

ASYLUM OFFICE
DEPARTMENT OF HOMELAND SECURITY
CITIZENSHIP AND IMMIGRATION SERVICES

In the Matter of XXXX,
ADDENDUM TO I-589
Application for Asylum, Withholding
Of Removal and Convention Against
Torture

AFFIDAVIT OF BRIAN CONCANNON JR., ESQ. IN SUPPORT OF XXXX'S
APPLICATION FOR ASYLUM, WITHHOLDING OF REMOVAL, AND
CONVENTION AGAINST TORTURE

I, **Brian E. Concannon Jr., Esq.**, hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge.

1. I am a member of the Massachusetts Bar, and Director of the Institute for Justice & Democracy in Haiti (IJDH). IJDH documents human rights violations in Haiti, and pursues human rights cases in Haitian and international courts. I lived and worked in Haiti from May 1995 until February 2004. In 1995 and 1996, I worked for the United Nations/Organization of American States Civilian Mission to Haiti, as a Human Rights Observer. From 1996 to February 2004, I co-managed the *Bureau des Avocats Internationaux* (International Lawyers Office, or "BAI"). The BAI, which received most of its support from Haiti's elected governments, helped victims and the justice system prosecute human rights cases. The BAI's work, especially the trial of the Raboteau Massacre in the fall of 2000, was internationally recognized as a landmark in the fight against impunity. From 2001 to 2003, I held a Brandeis International Fellowship in Human Rights, Humanitarian Intervention and International Law, and I am a 2005-2006 Wasserstein Public Interest Law Fellow at Harvard Law School. I am fluent in French and Haitian Creole.

Through my work with the United Nations and the BAI in Haiti, I became intimately familiar with the human rights situation in Haiti, especially human rights violations committed during the 1991-1994 *de facto* military dictatorship. I am also familiar with the provisions of Haiti's laws and Constitution regarding the arrest, trial and imprisonment of accused criminals. I followed the events leading to the overthrow of Haiti's government closely, because some of the

insurgency's leaders were people the BAI had helped convict in the Raboteau Massacre trial. I have followed developments in Haiti closely since February 2004, and have authored or co-authored several reports on the current human rights situation. I have not been physically present in Haiti during that time, but I am in daily email and telephone contact with colleagues in Haiti, especially the BAI staff in Port-au-Prince. I also read press reports and human rights reports about the country.

I am regularly consulted regarding human rights and legal procedure in Haiti by U.S. Government officials, human rights organizations and journalists. I write frequently on human rights and law in Haiti, including book chapters and articles in academic journals and newspapers. I speak frequently about human rights in Haiti at law schools, universities and conferences, and am regularly interviewed for radio programs throughout the world.

2. I have read Mr. XXX's affidavit in this matter, and I am familiar with the broader context of his claim for asylum, including his dangerous police work and the systematic attacks against supporters and members of Haiti's *Lavalas* government.
3. Mr. XXX took risks for the rule of law in Haiti on a daily basis in his work. He understood that effective democracy in Haiti needed a police force willing to investigate and pursue people based on the facts against them rather than on who they knew or what power they wielded. He pursued people who were powerful at the time or have since become powerful, many of whom have demonstrated a willingness and ability to kill their opponents.
4. The danger for Mr. XXX in Haiti rose precipitously after February 2004, when a group of insurgents, comprised mostly of former soldiers and of paramilitaries from disbanded death squads, started attacking and taking cities and towns in the north of Haiti. Each time the insurgency attacked a city, it released all the prisoners held in jail, some of whom joined the fight. Often the insurgents executed police and other officials, and prominent supporters of the elected government or *Lavalas* party. The insurgents publicly declared that they would kill *Lavalas* supporters and officials, and they have made good on that promise.
5. Many of the insurgency's leaders were implicated in human rights violations against the *Lavalas* movement during the 1991-1994 *de facto* dictatorship. For example, Jodel Chamblain was the second in command of the *FRAPH* death squad. Jean Pierre, alias Tatoune, was a local *FRAPH* leader in Gonaives. Both were convicted for murder in the Raboteau trial. The insurgency's top leader, Guy Philippe, was a former police officer forced to flee in 2000 when the U.S. Embassy reported to the Haitian government that he was involved in planning a coup. The UN Human Rights Mission had accused Mr. Philippe of tolerating executions by officers under his command, and the U.S. reported that he was involved in drug trafficking. Mr. Philippe is

the head of a political party, and was a candidate for President in the February 7, 2006 elections.

6. Eventually, the insurgents took over all of Haiti. Although the arrival of international forces limited their activities in some areas, they still operate openly in some places. The insurgents enjoy significant support from Haiti's interim government. Although there is occasionally some government action to rein them in, the police make little effort to arrest insurgents for attacks against perceived Lavalas supporters. In March 2004, the interim Prime Minister, Gerard Latortue hailed the insurgents as "freedom fighters."
7. Police officials purged police ranks of officers suspected of supporting the ousted constitutional government. The former Minister of the Interior, former General Herard Abraham, now Minister of Foreign Affairs, systematically integrated former soldiers into the police force, bypassing the normal channels for police recruitment and admission. As a result, the police force has become militarized, and a large segment of it is not answerable to the official police hierarchy.
8. Immediately after the departure of President Aristide on February 29, 2004, the insurgents and their allies conducted widespread attacks on *Lavalas* members, officials and supporters. Hundreds, perhaps thousands were killed, and many others were arrested illegally, beaten or otherwise tortured. Thousands, perhaps tens of thousands have been forced to flee abroad or into internal exile.
9. The persecution of *Lavalas* supporters includes mass killings. The Port-au-Prince morgue reported disposing of over 1000 bodies in March 2004 alone, many bearing signs of summary execution. It includes torture by both the insurgents, who often mutilate their victim's bodies before killing them, and the police, who use torture as an interrogation technique. The persecution also includes the illegal arrest and detention of former officials and activists, who are often arrested without a warrant and kept in jail without a hearing and without access to the courts. The persecution is being carried out by a wide spectrum of *Lavalas* opponents, including the insurgents in areas they control, Haitian police, and even top government officials such as the Minister of Justice and handpicked judges.
10. Mr. XXX was in immediate danger after the insurgents took over cities in Haiti, from the insurgents themselves, and from the prisoners they released. The insurgent would have targeted him because 1) he was a police officer who refused to join the insurgency; and 2) because he was associated with the constitutional government. Mr. XXX was in danger from his arrestees, who could use the chaos unleashed by the coup to exact revenge.
11. The HNP has systematically persecuted suspected Lavalas sympathizers. On September 30, 2004, police fired upon thousands of political dissidents

demonstrating against the government. A few days later the police arrested four current or former members of Parliament at a radio station after they participated in a radio debate about the arrests. On October 13, 2004, Haitian police forcibly entered the Sainte Claire Catholic Church in Port-au-Prince and arrested the Pastor, Rev. Gérard Jean-Juste, perhaps the most popular political dissident in Haiti, without a warrant, while he was feeding the hungry children of his parish. After almost seven weeks in prison, Fr. Jean-Juste was released when the government could produce no evidence against him. In late December 2004, the Minister of Justice retaliated against the judge who issued the release order, Jean-Senat Fleury, illegally ordering the Chief Judge to take all Judge Fleury's criminal cases away. Rev. Jean-Juste was re-arrested on July 21, 2005, and was held in jail for seven months before being released temporarily for cancer treatments in January.

12. On October 14, 2005, Thierry Fagart, the head of the UN Human Rights mission in Haiti, called the human rights situation "catastrophic." He cited an August 20 massacre of at least 10 people at a soccer game by police and machete-wielding civilians, as well as illegal arrests and torture by the police. On December 9, 2005, the Prime Minister illegally dismissed five members of the *Cour de Cassation* (Supreme Court) because he did not like a decision they had made on a political case. The court system went on strike in protest, and as of this date has not resumed functioning.
13. Detention in a Haitian prison could be a death sentence, even if the government does not intend for it to be so. Prisoners are kept in conditions so willfully wretched that the United Nations' official assigned to help improve them quit in November 2004, when the Haitian government refused international offers of help. His successor warned the Haitian authorities that unless they took immediate remedial action, there would be significant violence in the prisons, especially the National Penitentiary where many political prisoners are kept. As predicted, National Penitentiary prisoners broke out of their cells in a protest against conditions, on December 1. Although the prisoners did not hurt any guards, the guards responded with lethal force, including repeated firing from automatic weapons. The government admits to ten prisoners killed in the incident, but witnesses, human rights groups and journalists claim the number of dead was several times that. For at least six weeks, the government would not tell prisoners' family members whether their loved ones were dead or alive. On February 19, 2005, six armed men were able to take over the entire National Penitentiary. They released several hundred prisoners, and forced others to leave. The government has not explained why the attackers met with no resistance from the police or prison guards.
14. Haiti's February 7 elections hold out some hope that human rights and security conditions in Haiti will eventually improve. If, as seems probable, a democratic government is installed in March, the government will likely end

the practice of detaining political prisoners. But several dangers for Mr. XXX will likely survive a democratic transition.

15. First, the people that he arrested, or had pursued are all still at large, unless they have been arrested for other crimes, or have died. These people would have an even stronger motive to eliminate Mr. XXX: if he arrested them once, he can arrest them again. Although re-democratizing of the police and justice systems will eventually create a deterrence to political assassination, with current personnel it is unlikely that the police will make serious efforts to prosecute killings
16. Second, although the police will soon answer to constitutional authorities, it is unlikely that the constitutional authorities will be able to purge the former soldiers that the IGH illegally integrated into police ranks. The police force is sharply reduced already, and the government will be wary of taking more police, even potentially crooked ones, off the streets. The integrated officers' supporters in the force, and in society at large will fight any purge, and the new government will be reminded that the same people played a key role in removing Haiti's last constitutional government.
17. Third, several of Mr. XXX's risks predated the overthrow of democracy. The people he pursued appear to have had good friends high in the elected government and the police force, and it is likely that will be the case again now.
18. I believe that Mr. XXX has been in danger of political persecution in Haiti at least since February of 2004. First, the people he investigated, from low-level thugs to more prominent people may take the opportunity for revenge. Second, corrupt police officers or government officials engaged in illegal activities may want to remove a police officer who so zealously investigates wrongdoing and resists intimidation.
19. There would also very little deterrent to killing Mr. XXX today in Haiti. In the rampant violence, including police killings, that plagues the country, very few killings are effectively investigated, especially killings of suspected *Lavalas* supporters.
20. Many of the people with a reason to remove Mr. XXX have demonstrated a willingness to assassinate their opponents. Given the various risk factors, it is my professional opinion that XXXX has an extremely well-founded fear of persecution on account of his political opinions and membership in a particular social group. If he were returned to Haiti, there is a very good chance that he would be beaten or killed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February __, 2005 at _____

Brian Concannon Jr., Esq.