights of these Haitians since the first boatload of fearful refugees landed in

southern Florida in 1972. We applaud the efforts of Chairman Rodino and the other co-sponsors of this long-awaited legislation both because of its comprehensive coverage and because of its humane spirit informed by respect for fundamental principles of equal treatment before the law. In a recent letter complimenting Chairman Rodino for his leadership on this issue of fundamental importance to the A.J.C., we wrote:

"The unique plight and legal limbo of this restricted number of refugees can only be satisfactorily resolved through a grant of permanent resident status as you propose. The American Jewish Committee strongly agrees that fundamental principles of justice and humanity demand that both the Cuban refugees from Mariel and the far smaller group of Haitian refugees who arrived slightly later must have their legal status regularized not only because of the tragic nature of their plight and the treatment they have received but also because they have been repeatedly linked with the Cuban-Haitian "entrant" program of the Carter Administration. The great majority of the class of Cubans and Haitians who would benefit from the Rodino legislation long ago have been granted a temporary "entrant" status and a promise of legal residence."

In the same letter commending Chairman Rodino for his initiative, we emphasized the crucial importance of the specific provisions of the Cuban-Haitian Adjustment Act. We are convinced that no lesser coverage would rectify the continuing tragedy of these boat people, and we congratulate the bill's sponsors for their precise wording of these provisions.

The A.J.C. is particularly supportive of the legislation precisely because its comprehensive class definition provides for Cubans and Haitians who entered our country before 1982. This coverage is not restricted solely to the regularization of the narrower Cuban-Haitian "entrant" class of refugees. It is essential to fully correct the discriminatory treatment that

all the refugees have thus far received. In addition to endorsing the spirit of fundamental fairness and humanitarian concern in this legislation, the A.J.C. agrees with its provisions as absolutely essential to grant permanent residency to both (1) "entrants" and (2) persons with respect to whom any record was established by the Immigration Service before January 1, 1982. A more restricted class definition will simply not correct the injustices suffered by the Haitian boat people.

Mr. Chairman, we are proud of our association with the cause of the Haitian and Cuban boat people and we are delighted to state our unequivocal support for this legislation. However, we are particularly concerned that it must be as comprehensive as possible in the breadth of its coverage.

Mr. Chairman, we affirm these views not as a matter of charity, of being "nice" to these unfortunate victims of injustice, we do so because the quality of the soul of our great republic is at stake.

Thank you again for this welcome opportunity to appear and express the views of the American Jewish Committee on this issue of great concern to all those who wish justice to prevail in our treatment of refugees from all parts of the world.

Mr. MAZZOLI. Thank you, Rabbi, and let me salute all three of you. Each one was well within the 5 minutes and I salute you. I know—I personally know how hard it is to compress and condense a statement to 5 minutes in length. It is extremely more difficult than to prepare a long speech, so let me thank you for that.

Let me yield to my chairman for any questions or observations he would have.

Mr. RODINO. I want to thank you, Mr. Chairman, and I am going to take the time of the committee except to commend all these gentlemen and the organizations they represent. They have really responded to the plight of these people and have eloquently stated the cause. I don't think that there are any questions that I might ask that would enlighten us any more than the very, very fine statements that have been and will be made in support of the legislation.

Mr. MAZZOLI. They are very eloquent.

My friend from Michigan is recognized for a statement or questions.

Mr. CROCKETT. No questions, Mr. Chairman.

Mr. MAZZOLI. Thank you.

Well, I think you gentlemen have seen from my two panelists here that you have answered the questions in advance. Let me just perhaps ask one quick question of anyone who would care to respond—or all of you—and that is about the second part of the bill which doesn't deal with regularization of the Cuban/Haitians who come to the country, but deals with the question of issuance of visas to Cubans who are currently in Cuba, but aren't in that class of close relatives which are now being cleared by the State Department.

Have any of your organizations taken a stand on that?

Councilman PAYNE?

Mr. PAYNE. The position of Church World Services is that they are in favor of visas to be issued. I think that any kind of liberalization of current standards to allow the country to once again be the place where we send people who are striving for democracy would be provided with visas.

Mr. MAZZOLI. I would assume from that answer, too, though, that this phase doesn't rise to the same magnitude of intensity and importance as the first phase. Is that a fair statement?

Mr. PAYNE. That is right.

Mr. MAZZOLI. Bishop Bevilacqua.

Bishop BEVILACQUA. I think I would have to go along with that, also, that they be treated equally like any other country. It isn't the part of the bill that rouses the compassion that the other would.

Mr. MAZZOLI. Thank you.

Rabbi, please.

Rabbi TANENBAUM. We have not taken a formal position, but I know the sense of our leadership would support every possible act that would make possible the reunification of families. Anyone who has had any experience in oppressive societies, restrictive societies, feels a profound sense of obligation to open up every conceivable human opportunity for people to achieve freedom; to achieve

human dignity by reconciliation with their families and to live in an atmosphere of democracy. We would certainly support that.

Mr. MAZZOLI. Thank you very much and thank you, again, all the panels.

We will now take a break until about 11 and we will have to take part in our Democratic caucus.

We stand in recess until 11.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

Because of changes in part dictated upon us, we have altered our hearing list. We now ask to come forward Mr. Norman Hill of the A. Philip Randolph Institute; Mr. Jay Mazur, secretary-treasurer, of the International Ladies Garment Workers, AFL-CIO; Mr. Michael S. Hooper, executive director, National Coalition for Haitian Refugees; and Mr. Eduardo Padron, cochair of the Greater Miami United.

Most of you were in the room this morning and heard that we are operating with a very limited time, so if you could, we would appreciate your compressing your statements to 5 minutes each and any written statements are now made a part of the record.

Mr. Hill, you are recognized.

TESTIMONY OF NORMAN HILL, PRESIDENT, A. PHILIP RANDOLPH INSTITUTE; JAY MAZUR, SECRETARY-TREASURER, INTERNATIONAL LADIES GARMENT WORKERS UNION, AFL-CIO; MICHAEL S. HOOPER, EXECUTIVE DIRECTOR, NATIONAL COALITION FOR HAITIAN REFUGEES; AND EDUARDO PADRON, CO-CHAIRMAN, GREATER MIAMI UNITED

Mr. HILL. Thank you, Mr. Chairman. I am here on behalf of Bayard Rustin, the national chairman of the Randolph Institute. I am president of the A. Philip Randolph Institute. He sends his regrets because a sudden illness which we hope will be of short duration prevented him from being here.

Mr. MAZZOLI. I am sorry. We admire him very much and hope that it is short.

Mr. HILL. He very much wanted to be here and expresses his regrets. I will now read his statement.

Mr. MAZZOLI. Thank you.

Mr. HILL. Thank you, Mr. chairman, Representative Fish and the other members of the Subcommittee on Immigration, Refugees and International Law for holding these hearings to consider the Cuban/Haitian Adjustment Act of 1984, H.R. 4853, introduced by Judiciary Committee Chairman Peter Rodino.

This legislation is the long-overdue civil rights remedy to the tragic plight of Cubans and Haitians who have come to our shores seeking safety and have already waited too long for an equal chance in our society.

My name is Bayard Rustin and I am chairman of the A. Philip Randolph Institute. The A. Philip Randolph Institute's 160 chapters nationwide today remain committed to the principles espoused by our founder, A. Philip Randolph, including a commitment to political democracy for all people, whether in the United States or abroad.

I know that A. Philip Randolph would have enthusiastically endorsed our efforts to place the concern for refugees high on the civil rights agenda. My own involvement in civil rights and refugee affairs spans over 40 years, beginning with my active involvement in the effort to protect the fundamental rights of Japanese Americans who were interned during World War II.

I am sad for our country when I am reminded of the parallels between this shameful episode and the recent long-term detention of the Haitian refugee boat people. It is from this long commitment to justice that in March 1982, I joined with over 40 colleagues from prominent national civil rights, religious, labor, and human rights organizations to respond to the intolerable detention of Haitian refugee boat people by forming a National Coalition for Haitian Refugees with the specific aim of ending this dreadful mistreatment and furthering the public consideration of legal status for the Haitian refugees.

I am proud to be joined on this panel today by Michael Hooper, the executive director of this organization. We remain committed to the goals of justice and equal protection for the Haitian refugees and I am delighted to have this opportunity today to personally thank Judiciary Committee Chairman Peter Rodino for having the courage and vision to continue to play a leadership role in the effort to correct the intolerable plight of the Cuban and Haitian boat people through the introduction of the Cuban/Haitian Adjustment Act of 1984.

In gratitude to Chairman Rodino, and with heartfelt thanks, we strongly support this legislation. I also want to thank you, Chairman Mazzoli, and the other subcommittee members who have already joined Chairman Rodino as cosponsors of this essential legislation.

The Haitian refugee boat people are the first numerically significant group of black refugees ever to seek safety on our shores from brutal repression and degrading economic chaos. Our treatment of this group of boat people is, technology, significant as a test of the fairness and equal application of our refugee laws to peoples from all nations who no longer are allowed full participation in their own societies.

Our treatment of the Haitian refugees is to test our Nation's will to carry out the much-applauded reforms contained in the Refugee Act of 1980, its attempt to evenhandedly provide uniform criteria to discern who shall obtain safe haven in our country.

Our treatment of this group of black boat people has provided our Nation a test, and it is a test that thus far we have sadly not met.

From the first boatload of Haitian refugees who landed in southern Florida in 1972, the Immigration Service has speeded the rejection of Haitian claims for political asylum and hastened their deportation back to Haiti, often at overwhelming social cost and untold suffering. Wholesale violations of civil rights have occurred in the process.

In 1980, a Federal judge in Miami found the INS treatment of the Haitian refugees so repugnant that he ordered a stop to their proceedings and retrials for over 4,000 Haitian plaintiffs. But this unprecedented mistreatment did not stop.

In fact, with the illegal detention program promulgated in 1981, the singling out of the Haitian refugees for particular abuse escalated. It took a court order handed down over a year later to release almost 2,000 Haitians who were imprisoned pursuant to this detention program.

This unprecedented treatment meted out to these black boat people is a civil rights light for our country, that can only be satisfactorily remedied by granting permanent residency to these people who have been so maltreated.

Chairman Rodino's Cuban/Haitian Adjustment Act would do just that. Chairman Rodino's bill is simple, limited and fair. H.R. 4853 would grant permanent residence to Cubans and Haitians who arrived in our country before January 1, 1982, and for whom any record was established with the Immigration Service before that date.

This comprehensive coverage is the very reason that Chairman Rodino's bill has received the wholehearted support of every major civil rights organization in the country aware of the plight of Cuban and Haitian refugees.

Mr. MAZZOLI. Mr. Hill, I am sorry, could you summarize, perhaps, the remainder of Mr. Rustin's statement.

Mr. HILL. We feel that not only is the bill timely; it is right, just and fair. It refers to a specific group which unfairly has been let down and promises to rectify a longstanding injustice.

[The prepared statement of Mr. Rustin follows:]

PREPARED STATEMENT OF BAYARD RUSTIN, CHAIRMAN, A. PHILIP RANDOLPH INSTITUTE

Thank you, Mr. Chairman, Representative Fish and the other Members of the Subcommittee on Immigration, Refugees and International Law, for holding these hearings to consider the Cuban-Haitian Adjustment Act of 1984, H.R. 4853, introduced by Judiciary Committee Chairman Peter Rodino. This legislation is the long overdue civil rights remedy to the tragic plight of Cubans and Haitians who have come to our shores seeking safety and have already waited for far too long for an equal chance in our society.

My name is Bayard Rustin, and I am the Chairman of the A. Philip Randolph Institute. The A.P.R.I., as many of you know, was established almost twenty years ago following the passage of the civil rights legislation of the 1960s which had such a significant impact on the ability of the black community in our country to realize in their own lives the American ideal of political freedom and economic justice for all people. Today, our 160 chapters around the country remain dedicated to the principles espoused by our founder, A. Philip Randolph, including a commitment to political democracy for all people whether in the United States or abroad. I know that A. Philip Randolph would have enthusiastically endorsed our efforts to place the concern of refugees high on the civil rights agenda.

My own involvement in civil rights and refugee affairs spans over forty years, beginning with my active involvement in the effort to protect the fundamental rights of Japanese-Americans who were interned during World War II. I am sad for our country when I am reminded of the parallels between this shameful episode and the recent long-term detention of the Haitian refugee boat

people. Today, as an International Vice President of the International Rescue Committee, I am devoting an ever-increasing amount of time and energy to safeguarding the basic rights and freedoms of refugees here and abroad.

It is from this commitment that in March of 1982 I joined with over forty colleagues from prominent national civil rights, religious, labor and human rights organizations to respond to the intolerable detention of Haitian refugee boat people by forming the National Coalition for Haitian Refugees, with the specific aim of ending this dreadful mistreatment, and furthering the public consideration of legal status for the Haitian refugees. I am proud to be joined on this panel today by Michael S. Hooper, the Executive Director of this organization.

We remain committed to the goals of justice and equal protection under law for the Haitian boat people, and I am delighted to have this opportunity today to personally thank Judiciary Committee Chairman Peter Rodino for having the courage and vision to continue to play a leadership role in the effort to correct the intolerable plight of the Cuban and Haitian boat people through the introduction of the Cuban-Haitian Adjustment Act of 1984. In gratitude to Chairman Rodino, and with heartfelt thanks, we strongly support this legislation.

I want also to thank you, Chairman Mazzoli, and the other Subcommittee Members who have already Joined Chairman Rodino as co-sponsors of this essential legislation.

The Haitian refugee boat people are the first numerically significant group of black refugees ever to seek safety on our

shores from brutal repression and degrading economic chaos. Our treatment of this group of boat people is therefore significant as a test of the fairness and equal application of our refugee laws to peoples from all nations who no longer are allowed full participation in their own societies. Our treatment of the Haitian boat people is a test of our nation's will to carry out the much-applauded reforms contained in the Refugee Act of 1980, its attempt to even-handedly apply international law and provide uniform criteria to discern who shall obtain safe haven in our country. Our treatment of this group of black boat people has provided our nation a test, and it is a test that thus far we sadly have not met.

From the first boatload of Haitian refugees who landed in southern Florida in December 1972, extraordinary measures have been taken by the Immigration and Naturalization Service to speed the rejection of Haitian claims for political asylum and to hasten deportation back to Haiti -- often at overwhelming social costs and untold suffering. Wholesale civil rights violations have occurred in the process, and this official disrespect for the rule of law has also eroded respect for the rights of permanent residents and citizens. In 1980, Judge James Lawrence King found in his celebrated decision handed down in Haitian Refugee Center v. Civiletti, that the "manner in which the Immigration and Naturalization Service treated the more than 4000 Haitian plaintiffs violated the Constitution, the immigration statutes, international agreements, I.N.S. regulations and I.N.S. operating procedures. It must stop."

But it did not stop. In fact, with the detention program illegally promulgated by the Immigration Service in May 1981, the singling out of the Haitians for particular mistreatment escalated. The Government Accounting Office, in its report, "Detention Policies Affecting Haitian Nationals", issued June 16, 1983, concluded that "(T)he cost and the adverse humanitarian effects of long-term detention do not make it attractive as a normal way of dealing with undocumented aliens seeking asylum" (p.iv). However, it took a court order, handed down in June of 1982, to release almost 2000 Haitians held under this detention program, many of whom had been imprisoned for over a year and a half under substandard conditions.

This unprecedented treatment meted out to these black boat people is a civil rights blight for our country, and can only be remedied satisfactorily by granting permanent residency to these people who have been so mistreated. Chairman Rodino's legislation would do just that.

Chairman Rodino's bill is simple, limited and fair, providing legal status to a selected group of refugees. It is not a substitute for a comprehensive legalization program, but a specific grant to meet a specific need.

H.R. 4853 would grant permanent residence to Cubans and Haitians who arrived in our country before January 1, 1982, and "with respect to whom any record was established by the Immigration and Naturalization Service" before that date. This legislation has received the active endorsement of every major civil rights organization aware of the plight of these refugee groups precisely

because of this comprehensive coverage.

Repeated government announcements have promised the great majority of this group that their "entrant" status would be converted to permanent residence through legislation. We in the civil rights community agree with Chairman Rodino's particular concern for the small group of Haitians and Cubans who arrived subsequent to the granting of "entrant" status but prior to January 1, 1982. Their added suffering under indefinite detention deserves the special attention this legislation affords these refugees.

I am additionally gratified to have received assurances that the intent of the legislation is to include all Cuban and Haitian "entrants" and all those for whom any record was established, to ensure the most just and equitable implementation of the bill's benefits. It is of crucial importance that potential beneficiaries not be made ineligible because their files were misplaced by the Immigration Service. Additionally, all "entrants" must be secure that the interim status granted to them over three years ago will not be taken away through a rigid application of Section "C" of the Act. Mr. Chairman, it would go against all civilized principles to grant to these boat people an interim status, to promise them that it will be made permanent, only to deny them permanent residence on a clearly-unintended technicality.

CONCLUSION

In closing, I want to say again how important this issue is to the entire human rights community in our country, and

how Chairman Rodino's legislation has been carefully crafted to be both inclusive of the refugees in need of status adjustment while remaining limited in scope and not open-ended.

Mr. Chairman, I sincerely request that the Subcommittee on Immigration, Refugees and International Law work closely and actively with Judiciary Committee Chairman Peter Rodino in correcting the intolerable civil rights plight of the Cuban and Haitian boat people, by expediting the passage of the Cuban-Haitian Adjustment Act out of the Subcommittee and by furthering its early consideration by the full House of Representatives.

Thank you again for this opportunity to appear before you today to speak on this essential civil rights legislation.

Mr. MAZZOLI. Thank you very much. I appreciate your willingness to work with us in this very narrow framework we have.

Mr. HILL. Right.

Mr. MAZZOLI. Mr. Mazur, you are recognized for 5 minutes.

Mr. MAZUR. Mr. Chairman, thank you very much for holding these hearings on H.R. 4853 and for inviting me to testify before this subcommittee.

My name is Jay Mazur and I am the general secretary-treasurer of the International Ladies Garment Workers Union. The ILGWU strongly endorses the Cuban/Haitian Adjustment Act of 1984 and so does the AFL-CIO.

In his recent letter to Chairman Rodino of the House Judiciary Committee, President Kirkland called for the enactment of H.R. 4853 as—and I quote: "The only satisfactory solution to the unique plight and suffering of Cuban and Haitian boat people who sought safety on our shores before 1982."

Mr. Chairman, our union, a union of immigrants, was one of the earliest to stand in defense of the Haitian refugees. We did it because we realized early on that their treatment in this country had posed a major civil rights challenge to all of us.

In the words of Lane Kirkland, "Our Government's policy against Haitian refugees has been discriminatory, cruel and politically dangerous."

In the tradition of all civil rights struggles, therefore the ILGWU joined hands with other major labor, civil rights, religious and human rights organizations to establish the National Coalition for Haitian Refugees. I am glad to see some distinguished friends from that coalition here with me this morning.

It has been the commitment of that coalition to bring justice to the Haitian refugees. The bill before you, in many ways, is a culmination of the effort of that coalition, and to that extent, it is personally gratifying.

Mr. Chairman, the ILGWU and the men and women of the American labor movement have always supported the cause of all people who have left their homelands and arrived on U.S. shores fleeing from one form of persecution or the other. To treat the Haitians in any different way is morally and ethically intolerable. Yet, that is exactly what our government has chosen to do.

The administration has singled them out for mistreatment. The list reflecting the uniqueness of their plight is long and unprecedented. The Haitian refugees are the only group that was denied the most fundamental elements of due process under our laws and the Constitution.

They were subjected to mass deportation hearings that resembled Kangaroo courts. They were effectively denied access to committed lawyers who were willing and able to defend them without cost. They were put in jails where basic human conditions did not exist. They were shipped to remote parts of the country where there were no immigration lawyers to plead their cases and where subzero temperatures were common.

Their detention was held illegal by our courts and yet they face the possibility of their deportation to their homeland at this very moment.

The administration, Mr. Chairman, played the game for a long time of branding the Haitian as economic migrants, and not as political refugees.

We, all of us, have bitter memories of that dubious distinction, both before and during the Second World War. We opposed the distinction then and we oppose it today, no matter what the color of the skin of the refugees.

Mr. Chairman, the Haitians who reached our shores have not only fled the poorest country in the Western Hemisphere, they have also fled the last hereditary dictatorship in our hemisphere. Their fear of persecution if deported back has been amply proven by long judicial proceedings in the Federal courts and by testimonies of reporters, journalists and academics who know something about Haiti.

Modern history has taught us that dictatorships comes in more than one variety. The Duvalier government's record is full of suppression of the press and of individual freedom. Its wholesale physical elimination of trade union activity has been documented by many human rights reports.

Haitians fled their homelands, not to seek a welfare check in Florida; they fled the economic corruption and the political terror of their government. Haitians have proven to be exemplary workers in the farms and industries of our country. Those among them who have joined our union are good union members.

Instead of being jailed and made vulnerable to threats of deportation, they should be allowed to become a part of the mainstream America and to contribute their talent and labor to the American economy. That goal, Mr. Chairman, is precisely what the bill before you would seek to accomplish.

We applaud Congressman Rodino's courage in introducing this legislation. It is a tribute to his sense of decency and fair play. And we highly appreciate the bipartisan support the bill has received from a number of cosponsors.

This bill, Mr. Chairman, is long overdue. Granting legal permanent residence status to all Haitians and Cubans who arrived in the United States prior to January 1, 1982, would finally resolve the bureaucratic and legal chaos that surrounds this issue.

Mr. MAZZOLI. Mr. Mazur, I am sorry, your time has also expired. Could you maybe summarize what other points you may wish to make.

Mr. MAZUR. I just have one more paragraph that will take about 10 seconds.

Mr. MAZZOLI. All right, fine.

Mr. MAZUR. Thank you, Mr. Chairman.

Only then can the various voluntary agencies, churches, and communities around the country quickly engage in a decent resettlement program that both would benefit, the refugees and relieve the problems and tensions affecting south Florida and other areas where Haitians and Cubans now reside.

For our part, Mr. Chairman, the ILG will offer its help in this effort.

Thank you for the opportunity to be here today.

[The prepared statement of Mr. Mazur follows:]

PREPARED STATEMENT OF JAY MAZUR, SECRETARY-TREASURER, INTERNATIONAL LADIES
GARMENT WORKERS' UNION, AFL-CIO

Mr. Chairman, thank you very much for holding these hearings on H.R. 4853, and inviting me and my union to testify before this subcommittee.

My name is Jay Mazur, and I am the General Secretary-Treasurer of the International Ladies Garment Workers' Union. The ILGWU strongly endorses the Cuban Haitian Adjustment Act of 1984. And so does the AFL-CIO. In his recent letter to Chairman Rodino, of the House Judiciary Committee, President Kirkland called for the enactment of H.R. 4853 as "the only satisfactory solution to the unique plight and suffering of Cuban and Haitian boat people who sought safety on our shores before 1982."

Mr. Chairman, our union -- a union of immigrants -- was one of the earliest to stand in defence of Haitian refugees. We did it because we realized early on that their treatment in this country had posed a major civil rights challenge to all of us. In the words of Lane Kirkland, our government's policy against Haitian refugees has been discriminatory, cruel, and politically dangerous.

In the tradition of all civil rights struggles, therefore, the ILGWU joined hands with other major labor, civil rights, religious and human rights organization to establish the National Coalition for Haitian Refugees. I am glad to see some distinguished friends from that Coalition here with me this morning. It has been the commitment of that Coalition to bring justice to the cause of the Haitians. The bill before you, in many ways, is the culmination of the effort of that Coalition. To that extent, it is personally gratifying.

Mr. Chairman, the ILGWU and the men and women of the American labor movement have always supported the cause of all peoples who have left their homelands and arrived on U.S. shores fleeing from one form of persecution or the other. To treat the Haitians in any different way is morally and ethically intolerable. Yet, that is exactly what our government has chosen to do. The administration has singled them out for mistreatment. The list reflecting the uniqueness of their plight is long and unprecedented.

The Haitian refugees are the only group that was denied the most fundamental elements of due process under our laws and the Constitution. They were subjected to mass deportation hearings that reminded us of Kangaroo courts. They were effectively denied access to committed lawyers who were willing and able to defend them without cost. They were put in jails where basic human conditions didn't exist. They were shipped to remote parts of the country where there were no immigration lawyers to plead their cases, and where sub-zero temperatures were a common occurrence. Their detention was held illegal by our courts. And yet they face the possibility of deportation to their homeland.

Our administration, Mr Chairman, played the game for a long time of branding the Haitians as economic migrants and not as political refugees. We, all of us, have bitter memories of that dubious distinction. Nazi Germany called all migrating Jews economic migrants. And the U.S. government adopted the same definition until we discovered the consequences of that distinction in the unfortunate form that no one wants to be reminded of. We opposed the distinction then, and we oppose it today -- no matter

what the pigmentation of the skins of the refugees is.

Mr Chairman, the Haitians who reached our shores have not only fled the poorest country in the western hemisphere, they have also fled the last hereditary dictatorship in our hemisphere. Their fear of persecution, if deported back, has been amply proven by long judicial proceedings in the federal courts, and by testimonies of reporters, journalists and academics who know something about Haiti. Modern history has taught us that dictatorships come in more than one variety. The Duvalier government's record is full of suppression of the press and individual freedom. Its wholesale physical elimination of trade union activity has been documented by many a human rights report. Haitians fled their homeland not to seek a welfare check in Florida. They fled the economic corruption and the political terror of their government.

Haitians have proven to be exemplary workers in the farms and industries of our country. Those among them who have joined our union are good union members. Instead of being jailed and made vulnerable to threats of deportation, they should be allowed to become a part of mainstream America, and to contribute their talent and labor to the American economy.

That goal, Mr Chairman, is precisely what the bill before you would seek to accomplish. We applaud Congressman Rodino's courage to introduce this legislation. It is a tribute to his sense of decency and fairplay. And we highly appreciate the bi-partisan support the bill has received from a number of co-sponsors.

This bill, Mr. Chairman, is long overdue. Granting legal permanent resident status to all Haitians and Cubans who arrived

in the U.S. prior to January 1, 1982 would finally resolve the bureaucratic and legal chaos that surrounds this issue. Only then can the various voluntary agencies, churches and communities around the country quickly engage in a decent re-settlement program that would both benefit the refugees and relieve the problems and tensions affecting South Florida and other areas where Haitians and Cubans now reside. For our part, the ILGWU will offer its help in this effort.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, Mr. Mazur.

Mr. Hooper, you are recognized for 5 minutes.

Mr. HOOPER. Thank you, Mr. Chairman, and other members of the subcommittee for inviting our views today.

My name is Mike Hooper; I am the executive director of the National Coalition for Haitian Refugees.

Mr. Chairman, there are several technical changes in my written testimony which I would like to submit at this time.

Mr. MAZZOLI. All right.

Mr. HOOPER. Mr. Chairman, we are particularly grateful that this legislation would finally end the tragic plight and the aggravated legal limbo of this restricted class of Cuban and Haitian boat people.

This bill has already been endorsed and cosponsored by a bipartisan group of your colleagues: Chairman Pepper, Chairman Fascell, Chairman Barnes, Chairman Dixon, Mr. Fauntroy, Judge Crockett, and the overwhelming majority of the Black Caucus. The chairman of the Senate Subcommittee on Immigration and Refugee Policy, Senator Simpson, is also supportive of a need to end this limbo situation for Cuban and Haitian refugees.

Apparently following the testimony of Mr. Nelson this morning, the administration supports this same class definition, although they seem to prefer a July 1981 cutoff date.

Mr. Chairman, every major civil rights, trade union, religious, and voluntary organization familiar with the plight of the Cuban and the Haitian boat people favor this act. There are numerous letters of endorsement from organizations as well known and representing as many organizations. For instance, the Leadership Conference of Civil Rights, representing 150 well known national civil rights organizations has strongly enclosed this legislation. There are strong letters of support from the AFL-CIO. The NAACP has written that legal status is the only just solution to right this grave mistreatment. There are many other strong letters of endorsement.

At this time, Mr. Chairman, I would like to submit for the record one additional letter from Greater Miami United, a coalition organization of 90 groups from southern Florida that have written to each Member of the House of Representatives urging that they cosponsor this bill.

Mr. MAZZOLI. Without objection, it will be made a part of the record. [See app. 4 at p. 166.]

Mr. HOOPER. Mr. Chairman, the Haitian and Cuban boat people have risked their lives to come to our country. Obviously, refugees from other lands have suffered similar hardship, but the situation of the Haitian and Cuban boat people is unique and made more compelling because of the treatment they have received here.

The intended beneficiaries of H.R. 4853 are a specific and restricted group of Cuban and Haitian boat people. Our figures are essentially the same as those presented by Commissioner Nelson this morning. The number of Cuban boat people is approximately 110,000, the vast majority of those people have already been—already received entrant status from the Carter administration. However, the eligibility period, for the entrant status program was focused around and fixed around the influx of these Cuban refugees.

It includes a certain number, approximately 13,000 Haitians, but it essentially remains predominantly a Cuban program.

Mr. Chairman, H.R. 4853 should be enacted immediately because it conforms to and implements the purpose and the motivating principle of this entrant program.

Unfortunately, the Immigration Service narrowly interpreted the mandate of the entrant program, qualifying the term "known to INS" to mean only those persons who were encountered and placed in proceedings.

Mr. Rodino's bill, the Cuban/Haitian Adjustment Act, grants permanent residence status to all Haitians and Cubans who had any record established with the Immigration Service, regardless of whether actual deportation proceedings are initiated against them.

Mr. Chairman, H.R. 4853 should be enacted immediately because it will provide long overdue relief to a restrictive group of Haitians and Cubans who have suffered particularly harsh treatment and accumulated considerable equities. The most crucial aspect of this bill is it will grant permanent residence to a relatively restrictive group of Cuban and Haitian boat people who arrived subsequent to the entrant program. The most important subclass of these people are the 2,000 Haitian boat people imprisoned for 18 months.

It is now well accepted that this group of Haitian boat people suffered from a policy that was cruel, low precedence, that is now universally regretted. We believe that the moral heart of this bill, the moral linchpin of this bill is its central attention to make amends for this suffering.

Mr. Chairman, there are two areas of potential ambiguity involving the comprehensive coverage of H.R. 4853. We believe that simple technical amendments can resolve these ambiguities and preserve the spirit of the bill.

First, it is beyond dispute that in this bill, and through previous Government pronouncements, the clear intention is that persons who receive the immigration designation of Cuban/Haitian entrant status pending are to be adjusted to permanent residence, section (b)(1) of this bill.

It is also clear that section (c) of this bill is intended to exclude from coverage nonimmigrants who were lawfully admitted to the United States and who subsequently overstayed their visas.

As Bishop Bevilacqua pointed out, without further clarification, a rigid application of subsection (c) could completely undermine the mandate—

Mr. MAZZOLI. Proceed. You have this point and a second one and—

Mr. HOOPER. And then I will summarize. Thank you very much.

Mr. MAZZOLI. Yes.

Mr. HOOPER. The second ambiguity involves the need to reinforce the act's clear intention that all otherwise eligible Cubans and Haitians "with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, will receive the benefits of the legislation."

These benefits clearly should be granted to all otherwise eligible persons even if the files of certain of the refugees were later lost or misplaced by the Immigration Service.

Mr. Chairman, to summarize, in the spirit of Mr. Frank's comment earlier this morning, the sense of justice and humanitarian concern that is basic to this bill, that is absolutely fundamental to this bill, will be needlessly compromised if interim relief is not granted immediately to protect class members from the threat of imminent deportation. No intended beneficiary of this legislation should be deported while this bill is pending before the Congress.

Given the administration's assurances this morning that they agree with the class definition, given the July 1981 date they proposed, some kind of interim, even informal protection must be afforded. Absent a halt of deportation proceedings there would be a further disproportionate impact on Haitian refugees. This tragedy must not be further aggravated.

Thank you very much for inviting our views.

[The prepared statement of Mr. Hooper follows:]

PREPARED STATEMENT OF MICHAEL S. HOOPER, EXECUTIVE DIRECTOR, NATIONAL
COALITION FOR HAITIAN REFUGEES

Thank you, Mr. Chairman and Members of the Subcommittee on Immigration, Refugees and International Law, for inviting the views of the National Coalition for Haitian Refugees during your consideration of the Cuban-Haitian Adjustment Act of 1984, H.R. 4853, proposed by Judiciary Committee Chairman Peter Rodino. We consider this legislation to be absolutely essential and far too long overdue.

My name is Michael S. Hooper and I am the Executive Director for the National Coalition for Haitian Refugees, which is composed of over 45 national civil and human rights, labor, legal, religious, Haitian and other national voluntary organizations. Our member organizations traditionally concerned with fundamental civil rights issues include all north American and Haitian organizations working nationally to ameliorate the desperate plight of the Haitian refugee boat people. The concern of the Coalition and our constituent members with this legislation arises from our specific involvement since 1979 in all aspects of the national crisis created by the unprecedented official treatment that the Haitian boat people have suffered, and from our deep commitment to secure for them humane treatment, substantive and procedural due process of law, and eventual permanent residence status in this country.

Mr. Chairman, we are particularly grateful that this legislation would end the tragic plight and aggravated legal limbo of a restricted class of Cuban and Haitian boat people. It would grant to approximately 125,000 Cuban and 31,000 Haitian boat people permanent residence in the United States. This bill has already been endorsed and co-sponsored by a bi-partisan group of over forty of your colleagues including Chairman Mazzoli, Chairman Pepper, Chairman Fascell, Chairman Dixon, Chairman Barnes,

Representatives Conable, Pritchard, McKinney and Fauntroy, and the overwhelming majority of the Congressional Black Caucus. The Chairman of the Senate Subcommittee on Immigration and Refugee Policy, Alan Simpson, has also supported the need to "end the Cuban and Haitian legal limbo" and grant them permanent resident status. We sincerely appreciate this vigorous support and the courage and vision of the most active proponents of this legislation.

Every major civil rights, trade union, religious and voluntary organization familiar with the plight of the Cuban and Haitian refugees has enthusiastically endorsed the Cuban-Haitian Adjustment Act. Mr. Chairman, the Leadership Conference on Civil Rights, representing over 150 civil rights organizations of national prominence, has written to each Member of the House stating:

"Our member organizations have long been concerned with the tragic civil rights plight of the Haitian refugee boat people, and we agree with Chairman Rodino that this situation can only be resolved satisfactorily by granting this restricted number of Haitian and Cuban refugees permanent residence status.... We further applaud this legislation because it embodies the fundamental principles of equal justice for all and respect for basic human rights."

Mr. Lane Kirkland, President of the A.F.L.-C.I.O., has strongly endorsed the Cuban-Haitian Adjustment Act of 1984 stating that

"Justice demands that this group of Cuban and Haitian refugees who risked their lives to flee to our country from misery and repression be granted permanent residence and an end to their tragic plight and legal limbo. The unique and desperate situation of the Cuban and Haitian refugees has been repeatedly linked by governmental action and in the public mind. The great majority of the Cuban boat people from the Mariel flotilla and the comparable group of Haitian refugees have long ago been promised that their "entrant" status would be converted to permanent residency through legislation."

The N.A.A.C.P. has written that "legal status is the only just solution to right this grave mistreatment." The American Jewish Committee strongly agrees, expressing a grave concern for the unique plight of the Haitian refugees, "many of whom were jailed for up to 18 months under a detention program that has been universally condemned as illegal and discriminatory."

The A.J.C. continues:

"fundamental principles of justice and humanity demand that both the Cuban refugees from Mariel and the far smaller group of Haitian refugees who arrived slightly later must have their legal status regularized not only because of the tragic nature of their plight and the treatment they have received but also because they have been repeatedly linked in the public mind and in government actions, beginning with the Cuban-Haitian program of the Carter administration. The great majority of the class of Cubans and Haitians who would benefit from the Rodino legislation long ago have been granted a temporary "entrant" status and a promise of legal residence."

The American Civil Liberties Union has written to each Member of Congress stressing that they are:

"...committed to preserving the rights of due process and equal protection of law guaranteed by the Constitution and federal legislation. No recent example of government action more dramatically demonstrates the import of these rights or their frailty than the experience of Cuban and Haitian refugees here in the United States. These refugees came to this country seeking freedom and political asylum but they have suffered substantial abuse."

The League of United Latin American Citizens, this country's largest and oldest Hispanic organization, has enthusiastically supported Chairman Rodino's bill and have called for its early enactment:

"...in risking their lives they fled expecting just treatment by the democratic institutions of this country. Unfortunately, both these groups have been poorly treated and have had misrepresentations made

to them regarding their legal status in the U.S. by being promised that their "entrant" status would be converted to permanent residency through legislation. Regretfully and unfortunately, this promise has not been materialized and as a consequence major undue hardships have resulted.... Your bill serves to underscore the need to have legislation benefit both groups and is a message to those who wish to divide blacks and Hispanics that such efforts will be resisted."

I. INTRODUCTORY RATIONALE UNDERLYING THE NECESSITY OF IMMEDIATE STATUS FOR CUBAN AND HAITIAN BOAT PEOPLE

This legislation finally accords justice and due process to these Cuban and Haitian boat people, the great majority of whom have suffered in a legal limbo for an intolerable period. At the same time, the number of people who would benefit from this legislation is well defined and limited.

Mr. Chairman, the Haitian and Cuban boat people have risked their lives in fleeing to our country seeking shelter from repression and stark misery. Although refugees from other lands suffer similar hardship, the situation of the Haitian and Cuban boat people is unique and is made more compelling because of the treatment that they have been subjected to here on our shores.

Since 1980, the situation and fate of the Haitian and Cuban boat people has been linked both in the public mind and in government action and announcements. The Carter administration repeatedly recognized the uniqueness of the plight of these two refugee groups, and the great majority of them were repeatedly promised that their "entrant" status would soon be legislatively confirmed through a grant of permanent residence. The Cuban-Haitian Adjustment Act

would finally end their legal limbo and grant them this long-awaited status.

However, adjusting the legal status of only the "entrant" group arbitrarily restricts the small class of Haitians who should be eligible for the same protections from deportation. The cut-off date for eligibility for the Cuban-Haitian "entrant" program was set at October 10, 1980, because of the particularities of the Mariel experience. Specifically, the Mariel influx ended in the late summer of 1980, but the comparable group of Haitians were still arriving in 1981. A rigid enforcing of the "entrant" date would exclude from coverage the comparable group of Haitian boat people totaling approximately 9,000 persons, including the 2200 Haitians whose detention has been universally condemned and regretted. Both groups have essentially the same profile and the same equities. A slight difference in arrival date should not result in turning the equal protection of the Cuban-Haitian "entrant" program into a predominantly Cuban program.

Of the small group of Haitian and Cuban boat people who arrived subsequent to the grant of "entrant" status but prior to January 1, 1982, approximately 2200 Haitians languished in prisons for up to eighteen (18) months under intolerable conditions. This is an additional and substantial equity that must be recognized as warranting that their presence should be legally confirmed by a grant of legal status.

Both the Haitians and the Cubans work and are productive members of our communities, particularly in south Florida. The federal government entitlement programs they have benefitted from

recognize the historical linkage and particular needs of the Cuban and Haitian refugees, and have served as further reinforcement to the assurance that legal status would soon be forthcoming for both groups. Numerous studies have shown that these refugees are law-abiding and hard working. They have undeniably contributed to our society, yet they have been denied the benefits of full legal residence.

II. INTRODUCTION TO THE PLIGHT OF THE HAITIAN REFUGEE BOAT PEOPLE

Since 1959, almost one-eighth (1/8) of the population of Haiti has fled from their homeland to escape the cumulative effects of the twenty-six (26) years of Duvalier family rule. A small part of this diaspora has sought haven in the United States. In the last ten years approximately 50,000 refugees have risked their lives across 800 miles of hazardous ocean to seek safety and asylum in the U.S. These are the Haitian "boat people" whose total numbers are minuscule when compared to other refugee groups warmly and continuously received by our government. The desperate nature of their plight has been repeatedly confirmed in reports by Amnesty International, the Inter-American Commission on Human Rights of the Organization of American States, and other respected human rights organizations. Nevertheless, these refugees have been greeted by harsh and discriminatory policies, unprecedented in the history of our country,

that systematically deny them their rights to fair and impartial administration of our immigration laws.*

Many Haitians have applied for political asylum in the United States, expressing a fear of persecution in their home country. Despite substantial evidence of ongoing human rights violations in Haiti, almost all of these claims (more than 99%) have been denied by the Immigration and Naturalization Service (I.N.S.) after consultation with the Department of State. Federal courts have repeatedly found that our government's policy of detention of Haitians was unlawful, unconstitutional, and discriminatory. Yet the emergency of the Haitian boat people continues, as they still face the imminent threat of forcible deportation back to Haiti.

Three years ago a two-part policy was implemented that virtually guaranteed that the Haitian boat people, and virtually only Haitians, would not be able to exercise their rights to claim political asylum in this country. This policy appears to have been aimed at creating a deterrent against future arrivals

* The Haitian refugee boat people have been improperly denied their statutory and treaty rights to a hearing before an immigration judge in exclusion proceedings on their claims for political asylum. Sannon v. United States, 427 F. Supp. 1270 (S.D. Fla. 1977), vacated and remanded on other grounds, 566 F. 2d 104 (5th Cir. 1978). They have been denied their right to notice of the procedures that the government intended to use against them in exclusion proceedings. Sannon v. United States, 460 F. Supp. 458 (S.D. Fla. 1978). They have been denied the right to work during the pendency of their asylum claims. National Council of Churches v. Egan, No. 79-2959-Civ-WMH (S.D. Fla. 1979). They have been denied access to information to support their asylum claims. National Council of Churches v. Immigration and Naturalization Service, No. 78-5163-Civ-JLK (S.D. Fla. 1979). They have been denied the very right to be heard on their asylum claims. Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980), affirmed H.R.C. v. Smith 676 F.2d 1023 (5th Cir. Unit B, 1982). They have been denied their right to counsel and to fair process in their exclusion hearings by being shipped, like cattle, to remote areas of America. Louis v. Meissner, 530 F. Supp. 924 (S.D. Fla. 1981).

from Haiti regardless of the extent to which the legal rights of the refugees in this country were trampled on.

Beginning in May 1981, Haitian asylum applicants arriving in the U.S. were placed in detention, first in the Krome Avenue North Detention Facility in Miami. As protest concerning the overcrowded conditions there grew, the I.N.S. began to jail the refugees in ten federal prisons and I.N.S. facilities in five states and in Puerto Rico. In July of 1981, Attorney General William French Smith formally announced the Administration's new immigration and detention policy for Haitians. By September 1981 over 2,700 Haitians, and only Haitians, were held in ten isolated and widely dispersed locations, many far from attorneys, interpreters, and any contact with the Haitian community. In every meaningful sense they were thus effectively denied the right to apply for asylum in the U.S.

On September 29, 1981, President Reagan signed an Executive Order authorizing the interdiction of Haitian boats in the Caribbean by the U.S. Coast Guard, acting in cooperation with the Haitian Navy. Under this program, implemented pursuant to an agreement with the Government of Haiti, all Haitian boats suspected of carrying potential asylum applicants are intercepted and forcibly returned to Haiti.

The State Department and I.N.S. have officially pre-judged the claims of the Haitian boat people, declaring that all Haitians with few exceptions flee to the U.S. for economic, rather than political reasons, and are thus not entitled to receive refugee status. While one would expect a pronouncement of such potentially deadly significance to be supported by unimpeachable facts, our

government has offered only meager specifics to support their conclusory distinction. In fact, reliable evidence suggests just the opposite conclusion.

In the landmark judicial opinion rendered in the case of Haitian Refugee Center v. Civiletti, the United States District Court of the Southern District of Florida found that "Haitians have flocked to the shores of south Florida over the past twenty years fleeing the most repressive government in the Americas." Judge James Lawrence King found that the evidence presented in his court concerning conditions in Haiti was "stark, brutal and bloody." He concluded that "the treatment of returnees in Haiti is part of a systematic and pervasive oppression of political opposition which uses prisons as its torture chambers and Tonton Macoutes as its enforcers."¹

This judgement confirmed the finding of all respected human rights organizations that the brutal regime of the late dictator "Papa Doc" Duvalier and that of the current President-for-Life, Jean-Claude Duvalier, have crushed any viable opposition through a policy of imprisoning, torturing, and killing without legal procedure some of its critics and forcing others into exile.

 1. Cited in Haitian Refugee Center v. Civiletti, 503 F. Supp. 442, 475 (S.D. Fla., affirmed in part 5th Cir. May 24, 1982.)

"Haiti has inverted a famous quotation: Haiti is a nation of men, not laws... The law in Haiti on any given day is what the President says it is... Guilt is a determination made exclusively by the person empowered to arrest. That person's perception of what constitutes a crime, and what is necessary to commit it, controls. Arbitrariness is the rule. Guilt is often founded on association." Ibid.

Please see Appendix #1 entitled, "Preconditions for Tragedy: A Pattern of Human Rights Abuses in Haiti".

III. THE INTENDED BENEFICIARIES OF H.R. 4853 ARE A SPECIFIC AND RESTRICTED GROUP OF CUBAN AND HAITIAN BOAT PEOPLE

The immediate rationale for this essential and long overdue legislation is discussed in the balance of this testimony with particular reference to the plight of sub-groups of the affected refugee population. The basic demographics of the population demonstrate the carefully crafted and restricted nature of this legislation.

Most observers are in agreement that the number of Cuban boat people who would benefit from this legislation is approximately 125,000. The Cubans make up the majority of those refugees to be granted permanent residence under this legislation and the vast majority of eligible Cubans have previously received the I.N.S. designation of Cuban-Haitian "entrant" (please see the discussion of the Cuban-Haitian "Entrant" Program supra.) The overwhelming majority of these Cubans arrived in mid-1980 during the period of the "Mariel flotilla."

As detailed below, the eligibility period for Cuban-Haitian "entrant" status was arbitrarily fixed around the influx of these Cubans. While it includes approximately 13,500 Haitians who arrived at that same time, it is predominantly a Cuban "entrant" program.

It is clear from Federal and State Government statistics that between 70-75% of the Cubans and Haitians covered by this legislation were initially resettled in the State of Florida and still reside there. The resettlement and integration into the southern Florida community has proceeded remarkably smoothly for the vast majority of both Cubans and Haitians.

A recent study commissioned by the Latin American and Caribbean Center of Florida International University has concluded that both the Haitian "entrants" and the Haitian boat people released from long-term detention on the order of a federal court are "highly motivated, hardworking, and anxious to integrate into American society", despite their experience of "prejudice and discrimination from all sectors of local society."² The study concludes:

"Permanent resident status for Krome Haitians and Haitian "entrants" should be provided by the U.S. Congress. Returning the Haitians to Haiti would likely subject them to persecution by Haitian officials. Moreover, permanent resident status would assist in the adaptation of Haitians by alleviating the psychological uncertainty they currently face, promoting family development and bringing many Haitians out from the underground. Moreover, if a large population exists which is afraid of the law because of their uncertain legal status, then enforcing the law, including labor law, becomes more difficult. It would further deter others from exploiting Haitians because of their uncertain legal status.

"Congressman Rodino with support from Greater Miami United along with the National Coalition for Haitian Refugees, the Congressional Black Caucus and others have recently proposed legislation which would legalize the status of both the Krome and "entrant" Haitians. Passage of this legislation would significantly aid Haitians in their efforts to adapt to and integrate into U.S. society.... Excluding the Krome Haitians from a legalization program would only be arbitrary and inhumane."³

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2. "Haitians Released From Krome: Their Prospects for Adaptation and Integration in South Florida", Latin American and Caribbean Center, Florida International University, Occasional Papers Series Dialogues, #24, March 2, 1984, p.1.
 3. Ibid, p. 34.

The Fascell-Stone Amendment to the Refugee Education Assistance Act specifies that the Federal Government shall reimburse the states and localities 100% of the costs of social services and medical costs for the Cuban-Haitian "entrants". The numbers of "entrants" actually receiving any federally reimbursed cash assistance is dramatically low by all estimates.

According to estimates provided by the State of Florida's Refugee Coordinator, the number of Cuban "entrants" receiving federally reimbursed cash assistance totaled 5,418 as of June 30, 1983, or slightly over 4% of the eligible Cubans. For the same period 3,537 Haitian "entrants" received federally reimbursed cash assistance, or 8% of those eligible. All knowledgeable observers agree that these numbers are exceedingly low given the limbo legal status and uncertain future of the two refugee groups.

Appendix II of this testimony is a table of I.N.S. statistics on Haitian arrivals "broken out" as post-October 10, 1980 arrivals who "entered and were processed" and those who were classified as "entered without inspection." Although it is not easy to precisely calculate the exact number of these Haitians who arrived before January 1, 1982 and with respect to whom any record was established before that date, the approximate number is 9,000 to 10,000 individuals. Again, the vast majority of these refugees reside in Dade County, Florida, with smaller groups living in New York City and northern New Jersey.

IV. H.R. 4853 SHOULD BE ENACTED IMMEDIATELY BECAUSE IT CONFORMS TO AND IMPLEMENTS THE PURPOSE AND MOTIVATING PRINCIPLE OF THE CUBAN-HAITIAN "ENTRANT" PROGRAM

On June 19, 1980, the Department of Justice granted to Haitians and Cubans who arrived in the United States before that date and were "known to I.N.S.", a special status that they called "Cuban-Haitian Entrant (Status Pending)" for an initial six-month period. This immigration designation was used to defer exclusion proceedings for these boat people and to assure their status in the United States while Congress enacted legislation to regularize this status. This legislation was not enacted, and the Department of Justice later extended the eligibility period to allow all Cubans and Haitians to qualify who were in I.N.S. proceedings as of October 10, 1980, regardless of their actual date of entry. On July 14, 1981, the Department of Justice extended for an indefinite period this special status because the anticipated legislation still had not been enacted.

Through the use of the immigration designation of "entrant", the qualified Cubans and Haitians were effectively paroled into the U.S. with their immigration status promised but not specified. The coverage of this status was clearly intended to be broad, and both Cubans and Haitians who arrived during comparable periods were to be treated equally. The Congressional Black Caucus and a wide range of civil rights and religious organizations argued against any discriminatory treatment of this small group of refugees.

Unfortunately the I.N.S. narrowly interpreted the mandate of the Cuban-Haitian "entrant" program, qualifying as "known to I.N.S."

only those persons who were encountered and placed in proceedings before October 10, 1980.⁴ This restrictive interpretation arbitrarily eliminated a number of boat people who had presented themselves before the Immigration Service but who were never placed in deportation or exclusion proceedings.

Although the actual number of boat people so affected is relatively small, H.R. 4853 directly and humanely eliminates this practical inequity. Under the Cuban-Haitian Adjustment Act of 1984 all Haitians who had any record established with the Immigration Service are eligible, regardless of whether actual deportation proceedings were initiated against them.

V. H.R. 4853 SHOULD BE ENACTED IMMEDIATELY BECAUSE IT WILL PROVIDE LONG OVERDUE RELIEF TO A RESTRICTED GROUP OF HAITIANS AND CUBANS WHO HAVE SUFFERED HARSH TREATMENT AND HAVE ACCUMULATED CONSIDERABLE EQUITIES IN OUR SOCIETY

Perhaps the most crucial aspect of Chairman Rodino's bill is that it will grant permanent residence to a relatively restricted group of Cuban and Haitian boat people who arrived just subsequent to the "entrant" program eligibility date of October 10, 1980, and before January 1, 1982. The most important subclass included in this coverage is the more than 2000 Haitians who were unlawfully imprisoned for up to eighteen months by

4. Telex of November 10, 1980 from I.N.S. Commissioner to all officers.

the Immigration Service and who were only released following a federal court order.⁵ H.R. 4853 will also grant permanent residence to several hundred Cuban refugees who arrived after the Mariel boatlift and hence after the October 10, 1980 cut-off date for the "entrant" program.

The unique promise of Chairman Rodino's legislation for the national civil rights organizations that have enthusiastically endorsed it is its focus on legalizing these refugees who have suffered a legal limbo and in many cases imprisonment. It is now well-accepted that no group in recent history has suffered from a policy as discriminatory and cruel as have the Haitian boat people who arrived during 1981. The moral heart of this bill is its central attention to make amends for the suffering that this group has endured.

The record shows that Haitian refugees have repeatedly been singled out for particularly harsh treatment by our government. At a time when hundreds of thousands of refugees of various nationalities were being processed into the United States, the I.N.S. instituted in 1978 an accelerated processing program for Haitians and only Haitians. This "Haitian Program" was subsequently found to be illegal in a variety of respects by several federal courts. One expert on refugee affairs, Monsignor Brian Walsh of Miami, testified that:

"...from 1972 until May of 1980 the consistent practice of the Immigration Service was to grant refugee status to any Cuban who came into south Florida, no matter how he arrived ... and at the same time to deny refugee status to the Haitians who arrived on the same small boats at the same time."⁶

5. Louis v. Nelson, 544 F. Supp. 1004 (S.D. Fla. 1982).

6. Louis v. Nelson, No. 81-1260-Civ.-EPS (S.D. Fla. 1981), Transcript 260-64.

Walsh testified that discrimination against Haitians extended to the granting of parole, the issuance of work authorization, the length of detention and access to counsel.

This policy of discrimination against Haitians was confirmed by a federal district court in a case that challenged the "Haitian Program":

"Those Haitians who came to the United States seeking freedom and justice did not find it. Instead, they were confronted with an Immigration and Naturalization Service determined to deport them. The decision was made among high I.N.S. officials to expel Haitians, despite whatever claims to asylum individual Haitians might have. A Program was set out to accomplish this goal. The Program resulted in wholesale violations of due process, and only Haitians were affected..... This program, in its planning and execution, is offensive to every notion of constitutional due process and equal protection. The Haitians whose claims for asylum were rejected during the Program, shall not be deported until they are given a fair chance to present their claims for political asylum."⁷

Perhaps the greatest discrimination suffered by the Haitian boat people occurred with our government's decision to indefinitely detain Haitian asylum applicants. I.N.S. policy prior to the Spring of 1981 was routinely and regularly to release virtually all aliens seeking admission to the U.S.

An unprecedented change in policy occurred beginning in May 1981. Haitian asylum applicants arriving in the U.S. were placed in detention, first in the Krome Avenue North Detention Facility in Miami and, as protest concerning the overcrowded and unsanitary conditions there grew, in ten federal prisons and I.N.S. facilities in five

7. Haitian Refugee Center v. Civiletti, 503 F. 2d Supp. 443 (1980).

states and in Puerto Rico. In July of 1981, Attorney General William French Smith formally announced the Administration's new immigration program and detention policy. By September 1981, over 2,700 Haitians, and only Haitians, were held in ten isolated locations, far from attorneys, interpreters, or any contact with the Haitian community. In all save the most formalistic of worlds they were thus effectively denied the right to apply for asylum in the U.S. In explaining the policy, the Attorney General stated that "detention of aliens seeking asylum was necessary to discourage people like Haitians from setting sail in the first place."⁸

According to one court, indefinite detention appeared "intended to treat Haitians as poorly as permissible during their stay in the United States so that others would be deterred from immigrating."⁹ Detention under inhumane conditions that would never be tolerated for convicted criminals was used to simply force the Haitians to leave the U.S. without completing their asylum applications.

The punitive long-term detention of the Haitian refugees was further exacerbated by the sub-standard conditions at the prisons where they were detained for fourteen to eighteen months. I have personally visited most of these facilities as have representatives of our member organizations.

8 . New York Times, Oct 23, 1981, sec. 2 at 6, col. 2.

9 . Haitian Refugee Center v. Civiletti, 514.

Typically, these facilities -- designed only for short term detention -- were overcrowded and underequipped, often resembling concentration camps. While conditions at the Krome North facility shocked many Floridians in the Fall of 1981, conditions at other facilities were indisputably worse. Citing the Immigration Service and the Public Health Service as authority, the General Accounting Office has concluded that "the Haitian detainees, for the most part, were housed in facilities that were unsuited for long-term care. In addition, services and basic amenities were minimal. The mental health of long-term detainees was perhaps the most serious problem with which the Public Health Service could not effectively deal."¹⁰ During the indefinite imprisonment many refugees exhibited symptoms of physical and psychological distress and there were twenty-nine suicide attempts reported by the National Institute of Mental Health. Serious medical conditions like gynecomastia went undiagnosed and untreated. At the Immigration facility in Brooklyn, Haitians who had never been confined indoors for an entire day in their lives were prevented from ever seeing the sun and sky for eighteen months.

The Haitian detention program was predictably expensive for the federal government, costing many times more than a humane and orderly program providing for the release of the Haitians pending the final determination of their asylum

10 . U.S.G.A.O., "Detention Policies Affecting Haitian Nationals", Report No. GAO/GGD-83-68, June 16, 1983, p.21.

claims. The General Accounting Office estimates that the long-term detention of the Haitians cost the Federal Government about \$49 per day per detainee, although the cost varied between \$35 and \$65 depending on the detention facility.¹¹

Haitians were detained in remote regions in substandard conditions not because they were likely to abscond or because they were security risks. The Haitian boat people were detained without any consideration of individual circumstances as a punishment to discourage them from asserting or pursuing asylum claims and to deter their fellow nationals from seeking refuge in the U.S.

VI. THERE ARE THREE AREAS OF POTENTIAL AMBIGUITY INVOLVING THE COMPREHENSIVE AND SPECIFIC COVERAGE OF H.R. 4853

Simple technical amendments can resolve three possible ambiguities and preserve the spirit of fairness and compassion that is the foundation of this legislation. First, it is beyond dispute that this bill, and previous government pronouncements, intend that persons receiving the immigration designation Cuban-Haitian "entrant" (status pending) are to be adjusted to permanent residence under this bill (subsection (b) (1)). The clear intent of subsection (c) is to exclude from coverage nonimmigrants who were lawfully admitted to the United States and who subsequently overstayed their visas while never making application for political asylum in the U.S. Without further clarification, a rigid application of

11. Ibid. G.A.O. Report, p. 28.

subsection (c) could completely undermine this clear mandate because a number of those persons officially designated by the Carter Administration as "entrants" were (in the language of subsection-(c)) admitted to the United States as nonimmigrants and they have not applied for political asylum. This unintended ambiguity can be technically resolved by altering subsection (c) of the legislation to read:

The benefits provided by subsection (a) shall not apply to an alien who was admitted to the United States as a nonimmigrant, unless that alien filed an application for political asylum before January 1, 1982, or was accorded Entrant status by the Immigration and Naturalization Service.

The second potential ambiguity in coverage under H.R. 4853 involves the need to reinforce the Act's clear intention that all otherwise eligible Cubans and Haitians "with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982" will receive the benefits of the legislation. These benefits clearly should be granted even if the files established for certain of the refugees were later lost or misplaced by the Immigration Service. During the Immigration Service's "Haitian Program" a significant number of files were indeed "misplaced" as Haitian refugees were transferred from prison to prison around the country. Justice and basic humanity demand that the benefits of this legislation must be available to those Cubans and Haitians whose files were destroyed or lost through no fault of their own. We would ask that report language reflect the clear sense of this legislation that all those who had a record established by the I.N.S. should qualify, even if this record was subsequently lost by the

Immigration Service. Obviously, the I.N.S. will have to promulgate regulations to govern a procedure whereby otherwise eligible applicants whose records were lost have the ability to present proof of both their presence and of their contact with the Immigration Service.

The final potential source of ambiguity involves a further clarification of subsection (c). The clear intent of this section is to deny benefits under this Act to persons who were (lawfully) admitted to the United States unless they also filed an application for asylum with the I.N.S. (or unless they were eligible for "Entrant" status infra.) While the intent of this wording does appear to be clear on its face, we recommend that the Subcommittee specify that this disqualification makes ineligible only those persons lawfully or formally admitted to the U.S. as nonimmigrants. By clear implication it does not apply to the entry of an alien through parole or inspection or some other form of admission. The Subcommittee should clarify section (c) so that persons are not disqualified from receiving the benefits of this Act if they have never been lawfully admitted to the U.S. as non-immigrants.

VII. THE SENSE OF JUSTICE AND HUMANITARIAN CONCERN FUNDAMENTAL TO H.R. 4853 WILL BE NEEDLESSLY COMPROMISED IF INTERIM RELIEF IS NOT GRANTED TO PROTECT CLASS MEMBERS FROM THE THREAT OF IMMINENT DEPORTATION

This legislation has already been enthusiastically supported in the House of Representatives, due to the sustained commitment of the bill's co-sponsors. Concerned Senators have also supported

the necessity of granting permanent residence status to this particular group of refugee boat people. Every present indication points toward final passage of this bill during this session of Congress, finally resolving this long-standing and aggravated civil rights problem. Yet, today, we confront the tragic irony that many intended beneficiaries of H.R. 4853 may be deported during the period after the bill is approved in the House of Representatives and prior to its final enactment into law.

Our member organizations respectfully request that the individual Members of this Subcommittee express the appropriate concern that intended beneficiaries of this legislation should not be deported before the final passage of this bill. The Haitian and Cuban boat people have suffered untold hardships already. Let us assure them for once and for all a compassionate welcome in our country.

CONCLUSION

Some immigration and refugee policy issues cause widespread division among legislators, national organizations and the general public. But in the case of the Cuban and Haitian boat people who have suffered so many grievous hardships and who have languished so long in uncertainty, a wide range of organizations and Congressional co-sponsors are enthusiastically united on the necessity of granting them permanent residence status. The broad spectrum of national civil rights organizations belonging to our Coalition clearly bears witness to the equally broad public consensus in Florida, New York and nationally for granting residence to these refugees.

There are minor areas of potential ambiguity involving the specific coverage of H.R. 4853, but they can be resolved with simple technical amendments. Then this landmark legislation can be expeditiously considered by the entire House of Representatives and finally enacted into law -- providing long overdue relief to these 125,000 Cuban and 31,000 Haitian boat people.

The Statue of Liberty is widely known as the "Mother of Exiles." The Haitian and Cuban boat people have suffered untold hardships already. In H.R. 4853 we have the opportunity to honor this proud heritage justly and humanely by granting to these boat people the certainty of permanent residency in our country.

A P P E N D I X #1

PRECONDITIONS FOR TRAGEDY:
 A PATTERN OF HUMAN RIGHTS ABUSES IN HAITI *

by Michael S. Hooper, Esq.

Throughout much of its history, Haiti has suffered various forms of authoritarian government, severe political instability, egregious and systematic human rights violations, and related economic deprivation and instability. The "Duvalier era" of two successive Presidents-for-Life now in its 26th year did not initiate economic dislocation, poverty, starvation and disease, nor is this the first ruling elite in Haiti to be classified as a kleptocracy, a state bureaucracy of thieves that pursue policies of malign neglect of the most elemental needs of the Haitian citizenry.

The uniqueness of the Duvalier "political revolution" consisted of a crushingly violent political repression based on complimentary means of creating stark terror in the Haitian people. The precisely organized, "surgical terror" of the secret police (Service Detectif) and the Military Police was perfectly complemented by the random, arbitrary terror of an intentionally uneducated, undisciplined and brutal force of people loyal only to their benefactor Francois Duvalier, the infamous Tonton Macoutes who are unpaid below officer ranks and who must prey on the population in an economic as well as political sense.

Human rights violations were so widespread and serious under the regime of Francois Duvalier that they were virutally institutionalized during his rule from 1957 to 1971. Despite a much publicized but ill-defined "liberalization" that was proclaimed by his son, "President-for-Life" Jean-Claude Duvalier, the Duvalier system of authoritarian government and political persecution based on the military and the Tonton Macoutes has not been significantly altered.

There is no substantial evidence to indicate that "liberalization" has produced reforms in the following areas: continuing "states of exception" to and disregard of the rule of law; the large-scale detention, abuse and torture of persons for political reasons without the substantive provision of any due process

*The information contained in this Appendix is excerpted from the following reports by the author:

"Election 1984: Duvalier Style , A Report on Human Rights Based on a Mission of Inquiry", March, 1984.

"Haiti- Report of a Human Rights Mission", August, 1983.

"Violations of Human Rights in Haiti June 1981-September 1982", November, 1982.

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protections; the repression of all opposition parties and trade unions; and a total disregard for all fundamental freedoms of expression or communication.

When nineteen-year-old Jean-Claude Duvalier formally succeeded his father in 1971, there was no meaningful distinction between the total personal power of the Duvalier family and the Haitian Government; there were no institutions with even the slightest degree of autonomy from this autocracy. The legislature was reduced to rubber-stamping bills handed down by the President-for-Life, the press was in all meaningful senses the mouthpiece of the National Palace, and opposition political groupings and labor unions were completely crushed. Under the Duvaliers, democratic institutions have been completely stifled, while Haiti has become a government dominated by personal corruption. Even the State Department Report on Human Rights practices published in February 1980 acknowledges:

Corruption is traditional at all levels of society, and significant amounts of domestic revenues usable for development continue to be diverted to personal enrichment.¹

The 1979 Report of the World Bank corroborates that in 1977, for example, almost 40% of all expenditures and of total revenues were channelled through special checking accounts held at the National Bank that made it virtually impossible to determine their source or eventual disposition (p.l.v.) Similarly, a report by the World Council of Churches documents that the Duvaliers receive approximately \$70 per head for Haitian cane cutters sold into conditions of near-slavery in the Dominican Republic.²

In addition to this pervasive pattern of corruption, contemporary Haiti continues to experience the beating and torture of political activists; severe beatings are the accepted way of processing criminal cases and imposing discipline. It is a routine practice in Haiti to arbitrarily detain a person without arrest procedures or any due process protections. Free reign is given to government security forces and there is a complete absence of any system of disciplining them. Many of these people depend financially on extortion and the expropriation of property of "opponents of the regime". Seemingly mild by comparison are other equally institutionalized practices of the Haitian Government: a highly restrictive press censorship law; an absence of any tradition of government service to its citizens; a governmental structure that is pervaded by corruption at all levels, channelling significant amounts of domestic revenues and foreign assistance into personal enrichment of associates of the Duvalier

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1. U.S. Department of State, Country Reports on Human Rights Practices for 1979, p. 344.
 2. Sold Like Cattle: Haitian Workers in the Dominican Republic, World Council of Churches, Dossier Number 10, November 1980.

family; the governmental repression of opposition political groups or labor unions; and most recently, the government's disruption of the activities of the Haitian League for Human Rights.-

Today Haiti has without doubt the most desperately poor economy in this hemisphere, although it was once the richest pearl in the French colonial necklace. The present political regime of President-for-Life Jean-Claude Duvalier, run for and by the dreaded Tonton Macoutes, coupled with a long-standing tradition of official corruption, keeps this impoverished society underdeveloped and its people in a stark state of deprivation and terror.

In contemporary Haiti there is a striking relationship between deteriorating economic conditions and continuing violations of basic civil and political rights. The government of Haiti is formally committed to furthering the economic and social rights of its own citizens both in its own Constitution and through the ratification of the Inter-American Convention on Human Rights on Sept. 27, 1978. However, it is extremely difficult to quantify and analyze the pervasive property and economic chaos that characterizes Haiti because of the almost total reluctance of the Haitian Government to provide updated statistics. This indifference in systematizing reforms is matched by corruption and official extortion that further destabilize the entire economy and society. The economy of Haiti is entirely politicized, and much of its chaos and devastation can be attributed to the government's malign neglect and persecution of its citizenry.

Haiti's economic picture is bleak. The average annual income is somewhere between \$235 and \$270, or less than half of the next poorest country in this hemisphere, Bolivia. This annual per capita income qualifies Haiti as the only country in this hemisphere listed among the United Nations' thirty "relatively least developed countries" (RLDC's.)³ According to the U.S.A.I.D. Strategy Statement for 1984, "Even this figure fails to communicate the level of poverty in Haiti, as income distribution is highly skewed, and only the substantial wealth of the small urban elite brings the national per capita income figure above the absolute poverty levels. This income inequality is dramatic. In 1981, 0.4% of the population received more than 46% of the national income while more than 80% of the people had an average income of less than \$100 per year. Ninety percent of the population live below the absolute poverty level of \$140 per capita."⁴

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3. Country Development Strategy Statement, Haiti, F.Y. 1984, January 1982, A.I.D., Washington, D.C.
 4. Memorandum on the Haitian Economy, World Bank, Latin American and Caribbean Regional Office, May 13, 1981, p. 6.

Approximately seven thousand Haitian families have incomes exceeding \$50,000. About three thousand of these live in the Port-au-Prince area and have incomes around \$100,000 per year (IHS:1977). This concentration of wealth and power in the hands of a small elite in the capital results in centralized decision-making that contributes to the underdevelopment of rural areas.

This institutionalized misery is partly the result of a political system which has made no sustained effort to undertake economic improvements. Under both Presidents Duvalier, there have been continual reports of government corruption and mismanagement of public funds. The income that does return to the public treasury is inadequate to meet the social needs of public education, public health, or agricultural extension services. The rural population is under-served and over 95% lack access to safe water.

Foreign aid, allocated to ameliorate social problems, appears to be ineffective. A 1980 report of the Inter-American Commission on Human Rights of the Organization of American States concluded that: "It is questionable whether badly needed foreign assistance programs effectively reach their targets."⁵ It is difficult to ascertain whether or not funds budgeted for social purposes are expended on them. In 1978 a Congressional Research Service report estimated half of these public funds are kept in unbudgeted accounts, and these are subject to diversion to private hands.⁶

Government statements of official policies in these areas of income distribution and employment seem to be so diametrically opposed to reality as to suggest intentional deception. For example, in 1979 the government set a minimum wage for all workers of eleven gourdes a day. This daily minimum, equivalent to an annual income of 3234 gourdes, is attained by less than 5% of all Haitian workers. The government has never explained this discrepancy.

In conclusion, Haiti is a poor country with significantly limited resources, but the Duvalier Government has offered nothing but active neglect when confronted with the emergency problems of illiteracy, malnutrition and disease. Furthermore, the Duvalier regime has greatly exacerbated these problems through land seizures, political instability, massive corruption that siphons off meager public funds and much foreign assistance, and an unwillingness to allow any necessary independence to international relief organizations. A recent Congressional Research Service study concluded: "... the natural causes of Haiti's poverty could be overcome, were it not for sociological and political problems. Those problems are the manifestations of oppression, their consequence the economics of Duvalier."⁷

5. I.A.C.H.R. Report, Dec. 1979, p. 74.

6. "Impediments to Economic and Social Development in Haiti," Congressional Research Service, the Library of Congress, Washington, D.C., June 19, 1978.

7. Ibid, pg. 115-116.

A P P E N D I X #2

HAITIAN ARRIVALS BY MONTH AND YEAR
(EPI and EWI*)

	Monthly/ Yearly -Total	Cumu- lative Total	INS Exclusion Cases (EPI)	INS Deportation Cases (EWI)**
<u>1971-1979</u>	5,912	5,912	1,830	4,082
<u>1980</u>	24,530	30,442	13,136	11,394
<u>1981</u>	9,505	39,947	7,687	1,816

<u>1980</u> Jan	1,063	6,975	502	561
Feb	919	7,894	164	755
Mar	1,947	9,841	889	1,058
Apr	2,165	12,006	1,004	1,161
May	2,719	14,725	1,081	1,638
Jun	2,247	16,972	1,048	1,199
Jul	1,721	18,693	890	831
Aug	2,477	21,170	1,585	892
Sep	3,347	24,517	2,155	1,192
Oct	3,331	27,848	2,426	905
Nov	1,274	29,122	680	594
Dec	1,320	30,442	634	685
<u>1981</u> Jan	1,147	31,589	664	483
Feb	637	32,226	332	305
Mar	1,095	33,321	610	485
Apr	949	34,270	460	489
May	825	35,095	769	56
Jun	1,481	36,576	1,481	0
Jul	1,559	38,135	1,559	0
Aug	869	39,004	869	0
Sep	555	39,559	555	0
Oct	294	39,853	294	0
Nov	48	39,901	48	0
Dec	46	39,947	46	0
<u>1982</u> Jan	41	39,988	41	0
Feb	9	39,997	9	0
Mar	11	40,008	11	0
Apr	14	40,022	14	0
May	0	40,022	14	0
Jun	5	40,027	5	0

* EPI: Entered and Processed Immediately EWI: Entered Without Inspection
 ** Changed INS processing/deportation procedures ended EWI registration in
 June 1981.

SOURCE: HHS/ORR

NATIONAL COALITION FOR HAITIAN REFUGEES

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APPENDIX #3

New York Law Journal

BEFORE THE BIRTH OF THE NEW YORK LAW JOURNAL

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Page 1, col. 1

Immigration Law

By Stanley Mailman

Relief Offered For Boat People From Cuba, Haiti

At odds over the Simpson-Mazzoli bill, now headed for vote in the House,¹ Hispanic and labor groups have joined in an effort to regularize the status of Cuban and Haitian



boat people. The vehicle is the Cuban/Haitian Adjustment Act of 1984, a bill introduced on Feb. 9 by Representative Peter W. Rodino Jr.² The Rodino bill would allow more than 100,000 Mariel Cubans and Hai-

lians who arrived on the beaches of Florida in the spring of 1960, or even by 1982, to apply immediately for permanent residence. Having no immigration status now, these aliens cannot bring their families; nor can they return if they leave the United States on a visit.

The legislation formula is Representative Romano L. Mazzoli's more comprehensive bill would grant residence generally to undocumented aliens in the United

States since before 1982.³ No one knows, however, whether that date will survive amendment from the House floor or by compromise with Senate conferees. (Equivalent provisions in the Senate-passed bill are decidedly less generous.) Moreover, there is no assurance that Simpson-Mazzoli will come to a House vote, given opposition to its employer sanctions and temporary-worker program. Undoubtedly, the uncertainty of relief for Cubans and particularly for Haitians, under provisions now on the books or pending, was a factor that moved Congressman Rodino to introduce his bill.

It is not clear, for example, whether the Marielitos are eligible for relief under the Cuban Adjustment Act of 1966.⁴ On its face, this law qualifies Cubans who came after Jan. 1, 1959, to adjust their status to permanent residence after they are here for at least a year. Although designed for Cuban political refugees paroled into the United States after the Castro revolution, it requires no showing that they are in fact refugees.

The problem is that adjustment under the 1966 Act may require a visa number. In July, 1965, the Immigration and Naturalization Service ("INS") adopted the policy of charging a number to the then Western Hemisphere quota for every Cuban so adjusted.⁵ This diverted approximately 145,000 visa numbers from use by other Western Hemisphere natives and caused a severe backlog. After challenge in the courts, the Attorney General reexamined this "charging" policy and concluded

PLEASE SEE OVER

that Cubans who adjust their status under the act are not to be counted against the quota. His order of Aug. 31, 1976, to change the policy accordingly was followed by INS on Oct. 2, 1976.

On Oct. 20, 1976, the Cuban Adjustment Act was amended to drop the "charging" requirement for those physically here before its effective date (Jan. 1, 1977). This suggests a Congressional assumption that, absent the amendment and for those coming after the critical date, "charging" is required. Indeed, this is confirmed by statements in the legislative history.¹ Congress was apparently unaware of the Justice Department's view, taken just days earlier, that the "charging" was erroneous.

Suit Brought

On Nov. 10, 1976, one Refugio Silva, complaining of this error, sued to make those visa numbers, formerly assigned to Cubans, available to natives of other Western Hemisphere countries who applied for immigrant visas between July 1, 1945, and December 31, 1976, and whose cases were still pending. Silva's claim was sustained in a Court of Appeals decision, *Silva v. Bell*, elaborating a system for the receipt and distribution of the numbers.²

Implicit in the court's reliance on the Attorney General's earlier ruling, and later court decision, that it was error to charge numbers for use under the 1946 Cuban Adjustment Act. Significantly, the Justice Department could have defended in *Silva* by pointing to the implication in the 1976 amendment that the "charging" had been correct. The concession, on the other hand, and the massive Silva program of redistribution that followed are significant precedents for reading the act to dispense with charging, even now.

Whether numbers are needed for relief under the 1946 Act is critical. Silva numbers have by now run out. And the annual, now worldwide, allocation of 370,000 numbers is heavily oversubscribed. Its nonpreference portion has been unavailable for years. The 1946 Act is therefore a dead letter for post-1976 entrants if visa numbers are required. If they are not, the 1946 law remains a useful vehicle for adjusting virtually any non-Communist, noncriminal Cuban. No other provision appears to limit the rights of Cubans under the 1946 Act. The 1960 Refugee Act, if seeking to provide "a permanent and systematic procedure" for the admission of refugees,³ does not seem to affect the 1946 Act which has no "refugee" requirement.

Moreover, the 1946 Act provides relief to most Mariel Cubans which is otherwise unavailable. Whatever "refugee" rights might have accrued to Cubans or Haitians under earlier

law were extinguished by the Refugee Act of 1960.⁴ And under the 1960 Act, they have been singularly unsuccessful in their efforts to show that they are refugees.⁵ Few of them can meet the labor certification and visa number requirements of the basic Immigration and Nationality Act.⁶ And Cuban/Haitian entrant bill introduced on behalf of the Carter Administration mustered little support.⁷

No INS Action

At least for the Cubans, therefore, efforts to gain residence have focused on the 1946 Adjustment Act, but have so far failed. For years INS took no action on their applications and avoided taking a public position on their eligibility, apparently counting on the passage of Simpson-Mazzoli to cover both the Cubans and Haitians.

Earlier this year, the Reagan Administration tentatively resolved the issue in favor of the Cubans. According to Robert Pear of the *New York Times*, referring to a Service memorandum and quoting INS Commissioner Alan C. Nelson, the Service "had concluded that the Cubans 'have an entitlement to some relief under the 1946 law' and that it would be 'very unfortunate' if the Government got into protracted litigation leading to a court-directed legalization program."⁸ (The American Immigration Lawyers Association had earlier suggested to INS that a suit, then threatened by Florida lawyers and now brought,⁹ might result to a court-imposed timetable that could disrupt routine immigration services.)

Informed of the INS position, Representative Rodino, chairman of the House Judiciary Committee and long identified with immigration reform, objected to this treatment of the Cubans separately from the Haitians. In a Feb. 1 letter to Attorney General William French Smith he wrote: "Any program to adjust Cuban entrants must also include Haitian entrants, who have entered this country under similar, if not identical, circumstances."¹⁰

AFL-CIO Support

Representative Rodino put a bill behind his position on Feb. 8. Benefiting Cubans and Haitians alike, the Cuban/Haitian Adjustment Act of 1984 has been strongly endorsed by the AFL-CIO (in a letter by Lane Kirkland), the United States Catholic Conference, the National Association for the Advancement of Colored People, the American Jewish Committee, the *New York Times* and the *Miami Herald*.¹¹ It has also been incorporated verbatim in HR 4909, introduced as a comprehensive alternative to Simpson-Mazzoli by Representative Edward Roybal of California, a leader of the Hispanic Congressional caucus.

The Rodino bill is scheduled for hearing by the House Subcommittee on Immigration on May 5. At this writing it is still uncertain when Simpson-Mazzoli will be heard on the House floor, although it is widely believed that a two-tiered rule will shortly be issued by the Rules Committee chaired by Representative Claude Pepper of Florida. This would feature Representative Mazzoli's bill, as reported out by the Judiciary Committee, with amendments by other committees to be heard first. In a second tier of amendments, taken from the floor, the Rodino bill would presumably also be offered. The Roybal bill is poised for presentation as a single amendment as well as piecemeal. Whatever the fate, however, of Simpson-Mazzoli and the controversial issues of sanctions and legalization, the bill is a growing sense that legislative relief should be fashioned at least for the Cuban and Haitian boat people.

(1) Simpson-Mazzoli is the popular name for the Immigration Reform and Control Act of 1986, the House version of which is HR 1418. Senate version is S. 1015, passed on May 12, 1986. Its principal authors and sponsors are Senator Alan W. Cranston (D., California) and Representative Romano L. Mazzoli (D., Maryland). See also National Immigration Lawyers Association, *Immigration and Naturalization Act of 1986*, 2d ed. (1986).

(2) See also *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

(3) 22 U.S.C. § 1602(a)(1).

(4) 22 U.S.C. § 1602(a)(1).

(5) See *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

(6) See *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

(7) See *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

(8) See *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

(9) See *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

(10) See *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

(11) See *Silva v. Bell*, 666 F.2d 974 (7th Cir. 1981).

Stanley Mallman, whose column is a regular feature of the *Law Journal*, is a member of the firm of Mallman & Rathsler, a Professional Corporation. He is past president of the American Immigration Lawyers Association.

NATIONAL COALITION FOR HAITIAN REFUGEES

Rassemblement Nasyonal pou Refijye Ayisyen

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APPENDIX #4

18A The Miami Herald / Monday, Feb. 12, 1984

The Miami Herald

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The Rodino Bill

CREDIT Rep. Peter Rodino of New Jersey for a major legislative breakthrough whose impact in South Florida would be large and beneficial. The chairman of the House Judiciary Committee proposes to provide a separate legislative remedy for the immigration status of an estimated 150,000 Cubans and Haitians who entered the United States before Jan. 1, 1982.

Mr. Rodino properly asserts that this particular immigration problem should not have to await the long-delayed passage of an omnibus immigration-reform bill such as Simpson-Mazzoli. It can — and should — be solved separately.

The Cubans who embarked on the Mariel boatlift ought to be accepted. They did not enter the country illegally or surreptitiously. Quite the contrary: Jimmy Carter opened America's arms to them. And the Haitians who entered during that period likewise arrived quite openly and submitted themselves to U.S. law.

The Cubans rightly are eligible for legal-resident status under the 1966 Cuban Adjustment Act anyway. The Immigration and Naturalization Service is preparing to process them under that law. But what of the Haitians, the other members of the "Caribbean entrant" category that the Carter Administration established in response to Mariel? Are they to be left behind in permanent legal limbo simply because they are poor and black and fled the poverty of a right-wing dictatorship instead of the deprivations of communism?

Mr. Rodino says no. Good for him. His bill would keep the Haitians and Cubans yoked together by granting both groups

the opportunity to apply for permanent U.S. residence. Further, adding compassion and common sense to fair play, Mr. Rodino would extend the amnesty to include those post-Mariel Haitians who were confined for so long at the Krome Avenue camp.

Nicknamed for the Federal judge who ordered them freed them from Krome while their asylum claims were processed, the so-called Spellman Haitians have paid dearly to stay in the United States. Numbering only 1,800, they have survived on private charity and on their own unsurpassed eagerness to work.

Mr. Rodino's proposed legalization program would not encourage further irregular immigration from Cuba or Haiti. The Reagan Administration's campaign of interdiction on the seas has virtually halted the arrival of Haitian boat people. And a Mariel-type boatlift from Cuba depends more on Fidel Castro's whim and on Washington's reaction than on any immigration law.

Resident status is important, however, for those who are here and for the communities in which they live. It will enable the immigrants to claim homestead exemption, to obtain travel documents, and to seek permanent employment. It opens the hope of eventual naturalization as U.S. citizens. And the Rodino bill provides for reimbursement to the states, notably Florida, that have invested in the entrants' adjustment to American society.

Congress should move quickly to forge this separate peace for those individuals and their communities. It is long overdue.

AMERICAN CIVIL LIBERTIES UNION

WASHINGTON OFFICE

May 1, 1984

Dear Representative:

The American Civil Liberties Union is committed to preserving the rights of due process and equal protection of law guaranteed by the Constitution and federal legislation. No recent example of government action more dramatically demonstrates the importance of these rights, or their frailty, than the experience of Cuban and Haitian refugees here in the United States. These refugees came to this country seeking freedom and political asylum, but have suffered substantial abuse.

For the past several years, the ACLU has worked with other civil and human rights groups, labor and religious organizations in seeking fair treatment for the Cubans and Haitians. Given the history of prior abuses, we believe that legal status for these two refugee groups must be established as the only satisfactory solution to their unique plight and suffering. We write today in strong support of H.R. 4853, the "Cuban-Haitian Adjustment Act of 1984" which was introduced by Rep. Peter Rodino (D-NJ), and we urge you to join the effort by co-sponsoring this essential legislation.

The refugees who fled by boat from Cuba and Haiti in the past few years risked their lives to seek protection in the United States. The great majority of these groups were originally welcomed here under a temporary "entrant" status which carried the promise that lawful permanent residence through new legislation would soon follow. In 1981, our government's policy toward these groups changed dramatically. Shortly thereafter, over 2100 Haitian refugees were detained in federal prisons and immigration detention centers pending processing of their applications for political asylum. Federal court decisions in recent years have forced the inescapable conclusion that the policies of the federal government resulted in serious violations of due process or law in the treatment of Haitian and Cuban refugees.

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EXECUTIVE DIRECTOR

The Haitian refugees in particular have suffered at the hands of our government. They have been improperly denied their statutory and treaty rights to a hearing before an immigration judge in exclusion proceedings on their claim for political asylum, as well as their right to be notified of the procedures that the government intended to use against them. They have even been denied the right to present their asylum claims. Although most of the Haitian refugees have been released from detention, the status of Cuban and Haitian refugees remains in limbo. The inequities involving the treatment of both groups impells the enactment of legislation providing permanent residence.

The Rodino bill would finally rectify the injustice in our treatment of Cuban and Haitian boat people. The ACLU strongly endorses the specific language of the legislation, and we agree that the bill's definition of this distinct group of refugees must benefit from its provisions. H.R. 4853 is a modest step toward a humane and just solution to this dilemma. We urge you to co-sponsor and support this important legislation.

Sincerely,



John Shattuck
Director



Wade J. Henderson
Legislative Counsel

NATIONAL COALITION FOR HAITIAN REFUGEES

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Mark M. Murphy

April 23, 1984

Dear Representative:

On behalf of organizations traditionally concerned with fundamental civil and human rights, and as representatives of the forty-five national member organizations of the National Coalition for Haitian Refugees, we are writing to strongly urge your active support and co-sponsorship of the Cuban-Haitian Adjustment Act of 1984, H.R. 4853.

This legislation, introduced by Judiciary Committee Chairman Peter Rodino, would end the tragic plight and aggravated legal limbo of a restricted class of Cuban and Haitian boat people. It would grant to approximately 125,000 Cuban and 31,000 Haitian boat people permanent residence in the United States. This bill has already been endorsed and co-sponsored by a bi-partisan group of your colleagues including Representatives Mazzoli, Pepper, Fancell, Conable, Barnes, McKinney, Fauntroy, and the overwhelming majority of the Congressional Black Caucus. The Chairman of the Senate Subcommittee on Immigration and Refugee Policy, Alan Simpson, has also supported the need to "end the Cuban and Haitian legal limbo" and grant them permanent status.

Every major civil rights, trade union, religious, and voluntary organization familiar with the plight of Cuban and Haitian refugees has enthusiastically endorsed the Cuban-Haitian Adjustment Act. This legislation finally accords justice and due process to these Cuban and Haitian boat people, the great majority of whom have suffered in a legal limbo for an intolerable period. At the same time, the number of people who would benefit from this legislation is well defined and limited.

The Cuban and Haitian boat people fled to our country seeking shelter from repression and misery, and their situation is unique because of the treatment that they have been subject to. Beginning four years ago the great majority of this group was granted an "entrant" status and has been promised repeatedly by our government that this status would be converted to permanent residence through legislation. The small group of Haitian and Cuban boat people who arrived subsequent to the grant of "entrant" status but prior to January 1, 1982, have in many cases

suffered more than their predecessors. A large number of them were imprisoned for up to eighteen months as part of a universally condemned detention program. This long overdue legislation will grant permanent residence to both groups.

We sincerely request that you join us in correcting the intolerable civil rights plight of the Cuban and Haitian boat people, by co-sponsoring and actively supporting the Cuban-Haitian Adjustment Act of 1984. Thank you in advance for your assistance in this most urgent request.

Very Sincerely,

+ *Anthony J. Bevilacqua*

Most Reverend Anthony J. Bevilacqua
Bishop of Pittsburgh
Chairman

Benjamin L. Hooks

Benjamin L. Hooks
Executive Director
N.A.A.C.P.
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Executive Committee

Mr. MAZZOLI. Thank you very much, Mr. Hooper. I appreciate your willingness to work with us this morning.

Mr. Padron, you are recognized for 5 minutes.

Mr. PADRON. My name is Eduardo Padron; I am cochairman of Greater Miami United, an organization that brings together the civic and economic leadership in the Miami area.

Our organization strongly supports immediate enactment of the Cuban/Haitian Adjustment Act of 1984. The welfare of the south Florida community requires that the legislation of the limited group of Cubans and Haitians defined in Chairman Rodino's legislation be guided by the fundamental values of equal treatment and justice for all and be accomplished as quickly as possible.

We ask that the mass of this group of Cuban and Haitian refugees, who risked their lives to flee to our country from misery and repression, be granted permanent residency and an end to the tragic plight and legal limbo. The unique and desperate situation of the Haitian and Cuban refugee boat people has been repeatedly linked by Government election in the public mind. The great majority of the Cuban refugees from the Mariel flotilla and the comparable and smaller group of Haitian refugees of long ago have been promised that their entrant status would be converted to permanent residency through legislation.

Southern Florida has long prided itself on being a vital multiethnic community where our citizens suffer from too much divisiveness already. Introduction of the Cuban/Haitian Adjustment Act of 1984 represents a long overdue and equitable step toward solving the tragic plight of these two refugee groups. Our community is united in support of its early passage.

Our organization also endorses the specific language of the Cuban Adjustment Act of 1984 that defines the group of refugees to benefit from its provisions as absolutely essential to humane and equitable solution to this dilemma.

The handful of Cubans and Haitians who arrived subsequent to the granting of entrant status but before January 1, 1982, has suffered more than the prior arrivals in many cases. Thousands of Haitian refugees were detained for up to 18 months as part of the detention program that Federal courts have held to have been illegal and discriminatory.

As Chairman Rodino emphasized, no group in recent history has been subjected to more injustices by the Immigration Service. Both the Cuban and Haitian refugees have established additional and substantial equities in our society and their presence here should be legally confirmed immediately. Our organization is in support of this just and humane legislation, and we urge you to endorse this bill in a bipartisan commitment to end the plight of these refugees and to renew the sense of unity in our community.

Let me propose to you that the administration's suggestion that the Cuban Adjustment Act be repealed is illogical and irrational. If you eliminate the Cuban Adjustment Act, you will be in essence saying that the Cubans are no better or worse than any other people, however, the fact is that Cubans are really in an inferior position because they are the only ones who cannot come to the United States legally. From the preferential treatment in the

1960's and the 1970's, Cubans have been placed in an inferior position in the 1980's.

As you know, since 1980, the United States has closed the doors for legal migration from Cuba. This, in my opinion, is the most effective way of provoking another Mariel, since there is no legal or emotional outlet for Cubans at the present time.

At the present moment, the only avenue for Cubans to come to the United States is by way of third countries. This is a very difficult and time-consuming process.

In Costa Rica alone, there are over 20,000 Cubans waiting to come to the United States. As is true in most countries, they are not allowed to generate income. This is draining the south Florida economy. There are millions of dollars sent every year from U.S. citizens to their relatives in third countries. Sometimes it may take as much as 5 years before they are granted U.S. visas.

I would like to end by relating one of the cases I come in contact with every day in the Miami area. This is a lady 27 years old who came by way of the Mariel flotilla. She works about 12 hours a day at a local restaurant. At the time she was leaving Cuba on the boats, she had her 3-year-old girl, daughter, that she was ready to bring with her.

The Cuban Government told her not to bring the girl on that boat because there was no more space; that they would put the girl on the next boat and she would arrive safely to the United States. The girl never came.

It has been 4 years; the girl is 7 years old, hardly remembers her mother at this point, but both are anxious to reunite. This is one of just many cases that are happening and I think it is cruel. Only you can bring about a solution to this problem.

Also, Mr. Chairman, I would like to ask your permission to enter this, which is a very comprehensive report of the Miami Herald on the third anniversary of the Mariel exodus, which really documents all the contributions of these people to the United States of America, and I would like to enter it as an official part of the record.

Mr. MAZZOLI. Without objection.

[The document is on file with the committee.]

Mr. PADRON. Thank you.

[The prepared statement of Mr. Padron follows:]

PREPARED STATEMENT OF EDUARDO PADRON, COCHAIRMAN, GREATER MIAMI UNITED

Greater Miami United strongly supports the immediate enactment of the Cuban-Haitian Adjustment Act of 1984, introduced on February 9, 1984 in the United States Congress by Judiciary Committee Chairman Peter Rodino. The welfare of the South Florida community requires that the legalization of the limited group of Cubans and Haitians defined in Chairman Rodino's legislation be guided by the fundamental values of equal treatment and justice for all and be accomplished as quickly as possible.

Justice demands that this group of Cuban and Haitian refugees who risked their lives to flee to our country from misery and repression be granted permanent residence and an end to their tragic plight and legal limbo. The unique and desperate situation of the Haitian and Cuban refugee boat people has been repeatedly linked by governmental action and in the public mind. The great majority of the Cuban refugees from the Mariel flotilla and the comparable and smaller group of Haitian refugees have long ago been promised that their "entrant" status would be converted to permanent residency through legislation.

Southern Florida has long prided itself on being a vital, multi-ethnic community, but our citizens have suffered from too much divisiveness already. The introduction of the Cuban-Haitian Adjustment Act of 1984 represents a long-overdue and equitable step towards solving the tragic plight of these two refugee groups, and our community is united in support of its early passage.

Our organization also endorses the specific language of the Cuban-Haitian Adjustment Act of 1984 that defines the group of refugees to benefit from its provisions as absolutely essential to a humane and equitable solution to this dilemma. The handful of Cubans and Haitians who arrived subsequent to the granting of "entrant" status but before January 1, 1982 have suffered more than the prior arrivals in many cases. Thousands of the Haitian refugees were detained for up to 18 months as part of a detention program that federal courts have held to have been illegal and discriminatory. As Chairman Rodino emphasized: "No group in recent history has been subjected to more injustices by the Immigration Service."

Both the Cuban and Haitian refugees have established additional and substantial equities in our society, and their presence here should be legally confirmed immediately. Our organization is in support of this just and humane legislation, and we urge the Democratic and Republican parties to endorse this bill in a bi-partisan commitment to end the plight of these refugees and to renew the sense of unity in our community.

Sincerely,



Eduardo J. Padron
Co-Chairman
Greater Miami United

Mr. MAZZOLI. Thank you very much, Mr. Padron.

Gentlemen, we appreciate your testimony. Let me ask Mr. Padron, you brought up a subject I was going to mention and that is the possible repeal of the Cuban Adjustment Act which is done in H.R. 1510, the Immigration Reform and Control Act. You said it was irrational, illogical.

Why would it be that way? Why would there need to be a law on the books for one classification of people when we have people here from Salvador, people here from Afghanistan, people here from many other sectors of the world?

Mr. PADRON. There are historical reasons and I will not go into that, but from the practical point of view, as I said in my statement, it is basically the only avenue left for Cubans to be adjusted—as you know, there is no legal migration from Cuba.

Mr. MAZZOLI. Could they not come as refugees? I mean, wouldn't a Cuban who leaves that government have a pretty fair chance of being termed a "refugee"?

Mr. PADRON. You mean by the U.S. Government?

Mr. MAZZOLI. Yes.

Mr. PADRON. Well, that is one of our concerns right now. We have had cases, as many people present here will document, even people who are detained today at the Krome Avenue Detention Center. There are about 30 Cubans that are detained there.

The problem that we have is that it is discriminatory. Up to that time, it was a completely different story and what you have right now is that there are people who are coming with special permission to visit relatives, especially old people, in the United States.

Sometimes if they decide to stay, the only way they have to do that is by appealing through the Cuban Adjustment Act, and I feel that, of course, the great solution would be to treat the Cuban people no differently and to start legal migration. In my opinion, what the Government is doing is depriving these people of any kind of outlet and I personally happen to feel that was the major reason for the Mariel boatlift and it would be a major incentive for people to try to come into the United States illegally.

Mr. MAZZOLI. Good. Let me ask the other panelists this question: There is a second section—the first section you have dealt with eloquently and the second section deals with the issuance of visas in Cuba to people who would otherwise be cleared to come to the country, except for the policy of the Government not to issue visas except for close family reuniting.

Have you a position, has your organization taken a position on that phase of the bill?

Mr. Mazur, for example, have the Ladies Garment Workers spoken on that?

Mr. MAZUR. We take a broad view of the Simpson-Mazzoli bill about liberal policy of immigration to this country—

Mr. MAZZOLI. That second section is not in the immigration bill, Mr. Mazur.

Mr. MAZUR. I know that, but consistent with that policy, Mr. Chairman, as indicated by a number of the speakers this morning, we would take the same kind of liberal view with respect to allowing visas and allowing those people to come to this country as well.

Mr. MAZZOLI. But obviously, our—

Mr. MAZUR. It is not—

Mr. MAZZOLI. Implicit in that is that your organization doesn't have the same fealty and devotion to phase 2 as they do to phase 1.

Mr. MAZUR. I think we can draw a distinction. I think there is a distinction between those two phases, obviously.

Mr. MAZZOLI. OK.

Mr. Hill. And let me mention that you are well-served at home by Booker Webster, who is our local Louisville A. Philip Randolph Institute chapter president and has done a very fine job for us in your congressional district.

Mr. HILL. Thank you very much. We look forward to good cooperation with you in the continuing future.

We have a similar view, as Jay Mazur has indicated, in our own attitude. We are generally open to measures which are conducive to uniting families, to bringing about and creating best possible living situation for people who come here.

Mr. MAZZOLI. Thank you.

Mr. Hooper.

Mr. HOOPER. In your introduction to your question, I think you in some ways implied the answer, that our coalition would have, and that is that we are most concerned about the first section of the bill. Our principle motivating concern is the first section of the bill.

As all other speakers, except the administration, however, have indicated, we completely support the granting of those visas. We believe it should be done.

Mr. MAZZOLI. I understand, but I guess the administration draws a very sharp line against phase 2, but they are not adamant about phase 1 and I think if we are trying to get a piece of legislation passed, it may be that we perhaps should make some adjustments in this thing.

Let me ask you all in what little bit is left of my time, I am sure in this bill there is a retroactive grant of time toward permanent residency. It goes back to 1982 so that anyone here has 2½ years or so applied to the 5 years of residence for naturalization. Do you see this as right? Do you see this as selecting out people? We don't do this for Salvadorans; we don't do this for any other group. Is there some reason why we should do this for this particular class of people?

Mr. Hooper?

Mr. HOOPER. Well, I think there is because this class is a very discrete, identifiable group of people. They have suffered particular and unique hardship in this country. Their situation is well known. Really, the process that we are looking at is the process of adjusting people, the majority of whom have already been promised legal status long ago.

The larger question of the legalization of a general undocumented population, involves entire series of far more—are well aware—of far complicated questions as you, more than most of us.

Mr. MAZZOLI. Well, in the Simpson-Mazzoli bill, the H.R. 1510, we do about what this bill does with respect to Cubans and Haitians, but we don't grant retroactive application toward the 5-year requirement and I just wondered how you saw that, whether that

was something that is absolutely irreducible minimum in this bill, or whether that is something which is—

Mr. HOOPER. You are asking a delicate question, but I don't think it is an irreducible minimum.

Mr. MAZZOLI. Thank you.

The gentleman from Florida is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

I first want to say that I appreciate the comments of all the members of the panel. I certainly sympathize. Being from Florida, it is a problem which obviously many have shared, but for Florida, it is a uniquely difficult problem to deal with on a day-to-day basis.

I want to compliment my friend, Eduardo Padron, who is here today. He and a number of others have done an excellent job of not only trying to champion the cause of the Cuban and Haitian refugees who are in this nonstatus class, but in addition, have galvanized most of the community around it so that where it was a divisive issue previously, to a large degree, it is no longer such.

The justice and the fairness of the situation, for the most part now, are acceptable by the people in the community, especially in the south Florida area. They have done an excellent job in doing that and I am very proud of that.

It strikes me odd, and it is too bad the administration isn't here—President Reagan is very well received in the Cuban community in south Florida. The Haitians tend to be Democratic; the Cubans tend to be Republican. Interestingly enough, it is this administration that has not chosen to provide status to any single Marielito under the Cuban Adjustment Act of 1966, and while the President seems to be so personally popular, I wonder if they knew his policy that was being carried out if he would be so popular.

I think it is unfortunate there is an opportunity under the law to do this, and they have not been doing it. That is why I feel that this bill is extremely important to provide that kind of a basis on which to do it.

I also feel that it is important that we do examine the repeal in the Mazzoli bill of the Cuban Adjustment Act. I agree, frankly, and I discussed this with the chairman of the Rules Committee yesterday and he and I have agreed to file a joint amendment which would be in order, I hope—his name is going to be on that—

Mr. MAZZOLI. Sure will be.

Mr. SMITH. It might be possibly in order to—

Mr. MAZZOLI. I would say it is a pretty good chance that—the chairman of the Rules Committee might have an opportunity to make in order. [Laughter.]

Mr. SMITH [continuing]. To remove that provision so that the CAA, in fact, would not be repealed. There are some, I think, some very compelling arguments of the fact that this is an identifiable group who has been here for a very long time, over 20 years, many of them. I think people tend to lose sight of the fact that the Mariel boatlift and the Haitian boatlift people, in fact, represent only a small portion of the total number of a large class of people that came here, Haitians as well, previous to the boatlift.

As a result, I think that there is a very compelling reason for us to be able to examine them independently of whatever else other classes, in fact, have arrived here subsequent to that time. I would

just like to close—I don't really have any questions for the panel because obviously we agree on most of these issues—just by saying that I think it is important again, and the chairman certainly knows I have done this many times—it is interesting to note that in the south Florida area, the people who we are talking about today, the Cuban and Haitian boatlift people, but also the Mariel refugees' predecessors, and that is, the Cubans who have come since the unfortunate demise of Cuba to Castro, have become very much a strong, integral, very well-received and very important part of the community.

Aside from those few people who were shoved over with the others when Castro emptied his jails, there has been very little negative impact and only positive impact on the community. To a large degree Miami and Miami Beach today would not be what they are if it was not for the Cuban entrants who came here after 1959.

In the Haitian community, I doubt whether there has been—out of all of these years since all of the people have come—whether there has been a hundred reported cases of criminal element activity as a result of it. They are extremely industrious, hard-working people. Almost all of the people that have come here, both Cubans and Haitians, only want one thing: A chance to make a living and to have a decent place to live and raise a family and where they come from, not only could they not have that economically, but politically they had no chance either. That is really what it boils down to.

There is no turmoil in those communities today. There are no problems with those communities. None of them are seeking to go back and I think that the bottom line is that this bill, as well as the Mazzoli bill, does serve them a good deal of justice. Obviously, this deals with them slightly more independently of any other group. It is unfortunate that some people have chosen to campaign around this country on the grounds that they do not allow for others to have come here when, if they would look up their own family trees, they would find that just a short time ago, they wound up here in one way or another with an open-door policy.

The bell has rung; my time is up, but I wanted to congratulate the chairman again for the series of hearings and bringing this bill up. I would hope that we have an opportunity to vote on it rapidly.

Mr. MAZZOLI. I thank the gentleman for those comments and I certainly share them. It was my experience when I did come to Florida—I think when I first met Mr. Padron 2 or 3 years ago—even though many of you have fairly negative statements about the Government and about the Immigration Service, I think that my experience in talking with the Immigration Service was exactly as the gentleman said, and that is, with respect to the Haitians, there was, you know, literally no violence and no problems.

With respect to the great bulk of the Cuban entrants, and of course, anyone who has been here for a while, they have actually added a flavor and a substance to south Florida which it just didn't have for a long, long time.

We want to thank all of you very much. I hope you have a safe trip back home and thank you for your indulgence. We had a very hopscotch day here, but we want to thank you and wish you well.

We call our last group forward: Mr. Ira Kurzban, legal supervisor of the Haitian Refugee Center; and Mr. Jerome Audige, the executive director of the New Jersey Haitian/American Cultural Foundation.

Gentlemen, you can array yourselves as you wish.

Mr. Kurzban, you are recognized for 5 minutes.

TESTIMONY OF IRA KURZBAN, GENERAL COUNSEL, HAITIAN REFUGEE CENTER; AND JEROME AUDIGE, EXECUTIVE DIRECTOR, NEW JERSEY HAITIAN/AMERICAN CULTURAL FOUNDATION

Mr. KURZBAN. Thank you, Congressman Mazzoli.

On behalf of the Haitian Refugee Center, Inc., and the Haitian community in south Florida, I would like to thank you for giving us this opportunity to speak before the committee today.

The first thing I would like to point out is that we strongly support H.R. 4853. We think it is a humane, just, and long-needed alternative to the situation that has existed in south Florida for both Cubans and Haitians.

I would like to call to the committee's attention three beneficial aspects to the bill that are not presently covered under any other legislation. I think they are important for the committee to note.

First, this bill—unlike any other bill—reverses the narrow interpretation that the Immigration and Naturalization Service has given the Cuban/Haitian entrant status by including people who are not only in proceedings, but people for whom a record was created on or before October 10, 1980.

Second, the bill addresses the question of coverage of persons whose files were lost. As I know you are well aware, and I am sure many of the other committee members are the Immigration Service in 1980 established a Haitian program during which time they centralized all the files of Haitians in south Florida. That whole process was found to be illegal by Judge King in *Haitian Refugee Center v. Civiletti*, but during that process, many files were lost.

Subsequent to that time, Haitians were placed in detention camps and forcibly relocated throughout the United States. Their files were transferred with them. Many files were lost at that time, so we presently have a problem trying to establish that dates of entry of the existence of files for Haitians.

This bill addresses that problem by providing that a person would be covered if a record was created, even if, in fact, the Service now does not have that record, so long as the petitioning party can establish that the file should have been created. The contours of what this includes and excludes, will have to be addressed either by this committee or by regulation.

The third aspect of the bill and the one, I of course, am most familiar with, is the coverage of Haitians who were involved in *Jean v. Nelson* and the coverage of Haitians who were detained which not only covers those people who were detained for a period of a year, but also covers those Haitians who were detained for lesser periods and who were not members of the class in *Jean v. Nelson*.

So the affected group is not just the approximately 2,000 Haitians class members in *Jean v. Nelson* we are also talking about

other Haitians who were detained who certainly have significant equity.

I would like to call to your attention some technical changes that are needed in the bill with respect to subsection (c). I certainly don't think it was intended by Congressman Rodino, but subsection (c), if left in its present form, would substantially undermine even the Cuban/Haitian entrant program. It does so by having required that Cuban/Haitian entrants file an application for political asylum on or before January 1, 1982 to be eligible for residency benefits.

This provision should be modified, at least as to those people who arrived before October 10, 1980. Many of the pre-October 10, 1980, refugees, particularly Haitians who came into the country, did not file political asylum applications because of their belief the INS would not give them a fair hearing. This occurred during the period of the litigation in *Haitian Refugee Center v. Civiletti* and during the period of the Immigration Service's Haitian program when INS was mass-processing and mass-denying Haitians asylum claims.

After the Carter administration established the Cuban/Haitian entrant program, there was nothing that any of those people needed to do in order to affect their status in the United States so they were advised, I think quite appropriately, by competent attorneys, that they need not file an application for political asylum because they already had the status of Cuban/Haitian entrants.

This bill, I think unintentionally, would penalize those people if they never filed an application for political asylum before January 1, 1982. This provision certainly is not in the present 1510 bill, or even in the bill presented by Senator Simpson.

Finally, I would like to turn to something that I think is of critical importance and a matter the committee should seriously consider advancing at this time; that is the question of what the committee should consider doing to protect the Haitians during the pendency of the passage of any of the current immigration reform bills. I would hope that you, Congressman Mazzoli, and the rest of the members of the committee, would call upon the INS to stop deportation hearings against Haitians pending a final determination of this legislation.

I am not sure if committee members are aware of it, but the INS has stepped up, since the introduction of this bill in February—proceedings to deport Haitians. There was some comment made by Mr. Nelson initially that the Service didn't discriminate. I think the record speaks for itself. The task force of the Black Caucus has eloquently spoken on this issue for a number of years and has found that there was discriminatory treatment. Moreover Federal litigation that dates back to 1973 has raised the discretion treatment of Haitians. The panel of the court of the 11th Circuit Court of Appeals found a stark pattern of discrimination with respect to the Haitians. I don't think there is any question, but that discrimination goes against the Haitians and I would even say that there is no question of racism here. I think we have proven that.

In closing we do point out that if these bills are not passed this term, and if the Service continues there expedited processing of Haitian cases, what we will see by next year is a situation where, on the one hand, Cubans are going to be adjusted under the Cuban

Adjustment Act; on the other hand, many Haitians outfitted to benefit under H.R. 4853 will be deported. It will effect particularly those people who have the most equities, which are those Haitians who were detained for long periods of time.

I would certainly call upon you, Chairman Mazzoli, to bring this matter to the Government's attention and see, in an equitable and sensible way, given the thousands of other cases that the Immigration Service can certainly process, that we obtain a moratorium, either through legislation or through discussion with INS as to the deportation hearings of Haitians.

[The prepared statement of Mr. Kurzban follows:]

PREPARED STATEMENT OF IRA J. KURZBAN,¹ GENERAL COUNSEL,
HAITIAN REFUGEE CENTER,

The Haitian Refugee Center, Inc., on behalf of the Haitian refugee community in the United States, is grateful for the introduction of HR 4853 by the Honorable Peter Rodino and for the opportunity to appear before this committee.

The bill in its proposed form is a humane, just and equitable solution to a problem of long standing in the South Florida area. As early as 1963² and more regularly beginning 1972 Haitians have fled the dictatorship of the Duvalier family in Haiti. Despite the brutal, repressive nature of that regime,³ Haitians have been systematically maltreated by the Immigration and Naturalization Service since their arrival in our country.⁴

¹Mr. Kurzban is a partner in the law firm of KURZBAN, KURZBAN & WEINGER, P.A. of Miami, Florida, a member of the Board of Governors of the American Immigration Lawyers Association and Adjunct Professor of Immigration and Nationality Law at the University of Miami and Nova University School of Law.

²See House Committee on Immigration Citizenship and International Law, U.S. House of Representatives, Committee on the Judiciary, 94 Cong. 2nd Sess. Haitian Emigration.

³See, H.R.C. v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980)

⁴For over a decade, Haitian refugees seeking asylum in this country have been systematically denied their right to the fair and impartial administration of our immigration laws at the hands of immigration officials. They have been improperly denied their statutory and treaty rights to a hearing before an immigration judge in exclusion proceedings on their claims for political asylum. Sannon v. United States, 427 F. Supp. 1270 (S.D. Fla. 1977), vacated and remanded on other grounds, 566 F.2d 104 (5th Cir. 1978). They have been denied their right to notice of the procedures that the government intended to use against them in exclusion proceedings. Sannon v. United States, 460 F. Supp. 458 (S.D. Fla. 1978). They have been denied the right to work during the pendency of their asylum claims. National Council of Churches v. Egan, No. 79-2959-Civ-WMH (S.D. Fla. 1979). They have been denied access to information to support their asylum

HR 4853, therefore, is a welcome and long awaited effort to provide a solution to over a decade of misery to persons who have so long and earnestly sought freedom on our shores.

HAITIANS COVERED BY HR 4853

The coverage of HR 4853 of course, is of great concern to the Haitian community. At present the bill would cover Haitian entrants and all Haitians who arrived in the United States before January 1, 1982 and with respect to whom any record was established by the INS. The latter section is critical and provides important relief to Haitians neglected under the present version of the Simpson-Mazzoli bill. It achieves broader coverage in two ways.

claims. National Council of Churches v. Immigration and Naturalization Service, No. 78-5163-Civ-JLK (S.D. Fla. 1979). They have been denied the very right to be heard on their asylum claims. Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980), affirmed H.R.C. v. Smith 676 F.2d 1023 (5th Cir. Unit B, 1982). They have been denied their right to counsel and to fair process in their exclusion hearings by being shipped, like cattle, to remote areas of America. Louis v. Meissner, 530 F. Supp. 924 (S.D. Fla. 1981). They have been subjected to discriminatory incarceration based on race and nationality in concentration camp-like settings, Jean v. Nelson, 711 F.2d 1455 reversed on other grounds en banc 767 F.2d 957, petition for rehearing pending (1984) [The court en banc found the Constitution inapplicable to Haitian asylum seekers but did not disturb the panel's findings as to discrimination].

COVERAGE OF HAITIAN ENTRANTS NOT IN PROCEEDING

First, the Cuban-Haitian entrant program, originally envisioned to provide broad coverage to both Haitians and Cubans,⁵ has been narrowly interpreted by the INS to include only Haitians who were encountered and placed in proceeding before Oct. 10, 1980.⁶ This interpretation has eliminated a substantial number of Haitians who voluntarily appeared at INS before Oct. 10, 1980, who were given parole documents or told to return and who were never placed in deportation proceedings. HR 4853 remedies that problem by including all Haitians who had any record at INS, whether before or subsequent to Oct. 10, 1980, irrespective of the initiation of deportation proceedings. This broader coverage, particularly as it pertains to Haitians arriving here before Oct. 10, 1980 is more in keeping with the original spirit of the entrant program.

COVERAGE OF HAITIANS AND CUBANS WHOSE FILES
WERE LOST OR MISPLACED

Significantly, this broader provision would also apply to any Haitians whose records were established even if INS subsequently lost them. ["to whom any record was established"]. Although it is not possible to ascertain the number of Haitians in this "lost" category, it is well known that a significant number of Haitian files were lost due to INS actions during the "Haitian

⁵"Cuban-Haitian Arrivals In U.S." Current Policy No. 193. U.S. Department of State, June 20, 1980.

⁶Telex of 11/10/80 from INS Commissioner to all INS officers.

Program," where Haitian files were centralized,⁷ and to the subsequent transfer of many files to remote areas of the United States with the Haitians by the INS⁸. The broader coverage of HR 4853 is more equitable than that found in other pending legislation in this area in that it alone provides protection to Haitians and Cubans whose files were lost through no fault of their own. The bill, therefore, would protect both those Haitians who arrived before Oct. 10, 1980 but who were not in proceedings and therefore not designated as entrants, and those Haitians and Cubans whose files were lost or misplaced by the INS.

COVERAGE OF POST-ENTRANT HAITIANS AND CUBANS

Secondly, HR 4853 also covers Haitians who arrived subsequent to Oct. 10, 1980 including the approximately 2,000 Haitians who were incarcerated unlawfully for almost one year by the INS,⁹ and several thousands who were unlawfully incarcerated for lesser periods. In addition to this group there are a substantial number of both excludable and deportable Haitians who entered after Oct. 10, 1980 but before May, 1981 and are therefore neither Haitian entrants nor class members in Louis v. Nelson. This group, numbering in the several thousands would also be covered by this important legislation. In addition, the bill

⁷See, H.R.C. v. Civiletti, 503 F. Supp. 442 (S.D. Fla. affirmed H.R.C. v. Smith, 676 F.2d 1023 (5th Cir. Unit B. 1982).

⁸Louis v. Meissner, 530 F. Supp. 924 (S.D. Fla. 1981)
Louis v. Nelson, 544 F. Supp. 1004 (S.D. Fla. 1981).

⁹These Haitians were released from detention by order of the Honorable Eugene P. Spellman in Louis v. Nelson, 544 F. Supp. 1004 (S.D. Fla. 1982).

would cover post-Mariel Cubans who entered the U.S. prior to Jan. 1, 1982 and who number, at a minimum, in the high hundreds.

The coverage of both of these groups is of great concern to the South Florida community. Both groups entered or sought entry into the United States at a time when our country welcomed them. The Haitians who arrived subsequent to Oct. 10, 1980 had no reason to believe they would not be treated as their predecessors. Indeed, it was not until May, 1981 that the INS dramatically changed its position and began to incarcerate Haitians, and did so without the legally required public notice for such a change of policy mandated by the Administrative Procedure Act.¹⁰ Moreover, only very recently, in late 1983, has INS seriously initiated deportation proceeding against the post Oct. 10, 1980 Haitians. It would, therefore, be inequitable to tell this group of Haitians, now three years later, that they are not welcome in our country.

The same can be said of post-Mariel Cubans. Although President Carter, by May, 1980 attempted to stop the flow of persons from Mariel, post-Mariel Cubans have been welcomed to the United States and have been adjusted to permanent residency under the Cuban Adjustment Act.

APPLICATION OF SECTION 243(g) TO CUBANS

One other provision of the bill is of great importance to the

¹⁰Jean v. Nelson 711 F.2d 1455 vacated as moot 727 F.2d 957 (1984).

Cuban community in South Florida. Many Cuban-Americans have made diligent efforts to obtain immigrant visas through the quota system for their spouses, children and brothers and sisters. As a result of the Attorney General's announcement in 1983 invoking section 243(g) of the I.N.A., many United States citizens and residents of Cuban heritage have been unable to be reunited with their family members. Section 2 of HR 4853 would relieve that problem by requiring consular officers to issue visas under our quota system to persons who have waited and are entitled to such visas so that they may be reunited with their families.

AREAS OF CONCERN IN NEED OF CLARIFICATION OR REVISION

Although HR 4853 is a positive equitable solution to a long standing problem for Haitians and Cubans, this solution is in substantial jeopardy of being rendered meaningless unless the bill is modified and clarified in several respects.

SUBSECTION "C" OF HR 4853
MUST BE MODIFIED OR ELIMINATED

Subsection "c" of HR 4853 provides an exception to the coverage of the bill which if maintained in its present form would negate the substantial benefits of the bill. Indeed, if it was left in its present form, it would provide less coverage than the Cuban-Haitian provisions of the Simpson-Mizolli bill.

Subsection "c" as presently written provides that no Cuban or Haitian who is either a Cuban/Haitian entrant or who arrived before January 1, 1982 may be adjusted to permanent residency if he or she "was admitted to the United States as a non-immigrant, unless [he/she] filed an application for asylum... before January 1, 1982."

HAITIANS IN LOUIS V. NELSON COULD BE SERIOUSLY AFFECTED

It is important to note that many of the Haitian asylum seekers in the class of plaintiffs in Louis v. Nelson sought to enter the United States through airports and seaports with visas, were inspected but were not admitted, and were thereafter incarcerated in a discriminatory manner. Although they were subsequently paroled into the United States by virtue of the order of the court in Louis v. Nelson, they have never been admitted into the United States.

If subsection "c" is read to require actual admission [and overstay] and not just inspection, parole or unsuccessful admission, it would not, therefore, seriously affect this group. Alternatively, if subsection "c" is read to include any Haitian

who sought admission by the presentation of a non-immigrant visa [whether [fraudulent or not], who was inspected or paroled, it would affect all of the Haitian class members in Louis v. Nelson. The committee should state clearly in its report that subsection "c" does not apply to Haitians who sought admission (but were not admitted), and does not apply to any Haitian who was inspected or paroled but not admitted.

EFFECT OF SUBSECTION (c) ON HAITIAN ENTRANTS

The effect of subsection "c" on Haitian entrants is more serious and more problematical. Many of the Haitians who were later designated Haitian entrants entered the United States as non-immigrants and thereafter overstayed their grant of admission into the United States. Many of these people did not file claims for political asylum. The number of persons in this category is easily in the thousands. Their failure to file claims may not be attributable to their lack of desire to seek political asylum, however, but rather to a course of events which occurred between 1978 and 1982. In 1978 after the Immigration Service began its Haitian program, which ultimately resulted in the litigation known as Haitian Refugee Center v. Civiletti, many of the Haitians were in fear of appearing at INS and did not believe that they would obtain a fair opportunity to present their claims for asylum. The reasonableness of these fears was ultimately confirmed by Judge James Lawrence King's final decision in that

case, which was upheld by the Court of Appeals in Haitian Refugee Center v. Smith. During the course of these events, the Haitians were designated as Haitian entrants in June, 1980 which was later extended to October, 1980. They were then told that legislation would be submitted to make them residents.¹¹ There was, therefore, no perceived need to go to INS to file an application for asylum because the Haitian entrants were assured that legislation would be submitted to make them residents.

Indeed, it has been common practice for immigration lawyers to advise Haitians, who would now fall within the parameters of subsection "c", that it was unnecessary for them to apply for asylum or to take any other steps concerning their immigration status. This is the advice that competent, skilled immigration lawyers have consistently given to Haitian entrants since the Carter administration's decision on June 20, 1980 and later on October 10, 1980 and since the original submission of President Regan's proposals and Simpson-Mazzoli.

The modification proposed by subsection "c" of the Haitian entrant program would seriously undermine the original grant of entrant status and would now retroactively affect a substantial number of Haitians who were lulled into the belief, as early as 1980, that they did not need to take any additional action to effect their status. This retroactive effect upon persons who did not know and had no reason to know [and were often given

¹¹Indeed, the present Simpson-Mazzoli bill does not contain any provision limiting the Cuban-Haitian entrant group as does subsection (c).

advice not to take any action], is unfair and I do not believe this outcome was intended by Congressman Rodino. I would therefore strongly recommend that subsection (c) be modified so that it does not apply to persons designated under subsection (b) (1) [Cuban/Haitian Entrants] of the bill and under (b)(2) if they arrived on or before Oct. 10, 1980. This latter aspect is to cover persons who should have been designated Haitian entrants and could be designated for coverage under the more liberal provisions of section (b)(2) mentioned above.

Alternatively, the committee may wish to consider eliminating subsection "c" in its entirety.

TEMPORARY RELIEF IS NEEDED TO MAINTAIN THE STATUS QUO

The Haitian Refugee Center, Inc. and the Haitian community, strongly endorse Congressman Rodino's bill with the modifications suggested hereinabove. Congressman Rodino's leadership and direction of HR 4853 is an important factor in securing the passage of this significant and long awaited legislation.

The timing of the passage of HR 4853, however, is also of critical importance to the Haitian community. Subsequent to the introduction of HR 4853, the INS began calling to exclusion and deportation hearings large numbers of Haitians who arrived in the United States subsequent to Oct. 10, 1980 (i.e. post-Haitian entrants) but who would be covered by HR 4853. The efforts of the INS to deport these people before they obtain the benefits of Congressman Rodino's bill is yet another shameful example of the insensitivity and bias of the INS in the treatment of Haitians.

We have asked the INS voluntarily to cease deportation and exclusion hearings for the persons covered by this legislation and to concentrate its limited resources on persons who would not be covered by HR 4853. We have made this suggestion not only because it is fair and equitable but because it would represent a sensible use of the limited resources of the INS in bringing proceeding, and the Haitian Refugee Center, Inc. in representing indigent Haitians.

As the INS has not voluntarily ceased to initiate and conclude deportation and exclusion hearings for persons covered by HR 4853, we believe that this committee should consider seriously emergency legislation, or an amendment to legislation or appropriations now in the process of passage, to maintain the status quo through the temporary cessation of deportation and exclusion hearing of Haitians covered by HR 4853. Without this requested emergency relief hundreds of Haitians who are presently at the final stages of the administrative appellate process are likely to be deported within the next several months. Their deportation or exclusion, given the existing repression in Haiti, will mean their persecution, HRC v. Civiletti, 503 F.Supp. 442 (S.D. Fla. 1980) and possibly their torture or death upon return. We strongly recommend that you consider some emergency action to prevent these grave consequences and to preserve the status quo pending the passage of HR 4853.

Thank you.

IRA J. KURZBAN, ESQ.
KURZBAN, KURZBAN & WEINGER, P.A.
700 Brickell Avenue, Suite 901
Miami, Florida 33131

BY: 

Mr. MAZZOLI. Thank you.

Mr. Audige.

Mr. AUDIGE. It is privilege for me to be here today—

Mr. MAZZOLI. Thank you very much. It is a privilege for us to have you.

Mr. AUDIGE [continuing]. Mr. Chairman, and members of the committee.

My name is Jerome Audige, as you may know, founder and director of New Jersey Haitian/American Cultural Foundation. I appreciate being asked to provide comments on H.R. 4853.

You are aware, there has been continuing advocacy, notably from the religious community and other concerned citizens to bring into reality a status of legitimacy for Cuban and Haitian immigrants.

I have been a part of that movement for nearly 10 years and in that course of time, thousands of refugees have been helped by our services. The foundation, through grants and voluntary contributions, gives away food and clothing to needy applicants.

We also have contacts for emergency and long-term housing, medical health care, and education. We provide assistance with immigration forms, social security, and refer persons to employment.

However, the most difficult problem faced by refugees is not having documented credentials, certifying registration, and the designation of an official immigrant classification by the Department of Immigration and Naturalization.

Without such documentation, many abuses occur. The most serious has to do with employment. The recent law which imposes a stiff financial penalty against an employer who knowingly hires an unregistered immigrant has made the already difficult task of finding a job for refugees even harder.

Also, even if hired, once layoffs occur, without documentation, unemployment benefits cannot be received.

It is also necessary to produce a valid registration when enrolling children for school, seeking subsidized housing, or applying for technical training.

Therefore, I view the bill, the present bill, as an important first step toward recognizing the immense social and economic problems which result from current restrictions. I have been somewhat more expansive in my printed remarks and I invite you to refer to them.

Mr. MAZZOLI. I will, thank you.

Mr. AUDIGE. On behalf of the persons who will be benefited by this bill, I extend my thanks.

I hope it is the first of the pieces of legislation which will eventually raise the immigrant community to full citizenship with the rights and responsibilities that apply to it.

I think you, Mr. Chairman, you are an expression of God's love and I owe you a debt of gratitude for that.

[The prepared statement of Mr. Audige follows:]

PREPARED STATEMENT OF JEROME AUDIGE, EXECUTIVE DIRECTOR, NEW JERSEY
HAITIAN/AMERICAN CULTURAL FOUNDATION

PREPARED STATEMENT OF JEROME AUDIGE, EXECUTIVE DIRECTOR, NEW JERSEY
HAITIAN/AMERICAN CULTURAL FOUNDATION

My name is Jerome Marc Audige and I am a political refugee from the Republic of Haiti. At present, I am Executive Director of the New Jersey Haitian/American Cultural Foundation, Inc., Newark, New Jersey.

I would first like to commend my long time supporter, the Honorable Peter Rodino, for his care and interest in the plight of Refugees. The esteemed Congressman is intimately aware of the obstacles faced by persons seeking residency in the great democratic Republic of America; where the ideals of freedom and liberation have long been cherished.

As the international media has reported, thousands of my ex-countrymen have been forced to flee for their lives from a brutal police state which still operates in Haiti. A corrupt government which daily violates human rights and imposes its governmental will through militarized enforcement squads. Under such tyranny, pleas for moderation and equity have been answered by increased repression. And as a consequence, many of my people have elected to face the dangers of flight, rather than remain in a state of virtual bondage. Again, the media has recorded for all the world to see: the agony and travails of the Exodus. How unknown numbers died at sea; how multiple hundreds of others were tricked out of their meager resources and afterwards abandoned by cruel mercenaries.

And once ashore, some suffering continued. Instead of finding the freedom for which they came, many spent endless months of captivity in prison cells and detention centers. Even as I speak, a residue of Haitians remain imprisoned. Their offence, individually and collectively, is that they took the risk of entering a nation with a world wide reputation for fairness and opportunities and not the anomaly of selective imprisonment and rejection.

I give this background, Mr. Chairman, as a preface to my comments on the pending legislation before this Committee which would authorize the creation of a record of admission for permanent residence in the case of certain natives of Cuba and Haiti, and for other purposes. With due respect to those who have prepared House Representative 4852, I am of the opinion that it represents a helpful first step toward clarifying the immigrant status of many Haitians. If enacted, it may be possible for persons whose records have been misplaced or lost to cut through endless red tape and gain recognition of the actual immigrant status earlier applied for and in some cases approved, but for which at present no records exist.

Moreover, it permits the case by case review of persons classified as "Entrants Status Pending".

I remark that this Bill represents to me a valuable first step, Mr. Chairman, because in my view there still needs to be a more flexible, amnesty oriented policy, since much discretion remains with the Attorney General as to who shall or shall not be made eligible to have a record created upon which further processing for residency status may be possible.

Nonetheless, I am joyous that this legislation has the potential to bring legitimacy to the lives of many of my people.

Without the stamp of state approved, as represented by official credentials, Haitians and other refugees must remain in the shadows of the society. They shall remain an exploited class and shall eventually have the potential of being a burden upon society. Also, hundreds of my people do not earn the minimum wage and are forced to work under 18th century conditions because they are taken advantage of by greedy charlatans. Another component cannot afford health care, thereby not only endangering themselves as individuals, but also placing others at risk.

On a daily basis I see men and women who plead for assistance and because they are "undocumented" they are synonymous to nonpersons and more often than not cannot be helped. I believe this Bill will be helpful to many of them.

Therefore, Mr. Chairman, I plead for your support and for the support of all Committee Members. As I said earlier, I believe the focus of this Bill

and the context in which it will interconnect with existing legislation offers the humanitarian possibility that Haitian applicants will be reviewed with sensitivity, objectivity and with a sense of equity as compared to other nationals who have immigrated in the past.

I am grateful to the Committee for having given me the opportunity to testify. I believe the action taken by you in the passage of this Bill will have an historic impact on succeeding refugee legislation and I again commend you for your steadfast courage in seeking a fair solution to a problem which many have indicated has substantial, social, economic and political considerations.

I sincerely thank you for your attention and interest in the plight of Haitian Refugees.

Jerome Marc Audige,
Executive Director/Founder .

Mr. MAZZOLI. Well, Mr. Audige, we owe you a debt of gratitude for that fine statement and for your taking time to come see us today.

Mr. AUDIGE. I would like to, in reaffirmation, present this certificate of appreciation.

Mr. MAZZOLI. Thank you very much. On behalf of our subcommittee and committee, I accept that gratefully.

I don't have any substantial number of questions. Let me just ask Mr. Kurzban to tell me just a little bit about why you think section 3 is such a bad provision in the bill.

Mr. KURZBAN. Section C. Because what C does, in effect, is to say unless you were admitted—if you were admitted in the United States and you overstayed and you did not file an application for political asylum before January 1, 1982, you would not be eligible for the benefits of this bill, even if you were a Cuban/Haitian entrant or if—

Mr. MAZZOLI. Yes, but if you were named, if you came forward as a Cuban/Haitian entrant, or if you came forward for asylum between the time you came in and January 1, 1982, you are covered by this—

Mr. KURZBAN. No, you are not, no. If that is the reading you are giving the bill—and I think that is clear in its legislative history—then that is OK. But the way that the bill is written now on its face, it modifies both section B(1), which is the Cuban/Haitian entrant section, and section B(2), which is the section about records being created prior to January 1, 1982. C is a modifier of both sections and in that respect, it really undermines—and I don't think intentionally—the Cuban/Haitian entrant program. I think it is clear from your comments, Mr. Chairman, that it wasn't intentional. However, in its present form subsection C undermines the Cuban/Haitian entrant program and would, in fact, result in a Cuban/Haitian entrant program that is far more restrictive than the present bill H.R. 1510.

Mr. MAZZOLI. I have to express a little bit of frustration when you complained about the way the deportation process is going because in our bill, 1510, we, of course, rewrite totally the whole process by which the questions of asylum and deportation will be decided with a lot of appeal rights, and yet organizations like yours have dumped on our bill and I really feel like it is kind of hard for us to accept much of what you are saying in the spirit in which you are saying it simply because an effort was well made by this subcommittee at some fearful cost to put forth a measure which does solve some of those problems. Obviously, your lack of support has not helped it.

Let me ask you, what is your position—or your attitude about the second phase of the Rodino bill, which deals with the issuance of visas?

Mr. KURZBAN. Under 243(g)?

Mr. MAZZOLI. Whatever it is, yes.

Mr. KURZBAN. Well, we support that provision of the bill. We strongly support it. We think that it is a very serious problem in south Florida and one that was really minimized, I think, by the Immigration Service's testimony.

There are many, many Cuban Americans who have been in the United States for years now not just people who came from Mariel. American citizens for 10 or 15 years who wish to bring their brothers and sisters under the fifth preference, for example, and they are not able to do it.

I also think it is worth noting that the rationale of not preferity reunification because money would be going to Cuba is unusual. The fact is that money is going to Cuba anyway because at present Cubans who cannot get visas to come to the United States, as Mr. Padron pointed out, go to third countries. There are, for example, 20,000 Cubans in Costa Rica. Money is sent to their relatives anyway to get them out of Cuba so they wind up going somewhere else. So the money is still going to Cuba. The rationale, therefore, doesn't make any sense.

Mr. MAZZOLI. Is it fair to say that your group, Mr. Kurzban, is not as devoted to section 2 as section 1?

Mr. KURZBAN. I think that is a fair statement.

Mr. MAZZOLI. Thank you. I appreciate it very much.

You all notice that we now have a vote on the floor so I have to go on over. I appreciate very much your help and we, as a subcommittee, stand adjourned.

Thank you.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

APPENDICES

APPENDIX 1—CORRESPONDENCE

THE AMERICAN JEWISH COMMITTEE,
New York, NY, March 5, 1984.

Hon. PETER RODINO,
Chairman, House Committee on the Judiciary,
Washington, DC.

DEAR CONGRESSMAN RODINO: I want to thank you on behalf of the American Jewish Committee for introducing the Cuban-Haitian Adjustment Act of 1984 to right the grave injustices in our treatment of Cuban and Haitian boat people who sought safety on our shores before 1982. The unique plight and legal limbo of this restricted number of refugees can only be satisfactorily resolved through a grant of permanent resident status as you propose.

The American Jewish Committee strongly agrees that fundamental principles of justice and humanity demand that both the Cuban refugees from Mariel and the far smaller group of Haitian refugees who arrived slightly later must have their legal status regularized not only because of the tragic nature of their plight and the treatment they have received but also because they have been repeatedly linked in the public mind and in government actions, beginning with the Cuban-Haitian program of the Carter administration. The great majority of the class of Cubans and Haitians who would benefit from the Rodino legislation long ago have been granted a temporary "entrant" status and a promise of legal residence.

We join you in your continuing concern for the particular plight of the Haitian refugees, many of whom were jailed for up to 18 months under a detention program that has been found to have been illegal and discriminatory by federal courts. This group still faces the prospect of forcible deportation to the Haiti from which they fled over three years ago.

The American Jewish Committee is particularly supportive of your legislation precisely because it does contain a comprehensive class definition which is necessary to fully correct this discriminatory treatment, and it is not restricted to the narrow formality of the "entrant" definition. In addition to endorsing the spirit of fundamental fairness and humanitarian concern in your legislation, the American Jewish Committee agrees with the language of your legislation that it is absolutely essential to grant permanent residency to both (1) "entrants" and (2) persons with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982. A more restricted class definition will not correct the injustices suffered by the Haitian boat people.

Again, please accept my deep appreciation and heartfelt thanks for taking this significant step to address the plight of the Cuban and Haitian boat people.

Sincerely,

Rabbi MARC H. TANENBAUM,
Director, International Relations.

UNITED STATES CATHOLIC CONFERENCE,
Washington, DC, February 22, 1984.

Congressman PETER W. RODINO, Jr.,
Chairman, House Judiciary Committee,
Washington, DC.

DEAR CONGRESSMAN RODINO: I am pleased to learn of your introduction of H.R. 4853 which will provide the opportunity for many nationals of Cuba and Haiti to obtain permanent residence in the United States.

The thousands of Cubans who came to the U.S. during the Mariel boat lift of 1980 have made a remarkable record of adjustment since their entry. Despite this, they have been deprived of any opportunity to obtain the benefits accorded permanent resident aliens. Among such benefits is the right to send for family members including spouses and children from whom they have been separated for well over three years. This legislation will make it possible for families to be reunited, a cornerstone of our basic U.S. immigration policy.

In addition, the plight of the Haitian brothers and sisters who have fled poverty and persecution, only to find imprisonment and deprivation upon arrival in this country, will finally be relieved. These good people are of special concern to the Church which has sought for so long to relieve their misery and to open the door to a life filled with hope rather than despair. The action which you have taken will make it possible to achieve that goal.

I wish to commend you for the introduction of this legislation and pledge support for your efforts.

Sincerely yours,

Rev. Msgr. DANIEL F. HOYE,
General Secretary.

AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE, INC.,
New York, NY, March 20, 1984.

Hon. PETER W. RODINO, Jr.,
Chairman, House Committee on the Judiciary,
Washington, DC.

DEAR CONGRESSMAN RODINO: The member agencies of the American Council of Voluntary Agencies for Foreign Service, listed below, wish to take this opportunity to thank you for introducing the Cuban-Haitian Adjustment Act of 1984 (H.R. 4853), which would end the tragic situation in the United States of the Cubans from Mariel, and the Haitian boat people who arrived shortly after them. We commend and affirm the principles of justice and humanity in your bill, which speak to the best in the United States tradition as a haven to newcomers seeking refuge on our shores.

As members of a national organization of major private and voluntary organizations engaged in international assistance and humanitarian programs, we share the deep concern expressed in the February 21 letter to you from the ACVAFS Committee on Migration and Refugee Affairs, over the personal hardships and legal limbo of the two groups of refugees. Passage of your legislation would bring to fruition legalization of the Cubans and Haitians, thereby ending the suffering that the two groups have endured. In addition, the voluntary agencies' goals in their long-standing tradition of advocacy for the clients they serve, whether they be immigrants, refugees or asylum-seekers, would be realized.

We support early passage of the bill, and the granting of permanent residence to the two groups, which would avert deportation to the countries from which they fled to the United States. We also support the components in the bill, that it is essential to legalize both entrants, as well as those persons with respect to whom any record was established by the Immigration and Naturalization Service prior to January 1, 1982.

Passage of the Cuban-Haitian Adjustment Act would mark an important step and example, worldwide, in humane treatment of persons who seek safe haven and permanent solutions in countries of asylum. Be assured of our firm support in your courageous actions in presenting, and pursuing passage of the bill.

Sincerely,

DALE S. DE HAAN,
Chairperson, Committee on Migration & Refugee Affairs on behalf of the
member agencies of the ACVAFS.

MEMBER AGENCIES OF THE ACVAFS

American Council for National Service.
American Friends Service Committee.
American Fund for Czechoslovak Refugees, Inc.
American Jewish Joint Distribution Committee, Inc.
American Jewish Philanthropic Fund.
American ORT Federation.
Baptists World Aid.
The Pearl S. Buck Foundation, Inc.

Buddhist Council for Refugee Rescue and Resettlement.
 CARE.
 Catholic Relief Services—United States Catholic Conference.
 Christian Children's Fund
 Christian Reformed World Relief Committee (Cooperating Agency).
 Church World Service.
 CODEL, Inc. (Coordination in Development).
 Community Development Foundation, Inc.
 Experiment in International Living.
 Foundation for the Peoples of the South Pacific.
 Goodwill Industries of America, Inc.—International Department.
 HADASSAH, The Women's Zionist Organization of America, Inc.
 Heifer Project International.
 Helen Keller International.
 HIAS, Inc.
 Holt International Children's Services, Inc. (Cooperating Agency).
 International Human Assistance Programs.
 International Rescue Committee, Inc.
 International Social Service, American Branch, Inc.
 Lutheran Immigration and Refugee Service.
 Lutheran World Relief.
 MAP International (Cooperating Agency).
 Meals for Millions/Freedom from Hunger Foundation.
 Mennonite Central Committee.
 Migration and Refugee Services—United States Catholic Conference.
 Near East Foundation.
 PACT (Private Agencies Collaborating Together, Inc.).
 Polish American Immigration and Relief Committee, Inc.
 The Presiding Bishop's Fund for World Relief (The Episcopal Church).
 The Salvation Army.
 Save the Children.
 Seventh-Day Adventist World Service, Inc.
 Tolstoy Foundation, Inc.
 United Israel Appeal, Inc.
 United Lithuanian Relief Fund of America, Inc.
 World Concern Development Organization.
 World Relief Corporation.
 World Vision Relief Organization.
 Young Men's Christian Association of the U.S.—International Division of the National Board.
 Young Women's Christian Association of the U.S.A.—International Division of the National Board.

NATIONAL COUNCIL OF LA RAZA,
 Washington, DC, February 28, 1984.

Hon. PETER RODINO,
 Chairman, Committee on the Judiciary,
 Washington, DC.

DEAR CHAIRMAN RODINO: The National Council of La Raza (NCLR), a national Hispanic organization, wishes to take this opportunity to congratulate you on the introduction of the Cuban-Haitian Admusement Act of 1984 (H.R. 4853). We agree with the philosophy, embodied in the bill, that the principle of equal justice for all demands that Cuban and Haitian "Boat people" who arrived in the U.S. subsequent to the granting of "entrant" status but before January 1, 1982.

We appreciate your particular concern for the thousands of Haitian refugees who were illegally detained—some for up to 18 months—as part of a detention program that the federal courts have ruled to be discriminatory and unjustified. These individuals, as well as the somewhat larger group of Cuban arrivals, were promised that their status would be adjusted to permanent residency through legislation. We are, therefore, pleased that you have developed specific language in the bill that addresses the grave injustice perpetrated on these two groups of people.

If we can be of any assistance in expediting the passage of this legislation, please do not hesitate to call on me or our Policy Analysis Director Charles Kamasaki at 628-9600.

Sincerely,

RAUL YZAGUIRRE,
President.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,
February 28, 1984.

HON. PETER W. RODINO, Jr.,
U.S. House of Representatives
Washington, DC.

DEAR CONGRESSMAN RODINO: On behalf of the League of United Latin American Citizens (LULAC) I write to inform you of our endorsement of the Cuban-Haitian Adjustment Act of 1984 (H.R. 4853), and to express our appreciation for your initiative in introducing this legislation, which will provide proper and just treatment of Cubans and Haitians who have sought safety in our country before 1982.

The plight of Cubans and Haitians fleeing their country of origin for political freedom and survival has received much attention. In risking their lives they fled expecting just treatment by the democratic institutions of this country. Unfortunately, both these groups have been poorly treated and have had misrepresentations made to them regarding their legal status in the U.S. by being promised that their "entrant" status would be converted to permanent residency through legislation. Regrettably and unfortunately, this promise has not been materialized and as a consequence major undue hardships have resulted.

As you well know, a small number of Cubans and Haitians who arrived prior to January 1, 1982 but unfortunately after the granting of "entrant" status, have clearly suffered illegal and discriminatory treatment as evidenced by the imprisonment of thousands of Haitians for up to 18 months. This situation continues today and despite previous promises, many of these persons still face deportation, which clearly presents life threatening consequences.

It is for these reasons which we applaud your effort which includes provisions that any person "who is a national of Cuba and Haiti, arrived in the United States before January 1, 1982 and with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982." This language specifies the group of persons who should benefit from your adjustment program and thus rectify the current situation. Your bill serves to underscore the need to have legislation benefit both groups and is a message to those who wish to divide blacks and Hispanics that such efforts will be resisted.

Again, we express our appreciation and support for H.R. 4853. We hope that this legislation will be approved by both houses of congress and stand ready to assist you in this effort.

Respectfully,

ARNOLDO S. TORRES,
National Executive Director.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
February 17, 1984.

Congressman PETER W. RODINO, Jr.,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN RODINO: The NAACP has joined with a number of national civil rights and religious organizations in long advocating that Haitian boat people should be granted legal status in our country. I am extremely pleased therefore to take this opportunity to thank you on behalf of the NAACP for introducing the Cuban-Haitian Adjustment Act of 1984.

Refugees fleeing by boat from Cuba and Haiti have risked their lives to reach our shores. The great majority of the Cuban boat people and many of the Haitians were originally welcomed here under a temporary "entrant" status, which carried the promise that permanent residency would soon follow through legislation. Today, both groups of refugees remain in this status limbo, waiting for permanent residence.

In many cases, the restricted group of Cubans and Haitians who arrived after this "entrant program" and before January 1, 1982, have suffered even more than their

predecessors. Over 2,000 of the Haitian refugees were detained for over a year under an Immigration Service detention program since found to have been illegal and discriminatory by federal courts. Now, after having endured in some cases eighteen (18) months detention having committed no crime, Haitian boat people still face the imminent threat of deportation to the Haiti they fled over three (3) years ago. Legal status is the only just solution to right this grave mistreatment.

The NAACP has long advocated comprehensive coverage in legalizing Cuban and Haitian boat people, and we strongly endorse the language of the Cuban-Haitian Adjustment Act which includes any person "who is a national of Cuba or Haiti, arrived in the United States before January 1, 1982, and with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982." This class definition is essential to the spirit of your legislation. We sincerely appreciate your sensitivity in resisting any attempt to divide these refugee groups against each other.

Thank you again for introducing the Cuban-Haitian Adjustment Act of 1984 to end the suffering of Haitian and Cuban boat people who sought safety on our shores before January 1982.

Sincerely,

BENJAMIN L. HOOKS,
Executive Director.

NATIONAL COALITION FOR HAITIAN REFUGEES,
New York, NY, February 15, 1984.

HON. PETER RODINO,
Chairman, Judiciary Committee,
Washington, DC.

DEAR PETER: I want to thank you personally and on behalf of the National Coalition for Haitian Refugees, for introducing the "Cuban-Haitian Adjustment Act of 1984", H.R. 4853. From our telephone conversation of February 9, I am extremely pleased to learn that you agree that the bill should benefit not only Cuban and Haitian "entrants", but all the Cuban and Haitian boat people who arrived in our country before January 1, 1982 with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982—including all those who were subjected to dreadful detention.

Legalization for this entire group of boat people is essential as the only satisfactory solution to their unique plight and suffering. We shall do everything possible to encourage the early enactment of your legislation, and I sincerely appreciate your strong insistence on this class coverage and your opposition to any attempts to divide these two refugee groups against each other. We appreciate your particular concern for the Haitian refugees, and support your statement that "no group in recent history has been subject to more injustices by the Immigration Service."

Thank you again for taking this major step forward in seeing that justice is done for the boat people. The introduction of the "Cuban-Haitian Adjustment Act of 1984" represents a long overdue and equitable step towards solving the tragic plight of these two refugee groups.

Very sincerely,

BAYARD RUSTIN,
Vice Chairman.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, March 27, 1984.

HON. PETER W. RODINO, Jr.,
Chairman, House Committee on the Judiciary,
Washington, DC.

DEAR CONGRESSMAN RODINO: We are delighted to have this opportunity to strongly endorse the Cuban-Haitian Adjustment Act of 1984 (H.R. 4853), and to personally thank you for your courageous initiative in introducing this legislation. Our member organizations have long been concerned with the tragic civil rights plight of the Haitian refugee boat people, and we agree with you that this situation can only be resolved satisfactorily by granting this restricted number of Haitian and Cuban refugees permanent residence status.

We further applaud this legislation because it embodies the fundamental principles of equal justice for all and respect for basic human rights. The unique and desperate situation and aggravated legal limbo of the Haitian and Cuban refugees has

been linked repeatedly by government action and in the public mind. The vast majority of the Cuban refugees from the Mariel flotilla and the parallel and far smaller group of Haitian refugee boat people have often been promised that their temporary "entrant" status granted by the Carter administration would be converted to full permanent residency through legislation.

The small group of refugees who arrived subsequent to the granting of this "entrant" status have in many cases suffered far more than their predecessors, with many being detained for over fifteen months as part of a detention program that federal courts have found to be illegal. We have long advocated the necessity of comprehensive coverage in granting in granting permanent residence to this restricted group of Haitian and Cuban boat people, so we strongly support the specifics of the comprehensive class definition in your bill which is not restricted to the narrow formality of the "entrant" definition.

We would again like to thank you for having the vision to continue to play a leadership role in recognizing and correcting the intolerable plight of the Cuban and Haitian boat people through the introduction of Cuban-Haitian Adjustment Act of 1984. As a member of the Executive Committee of the National Coalition for Haitian Refugees we will continue to work closely with you to ensure the early enactment of this important legislation in both the House and the Senate.

Very sincerely,

BENJAMIN L. HOOKS, *Chairperson*,
RALPH G. NEAS, *Executive Director*.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC.

HON. PETER W. RODINO, Jr.,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN RODINO: The AFL-CIO strongly endorses the Cuban-Haitian Adjustment Act of 1984 (H.R. 4853) that you have introduced to right the grave injustices in our treatment of Cuban and Haitian boat people who sought safety on our shores before 1982. Legal status for these two refugee groups must be enacted as the only satisfactory solution to their unique plight and suffering.

Justice demands that this group of Cuban and Haitian refugees who risked their lives to flee to our country from misery and repression be granted permanent residence and an end to their tragic plight and legal limbo. The unique and desperate situation of the Haitian and Cuban refugees has been repeatedly linked by governmental action and in the public mind. The great majority of Cuban boat people from the Mariel flotilla and the comparable and smaller group of Haitian refugees have long ago been promised that their "entrant" status would be converted to permanent residency through legislation.

The handful of Cubans and Haitians who arrived subsequent to the granting of "entrant" status but before January 1, 1982, have suffered more than the prior arrivals in many cases. Thousands of the Haitian refugees were detained for up to 18 months as part of a detention program that federal courts have held to have been illegal and discriminatory. Their suffering continues, and after 18 months imprisonment they still face forcible deportation to the Haiti they fled three years ago. As we have often emphasized, no group in recent history has been subjected to the harsh treatment and discrimination endured by the Haitian refugee boat people.

The AFL-CIO strongly endorses the specific language of the Cuban-Haitian Adjustment Act of 1984. We agree with the bill's definition of this restricted group of refugees who must benefit from its provisions, as absolutely essential to a humane and just solution to this dilemma.

Thank you again for taking this important step in recognizing and ameliorating the plight of Haitian and Cuban refugee boat people.

Sincerely

LANE KIRKLAND,
President.

LUTHERAN COUNCIL IN THE USA,
New York, NY, March 1, 1984.

Hon. PETER RODINO,
Chairman, Committee on the Judiciary,
Washington, DC.

DEAR MR. RODINO: On behalf of the Lutheran Immigration and Refugee Service, a cooperative agency of the major Lutheran churches in the U.S. which together represent some 18,000 congregations, I want to applaud your recent introduction of the Cuban-Haitian Adjustment Act, H.R. 4853.

LIRS has long advocated for the humane and just treatment of the Cubans and Haitians who have come to our shores. As you know, our congregations assisted in the resettlement of several thousand Cuban and Haitian entrants and again came forth to help when 1,800 Haitians were released from INS detention under an order from Judge Eugene Spellman. Therefore, we support your effort to grant legal status to entrants as well as those known to INS prior to January 1, 1982, a date which would include the Spellman Haitians. It is time that the threat of deportation be removed for this group which has suffered immensely since their arrival in the U.S.

Thank you for taking such a significant step to alleviate the unjust situation of these Cubans and Haitians, people who have no homes to return to. Once again, we strongly support and endorse your legislation and hope for its prompt passage.

Sincerely yours,

Mrs. INGRID WALTER, D. HUM,
Director,
Lutheran Immigration and Refugee Service.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION,
Washington, DC, March 3, 1984.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
Washington, DC.

DEAR CHAIRMAN RODINO: On behalf of the American Immigration Lawyers Association, we would like to express our sincere appreciation and support for your introduction of the Cuban-Haitian Adjustment Act of 1984 (HR 4853).

We commend you for this courageous and humanitarian proposal in behalf of Cuban and Haitian refugees who have arrived on our shores and become a part of our society. Our association's recent participation in the effort to secure volunteer, pro bono lawyers to represent Haitians recognized in Judge Spellman's order in *Louis v. Nelson* has made us all the more aware of the need for the legislation you have introduced.

We thank you for taking the initiative in sponsoring this legislation and will commit our every effort to support its enactment.

Sincerely,

WARREN LEIDEN,
Executive Director.

APPENDIX 2—STATE DEPARTMENTS EFFORTS REGARDING EXCLUDABLE
CUBANS

U.S. DEPARTMENT OF STATE,
Washington, DC, June 18, 1984.

Hon. ROMANO L. MAZZOLI,
Chairman, Subcommittee on Immigration, Refugees and International Law, Committee on the Judiciary, House of Representatives.

DEAR MR. CHAIRMAN: I write with reference to the Subcommittee's hearing of May 9, 1984, concerning H.R. 4853, "a bill to authorize the creation of a record of admission for permanent residence in the cases of certain natives of Cuba and Haiti, and for other purposes."

At the hearings I provided to the Subcommittee a classified document entitled "U.S. Efforts to Negotiate the Return to Cuba of the Mariel Excludables." I am pleased to inform you, Mr. Chairman, that the Department of State has now been able to declassify most of the information in that document. An updated and unclassified version is enclosed. I request that this unclassified document be made part of the public record of the proceedings of your Subcommittee on H.R. 4853.

Sincerely,

JAMES H. MICHEL,
Deputy Assistant Secretary for Inter-American Affairs.

Attachment:

U.S. EFFORTS TO NEGOTIATE THE RETURN TO CUBA OF THE MARIEL EXCLUDABLES

The abrupt and illegal migration of some 129,000 Cubans from the port of Mariel, Cuba, to the United States in 1980 has caused serious problems in the United States at all levels of government and for the general public. A small percentage of these persons—approximately four percent of the total—admitted to having been institutionalized in Cuba for the commission of serious crimes or for mental disorders or else committed such crimes after their arrival in the United States.

The Department of State, in an effort to effect the return of persons from the Mariel Boatlift who were ineligible to remain in the United States for substantive reasons—such as the commission of serious crimes—sought in December 1980 and January 1981 to negotiate the return to Cuba of these persons excludable under U.S. law. In turn the Department of State informed Cuban negotiators that such a solution would make possible the resumption of normal immigration visa processing in the U.S. Interests Section in Havana, which had been suspended following the Mariel events.

The talks with Cuba in 1980–81 were unsuccessful. The Cubans stated that they would consider accepting only persons returning voluntarily and, among those, only on the basis of a case-by-case review. This position of the Government of Cuba was unacceptable to the United States. Very few Cubans have indicated a desire to return to Cuba.

Inquiries in 1981 and 1982 through diplomatic channels confirmed that the position of the Government of Cuba on this subject had not changed.

Despite the foregoing the Department of State decided in 1983 to probe the Government of Cuba again in order to see if it would accept the return of the Mariel Excludables.

On May 25, 1983, the Department of State delivered to the Cuban Interests Section of the Embassy of Czechoslovakia a diplomatic note that:

"informed the Government of Cuba of the notification by the Attorney General of the United States that, due to Cuba's failure to accept the return of excluded individuals, Section 243(g) of the Immigration and Nationality Act precluded the issuance of immigrant visas in Cuba by the Government of the United States;

"requested that the Government of Cuba agree to the return of all Cuban nationals who came at the time of Mariel who were ineligible under U.S. immigration law to remain in the United States and whom the U.S. wished to return to Cuba;

"presented a list of 789 such persons and indicated that other lists would follow; and

"advised that the Department of State would be prepared to reestablish normal immigration procedures at the U.S. Interests Section in Havana once Cuba fulfilled its obligation to accept the return of persons excluded from the U.S."

On June 17, 1983, the Cuban Foreign Ministry responded with a diplomatic note that:

"rejected the U.S. proposal as "an unacceptable act intended to impose upon Cuba unilateral solutions"; and

"stated that Cuba 'did not refuse' to discuss the 'reestablishment of standards which would permit normalization of migration conditions between both countries, conditions which would include norms to follow with respect to persons who, having committed illegal acts in one of the two countries, travel illegally to the other.'"

On July 7, 1983, the Department of State delivered a diplomatic note to the Cuban Interests Section of the Embassy of Czechoslovakia that:

"inquired why the Cuban note had not responded to the specific request by the United States or to the list of 789 persons given to the Cuban Government in May;

"reiterated the U.S. request of May 25;

"reiterated its willingness to reestablish normal immigration procedures at the U.S. Interests Section in Havana once these persons had been returned to Cuba; and

"stated that if the Government of Cuba were prepared to take back the Cuban nationals ineligible to remain in the United States, the U.S. Government would be pleased to explain in appropriate detail the measures concerning migration to the United States it would be willing to reinstate once those persons had been returned."

On September 22, 1983, the Cuban Foreign Ministry responded with a diplomatic note that:

"stated that the Government of Cuba was prepared to initiate conversations with the United States Government on 'the migration between the two countries'; and

"added that the possible return to Cuba of persons 'who traveled from the port of Mariel' could be one of the matters discussed and resolved through the establishment of the above-mentioned standard."

On March 20, 1984, in a diplomatic note delivered to the Cuban Ministry of Foreign Relations by the U.S. Interests Section in Havana the United States:

"stated that the United States was prepared to meet with Cuban representatives to discuss the return of the Mariel excludables to Cuba and to discuss the resumption of normal migration procedures;

"proposed that the talks be held March 30 in a specified location; and

"requested an early response."

On March 27, 1984, the Ministry of Foreign Relations orally informed the U.S. Interests Section in Havana that it could not reply to the U.S. proposal because the time-frame was too short; the Foreign Ministry official indicated that a formal reply would be coming in due course.

On May 2, 1984, the U.S. Interests Section in Havana delivered a diplomatic note to the Ministry of Foreign Relations in which it:

"called attention to the fact that no Cuban response had yet been received to our note of March 20, 1984;

"recalled the stated willingness of the Cuban Government to discuss migration, including specifically the return to Cuba of persons whom the Government of the United States wished Cuba to take back; and

"proposed that the two countries send representatives to a specified location to meet May 21 and 22."

On May 22, 1984, the Ministry of Foreign Relations presented a diplomatic note to the U.S. Interests Section in Havana in which it:

"viewed 'positively' the willingness of the U.S. Government to begin negotiations with Cuba 'about normal migratory procedures';

"complained of other U.S. Government activities such as 'military exercises in waters adjacent to Cuban territorial waters';

"asserted that the 'pre-electoral situation in the United States' is not the appropriate moment to begin talks;

"stated it would be convenient to postpone beginning talks until after November 6;

"indicated no objection to an announcement by the U.S. Government that 'there is mutual agreement to begin these talks in this period after November 6'; and

"stated that if this Cuban willingness were to be interpreted publicly as a sign of weakness on the part of Cuba, it 'would constitute in this case a total obstacle to realizing the planned talks.'"

On the basis of this response the Department of State assumes that it will not be possible to initiate talks with Cuba on the return of the Mariel Excludables and the restoration of normal immigrant visa processing until after November 6. However, there is now a prospect for such talks at that time.

**APPENDIX 3—STATE DEPARTMENT'S RESPONSES TO SUPPLEMENTAL
QUESTIONS**

U.S. DEPARTMENT OF STATE,
Washington, DC, June 1, 1984.

Hon. PETER W. RODINO, Jr.,
*Chairman, Committee on the Judiciary,
U.S. House of Representatives.*

DEAR MR. CHAIRMAN: I am replying to your letter of May 15, requesting responses to several questions concerning H.R. 4853 that could not be asked because of time constraints during the May 9 hearing of the Subcommittee on Immigration, Refugees, and International Law. The responses are enclosed.

Let me take this occasion to thank you for having been invited to appear before the Subcommittee to present the views of the Department of State on this legislative proposal.

Sincerely,

JAMES H. MICHEL,
Deputy Assistant Secretary for Inter-American Affairs.

Enclosure: Questions and Answers Re: to 9th Hearing on HR 4853—Cuba.

IMMIGRANT VISA ISSUANCE

Question. When and why did the Department of State make the decision to stop issuing visas to persons holding approved immigration petitions?

Answer. The issuance of immigrant visas was suspended on May 2, 1980, after a pro-Castro mob attacked a group of Cubans seeking to be admitted as refugees into the United States Interests Section in Havana.

Question. How many Cuban nationals for whom a preference petition has been filed are awaiting immigrant visas in Cuba? How does that number break down for each preference category?

Answer. Based on the Department's January 1984 Annual Report of Qualified Visa Applicants the total numbers of preference immigrant visa petitions on file in Havana are as follows:

First preference	651
Second preference	2,704
Third preference	0
Fourth preference	3,289
Fifth preference	19,597
Sixth preference	4
 Total	 26,245

Question. How many immediate relative visas have been issued to Cuban nationals during the past year?

Answer. During FY 1983 679 immediate relative immigrant visas were issued to Cuban nationals worldwide. During the first quarter of FY 1984 98 immediate relative immigrant visas were issued to Cuban nationals.

Question. At one point, the Department stated that it would be necessary to increase personnel at the U.S. Interests Office in Havana if immigrant visas were to be issued. What is the personnel situation at present? How many additional persons would be required to be assigned to handle the situation if the decision were made to issue visas? Would the Cuban Interests Section in Washington ask for a corresponding increase in their staff here?

Answer. The Interests Section is currently staffed by twenty full time American employees, which is the limit provided in the 1977 Memorandum of Understanding establishing the two Interests Sections. This figure includes three consular officers. The Department estimates that three additional American officers would be required to handle the anticipated volume if the USINT resumed full scale immigrant visa processing. The local staff would also have to be augmented to handle the in-

creased workload. Unless the additional positions for American consular personnel were taken from positions now assigned to other functions in the Interests Section, such an increase would require the consent of the Government of Cuba. In this case it seems likely that the Government of Cuba might seek a corresponding increase of its staff in Washington. This problem might possibly be avoided if the Cuban Government were willing to allow the Department to send a sufficient number of consular officers on a temporary duty basis, but this would require us to rotate consular personnel indefinitely to handle the workload.

Question. What is the present State Department policy with regard to issuing immigrant visas to Cuban nationals with approved petitions who appear at an American Embassy in another country? Does the individual post have the authority to refuse to deal with the case?

Answer. Department regulations provide that an application shall be accepted from an applicant physically present in the consular district and expected to remain in the consular district throughout the time that it normally takes to process an immigrant visa application. This policy applies equally to all nationalities. An individual post may decline to accept a case for processing if the applicant cannot obtain permission to remain in country for the duration of visa processing.

Question. What effect would the adjustment of 100,000 Cuban entrants have on the future demand for Cuban immigrant visas?

Answer. It is inevitable that the adjustment of 100,000 Cuban entrants would be followed by the filing of a substantial number of petitions by those granted resident status—first, for immigrants in the second preference (spouses and unmarried sons and daughters of alien residents) and later, as adjusted entrants became naturalized, in other immigrant categories as well. The Department has no data which would permit it to estimate the specific numbers of potential additional petition beneficiaries, but believes it is reasonable to anticipate there would be many thousands of additional cases.

Annual immigration in the numerically limited preference categories cannot exceed 20,000 applicants from any particular foreign state, per Section 202 of the INA. Demand for visa numbers by applicants in excess of this annual country limit would result in chargeability oversubscription. According to the most recent January, 1984 tabulation of active immigrant cases at consular offices abroad, there were 34,742 registrants chargeable to Cuba, about two-thirds of whom have priority dates within present visa availability cut-off dates. If all of these registrants were ready and able to pursue their visa applications, this demand alone would be sufficient to oversubscribe the Cuba chargeability.

APPENDIX 4—ADDITIONAL STATEMENTS

MIGRANT AND SEASONAL FARMWORKERS ASSOCIATION, INC.,
Raleigh, NC, May 22, 1984.

Chairman ROMANO L. MAZZOLI,
Subcommittee on Immigration, Refugees and International Law—Judiciary Committee, Washington, DC.

DEAR CHAIRMAN MAZZOLI: As Director of the North Carolina Cuban/Haitian Entrant Program for 1981-1983 and as the writer of a doctoral dissertation on the Haitian immigrants, I would like to submit the enclosed testimony regarding the legislation to grant lawful status to Cubans and Haitians who have sought safety and freedom in the United States.

I request that the statement be enclosed in the hearing record.

Sincerely,

TITO CRAIGE,

Director, Cuban/Haitian Entrant Program, Farmworker English Language School.

Enclosure.

TESTIMONY REGARDING LEGISLATION TO GRANT LAWFUL STATUS TO CUBANS AND HAITIANS

My name is Ernest Tito Craige. I am director of a series of pre-employment programs that work with Haitian Entrants and am a doctoral candidate at North Carolina State University in Raleigh, North Carolina.

As Director of the Cuban/Haitian Entrant Program and the Farmworker English Language School, I have headed programs that have enrolled over 500 Haitian Entrants. They have been English-as-a-Second Language students, recipients of translation and interpretation services and participants in our outreach, information and referral program. In addition, as author of a dissertation on Haitian immigrants, I have conducted extensive interviews with a number of Haitians who have settled in North Carolina. In preparing for the research, I visited Haiti, Krome internment camp and the Haitian communities in Miami, Washington, D.C., and New York City.

From my experiences, I have reached the following conclusions: (1) Haitians have made enormous contributions to the economy and social fabric of the United States; (2) Haitians have been hampered by the discrimination that results from their temporary status, and (3) Haitians and Americans would benefit from Entrants being lawfully admitted for permanent residence.

HAITIANS BECOMING SELF-SUFFICIENT

Most of the Haitians who came to our Association's offices in 1983 sought training and employment. But very few, even with their migrant incomes, received public assistance. In fact, of 589 Haitians enrolled in 1983 only 16 (2.7%) received such monies.

Many Haitian Entrants have procured entry-level jobs in states on the eastern seaboard. When they are given the opportunity to become economically self-sufficient and independent of any public assistance, they make the best of such a chance.

For example, a large company named a Haitian Entrant as its first "Employee of the Month." Based on an evaluation of "promptness, attitude, productivity and craftsmanship," the personnel director gave a \$25.00 gift certificate and noted that Jean ——— "has been quick to learn . . . and has demonstrated the ability and skill to perform tasks." A news release thanked Jean "for being such a dedicated and well-liked employee."

One of the teachers in our school wrote of the interest that Haitian Entrants took in their English class. The teacher praised the students' efforts to make a classroom out of the farm labor camp setting. "After the first class they dragged in buckets and stumps and made seats. They carefully made the space into a classroom. They

put a nail in the tree to hold the flip chart. They made a woven ceiling over the class area."

Virtually every Entrant has told me of the desire of the skills to procure work, make friends and participate fully in American life. Typical comments are those of Fritz: "I want to go to school. I want to learn for a better job, for talking to people, for talking to nice people. I want to stay in North Carolina. Everybody friendly. I want to be an American citizen. I love the United States. I be in the United States for my life."

HAITIANS HELD BACK

Our outreach, information and referral services have been sorely taxed because of the denials of services to Haitians. Again and again we tell schools, employers, and social service agencies that Haitian Entrants are legally here and that they are entitled to opportunities that are accorded to others who meet eligibility guidelines. But since there is wide ignorance of the meaning of the term "Cuban/Haitian Entrant (status pending)," denials of work and benefits occur routinely. Since 1981 we have been frustrated by the lack of clarification memos from the Department of Justice and the Immigration and Naturalization Service. Pell Grants, food stamps, employment opportunities, and driver's licenses have been denied to our clients. Only after extensive intervention do agencies understand the special nature of this type of I-95 card. Perhaps most problematical of all is the explicit exclusion of Cuban/Haitian Entrants from the list of eligible clients for the Legal Services Corporation.

HAITIANS ARE IMMIGRANTS

Haitians are suspended in an uncomfortable place between citizen and deportee. They cannot plan their futures because they are fearful of eventual deportation. Although they work hard in the least desirable jobs our country has to offer, they are rarely accepted as equals because of their peculiar status. In spite of the many strikes against them, they, like other immigrants before them, are proud of their newly adopted country. They have an enviable record in our state. Like the Indochinese who came before them, the Haitians have established themselves as men and women who are becoming economically self-sufficient and who are proud to be in the United States.

THE ARCHDIOCESE OF MIAMI,
May 3, 1984.

Congressman ROMANO L. MAZZOLI,
Chairman, Subcommittee on Immigration, Refugees and International Law, U.S.
House of Representatives, Committee on the Judiciary, Washington, DC.

DEAR CONGRESSMAN MAZZOLI: This will acknowledge your letter of April 25 addressed to Monsignor Bryan O. Walsh, the Archdiocesan Executive Director of Catholic Community Services, relative to his testifying before the House Subcommittee on Immigration, Refugees and International Law on May 9.

Monsignor is presently out of the country and not expected to return until around May 16.

As Archbishop of the Roman Catholic Archdiocese of Miami, I am enclosing for your consideration a statement to be included in the hearings on the Cuban Adjustment Act of 1984 (H.R. 4853).

As you know, the Archdiocese of Miami has been very active in the resettlement of refugees in South Florida for over twenty years. It is imperative that justice be done for all refugees who come to our shores.

With every good wish, I am
Sincerely yours in Christ.

EDWARD A. MCCARTHY,
Archbishop of Miami.

Enclosure.

STATEMENT BY EDWARD A. MCCARTHY, ARCHBISHOP OF MIAMI

My name is Edward A. McCarthy, I am the Archbishop of the Roman Catholic Archdiocese of Miami.

The Archdiocese of Miami has a long history of involvement with refugees and their problems. Our mission with refugees dates from 1957, when we helped a group

of Hungarian Freedom fighters to establish themselves in this country. Later, the Archdiocese was confronted with the monumental task of providing for 14,000 children fleeing from communist oppression and seeking the right to live freely and avail themselves of a life full of opportunities in this great country of ours. In 1980, we were once more challenged by the Mariel boat people and by the Haitians who arrived at our shores seeking, like so many before, the privilege of living in the truest democracy in the world.

It is because of our past experience that we now express our opinion on the merits of the Rodino Bill which aims to adjust the status of the Cuban-Haitian entrants.

For the past four years our community and similar communities throughout the United States have seen the suffering of the thousands of Cuban-Haitian entrants, who came to our shores ignorant of the consequences of our "open arms policy". The end result has been the cruel enforced separation of families over a prolonged period of time; separated spouses and children growing up bereft of the love and protection of either parent, and for others, enforced detention for long periods of time with the uncertainty of not knowing their fate. The consequences are manifold: Cuban-Haitian entrants are plagued by instability, hostility, depression and mental and physical alienation.

Cuban and Haitian refugees have risked their lives to reach our shores. They were welcome here under a temporary "entrant" status which carried the promise that permanent residency status would soon follow through legislation. As of today, they continue to be in a legal limbo, and some are facing a constant threat of deportation.

Denying the passage of this bill will take hope away from them, the only hope they have, and as a result, a repetition of history will take place. A sad story that we all experience: a third Camarioca or Mariel, and many others dying at sea while trying to reach our shores.

We also fear the consequences for their continuous frustration and their inability to solve this problem.

At this time I feel it is necessary to point out the cultural and economic values that these people have brought to our community. The great majority of them have proven to be hard working, law abiding, responsible people who are desperately trying to adjust and succeed in our society.

If, as expected, the Cuban-Haitian Adjustment Act of 1984, H.R. 4853 is passed, our community will profit in many ways: their full integration into our society will occur; they will become more stable, more productive and they will be able to achieve the fulfillment of their potentialities as human beings.

For all of the above mentioned reasons we, in the Archdiocese of Miami, strongly support the passing of the Cuban-Haitian Adjustment Act of 1984.

We cannot pass up the opportunity to express our concern for the omission of similar legislation for other asylum seeking peoples in similar plight who have left their countries in the Caribbean and Central America.

In Miami at present there are approximately 40,000 seeking asylum who have been forgotten by all levels of government, and are struggling against incredible odds to survive, and who are hoping that similar legislation as the one we are supporting today will soon be proposed on their behalf.

PREPARED STATEMENT OF THE HONORABLE WALTER E. FAUNTROY, CHAIRMAN,
CONGRESSIONAL BLACK CAUCUS, TASK FORCE ON HAITIAN REFUGEES ON H.R. 4853

I want to express my appreciation to the Subcommittee and its Chairman for holding this hearing on H.R. 4853, a bill which would grant lawful permanent resident status to Haitians and Cubans who have sought safety and freedom in the United States. The leadership of the Chairman of the Committee on the Judiciary and the Chairman of the Subcommittee in sponsoring and co-sponsoring this legislation is testimony not only to expertise in the area of immigration and refugee policy but is reflective of the fairness and compassion with which they have approached the difficult issues that abound in immigration and refugee matters.

The treatment and absence of legal status of the Haitian refugees has long been a concern of the Congressional Black Caucus generally, and our Task Force on Haitian Refugees in particular, as evidenced in the support of the co-sponsorship of this legislation by the Congressional Black Caucus.

The Congressional Black Caucus Task Force on Haitian Refugees has been concerned for many years with the denial of due process and equal protection under the law afforded the Haitian refugees. We have been alarmed and appalled by the inhumane treatment and detention of this class of refugees. While, I do not wish to

judge the intent of the Immigration and Naturalization Service and the Department of State in its treatment of the Haitian refugees, the result has been a determined effort to exclude the first significant class of Black refugees to come to our shores. The result has been racist in effect regardless of intent.

H.R. 4853, seeks a constructive solution to a harmful and disturbing episode in the history of immigration to the United States. It would also and most importantly provide relief to a limited class of Haitian refugees who have developed equity in our country and have provided themselves to the communities in which they reside, to be hard working and law abiding.

While enthusiastic about the solution embodied in H.R. 4853, I am concerned that the Immigration and Naturalization Service appears to be committed to moving ahead with deportation and exclusion hearings against persons who would benefit from this legislation. I would urge the Chairman of the Subcommittee to intervene with the Immigration and Naturalization Service to obtain a moratorium on these proceedings.

As the Chairman knows, for the past two years I have been seeking a relationship with people at all levels of Haitian society to see if there is some way that we can improve the human rights situation and the political economy of Haiti so that refugees would no longer feel impelled to risk their lives on the high seas to escape to our shores. This discussion has involved the Haitian Government, private voluntary organizations working for development in Haiti, the business sector, the Haitian League for Human Rights, our Embassy, and many others. The road has been rocky and often characterized by one or two steps forward and one, two, or three steps backward.

Most recently, the Committee on Foreign Affairs in Section 803 of the International Security and Development Act of 1984 addressed the Human Rights situation in Haiti which should be considered in evaluating the need for H.R. 4853. I quote now from section 803:

"While the Committee is encouraged by the Haitian Government's cooperation in curbing illegal emigration and in implementing fiscal reform and U.S. development assistance programs, the human rights situation in Haiti, which had shown potential for improvement, has in fact deteriorated. As the Department of State's most recent annual human rights report to the Congress states, "Haiti's political history has been one of authoritarian rule characterized by periods of political instability and human rights abuses . . . Freedom of speech, press, and association is restricted by the Government, and due process guarantees relating to judicial procedure are frequently disregarded." For example, in May 1983, the Government arrested without charge, several political opponents during the municipal elections process and held them in jail until the elections were over. The leader of the Haitian Christian Democratic Party, Sylvio Claude, continues to suffer house arrest and other abuses of his rights under Haitian law. Prior to Haitian legislative elections on February 12, 1984, the Government prevented the participation of known opposition parties and individuals by intimidation, harrassment, and by refusing the reentry into Haiti of Eugene Gregoire, leader of the Social Christian Party. Also, during the legislative election supporters of candidates not sanctioned by the Government were physically beaten by security forces and the military in the towns of Cavaillon, Gros Morne, and Petit Goave.

"The Committee is seriously concerned over such unwarranted intimidation of the nascent political opposition in Haiti and other continuing human rights violations attributable to the Government. For that reason, the Committee has eliminated any new authorization for military assistance and sales to the Government of Haiti for fiscal years 1984 and 1985 in order to apprise the Government of the implications of the lack of progress in the promotion and protection of human rights."

More recent events reflect some indication of a change in a more positive direction, one that I hope would enhance the effort to improve the human rights environment in Haiti. However, that remains to be seen and I could not in good conscience rest, assured that any and all Haitians that might be returned to Haiti would not suffer programmed or arbitrary abuse.

There has been much discussion that the Haitian refugees are simply economic refugees and therefore not entitled to refuge in our country. This simplistic and distorted assertion emanates from a theoretical assumption that economics and politics are separable. This was not asserted nor could it be in the case of the Indo-Chinese Refugees. In Haiti, this is especially true, where wealth can only be accumulated through a "franchise" from the Government of Haiti. Nevertheless, I think it important to put on the record the situation of the economy in Haiti and the impact the economy has on the people of that country.

By the end of 1983, Haiti's real per capita income will have dropped 8.5% below the corresponding 1980 level:

"8,000 families comprising 1% of the population take 44% of the national income and pay only 3.5% of their income in direct taxes.

"In Haiti there is roughly one doctor for every 11,000 people.

"More than one third of Haiti's children die before the age of five.

"The vast majority of the population exist in absolute poverty (on an income of less than \$140 per year).

"The population of metropolitan Port-au-Prince has doubled to over one million in the last ten years due primarily to the migration of peasants from the rural areas.

"As many as 60,000 people crowd in each square kilometer of urban slums such as Cite Simone.

"Only 20% of Haiti's population can read and write.

"There are nearly 700 people per every square kilometer of arable land in Haiti as compared to 381 in India and 53 in the U.S.

"41% of Haiti's population is under the age of 15.

"Once nearly 70% of Haiti's land was covered with trees. Now less than 10% of the country is forested."

FISCAL PERFORMANCE

While the Government of Haiti has fully complied with its 1983 fiscal reforms in macroeconomic terms, for example Government revenues rose at an annual rate of over 10%, there are some real questions as to who is paying for this compliance and who is not. For example, the new general sales tax, while successful in raising about 1% of the Gross Domestic Product for the fiscal year, imposed a severe hardship on the poor, because this tax was levied on basic products which the peasantry produces and consumes, such as flour, sugar, and vegetable oil. The fiscal system still continues to operate so that the 80% rural population pays for about 85% of internally generated revenues while receiving less than 20% of total government expenditures in return. Additionally, there is some question as to whether or not those close to the Government, such as Ernest Bennett, the President's father in law, are paying back outstanding Government loans. On a positive level, the fiscal program raised Government revenues as a percentage of Gross Domestic Product and seems to have given greater confidence to the private sector. Real private investment grew in 1983, capital flight was greatly reduced, and foreign arrears virtually eliminated.

AGRICULTURE

While there was a bumper coffee crop in 1983, this does not appear to have led to a corresponding sector wide expansion of agriculture generally because of a severe drought. Additionally, while the volume of coffee exports increased by 65%, this gain was minimized by the low prices on the world market. The coffee crop is projected to be some 25% lower in volume than last year, but the unit price is expected to be 5% higher. The system of coffee production and marketing is still dominated by middle men who live in small towns in the countryside. These middle men, who are also merchants from whom the peasants borrow money or food, are one of the key constituencies of the Duvalier regime and are directly linked to the upper administration of the Duvalier regime. One Haitian scholar has estimated that up to 40% of the personnel in the upper levels of the Government owes its origin to families engaged in agricultural speculation. However, the largest profits are made by the exporters at the end of the chain. This exporter segment of the coffee industry is controlled by 27 export houses dominated by mulattoes and persons of European background. The three largest are Madsen of Danish origin, Brandt of British and Jamaican origin, and Wiener of German origin. In 1982, Ernest Bennett joined this elite group. These exporters are in a position to set a price to pay to the middlemen. The peasant producer is relatively powerless, has no control over prices, and alone pays the tax levied by the Government on coffee exports. The result is that the coffee producer pays the highest taxes in Haiti. That tax being equal to an income tax of 35 to 40%.

Small peasant agricultural producers continue to suffer from a lack of access to credit. It is estimated that the cost of credit in Port au Prince is at 18% per year for those in the dominant business sector. In the peasant agricultural sector, the rate is estimated at 18% per month or over 216% when compounded.

Due to low agricultural productivity, Haiti's domestic market is limited in the extreme by low-purchasing power and market size. The real market for most products

is less than 50,000 persons. The result is monopoly or oligopoly in the domestic market and export industries based on cheap labor for the international market.

INDUSTRY

The assembly industries appear to have expanded somewhat as "economic expansion" increased in the U.S. According to the international financing community, Haiti's export of light manufactures are projected to increase by 20% on the assumption that the recovery of economic activity in the United States continues. These firms enjoy the advantage of U.S. Customs Code Sections 806 and 807: "which permit goods assembled from U.S. made components to reenter the U.S. with duty paid only on the value added abroad." These companies, which can be established with minimal capital investment are able to profit from labor priced at \$2.64 per day. The industry employs anywhere from 45,000 to 60,000 workers, and it is generally understood that the Government will repress strikes and break up independent trade unions. The principal contribution of these plants is the \$30 to 40 million in wages which "support" between 260,000 and 325,000 people, approximately one third of the population of Port au Prince.

TOURISM

Tourism was extremely depressed in 1983. Visitors, primarily from Canada and the United States, are numbered at 300,000 per year, but 60% of these arrive on cruise ships and spend only a few hours in Port-au-Prince or Cape Haitian. Tourist expenditures in Haiti are this very low compared to the number of visitors. The 300,000 figure is also only 1/2 of the number that visit Jamaica or the Dominican Republic. Given the image of Haiti, caused by human rights abuses, the unfair labeling of Haitians as carriers of A.I.D.S, and the lack of Government activity in promoting tourism, the outlook is not encouraging.

DEVELOPMENT ACTIVITIES

The absorptive capacity of the Private Voluntary Organizations engaged in development is being questioned seasoned and respected observers of Haiti. Specifically, there is a question as to the numbers of quality PVOs and projects that can be undertaken. There is a general feeling that U.S.A.I.D. should exercise more care in funding projects through P.V.O.s. This criticism was one of the secondary arguments against an increase in Economic Support Funds for Haiti.

Perhaps, the most inhibiting factor in undertaking serious, coherent, and coordinated development activities is the continuing lack of a partner in the Government of Haiti. According to Mats Lundahl, an economist, who has written extensively on Haiti: "The future appears bleak for the Haitian peasant . . . The Government's lack of commitment to agricultural development forces the peasants to rely on their own efforts. It is here that the major obstacle to economic development would seem to be."

CONCLUSION

Legislation such as H.R. 4853, is not unique in our Nation's history. We have in the past compassionately and wisely responded to Hungarian refugees, other Eastern European refugees, the initial wave of Cuban refugees, and to Indo-Chinese refugees through special legislation. There is a clear humanitarian need for H.R. 4853 as well as a compelling national interest in the passage of this legislation. Let us correct the record and put our Nation squarely in support of the principles of equal justice as reflected in the passage of the Refugee Act of 1980. Again, I congratulate the Chairman and the Subcommittee for holding this hearing, the sponsor, and all of my colleagues who have cosponsored this legislation.

FLORIDA ORGANIZATIONS STRONGLY ENDORSE PASSAGE OF CUBAN-HAITIAN ADJUSTMENT ACT OF 1984

STATEMENT OF GREATER MIAMI UNITED NATIONAL COALITION FOR HAITIAN REFUGEES SPANISH-AMERICAN LEAGUE AGAINST DISCRIMINATION

Our member organizations based in Florida and nationwide strongly urge the immediate enactment of the "Cuban-Haitian Adjustment Act of 1984", introduced on February 9 in the United States Congress by Judiciary Committee Chairman Peter Rodino. The welfare of our community requires that the legalization of the limited

group of Cubans and Haitians defined in Chairman Rodino's legislation be guided by the fundamental values of equal treatment and justice for all and be accomplished as quickly as possible.

Justice demands that this group of Cuban and Haitian refugees who risked their lives to flee to our country from misery and repression be granted permanent residence and an end to their tragic plight and legal limbo. The unique and desperate situation of the Haitian and Cuban refugee boat people has been repeatedly linked by governmental action and in the public mind. The great majority of the Cuban refugees from the Mariel flotilla and the comparable and smaller group of Haitian refugees have long ago been promised that their "entrant" status would be converted to permanent residency through legislation.

Southern Florida has long prided itself on being a vital, multi-ethnic community, but our citizens have suffered from too much divisiveness already. The introduction of the Cuban-Haitian Adjustment Act of 1984 represents a long overdue and equitable step towards solving the tragic plight of these two refugee groups, and our communities are united in support of its early passage.

Our organizations also endorse the specific language of the Cuban-Haitian Adjustment Act of 1984 that defines the group of refugees to benefit from its provisions as absolutely essential to a humane and equitable solution to this dilemma. The handful of Cubans and Haitians who arrived subsequent to the granting of "entrant" status but before January 1, 1982, have suffered more than their predecessors in many cases. Thousands of the Haitian refugees were detained for up to 18 months as part of a detention program that federal courts have held to have been illegal and discriminatory. As Chairman Rodino emphasized: "No group in recent history has been subject to more injustices by the Immigration Service."

Both Cuban and Haitian refugees have established additional and substantial equities in our society, and their presence here should be legally confirmed immediately. Our organizations join together in support of this just and humane legislation, and we urge the Democratic and Republican parties to endorse this bill in a bi-partisan commitment to end the plight of these refugees and to renew the sense of unity in our community.

For further information please contact:

Greater Miami United, Dr. Eduardo J. Padron, Co-Chair, (305) 577-6730

National Coalition for Haitian Refugees, Michael S. Hooper, Esq., Executive Director, (212) 741-6152

Spanish-American League Against Discrimination, Manuel Diaz, Esq., Chairman, (305) 576-1500

CUBAN-AMERICAN COMMITTEE,
Washington, DC, May 17, 1984.

Hon. PETER W. RODINO, Jr.,
Chairman, Judiciary Committee, House of Representatives,
Washington, DC.

DEAR CHAIRMAN RODINO: We would like to ask your permission to introduce the enclosed statement in the record for HR 4853 ("Cuban-Haitian Adjustment Act"). The issues covered by the bill are extremely important and we trust that the points we made in our statement will contribute to its favorable consideration.

We would also like to thank you for taking a leadership role in addressing this matter. We strongly support the bill and we will be happy to assist your office on this matter in any way we can in the weeks to come.

Sincerely,

MANUEL R. GÓMEZ, *President.*

STATEMENT OF MANUEL R. GÓMEZ, PRESIDENT, CUBAN-AMERICAN COMMITTEE

I am Manuel Gómez, President of the Cuban-American Committee, an organization concerned with a broad range of domestic and foreign issues affecting Hispanic interests. We are thankful to Judiciary Committee Chairman Peter Rodino and to the staff of the Immigration Subcommittee for the opportunity to introduce testimony into the record which reflects our views on the "Cuban-Haitian Adjustment Act of 1984" (HR 4853).

We strongly support both the adjustment aspects of the proposed legislation and the section which addresses the issuance of immigrant visas to qualified individuals under section 203 of the Immigration and Nationality Act, without regard to Section 243(g) of such act. We would like to outline the basis for our support and also offer

some comments which concern the underlying causes of the "Cuban" issues covered by this legislation.

With regard to the issue of adjustment of the status of both groups to permanent residents, it is clear that the Cuban and Haitian groups have similar origins and characteristics; and that both are strongly deserving of the change of status. Both are correctly linked in the public mind as one issue, and they have both received implicit assurances from past government actions and statements that they would be adjusted from "entrants" to permanent residents.

The proposed legislation will thus result in a long-overdue legalization of two groups that have been in an unjustified legal limbo for several years. The measure is just and consistent with the equal treatment principles of our society. It is the only acceptable solution to a problem which has been allowed to fester for too long.

The comprehensive coverage of the proposed legislation is particularly important. Deportation is not a realistic threat for most Cuban entrants, yet many of the Haitian entrants, if not adjusted, would face such a prospect, followed by almost certain persecution, and even death. It would be unacceptable and shameful, to say the least, if the first voluntary massive emigration of Black people to our shores—a heroic emigration, we might add—were to end with such a tragic chapter. The treatment that may of them have received in detention camps and other contexts is already a stain on our civil rights values. The equal treatment of both groups by the proposed legislation is therefore essential.

Our support for Section 2 of the bill, instructing consular officers to issue visas to certain qualified individuals, is equally straightforward. For more than two years now, some 15,000 spouses and children of Cubans who are permanent residents in the US, and who are thus eligible for preference immigrant visas, have been stymied in their desire to emigrate to the US by an Administration policy which is as callous as it is hard to understand. The State Department is refusing to issue visas until the Cuban government accepts the return of the small group of excludables who came with the Mariel exodus.

Yet there is every indication to suggest that Cuban officials, in fact, have offered to negotiate the return, but the Administration has refused any meaningful discussion. At least one high-ranking government official with first-hand knowledge of the discussions—Wayne Smith, former head of our interest section in Havana—is of the strong opinion that the matter is amenable to fruitful negotiation. Whatever the details of the dispute, however, the reunification of Cuban families is needlessly being held hostage to a policy of confrontation with Cuba. We cannot fathom the goal of this heartless policy. The Cuban immigration problem is perfectly amenable to bilateral discussions between the two governments, quite apart from other sources of conflict.

This brings us to the last point we would like to bring to the attention of the Subcommittee, which is the need to understand the underlying causes of the two "Cuban" problems this bill addresses, so as to prevent similar situations from arising in the future. Otherwise, the piecemeal approach which HR 4853 must today embody to resolve a pressing and specific problem may well have to be repeated in the future.

Both the explosive Mariel exodus and the continued division of thousands of Cuban families are the result of incessant hostility between Cuba and the United States. Similar instances of emigration without agreed-upon rules have occurred in the past and would come up again in the future, so long as both governments feel compelled to use the issue as a political weapon. That pattern has gone on for too long, and it should stop.

There is simply no reason why bilateral discussions between the two countries cannot set the basis for a humane and mutually agreeable resolution for many current immigration problems, and thus prevent the kinds of crisis we now confront from occurring in the future. Indeed, a relaxation of tensions between the two countries offers the only real prospect of meaningful family reunification.

It is now clear that neither country desires a repeat of the massive exodus pattern which has been the case until now. A relaxation of tensions, coupled with immigration agreements between the two countries, should pave the way for reunification mechanisms which need not always demand definitive emigration, but should have an expanded meaning which includes a range of contacts, such as easier, more relaxed, and extended visits of relatives in both countries, better phone and mail communication, and the like. For countries which are so close, maintaining close contact between loved ones need not always mean emigration, any more than families with members in New York and Miami must all choose the same city in which to live in order to remain close. To reach such a state of affairs will require the earnest effort of both governments. It may seem like a dream today, but we urge our

Congressmen to consider it. From our point of view, such a state of affairs is the only real solution to the type of "Cuban" immigration problems we are today faced with resolving in an urgent but piecemeal fashion.

In conclusion, we join the wide coalition of organizations and individuals which support this legislation. The plight of the Cuban/Haitian entrants is a very specific and well-defined case of injustice which deserves an equally specific redress. We have stated only briefly the reasons for our support because we are well aware that many other witnesses have presented testimony that amply documents these and other arguments in support of the legislation. Finally, we trust that the points we have made about the "Cuban" aspects of this immediate problem contribute to policies which will prevent their repetition in the future.

APPENDIX 5: MICHAEL HOOPER'S RESPONSES TO SUPPLEMENTAL QUESTIONS

Question. Mr. Hooper, you are concerned by the effects of Section C of this legislation because of the exclusion of certain admitted nonimmigrants who overstayed their visas. Can you explain this concern and do you have alternative language to suggest?

Answer. We are concerned with the exclusions of Section C to the extent that it directly contradicts the clear intent of Section B. There are two groups of otherwise eligible beneficiaries who might be excluded from coverage if Section C is not technically amended.

Any application of Section C to Section B would result in the disqualification of Haitian and Cuban who were previously assured of protection through the granting of "Entrant" status by the Carter administration. Since they were (in the language of Section C) admitted to the United States as nonimmigrants and have not applied for asylum a formalistic application of Section C could result in their exclusion from coverage in direct contradiction of the spirit of this bill.

Secondly, we are concerned that the legislation be clarified to indicate that the class of persons intended to be excluded from the benefits of this legislation includes only those persons who were inspected and lawfully admitted to the U.S., and does not apply to an alien paroled and inspected or otherwise allowed entry into the U.S. "Admitted" is a term of art in immigration law, and those persons who were detained or who were placed in proceedings when they presented themselves at the border have not been admitted. We would hope that the Committee report would indicate that the clear intent of this legislation is that anyone who was not "lawfully admitted" to the U.S. would be eligible for the benefits of Section B.

We would recommend that Section B(2) could be modified so as to preserve the spirit of Section C which would be eliminated from the text. This minor modification in language would also resolve the two ambiguities noted above. Section B(2) would then read:

(2) "who is a national of Cuba or Haiti, who arrived in the U.S. before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982 and who (unless the alien filed an application for political asylum with the INS before January 1, 1982) was not lawfully admitted to the U.S. as a non-immigrant."

Written in this fashion this bill is only intended to exclude Haitians and Cubans who are not Cuban-Haitian Entrants, who were lawfully admitted to the U.S. on a valid temporary visa and who did not apply for political asylum.

Question. It is intended that this legislation apply only to otherwise eligible Cubans and Haitians "with respect to whom any record was established by the INS before January 1, 1982." What would be included in the restriction "with respect to who any record was created by INS"?

Answer. Included in the restriction "any record created by INS" would be any document or computer entry prepared or accepted by the INS or the Executive Office of Immigration Review, including but not limited to the documents described on the list which follows. Any record would also include any petition or application submitted by the alien. The contact requirement would be fulfilled for any persons placed in deportation or exclusion proceedings, those who have final orders of deportation entered against them, those who have sought to exhaust their administrative or federal court remedies and those given parol documents or their equivalent even though they were never placed in deportation proceedings. A nonexhaustive list of this kind of "record" of contact which placed the INS on notice as to the presence of the alien includes but is not limited to:

I-39 decision of an immigration judge.

I-94 document of entry.

I-102 application for a lost I-94.

I-72 Call-in-Letter (request for information or to come in to INS in person, applies only to those persons already at the attention of INS. Other call-in letters included I-210 and G-56.

- I-122 notice that alien is under exclusion proceedings.
- I-221 Order to Show Cause, the equivalent of I-122 for deportation.
- I-166 "Bag and baggage" letter informing alien that has been ordered deported and setting date of deportation.
- I-213, I-214 statements and declarations taken from aliens usually at time of entry.
- I-200 warrant for arrest.
- I-290 Notice of Decision by Immigration Judge.
- I-292 Notice of appeal.
- I-246 request for a stay of deportation.
- I-342, I-352 notice of bond from IJ or District Director Respectively.
- I-286 Notice of Decision.
- I-589 Notice of application for political asylum.
- I-506 Application for a change of status.
- I-539 Application for an extension of stay.
- I-6 Execution of Parole Agreement.

— A Writ of Habeas Corpus in Federal Court.

— A notice of docketing of an appearance in a Circuit Court of Appeals.

Finally I would like to emphasize that the "any record" limitation refers to any record that was established by the INS before January 1, 1982. As long as this record was created, the clear intent of this legislation is that benefit eligibility exists once any record was established, even if the refugees files were later lost or misplaced by the Immigration Service. Justice and basic humanity demand that the benefits of this legislation must be available to otherwise eligible Cubans or Haitians whose files were destroyed or lost through no fault of their own. This is not an abstract concern, as during the Immigration Service's "Haitian Program" a significant number of files were indeed misplaced as the refugees were transported from prison to prisons around the country.

Question. While there is a continuous residence requirement appearing at (a)(4) of this legislation, there is absolutely no physical presence requirement in determining eligibility. How would a continuous residence requirement affect these Cubans and Haitians?

Answer. As with certain other common-sense limitations, a carefully crafted and flexible continuous residence requirement would be very reasonable, but a rigidly applied requirement could be used to defeat the entire purpose of this legislation. Should any continuous residence requirement be included in the bill, it would be very important for the Committee to give the INS specific guidance in order to avoid the use of this requirement to undermine the legislation's intent.

We believe that continuous residency and derivatively, eligibility for this legislation's benefits, means that the applicant for adjustment remained in the U.S. and does not require continuous physical presence. The interests of justice are not served if an otherwise eligible applicant is disqualified just because he left the country once for two days. Continuous residence as a term of art means just what it implies, that the concerned individual did not reside elsewhere it does not require continuous physical presence. If an applicant resided outside the U.S. he should be disqualified however if he traveled or visited outside the U.S. he clearly would continue to qualify for the benefits of this legislation. Naturally the more difficult problem concerns what will be considered acceptable documentation and evidence to establish continuous residency. This matter will also be resolved by regulations, but we would urge the Committee to clearly go on record as favoring the use of reliable witness affidavits as a sufficient form of documentation.

Question. Section 2 of this legislation mandates the issuance of immigrant visas to qualified Cubans without regard to the availability of visas. Why has your Coalition made this a major priority?

Answer. Our Coalition is composed of 45 national organizations deeply concerned with the problem of these refugees, and we have also organized affiliated Coalition working groups in Washington and Miami. Our Miami group included many Cuban-American organizations and Civil rights organizations committed to resolving the dilemma of the Haitian and Cuban boat people. Although many of our member organizations were not aware of this problems of visa issuance prior to our contacts with the Cuban community, we now include this policy as a priority essentially because of the importance which our colleagues place on resolving the issue.

Question. In your testimony you stressed that there is a possibility that a significant number of otherwise eligible beneficiaries of this legislation faced imminent deportation. How serious is this problem and how many people are you talking about?

Answer. The problem is very grave and it is very immediate. Today we are confronted by the tragedy irony that persons may be deported just days before this con-

tinuing civil rights tragedy is finally resolved. Whether this legislation is approved in late 1984 or in early 1985 it is essential that these refugees who have suffered in innumerable ways already should not be shunted out from under the protections that they have waited for so long. Finally there is no opposition to this bill. Everyone agrees with its spirit, including key Senators and administration as we have seen this morning, although there are certain differences as to eligibility date. The beneficiaries of this legislation should be assured that the untold hardships that they have suffered already will not be multiplied by the ultimate penalty of deportation to the countries from which they fled.

H 363 85