

# Memorandum

U.S. Department  
of Transportation  
United States  
Coast Guard



Subject: SITREP 9 - HAITIAN REFUGEE CENTER, INC.  
v. BAKER (SOUTHERN DISTRICT OF FLORIDA,  
CASE NUMBER 91-2653)

Date: 30 Dec 91  
16217

From: District Legal Officer

Reply to  
Attn. of: d1  
PROKOP: x-4343

To: District Commander

Via: Chief of Staff

## 1. Situation:

The United States is enjoined from forcefully repatriating individual plaintiffs and members of the class of plaintiffs. Voluntary repatriations (certified by the UNHCR) are permitted.

## 2. Chronology of events:

- 30 SEP: Coup ousts Haitian President Aristide; the United States de facto halts repatriations.
- 28 OCT: First interdiction following coup.
- 18 NOV: 244 migrants from CGC CONFIDENCE repatriated at Port au Prince.
- 19 NOV: 225 migrants from CGC STEADFAST repatriated at Port au Prince.
- 19 NOV: The Haitian Refugee Center, Inc., a non-profit membership corporation that promotes the well-being of Haitian refugees, files suit in the United States District Court for the Southern District of Florida, against RADM KRAMEK and ADM KIME, among others, to halt the repatriation of 1500 Haitians.

Following a hearing at which the United States (represented by Assistant United States Attorney Dexter Lee) argued that the plaintiff did not have standing to sue, Judge Donald L. Graham issued a

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temporary restraining order (TRO), precluding the repatriation of Haitians currently held on board US flagged vessels and at Guantanamo Bay, Cuba. Plaintiff was directed to file a brief on standing and the requirements for a TRO within 5 days. Defendants were directed to file a reply within 2 days.

20 NOV: The United States files declarations by CAPT SPADE, USCG, Chief, Operations Division, Seventh Coast Guard District; RADM LEAHY, USCG, Chief, Office of Law Enforcement and Defense Operations, Coast Guard Headquarters; Robert K. Wolthuis, Assistant Secretary of Defense for International Security Affairs; Bernard W. Aronson, Assistant Secretary of State for Inter-American Affairs; and Leon Jennings, INS, Chief Asylum Pre-Screening Officer. The United States then files a motion for an emergency hearing, to shorten notice time and to vacate or stay the TRO.

21 NOV: Plaintiff Haitian Refugee Center files a motion to expedite discovery and an extensive discovery request.

Ruling on the written submissions, Senior Judge C. Clyde Atkins issues an omnibus order denying the relief requested by the United States and granting plaintiff's motion for expedited discovery, with specific guidance for extraordinary government support of the discovery process.

The United States, in the United States Court of Appeals for the Eleventh Circuit, files a motion for a temporary emergency stay of Senior Judge Atkins' discovery order and for a stay of Judge Graham's order blocking repatriation, pending appeal or mandamus.

NBC News files an action to require access by their reporters to Haitian migrants on Coast Guard cutters and at Guantanamo Bay, Cuba (essentially a motion to allow reporters to accompany plaintiff's attorneys on Coast Guard aircraft when they proceed to Guantanamo to take the depositions of the migrants).

The Court of Appeals grants a stay of the discovery order.

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Plaintiff Haitian Refugee Center files a reply brief to the United State's motion to stay the TRO.

22 NOV: In cases 91-6027 and 91-6028, Chief Judge Tjoflat and Circuit Judges Hatchett and Cox of the United States Court of Appeals for the Eleventh Circuit, dismiss the United States' request for a stay of the order blocking repatriation, deny the request for mandamus and lift the stay of Senior Judge Atkins' discovery order.

The United States decides not to appeal this order to the Supreme Court.

Senior Judge Atkins appoints a special discovery master, a Mr. Donald Bierman, to handle disputes over discovery matters and render on the spot decisions, subject to later review by the judge.

23 NOV: Magistrate Judge Garber, in the NBC suit for access to depositions, following a hearing, allows one representative to be present at depositions taken on board cutters and at Guantanamo Bay, Cuba.

Haitian Refugee Center and attorneys for the United States (lead attorney is Robert L. Bombaugh, Director, Office of Immigration Litigation, Civil Division, Department of Justice) continue negotiations to settle suit and postpone planned deposition trip to Cuba.

24 NOV: Negotiators agree to extend TRO and to delay hearing on merits.

27 NOV: CAPT SPADE deposition.

30 NOV: Party of attorneys and various support personnel (totaling 27) proceed to Guantanamo Bay, Cuba, to inspect conditions and depose migrants. Migrants are interviewed aboard USS TORTUGA (LSD 46), USCGC COURAGEOUS (WMEC 622), USCGC LEGARE (WMEC 912) and at Camp Buckley. The special discovery master, Mr. Bierman, conducts his own, separate inquiries.

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Plaintiff files memorandum in support of its motion for a preliminary injunction.

1 DEC: Party returns from Guantanamo Bay, Cuba.

Defendants file memorandum opposing injunctive relief.

2 DEC: Senior Judge C. Clyde Atkins, District Court for the Southern District of Florida, holds a hearing on the motion for injunctive relief. The plaintiffs (Ira Kurzban, Esq.) argued the facts (stories of poor conditions in Haiti and on board CG cutters and of INS incompetence) and the defendants (Solicitor General Starr) argued the law (there is no jurisdiction for US courts to hear the claims of migrants outside the territorial limits of the US). No ruling was issued and the government refused to agree to an extension of the TRO.

3 DEC: Senior Judge Atkins grants plaintiff's motion to amend the complaint and add 15 individual Haitian plaintiffs.

Senior Judge Atkins grants plaintiff's motion for a class action.

Senior Judge Atkins grants a preliminary injunction enjoining the United States from forcefully repatriating any of the migrants until (1) a decision is reached on the merits of the underlying case, or (2) the United States implements and follows procedures adequate to ensure that Haitians with valid asylum claims are not forcefully repatriated. Plaintiffs are required to post a \$5000 bond. This injunction is based on Article 33 of the 1967 United Nations Protocol Relating to the Status of Refugees and HRC's right of association and counsel under the First Amendment.

4 DEC: Defendants file a notice of appeal of the preliminary injunction in District Court.

Defendants file an emergency motion for a stay of the preliminary injunction pending appeal, in District Court.

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- 5 DEC: Defendants file an emergency motion for a stay of the preliminary injunction pending appeal in the United States Court of Appeals for the Eleventh Circuit in Atlanta.
- 9 DEC: Senior Judge Atkins denies the government's motion for a stay pending appeal and grants plaintiff's motion to maintain a class action.
- 10 DEC: Defendants file description of current procedures used to interview Haitian migrants in district court.
- 12 DEC: Oral argument on the defendant's motion for a stay pending appeal is held before a three judge panel of United States Court of Appeals for the Eleventh Circuit in Atlanta.
- 13 DEC: Plaintiffs respond (critically) to description of current procedures filed in district court.
- 16 DEC: Plaintiffs demand additional discovery, including another trip to Guantanamo Bay, Cuba, in district court.

Plaintiffs and defendants file reply appellate briefs in circuit court.

- 17 DEC: The Eleventh Circuit, per Chief Judge Tjoflat and Judge Cox, dissolves the preliminary injunction issued by Senior Judge Atkins of the district court on 3 December, finding that Article 33 is not self-executing, thus providing no enforceable rights to the Haitians. Judge Hatchett files a lengthy dissent, suggesting that the Administrative Procedures Act provides a basis for relief.

Plaintiffs, in district court, file for a TRO, based on the Administrative Procedures Act. Senior Judge Atkins issues the TRO, with a hearing to be held on Friday, 20 December. The order, in footnote 2, specifically does not preclude the voluntary return of migrants, as determined by the staff of the UN High Commissioner on the Status of Refugees.

Defendants move to stay the TRO pending appeal - Judge Atkins denies the motion.

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18 DEC: Defendants file for a stay of the district court order granting the TRO pending appeal and for an order summarily reversing the district court's ruling or a writ of mandamus.

19 DEC: CGC THETIS (WMBC 910) repatriates 22 volunteers at Port au Prince.

The Eleventh Circuit stays, pending appeal, Judge Atkins' TRO issued on December 17.

20 DEC: Senior Judge Atkins holds a status conference in Miami. Plaintiffs request unrestricted access to their clients in GTMO, supplemental findings by Judge Atkins to buttress their APA claim and an injunction to prohibit defendants from conducting involuntary repatriations. Defendants request and receive permission to file additional affidavits with the court, oppose unrestricted access and oppose any further injunctive relief.

Defendants file in district court opposing plaintiffs second motion to expedite discovery.

Later in the day, Senior Judge Atkins grants the requested preliminary injunctive relief (prohibiting forceful repatriations), based on First Amendment access to counsel grounds, files supplemental findings of law and fact on the APA issue and grants plaintiff's counsel access to the class members at Guantanamo Bay.

23 DEC: Plaintiff's file in the district court for injunctive relief based on APA grounds.

Senior Judge Atkins further enjoins repatriations based on APA grounds, but stays his own order pending appeal.

Plaintiffs file notice of cross appeal in district court on Senior Judge Atkins' 20 December order, and on previous adverse rulings on Executive Order 12324, the Immigration Act and the Refugee Act of 1980.

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24 DEC: Plaintiffs file in the appeals court a motion to dismiss defendant's 18 December appeal for a summary reversal order and a writ of mandamus.

The Eleventh Circuit orders briefs on 27 December, oral argument on 30 December and denies plaintiffs' petition for a writ of mandamus.

Plaintiffs file in district court reply to defendants' opposition to expedited discovery.

26 DEC: The Eleventh Circuit rescinds its 23 December order setting dates for briefs and oral argument, and requests advice on whether all issues are before the court.

27 DEC: CGC VIGILANT (WMEC 617) repatriates 132 volunteers at Port-au-Prince.

30 DEC: CGC TAHOMA (WMEC 908) repatriates 85 volunteers at Port-au-Prince.


3. Future plans:

a. Briefs are due in circuit court in Atlanta at 1700, on Tuesday, 31 December.

b. Oral argument in circuit court in Atlanta will be held on Thursday or Friday, 2 or 3 January 1992.

c. Negotiations continue on means of granting plaintiffs' counsel access to their clients at Guantanamo Bay, Cuba. Motions on this issue are pending with Senior Judge Atkins in district court. Plaintiffs' counsel have stated the intention to request another hearing before Senior Judge Atkins on this issue. We are forwarding an affidavit on air connections to GTMO (Coast Guard/DOD/commercial) to the AUSA handling the case here in Miami.

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COMDT (G-LCL)  
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