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September 23, 2021

**Via E-mail and U.S. Mail**

President Joseph Biden  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
Washington, DC 20528

**Re: Haitian Refugees**

Dear President Biden and Secretary Mayorkas:

We, the Attorneys General of Illinois, the District of Columbia, Nevada, New York, the U.S. Virgin Islands, California, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, and Washington write to you concerning the urgent circumstances facing thousands of Haitian migrants currently seeking the humanitarian aid of the United States at our borders. Like many Americans, we were grateful to learn that your administration will investigate the tactics of U.S. immigration officials on horseback who were recently filmed and photographed charging at—and apparently attempting to whip—Haitian migrants as they sought to bring food to their families massed under a bridge in Del Rio, Texas.<sup>1</sup> We trust that this investigation will result in the cessation of these inhumane tactics, which do not reflect the values of our nation and our respective states. Likewise, we commend the

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<sup>1</sup> See Alexandra Petri, *Homeland Security Investigates Border Patrol's Treatment of Haitian Immigrants*, N.Y. TIMES (Sept. 20, 2021), <https://www.nytimes.com/2021/09/20/us/politics/haitians-border.html>.

administration for its recent decision to greatly increase the number of refugees who will be allowed into the United States in the coming fiscal year.<sup>2</sup>

While we are confident that your administration will address the alarming practices recently used to apprehend Haitian migrants at the border, we remain deeply concerned by the administration's continuation of a summary deportation policy (ostensibly supported by 42 U.S.C. § 265 and related rules) that is sending many Haitians back to a country facing one of the worst series of crises in its history. Haiti is experiencing unprecedented political upheaval from this summer's presidential assassination and is struggling yet again to rebuild after a destabilizing earthquake. These unexpected events have prompted a new influx of Haitian nationals seeking refuge in our country. We understand that the administration must constantly reconsider and formulate responses to a challenging crisis that is unfolding day by day. However, individuals seeking asylum or other humanitarian assistance in our country deserve our respect and compassion, and they should not be treated differently from other migrants based on their country of origin. Haitians deserve the same due process as all others attempting to immigrate or flee to the United States. The circumstances of every Haitian seeking refuge here should be assessed on a case-by-case basis. This individualized evaluation should factor in both the time a person has been away from Haiti and the circumstances he or she would likely face if compelled to return to a nation in the midst of dire humanitarian and governance crises.

We support and encourage the Administration to use the several tools available to address the critical conditions for the Haitians who have sought refuge under the bridge in Del Rio. In immigration matters, the Supreme Court has repeatedly affirmed "the deference traditionally accorded the President in this sphere."<sup>3</sup> For example, the President may set a number of refugees to be admitted to the United States separate from the annual cap after determining that "an unforeseen emergency refugee situation exists," and that admission of those refugees "is justified by grave humanitarian concerns."<sup>4</sup> The administration also could invoke country-specific measures to allow these migrants to legally remain in the United States while conditions in their country of origin are too hazardous for them to safely return.<sup>5</sup> On an individual level, the Attorney General may parole a migrant into the United States if he "determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States."<sup>6</sup>

We also respectfully urge your administration to reconsider relying on 42 U.S.C. § 265 and related rules to justify expelling Haitian nationals to Haiti. As one federal court recently held, citing Title 42 to expel foreign nationals already in the United States on public health grounds defies the language of the statute and overrides clear humanitarian protections for refugees in the law.<sup>7</sup>

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<sup>2</sup> See Mica Rosenberg & Lisa Lambert, *Biden Administration Seeks to Lift U.S. Refugee Cap to 125,000*, REUTERS (Sept. 20, 2021), <https://reut.rs/3EHHWmG>.

<sup>3</sup> *Trump v. Hawaii*, 138 S. Ct. 2392, 2409 (2018).

<sup>4</sup> 8 U.S.C. § 1157(b).

<sup>5</sup> See, e.g., 86 FR 41863, *Designation of Haiti for Temporary Protected Status* (Aug. 3, 2021); 86 FR 9531, *Reinstatement of Deferred Enforced Departure and Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians* (Feb. 16, 2021).

<sup>6</sup> 8 U.S.C. § 1182(d)(5)(B).

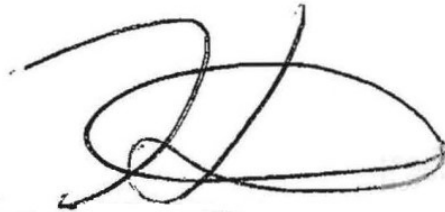
<sup>7</sup> See *Huisha-Huisha v. Mayorkas*, Civ. Action No. 21-100, 2021 WL 4206668 (D.D.C. Sept. 16, 2021).

As Attorneys General, we understand the need to respond to an evolving crisis while following the law. We urge the administration to exercise its discretion—discretion that the law expressly provides—to demonstrate compassion and fairness in the treatment of those Haitians seeking refuge in our country.

Respectfully,



KWAME RAOUL  
Illinois Attorney General



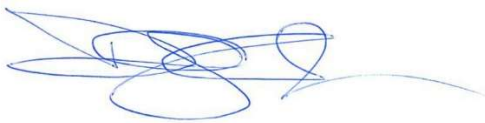
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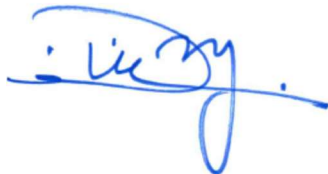
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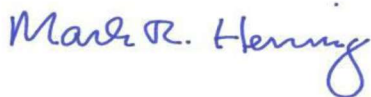
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