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November 18, 1991

Hon. William J. Barr
Acting Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

As we witness the momentous growth of democratic ideals and institutions abroad, recent events in Haiti provide a tragic reminder of how fragile democracy may be. In a matter of weeks, at least three hundred lives have been lost and an uncertain number of Haitians have been imprisoned, gone into hiding, or fled the country. Now that the international community has imposed sanctions, the health and welfare of the entire nation is imperiled by deteriorating economic conditions. Meanwhile, Haitians who have fled to the United States for safety fear they may be forced to return to Haiti before peace and constitutional order are restored.

In view of this deepening crisis, the American Bar Association urges you in your capacity as acting Attorney General to designate Haiti as a country for Temporary Protected Status. We believe such recognition will help ensure that Haitians who have reached the United States are provided physical safety and given the same treatment that our nation currently extends to Kuwaitis, Lebanese, Liberians, Salvadorans and Somalians.

The Immigration Act of 1990 authorizes the Attorney General to grant safe haven status to nationals from countries experiencing war, natural disaster or other extraordinary conditions that endanger physical safety. As you know, the TPS law does not create an admissions program and does not modify the refugee, asylum or withholding of deportation provisions. The statute only permits nationals from designated states who are already in the United States, but who may not fit the textbook definition of "refugee" or "asylee", to remain and work until they can safely return home, provided they register and meet the other eligibility requirements. This framework is intended to provide sufficient flexibility and the necessary authority to respond

swiftly to changing world developments. We believe that conditions in Haiti are so "extraordinary" to warrant immediate designation. Even under a best-case scenario, conditions in that country are not likely to permit the safe repatriation of Haitians for the foreseeable future. In the meantime, Haitians in this country should be treated with dignity and compassion.

While TPS is the appropriate remedy for individuals already in the United States, we also have concerns for those who have risked their lives but not yet reached our shores. We understand from news accounts that at least 38 Haitians on coast guard cutters at sea have been preliminarily identified as potential refugees yet have not been allowed to apply for asylum. In our judgment, those individuals should immediately be permitted to apply for asylum pursuant to international agreements and established INS procedures.

Furthermore, we understand that the INS "pre-screening" interviews taking place on the Coast Guard cutters lack normal procedural protections to ensure that eligible refugees are not erroneously rejected. If such individuals are taken to camps in third countries, as has been proposed, they will be precluded from proving that they do qualify for asylum. We note that the U.S. treats no other group of potential refugees in the manner proposed for the Haitians, and that about 2000 Cuban rafters have been paroled into the United States so far this year.

In conclusion, we are aware that the Administration is deeply troubled by the situation in Haiti and is developing a response to those who flee. We urge you to grant TPS to Haitians who are fortunate to be in the United States and to give all Haitians in U.S. custody a meaningful opportunity to demonstrate their eligibility for asylum.

Sincerely,

Robert D Evans

Robert D. Evans

cc: James A. Baker III, Secretary of State
J. William Kime, Commandant, U.S. Coast Guard