

FOIA MARKER

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Folder Title: Haiti-HIV, 1993-1994				
Staff Office-Individual: Multilateral & Humanitarian Affairs-Schwartz, Eric				
Original OA/ID Number: 3424				
Row: 40	Section: 6	Shelf: 6	Position: 3	Stack: V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Samuel Berger and Anthony Lake to the President, re: Haiti/HIV (2 pages)	ca. 1993	P1/b(1)
001b. memo	Samuel Berger and Anthony Lake to the President, re: Haiti: HIV Cases at Guantanamo Bay, Cuba (6 pages)	ca. 1993	P1/b(1)
002. memo	Anthony Lake and Samuel Berger to the President, re: HIV-positive Haitians at Guantanamo Bay, Cuba, and the March 26 Order by the New York Federal District Court (6 pages)	03/30/1993	P1/b(1)
003. memo	Eric Schwartz to Anthony Lake and Samuel Berger, re: My visit to Guantanamo Bay, Cuba (9 pages)	03/29/1993	P1/b(1)
004. statement	Sworn Statement [partial] (1 page)	02/25/1993	P6/b(6)
005. statement	Sworn Statement [partial] (1 page)	02/24/1993	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral & Humanitarian Affairs (Schwartz, Eric)
OA/Box Number: 3424

FOLDER TITLE:

Haiti - HIV, 1993-1994

2007-1550-F

ke2044

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

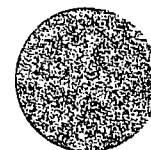
C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

October 14, 1994



ACTION

MEMORANDUM FOR ANTHONY LAKE
THROUGH: RICHARD A. CLARKE
FROM: ERIC SCHWARTZ *ES*
SUBJECT: HIV-Positive Refugees: INS Policy Change

I have attached a memorandum to the President on the subject issue.

I have drafted it as an information memorandum so that the decision on this sensitive issue remains with INS unless the President objects. As indicated below, I have coordinated with DPC staff.

Concurrences by: *ES* Jamie Baker, *ES* Steve Wainath (DPC staff), *ES* Mort Halperin

RECOMMENDATION

That you sign the memoranda to the President at Tab I.

Attachments

Tab I Memorandum to the President

THE WHITE HOUSE
WASHINGTON

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
CAROL RASCO

SUBJECT: HIV-positive Refugees

Summary

The Immigration and Naturalization Service intends to modify a discriminatory restriction on entry of refugees who test positive for the HIV virus. All concerned agencies -- State, HHS and Justice -- as well as the National Office of AIDS Policy strongly support the INS policy modification. The shift is likely to result in entry of some HIV-positive Haitian refugees; however, none of these movements would take place before mid-November.

I. Discrimination against HIV-positive refugees

As a result of the an amendment by Sen. Helms last year, HIV is considered a "communicable disease of public health significance" and is therefore a ground for exclusion under the Immigration and Naturalization Act (INA). Under the INA, however, this exclusion may be waived -- in the case of refugees, for humanitarian or public interest purposes, or to ensure family unification.

A 1988 INS directive established additional requirements for immigrant and refugee waiver applicants. To be considered for a waiver, applicants must show that 1) the danger to public health and the possibility of the spread of the disease would be minimal and 2) there would be no cost incurred by any level of government agency without prior consent as a result of the disease.

According to INS, the second part of this test is appropriate for non-refugee immigrants but not for refugees. This is because the second part clearly imposes a "public charge requirement," to which refugees, by virtue of their status, are exempt under our law. State, HHS, Justice and INS point out that the public charge requirement in this INS directive unfairly discriminates against HIV-positive refugees, as refugees with far more costly diseases enter the U.S. each year.

cc: Vice President
Chief of Staff

INS thus intends to alter its policy directive with respect to HIV-positive refugees (as well as refugees with other communicable diseases) by removing the public charge requirement and, thus, remedying this inconsistency.

II. Worldwide numbers involved and costs

INS estimates that of the some 110,000 refugees to which we provide entry each year, there may be about 200 approved applicants worldwide who test positive for the HIV virus and who would be considered (but not in all cases approved) for the waiver.

HHS estimates that the annual costs for HIV sufferers without active AIDS is about \$10,000 and that the lifetime costs for caring for HIV sufferers is about \$100,000. These costs are lower per capita than the costs for other diseases suffered by refugees (such as some heart diseases and cancers). Moreover, some refugees will obtain private health care at no cost to the states and HHS already provides refugees with aid for medical assistance.

III. Implications of the policy shift for HIV-positive Haitian refugees

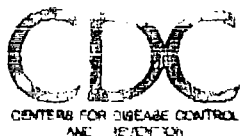
Current general policy toward approved refugees from Haiti: We have now suspended acceptance of new applications under the in-country refugee processing program in Haiti and are winding up the program. However, there are about 1000 Haitians in Haiti who have already been approved for refugee status and entry to the United States and have made preparations to leave (such as selling their homes and belongings), but have remained in Haiti -- in many cases in hiding -- because they were prevented by the military regime from traveling or because their final paperwork had not been completed.

Under current circumstances, in which there are still pockets of instability, we are processing the already approved applicants for resettlement but are keeping this issue under review. After a State Department determination that conditions are sufficiently stable in Haiti, our plan is to move to case-by-case reevaluation of those approved applicants who have not yet left. Under case-by-case review, only those with compelling humanitarian justifications will be permitted U.S. entry.

HIV-positive refugees at Guantanamo: There are about 29 HIV-positive refugees at Guantanamo who went through the refugee adjudication process on our processing ship in Jamaica and were granted refugee status, but who could not meet the third waiver requirement. Thus, they remained in Guantanamo while the 600 other Jamaica-approved refugees entered the U.S. There are also

about 88 HIV-positive approved refugee applicants within Haiti. Under the INS policy shift, these refugees will also be subject to the modified waiver requirement. If their waiver applications are approved, they will be considered for entry in the same manner as other approved refugees.

Under our refugee admissions program, these refugees will be assisted by non-governmental organizations on arrival and would be eligible for cash and medical assistance provided through the refugee admissions program.

*HIV*

Facsimile Transmission

National Center for Prevention Services

Corporate Square



Atlanta, Georgia

TO

MR. ERIC SCHWARTZ

Address:

White House

(202)

456-9351

Telephone No.

(202)

456-9360

Facsimile Telephone No.

FROM:

Mr. Charles R. McCance

NCPS Office or Division:

DQ

10

Building

Room

E03

Mailstop

Atlanta, GA 30333

(404)

639-8100

Telephone No.

(404)

639-2599

Facsimile Telephone No.

DATE:

October 18, 1994

MESSAGE:

Note page number 7.

NUMBER OF PAGES (INCLUDING COVER):

9

SUBJECT:

HIV Waivers

TELEGRAPHIC MESSAGE

NAME OF AGENCY JUSTICE		PRECEDENCE ACTION PRIORITY INFO	SECURITY CLASSIFICATION UNCLASSIFIED
ACCOUNTING CLASSIFICATION 71 CE 2211		DATE PREPARED 07-06-87	FILE CO 234-P
FOR INFORMATION CALL			
NAME Joseph D. Cuddihy	PHONE NUMBER 633- 3320	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters.)

TO:

THIS IS A FOLLOW UP TO MY JUNE 17, 1987 TELEGRAM REGARDING THE PUBLIC HEALTH SERVICE'S (PHS) FINAL RULE ON ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) AND THE ISSUE OF INELIGIBILITY UNDER 212(A)(6) OF THE INA. THE FINAL RULE, PUBLISHED IN 52 FEDERAL REGISTER 109, PP.21532/33 ON JUNE 8,1987, AMENDS 42 CFR 34.2(B) BY ADDING AIDS TO THE LIST OF DANGEROUS CONTAGIOUS DISEASES. THE RULE BECOMES EFFECTIVE JULY 8, 1987. THE INSTRUCTIONS PROVIDED IN THIS TELEX ARE TO BE FOLLOWED BY ALL SERVICE OFFICERS, INCLUDING THOSE CROSS-DESIGNATED FROM OTHER AGENCIES, BEGINNING JULY 8, 1987.

PHS, THROUGH THE CENTERS FOR DISEASE CONTROL (CDC), HAS PROVIDED ALL PHS PHYSICIANS WITH INSTRUCTIONAL MATERIALS FOR MEDICAL EXAMINERS TO FOLLOW IN EXAMINING ALIENS FOR AIDS. ALL MEDICAL EXAMINATIONS COMPLETED ON JULY 8, 1987 OR LATER SHALL BE PRESUMED TO CONFORM TO

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FORM-1

SECURITY CLASSIFICATION

PAGE NO 1 NO OF PGS 8

TELEGRAPHIC MESSAGE

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	INFO	
ACCOUNTING CLASSIFICATION	DATE PREPARED	FILE
FOR INFORMATION CALL		
NAME	PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

PHS GUIDELINES REGARDING EXAMINATION FOR AIDS. IF A CLINICAL OBSERVATION OF AIDS IS CONCLUSIVELY SUPPORTED BY CONFIRMATORY TESTING, FORM OF-157 OR FORM I-693 WILL BE NOTED QUOTE CLASS A: AIDS UNQUOTE. THIS FINAL REGULATION DOES NOT REQUIRE ROUTINE SEROLOGIC TESTING BY MEDICAL EXAMINERS FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION. ALL OFFICES ARE BEING PROVIDED A COPY OF THE PHS GUIDELINES BY SEPARATE MEMORANDUM. THE FOLLOWING INSTRUCTIONS RELATE TO THE SPECIFIC SITUATIONS GIVEN:

IMMIGRANT AND FIANC(E) VISA APPLICANTS AND REFUGEES:

THE DEPARTMENT OF STATE HAS ADVISED THAT ALL PANEL AND ICM CONTRACT PHYSICIANS HAVE BEEN PROVIDED WITH THE PHS GUIDELINES REGARDING CLINICAL EXAMINATION FOR AIDS. ANY INDIVIDUAL WHO RECEIVES A REPORT OF A MEDICAL EXAM

SECURITY CLASSIFICATION

PAGE NO. NO. OF PAGES

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8

TELEGRAPHIC MESSAGE

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ACCOUNTING CLASSIFICATION	DATE PREPARED	FILE
FOR INFORMATION CALL		
NAME	PHONE NUMBER	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE ADDRESS

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

SIGNED ON OR AFTER JULY 8, 1987 WILL THEREFORE BE PRESUMED TO HAVE BEEN EXAMINED REGARDING AIDS. APPLICANTS FOR IMMIGRANT OR FIANC(E) VISAS AND REFUGEE STATUS WHO CURRENTLY HAVE PENDING APPLICATIONS AND HAVE ALREADY RECEIVED MEDICAL EXAMS WILL NOT BE REFERRED FOR AN UPDATED MEDICAL EXAM SOLELY TO OBTAIN AN AIDS OBSERVATION. HOWEVER, CONSULAR OFFICERS AND SERVICE OFFICERS RETAIN THE AUTHORITY TO REFER AN APPLICANT FOR RE-EXAMINATION IF THE APPLICANT EXHIBITS SYMPTOMS OF AIDS OR ANY OTHER DANGEROUS CONTAGIOUS DISEASE. THIS SHOULD BE DONE IF THE APPLICANT EXHIBITS THE SYMPTOMS OUTLINED IN THE PHS GUIDELINES. SERVICE EMPLOYEES OVERSEAS ARE EXPECTED TO PROCESS FEW, IF ANY, AIDS CASES. REFERRALS TO PANEL OR ICM PHYSICIANS SHOULD THEREFORE RARELY BE NECESSARY.

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3	8

TELEGRAPHIC MESSAGE

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THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

ADJUSTMENT APPLICANTS AND LEGALIZATION APPLICANTS:

SERVICE DESIGNATED PHYSICIANS HAVE BEEN PROVIDED THE PHS GUIDELINES REGARDING THE CLINICAL EXAMINATION FOR AIDS. ANY ADJUSTMENT OR LEGALIZATION APPLICANT WHO IS MEDICALLY EXAMINED ON OR AFTER JULY 8, 1987 WILL THEREFORE BE PRESUMED TO HAVE BEEN CLINICALLY EXAMINED FOR AIDS. APPLICANTS FOR ADJUSTMENT OF STATUS OR LEGALIZATION WHO WERE MEDICALLY EXAMINED BEFORE JULY 8, 1987 MUST PROPERLY FILE THEIR APPLICATIONS (EITHER WITH A SERVICE OFFICE OR A QUALIFIED DESIGNATED ENTITY) BEFORE AUGUST 8, 1987 IN ORDER TO USE THE MEDICAL. APPLICANTS WILL NOT BE ALLOWED TO SUBMIT AN ADJUSTMENT OR LEGALIZATION APPLICATION AFTER AUGUST 8, 1987 WITH A MEDICAL COMPLETED PRIOR TO JUNE 8, 1987 UNLESS THE MEDICAL HAS BEEN UPDATED BY THE MEDICAL EXAMINER WITH A

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TELEGRAPHIC MESSAGE

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THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

CLINICAL OBSERVATION CONCERNING AIDS. THEREFORE, ANY INTENDING ADJUSTMENT OR LEGALIZATION APPLICANT WHO HAS A MEDICAL EXAMINATION DATED BEFORE JULY 8, 1987 MUST EITHER PROPERLY FILE AN APPLICATION PRIOR TO AUGUST 8, 1987 OR RETURN TO THE DESIGNATED PHYSICIAN TO GET AN UPDATE OF THE MEDICAL EXAMINATION SHOWING A CLINICAL OBSERVATION WAS MADE CONCERNING AIDS.

EXAMINERS ADJUDICATING APPLICATIONS FOR ADJUSTMENT OF STATUS AND LEGALIZATION BENEFITS HAVE THE AUTHORITY TO REFER APPLICANTS BACK TO THE DESIGNATED PHYSICIAN WHO PERFORMED THE EXAMINATION IF AN APPLICANT EXHIBITS THE PHYSICAL SYMPTOMS OF AIDS AS WITH THE SYMPTOMS OF ANY OTHER DANGEROUS CONTAGIOUS DISEASE.

INSPECTIONS:

THOSE INDIVIDUALS APPLYING FOR ADMISSION ON OR AFTER JULY 8, 1987 WHOSE VALID MEDICAL EXAMINATIONS WERE

SECURITY CLASSIFICATION

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TELEGRAPHIC MESSAGE

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MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

CONDUCTED PRIOR TO JULY 8, 1987 SHALL BE INSPECTED WITHOUT A CLINICAL OBSERVATION OF AIDS HAVING BEEN MADE.

INSPECTORS AT PORTS OF ENTRY WHO OBSERVE INDIVIDUALS EXHIBITING THE CLINICAL SIGNS OF AIDS HAVE THE AUTHORITY TO REFER THE APPLICANT FOR ADMISSION TO PHS IN ACCORDANCE WITH CURRENT PROCEDURES. APPLICANTS FOR ADMISSION AT INTERNATIONAL AIRPORTS IN CHICAGO, HONOLULU, LOS ANGELES, MIAMI, NEW YORK, SAN FRANCISCO, AND SEATTLE ARE TO BE REFERRED TO THE QUARANTINE OFFICER POSTED AT THE PORT OF ENTRY. IT IS EMPHASIZED THAT THE INSPECTOR'S OBSERVATION IS ONE THAT CAN BE DONE WITHIN THE NORMAL COURSE OF INSPECTION FOR INELIGIBILITY UNDER THE 33 EXCLUSIONARY GROUNDS AND WHILE OBSERVING SIGNS OF THE EXISTENCE OF ANY OF THE OTHER DANGEROUS CONTAGIOUS DISEASES. THE INSPECTOR'S OBSERVATION SHOULD THEREFORE NOT INCREASE THE TIME OF INSPECTION.

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TELEGRAPHIC MESSAGE

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FOR INFORMATION CALL		
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THIS SPACE FOR USE OF COMMUNICATION UNIT		

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

WAIVERS:

THERE IS NO STATUTORY AUTHORITY TO ACCEPT AN APPLICATION FOR A WAIVER OF 212(A)(6) BECAUSE OF AIDS IN IMMIGRANT AND FIANC(E) VISA CASES. ALTHOUGH THERE IS STATUTORY AUTHORITY TO WAIVE SECTION 212(A)(6) IN REFUGEE, LEGALIZATION, AND NONIMMIGRANT CASES, THE DISCRETIONARY AUTHORITY OF THE ATTORNEY GENERAL WILL NOT BE USED UNLESS THE APPLICANT CAN ESTABLISH THAT (1) THE DANGER TO THE PUBLIC HEALTH OF THE UNITED STATES CREATED BY THE ALIEN'S ADMISSION TO THE U.S. IS MINIMAL, (2) THE POSSIBILITY OF SPREAD OF THE DISEASE CREATED BY THE ALIEN'S ADMISSION TO THE U.S. IS MINIMAL, AND (3) THERE WILL BE NO COST INCURRED BY ANY

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TELEGRAPHIC MESSAGE

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THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

LEVEL OF GOVERNMENT AGENCY OF THE U.S. WITHOUT PRIOR
 CONSENT OF THAT AGENCY. ALL DECISIONS ON WAIVER
 APPLICATIONS REGARDING AIDS WILL BE CERTIFIED TO THE
 ASSOCIATE COMMISSIONER, EXAMINATIONS UNTIL FURTHER
 NOTICE.



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THE WHITE HOUSE
WASHINGTON

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INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
CAROL RASCO

SUBJECT: HIV-positive Refugees

Summary

The Immigration and Naturalization Service intends to modify a discriminatory restriction on entry of refugees who test positive for the HIV virus. All concerned agencies -- State, HHS and Justice -- as well as the National Office of AIDS Policy strongly support the INS policy modification. The shift is likely to result in entry of some HIV-positive Haitian refugees; however, none of these movements would take place before mid-November at the earliest.

I. Discrimination against HIV-positive refugees

As a result of an amendment by Sen. Helms last year, HIV is considered a "communicable disease of public health significance" and is therefore a ground for exclusion under the Immigration and Naturalization Act (INA). Under the INA, however, this exclusion may be waived -- in the case of refugees, for humanitarian or public interest purposes or to ensure family unification.

A 1988 INS directive established yet additional waiver requirements for refugees who are HIV-positive. Before being permitted to apply for the waiver, HIV-positive refugees must show that 1) the danger to public health and the possibility of the spread of the disease would be minimal and 2) there would be no cost incurred by any level of government agency without prior consent as a result of the disease.

According to INS, the second part of this test -- while appropriate for non-refugee immigrants who are HIV-positive -- is not appropriate for HIV-positive refugees. This is because the second part of the test clearly imposes a "public charge requirement," to which refugees, by virtue of their status, are exempt under our law. State, HHS, Justice and INS point out that the public charge requirement in this INS directive unfairly

cc: Vice President
Chief of Staff

discriminates against HIV-positive refugees, as refugees with far more costly diseases enter the U.S. each year.

INS thus intends to alter its policy directive by removing the public charge requirement for HIV-positive refugees and remedying this inconsistency. The current public charge requirement for immigrant (i.e., non-refugee) waiver applicants would not be affected by this decision and would be maintained. INS also intends to maintain the first requirement in its policy directive on HIV-positive refugees, relating to public health and spread of the disease.

II. Worldwide numbers involved and costs

INS estimates that of the some 110,000 refugees to which we provide entry each year, there may be about 200 approved applicants who test positive for the HIV virus and who would be considered (but not in all cases approved) for the waiver.

HHS estimates that the annual costs for HIV sufferers without active AIDS is about \$10,000 and that the lifetime costs for caring for HIV sufferers is about \$100,000. These costs are lower per capita than the costs for other diseases suffered by refugees (such as some heart diseases and cancers). Moreover, some refugees will obtain private health care at no cost to the states and HHS already provides refugees with aid for medical assistance.

III. Implications of the policy shift for HIV-positive Haitian refugees

Current general policy toward approved refugees from Haiti:

We have suspended acceptance of new applications under the in-country refugee processing program in Haiti. However, there are about 1000 Haitians in Haiti who were already approved for refugee status and entry to the United States and have made preparations to leave (such as selling their homes and belongings). These refugees -- many of whom have spent periods in hiding -- remained in Haiti because they were prevented by the military regime from traveling or because their final paperwork had not been completed.

Under current circumstances, in which there are still pockets of instability, we are processing the already-approved applicants for resettlement if they so desire, but are keeping this issue under review. After a State Department determination that conditions are sufficiently stable in Haiti, our plan is to move to case-by-case reevaluation of those approved applicants who have not yet left. Under case-by-case review, only those with

compelling humanitarian justifications will be permitted U.S. entry.

HIV-positive Haitian refugees: There are about 29 HIV-positive refugees at Guantanamo who went through the refugee adjudication process on our processing ship in Jamaica and were granted refugee status, but who could not meet the third waiver requirement. They remained in Guantanamo while the 600 other Jamaica-approved refugees entered the U.S. There are also about 88 HIV-positive approved refugee applicants within Haiti. Under the INS policy shift, these refugees will also be subject to the modified waiver requirement. If their waiver applications are approved, they will be considered for entry in the same manner as other approved refugees.

These refugees will be counseled and otherwise assisted by non-governmental resettlement organizations on arrival. They will also be eligible for financial and medical support provided by the refugee admissions program, by special federal legislation for Haitian and Cuban entrants and by other federal and state social service programs.

Withdrawal/Redaction Marker

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001a. memo	Samuel Berger and Anthony Lake to the President, re: Haiti/HIV (2 pages)	ca. 1993	P1/b(1)
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COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral & Humanitarian Affairs (Schwartz, Eric)
OA/Box Number: 3424

FOLDER TITLE:

Haiti - HIV, 1993-1994

2007-1550-F
ke2044

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

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b(1) National security classified information [(b)(1) of the FOIA]
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THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
SAMUEL R. BERGER

SUBJECT: Haiti: The Supreme Court Case on Direct Return of
Haitian Asylum Seekers

I. INTRODUCTION

Due to an impending Supreme Court hearing scheduled for March 2, you need to decide what position to take on the legality of the "Kennebunkport" Executive Order. That Order directed the Coast Guard to return Haitian boat people to Haiti without first giving them hearings to determine if they might be refugees who fear persecution due to their political affiliations or activities.

II. BACKGROUND

A. Description of processing of Haitians until the 1991 coup

Between 1980 and early 1991, Haitians who fled Haiti by boat were interdicted by the Coast Guard and given, while still on the Coast Guard ship, a cursory interview by Immigration and Naturalization Service (INS) officials (a "pre-screen") to determine if they had "credible claims" that they would be persecuted upon return to Haiti on account of political affiliation or activities. If not, the Haitians were returned to Haiti. But if INS determined that a Haitian did have a "credible claim", he or she was sent to the U.S. for full-fledged asylum hearings. These asylum hearings -- more exacting than the credible claim determinations -- were designed to determine if these applicants were refugees; that is, if they had well-founded fears of persecution due to their political affiliations or activities. If so, they were granted asylum in the United States. If not, they generally were, as a matter of law, subject to deportation.

B. Description of processing of Haitians after the coup:
litigation and outflows from Haiti

After the coup in Haiti in September 1991, this system broke down. Late in the year, large numbers of Haitians fled the post-

cc: Vice President
Chief of Staff

coup repression and lawyers for the Haitians challenged the "pre-screening" on what had become overcrowded Coast Guard ships. In November 1991, they persuaded a Florida District Court to order temporary halt on returns of all Haitians and, as a result, the USG began to deposit the Haitians on the U.S. facility on Guantanamo. While the Florida District Court's ruling was ultimately reversed on appeal, a second court challenge to the procedures used to screen Haitians resulted in yet another injunction against returns in April 1992.

C. The Bush Executive Order of May 24, 1992, and the current court case on direct return

Although this injunction was lifted by the Supreme Court in late April 1992, the outflows continued, and may have been fueled by hopes among Haitians for further rulings enjoining return, as well as a perception that those who ended up in Guantanamo had a good chance of making it to the U.S. (due to the cursory nature of "credible claim" determination made on Guantanamo).

With Haitians continuing to leave Haiti, the U.S. military -- maintaining that Guantanamo could only hold 12,500 Haitians -- claimed that the base would soon be overflowing. And as the numbers on Guantanamo approached 12,000, President Bush issued an Executive Order on May 24, 1992 directing the Coast Guard to return Haitians without any prior hearing to determine if they might be refugees.

In HCC v. McNary, this Order was challenged by lawyers for the Haitians. The lawyers sought an injunction in federal District Court in New York, and claimed that direct return violated section 243(h), 8 U.S.C. 1253(h) of the U.S. Immigration Act, which prevents return of refugees to a place where they would fear persecution. They also argued that such return would violate U.S. obligations under the 1951 Refugee Convention and its 1967 Protocol, which prohibit return of persons to countries where their lives or freedom would be at risk due to persecution. (By ratifying the Protocol in 1968, the U.S. acceded to the obligations of both the Convention and Protocol.)

The Bush Administration responded that the plaintiffs' claims were barred by collateral estoppel; that is, that this issue had already been litigated in the Florida case mentioned above. They also argued: 1) that neither the Immigration Act nor the Refugee Convention has extraterritorial effect, i.e., as long as the interception takes place outside U.S. territorial waters, we can legally return refugees; 2) that the Immigration Act provides the Executive with unreviewable ability to bar entry of any aliens if the President deems it detrimental to the interests of the United States; and 3) that Court action in this case would interfere with the President's role as Commander-in-Chief and as the "sole organ" of foreign affairs.

While the District Court found for the Bush Administration, the Court of Appeals for the Second Circuit ruled that the

Immigration Act does apply extraterritorially, and enjoined the Administration from repatriating Haitians. The Supreme Court, however, stayed that injunction by a vote of 7-2, and the case is scheduled for argument in the Supreme Court on March 2. All the briefs have been filed, with the USG claiming that direct return of Haitians without prior hearings is permissible.

III. OPTIONS: THE SUPREME COURT CASE ON THE LEGALITY OF DIRECT RETURN

A. Background

While the legal arguments are subject to debate, State and Justice strongly believe the far more persuasive legal view -- and the one that the Supreme Court will most likely accept -- is that neither U.S. domestic law nor the UN Refugee Convention precludes direct repatriation of refugees interdicted on the high seas.

The UN High Commissioner for Refugees, more than 40 NGOs (including the New York City Bar Association and the NAACP), more than 20 members of Congress, and other prominent Americans, including three former Attorneys General, take the opposite view.

A Supreme Court decision upholding direct return will make future court challenges on these and related issues more difficult (and thus enable us to respond to migration issues in a manner that we deem appropriate without fear of litigation). On the other hand, such a decision could add an imprimatur to the practice of direct repatriation that would make it more difficult for us to advance with other countries the principle of non-return of refugees. From Kenya to Croatia, U.S. officials have urged governments not to forcibly return refugees or displaced persons fleeing violence.

During the campaign, you strongly opposed the Kennebunkport Order and, on July 29, 1992, issued a press release stating that "the Court of Appeals made the right decision in overturning the Bush Administration's cruel policy of returning Haitian refugees to a brutal dictatorship without an asylum hearing." You noted that "we respect the right of refugees from other parts of the world to apply for political asylum, and Haitians should not be treated differently." Nonetheless, the circumstances since the election have compelled us to continue the policy of direct return, which, so far, has been successful in avoiding a mass and tragic boat exodus.

B. Options: The direct return case

1. Defend current practice, on the basis of the briefs already submitted.

As mentioned, the Bush Administration argued that plaintiffs' legal action is barred by collateral estoppel, and that the Constitution and the Immigration Act provide the President with

unreviewable authority in this area. They also argued that neither the Immigration Act's prohibition on return of refugees, nor a similar prohibition in the Refugee Convention, applies extraterritorially.

2. Defend current practice, after explaining the Clinton Administration's perspective in a public statement, which could be referenced during oral argument in the Supreme Court.

Such a public statement on the litigation, which could be issued by the Secretary of State, would stress endorsement of the goal that aliens with a well-founded fear of persecution be protected and emphasize the specific steps that the Administration is taking to protect against persecution: in-country human rights monitors, enhanced in-country processing, and efforts to explore third country screening. Without abandoning (or repeating) any of the Bush Administration's legal arguments, the statement could be cast largely in terms of preserving the President's ability to respond to changing developments and exigent circumstances, including the threat of loss of life. The statement could also indicate that this is a policy for exceptional circumstances, is continually under review, and will be adjusted when circumstances permit.

The statement could take the form of a publicly-released letter from the Secretary of State to the Attorney General, which offers the State Department's perspectives on the litigation and requests that the Justice Department take these perspectives into account during oral argument.

3. Defend current practice but attempt to avoid altogether the international legal issue (i.e., the applicability of the Refugee Convention); argue that domestic law and U.S. Constitutional law permit the practice of direct return.

This option is similar, but distinct, from option 2, above. Under option 3, we specifically would not address the question of whether the Refugee Convention prohibits direct return from the high seas; we would continue the litigation on the procedural argument that the issue is not subject to Court review. The goal would be to avoid endorsing a restrictive view of the Refugee Convention that might undermine support for refugees worldwide. Under this option, we would not take a position on the scope of the Refugee Convention.

We would argue that judicial review is precluded by collateral estoppel, and by both the Immigration Act, which enables the President to bar entry of aliens when he deems it detrimental to the interests of the U.S. (8 U.S.C. 1182(f)), and by the Constitution. We would argue that the President's role as Commander-in-Chief and "sole organ" in foreign affairs makes his actions with respect to Haitians unreviewable.

If the Court rejected these arguments, we could still argue that the Immigration Act's prohibition on return of refugees does not have extraterritorial effect, and that the Refugee Convention -- whatever its scope -- is not self-executing and therefore not enforceable against the USG.

Though we probably would prevail in the Supreme Court on these arguments, we would be foregoing an argument that the Administration had used in the past and, in the view of the Solicitor General, would be substantially increasing the risk of losing in Court. For this reason, lawyers in the Solicitor General's office oppose this option.

Finally, this option might only delay having to take a position on the applicability of the Refugee Convention to aliens outside of U.S. waters. This is because the practice of direct return may well be challenged by lawyers for the Haitians in the Inter-American Court on Human Rights, where -- if we chose to defend the practice -- we would probably have to address the issue of the scope of the Refugee Convention.

4. Do not defend the practice of direct return: Reach a settlement with plaintiffs that results in vacating the 2nd Circuit decision that direct return is illegal.

This was the preferred option of at least some of the lawyers associated with the INS transition team. This option would enable the Administration to avoid arguing that Kennebunkport Order is legal. However, it would presumably mean that we would have to reach some sort of agreement with the plaintiffs to end direct returns, probably within a rather short period of time. The arrangement also would have to be approved by the Court.

While this option would remove the Court of Appeals ruling that direct return is illegal, it would not prevent other aggrieved parties from relitigating the direct return issue in the future.

This option would require an immediate effort to devise a plan for screening of Haitians before returning them to Haiti.

5. Do not defend direct return: Postpone the Supreme Court hearing, with a view to keeping litigation options open.

The prospects for such delay (especially for more than a month or two) are very uncertain, and delay only postpones dealing with the issue.

IV. CONCLUSION

Notwithstanding your campaign statements, given the potential consequences of a Haitian boat exodus and the risk that ending the practice of direct return precipitously could encourage an exodus that we could not now manage, we do not believe there is any choice but to seek to maintain the instrument of direct

return. At the same time, we would hope that this could be done in a way that a) does not needlessly undermine the international regime for protection of refugees; b) distinguishes your position from that of the Bush Administration; and c) minimizes the likely harsh reaction from the press (who will refer to a broken campaign promise) and Haitian refugee advocates.

Accordingly, we recommend you adopt option 2, or option 3 as a close second choice.

We also recommend that we continue to develop our plan for a more active U.S. diplomacy to restore democracy to Haiti so that the statement described in option 2 could be preceded by announcement of an early Aristide-Clinton meeting. As mentioned, the statement would also refer to our efforts to strengthen in-country processing of refugees, as well as efforts to identify appropriate sites outside of Haiti for refugee status determination when conditions permit.

RECOMMENDATIONS

That you indicate your preference for one of the five options:

Option 1 _____ Option 2 _____ Option 3 _____
Option 4 _____ Option 5 _____

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. memo	Samuel Berger and Anthony Lake to the President, re: Haiti: HIV Cases at Guantanamo Bay, Cuba (6 pages)	ca. 1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral & Humanitarian Affairs (Schwartz, Eric)
OA/Box Number: 3424

FOLDER TITLE:

Haiti - HIV, 1993-1994

2007-1550-F
ke2044

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

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b(1) National security classified information [(b)(1) of the FOIA]
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concerning wells [(b)(9) of the FOIA]



Office of the Attorney General
Washington, D. C. 20530

February 12, 1993

MEMORANDUM

TO : Honorable Anthony Lake
Assistant to the President for
National Security Affairs

FROM : Stuart M. Gerson *SmGerson*
Acting Attorney General

SUBJECT : Resettlement of Medically Sensitive Population
At Guantanamo Naval Base

A. BACKGROUND:

Between October 1991 and May 1992, Immigration and Naturalization Service (INS) Asylum Officers interviewed approximately 37,000 Haitian asylum seekers at the naval base in Guantanamo Bay, Cuba. About 11,000 of these people were determined to have a credible fear of persecution if returned to Haiti, and were therefore processed for consideration under the Attorney General's authority to parole aliens into the United States. This processing included testing for medical conditions listed as statutory grounds for exclusion under United States immigration laws. Due to government concerns about paroling people into the United States who were statutorily excluded from admission, and to the ensuing litigation in which the United States was enjoined from further processing of these asylum seekers without affording access to counsel at the Guantanamo naval base, 215 Haitians who have tested positive for the HIV virus (and 52 of their dependents) remain in Guantanamo.

The entire population of the Guantanamo camp has been there for at least nine months, and most have been there over a year. Although most of the Haitians on Guantanamo are young adult males, the group also includes 37 children and at least 19 pregnant women. Of the 215 HIV+ asylum seekers, 78 have serious dysfunction in the immune system, and 10 have symptomatic AIDS. The condition of several others has deteriorated. Although medication and treatment have been provided at the base clinic, this is a small facility designed primarily for occasional outpatient treatment of a healthy population. To date, 38 people (either HIV+ Haitians or their immediate family members on Guantanamo) have been paroled into the United States for medical treatment that cannot be provided at the

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clinic. Finally, the protracted maintenance of a camp for HIV+ asylum seekers at the naval station has also imposed a substantial financial burden on the United States military.

One option for resolving this situation would be for the Attorney General to exercise the authority to parole the remaining Haitian asylum seekers into the United States notwithstanding the medical exclusion. The exercise of this option, however, raises a number of collateral issues of consequence, among them its precedential effect. These issues must be given full consideration at the most senior levels of government before any commitment can be made to the broad-scale regime described, infra. Other options include: 1) awaiting the outcome of the litigation; 2) maintaining the people at Guantanamo pending political developments in Haiti that might allow their safe return; and 3) attempting to satisfy the Court's requirement of access to counsel in Guantanamo so as to allow refugee processing there.

B. RESETTLEMENT OPERATIONS:

If the option of paroling the remaining Haitians into the United States is chosen, the Departments of Justice, Health and Human Services, Defense and State would implement the following resettlement plan.

- o Community Relations Service (CRS) of DOJ would resettle this population in stages, in order to reduce public concern and allow for orderly resettlement.
- o CRS would resettle as many migrants as possible outside the state of Florida, thus reducing the impact of this population on any one state. However, humanitarian resettlement policy has historically provided that migrants be resettled with family members whenever possible. (Historical evidence shows that approximately 70% of this population will be resettled with family members in South Florida and the remaining 30% with families or churches outside of Florida.) Although not guaranteed, CRS will attempt to disperse these individuals.
- o The White House and the Attorney General's Office should consult with Congressional delegations and State and local officials from impacted states, principally, Florida, New York and Massachusetts. State and local officials should be advised of the resettlement plan, the need for their cooperation and assistance, and the financial assistance to be made available.

Resettlement Activities: Week One

- o Sponsorship and Placement CRS would negotiate with its current grantees (i.e. National Voluntary Agencies (VOLAGS), U. S. Catholic Conference and Church World Service) to expand existing cooperative agreements to resettle this medically

sensitive population. It will cost CRS approximately \$400,000 (\$1,500 per person) to resettle this population.

- o Resettlement Screening CRS would send staff to Guantanamo to coordinate all resettlement activities. CRS' fluent Creole speaking staff will gather information for placing migrants with family members or church sponsors in the United States, which will be sent to the VOLAGS in Miami for use in establishing willing and responsible sponsors.
- o Medical Assessments Public Health Service (PHS) would send a representative to Guantanamo to perform a medical assessment and health screening of the population. PHS will then share the results with states as appropriate and work with state and local hospitals to place those who need immediate hospitalization.
- o Entry Processing Immigration and Naturalization Service (INS) staff would go to Guantanamo for final processing for entry into the United States. This processing will include conducting criminal record checks, issuing a one-year parole document and Employment Authorization Card, and developing the alien file.
- o Medical Benefits Health and Human Services staff would arrange for the severely ill migrants to complete applications for Supplemental Security Income (SSI), and Refugee Cash and Medical Assistance benefits to ensure their eligibility for medical benefits upon their arrival in the United States.
- o Logistics The Departments of Justice, State and Defense would arrange to transport the migrants from Guantanamo to the United States. Family reunification or church sponsorship arrangements must be finalized before migrants will fly to Miami. Due to limited availability of hospital bed space, CRS estimates that the first flight of 50 would be ready within ten to fourteen days of CRS' arrival at Guantanamo. Transportation of 50 per week will continue thereafter.
- o Community Relations CRS conciliation and mediation staff would address any community tensions that may arise as a result of the resettlement of this population.

Resettlement Activities: Week Two

- o The first flight would comprise the most serious medical cases, unaccompanied minors, and relatively healthy family groups. This will demonstrate to the public and media that the President's policy is humane because of its attention to the most seriously ill and to the welfare of children and families.

- o Reception in the United States Upon arrival, INS, U.S. Customs Service, CRS and VOLAG officials would meet the flights and process the individuals for resettlement into the United States. If a migrant is to be resettled with family members in South Florida, arrangements would be made for the family to meet the migrant at the VOLAG processing office. If the migrant is to be resettled with a family or church sponsorship outside of South Florida, the VOLAGS would arrange for the migrant to be flown from Miami to the destination city.
- o Ongoing Resettlement After the initial resettlement, the VOLAGS would: 1) Provide temporary accommodation, as necessary, and assist in obtaining initial housing and essential furnishings; 2) Assist migrants in applying for appropriate state and federal health services and assist those with known health problems in securing immediate treatment; and 3) Provide employment counseling and referrals, provide advice on availability and procedures for applying for job training programs, assist migrants in applying for social security cards, and register children in schools.

Resettlement Activities: Weeks Three-Seven

- o Weekly flights of 50 migrants would continue according to the procedures described above.

C. COST:

HHS has made the following estimates of the costs that would be borne by the Federal Government and the States if this population is resettled.¹

FIRST-YEAR COSTS

	<u>FEDERAL</u>	<u>STATE-LOCAL</u>
REFUGEE CASH ASSISTANCE	\$165,128	
REFUGEE MEDICAL (HIV-)	47,580	
REFUGEE MEDICAL (HIV+)	242,570	
REFUGEE UNACCOMPANIED MINOR	12,000	
SSI DISABILITY	265,608	
SSI DISABILITY STATE SUPPLEMENT		\$16,601
MEDICAID (SYMPTOMATIC AIDS)	179,107	152,573
MEDICAID (T4 200-500)	98,971	84,309
MEDICAID (NORMAL PREGNANCIES)	4,320	3,680
MEDICAID (HIV+ PREGNANCIES)	56,700	48,300
GENERAL ASSISTANCE:		
FL		49,588
NY/MA		36,225
GENERAL MEDICAL ASSISTANCE		<u>128,800</u>
TOTAL	\$1,071,984	\$ 520,076

LIFETIME COSTS

	<u>FEDERAL</u>	<u>STATE-LOCAL</u>
REFUGEE CASH ASSISTANCE	\$165,128	
REFUGEE MEDICAL (HIV NEG)	47,580	
REFUGEE MEDICAL (HIV POS)	242,570	
REFUGEE UNACCOMPANIED MINORS	96,000	
SSI DISABILITY	3,359,160	
SSI DISABILITY STATE SUPPLEMENT		\$207,994
MEDICAID (SYMPTOMATIC AIDS)	7,701,610	6,560,615
MEDICAID (T4 200-500)	507,227	432,083
MEDICAID (NORMAL PREGNANCIES)	4,320	3,680
MEDICAID (HIV + PREGNANCIES)	56,770	48,300
GENERAL ASSISTANCE:		
FL		42,504
NY/MA		62,100
STATE/LOCAL MEDICAID		220,800
TOTAL		
	<u>\$12,197,587</u>	<u>\$7,574,856</u>
GRAND TOTAL:	\$19,772,443	

¹ It should be noted that the states' cost estimates for this population could be as much as 30% to 40% higher than HHS' estimates for both the Federal and State shares.

D. USE OF IMMIGRATION EMERGENCY FUND:

Section 404 of the Immigration and Nationality Act provides for an Immigration Emergency Fund currently containing \$30.6 million. Up to \$20 million in the Fund is available to reimburse States and localities where "the lives, property, safety, or welfare of the residents of a State or locality are endangered" or "in any other circumstances as determined by the Attorney General." No money has yet been paid out of the Fund. Funds may be made available "by application" by States and localities. A written request would satisfy the "application" requirement. No formal action by the President would be necessary.

The Fund could be used to reimburse States and localities for some or all of the additional expenses they will incur because of the HIV status of Haitians who are paroled into the United States. Medicaid costs the States would incur for this group if they were not HIV+ need not be reimbursed. And because Section 404 is an exceptional remedial measure that has not previously been used despite substantial influxes of refugees, it would be appropriate to reimburse the States only to the extent that their expenses depart substantially from the norm. It should be emphasized that any reimbursement is made only because of the unique circumstances of the humanitarian emergency at Guantanamo resulting from the HIV status of the whole group and the injunction ordered by the Second Circuit. It is recommended that reimbursement be made in a lump sum payment to the affected States at the outset. In addition, it would be prudent to invoke its provision allowing reimbursement "in any other circumstances as determined by the Attorney General."

E. CONSULTATION:

Acceptance of the plan by state and local officials would be crucial for political and public relations reasons. Prior consultation with senior officials in areas that would be affected by entry of this group is essential to allay concerns regarding any cost and political implications of the decision. Prior to an announcement of the policy, the President, Office of the Attorney General, Secretary of HHS, and/or Deputy National Security Advisor should call Senators Graham and Mack and Governor Chiles of Florida, as well as Governor Cuomo of New York. In these conversations, the following points would be stressed: that this is a humanitarian issue involving children and families whose only alternative is indefinite detention at Guantanamo; that all have been deemed to have credible fears of persecution, and return to Haiti is not a humane alternative; that the Administration is very sensitive to the cost and political implications, and therefore has a detailed plan to effect entry in stages over 6 - 7 weeks, which will attempt to disperse the population, and -- most importantly -- provide compensation to affected States.

These consultations should be followed up immediately with similar conversations between Administration officials and 1) Members of Congress from areas that will be affected; 2) Miami and Dade County officials; 3) officials from New York, New Jersey, and Boston; and 4) non-governmental organizations. These consultations would address various public concerns and furnish a useful vehicle for

political support if the plan were otherwise acceptable to the Administration. This effort would be coordinated by the White House in consultation with HHS and DOJ:

Cleared:

HHS: P. Fleming
State/RP: P. Clapp

✓ bcc:
Eric Schwartz

Copies
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Harti - HFE
Guantanamo

NATIONAL SECURITY COUNCIL

31-Mar-1993 19:58 EDT

UNCLASSIFIED

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ATTACHMENTS

MEMORANDUM FOR: SEE BELOW

FROM: Eric P. Schwartz
(SCHWARTZ)

SUBJECT: HIV-positive Haitians: additional information received

Tony/Sandy:

As you know, the judge in the New York Federal District Court identified two subgroups of Haitians as the subjects of his order: those with T-Cell counts of 200 or below and those with T-Cell percentages of 13% or below. His order suggests that all of the first and some of the second are not now receiving "adequate" medical care at Guantanamo.

In the memo to the President on this issue, two options with respect to these Haitians were presented:

- Option 1: bring them all into the U.S.;
- Option 2: bring in all of those in the first subgroup, who are identified at one point in the memo as AIDS sufferers; and bring in only those within the second subgroup who are deemed, after a case-by-case review, to require care not now available at Guantanamo.

Since drafting the memo, I have obtained information relevant to these options. I've spoken directly with (and received written materials from) doctors from the National Institutes of Health and the Center for Disease Control, and also obtained additional information from Guantanamo medical personnel via the Justice Department. I've learned that:

- NIH and CDC make little or no distinction between the two subgroups (i.e., T-Cell of 200 and below, and T-Cell percentage of 13% and below) for "case definition" purposes. Both subgroups are considered to have AIDS, a fact of which I was not aware when I first prepared the memo. Moreover, NIH and CDC doctors told me they could not understand the basis of the distinction between the two subgroups made by the government doctor during the trial. It was this distinction upon which the judge relied in making his order. (I am continuing to try to determine the basis of the distinction made by the government doctor.)
- Based on comments by the infectious diseases specialist at

Guantanamo, any case-by-case review of the second subgroup is likely to result in decisions to allow all of the second subgroup to come into the United States.

The implication of these two points is that the second option may not turn out to be any different than the first. This, of course, would be relevant to any conversation you might have with the President on the issue.

Distribution:

FOR: Samuel R. Berger	(BERGER)
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	Anthony Lake and Samuel Berger to the President, re: HIV-positive Haitians at Guantanamo Bay, Cuba, and the March 26 Order by the New York Federal District Court (6 pages)	03/30/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral & Humanitarian Affairs (Schwartz, Eric)
OA/Box Number: 3424

FOLDER TITLE:

Haiti - HIV, 1993-1994

2007-1550-F
ke2044

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. memo	Eric Schwartz to Anthony Lake and Samuel Berger, re: My visit to Guantanamo Bay, Cuba (9 pages)	03/29/1993	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral & Humanitarian Affairs (Schwartz, Eric)
OA/Box Number: 3424

FOLDER TITLE:

Haiti - HIV, 1993-1994

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RR. Document will be reviewed upon request.



U.S. Department of Justice
Community Relations Service

Haiti -

Washington, DC 20530
April 3, 1990

HCU

Mark Franken
Director of Refugee Operations
Migration and Refugee Services
United States Catholic Conference
902 Broadway, 8th Floor
New York, NY 10003

Dear Mark:

As a result of the United States District Court for the Eastern District of New York's Interim Order in Haitian Centers Council, Inc., v. Chris Sale, Acting Commissioner, Immigration and Naturalization Service, the Community Relations Service (CRS) is requesting that USCC provide primary resettlement services to approximately 30 HIV+ Haitians currently housed on the Guantanamo Bay Naval Base in Cuba. Due to the exceptional medical needs of the subject population, CRS is requesting that United States Catholic Conference (USCC) provide the services detailed below as part of USCC's FY 1993 Primary/Secondary Resettlement grant with CRS. CRS will provide a \$2,000 per capita payment for these services.

FIRST 90 DAYS

USCC will ensure that basic resettlement services are provided to all clients from Guantanamo for 90 days:

- Reception and processing;
- Family reunification;
- Housing and essential furnishings;
- Food allowances;
- Emergency cash assistance;
- Employment counseling and referral;
- ESL referrals;
- Referral to health services;
- Referral to pro bono attorneys;
- Assistance in obtaining appropriate government documentation; and
- Assistance in applying for SSI benefits.

In addition, the clients who are HIV positive and their family

members should be referred to specialized services by experienced organizations who have worked with HIV populations and who are culturally sensitive to the needs of this population. Specialized services that should be provided include:

- Transportation to and from medical service providers, if necessary;
- Intensive professional counseling;
- Monitoring individual's medical conditions for immediate intervention in critical situations;
- Dispensing medications as appropriate; and
- AIDS-related family counseling

SECOND 90 DAYS

During the second 90 days USCC will provide intensive follow-up services and ensure, to the degree possible, that the clients are maintaining prescribed medical treatment; families are accessing community-based support programs; and health concerns are being addressed.

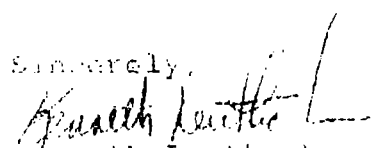
THIRD 180 DAYS

During the third 180-day period, USCC will conduct monthly updates on the status of the clients.

In addition to the services detailed above, during the 12 month service period, USCC will provide CBS with monthly status reports on the population which will include the following: current address of client, health condition, services provided that period, programs accessed, employment status, and any significant problems associated with their resettlement.

All press inquiries regarding the resettlement or status of these clients will be referred to CRS.

Sincerely,


Kenneth Leutbecker
Associate Director
Immigration and Refugee Affairs

cc: Raul Hernandez
Fran Kline

s/HIV

National Rainbow Coalition, Inc.

Reverend Jesse L. Jackson
President and Founder

May 17, 1993

To: Sandy Berger
National Security Council

From: Jesse L. Jackson

*Eric -
Will you check
into this ASAP
and either call
Jesse or I will
S.*

*Emailed
response.
5/19*

I am appealing to you once again on the issue of the Haitian refugees at Guantanamo. I have just been informed that one of the attorneys for the refugees, Robert Rubin, of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, has been denied military clearance to go to Guantanamo to see his clients. He was planning to begin travel from San Francisco tomorrow. I understand that the refugees have entered a suicide pact and have begun another hunger strike. From my own trips there, and my continuing contact with friends, families, and legal representatives of the detainees, I can attest to the fact that the level of despair is great; the tensions are high. The sense of outrage at the injustice, first at the hands of the Haitian military regime, and now at the hands of the United States, is deep.

At this time, as they await Judge Sterling Johnson's ruling, it is inconceivable that our government could deny these people the basic democratic right to contact with their attorney. I understand that the detainees were informed on Friday that attorney Rubin would be coming. To now deny clearance is to even further exacerbate a difficult situation. It is in the interests of our government and our goal of restoring democracy to Haiti, and our common desire to have avoid any further tragedies at Guantanamo, that Mr. Rubin be given clearance.

You could, if you would, correct this situation and grant Mr. Rubin access. I have always felt, and have expressed to you on numerous occasions, that our country does and must stand for something much better than our performance thus far at Guantanamo would indicate. I urge you to use your wisdom and your influence now.

Plati - Hlv
~~Plati - Hlv~~
Plati - Hlv



FREQUENTLY CALLED NUMBERS

CINCLANT POCs

	<u>COMMERCIAL</u>	<u>AUTOVON</u>	<u>OTHERS IN J-33</u>
WATCH OFF.....	(804) 445-6602	564-6602	LTC GARY MILLER
WATCH OFF FAX.....	(804) 445-5817	564-5817	MAJ GRAHAM
(MUST TELL TO SWITCH TO FAX)			
J-3 - RADM GEHMEN	(804) 444-6661/6662	564-6661/6662	CMDR NIMITZ
J-3A - CAPT LYLE, "SPARKY"...	(804) 444-8280/5720	564-8280/5720	
J-33 - CAPT DELANEY	(804) 444-8280/5720	564-8280/5720	
J-33 - FAX.....	(804) 445-9304	564-9304	
J-33 - LTC LABRECQUE.....	(800) 852-7496		

EXAMPLE - COMMERCIAL (DIAL 8,9-444-8280)

EXAMPLE - AUTOVON (DIAL 8,8-564-8280)

JTF

	<u>BASE EXTENSION</u>	
CO - COL PAULSON.....	5020	J-6 - 2LT HERSHMAN.... 5029
COS - LTC MCLAURINE	5023	SNCO - MSGT HEMMERS ... 5029
SGTMAJ - CMSGT HERRINGTON.....	5017	
SS - SGT MATNEY.....	5024	HHC - 4783
		1SG - MSGT KEINATH ... 4783
J-1 - MAJ LENZ.....	5018	SNCO - SSG DER... .. 4783
SNCO - SSGT MAGEO	5018	
J-1 FAX	4093	
		<u>CAMP BULKELEY</u>
J-2 - CPT DRAPER	5028/4768	CAMP CO - CPT ECKHARDT . 3687
SNCO - SFC HERNANDEZ	5028/4768	XO - 1LT ROMERO ... 3059
		1SG - 1SG WALKER ... 3687
J-3 - MAJ WHITLOCK.....	5022	SOG, SETY FOR..... 3680
J-3A - 1STLT FAUCHER	5030	HHC - CPT SULLIVAN.. 3997
J-3B - 1STLT NIELSON.....	5030	BAS - LCDR ALBRECHT. 3688/3689
SNCO - OSC HOLLIDAY.....	5030	HEAD NURSE - CDR KINGER.... 3688/3689
J-3 FAX	5032	CPOIC - CHIEF MAHLER.. 3688/3689
		SUPPLY - CHIEF DOMINGO. 3060
		<u>NAVBASE</u>
J-4 - MAJ BURNET.....	5031	
J-4B - 1STLT BRACKMAN	5033	CO - CAPT DESPAIN ... 4400/4100
SNCO - AKC EDDY	5033	XO - CDR REA
JMC - 1LT JONES	5034	CO'S SEC - RENE
SNCO - SSGT TOWLER.....	5034	
		N-3 - LTCDR CHICHESTER .. 4366

HOW TO CALL JTF GTMO FR CONUS

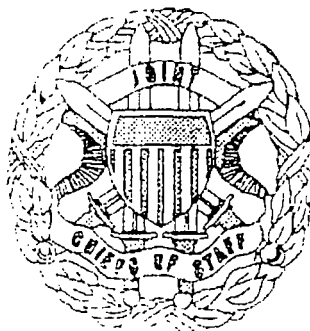
COMM..... 011-53-99-5020/5023

AV..... 723-5020-5023

FAX..... 011-53-99-5032

	<u>MARINE HILL</u>	
CO - COL MURRAY	2554/2648	
XO - LTC LAMADE	2554/2648	
CO'S SEC -	2554/2648	
SGTMAJ - SGTMAJ HERNANDEZ ..	2648/21	

22114

Part: H10
THE JOINT STAFFTO: ERIC SCHWARTZPHONE: 202-395-3736ORGAN/OFF SYM: NSC REFUGEE AFFAIRSTELEFAX: 202-395-1199TOTAL PAGES INCLUDING THIS ONE: 12ADDITIONAL COMMENTS: Copy of FACTS &CIRCUMSTANCES REGARDING R. RUBIN.FROM: LTC SWANNACK 78-695-8162
(OPTIONAL WHEN USING THE TTI SELECTOR)

FACSIMILE COVER SHEET

MEMORANDUM FOR JOINT STAFF J5 WHEN 14 May 1993

SUBJ: DENIAL OF CLEARANCE FOR MR ROBERT RUBIN TO GUANTANAMO BAY

ENCL: Draft letter from DOJ

1. USCINCLANT has received a request for Mr. Robert Rubin to visit Guantanamo Bay Cuba during the period 18 May - 1 June 1993.
2. Based on the involvement of Mr. Rubin in confrontations with military authorities during his last visit to Guantanamo in February, and the valid concerns of the Joint Task Force Commander, clearance for Mr. Rubin is denied.
3. Request that the Joint Staff forward the draft letter to the Department of Justice for transmission to the Center for Constitutional Rights.


George T. Hodermarsky
Captain U.S. Navy
Deputy Director for
Plans and Policy

USCINCLANT J55

TEL No.804-445-5362

May 14,93 18:44 No.017 P.03

Michael Ratner, Esq.
Center for Constitutional Rights
666 Broadway
New York, NY 10036

Dear Mr. Ratner:

I am writing to you concerning the request for clearance made to the U.S. Atlantic Command for the visit of your representative, Mr. Robert Rubin, to Guantanamo during the period 18 May - 1 June 1993.

As you are aware, this attorney was involved in several confrontations with the military authorities during his last visit to Guantanamo in February. The military authorities responsible for the security of Camp Bulkeley and the safety of the migrants are concerned that further confrontations with Mr. Rubin could exacerbate the current tense situation at the camp.

The Joint Staff, therefore, has asked me to inform you that clearance for Mr. Rubin's travel to Guantanamo will not be granted. The Department of Justice will support this decision. We have no wish to deny access to your clients. The Commander of the Joint Task Force at Guantanamo has allowed your current attorney, Esther Cruz, liberal access to your clients under the current Department of Justice visitation guidelines. He has, in fact, supported her request for an extension because she is working cooperatively with the JTF and the migrants to reduce tensions.

If you wish to further extend Ms. Cruz or if you wish to substitute another attorney in place of Mr. Rubin, please provide the name and social security number to the U.S. Atlantic Command by Monday morning. They are willing to work a new clearance through in less than the normal 72 hours as an exception to policy in this instance.

Please be assured we believe this action will be in the best interest of the migrants, their attorneys, and the military authorities at Guantanamo.

DOJ Representative

JOINT TASK FORCE GUANTANAMO
Guantanamo Bay, Cuba
PPO AG 09503-9273

25 February 1993

FROM: Staff Judge Advocate, JTF-GTMO

TO: Mr. Robert Bombaugh, Director, Office of Immigration
Litigation, Civil Division, U.S. Department of Justice

SUBJECT: Conduct of Plaintiffs' Counsel and Staff (HCC v. McNary)

1. This memorandum is to advise you of the conduct and activities of Plaintiffs' counsel and staff here at Guantanamo Bay, Cuba, in chronological order.

2. On Tuesday, 23 Feb 93, between 1700 and 1800, Mr. Robert Rubin and Ms. Veronique Sanchez visited the mess at the Naval Hospital, Guantanamo Bay, Cuba. Mr. Rubin purchased one meal, and both he and Ms. Sanchez ate it. When confronted by mess personnel and informed that each person eating in the mess had to pay, Mr. Rubin was argumentative and boisterous. He argued about the price and indicated he did not understand why two could not eat 'one meal'. This was witnessed by LT Vivian Parodi, USN, Nurse on Duty. I spoke directly with LT Parodi.

3. On Tuesday, 23 Feb 93, between 1800 and 1900, Mr. Robert Rubin and Ms. Veronique Sanchez were present on a ward of the Naval Hospital, Guantanamo Bay, Cuba. This was after visiting hours, and they did not announce their presence to hospital staff, both of which are contrary to hospital policy. Only when they came to the nurses' station was their presence made known. They requested a Haitian interpreter. When questioned, they identified themselves as "lawyers for the Haitians". Ms. Sanchez has been identified to this Headquarters as a Yale law student. When advised they were not authorized on the ward, Mr. Rubin argumentatively stated that he was. The nurse on duty then contacted LT Parodi, who advised her that these two persons were not authorized to be on the ward, and that any attorney or staff representing the Haitians were required to have either the SJA, JTF-GTMO, or a DOJ attorney accompanying them on any visit to the Naval Hospital. CAPT James Smith, Naval Hospital Commander and JTF Surgeon, has verified to the undersigned that this has been the policy since the inception of this operation. Before LT Parodi arrived at the ward approximately 5 minutes later, Mr. Rubin and Ms. Sanchez had left.

4. In my discussions this morning with CAPT Smith, LT Parodi, and CAPT Caroline Carlton, Naval Hospital XO, another matter was brought to my attention. Someone has been smuggling unauthorized items to the Haitian patients in the Naval Hospital. Some of these items conflict with the medical regimen of the hospital. I do not suggest that the attorneys or their staff are directly responsible.

ENCL (1)

2 OF 10

2/26/93 10:16 003

5. On Wednesday, 24 Feb 93, beginning at approximately 1700, a series of demonstrations by Haitians occurred at Camp Bulkeley, Guantanamo Bay, Cuba. Attached are sworn statements from two of the military security personnel. Additionally both OOS attorney Bill Howard and I viewed the video tapes of these demonstrations, which lasted some four hours. The demonstrations were preceded by one armed Haitian leaving Camp Bulkeley. He returned voluntarily in the presence of security personnel. They were met at the front gate of Camp Bulkeley by the first group of demonstrators, including Mr. Rubin and Ms. Sanchez. Both Mr. Rubin and Ms. Sanchez were directing the demonstrations and participating therein. Based on their demonstrative role in the demonstrations, I cannot but help conclude that the demonstrations were organized by Mr. Rubin. Although the demonstrations were not violent, they were confrontational and involved between 50 - 150 Haitians at various times. Notwithstanding the great restraint shown by security personnel, such demonstrations clearly are susceptible to violence. It appears to me that these demonstrations may have been an attempt to elicit an aggressive response from security personnel. If so, it failed. It is my personal studied opinion that the actions of Mr. Rubin and Ms. Sanchez fall far beyond legitimate representation of the Haitians in HCC v. McNary. More pointedly, I consider their actions to be unethical. Such activity is not only disruptive to the administration of the facility, it endangers the safety and well-being of their clients. Certainly it is not in their clients' best interests. Parenthetically, I am advised that Ms. Nicole Payen, an interpreter, was also involved in the demonstrations.

6. My personal recommendations are as follows, and do not necessarily represent the viewpoint of Cdr, JTF-GTMO:

a. That Mr. Rubin, Ms. Sanchez, and Ms. Payen be required to leave GTMO at the earliest possible time;

b. That in the interim, all three be denied access to Camp Bulkeley - in the event they desire continued access to Haitians, that such be conducted outside Camp Bulkeley and its environs, and on an individual or small group basis;

c. That future visits by Haitian legal counsel and staff be denied;

d. That, if the foregoing is not feasible, future visits be planned with scheduled itineraries, and that arrangements be made for attorney - client conferences outside Camp Bulkeley and its environs; visits to Camp Bulkeley should be limited to brief inspection tours requested through OSJA, JTF-GTMO;

e. That the 72 hour notice rule be strictly enforced in order to allow time to prepare logistical support, and that such visits be limited to one per month lasting no more than two days; and,

USCINCLANT J55

TEL No.804-445-5362

May 14, 93 13:18 No.004 P.05

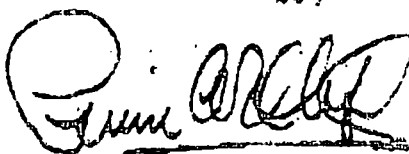
02/26/93

12:17

004

6. That extensions of visits be requested in writing to OIL, DOJ, through SJA, JTF-GTMC, not less than 24 hours in advance, with appropriate justification.

7. POC is LTC Kleff (Commercial 011-83-99-8026)



PIERRE A. KLEFF
LTC, JA, USAR
Staff Judge Advocate

End as

- CP: (1) Stewart Gerson, Acting Attorney General
ATTN: Tim O'Rourke
(2) Legal Officer, U.S. Atlantic Command (J02L),
ATTN: CAPT Schiff
(3) OCJCS/LC Pentagon, ATTN: CAPT Connolly
(4) Chief of Staff, JTF-GTMC

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. statement	Sworn Statement [partial] (1 page)	02/25/1993	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral & Humanitarian Affairs (Schwartz, Eric)
OA/Box Number: 3424

FOLDER TITLE:

Haiti - HIV, 1993-1994

2007-1550-F
ke2044

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Very apparent that the lawyers on site was keeping the Haitians going. Reuben and his people the middle of the crowd waving their arms to become leaders, having more Haitians on to their hands. They were also dancing around them to continue. Throughout the course of the continuously involved until the time they departed led them to the soccer field and all became spoke to the crowd. Before speaking to the crowd security knew so "they could have their privacy". After the affair was over, but shortly after it started leading the group back around the camp. Towards gathered and stayed at the entrance to the continued to chant and dance around, when the would tell them another chant to sing. While he directed towards the Military in a negative manner the lawyers departed in their vehicle and immediately went to bed. After observing the activities it was very evident that they played a major role in the crowd. The ordeal was over at approximately

NOT USED

EXHIBIT

INITIALS OF PERSON MAKING STATEMENT

MAKED

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF" AT THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON BEING INTERVIEWED. IF THE STATEMENT IS MORE THAN ONE PAGE, THE ADDITIONAL PAGES MUST BE INITIALED AS "PAGE 2 OF 2 PAGES." IF THE ADDITIONAL PAGES ARE NOT INITIALED, AND THE STATEMENT WILL BE CONSIDERED AS THE REVERSE OF THE PREVIOUS PAGE.

DA FORM 2823

REPLACES DA FORM 2823, 1 JAN 66, WHICH WILL BE U

CLINTON LIBRARY PHOTOCOPY

05/19/93 10:20 2703 895 9167 LTC C. SWANN
USCINCLANT J55 TEL No. 804-445-5362

02/26/93 10:17

SWORN STATEMENT	
For use of this form, see AR (Pentagon) and Department of Defense Policy on the Use of Force.	
LOCATION Camp Bulkeley GTMO, Cuba	DATE 25 Feb 93
LAST NAME, FIRST NAME, MIDDLE NAME Hendley, Michael A	P6(b)
ORGANIZATION OR ADDRESS A CO, 2-27 Infantry	

Michael A. Hendley
On 24 Feb 93 while being on Security Duty just returned with the Man that had left a group of 50 to 60 Haitians in a crowd moving and dancing. Unaware of what was going on I

NSC INTL PROG 0007
14.93 13:18 No.004 P.06

my Chief of Staff for Personnel

FILE NUMBER

GRADE/STATUS

E-1

[004]

STATEMENT UNDER OATH

Camp Bulkeley I had when I observed a street chanting and I parked the truck in a situation it became a major role in was observed to be in moving the crowd then and to clap the Haitian Mothering in they were one point the lawyers while they lawyers lawyers requested that at point we thought join with the lawyers and the crowd very compound and was finished Reuben in English and Mr. Chaffy after the crowd dispersed Reuben and the personnel in the conduct of

20 hrs./End of Statement

PAGE 1 OF 1 PAGES

IF DATED CONTINUED - BY READING THE STATEMENT AND BY THE BACK OF PAGE 1 WILL OF ANOTHER COPY OF THIS FORM.

5 OF 10

02-26-93 10:18

006

NOT USED

AFFIDAVIT

I, Michael A. Swandley, NAME READ OR HAVE HAD READ TO ME THE STATE-
MENT WHEN BEING ON PAGE 1 AND EACH ON PAGE 2, I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT
MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE
CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT
OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE OR UNLAWFUL INDUCEMENT.

ENTRUSTED

Michael A. Swandley
Signature of Person Making Statement

Subscribed and sworn to before me, a person authorized by me,
on 28th of February, 1993
at Joint Base Lewis-McChesney, Galt, Utah

ORGANIZATION OR ADDRESS

Jim O'Neil
Signature of Person Authorizing (Only)

ORGANIZATION OR ADDRESS

Peter A. Kline, Jr., LTC, USA
Typed Name of Person Authorizing (Only)

10 USC 1044g
(Reference to applicable statute)

INITIALS OF PERSON MAKING STATEMENT

PAGE OF PAGES

U.S. Government Printing Office: (5010-104) 1/82



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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. statement	Sworn Statement [partial] (1 page)	02/24/1993	P6/b(6)

COLLECTION:

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National Security Council
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OA/Box Number: 3424

FOLDER TITLE:

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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

SWORN STATEMENT			
For use of this form, see AR 190-45. The person making the statement is sworn to by the official.			
LOCATION	DATE	TIME	FILE NUMBER
Camp Bolkeley, CP, Cuba	24 Feb 93	2300	
LAST NAME, FIRST NAME, MIDDLE NAME	GRADE/RATE		
DILLMAN, JASON TERRY	P6(b)(6)		0-1
ORGANIZATION OR ADDRESS			
JTF - CMO Security, A Co, A-270 I.F. 5th I.D. 1st Army			
I, <u>JASON TERRY DILLMAN</u> , WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			
On Wednesday, 24 Feb 93, I was involved in picketing up a migrant who had gone outside the main gate at Camp Bolkeley. As I and several other security personnel were guiding the migrant back into camp, we made contact with a group of approximately 50 migrants chanting, clapping their hands and moving down the road from the direction of the BAS. The female law student assisting the Haitian's lawyer was with the group singing, chanting and holding hands with them. The crowd of migrants grew larger, to approximately 150 people. They were all dancing and singing and making noise to the song of the Camp Bolkeley CP. The Haitian's lawyer and the law student were both in the crowd as well. The lawyer often waved his hands at the crowd and appeared to be directing the crowd's movements. I witnessed both he and the law student encouraging and directing the migrants several different times during the approximately 2 hours the main demonstration lasted. I witnessed these activities both in person and using the surveillance monitors. When the main demonstration moved down to the soccer field, I saw the lawyer addressing the crowd. Several of my soldiers also reported to me that the lawyer told all military personnel to leave the soccer field so they could have their privacy. END OF STATEMENT			
EXHIBIT	INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF	PAGES
		1 OF	1
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF TAKEN AT DATED CONTINUED." THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT AND BE INITIALED AS "PAGE OF PAGES." WHEN ADDITIONAL PAGES ARE INITIALED, THE BACK OF PAGE 1 WILL BE LINED OUT, AND THE STATEMENT WILL BE CONCLUDED ON THE REVERSE END OF THE LAST COPY OF THIS FORM.			

DAI 2823

REPLACES DA FORM 1, 1 JAN 83, WHICH MAY BE USED.



USCINCLANT J55

TEL No. 804-445-5362

MAY 18 1993 18 11 004 P.09

22/25/93

10:19

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NOT USED

AFFIDAVIT

James T. Dillman I, James T. Dillman, being of the County of Jefferson State of Mississippi do hereby depose and say that I am the author of the statement made by me on page 1 and other on page 2 of the statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope or fear of reward or punishment, and without coercion, duress, influence or unlawful inducement.

Signature of Affiant

Signature of Affiant

Organization or Address

Organization or Address

Initials of Person Making Statement

PAGE OF PAGES

U.S. GOVERNMENT PRINTING OFFICE: 1974-751-101223



MEMORANDUM FOR THE RECORD
 ATLANTIC COMMAND
 HEADQUARTERS OF THE COMMAND
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1000
 SER 13 14 93

MEMORANDUM FOR THE RECORD

From: USCINCLANT 33

Subj: SUMMARY OF ACTIVITIES INVOLVING HAITIAN MIGRANTS AND
 JTF GTMO STAFF

1. This memorandum summarizes the activities of the JTF GTMO staff in connection with the Haitian migrants and of the JTF staff at NAVBASE GTMO during the period 23 February 1993 - 1 March 1993.

2. The incidents described herein were brought to the attention of the JTF Staff Judge Advocate (meals discussed 15 February 1993) and in discussions with the JTF Commander.

3. The Staff Judge Advocate, as the legal advisor to the JTF Commander, is the only officer in the JTF who is authorized to represent the JTF in the office of the Attorney General. This was inadvertently done by the JTF Staff Judge Advocate without his knowledge of his authority at his headquarters.

4. While some of the cases listed include the names of the individuals involved themselves, they show a pattern of disregard for the rules established at NAVBASE GTMO both within and outside the migrant camp.

a. Between 1700 and 1800 on 23 February, Mr. Robert Rubin and Mr. Henrique Sanchez violated Naval Hospital regulations by entering the hospital grounds without proper authorization and that each person would have to purchase his/her own meal. Mr. Rubin became agitated and was detained.

b. Between 1800 and 1900 on 23 February, Mr. Rubin and Mr. Sanchez were present on a ward of the Naval Hospital in violation of established hospital regulations. Specifically, it was a visiting hour only, but they were present in the presence of the hospital staff, and they were not accompanied by a JTF staff or a DOJ attorney. Again, Mr. Rubin was agitated and was detained in his dealings with the hospital staff.

c. On 24 February, Mr. Rubin and Mr. Sanchez participated in a demonstration lasting for four hours. Based on sworn statements from JTF security personnel and other staff of the demonstration, it is apparent that both individuals were not only active participants but also leaders of the demonstration. Although the demonstration was non-violent, it was disruptive and involved the JTF staff at the time.

