

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Victor Rocha to Richard Feinberg re: [Cubapar] (4 pages)	11/16/1994	P1/b(1)
002. email	Dallas Brown to Larry Rossin et al. re: EXCOMM Notes (2 pages)	11/16/1994	P1/b(1)
003. email	Eric Schwartz to Kristen Cicio et al. re: Haitian Migration Policy (4 pages)	11/18/1994	P1/b(1)
004. email	Schwartz to Melaine Darby et al. re: Haitian Migration Policy (4 pages)	11/18/1994	P1/b(1)
005. email	Schwartz to Kurt Campbell re: Urgent Action (6 pages)	11/21/1994	P1/b(1)
006. email	Rossin to Schwartz re: Haiti Migrants (6 pages)	11/23/1994	P1/b(1)
007. email	Schwartz to Richard Clarke re: Memo to TL (1 page)	11/30/1994	P1/b(1)
008. email	Alan Kreczko to James Baker re: Aristide Gtmo Videotape (2 pages)	12/01/1994	P1/b(1)
009. email	Robert Malley to Darby and Ardenia Hawkins re: Panama Safehaven (2 pages)	12/05/1994	P1/b(1)
010. email	Malley to Schwartz re: Panetta Memo (3 pages)	12/07/1994	P1/b(1)
011. email	Malley to Rocha and Schwartz re: Cuba-GTMO (12 pages)	12/13/1994	P1/b(1)
012. email	Malley to Feinberg and Rocha re: GTMO End-Game (12 pages)	12/15/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F

rs1851

RESTRICTION CODES

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

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.

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

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]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
013. email	Malley to Schwartz re: GTMO-Summary (3 pages)	12/19/1994	P1/b(1)
014. email	Morton Halperin to Schwartz re: Haiti Migrant Game Plan (2 pages)	12/21/1994	P1/b(1)
015. email	Rocha to Tyler Beardsley et al. re: FW: Cuba Idea (3 pages)	12/23/1994	P1/b(1)

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M S M a i l

DATE-TIME 02 November 94 11:34
FROM Kreczko, Alan J.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: FW: [UNCLASSIFIED]
TO Schwartz, Eric P.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

eric,

Don't know if this is OBE'd, but Michelle Klein has done some more digging, and will do so more, on issue number 2.

Our courts do appear to have found that asylum can be denied to an individual on basis that he could have safely moved to another part of the country of origin without being persecuted. That is somewhat different than saying that no only can asylum be denied, but they can also be refouled to the non-troubled part of the country.

UNHCR guidelines have some ambiguity in them. They suggest that in principle aslyum might be denied on this basis, but only if person had family ties in another part of country, so that moving to it was realistic optino. Again, however, not clear that carries over to refoulement.

From: Kreczko, Alan J.
To: Schwartz, Eric P.
CC: /R, Record at A1; Baker, James E.
Subject: RE: [UNCLASSIFIED]
Date: Monday, October 31, 1994 03:01 PM

Assertion Number 1 is correct.

I'm not sure about assertion Number 2. I know that BIA has taken that position, but I'm not sure it has ever been examined as a matter of international law. (In a quieter moment, this is a coordination issue we might discuss. BIA frequently takes positions which implicate our refugee convention obligations, without consulting State. For an administration that wants to take the Refugee Protocol seriously, there should be an obligation to consult early on. Once BIA has advanced a position, it is difficult for State to catch up.) I've asked Michelle, who is checking to see if L has ever examined. Do you know whether UNHCR has taken a view?

From: Schwartz, Eric P.

To: Kreczko, Alan J.
CC: /R, Record at A1
Subject: [UNCLASSIFIED]REFUGEE QUESTIONS YOU ASKED
Date: Friday, October 28, 1994 04:18 PM

KRECZKO: FOR YOUR CONCURRENCE.

Memorandum to Sandy Berger

From: Eric Schwartz

I am drafting the memorandum to the President that you requested from Dick on processing of already refugees approved before the intervention. On your question regarding refugee status for those who fear non-government violence, two observations are pertinent:

1. If a government does not have the ability or the willingness to prevent acts of persecution by non-governmental entities, then the victims of such persecution may be eligible for refugee status.
2. If a person fears persecution in his region of origin, but could returned to another part of the country and live there safely, he could be returned. However, a question of fact might be whether the person can reasonably be expected to sustain himself in an area far from his home.

Of course, we are not obliged in international law to take any person out of Haiti, as such person is not technically a "refugee" until he or she is outside the country of origin.

Eric

M S M a i l

DATE-TIME 05 November 94 10:09

FROM Rossin, Larry

CLASSIFICATION UNCLASSIFIED

SUBJECT Subject: Haiti In-Country Approved Refugees [UNCLASSIFIED]

TO Cicio, Kristen K.
Darby, Melanie B.
Emery, Mary C.
Hall, Wilma G.
Hawkins, Ardenia R.
Millison, Cathy L.
Reed, James W.
Sens, Andrew D.
Veit, Katherine M.
Wolin, Neal S.
Wright, Allison M.

CARBON_COPY Beers, Rand R.
Clarke, Richard A.
Halperin, Morton H.
Schwartz, Eric P.

TEXT_BODY

NOTE FOR SANDY BERGER

FROM: LARRY ROSSIN

SUBJECT: What Approved Refugees Were Told

Following up on my brief note to you covering Brunson McKinley's paper, you asked what the people on the approved list were told.

I asked both Brunson and, while we were in Haiti, former in-country program director Luis Moreno. Both indicated that when they were applying, during the process and upon approval, the applicants/approved refugees were told that they were applying for refugee status which would include being resettled in the United States if approved. When they were informed that their applications had been approved, they were told that they would be taken to the United States as soon as they completed non-substantive formalities (documentation, medicals, etc.).

AT NO TIME was there any proviso expressed or implied that their eligibility for resettlement in the U.S. was contingent on the continuing rule of the military regime or that, were that regime to be replaced by Aristide, were the U.S. to intervene, or were any other exogenous event to

occur, their approval for resettlement in the U.S. would be voided. In essence, once approved, he or she and family members were guaranteed entry into the U.S. as soon as the medical, etc. were in order.

Moreno confirmed that many of the pending refugees have in fact wound up affairs -- quit jobs, sold property, etc.

Finally, Moreno noted that because of continuing departures since 19 September -- first, several more overland to the DR, now by charter air to Miami -- there are only some 2-300 approved refugees remaining in the pipeline -- with dependents, perhaps 1000 people in all. He concurred with the view that letting them in is virtually invisible, but cutting them off would spark controversy from the refugee advocacy community.

M S M a i l

DATE-TIME 08 November 94 10:22

FROM Schwartz, Eric P.

CLASSIFICATION UNCLASSIFIED

SUBJECT [UNCLASSIFIED]HIV-POSITIVE HAITIAN REFUGEES

TO Cicio, Kristen K.
Darby, Melanie B.
Emery, Mary C.
Hall, Wilma G.
Hawkins, Ardenia R.
Millison, Cathy L.
Jim Reed
Sens, Andrew D.
Veit, Katherine M.
Wolin, Neal S.
Wright, Allison M.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

MEMORANDUM TO SAMUEL BERGER

SEE ATTACHED

[[HAITI76.DOC : 2562 in HAITI76.DOC]]

ATTACHMENT
FILE DATE 8 November 94 10:20

ATTACHMENT
FILE NAME HAITI76.DOC

MEMORANDUM TO SAMUEL BERGER

FROM ERIC SCHWARTZ

Concurrence by Larry Rossin

SUBJECT: Refugee Processing of Haitians Approved Prior
to the Intervention

While I was away, I understand that a decision was taken to bring
in Haitians approved for refugee status prior to the intervention.

As I understand it, however, there was no decision taken on what to do with those among these Haitians who are HIV-positive.

As you will recall:

1. there are about 80 HIV-positive approved refugees remaining in Haiti;
2. there are 39 HIV-positive approved refugees at Guantanamo; and
3. an INS proposal to ease a waiver requirement for HIV-positive refugees worldwide would probably result in entry of most of these refugees.

How do you want to deal with the HIV issue at this point? In particular, if you want an HIV memo for the President, do I assume that the prior question (what to do with refugees approved prior to the intervention) has been resolved?

Please call if you want to discuss.

M S M a i l

DATE-TIME 08 November 94 11:51
FROM Halperin, Morton H.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: GTMO Litigation: Issues [UNCLASSIFIED]
TO Baker, James E.
Schwartz, Eric P.
CARBON_COPY Campbell, Kurt M.
Cooper, Kathleen H.
Halperin, Morton H.
Longoria, Michael A.
Malley, Robert

TEXT_BODY

Re pregnant women. We think there are appropriate facilities in the camp now and we can improve them. I would not want to send a message to every women in the camp that this is the way to get to the US>

From: Schwartz, Eric P.
To: Baker, James E.
CC: /R, Record at A1; @DEMOCRACY - Democracy Affairs
Subject: FW: GTMO Litigation: Issues [UNCLASSIFIED]
Date: Tuesday, November 08, 1994 11:00 AM

JAMIE: NOTE MY RESPONSES, THEN GIVE ME A CALL TO D!SCUSS..

I THINK I NEED TO BE AT THE WEDNESDAY MEETING.

ERIC

From: Halperin, Morton H.
To: Schwartz, Eric P.
CC: /R, Record at A1
Subject: FW: GTMO Litigation: Issues [UNCLASSIFIED]
Date: Tuesday, November 08, 1994 10:45 AM

I assume that this are your issues and you will get back to the lawyers. If I were you I would insist on being at the meeting on Wednesday.

From: Baker, James E.
To: Halperin, Morton H.; Longoria, Michael A.; Malley, Robert; Rossin, Larry; Schwartz, Eric P.
CC: /R, Record at A1; Kreczko, Alan J.; Wolin, Neal S.

Subject: GTMO Litigation: Issues [UNCLASSIFIED]
Date: Tuesday, November 08, 1994 10:25 AM

ATTORNEY-CLIENT PRIVILEGED

Justice has identified a number of issues that could arise in the context of the Cuba/Haitian litigation this week that raise serious policy considerations. In order for litigators to best represent the government's legal view and preserve its policy options it is important that we provide guidance on the questions presented below as soon as possible. A follow-on lawyers meeting is scheduled for Wednesday.

1. Parole: The Haitian plaintiffs will likely ask for an order granting Haitians parity with Cuban migrants on parole decisions, i.e., parole for children, the elderly and medical hardships. This argument would likely be cast as an equal protection, due process, abuse of discretion claim.

NOTE: DOJ is not aware that the Administration has ever been asked, or considered parole concessions for Haitians. As a matter of law, parity is not required, although it is not clear how a five member CA panel would come out on this issue. Further, the scenarios are factually different -- Haiti is a democracy, Cuba is not, etc.

Jamie: I think we do want to make a distinction here. With the Haitians, we believe that a durable solution is in sight. This justifies a different way of treating them. They have a democracy to return to. We do medevac some Haitians, but that is a different issue involving acute situations.

2. Voluntary Repatriation: Haitian plaintiffs will likely ask for an order similar to that issued by the Court of Appeals regarding Cuban migrants: no repatriation unless a migrant signs a form that such repatriation is voluntary.

NOTE: If policy-makers are considering, or are going to take, a different view, i.e., involuntary repatriation of Haitians, it would be useful for litigators to know now, so that they can prepare to distinguish the two groups and factual scenarios before the courts and be careful to preserve options if asked on the record, e.g., the Haitian case is distinguishable for among other reasons because we were offering safe haven from a regime whose days were numbered and therefore repatriation requires different analysis. As a matter of law, Justice believes involuntary repatriation is legally available and that we will ultimately win on the law if enjoined. It is also the lawyers' view that so long as this lawsuit is pending, more Haitians will not volunteer to return.

In the event, we were to get an injunction against involuntarily repatriating Haitians beyond the 14 Haitians already covered are we prepared to say to the court(s) that Haiti is in fact stable and safe in an effort to

oppose? Are we considering moving to a policy of involuntary return? When? Are we prepared to repatriate before UNMIH. At what point will the sewage situation at GTMO dictate policy?

Jamie: This is tricky. I would think, as a legal matter, we would want to preserve the government's option to not only involuntarily return, but to do so summarily -- without screening -- though as a matter policy I would urge against any practice that creates the possibility of return of bonafide refugees.

We have not yet confronted the policy issue of involuntary return with prior screening. As a matter of law and of policy, I think we should argue that involuntary return is justified. We can distinguish with the Cuba case by arguing that nothing prevents us from either being more generous than the law requires, or from making a generalized judgment about non-return to avoid the burden of individualized adjudications.

I think there is an important policy/legal issue here, however, and we may need to seek higher level guidance on it -- whether we want to take a position on the legality of direct return (i.e., return without screening) from Guantanamo.

3. Request for a permanent injunction granting parole to all pregnant women.

For Haitians? I say not necessarily. For Cubans? Speak to Mort.

4. Cuban plaintiffs may request an order permitting Cubans at GTMO with visas to come directly to the U.S. from GTMO.

Check with Mort.

5. Due Process and other Constitutional Rights: While litigators think the law is clear, if not necessarily the results, on the issues above, the question of migrant due process rights to a particular standard of conditions at GTMO is a tougher question. For example, do migrants have a DP right to a particular standard of medical care, or safety. That we are providing safe haven to migrants and are not holding them against their will, does not end the discussion as there is a body of law, which courts may choose to apply to GTMO, involving the conditions of persons who voluntarily put themselves in state custody. Further, some groups of migrants, such as children and unborn babies, are not in a position to exercise the types of choices that makes one's presence in GTMO voluntary. Bottom line: it is not likely at all that we will get the votes in the Court of Appeals or S.Ct. that the only rights that apply to migrants at GTMO are non-enforceable standards under international law. Indeed, it is not clear this is a position Justice litigators are prepared to take as a matter of law. Clearly, there are remedies available other than brining migrants to the U.S., but planners should consider and anticipate a

requirement to provide additional doctors, or facilities to improve conditions at GTMO.

Jamie: Need to explore this in greater detail.

6. 22 HIV Haitians. We understand that there remain 22 screened in HIV Haitians at GTMO. Lawyers consider it a matter of time, and short time given the availability of additional attorney access to GTMO, before these 22 sue for admission. Do we have plans to admit them?

Jamie: Awaiting a policy decision.

As noted above, your feedback on these matters is greatly appreciated.

ATTORNEY-CLIENT PRIVILEGED

M S M a i l

DATE-TIME 08 November 94 13:14
FROM Baker, James E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: GTMO Litigation: Issues [UNCLASSIFIED]
TO Schwartz, Eric P.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Eric,

I guess I need to be more direct. I am aware that all these issues raise legal and policy questions. The litigators are asking among other things whether policy makers have affirmatively considered these issues, and if not, whether and when you intend to do so. In the absence of affirmative decisions, the courts may dictate our policy to us, or more accurately, minimize our policy options. What is the policy timetable, for example, for deciding whether we are going to repatriate Haitians involuntarily? With or without screening?

It would be helpful to the Government's argument to be able to advise the court(s) that we intend to screen Haitians; or will not repatriate involuntarily; etc. To the extent such policy determinations alleviate the court's concern about how we are handling migrants at GTMO we may avoid broad sweeping TROs that prevent options. We may also avoid having to wait extended periods of time to win on the law, for as explained in the earlier E-mail, on all but the DP issue, we are confident that we will prevail on the law, but as a matter of policy we may not have the time or inclination to wait that long.

Why don't we meet to discuss. Can you suggest a time this late afternoon or evening? Thanks.

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To: Baker, James E.
CC: /R, Record at A1; @DEMOCRACY - Democracy Affairs
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To: Halperin, Morton H.; Longoria, Michael A.; Malley, Robert; Rossin, Larry; Schwartz, Eric P.
CC: /R, Record at A1; Kreczko, Alan J.; Wolin, Neal S.
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ATTORNEY-CLIENT PRIVILEGED

M S M a i l

DATE-TIME 09 November 94 19:14

FROM Schwartz, Eric P.

CLASSIFICATION UNCLASSIFIED

SUBJECT [UNCLASSIFIED][PRIVILEGED WORK PRODUCT]

TO Cicio, Kristen K.
Darby, Melanie B.
Emery, Mary C.
Hall, Wilma G.
Hawkins, Ardenia R.
Millison, Cathy L.
Jim Reed
Sens, Andrew D.
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Wolin, Neal S.
Wright, Allison M.

CARBON_COPY Baker, James E.
Clarke, Richard A.
Halperin, Morton H.
Rossin, Larry

TEXT_BODY

MEMORANDUM TO SAMUEL BERGER

FROM ERIC SCHWARTZ

(TIME SENSITIVE)

[[HAITI77.DOC : 4926 in HAITI77.DOC]]

**ATTACHMENT
FILE DATE** 9 November 94 19:13

**ATTACHMENT
FILE NAME** HAITI77.DOC

PRIVILEGED WORK PRODUCT

TIME SENSITIVE:
PLEASE REVIEW AS SOON AS POSSIBLE

MEMORANDUM TO SAMUEL BERGER

THROUGH: MORT HALPERIN, DICK CLARKE

FROM: ERIC SCHWARTZ

CONCURRENCE: JAMIE BAKER

SUBJECT: GTMO Litigation and Policy Issues Relating to Haitians

Justice has identified a number of issues that could arise in the context of Cuba/Haitian litigation as early as this week and that raise serious policy considerations. As I think you know, advocates for the Haitians have sought to intervene in the Cuba litigation and have been given provisional permission to do so.

In order to best represent the government's legal view and preserve policy options, it would be very useful -- in advance of their consideration by the courts -- to consider a number of policy issues which we had in some cases purposefully put off. If we adopt certain policies and rule out others, the courts may be persuaded to step back from the litigation and let U.S. policy run its course. The alternative would be to risk having the courts decide these policy issues.

This memorandum seeks your agreement on recommended positions on five issues.

1. Parole

Issue: the Haitian plaintiffs will likely ask for an order granting Haitians parity with Cubans on parole decisions -- children, the elderly and medical hardships.

Recommendation: Parity is not required as a matter of law. In view of our position that the Haitians have a relatively stable and democratic country to which they can return, we think we can also make a good faith distinction on policy grounds and should do so.

2. Request for a permanent injunction granting parole to all pregnant Cuban

Recommendation: If we believe that there is adequate medical care at GTMO and Panama (as we do), we think we need to oppose this for the time being. If we decide to expand parole to children and accompanying relatives, we may wish, as a matter of policy, to revisit this question.

3. HIV-positive Haitians at GTMO.

Issue: There are between 20 and 30 HIV-positive approved refugees at GTMO, and, with the recent influx of lawyers into GTMO, we expect

that these Haitians will shortly sue for admission. We will then probably re-live many of the unpleasant issues we confronted with the HIV-GTMO litigation last year.

As I mentioned in a previous memo to you, I was told that a

decision was taken last week (while I was away) to bring in Haitians approved for refugee status prior to the intervention.

As I understand it, however, there was no decision taken on what to do with those among these Haitians who are HIV-positive.

As you will recall:

1. there are about 80 HIV-positive approved refugees remaining in Haiti;
2. there are between 20 and 30 HIV-positive approved refugees at Guantanamo; and
3. an INS proposal to ease a waiver requirement for HIV-positive refugees worldwide would probably result in entry of most of these refugees. (All relevant agencies approved the INS proposal.)

How do you want to deal with the HIV issue at this point? In particular, if you want an HIV memo for the President, do we assume that the prior question (what to do with refugees approved prior to the intervention) has been resolved?

In view of the litigation, I need to hear from you as soon as possible.

4. Voluntary repatriation

Issue: We expect that the plaintiffs for the Haitians will request an order similar to that issued by the Court of Appeals regarding Cuban migrants: no repatriation unless a migrant signs a form that such repatriation is voluntary. They could make this request on their own initiative or as a result of any further efforts at Haitian repatriations -- either voluntary or involuntary. Such a request will likely result in entry of an order similar to the existing order with respect to the Cubans -- no repatriation unless it is voluntary.

This will immediately raise the issue of our policy on involuntary return of the remaining 5000 or so Haitians and Justice would like guidance on this question.

Discussion: State and Defense have different views on the issue of

involuntary return of Haitians at GTMO. DOD's position is that, with the change in Haiti, everyone should go back and that this should happen as quickly as possible. They argue that we need not bother to assess claims of those who might express fears of return; with thousands of troops in the country, return is safe.

State's position is that we should not force anyone back, but that we should continue to emphasize voluntary return. Those who refuse to go back (as well as those few who continue to leave Haiti by boat) should be given the option of returning to Haiti or going to our facility in Suriname (which State would be willing to finance). State reasons that given these choices, the overwhelming majority would return to Haiti.

State makes a number of arguments in favor of its position.

- ù Safe haven is the only migration policy we have tried with Haiti that works -- that meets the concerns of the immigration control community as well as the NGOs and the UNHCR.

- ù Safe haven has resulted in very small outflows, which will be even further reduced with a democratic government in Haiti.

- ù If we forcibly return Haitians, we should screen them before doing so if we want to avoid renewed criticism from the UNHCR and NGOs (which will contrast forced return of Haitians with our policy toward Cubans), and if we wish to ensure that we are not returning any bonafide refugees. (State argues that there may well continue to be some small number of refugees from Haiti.) However, screening will create expectations of U.S. resettlement which we want to avoid; safe haven avoids creating such expectations.

Evaluation: These issues have very important policy consequences and require more detailed briefing of you as well as Deputies level review which may not be possible prior to your departure. At the same time, it is to our advantage to be in a position to answer the court's questions and we therefore propose interim responses below. If you agree, we think you need to work them with John Deutch. We can take care of State and Justice.

Do we tell the Court that we seek to retain the option of involuntary return?

This is an easy call. We should retain the option of involuntary return and can easily distinguish the Haitians from the Cubans as the former are returning to a country led by a democratically elected government.

What do we tell the Court about when we will begin such involuntary return and what procedures we will implement prior to such returns?

To preserve our options, we would recommend that we say the following:

ù Our safe haven policy has demonstrated that we are deeply committed to the welfare and well-being of Haitians who feared civil conflict and persecution in Haiti.

ù There are now thousands of U.S. troops in Haiti, a democratically elected government and conditions of much greater peace and stability that have permitted thousands to return voluntarily.

ù While, under U.S. law, we could involuntarily return all of remaining Haitians, we have instead emphasized voluntary return as a further demonstration of our willingness to deal with this population with sensitivity.

ù Nonetheless, as a matter of policy, we may indeed need to move to involuntary return of those who can return to their country of origin but refuse to do so.

ù In implementing such action, we will, as a matter of policy, continue to consult closely with the UNHCR and others to ensure against return of bonafide refugees who might face risk of persecution in Haiti.

Discussion

To be sure, this response may oblige us to conduct some sort of (undefined) review prior to forced return. But it has several important advantages:

ù It binds us to a policy of basic fairness which we should support on the merits.

ù It will help us to avoid criticism from NGOs, UNHCR and others.

(UNHCR has expressed deep concern that we will undermine the significant gains we made with adoption of safe haven if we return to direct return without any sort of assessment prior to return.)

ù Our stated commitment to fairness may help to dissuade the courts from imposing equitable remedies that are probably wrong on the law but which the courts feel obliged to impose on fairness grounds. (I have run this specific point by DOJ counsel who concurs.)

Again, if you agree with the proposed course of action, you need to

Speak with John Deutch to ensure DOD is on board.

M S M a i l

DATE-TIME 14 November 94 12:52
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT [UNCLASSIFIED]GTMO litigation

TO Atkin, Timothy J.
Beers, Rand R.
Brown, Dallas
Campbell, Kurt M.
Clarke, Richard A.
Cooper, Kathleen H.
Darragh, Sean J.
Halperin, Morton H.
Lindsey, Wanda
Longoria, Michael A.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Richardson, Craig
Rossin, Larry
Roundtree, Beverly J.
Schwartz, Eric P.
Simon, Steven N.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY TONY ASKED, IN A NOTE, TO OBTAIN INTERAGENCY CONCURRENCE
PRIOR TO SENDING A
MESSAGE TO POTUS ON THIS ISSUE. I DON'T KNOW IF POTUS NEEDS
TO GET A
MESSAGE ON THIS, BUT I HAVE SENT THE ATTACHED TO MIKE
MYERS TO GET DOD
CONCURRENCE.

[[HAITI78.DOC : 3076 in HAITI78.DOC]]

**ATTACHMENT
FILE DATE** 14 November 94 12:49

**ATTACHMENT
FILE NAME** HAITI78.DOC

PRIVILEGED WORK PRODUCT

URGENT: NEED RESPONSE BEFORE COB MONDAY

To: 703 695 9748

November 14, 1994

MEMORANDUM TO MICHAEL MYERS, DOD

FROM: ERIC SCHWARTZ, NSC Staff

SUBJECT: GUANTANAMO LITIGATION

The problem: In the GTMO litigation, we expect that the plaintiffs for the Haitians will request an order similar to that issued by the Court of Appeals regarding Cuban migrants: no repatriation unless a migrant signs a form that such repatriation is voluntary. They could make this request on their own initiative or as a result of any further efforts at Haitian repatriations -- either voluntary or involuntary. Such a request will likely result in entry of an order similar to the existing order with respect to the Cubans -- no repatriation unless it is voluntary.

This will immediately raise the issue of our policy on involuntary return of the remaining Haitians and Justice would like guidance on this question.

Discussion: These issues have very important policy consequences and, as you know, we may have to work out interagency differences -- safe haven versus return -- at the Deputies' level. (In the meantime, I will, at John Christiansen's request, schedule a meeting on ways to better encourage Haitians to return home.)

At the same time, it is to our advantage to be in a position to answer the court's questions, should they be asked, and we therefore propose interim responses below.

The answers below have been personally and carefully reviewed, modified and approved, first by Sandy Berger and then by Tony Lake. They have also been discussed with Justice lawyers and will be acceptable to Justice and State.

I'd appreciate DOD concurrence as soon as possible.

Do we tell the Court that we seek to retain the option of involuntary return?

If asked, yes. We should retain the option of involuntary return and can easily distinguish the Haitians from the Cubans as the former are returning to a country led by a democratically elected government.

What do we tell the Court about when we would begin such involuntary return and what procedures we will implement prior to such returns?

We should say the following:

ù Our safe haven policy has demonstrated that we are deeply committed to the welfare and well-being of Haitians who feared civil conflict and persecution in Haiti.

ù There are now thousands of U.S. troops in Haiti, a democratically elected government and conditions of much greater peace and stability that have permitted thousands to return voluntarily.

ù While, under U.S. law, we could involuntarily return all of remaining Haitians, we have instead emphasized voluntary return as a further demonstration of our willingness to deal with this population with sensitivity.

ù Nonetheless, as a matter of policy, we may indeed need to move to involuntary return of those who can return to their country of origin but refuse to do so.

ù In implementing such action, we would, as a matter of policy, continue to consult closely with the UNHCR and others to ensure against return of bonafide refugees who might face risk of persecution in Haiti.

M S M a i l

DATE-TIME 15 December 94 12:22
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT [UNCLASSIFIED]ABSOLUTELY LAST VERSION OF HIV MEMO

TO Atkin, Timothy J.
Baker, James E.
Beers, Rand R.
Brown, Dallas
Campbell, Kurt M.
Clarke, Richard A.
Cooper, Kathleen H.
Darragh, Sean J.
Halperin, Morton H.
Kreczko, Alan J.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Richardson, Craig
Rossin, Larry
Roundtree, Beverly J.
Schwartz, Eric P.
Simon, Steven N.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Here is the absolutely last version, I hope. I need concurrences/clearances from baker. I will send it through Dick Clarke.

Jamie:

Is what I've done, as an info memo, consistent with the Panetta meeting? I think it is, but the issue of the Haitians meeting the existing policy directive's public charge requirement was not discussed at that meeting, as it only came up recently when Justice told me that they think the GTMO Haitians (and maybe some in Haiti) could get sponsors.

[[HIVMEM.DOC : 3075 in HIVMEM.DOC]]

ATTACHMENT
FILE DATE

15 December 94 12:18

ATTACHMENT
FILE NAME

HIVMEM.DOC

MEMORANDUM TO THE PRESIDENT

Subject: Haitian Refugee Processing: Endgame Issues and
HIV-Positive Refugees

Termination of In-country Refugee Processing in Haiti

At the time of the intervention, we stopped accepting applications for the in-country refugee processing program. However, we permitted U.S. resettlement for the some 1500 Haitians who were approved for refugee status during the period of military rule but who could not leave Haiti prior to the intervention. We took this action primarily because these Haitians had already been informed that they would be admitted to the United States and many took measures -- e.g., selling their belongings, quitting their jobs -- in reliance of our promise of U.S. resettlement.

HIV-positive Haitian Refugees and the Medical Exclusion

This decision still leaves 26 HIV-positive Haitians on Guantanamo Naval Base who were approved for refugee status at our processing ship in Jamaica last spring and summer but were not permitted entry when other Jamaica-approved refugees were accepted for admission. In addition, there remain in Haiti about 85 HIV-positive Haitians who were approved for refugee status in the in-country program prior to the intervention. These two groups of HIV-positive Haitians have been barred due to a medical exclusion in the Immigration and Nationality Act.

Waiver of the Exclusion

This exclusion may be waived for humanitarian, public interest or family unification reasons. However, a 1988 INS policy directive requires HIV-positive applicants to establish further that 1) the danger to the public health created by admission is minimal, 2) the possibility of the spread of the infection is minimal, and 3) there will be no cost incurred by any level of Government agency of the U.S. without prior consent of that Agency as a result of entry. The third prong of this test -- and the need to find sponsorship -- has prevented most HIV-positive refugees (including the Haitians) from gaining entry.

INS Proposal to Alter the Public Charge Requirement

The INS policy directive's sponsorship requirement is

discriminatory, as refugees, by virtue of their status, are by legislation exempt from public charge requirements. This includes refugees with diseases more costly than HIV. For this reason, INS -- with support from State, HHS and the National Office of AIDS Policy -- proposed earlier this year to modify its policy directive worldwide to eliminate the public charge requirement for HIV-positive refugees. INS estimates that this change would result worldwide in entry of less than 100 HIV-positive refugees each year (out of more than 100,000).

While the logic of the INS proposal is sound, implementing such a policy change in the present political climate could spur a backlash that might result in restrictive legislation, including legislation to impose public charge requirements on all refugees.

Alternatives to a Change in the Policy Directive

We have thus suggested that Justice/INS defer considering a change in its policy directive. Justice understands our position and does

not disagree. At the same time, however, the Attorney General intends to take action -- without changing the existing policy directive or its sponsorship requirement -- that will result in entry of the 26 Haitians on Guantanamo and could result in the entry of some number of other HIV-positive refugees in Haiti and elsewhere around the world.

In particular, Justice has now obtained guarantees of private sponsorship for each of the 26 Haitians, thus bringing them into conformity with the requirements of the policy directive. In addition, INS will be informing the 85 others in Haiti -- who have not been able to obtain private sponsorships -- that they will be given a limited time to file or perfect their waiver applications (after which they will cease to be valid).

Finally, in the absence of a change in the policy directive, the Attorney General is prepared to provide globally, and in exceptional circumstances, an exemption from the public charge requirement for approved HIV-positive refugees. Such a circumstance might include a refugee applicant in one of our in-country programs who would be at grave risk if forced to remain in his country of origin after being approved by INS.

Discussion

We have concurred with the Justice Department's course of action for several reasons.

The Guantanamo Haitians have been outside their country of origin for between five and seven months and were formally deemed to have

well-founded fears of persecution. Seeking to return a group of already-approved asylum-seekers would break new ground and would be quite controversial. To ensure basic fairness to these Haitians, the UNHCR would rightly press us to re-evaluate their cases prior to return. Such re-evaluation, as well as any attempt to return some or all of the Haitians, would come under a court challenge similar to that which we faced last year (and which result in the compelled admission of some 200 HIV-positive refugees).

An attempt to return the Guantanamo Haitians would also focus attention on the discriminatory aspect of the INS policy directive's public charge requirement. And a blanket decision to bar entry of HIV-positive Haitians who meet the existing waiver requirements would conflict with the decision to permit entry of the other Haitians approved for refugee status prior to the intervention.

Finally, we support the Attorney General's judicious use of discretion to provide an exemption to the public charge requirement in exceptional circumstances involving approved refugees. In the absence of a change in the policy directive, we believe that the Attorney General should nonetheless ensure that an applicant whom we have determined to be a refugee is not subjected to grave risks due to our unwillingness to consider entry.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Victor Rocha to Richard Feinberg re: [Cubapar] (4 pages)	11/16/1994	PI/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

RESTRICTION CODES

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

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.

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

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]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	Dallas Brown to Larry Rossin et al. re: EXCOMM Notes (2 pages)	11/16/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

RESTRICTION CODES

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

- P1 National Security Classified Information [(a)(1) of the PRA]
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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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- 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]

M S M a i l

DATE-TIME 17 November 94 11:03
FROM Rossin, Larry
CLASSIFICATION CONFIDENTIAL
SUBJECT FW: Returning Haitian Refugees [CONFIDENTIAL]
TO
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

From: Rossin, Larry
To: Schwartz, Eric P.
CC: Beers, Rand R; Rocha, Victor M.
Subject: Returning Haitian Refugees
Date: Wednesday, November 16, 1994 06:57 PM

You should have a look at the first para of this telegram which mentions a plan of the GOH to bring about the return of 100,000 Haitian refugees to Haiti during 1995. Rather ambitious.

WHITE HOUSE SITUATION ROOM
DIST: BEERS, BROWN, CLARKER, FEINBERG, HALPERIN, MALLEY,
NSC, PEASE, RICE,
ROSSIN, SCHWARTZ, SIMON, TENET

PREC: IMMEDIATE CLASS: UNCLASSIFIED DTG:162153Z NOV 94

FM: AMEMBASSY PORT AU PRINCE

TO: RUEHC/SECSTATE WASHDC IMMEDIATE 8209

UNCLAS SECTION PORT AU PRINCE 008939

SUBJECT: MINISTERIAL ADVISOR TEAM SITREP NO. 10

MINISTERIAL ACTIVITIES

DECLASSIFIED MINISTRY OF FOREIGN AFFAIRS: COL LIMA ATTENDED AN

E.O. 13526

White House Guidelines, September 11, 2006

By ml NARA, Date 3/24/16

2011-1039-F

ORIENTATION MEETING WITH THE FOREIGN MINISTRY CHIEF OF STAFF, MR. FREDERICK THELUSMA ON 15 NOV. A STRATEGIC PLANNING SESSION FOCUSED UPON THE ISSUE OF THE RETURN OF HAITIAN REFUGEES. THE GOH PLANS TO RETURN APPROXIMATELY 100,000 REFUGEES DURING 1995. THESE REFUGEES ARE LOCATED PRIMARILY IN THE BAHAMAS, DOMINICAN REPUBLIC, CUBA, CENTRAL AMERICA, AND VENEZUELA. THE STRATEGIC PLAN WILL DEFINE A COMPLETE PROCESS FOR COORDINATING THE PARTICIPATION OF VARIOUS MINISTRIES AND ESTABLISHING A PRIORITY FOR RESOURCE ALLOCATION.

MINISTRY OF INFORMATION AND CULTURE: THE TEAM MET WITH MS. VICKY BELL, INFORMATION AND CULTURAL RELATIONS ATTACHE, USIS, ON 15 NOV. USIS ASSISTANCE IN ACCOMPLISHING THE TASKS OUTLINED IN THE INITIAL ASSESSMENT WAS DISCUSSED, AND MS. BELL INTRODUCED MR. LARRY CORWEN, THE NEWLY APPOINTED INFORMATION OFFICER. THE HAITIAN NATIONAL RADIO PROJECT WAS DISCUSSED, AND IT WAS AGREED THIS SHOULD REMAIN THE TEAM'S TOP PRIORITY.

MINISTRY OF INTERIOR: REVIEWED THE U.S. GOVERNMENT MISSION DISASTER RELIEF PLAN FOR HAITI, DATED SEP 1991. THE PLAN FOCUSES ON RESPONSE RECOVERY ACTIVITIES OF THE U.S. MISSION AND USAID TO SUPPORT RESPONSE AND RECOVERY ACTIVITIES OF GOH.

MINISTRY OF PUBLIC HEALTH: COL NELSON MET WITH THE MINISTER OF HEALTH, DR. MOLIERE AND HIS DIRECTOR GENERAL, DR. SAJOUS, ON 15 NOV. THE DIRECTION OF OUR ASSISTANCE PROGRAM WAS DISCUSSED. ARRANGEMENTS WERE MADE TO HAVE THE TEAM'S FIVE PERSONNEL (THREE U.S. AND TWO COSTA RICANS ATTACHED) WORK FROM AN OFFICE IN THE MINISTRY. COL NELSON WAS INVITED BY THE MINISTER TO BECOME A GUEST MEMBER OF THE COMITE TECHNIQUE DE COORDINATION SANTE (MEDICAL TECHNICAL ADVISORY COMMITTEE), AND ATTENDED THEIR WEEKLY MEETING. MRS. LIZ GIBBONS OF UNICEF HAS IDENTIFIED A NEED TO PUBLICIZE THE COUNTRY WIDE VACCINATION PROGRAM WHICH BEGAN 14 NOV. COORDINATION WAS MADE WITH THE US MILITARY INFORMATION SUPPORT TEAM (MAJ HERNANDEZ AND CPT LANE) TO PROVIDE SUPPORT IF POSSIBLE. ANOTHER MEETING WAS HELD WITH NURSE IRENE VAN BECKEL, A MISSIONARY, ABOUT PUBLIC HEALTH CONDITIONS IN CAP HAITIEN. DISCUSSIONS CONCENTRATED ON THE NEED FOR A MORE DECENTRALIZED MANAGEMENT APPROACH TO PUBLIC HEALTH.

MINISTRY OF COMMERCE: LTC BEACH AND LTC BLACKLEDGE MET WITH RAYMOND LAFONTANT, EXECUTIVE DIRECTOR OF THE ASSOCIATION OF HAITIAN INDUSTRIES (ADIH). THE DISCUSSION FOCUSSED ON OBTAINING PRIVATE SECTOR INPUT REGARDING PRIORITIES FOR THE MINISTRY OF COMMERCE AND INDUSTRY. MAJ FLAXMAN ARRANGED AN INTERVIEW FOR PIERROT DELIENNE, DIRECTOR GENERAL NATIONAL TOURISM OFFICE AND ERNST BELLAND, MARKETING DIRECTOR, WITH THE TRAVEL INDUSTRY JOURNAL QUOTE TRAVEL AGENT UNQUOTE. THE INTERVIEW FOCUSED ON HAITI'S PLANS AND EFFORTS TO GENERATE AN ACTIVE TOURISM INDUSTRY

MINISTRY OF EDUCATION: WORKED WITH REBECCA ADAMS, USAID EDUCATION AND TRAINING OFFICER, MN REFINING THE OBJECTIVES OF THE SCHOOLS INVENTORY TO PROVIDE MAXIMUM SUPPORT TO THE DEVELOPMENT OF THE MINISTRY OF EDUCATION'S NATIONAL PLAN. INVENTORY VISITS ARE INTENDED TO INCORPORATE THE OPPORTUNITY FOR MINISTRY OF EDUCATION OFFICIALS TO ESTABLISH COORDINATION WITH DEPARTMENT EDUCATION REPRESENTATIVES.

MINISTRY OF PUBLIC WORKS: BG BINGHAM, REPRESENTATIVES FROM USAID AND THE PUBLIC WORKS TEAM MET WITH EVANS PAUL, MAYOR OF PORT-AU-PRINCE (PAP). THE MAIN PURPOSE OF THE MEETING WAS TO DETERMINE THE MAYOR'S CONCEPTS AND PRIORITIES FOR URBAN PLANNING. HE WAS INTERESTED IN COMPLETING A SMALL ROADWAY OR TRAFFIC IMPROVEMENT PROJECT IN PAP PRIOR TO CHRISTMAS 1994. THE PROJECT WOULD SERVE AS AN IMMEDIATE EXAMPLE TO THE PUBLIC THAT THINGS CAN CHANGE. AFTER DISCUSSION ON THE BENEFITS OF DECENTRALIZATION OF GOVERNMENT FUNCTIONS, THE MAYLR WAS INTERESTED IN A USAID OFFER TO ASSIST IN SETTING UP A SEMINAR WHICH COULD BE HOSTED BY HAITI, FOR THE REGIONAL CARIBBEAN AREA.

THE PUBLIC WORKS TEAM MET WITH KEY MEMBERS OF THE MINISTRY OF PUBLIC WORKS (TPTC) INCLUDING REVEL MONPREMIER, CABINET MEMBER, PATRICE BAPTISTE, DIRECTOR OF SNEP (WATER DEPARTMENT), CARL PREVAL, DIRECTOR ELECTRIC D'HAITI, ANDRE ST. LOT, ASST DIRECTOR SMCRS (TRASH DISPOSAL) AND ECELER LOUIS, TECHNICAL DIRECTOR TPTC. GENERAL ISSUES WHICH WERE DISCUSSED INCLUDE: SCOPE AND LIMITATIONS OF THE TYPE OF ASSISTANCE WHICH THE TEAM CAN PROVIDE,

MINISTERIAL REORGANIZATION ALONG WITH SOME OF THE CURRENT PROBLEMS AND COLLECTION OF FEES FOR WATER AND ELECTRIC SERVICE. A POTENTIAL PROBLEM REGARDING ROUTE OF THE TRUITTIER LANDFILL ACCESS ROAD CONSTRUCTED BY THE 20TH ENGR BDE WAS DIFFUSED. TPTC PREFERRED A SLIGHTLY DIFFERENT ROUTE BUT WAS CONVINCED THAT THE COST TO DEVELOP THAT ROUTE WAS TOO COSTLY FOR THEIR PRESENT BUDGET BUT IT WOULD BE AN EXCELLENT CANQQ&QTE F-R FUTURE DEVELOPMENT. THE ROUTE DEVELOPED BY THE 20TH ENGRS IS CURRENTLY FUNCTIONAL.

MINISTRY OF AGRICULTURE: LTC JENKINS MET WITH MR. RON DANIELS, DEPUTY DIRECTOR OF AGRICULTURE AND ENVIRONMENT, USAID ON 14 NOV. VETERINARY ISSUES AND ALTERNATIVES WERE DISCUSSED. LTC JENKINS MET WITH VETERMED (DR. MICHEL CHANCY, VETERINARIAN, FRANCOIS WASMITH, AGRONOMIST, MOISE ROSAMIA, AGRONOMIST, AND JEAN-CLAUDE BEAUVAIS, ANIMAL HEALTH AND SMALL EXTENSION SPECIALIST). VETERMED HAS BEEN INVOLVED WITH TRAINING PEOPLE LIVING IN THE COUNTRYSIDE TO VACCINATE AND DO BASIC PHYSICAL EXAMINATIONS OF ANIMALS. VETERMED WANTS TO VACCINATE ANIMALS IN ALL ENDEMIC AREAS AGAINST ANTHRAX. IN ORDER TO ACCOMPLISH THIS A COLD CHAIN SYSTEM IS ESSENTIAL. WITH THE STATUS OF THE CURRENT ANIMAL HEALTH SITUATION IN HAITI, THE NEED FOR A MOBILE FIELD LABORATORY PATHOLOGY WAS IDENTIFIED.

MINISTRY OF FINANCE: FINANCE TEAM (CENTRAL BANK) MET WITH MARY OTT, USAID ECONOMIST FOR LATIN AMERICA AND THE CARIBBEAN. MS. OTT IS THE PRINCIPAL PROJECT MANAGER IN DC FOR THE CENTRAL BANK EVALUATION. AS A PART OF THE EVALUATION, THE FOLLOWING ASSIGNMENTS WERE GIVEN: COL HUDAK, LEGAL SECTION OF THE BANK; LTC GREB, CREDIT ADMINISTRATION, AND LTC THOMAS, CASH AND INTERNATIONAL OPERATIONS. THE SCOPE OF THE FINANCE TEAM ASSISTANCE IS TO DEVELOP AN UNDERSTANDING OF EACH DIVISION AND BEGIN COLLECTION DOCUMENTATION FOR A REVIEW OF SQFCIFIC TRANSACTIONS. A COPY OF MINISTERE DE L'ECONOMIE ET DES FINANCES ORGANIZATION WAS GIVEN TO THE EMBASSY ECONOMIC SECTION.

SWING

M S M a i l

DATE-TIME 17 November 94 20:13
FROM Rossin, Larry
CLASSIFICATION **** NO CLASSIFICATION ****
SUBJECT Subject: Refugee returns to Haiti [unclassified]
TO Schwartz, Eric P.
CARBON_COPY Beers, Rand R.
Rocha, Victor M.
TEXT_BODY

Can it really be possible that the GOH seriously plans to get 100,000
Haitians to return to HAiti from abroad next year? Should we be encouraging
this? Talk about absorptive capacity problems!

WHITE HOUSE SITUATION ROOM
DIST: BEERS, BROWN, CLARKER, FEINBERG, HALPERIN, MALLEY,
NSC, PEASE, RICE,
ROSSIN, SCHWARTZ, SIMON, TENET

PREC: IMMEDIATE CLASS: UNCLASSIFIED DTG:172225Z NOV 94

FM: AMEMBASSY PORT AU PRINCE

TO: RUEHC/SECSTATE WASHDC IMMEDIATE 8253

UNCLAS PORT AU PRINCE 008981

SUBJECT: MINISTERIAL ADVISOR TEAM SITREP NO. 11

MINISTERIAL ACTIVITIES

MINISTRY OF FOREIGN AFFAIRS: ON 16 NOV, COL LIMA
WORKED WITH MR. FREDERICK THELUSMA AND MRS. DUBOIS
OF THE FOREIGN MINISTRY ON THE HAITIAN REFUGEE
ISSUE. A MATRIX GAME PLAN FOR WORLDWIDE FLOW OF
100,000 REFUGEES INTO THE COUNTRY WAS PREPARED FOR
THE REVIEW OF MINISTER CLAUDETTE WERLEIGH. COL
LIMA ALSO MET WITH AMEMBASSY POLITICAL OFFICER,
MR. GENE CHRISTY TO BRIEF HIM ON COL LIMA'S
ACTIVITIES AT THE FOREIGN MINISTRY AND TO RECEIVE

HIS GUIDANCE ON VARIOUS ISSUES.

3

M S M a i l

DATE-TIME 17 November 94 11:32
FROM Kreczko, Alan J.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: refugees [UNCLASSIFIED]
TO Schwartz, Eric P.
CARBON_COPY Baker, James E.
TEXT_BODY

Eric,

A few weeks ago you sent me a draft note to SB that had two conclusions on refugee law. The second was that a person did not qualify if he could be returned to a part of his country where he would not be persecuted, even if there were other parts of the country where he would be persecuted. I've spent some more time on this issue with Michelle, including reviewing UNHCR guidance on places like Haiti. I think your conclusion was correct as a matter of legal theory --- if in fact, the individual will not be persecuted in the place of return, he can be returned. However, it is also clear that while the UNHCR accepts this as correct legal theory, it is extremely skeptical of it in practice. It looks to additional issues, like whether the individual has family/work in the place so that he can really be expected to be able to stay there, is of the same ethnic/tribe as the local population, if the country is one where persecution follows ethnic lines, etc.

M S M a i l

DATE-TIME 18 November 94 08:31
FROM Rossin, Larry
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: Refugee returns to Haiti [UNCLASSIFIED]
TO Rocha, Victor M.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

I agree, seems very weird and ideological

From: Rocha, Victor M.
To: Rossin, Larry
CC: /R, Record at A1
Subject: RE: Refugee returns to Haiti [UNCLASSIFIED]
Date: Thursday, November 17, 1994 08:18 PM

It is not my business yet; however, this seems totally out of whack. Most governments would work to do the opposite, like El Salvador which is fighting having its illegal migrants return home.

From: Rossin, Larry
To: Schwartz, Eric P.
CC: /R, Record at A1; Beers, Rand R; Rocha, Victor M.
Subject: Refugee returns to Haiti [unclassified]
Date: Thursday, November 17, 1994 08:13 PM

Can it really be possible that the GOH seriously plans to get 100,000 Haitians to return to HAiti from abroad next year? Should we be encouraging this? Talk about absorptive capacity problems!

WHITE HOUSE SITUATION ROOM
DIST: BEERS, BROWN, CLARKER, FEINBERG, HALPERIN, MALLEY,
NSC, PEASE, RICE,
ROSSIN, SCHWARTZ, SIMON, TENET

PREC: IMMEDIATE CLASS: UNCLASSIFIED DTG:172225Z NOV 94

FM: AMEMBASSY PORT AU PRINCE

TO: RUEHC/SECSTATE WASHDC IMMEDIATE 8253

UNCLAS PORT AU PRINCE 008981

SUBJECT: MINISTERIAL ADVISOR TEAM SITREP NO. 11

MINISTERIAL ACTIVITIES

MINISTRY OF FOREIGN AFFAIRS: ON 16 NOV, COL LIMA WORKED WITH MR. FREDERICK THELUSMA AND MRS. DUBOIS OF THE FOREIGN MINISTRY ON THE HAITIAN REFUGEE ISSUE. A MATRIX GAME PLAN FOR WORLDWIDE FLOW OF 100,000 REFUGEES INTO THE COUNTRY WAS PREPARED FOR THE REVIEW OF MINISTER CLAUDETTE WERLEIGH. COL LIMA ALSO MET WITH AMEMBASSY POLITICAL OFFICER, MR. GENE CHRISTY TO BRIEF HIM ON COL LIMA'S ACTIVITIES AT THE FOREIGN MINISTRY AND TO RECEIVE HIS GUIDANCE ON VARIOUS ISSUES.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	Eric Schwartz to Kristen Cicio et al. re: Haitian Migration Policy (4 pages)	11/18/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

RESTRICTION CODES

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

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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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.

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

b(1) National security classified information [(b)(1) of the FOIA]
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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Schwartz to Melaine Darby et al. re: Haitian Migration Policy (4 pages)	11/18/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. email	Schwartz to Kurt Campbell re: Urgent Action (6 pages)	11/21/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

RESTRICTION CODES

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. email	Rossin to Schwartz re: Haiti Migrants (6 pages)	11/23/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. email	Schwartz to Richard Clarke re: Memo to TL (1 page)	11/30/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

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Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. email	Alan Kreczko to James Baker re: Aristide Gtmo Videotape (2 pages)	12/01/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

RESTRICTION CODES

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Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
009. email	Robert Malley to Darby and Ardenia Hawkins re: Panama Safehaven (2 pages)	12/05/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
010. email	Malley to Schwartz re: Panetta Memo (3 pages)	12/07/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

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M S M a i l

DATE-TIME 13 December 94 15:24

FROM Schwartz, Eric P.

CLASSIFICATION ~~CONFIDENTIAL~~

SUBJECT Subject: [CONFIDENTIAL]CUBA MEETING

TO Cicio, Kristen K.
Darby, Melanie B.
Emery, Mary C.
Gray, Wendy
Hall, Wilma G.
Hawkins, Ardenia R.
Millison, Cathy L.
Veit, Katherine M.
Wolin, Neal S.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Please pass to Sandy.

Sandy:

If your meeting on Cuba with Mort and Peter is to include the issue of disposition of the migrants over the long term, I wonder if I might attend.

I have a number of ideas about how we might deal effectively with this issue, the resolution of which will impact on our overall refugee policies.

Eric

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By ML NARA, Date 2/28/11
2011-1029-F

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
011. email	Malley to Rocha and Schwartz re: Cuba-GTMO (12 pages)	12/13/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
012. email	Malley to Feinberg and Rocha re: GTMO End-Game (12 pages)	12/15/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
013. email	Malley to Schwartz re: GTMO-Summary (3 pages)	12/19/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

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Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
014. email	Morton Halperin to Schwartz re: Haiti Migrant Game Plan (2 pages)	12/21/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
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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.

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

- 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]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- 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]

M S M a i l

DATE-TIME 22 December 94 19:24

FROM Schwartz, Eric P.

CLASSIFICATION ~~CONFIDENTIAL~~

SUBJECT Subject: [~~CONFIDENTIAL~~]Haitian Migrants at GTMO

TO Atkin, Timothy J.
Beers, Rand R.
Brown, Dallas
Cicio, Kristen K.
Clarke, Richard A.
Cooper, Kathleen H.
Darragh, Sean J.
Emery, Mary C.
Hall, Wilma G.
Halperin, Morton H.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Richardson, Craig
Roundtree, Beverly J.
Schwartz, Eric P.
Simon, Steven N.
Veit, Katherine M.
Wolin, Neal S.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Please pass to Sandy

We've done more scrubbing of the time-line, but it will be extremely difficult to guarantee that the process will be finished before January 20 without major problems (and mistakes). Let me explain:

We need tomorrow and next week -- which is December 25 - 31 -- to:

1. Ensure the Haitian Government will acquiesce in involuntary return.
2. Distribute and present detailed announcements in the camps, explaining that the jig is up -- volunteer with our jobs program or go home involuntarily.
3. Finalize the AID/PRM jobs program.

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By ms NARA, Date 3/4/16
201-1039-F

4. Notify INS officials that they will need to travel to Guantanamo, make travel arrangements, and train them for the process of review.

We then need the next week -- January 1 - 8 -- to:

1. Get INS officials down to Guantanamo, having been trained.
2. Begin the review process for anyone who claims they can't go back.

INS can start that on or about January 5 and might be able to finish within a week or so. However, if there are a large number of people to examine, the process might take longer. And while we can always deploy additional INS officials, there are other bottlenecks -- such as finding enough capable Creole interpreters on very short notice just after the Christmas/New Year's holidays. Hence, we estimate that this process could run out until about January 20.

Does this work?

On another issue, you should know that there are about 200 unaccompanied minors who are in the camps at Guantanamo. In their suit, lawyers for the Haitians have argued that the unaccompanied Haitian minors should be treated like their Cuban counterparts and paroled in. We have responded in court that the UNHCR is conducting reviews of all these cases and is resolving them "in the best interests of the child." In some cases, that has meant that the children enter the U.S.; in most cases, it means the children go back to Haiti as that is where most of their parents are. But this UNHCR process will not/not be complete before January 20. Unless I hear otherwise from you, I will make sure the military knows that these cases are on a separate track. I don't see a problem here. If, however, you want all of these children off Guantanamo by January, we will have to discuss with Justice litigators.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
015. email	Rocha to Tyler Beardsley et al. re: FW: Cuba Idea (3 pages)	12/23/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
NSC Emails
MSMail-Record (Sept 94-Sept 97) ([Schwartz and Cuba...])
OA/Box Number: 590000

FOLDER TITLE:

[11/02/1994-12/29/1994]

2011-1039-F
rs1851

RESTRICTION CODES

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

- 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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M S M a i l

DATE-TIME 29 December 94 10:13

FROM Rocha, Victor M.

CLASSIFICATION UNCLASSIFIED

SUBJECT Haiti Points for Lake/Hamilton Breakfast [UNCLASSIFIED]

TO Beers, Rand R.
Halperin, Morton H.
Schwartz, Eric P.
Simon, Steven N.

CARBON_COPY Cooper, Kathleen H.
Danvers, William C.

TEXT_BODY

Bill Danvers has requested talking points for a Lake/Lee Hamilton breakfast on a number of issues including Haiti. I have prepared the attached draft. Please make suggestions, deletions, additions etc. as you see fit. Thanks

[[LAKEHAM.DOC : 2577 in LAKEHAM.DOC]]

ATTACHMENT
FILE DATE 29 December 94 10:7

ATTACHMENT
FILE NAME LAKEHAM.DOC

TALKING POINTS FOR LAKE - HAMILTON BREAKFAST

Elections

- Preparations for the elections were slowed by negotiations for naming a provisional electoral council to organize and supervise the elections.
- Its members have been chosen and we are now awaiting the passage of an electoral law.
- The election planning and the campaign will now move forward. We expect the Council to set an election date, which will likely be in March or April.

Concerns about the Fad'H

- We were made aware by the GOH about the future of the Fad'H, and we find the decision to limit the Fad'H to 1,500 soldiers to be reasonable.
- Recent disturbances by dissatisfied Fad'H members are now under control.
- We are now working closely with the GOH to ensure that the program to reduce the Fad'H is carried out carefully in order to reassure enlisted personnel and reduce the likelihood of additional protests.

Haitian Migrants

- We have initiated a program at Guantanamo that offers a cash incentive to Haitians to facilitate their return to Haiti as well as the possibility of employment for two to four months in USAID-supported jobs programs in Haiti.
- Any Haitians who do not volunteer for this program by January 5 will become subject to involuntary repatriation.
- There may be a handful of Haitians who cannot return to Haiti safely and who will be offered continued safe haven. No Haitians presently at Guantanamo will be settled in the U.S.

MNF/UNMIH Transition

- Relations in the field between the Multinational Force and the advance team of the UN Mission in Haiti have been very cooperative.
- We held a successful planning conference with the UN here in Washington on December 5 for the transition from the MNF to UNMIH.
- The Security Council will adopt a resolution by the end of the month to formalize the transition from the MNF to UNMIH, which should follow in late February or March.

Funding for Haiti Operations

- Because of the way events developed during the Haiti crisis, it was not possible for the Administration to plan for expenditures.
- As a result, we have been funding the implementation of our Haiti policy through reprogramming of resources.
- We realize that these reprogramming measures have been unpopular in Congress, and we regret that circumstances did not allow for our

Haiti policy to be funded through normal procedures.

- Congressional displeasure over the funding issues should not cloud the fundamental success of our policy, which has succeeded in restoring democracy to Haiti, stopping the outflow of migrants, curtailing human rights abuses in Haiti, providing the people of Haiti with hope, and reminding the world that the U.S. lives up to its commitments.