

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Eric Schwartz to James Baker and Alan Kreczko re: Interdiction (5 pages)	05/03/1995	P1/b(1)

COLLECTION:

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

FOLDER TITLE:

[05/02/1995-06/29/1995]

2011-1039-F

rs1853

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]

M S M a i l

DATE-TIME 02 May 95 10:57
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT guidance on uams [UNCLASSIFIED]
TO Cooper, Kathleen H.
Halperin, Morton H.
Lennon, John E
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY
Rob:

Here you go.

[[HAITI92.DOC : 2652 in HAITI92.DOC]]
**ATTACHMENT
FILE DATE** 2 May 95 10:56
**ATTACHMENT
FILE NAME** HAITI92.DOC
0251

Unaccompanied Minors at Guantanamo Bay

Background

After the restoration of democracy in Haiti and the return of Haitians who were in the safe haven at Guantanamo, some 320 Haitians unaccompanied minors remained at Guantanamo Bay. Under the guidance of the UN High Commissioner for Refugees, we are seeking to resolve these cases based on a case-by-case, "best interests of the child" determination. In some cases, this means return to Haiti; in other cases, it means entry into the U.S. The population of children at the camp -- almost all teenagers -- is now about 250, and we expect the process to be completed during the month of June.

Key Points

- ù The restoration of democracy in Haiti has permitted the repatriation of thousands of Haitian migrants from Guantanamo.

ù However, the disposition of the unaccompanied children at Guantanamo presents sensitive issues that we are seeking to resolve in a humane manner consistent with established international practice.

ù With this in mind, we have sought the assistance of specialists from the UNHCR and other organizations, and we are conducting case-by-case evaluations to determine the disposition that serves the "best interests of the child."

ù In some cases, especially where the child's parents or close relatives are in Haiti, this may mean that the child will be repatriated.

ù In other cases, U.S. resettlement better meets the child's needs and we will authorize U.S. entry for such children.

ù This is a complex procedure involving tracing of families, home-site visits and interviews with family members, but we are doing it as quickly as possible and hope to complete the process early this summer.

ù We think this procedure is most responsible to the needs and the interests of the children.

M S M a i l

DATE-TIME 02 May 95 14:28
FROM Cicio, Kristen K.
CLASSIFICATION ***** CLASSIFICATION NOT FOUND *****
SUBJECT FW: Guidance on interdictions: Prompt attention requested
TO Schwartz, Eric P.
CARBON_COPY Atkin, Timothy J.
Bass, Peter E.
Beers, Rand R.
Brown, Dallas
Cicio, Kristen K.
Clarke, Richard A.
Cooper, Kathleen H.
Cressey, Roger W.
Emery, Mary C.
Feinberg, Richard E.
Hall, Wilma G.
Halperin, Morton H.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Rocha, Victor M.
Roundtree, Beverly J.
Simon, Steven N.
Veit, Katherine M.

TEXT_BODY

Eric,

Sandy initialed "proceed"...

Kris

From: Schwartz, Eric P.
To: @NSA - Nat'l Security Advisor
CC: /R, Record at A1; Feinberg, Richard E.; Rocha, Victor M.; Schwartz, Eric P.; @DEMOCRACY - Democracy Affairs
Subject: Guidance on interdictions: Prompt attention requested
[CONFIDENTIAL]
Date: Tuesday, May 02, 1995 10:00 AM

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By ML NARA, Date 3/26/16
2011-122-F

[[CUBA63.DOC : 3673 in CUBA63.DOC]]

Please pass to Tony and Sandy, from Mort and Eric, as soon as possible:

We have attached draft internal, repeat internal, guidance on interdictions of Cubans.

Eric and Mort are satisfied that this guidance meets both our immigration control and our refugee protection concerns. It can also be modified if circumstances so demand.

We have had informal consultations with Justice, State, OSD/Humanitarian Affairs and INS, all of whom are on board (so to speak). We would like to inform agencies of this guidance today, as we want to be prepared if we have any interdictions.

Proceed _____

Need to discuss _____

ATTACHMENT
FILE DATE

2 May 95 10:18

ATTACHMENT
FILE NAME

CUBA63.DOC
~~CONFIDENTIAL~~
~~CONFIDENTIAL~~
Declassify on: OADR

INTERNAL GUIDANCE FOR INTERDICTED CUBANS

(Note: this internal guidance will be subject to review and modification as circumstances warrant.)

As indicated in the AG's statement, migrants interdicted at sea or in Guantanamo will be advised that they will be taken back to Cuba, where U.S. consular officials will assist those who wish to apply to come to the U.S. through already established mechanisms. They will be told that the Government of Cuba has provided a commitment to the United States that they will suffer no adverse consequences or reprisals of any sort for irregular departure or for making application for refugee status.

They will also be told that those persons who seek resettlement in the United States as refugees must use the in-country refugee program.

One or more interpreters will make themselves present among the migrants.

Any migrant who, even after the explanation referred to above, expresses the need for protection which he or she believes cannot be satisfied by applying at the U.S. Interests Section will be interviewed by an INS officer. If that INS officer determines that the migrant has a credible claim of a threat to his or her life or freedom or other serious violations of his or her human rights upon return due to race, religion, nationality, membership in a particular social group or political opinion, the migrant will be held on the Coast Guard cutter, informed that he may be eligible for protection outside of Cuba, but also informed that he will not be assured of U.S. resettlement. He will be informed that only those who interview at the U.S. Interests Section in Havana will be assured of U.S. resettlement.

Withdrawal/Redaction Marker

Clinton Library

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

M S M a i l

DATE-TIME 04 May 95 15:51

FROM Malley, Robert

CLASSIFICATION ~~CONFIDENTIAL~~

SUBJECT Cuba funding [~~CONFIDENTIAL~~]

TO Bass, Peter E.
Cicio, Kristen K.
Emery, Mary C.
Hall, Wilma G.
Veit, Katherine M.

CARBON_COPY Cooper, Kathleen H.
Halperin, Morton H.
Schwartz, Eric P.

TEXT_BODY

Please pass to Sandy per his request:

[[FUND.DOC : 3851 in FUND.DOC]][[FUND3.DOC : 3852 in
FUND3.DOC]][
FUND4.DOC : 3853 in FUND4.DOC]]

ATTACHMENT
FILE DATE 4 May 95 15:50

ATTACHMENT
FILE NAME FUND.DOC
~~CONFIDENTIAL~~
~~CONFIDENTIAL~~
Declassify on: OADR

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

May 3, 1995

ACTION

MEMORANDUM FOR SANDY BERGER

THROUGH: MORTON HALPERIN

FROM: ROB MALLEY

SUBJECT: Assistance to Florida for Cuban Migrants

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By *MM* NARA, Date *3/21/16*
2011-1039-F

The decision to admit the Cuban migrants from Guantanamo has generated requests from Governor Chiles and Senator Graham for additional assistance to Florida. In FY 95, the decision means that roughly 3,000 more Cubans than previously anticipated will be admitted; in FY 96, about 7,000 more than expected (given the concurrent reduction in admissions from Cuba by 5,000). The additional migrants will be mainly adult males. Typically about 75-85% of the parolees settle in Florida.

The Governor is preparing a request for assistance which we will be receiving by mid-day. Mort talked to Senator Graham this morning. Graham indicated again his sense of urgency about this. The attached memorandum discusses the impact of the decision on Florida and possible sources of funding. We would like to meet with you to discuss how to proceed with the memorandum -- whether you want to send it on formally, and if so with what clearances (OMB, etc.). or whether you want to use it to talk to Leon Panetta.

Our initial judgment is that we should move quickly and make available to Florida assistance from the Department of Justice's Immigration Emergency Fund. If the assistance does not exceed \$20 million (and if it is solely for reimbursement to a state), the Attorney General can make the decision, and there is no requirement for a presidential declaration of emergency. At the same time, use of the monies for Florida would make more politically palatable for us to allocate \$6 million from the IEF for repatriation of smuggled migrants (which would require a declaration of immigration emergency).

Concurrence by: Erid Schwartz

Attachment

Tab A Discussion Memorandum

Tab B Federal Assistance to Florida

**ATTACHMENT
FILE DATE**

4 May 95 15:50

**ATTACHMENT
FILE NAME**

FUND3.DOC

CUBAN MIGRATION TO FLORIDA

DISCUSSION MEMORANDUM

DATA

ù Under the September 1994 agreement, the U.S. had committed to

admit at least 20,000 Cubans a year.

ù Pursuant to the new arrangement, figures over the next three years will remain the same. However, in FY 95 there will be approximately 3,000 additional Cubans admitted to the U.S., and, in FY 96, an additional 7,000. These will be almost exclusively adult males.

I. What Additional Costs Will Florida Incur as a Result of the Agreement?

ù Given the demographics of the group, this added influx will not result in additional educational costs compared to what was anticipated under the September agreement, nor is it expected to cost the State much in terms of its share of AFDC or medicaid. (Indeed, the number of children expected to be admitted in FY 96 will almost certainly diminish because of the simultaneous decrease in the number of admissions from Cuba and the new practice of returning migrants to Cuba).

ù Instead, the migrants will qualify for refugee cash and medical assistance from the Office of Refugee Resettlement (ORR) for their first eight months in the U.S., which is fully federally funded. (HHS estimates that it will be able to maintain the current eight months of assistance despite the additional influx). After the first eight months, of course, migrants eligible for AFDC or Medicaid could access those funds, of which the state must cover its share.

ù There will be additional costs in terms of other human social services needs (e.g., employment services, orientation, health, language training, criminal justice, etc.). Based on a very preliminary assessment by HHS, we can assume the order of magnitude will be about \$15-20 million.

ù Parolees also will need reception and placement services, especially if we want them to be dispersed to locations other than Florida. However, these costs (roughly \$1,000 per capita) are currently borne by the Community Relations Services. While we will have to address the issue of funding, this will not represent additional costs to Florida.

II. Does Florida Require Additional Assistance?

Governor Chiles will be requesting additional aid for refugee assistance (which will be covered by ORR), to cover for the state's share of AFDC (which will not increase as a result of the recent accord given the demographics of the group), and for social services (which is a real cost and which HHS is assessing).

Florida already receives a disproportionate share of federal assistance for refugees/entrants. This results from several facts:

- ù Unlike all other nationalities, Cuban and Haitian parolees are eligible for refugee program assistance and services (which are totally federally funded) on the same basis as refugees.
- ù Florida is the prime beneficiary of federal targeted assistance to communities most heavily impacted by Cuban/Haitian arrivals

(roughly \$19 million earmarked per year). The rest of targeted assistance is determined on a formula basis, depending on the number of refugees. (The only other State in the country to be allocated some of these funds is New York, with \$700,000). These funds typically are spent on education and health care.

- ù Finally, Florida received a special \$6 million allocation for services in September 94 in addition to the new arrival per capita given to all other states. This increased their core services money for refugees/parolees by 115%. The other 47 states that participate in the refugee program see Florida as having an unfair advantage - especially California which recently lost its earmark, and which receives a far greater share of illegal immigration than does Florida. (See attached data on federal assistance to Florida for Cuban/Haitians for FY 94, Tab B).

The decision to admit the 15,000 migrants at Guantanamo also is mitigated by the reduction in admissions from Cuba, and by the change in the demographic composition of entrants.

Still, Florida appears unpersuaded by the argument that costs will not increase very much given the reduction of entrants from Cuba -- both because many members appear not to have focused on the fact that we would be admitting 20,000 Cubans a year, and because those who had believe the state had not received adequate assistance to address the 20,000 admissions from Cuba per year agreed to last September in any event. Finally, they point out that the additional 10,000 migrants over the next year will add to the state's costs in terms of social services.

Moreover, a distinction with other states can be made in that the additional influx is a direct result of the United States' agreement with Cuba, as opposed to uncontrolled, illegal immigration.

(You should know that in the aftermath of the August 1994 influx, Governor Chiles submitted a request for federal assistance of about \$1 billion from the Immigration Emergency Fund. After reviewing the request, DOJ stated it was willing to provide \$1 million, a sum the Governor rejected).

III. Funding Options

1. HHS/Office of Refugee Resettlement could seek an FY 1995 supplemental and/or a budget amendment for the ORR FY 1996 request to

provide Florida with additional assistance for social services due to recent Cuban arrivals. (There is a program designed for "unanticipated arrivals." The request could be for about \$20 million).

Governor Chiles and Senator Graham's offices have cautioned us against passing the buck to the Congress, and are looking for a more forward (and immediate) gesture from the Administration.

2. Use the Immigration Emergency Fund (IEF) of DOJ pursuant to a presidential declaration of an "immigration emergency" with respect to the Cuban arrivals and Congressional notification. A declaration triggered by the Cuban arrivals would be politically sensitive and might undermine the Administration's position that the decisions made with regard to Cuban paroles will ensure an orderly migration. Moreover, as our first disbursement to a state from IEF, it would likely draw the attention of states such as California, result in demands for increased immigration assistance from other states, and in a possible lawsuit from Governor Wilson. (You should note that, unlike the case of the smuggled migrants, there is no specific appropriation for this purpose).

On the other hand, this situation is distinguishable: The IEF is

designed to provide funds for states or local governments that assist the Attorney General in the administration of U.S. immigration laws. In this instance, Florida would be assisting the AG in the implementation of a decision made by the federal government.

3. The Attorney General can request assistance from a State or local government in meeting urgent demands where the need for assistance arises from the presence of aliens, and she may provide funding to the state or local government from the IEF without a Presidential determination of an immigration emergency. Under this scenario, the AG can provide a maximum of \$20 million in assistance in any fiscal year. Under this option, it could be announced that the President had discussed with the Attorney General the possibility of providing funds to Florida to assist in the implementation of the decision to parole in the Guantanamo migrants, agreed that exigent circumstances existed, and that the AG should exercise her discretion, in consultation with the Governor, to provide IEF funds to Florida.

**ATTACHMENT
FILE DATE**

4 May 95 15:50

**ATTACHMENT
FILE NAME**

FUND4.DOC

FEDERAL ASSISTANCE FOR REFUGEE (AND CUBAN/HAITIAN)

RESETTLEMENT
FY 94

FY 94 US estimates Grants to Florida

Refugee cash, medical \$225,279,951 \$16,000,000
assistance, State
Administration

Social Services Formula 70,681,700 5,231,221

Targeted assistance
Formula 25,457,300 3,036,839

Earmark for Cuban/
Haitian 19,000,000 19,000,000

Special Reprogramming -- 6,000,000

Total \$340,418,951 \$49,268,060

M S M a i l

DATE-TIME 05 May 95 08:35
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT Haitian migration endgame issues [UNCLASSIFIED]
TO Atkin, Timothy J.
Beers, Rand R.
Brown, Dallas
Clarke, Richard A.
Cressey, Roger W.
Eddy, Randolph P.
Lindsey, Wanda
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.

CARBON_COPY Cooper, Kathleen H.
Halperin, Morton H.
Lennon, John E
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert

TEXT_BODY

DICK:

May I obtain your concurrence? I'll then send on to Berger if you agree.

[[HAITI96.DOC : 2096 in HAITI96.DOC]]

**ATTACHMENT
FILE DATE**

5 May 95 8:34

**ATTACHMENT
FILE NAME**

HAITI96.DOC

Haitian Migration Endgame Issues

There are about 400 Haitians at GTMO. About 240 are unaccompanied minors. Some 80 (out of thousands interviewed by INS) have been held in safe haven as INS had reason to be concerned about their safety upon return. The rest are medical hold cases, who will presumably be able to return after their treatment ends.

The Attorney General has requested that we take the following actions on two of these three groups in view of our decision on letting the GTMO Cubans enter.

1. 80 safe haven holds.

These people all seemed to have some good reason to fear return to Haiti according to INS. The AG would like to quietly parole them in. We concur.

2. The 240 unaccompanied minors.

We are continuing the "best interests of the child" determinations. The AG would like us to set a deadline (but not publicize it), perhaps June 30 (she would prefer earlier but would agree to June 30), after which we would look to bring to the U.S. whichever children remain at GTMO. There comes a point at which any disposition is better than indefinite detention at Guantanamo, and we continue to get bad publicity on this issue.

We would revisit this issue in late June, but the AG wanted your agreement in principle to this course of action.

We recommend you approve both these proposals.

Approve 1 and 2 _____

Approve 1 but not 2 _____

Approve 2 but not 1 _____

Disapprove 1 and 2 _____

M S M a i l

DATE-TIME 05 May 95 10:09

FROM Halperin, Morton H.

CLASSIFICATION UNCLASSIFIED

SUBJECT Subject: RE: Haitian migration endgame issues [UNCLASSIFIED]

TO Atkin, Timothy J.
Beers, Rand R.
Brown, Dallas
Clarke, Richard A.
Cressey, Roger W.
Eddy, Randolph P.
Lindsey, Wanda
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.

CARBON_COPY Cooper, Kathleen H.
Halperin, Morton H.
Lennon, John E
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert

TEXT_BODY

I agree with this. Because of the overlap with Cuba I think you should indicate my concurrence.

From: Schwartz, Eric P.
To: @GLOBAL - Global Affairs
CC: /R, Record at A1; @DEMOCRACY - Democracy Affairs
Subject: Haitian migration endgame issues [UNCLASSIFIED]
Date: Friday, May 05, 1995 08:35 AM

<<Attached File: HAITI96.DOC>>

DICK:

May I obtain your concurrence? I'll then send on to Berger if you agree.

M S M a i l

DATE-TIME 05 May 95 17:14
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT haiti points for summary of conclusions [UNCLASSIFIED]
TO Brown, Dallas
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY [[HAITI98.DOC : 4357 in HAITI98.DOC]]

**ATTACHMENT
FILE DATE** 5 May 95 17:13
**ATTACHMENT
FILE NAME** HAITI98.DOC

Dallas:

Check with Dick. This is the right guidance, but you should make sure he's ok with it.

Eric

ù State will attempt to negotiate a narcotics interdiction agreement with the GOH which would enable the Coast Guard to stop and board suspect vessels.

ù We will maintain the current practice on interdicted Haitians, consistent with worldwide policy. Interdicted Haitians will be informed that they are to be returned. If any come forward and claim to have a need for protection from return, USCG will convene PD 27 to determine disposition. As a general matter (and consistent with guidance toward Cubans), those deemed to have a credible claim of a threat to their life or freedom or other serious violations of their human rights upon return due to race, religion, nationality, membership in a particular social group or political opinion, the migrant will not be returned immediately. If the migrant has a credible claim, he or she will be given a more thorough screening. If it is determined that he or she is not a refugee, then the migrant will be returned. Otherwise, the migrant will be held pending disposition of the case but is not to be resettled in the U.S.

M S M a i l

DATE-TIME 06 May 95 11:04
FROM Halperin, Morton H.
CLASSIFICATION ~~CONFIDENTIAL~~
SUBJECT FUNDING FOR FLORIDA [~~CONFIDENTIAL~~]
TO Schwartz, Eric P.
CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Sandy wants to move quickly on this. Since both Rob and Mike will be out on Monday, I would appreciate it if you could work this with OMB, DPC, Justice, and HHS. Thanks[[3483A.DOC : 2873 in 3483A.DOC]][[3483B.DOC : 2874 in 3483B.DOC]][[3483C.DOC : 2875 in 3483C.DOC]][[3483D.DOC : 2876 in 3483D.DOC]][[3483E.DOC : 2877 in 3483E.DOC]]

ATTACHMENT
FILE DATE

5 May 95 22:26

ATTACHMENT
FILE NAME

3483A.DOC
~~CONFIDENTIAL~~
3483
~~CONFIDENTIAL~~
Declassify on: OADR

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~

May 5, 1995

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: MORTON HALPERIN

FROM: ROB MALLEY/MIKE LONGORIA

SUBJECT: Assistance to Florida for Cuban Migrants

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By MS NARA, Date 3/28/11
2011-1097-f

Letters have been sent to both Governor Chiles and Senator Graham. The explicit promise made was to work urgently to determine how best we could be of assistance to Florida in meeting the requirements imposed by our recent announcement on Cuban migrants. There are

currently three funding options available to provide relief to Florida. An HHS budget amendment option for FY 96 is not recommended by either Graham or Chiles and would not cover FY 95 expenses. Use of the Immigration Emergency Fund (IEF) pursuant to a presidential declaration of an "immigration emergency" is fraught with significant political and legal risks. The third option entails using the IEF without a presidential declaration. Under this option the Attorney General can provide a maximum of \$20 million in assistance in any fiscal year. The Justice Department is working with Florida to determine what specific costs they will incur as a result of the decision, but a tentative HHS assessment suggests that \$25 million is needed for Florida. The AG could authorize of the use of \$20 million now. The remainder of required funds could be addressed after Justice confers with Florida.

RECOMMENDATION

That you forward memorandum at Tab I to Leon Panetta approving the use of IEF funds (\$20M).

Approve _____ Disapprove _____

Attachment

Tab I Lake Memo to Chief of Staff

Tab A Discussion Memorandum

Tab B HHS Federal Funds Data Sheet/Recommendation Figures

**ATTACHMENT
FILE DATE**

5 May 95 22:20

**ATTACHMENT
FILE NAME**

3483B.DOC

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

Declassify on: OADR

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

May 5, 1995

ACTION

MEMORANDUM FOR LEON PANETTA

FROM: ANTHONY LAKE
ALICE RIVLIN

SUBJECT: Assistance to Florida for Cuban Migrants

Letters have been sent to both Governor Chiles and Senator Graham. The explicit promise made was to work urgently to determine how best we could be of assistance to Florida in meeting the requirements imposed by our recent announcement on Cuban migrants. There are currently three funding options available to provide relief to Florida. An HHS budget amendment option for FY 96 is not recommended by either Graham or Chiles and would not cover FY 95 expenses. Use of the Immigration Emergency Fund (IEF) pursuant to a presidential declaration of an "immigration emergency" is fraught with significant political and legal risks. The third option entails using the IEF without a presidential declaration. Under this option the Attorney General can provide a maximum of \$20 million in assistance in any fiscal year. The Justice Department is working with Florida to determine what specific costs they will incur as a result of the decision, but a tentative HHS assessment suggests that \$25 million is needed for Florida. The AG could authorize the use of \$20 million now. The remainder of required funds could be addressed after Justice confers with Florida.

RECOMMENDATION

That you approve the use of the IEF non-declaration funds (\$20 million) and authorize OMB to ask the Attorney General to disburse funds to Florida.

Approve _____ Disapprove _____

Attachment

Tab A Discussion Memorandum

Tab B HHS Federal Funds Data Sheet/Recommendation Figures

ATTACHMENT
FILE DATE

5 May 95 17:10

ATTACHMENT
FILE NAME

3483C.DOC

CUBAN MIGRATION TO FLORIDA

DISCUSSION MEMORANDUM

DATA

ù Under the September 1994 agreement, the U.S. had committed to admit at least 20,000 Cubans a year.

ù Pursuant to the new arrangement, figures over the next three years will remain the same. However, in FY 95 there will be approximately 3,000 additional Cubans admitted to the U.S., and, in FY 96, an additional 7,000. These will be almost exclusively adult males.

I. What Additional Costs Will Florida Incur as a Result of the Agreement?

ù Given the demographics of the group, this added influx will not result in additional educational costs compared to what was anticipated under the September agreement, nor is it expected to cost the State much in terms of its share of AFDC or Medicaid. (Indeed, the number of children expected to be admitted in FY 96 will almost certainly diminish because of the simultaneous decrease in the number of admissions from Cuba and the new practice of returning migrants to Cuba).

ù Instead, the migrants will qualify for refugee cash and medical assistance from the Office of Refugee Resettlement (ORR) for their first eight months in the U.S., which is fully federally funded. (HHS estimates that it will be able to maintain the current eight months of assistance despite the additional influx). After the first eight months, of course, migrants eligible for AFDC or Medicaid could access those funds, of which the state must cover its share.

ù There will be additional costs in terms of other human social services needs (e.g., employment services, orientation, health, language training, criminal justice, etc.). Based on a very preliminary assessment by HHS, we can assume the order of magnitude will be about \$15-20 million.

ù Parolees also will need reception and placement services, especially if we want them to be dispersed to locations other than Florida. However, these costs (roughly \$1,000 per capita) are currently borne by the Community Relations Services. While we will have to address the issue of funding, this will not represent additional costs to Florida.

II. Does Florida Require Additional Assistance?

Governor Chiles will be requesting additional aid for refugee assistance (which will be covered by ORR), to cover for the state's share of AFDC (which will not increase as a result of the recent accord given the demographics of the group), and for social services

(which is a real cost and which HHS is assessing).

Florida already receives a disproportionate share of federal assistance for refugees/entrants. This results from several facts:

- ù Unlike all other nationalities, Cuban and Haitian parolees are eligible for refugee program assistance and services (which are totally federally funded) on the same basis as refugees.
- ù Florida is the prime beneficiary of federal targeted assistance to communities most heavily impacted by Cuban/Haitian arrivals

(roughly \$19 million earmarked per year). The rest of targeted assistance is determined on a formula basis, depending on the number of refugees. (The only other State in the country to be allocated some of these funds is New York, with \$700,000). These funds typically are spent on education and health care.

- ù Finally, Florida received a special \$6 million allocation for services in September 94 in addition to the new arrival per capita given to all other states. This increased their core services money for refugees/parolees by 115%. The other 47 states that participate in the refugee program see Florida as having an unfair advantage - especially California which recently lost its earmark, and which receives a far greater share of illegal immigration than does Florida. (See attached data on federal assistance to Florida for Cuban/Haitians for FY 94, Tab B).

The decision to admit the 15,000 migrants at Guantanamo also is mitigated by the reduction in admissions from Cuba, and by the change in the demographic composition of entrants.

Still, Florida appears unpersuaded by the argument that costs will not increase very much given the reduction of entrants from Cuba -- both because many members appear not to have focused on the fact that we would be admitting 20,000 Cubans a year, and because those who had believe the state had not received adequate assistance to address the 20,000 admissions from Cuba per year agreed to last September in any event. Finally, they point out that the additional 10,000 migrants over the next year will add to the state's costs in terms of social services.

Moreover, a distinction with other states can be made in that the additional influx is a direct result of the United States' agreement with Cuba, as opposed to uncontrolled, illegal immigration.

(You should know that in the aftermath of the August 1994 influx, Governor Chiles submitted a request for federal assistance of about \$1 billion from the Immigration Emergency Fund. After reviewing the request, DOJ stated it was willing to provide \$1 million, a sum the Governor rejected).

III. Funding Options

1. HHS/Office of Refugee Resettlement could seek an FY 1995 supplemental and/or a budget amendment for the ORR FY 1996 request to provide Florida with additional assistance for social services due to recent Cuban arrivals. (There is a program designed for "unanticipated arrivals." The request could be for about \$20 million).

Governor Chiles and Senator Graham's offices have cautioned us against passing the buck to the Congress, and are looking for a more forward (and immediate) gesture from the Administration.

2. Use the Immigration Emergency Fund (IEF) of DOJ pursuant to a presidential declaration of an "immigration emergency" with respect to the Cuban arrivals and Congressional notification. A declaration triggered by the Cuban arrivals would be politically sensitive and might undermine the Administration's position that the decisions made with regard to Cuban paroles will ensure an orderly migration. Moreover, as our first disbursement to a state from IEF, it would likely draw the attention of states such as California, result in demands for increased immigration assistance from other states, and in a possible lawsuit from Governor Wilson. (You should note that, unlike the case of the smuggled migrants, there is no specific appropriation for this purpose).

On the other hand, this situation is distinguishable: The IEF is

designed to provide funds for states or local governments that assist the Attorney General in the administration of U.S. immigration laws. In this instance, Florida would be assisting the AG in the implementation of a decision made by the federal government.

3. The Attorney General can request assistance from a State or local government in meeting urgent demands where the need for assistance arises from the presence of aliens, and she may provide funding to the state or local government from the IEF without a Presidential determination of an immigration emergency. Under this scenario, the AG can provide a maximum of \$20 million in assistance in any fiscal year. Under this option, it could be announced that the President had discussed with the Attorney General the possibility of providing funds to Florida to assist in the implementation of the decision to parole in the Guantanamo migrants, agreed that exigent circumstances existed, and that the AG should exercise her discretion, in consultation with the Governor, to provide IEF funds to Florida.

The Justice Department cautions however, that even though the option for providing up to \$20 million is available that any money

provided must at least meet a simple test of actual projected expenses. Some degree of imagination is required to find an expense category not covered by existing federal programs. Under the guide of "exigent circumstances" what are the actual costs to be borne by the State of Florida that will not already be covered? The Justice view is simply that they have yet to hear of any unique state expenses, but are willing to continue the dialogue with Florida.

**ATTACHMENT
FILE DATE**

5 May 95 22:20

**ATTACHMENT
FILE NAME**

3483D.DOC

FEDERAL ASSISTANCE FOR REFUGEE (AND CUBAN/HAITIAN)
RESETTLEMENT
FY 94

FY 94 US estimates Grants to Florida

Refugee cash, medical \$225,279,951 \$16,000,000
assistance, State
Administration

Social Services Formula 70,681,700 5,231,221

Targeted assistance
Formula 25,457,300 3,036,839

Earmark for Cuban/
Haitian 19,000,000 19,000,000

Special Reprogramming -- 6,000,000

Total \$340,418,951 \$49,268,060

**ATTACHMENT
FILE DATE**

6 May 95 11:1

**ATTACHMENT
FILE NAME**

3483E.DOC

HHS PROJECTED FUNDING REQUIREMENTS
FOR FLORIDA FY 95

Estimation of Number of Immigrants

10,000 paroled from Guantanamo thus far
1,000 paroled from Krome/Port Isabella
10,000 additional parolees this FY from Guantanamo
1,500 Haitian refugees from other countries projected
20,000 Cubans paroled from Havana

45,000 Total (of these 80% or 36,000 will most likely remain in Florida)

Projected Needs

In addition to the federally reimbursed cash and medical assistance, social services will need to be boosted to address the impact primarily in Dade County. Specifically, funds should be made available for medical services for refugees/entrants once their eighth month eligibility period expires, schools, and employment services. Flexibility in proposing services is recommended as the specific service needs in respective communities will have to be addressed.

Arrivals FY 94 14,000 Total Target Assistance \$33M

Arrivals FY 95 36,000 Total Target Assistance \$28M

Recommended Additional
For FY 95 \$25M

M S M a i l

DATE-TIME 07 May 95 21:16
FROM Feinberg, Richard E.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: UNHCR STATEMENT ON CUBAN MIGRATION
[UNCLASSIFIED]
TO Schwartz, Eric P.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Good work, Eric!

From: Schwartz, Eric P.
To: @NSA - Nat'l Security Advisor
CC: /R, Record at A1; Feinberg, Richard E.; Rocha, Victor M.; @GLOBAL -
Global Affairs; @DEMOCRACY - Democracy Affairs
Subject: UNHCR STATEMENT ON CUBAN MIGRATION [UNCLASSIFIED]
Date: Friday, May 05, 1995 12:41 PM

Please pass to Tony and Sandy:

UNHCR issued a positive statement on our new Cuba migration policy.

Some background:

Just before the announcement on Cuban migration, I called Mrs. Ogata's deputy, Gerald Walzer, and briefed him on our policy change. (At the same time, Phyllis Oakley spoke to another high-level aide to Ogata and Brunsen McKinley spoke to UNHCR's Washington representative.)

I asked Gerald not to criticize us on involuntary return, and instead to focus on the relief we were providing the Cubans on GTMO. I also told him of the AG's public statement that "measures will be taken to ensure that persons who claim a genuine need for protection which they believe cannot be satisfied by applying at the U.S. Interests Section in Havana will be examined before return."

Knowing that UNHCR would have to comment publicly on the return issue, I asked that they not make any snap/negative judgments, but rather be aware of the AG's statement and be willing to work with us on this issue.

Here is the statement they issued:

UNHCR welcomes the announcement by the United States Government that the Cubans at the U.S. Naval Base at Guantanamo, Bay, Cuba will be given an opportunity to enter the United States and that, thus, a humanitarian solution has been found for this group.

Regarding the announced U.S. policy toward future outflows from Cuba, the U.S. government has reiterated to UNHCR its intent to honour its commitments to refugee protection principles, in particular, the well-known principle of non-refoulment. We look forward to obtaining further details of the new policy and to working with the U.S. government to ensure that those in need of protection have access to proper procedures in accordance with international standards.

M S M a i l

DATE-TIME 08 May 95 13:20
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT Guidance [UNCLASSIFIED]
TO Cooper, Kathleen H.
Halperin, Morton H.
Lennon, John E
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY
OK?
[[CUBA66.DOC : 3351 in CUBA66.DOC]]
ATTACHMENT
FILE DATE 8 May 95 13:18
ATTACHMENT
FILE NAME CUBA66.DOC
FOR OFFICIAL USE ONLY
FOR OFFICIAL USE ONLY
Declassify on: OADR

INTERNAL GUIDANCE FOR INTERDICTED CUBANS

As indicated in the AG's statement, migrants interdicted at sea or in Guantanamo will be advised that they will be taken back to Cuba, where U.S. consular officials will assist those who wish to apply to come to the U.S. through already established mechanisms. They will be told that the Government of Cuba has provided a commitment to the United States that they will suffer no adverse consequences or reprisals of any sort for irregular departure or for making application for refugee status.

They will also be told that those persons who seek resettlement in the United States as refugees must use the in-country refugee program; that this is the only route that would guarantee U.S. resettlement for those who are deemed to be refugees.

One or more interpreters will make themselves present among the

migrants.

Any migrant who, even after the explanation referred to above, expresses an unwillingness or inability to return due to a fear of abuse upon return will be assessed by the INS on board.

If that INS officer determines that the migrant has a credible claim of a threat to his or her life or freedom or other serious violations of his or her human rights upon return due to race, religion, nationality, membership in a particular social group or political opinion, the migrant will be protected outside Cuba pending further investigation (which might involve additional processing aboard ship).

Before making this determination, the INS officer will determine whether the migrant has a credible fear of harassment, intimidation or persecution in connection with being processed in the in-country system. Such judgment should be a highly significant factor in determining whether the migrant has a credible fear that he or she will suffer, upon return, loss of life or freedom or other serious violations of human rights.

Rev. 5/8/95

M S M a i l

DATE-TIME 08 May 95 15:40
FROM Andricos, George M.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: FW: Coast Guard Bill; [UNCLASSIFIED]
TO Atkin, Timothy J.
Baker, James E.
Beers, Rand R.
Bell, Robert G.
Blakeman, Earle C.
Brown, Dallas
Clarke, Richard A.
Cooper, Kathleen H.
Cressey, Roger W.
Danvers, William C.
Eddy, Randolph P.
Feinberg, Richard E.
Hahn, Keith D.
Halperin, Morton H.
Herrington, David E.
Hunerwadel, Joan S.
Jensen-Moran, Jeri L.
Kreczko, Alan J.
Lennon, John E.
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Mazzuchi, Anthony D.
Mitchell, Calvin A.
Norman, Marcia G.
Pease, Bruce E.
Reed, James W.
Rice, Susan E.
Rocha, Victor M.
Ross, Thomas B.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Silger, Ralph
Simon, Steven N.
Spalter, Jonathan H.
Tenet, George J.
Wilhelm, Richard J.

CARBON_COPY

Andricos, George M.
Funches, Christina L.

TEXT_BODY

Re note below, Coast Guard believes Diaz-Ballart will introduce an amendment prohibiting the Coast Guard from picking up refugees at sea--which seems to be an odd way to go about helping refugees-- but they haven't seen language yet. They'll call us when they know more.

From: Andricos, George M.

To: @DEMOCRACY - Democracy Affairs; @HAITI; @INTERAM - Inter-American;

@GLOBAL - Global Affairs; @LEGAL - Legal Advisor

CC: /R, Record at A1; @LEGISLAT-Legislative Affairs

Subject: Coast Guard Bill; [UNCLASSIFIED]

Date: Monday, May 08, 1995 01:03 PM

The Coast Guard Authorization Bill, HR 1361, will be taken up by the House on Tuesday. Rep. Lincoln Diaz-Ballart is expected to use the occasion to debate Administration policy on Cuba and possibly Haiti. We know of no specific amendments at this time or if, in fact, any will be offered. We are working with State and committee staff to monitor the situation and will keep you advised. This is a heads up that there is a potential for amendments that we may have to respond to on a quick turn around basis.

M S M a i l

DATE-TIME 09 May 95 14:09
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT DECISION MEMO FOR BERGER [UNCLASSIFIED]
TO Clarke, Richard A.
Feinberg, Richard E.
Halperin, Morton H.
CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY
NEED CONCURRENCES ASAP PLEASE
[[HAITI99.DOC : 3677 in HAITI99.DOC]]

ATTACHMENT
FILE DATE 9 May 95 13:51

ATTACHMENT
FILE NAME HAITI99.DOC

INITIAL DRAFT: NEED TO DO SOME FACT-CHECKING

Haitian Migration Endgame Issues

The Issue

There are about 400 Haitians at GTMO. About 240 are unaccompanied minors. Some 33 cases (65 individuals) have been held in safe haven after INS screening. The remaining 100 are medical hold cases, most of whom are being treated TB and will be completed with their treatment over the next several months.

1. 33 safe haven hold cases (65 individuals).

According to the INS, most of these cases involved people who experienced trauma so severe in Haiti that INS believed it inappropriate to return. It is a well-accepted humanitarian principle in refugee law and practice that, even with changed circumstances in the country of origin, those who experienced atrocious harm should not be expected to repatriate.

INS also concluded that a minority among the 35 had justified fears of serious harm about return, in some cases due to their being high profile figures who had powerful political enemies.

Arguing in favor of parole for all members of this group, Justice notes that their entry could be done very quietly and is justified on humanitarian grounds. Moreover, sending this group of people back would be compared unfavorably to our policy of permitting all the GTMO Cubans to come into the United States.

2. The 240 unaccompanied minors.

We are continuing the "best interests of the child" determinations. The AG would like us to set an deadline (but not publicize it) -- perhaps June 30 -- after which we would look to bring to the U.S. whichever children remain at GTMO. The logic behind this position is that there comes a point at which any disposition is better than indefinite detention of young people at Guantanamo, and we continue to get bad publicity on this issue.

We would revisit this issue in late June, but the AG wanted your agreement in principle to this course of action.

3. Medical hold cases

There are about 100 persons in this category, 73 of whom are TB cases. Most of the TB treatments would be completed by summer's end, and all will be completed by December 31. We anticipate repatriating TB cases upon completion of treatment.

In addition to the 73 TB cases, there are about 20 individuals in need of serious medical treatment (e.g., conditions which, if not treated, could be life-threatening) not available at GTMO and not available in Haiti. In some cases, we are attempting to bring appropriate medical personnel to Guantanamo (e.g., cataract surgery). After appropriate treatment, the individual could be repatriated.

Where that is not possible, Justice intends to bring the migrant to the United States for medical treatment, after which the individual would be returned to Haiti (unless he or she made application for asylum or adjustment of status to legal alien).

Justice and PHS doctors believe that we cannot repatriate migrants with serious medical conditions that are now being treated but which, if the migrant were returned, would remain untreated and quite possibly result in the death of the migrant.

RECOMMENDATION

Issue 1: That you approve the Justice plan to permit entry of the safe haven hold cases.

Approve _____ Disapprove _____

Issue 2: That you approve the Justice plan to set a June 31 deadline for completion of the "best interests of the child" determinations.

Approve _____ Disapprove _____

Issue 3: That you approve the plan for return of medical hold cases excepting those who have serious medical conditions that cannot be treated in Haiti.

Approve _____ Disapprove _____

MS Mail

DATE-TIME 10 May 95 14:32

FROM Schwartz, Eric P.

CLASSIFICATION UNCLASSIFIED

SUBJECT Subject: FW: Chief of Staff Daily Update [UNCLASSIFIED]

TO Baker, Jane E.
 Darby, Melanie B.
 Gray, Wendy
 Hawkins, Ardenia R.
 Hilliard, Brenda I.
 Joshi, M. Kay
 Millison, Cathy L.

CARBON_COPY Atkin, Timothy J.
 Beers, Rand R.
 Brown, Dallas
 Clarke, Richard A.
 Cooper, Kathleen H.
 Cressey, Roger W.
 Eddy, Randolph P.
 Halperin, Morton H.
 Lennon, John E
 Lindsey, Wanda
 Longoria, Michael A.
 Lorin, Matthew E.
 Malley, Robert
 Norman, Marcia G.
 Rice, Susan E.
 Roundtree, Beverly J.
 Schwartz, Eric P.
 Sheehan, Michael A.
 Simon, Steven N.

TEXT_BODY

CUBA

The return of the 13 Cubans to Havana went smoothly yesterday. They were met by U.S. officials at port some 40 miles from Havana and informed of procedures for U.S. immigration. Cuban officials were on scene and transported the Cubans to a reception center near Havana. The 13 travelled by bus last night to their homes in eastern Cuba and U.S. officials are travelling today to the area to meet and speak to each of the migrants again.

Justice reports that Cuban-Americans undertook a ten-minute work stoppage in

Miami at noon today to protest the new policy, walking off jobs and blocking traffic. There were no reports of violence and the level of protest activity was reportedly no different than it has been over the past two days.

From: Joshi, M. Kay
To: @GLOBAL - Global Affairs
CC: /N, NonRecord at A1; @EXECSEC - Executive Secretary
Subject: FW: Chief of Staff Daily Update [UNCLASSIFIED]
Date: Wednesday, May 10, 1995 01:25 PM

Eric Schwartz:

Please see attached note. Would you mind doing a short update on the Cuba item as both Mort Halperin and Rob Malley are in Haiti today? Please let me know if you are not the appropriate person. We need the submission by 2:30 p.m. today.

Thank you.

From: Joshi, M. Kay
To: @NONPRO - Export Controls; @DEMOCRACY - Democracy Affairs;
@LEGAL -
Legal Advisor; @NESASIA - NE/South Asia; @LEGISLAT-Legislative Affairs;
@EUROPE - European Affairs
CC: /N, NonRecord at A1; @EXECSEC - Executive Secretary
Subject: Chief of Staff Daily Update [UNCLASSIFIED]
Date: Wednesday, May 10, 1995 01:09 PM

Attached is a list of topics to be included in the memorandum for the Chief of Staff re foreign policy daily wrap-up. Please send in your two-to-three sentence update ASAP but no later than 2:30 via e-mail to @CROSS. Subjects are as follows:

NPT -- Dan Poneman

Cuba and Cuban-American Community in Miami -- Mort Halperin

Terrorism Legislation -- Alan Kreczko; please coordinate with Bill Danvers

Dole Resolution on Jerusalem -- Mark Parris; please coordinate with Bill Danvers

Bosnia and Croatia -- Kerrick -- if you deem an update is appropriate

Thank you.

M S M a i l

DATE-TIME 11 May 95 10:15

FROM Schwartz, Eric P.

CLASSIFICATION UNCLASSIFIED

SUBJECT CUBA POINTS FOR TONY [UNCLASSIFIED]

TO Fetig, James L.
Mitchell, Calvin A.
Ross, Thomas B.
Spalter, Jonathan H.
Wozniak, Natalie S.

CARBON_COPY Atkin, Timothy J.
Beers, Rand R.
Blakeman, Earle C.
Brown, Dallas
Clarke, Richard A.
Cooper, Kathleen H.
Cressey, Roger W.
Eddy, Randolph P.
Feinberg, Richard E.
Halperin, Morton H.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Rocha, Victor M.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.

TEXT_BODY [[CUBA67.DOC : 2566 in CUBA67.DOC]]

**ATTACHMENT
FILE DATE** 11 May 95 10:13

**ATTACHMENT
FILE NAME** CUBA67.DOC

CUBA POINTS

CHANGE IN MIGRATION POLICY

Change part of effort, begun last August, to regularize migration relationship with Cuba.

Entry for 15,000 Cubans at Guantanamo appropriate humanitarian response.

New repatriation policy will avert massive boat flows and loss of life.

Returning migrants advised that U.S. officials will assist those who wish to apply for immigration through established, legal means.

Migrants are informed of Cuban Government assurances that migrants will not suffer reprisals for illegal departure or for making application for immigration at U.S. Interests Section.

Moreover, interdicted migrants who express a genuine need for protection that they believe cannot be satisfied by return to the U.S. Interests Section will be examined before being returned (and, if necessary, protected from return).

RETURN OF 13 CUBAN MIGRANTS ON TUESDAY

Migrants had opportunity to speak to an INS officer and none expressed fears that would preclude their return.

Returnees were met at a port some 40 miles from Havana by U.S. officials and told about procedures for U.S. immigration.

After being processed at a center near Havana, they returned by bus to their homes in eastern Cuba.

U.S. officials travelled to the region to speak to the migrants again and are now doing so.

NEW INTERDICTION OF CUBANS (ONLY IF ASKED)

Coast Guard rescued nine Cuban nationals near the Bahamas yesterday.

Few details at this point, but we intend to follow standard procedure.

GENERAL CUBA POLICY

New practices we have instituted do not represent a change in anything other than migration policy.

Reaffirm that Cuban Democracy Act is basis for U.S. policy toward

Cuba, designed to promote peaceful democratic transition through economic embargo and programs of support for the Cuban people.

M S M a i l

DATE-TIME 12 May 95 14:42
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT your concurrence/comments please [UNCLASSIFIED]
TO Feinberg, Richard E.
Halperin, Morton H.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY
[[HAITI100.DOC : 3667 in HAITI100.DOC]]
**ATTACHMENT
FILE DATE** 12 May 95 14:41
**ATTACHMENT
FILE NAME** HAITI100.DOC

Memo to Berger

Subject: Travel Request for Eric Schwartz to Travel to Geneva to
Consult with UNHCR on Migration Policy

Background: UNHCR and Our New Cuba Migration Policy

As you know, UNHCR has treated us kindly this week. This followed a long conversation I had with UNHCR Deputy High Commissioner Gerald Walzer on Tuesday. The thrust of my argument was that we were acting consistent with the principles of the Refugee Convention and UNHCR should withhold any negative judgments. Without foreclosing its options to criticize us in the future, UNHCR issued a generally positive statement.

Their continued gentle treatment of our policy shift is by no means assured and, whatever we do, they might feel obliged to criticize us publicly on two grounds: 1) our failure to interview each and every interdicted Cuban; 2) our decision to allow the existence of the in-country program, U.S. monitoring and Cuban guarantees against reprisal to play a role in our determinations about the safety of return.

If UNHCR does come out publicly against what we are doing, it could lend a much greater degree of credibility to what has thus far largely been perceived as partisan criticism by the Cuban-American community.

The Purpose of a Trip to Geneva

I have been encouraged by UNHCR officials to travel to UNHCR headquarters to make our case in person and in detail. If I were to go, I would ask Brunsen McKinley at State to join me.

Let me first emphasize that I am not sure we can convince UNHCR to stay on board.

However, I think the chances of doing so are much greater if we have personal contact with senior officials in Geneva. Were Brunsen and I to go to Geneva, we would seek meetings with Mrs. Ogata and Gerald Walzer, and would also meet with the head of UNHCR's offices dealing with the legal protection issues and with the Americas.

The Value of a Trip to Geneva

Cuban Migration

We are asking UNHCR to accept new thinking on this issue -- again, that the existence of an in-country processing program, U.S. monitoring and guarantees by the Cuban government should be considered when determining the level of risk faced by an asylum-seeker upon return to the country of origin.

I believe we have a plausible argument -- much stronger than the case with respect to forced return of Haitians, where INS was not involved, the in-country situation was more difficult to monitor and the standard for non-repatriation (imminent risk of grave physical harm) was far more exacting.

While our argument is plausible, it is new enough that it must be made to senior officials directly, rather than through the UNHCR chain-of-command.

General Policy Toward Interdiction

The trip to Geneva would also enable us to discuss more broadly with UNHCR our thinking on interdiction and screening.

As you know, we ask interdicted Chinese migrants why they left China. Those whose answers reflect a possible fear of return to persecution are interviewed by INS. Similarly, our current guidance on Haiti calls for a review of any interdicted Haitian who comes forward and expresses a fear of return. We have yet to adopt formally general guidelines for interdictions, and a visit to Geneva would provide an excellent opportunity to exchange views with UNHCR on this issue.

RECOMMENDATION

That you approve my travelling to Geneva with a State official to discuss these issues next week with UNHCR officials.

Approve _____ Disapprove _____

In dealing with a large organization like UNHCR, it is probably best for us to start at the top. This is because we will be asking UNHCR to accept new thinking that will require policy decisions at a high level on their part.

In urging UNHCR to accept our

the level of scrutiny we are applying to interdicted Cubans prior to return; 2) the fact

After a long conversation I had with the Deputy High Commissioner last Tuesday, UNHCR issued a statement welcoming the decision to provide parole for the Guantanamo Cubans. On our repatriation policy, UNHCR welcomed our commitment not to return those whose safety would be in jeopardy as well as our commitment in principle on the day of our policy Tuesday,

M S M a i l

DATE-TIME 12 May 95 17:39
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT cuba points [UNCLASSIFIED]
TO Fetig, James L.
Mitchell, Calvin A.
Ross, Thomas B.
Spalter, Jonathan H.
Wozniak, Natalie S.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY [[CUBA68.DOC : 4381 in CUBA68.DOC]]
**ATTACHMENT
FILE DATE** 12 May 95 17:38
**ATTACHMENT
FILE NAME** CUBA68.DOC

CUBA POINTS

CHANGE IN MIGRATION POLICY

Change part of effort, begun last August, to regularize migration relationship with Cuba.

Entry for 15,000 Cubans at Guantanamo appropriate humanitarian response.

New repatriation policy will avert massive boat flows and loss of life.

Returning migrants advised that U.S. officials will assist those who wish to apply for immigration through established, legal means.

Migrants are informed of Cuban Government assurances that migrants will not suffer reprisals for illegal departure or for making application for immigration at U.S. Interests Section.

Moreover, interdicted migrants who express a genuine need for protection that they believe cannot be satisfied by return to the U.S. Interests Section will be examined before being returned (and, if necessary, protected from return).

REPATRIATIONS THAT HAVE TAKEN PLACE

Two repatriations involving 24 migrants took place on Tuesday and Friday.

(ONLY IF ASKED ABOUT REPORTS BY A FEW MIGRANTS THAT THEY HAVE BEEN FOLLOWED BY CUBAN AUTHORITIES AFTER RETURN:)

We take such accusations seriously and have expressed concerns to Cuban authorities.

They have reiterated their assurances that returned migrants will not be harassed or otherwise prejudiced for departing Cuba by raft.

We intend to continue our visits of returning migrants to ensure that this commitment is upheld.

GENERAL CUBA POLICY

New practices we have instituted do not represent a change in anything other than migration policy.

Reaffirm that Cuban Democracy Act is basis for U.S. policy toward Cuba, designed to promote peaceful democratic transition through economic embargo and programs of support for the Cuban people.

M S M a i l

DATE-TIME 15 May 95 19:56
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT memo to sandy [UNCLASSIFIED]
TO Clarke, Richard A.
Feinberg, Richard E.
Halperin, Morton H.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY
for your concurrence asap, drafted per Sandy's detailed instructions.
[[HAITI101.DOC : 4916 in HAITI101.DOC]]
**ATTACHMENT
FILE DATE** 15 May 95 19:55
**ATTACHMENT
FILE NAME** HAITI101.DOC

Memorandum to the president

Subject: Haitian Migration Issues
Cover memo to Berger

Per Sandy's instruction, I have enclosed an action memorandum to the President on the subject issue.

Purpose

To obtain your approval on disposition of Haitian remaining at Guantanamo.

Background

There are about 400 Haitians who remain at Guantanamo. They can be divided into three groups.

Safe haven "hold" cases (65 individuals)

When we screened and involuntarily returned thousands of Haitians after the restoration of democracy, INS determined that 33 individuals and 32 of their family members should not be returned. In most cases, these Haitians had experienced trauma so severe in

Haiti (such as witnessing the killing of family members) that INS determined that return would be inappropriate.

Justice recommends that these individuals be quietly paroled into the United States with suitable sponsorship and we concur with this recommendation.

Unaccompanied Minors (about 220)

There remain at Guantanamo about 220 unaccompanied minor children (mostly young teenagers). We have sought to resolve these cases based on the "best interests of the child," which generally has meant seeking to return the child to his or her parents (most of whom are in Haiti).

The investigation and review process is very time-consuming, and we have been under very heavy criticism for the prolonged stay of the children at Guantanamo. For this reason, the Attorney General would like to provide U.S. entry for the children, all of whom have sponsors or at least some family members in the United States. Arguing that most of the cases will be resolved by the end of June, the State Department opposes this course of action and argues that it would risk sending a signal to parents in refugee-producing island countries that they should send their children out in boats.

Both State and Justice would agree to a compromise in which we would publicly indicate that the minors would be out of Guantanamo by June 30. At that time, cases that have not been resolved would be paroled into the United States with suitable sponsorship. We believe this is a reasonable alternative that meets legitimate concerns of both agencies.

Medical hold cases (about 100)

While we plan to repatriate most of the medical cases when they are finished with their treatments (mostly for tuberculosis), there are between 10 and 20 medical hold cases in need of serious treatments not currently available at Guantanamo or in Haiti. Members of this

group will eventually lose limbs, eyesight or their lives if they are not treated. Justice believes that we should bring this small number of Haitians into the U.S., subject to suitable sponsorship arrangements, where they would be eligible for special Cuban/Haitian medical benefits that Cuban entrants from Guantanamo have already received. We concur with Justice's recommendation that they be permitted entry to complete treatment (after which Justice could decide to seek their return to Haiti).

The HIV Issue

Very few of the Haitians at Guantanamo have been tested for the HIV virus, though we expect that about 5-10% would test positive. If all the safe haven hold individuals (65), half the unaccompanied minors (110) and 20 medical hold cases are considered for U.S. entry, this would mean that between 10 and 20 of these individuals would be HIV positive. Justice would process these Haitians for admission in the same way they processed other HIV-positive Haitians at Guantanamo late last year: each would have to submit applications for waivers of excludability and show that any medical costs would be voluntarily covered by sponsoring organizations.

RECOMMENDATIONS

That screened in safe haven "hold" Haitians be permitted entry subject to suitable sponsorship arrangements.

Approve _____ Disapprove _____

That the processing of unaccompanied minors continue through the end of June, after which remaining minors at Guantanamo will be paroled into the United States.

Approve _____ Disapprove _____

That we return to Guantanamo those medical hold cases that have completed a course of treatment and permit entry for those cases that are not treatable at Guantanamo or in Haiti.

Approve _____ Disapprove _____

That HIV-positive Haitians who are otherwise eligible for entry be processed as are all other HIV-positive applicants worldwide and be permitted entry subject to waiver approvals that include identification of voluntary medical sponsors.

Approve _____ Disapprove _____

M S M a i l

DATE-TIME 17 May 95 18:30
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT Unaccompanied minor points [UNCLASSIFIED]
TO Andricos, George M.
Cooper, Kathleen H.
Danvers, William C.
Halperin, Morton H.
Lennon, John E
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Tyler, John T.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY [[HAITI92.DOC : 4702 in HAITI92.DOC]]
**ATTACHMENT
FILE DATE** 17 May 95 18:30
**ATTACHMENT
FILE NAME** HAITI92.DOC
0251

Unaccompanied Minors at Guantanamo Bay

Background

After the restoration of democracy in Haiti and the return of Haitians who were in the safe haven at Guantanamo, some 320 Haitians unaccompanied minors remained at Guantanamo Bay. Under the guidance of the UN High Commissioner for Refugees, we are seeking to resolve these cases based on a case-by-case, "best interests of the child" determination. In some cases, this means return to Haiti; in other cases, it means entry into the U.S. The population of children at the camp -- almost all teenagers -- is now about 220, and the State Department expects the process to be completed by the end of June.

Key Points

ù The restoration of democracy in Haiti has permitted the repatriation of thousands of Haitian migrants from Guantanamo.

ù However, the disposition of the unaccompanied children at Guantanamo presents sensitive issues that we are seeking to resolve in a humane manner consistent with established international practice.

ù With this in mind, we have sought the assistance of specialists from the UNHCR and other organizations, and we are conducting case-by-case evaluations to determine the disposition that serves the "best interests of the child."

ù In some cases, especially where the child's parents or close relatives are in Haiti, this may mean that the child will be repatriated.

ù In other cases, U.S. resettlement better meets the child's needs and we authorize U.S. entry for such children.

ù This is a complex procedure involving tracing of families, home-site visits and interviews with family members, but we are doing it as quickly as possible [and plan to complete the process by the end of June.]

ù We think this procedure is most responsible to the needs and the interests of the children.

[Note: advocates have claimed that unaccompanied minors from among this population have been sent back to Haiti even when their parents are in the U.S., or that minors from this group have been sent back and have not been adequately placed. We follow-up on these allegations and the evidence indicates that the process -- which includes visits to homesites before return of the minors and follow-up visits after return -- is working.]

M S M a i l

DATE-TIME 17 May 95 19:03
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT Unaccompanied Minors/Rangel testimony [UNCLASSIFIED]
TO Andricos, George M.
Bass, Peter E.
Cicio, Kristen K.
Cooper, Kathleen H.
Danvers, William C.
Emery, Mary C.
Hall, Wilma G.
Halperin, Morton H.
Lennon, John E
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Tyler, John T.
Veit, Katherine M.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Sandy:

You may get the same message from Bill Danvers, but I cannot reach him and wanted to make sure you have the following:

1. Rangel testifies at the Cuba hearing tomorrow. His staff says he may criticize us on the unaccompanied minor issue. We were planning to suggest you call him tonight at 212 283 1212 and I have enclosed talking points for your call. However, Mort is also willing to make the call in your stead -- please let him know if he should do so.

2. Randall Robinson and Jonathan Demme have asked Rangel to arrange a trip to GTMO this weekend to focus attention on Haitians. Mort is willing to call Randall and tell him we expect this issue to be resolved within the next day or two. Mort thinks that on that basis, Randall may well hold off. Again, please let Mort know if he should make the call.

[[HAITI92.DOC : 4893 in HAITI92.DOC]]

**ATTACHMENT
FILE DATE** 17 May 95 18:30

ATTACHMENT HAITI92.DOC

FILE NAME

0251

Unaccompanied Minors at Guantanamo Bay

Background

After the restoration of democracy in Haiti and the return of Haitians who were in the safe haven at Guantanamo, some 320 Haitians unaccompanied minors remained at Guantanamo Bay. Under the guidance of the UN High Commissioner for Refugees, we are seeking to resolve these cases based on a case-by-case, "best interests of the child" determination. In some cases, this means return to Haiti; in other cases, it means entry into the U.S. The population of children at the camp -- almost all teenagers -- is now about 220, and the State Department expects the process to be completed by the end of June.

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ù We think this procedure is most responsible to the needs and the interests of the children.

[Note: advocates have claimed that unaccompanied minors from among this population have been sent back to Haiti even when their

parents are in the U.S., or that minors from this group have been sent back and have not been adequately placed. We follow-up on these allegations and the evidence indicates that the process -- which includes visits to homesites before return of the minors and follow-up visits after return -- is working.]

M S M a i l

DATE-TIME 17 May 95 19:08

FROM Danvers, William C.

CLASSIFICATION UNCLASSIFIED

SUBJECT Call to Rangel [UNCLASSIFIED]

TO Baker, Jane E.
Bass, Peter E.
Cicio, Kristen K.
Darby, Melanie B.
Dohse, Fred J.
Emery, Mary C.
Gray, Wendy
Hall, Wilma G.
Harmon, Joyce A.
Hawkins, Ardenia R.
Itoh, William H.
Joshi, M. Kay
Millison, Cathy L.
Jim Reed
Sens, Andrew D.
Veit, Katherine M.

CARBON_COPY Atkin, Timothy J.
Beers, Rand R.
Brown, Dallas
Clarke, Richard A.
Cooper, Kathleen H.
Cressey, Roger W.
Eddy, Randolph P.
Halperin, Morton H.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.
Tyler, John T.

TEXT_BODY Note for Sandy:

We received a call today from Charley Rangel's office. He has been invited to Gitmo this weekend by Randall Robinson. Robinson is concerned about the Haitian kids at Gitmo. (I don't know how Robinson plans to do this.)

According to Rangel's staffer, he wants to be helpful, but needs some information as to what is going on.

In addition, as you know, he is testifying before Burton tomorrow, so in talking with Eric we thought it might be a good idea to ask you to call Rangel to talk about the Haitian kids and Cuba.

Attached are talking points prepared by Eric should you choose to call Rangel. A good number for him on New York is 212/283-1212.

[[TEMPHAIT.DOC : 4868 in TEMPHAIT.DOC]]

**ATTACHMENT
FILE DATE**

17 May 95 19:1

**ATTACHMENT
FILE NAME**

TEMPHAIT.DOC
0251

Unaccompanied Minors at Guantanamo Bay

Background

After the restoration of democracy in Haiti and the return of Haitians who were in the safe haven at Guantanamo, some 320 Haitians unaccompanied minors remained at Guantanamo Bay. Under the guidance of the UN High Commissioner for Refugees, we are seeking to resolve these cases based on a case-by-case, "best interests of the child" determination. In some cases, this means return to Haiti; in other cases, it means entry into the U.S. The population of children at the camp -- almost all teenagers -- is now about 220, and the State Department expects the process to be completed by the end of June.

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ù With this in mind, we have sought the assistance of specialists from the UNHCR and other organizations, and we are conducting case-by-case evaluations to determine the disposition that serves

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ù In some cases, especially where the child's parents or close relatives are in Haiti, this may mean that the child will be repatriated.

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M S M a i l

DATE-TIME 19 May 95 12:25

FROM Schwartz, Eric P.

CLASSIFICATION UNCLASSIFIED

SUBJECT REVISED VERSION AS OF 12:30 PM [UNCLASSIFIED]

TO Atkin, Timothy J.
Beers, Rand R.
Brown, Dallas
Clarke, Richard A.
Cooper, Kathleen H.
Cressey, Roger W.
Eddy, Randolph P.
Halperin, Morton H.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.
Tyler, John T.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Paper requested by UNHCR in advance of the visit.

[[CUBA70.DOC : 3152 in CUBA70.DOC]]

**ATTACHMENT
FILE DATE** 19 May 95 12:24

**ATTACHMENT
FILE NAME** CUBA70.DOC
DRAFT
NOT FOR CIRCULATION

DRAFT
NOT FOR CIRCULATION
SEABORNE MIGRATION AND PROTECTION

Events of 1994: Large-scale seaborne migration from Cuba
and USG response

Growing frustration in Cuba, combined with signals from the Cuban leadership that boat departures would be tolerated, led last summer to tens of thousands of boat departures from Cuba. This situation was not sustainable for at least two reasons.

First, it is a dangerous form of migration. Over the past several years, we have documented hundreds of deaths at sea resulting from irregular migration within the Caribbean. It is not known how many in total may have lost their lives. Cuban departures have been particularly unsafe. The typical vessel last summer was no more than a makeshift raft.

Second, such migration threatens to undermine public support for generous policies of refugee protection. Irregular migration, and in particular such migration from Cuba and Haiti, severely burdens U.S. federal and state assistance programs that provide special benefits for these two groups of migrants. If the U.S. Government cannot demonstrate a capacity to discourage such visible large-scale irregular economic migration, then we will experience increased pressures to oppose all measures that provide protection and resettlement for those with bonafide refugee claims.

To meet these other concerns, the President ordered on August 19, 1994 that Cuban migrants rescued at sea would no longer be taken to the United States but would be given safe haven at our naval base at Guantanamo Bay. Later, we secured the agreement of Panama to allow us to open a safehaven there as well.

At the same time, we sought to expand opportunities for legal migration to the United States, both for those who might fear persecution in Cuba as well as others who wished to immigrate. On October 12, 1994, we announced plans to expand immigrant visa and refugee processing and to use parole authority to ensure migration of at least 20,000 Cubans to the United States each year. As part of our enhanced program, the pre-existing in-country refugee processing program, one of only three the United States conducts in the world, was expanded to process some 7000 cases for entry by September 1995.

New arrangements in May 1995

Notwithstanding the successful implementation of the September agreement, there remained a potential for large scale outflows which might have been stimulated by further economic dislocation in Cuba and by the uncertain future for those being held in Guantanamo.

To address these critical issues and to prevent additional loss of life at sea during the coming months, and to find a responsible humanitarian solution to the problem of the Cuban migrants at our

safe haven at Guantanamo, the President directed that we build on the September 1994 agreement to further regularize U.S.-Cuban migration relations.

Additional discussions were held with the Cuban government last month which resulted in a new migration agreement.

Parole for those at Guantanamo

The first element of the new agreement concerns the Cuban migrants currently at Guantanamo. We will continue to bring into the United States those persons who are eligible for parole under guidelines announced last October and December. These cover mainly children, the elderly and the medically ill, with their families. Those eligible for this program currently number about 6000. Following completion of the existing parole program, we will continue to parole into the United States, on a case-by-case basis, all other Cubans in the safe haven, provided they are not ineligible for admission because of criminal records, medical, physical or mental condition, or commission of acts of violence while at Guantanamo.

Future irregular migration

The second element of the May 2 arrangement provides that Cuban migrants rescued at sea while attempting to reach the United States will generally be returned to Cuba.

Migrants interdicted at sea (or who enter the Guantanamo Naval Base) are met by a specially trained officer of the U.S. Immigration and Naturalization Service. The officer advises them that they will be taken back to Cuba, where U.S. consular officials will assist those who wish to apply to come to the U.S. through already established mechanisms. They are told that the Government of Cuba has provided a commitment to the United States that they will suffer no adverse consequences or reprisals of any sort for irregular departure or for making application for refugee status.

Any migrant who expresses an unwillingness or inability to return due to a fear of abuse upon return will be assessed by the INS on board.

If that INS officer determines that the migrant has a credible claim of a threat to his or her life or freedom or other serious violations of his or her human rights upon return due to race, religion, nationality, membership in a particular social group or political opinion, the migrant will be protected outside Cuba pending further investigation.

Before making this determination, the INS officer will determine

whether the migrant has a credible fear of harassment, intimidation or persecution in connection with being processing in the in-country system. Such judgment is a factor in determining whether the migrant has a credible fear that he or she will suffer, upon return, loss of life or freedom or other serious violations of human rights.

Discussion of the procedure

There are a number of reasons why we believe the process we have developed is properly calculated to ensure the protections reflected in the Refugee Convention and Protocol.

To be sure, we are aware of UNHCR concerns with respect to "direct return" of asylum-seekers. However, we believe that our procedures differ from direct return in several critical areas, and in particular those involving the presence of asylum specialists at the point of contact with the migrants, the standards of review to determine whether a migrant will not be returned, our ability to obtain enforceable commitments by the country of origin regarding non-reprisal and our capacity to monitor carefully implementation of those commitments.

The making of a claim

We seek to create an environment on the ship in which an individual who has a fear of return will be able to make that fear known, but we do not solicit claims.

In this respect, we have been influenced by our previous discussions with UNHCR regarding Chinese migrants who are rescued at sea -- in particular, UNHCR's view that governments need not solicit claims, particularly in situations where a primary motivation for departure appears to be economic gain.

In the case of the Chinese who had been aboard the Eastwood, we concurred in the UNHCR position that individual migrants did not need to meet personally with specially trained officers. Rather the UNHCR officer simply reviewed reports submitted by non-specialist USG officials who spoke to the migrants.

We have been guided as well by the principles set forth in the UNHCR Handbook for establishing the facts, recognizing that the relevant facts will have to be provided by the individual, that the burden of proof is on the individual, but that it is frequently advisable to give the applicant the benefit of the doubt.

The consideration of a claim

Again, there are a number of reasons why we are confident that the process we have developed is properly calculated to ensure the protections reflected in the Refugee Convention and Protocol.

First, each of the INS officers on board the vessels has received a special training course that includes information on country conditions provided not only by U.S. Government sources, but by non-governmental human rights specialists.

Second, the standard used by the INS officers is based on that described in the UN Handbook on Procedures and Criteria for Determining Refugee Status. To be sure, the INS officer is to consider the totality of the circumstances in evaluating a claim that an individual will be persecuted upon return, including the existence of the in-country program, the fulfillment of Cuban government guarantees against reprisals and our ability to monitor implementation of those guarantees. But we believe those factors are indeed relevant to a consideration of whether the migrant will be persecuted upon return.

The first two repatriations support our view on this issue. In each case, Cuban government officials provided U.S. officers free access to the returned migrants, both at the port upon return and subsequently after the migrants returned home. We have every reason to believe that the Cuban government has the capacity to ensure that local officials are aware of and respect the government's commitments under the May 2 agreement.

The returned migrants have been able to meet freely both as a group and individually with U.S. government officials and to enter and depart the U.S. Interests Section in Havana freely.

M S M a i l

DATE-TIME 22 May 95 08:13
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT Concurrences requested [UNCLASSIFIED]
TO Baker, James E.
Clarke, Richard A.
Halperin, Morton H.
Kreczko, Alan J.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

May I have your concurrence as soon as possible. I leave on Monday at 3 pm.

This memo implements general guidance approved by the President on Friday. It is important that it get out, as these are precisely the kinds of conclusions that get confused when transmitted only by phone.

I am also sharing the draft with Seth Waxman and will seek his informal concurrence.

[[HAITI102.DOC : 2120 in HAITI102.DOC]]

**ATTACHMENT
FILE DATE** 22 May 95 8:11

**ATTACHMENT
FILE NAME** HAITI102.DOC

Memorandum to State
Justice
INS
OSD
JCS
HHS

from Sens

Subject: Haitian at Guantanamo

Agencies are hereby informed of the following policy guidance and requested to take appropriate actions to implement measures described below. All these measures are subject to individual parole decisions made at the discretion of the Attorney General:

Unaccompanied Minors

We will continue to process unaccompanied minors based on the "best interests of the child"; however, we will take necessary measures to ensure the completion of the process for unaccompanied minors by June 30, 1995.

After that date, no unaccompanied Haitian minor should remain at Guantanamo. However, no child will be returned to Haiti unless the judgment is made that it is in his or her best interest.

Agencies should take necessary measures to ensure these outcomes.

If Justice seeks to alter the current process for "aged out" minors, Justice should confer with State and make recommendations/provide options to the interagency as soon as possible.

Safe haven hold cases

Those Haitians who are in "safe haven" hold status will be paroled into the United States with suitable sponsorship.

Justice will consult with State in implementation of this provision to ensure adequate notification of the Haitian authorities.

In discussing this population, U.S. officials will emphasize that, in most cases, those in this group had experienced severe trauma in Haiti during the period of military rule and that our actions are motivated by humanitarian considerations.

UNHCR "Cases of Concern"

UNHCR has identified an underminted number of Haitians outside the "safe haven" category, above, as cases of concern. State and Justice should report to the interagency through NSC staff, no later than May 30, 1995, on the recommended disposition of this population.

Prior to such report and pending a decision on this population, no such cases of concern will be repatriated to Haiti. State will ensure that these cases are known to authorities at Guantanamo so they are not subject to repatriation in error.

Medical hold cases

Unless they fall into one of the categories above which might entitle them to be considered for U.S. entry, medical hold cases

should generally be repatriated following completion of their treatments.

However, those with serious medical conditions not treatable at Guantanamo or, for all practical purposes, in Haiti will be permitted to enter the United States for treatment. Justice will consult with medical authorities at Guantanamo on implementation of this provision.

HIV issue

Those eligible to be considered for entry under these procedures but who test positive for the HIV virus will be subject to processing procedures similar to those mandated by U.S. worldwide guidelines for entry of HIV-positive refugees. Prior to permitting entry, Justice would seek to ensure that medical costs would be voluntarily covered by sponsoring organizations in the United States.

M S M a i l

DATE-TIME 22 May 95 09:18
FROM Cicio, Kristen K.
CLASSIFICATION UNCLASSIFIED
SUBJECT FW: Call to Rangel [UNCLASSIFIED]
TO Danvers, William C.
Schwartz, Eric P.

CARBON_COPY Andricos, George M.
Atkin, Timothy J.
Bass, Peter E.
Beers, Rand R.
Brown, Dallas
Cicio, Kristen K.
Clarke, Richard A.
Cressey, Roger W.
Eddy, Randolph P.
Emery, Mary C.
Funches, Christina L.
Hall, Wilma G.
Lindsey, Wanda
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Sheehan, Michael A.
Simon, Steven N.
Veit, Katherine M.

TEXT_BODY

Bill/Eric,

Sandy noted..."I spoke to Charlie on Thursday."

Kris

From: Danvers, William C.
To: @UP - APNSA Special Assistants; @NSA - Nat'l Security Advisor
CC: /R, Record at A1; @DEMOCRACY - Democracy Affairs; @GLOBAL -
Global
Affairs
Subject: Call to Rangel [UNCLASSIFIED]
Date: Wednesday, May 17, 1995 07:08 PM

[[TEMPHAIT.DOC : 2304 in TEMPHAIT.DOC]]

Note for Sandy:

We received a call today from Charley Rangel's office. He has been invited to Gitmo this weekend by Randall Robinson. Robinson is concerned about the Haitian kids at Gitmo. (I don't know how Robinson plans to do this.)

According to Rangel's staffer, he wants to be helpful, but needs some information as to what is going on.

In addition, as you know, he is testifying before Burton tomorrow, so in talking with Eric we thought it might be a good idea to ask you to call Rangel to talk about the Haitian kids and Cuba.

Attached are talking points prepared by Eric should you choose to call Rangel. A good number for him on New York is 212/283-1212.

**ATTACHMENT
FILE DATE**

17 May 95 19:1

**ATTACHMENT
FILE NAME**

TEMPHAIT.DOC
0251

Unaccompanied Minors at Guantanamo Bay

Background

After the restoration of democracy in Haiti and the return of Haitians who were in the safe haven at Guantanamo, some 320 Haitians unaccompanied minors remained at Guantanamo Bay. Under the guidance of the UN High Commissioner for Refugees, we are seeking to resolve these cases based on a case-by-case, "best interests of the child" determination. In some cases, this means return to Haiti; in other cases, it means entry into the U.S. The population of children at the camp -- almost all teenagers -- is now about 220, and the State Department expects the process to be completed by the end of June.

Key Points

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M S M a i l

DATE-TIME 25 May 95 10:09

FROM Schwartz, Eric P.

CLASSIFICATION UNCLASSIFIED

SUBJECT DRAFT MEMO ON OGATA VISIT [UNCLASSIFIED]

TO Cooper, Kathleen H.
Halperin, Morton H.
Kammerer, Kelly C.
Lennon, John E.
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Tyler, John T.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY [[CUBA72.DOC : 2659 in CUBA72.DOC]]

**ATTACHMENT
FILE DATE** 25 May 95 10:9

**ATTACHMENT
FILE NAME** CUBA72.DOC

Background

We went into the meetings knowing that UNHCR would be principally concerned about two issues: first, the process we were using on the ships to provide procedural fairness to claimants; and second, the standards we were using to determine who would not be returned to Cuba.

As described below, we ended our meetings convinced that UNHCR was willing to go a very long way -- compromising some of its most strongly held views -- to accommodate us. We thus believe that our efforts to consult with them continually on these issues are paying off.

However, UNHCR clearly had a few "bottom lines" that would require modifications in our process.

The politics

We think the stakes here may be high. Mrs. Ogata will be in Washington in next week and will return in early June. She will have many meetings on the Hill. She clearly does not want to be drawn

into the ongoing debate on Cuba policy, and UNHCR's current statement -- that they welcome our commitment to protection and are discussing with us the details of what we are doing -- is fine.

But members of Congress will press her on her views on our interdiction policy and it will be difficult for her not to respond to very direct questions regarding our procedures if they implicate UNHCR core principles. If she does raise concerns about what we are doing, we may well be faced with opposition from both conservative Republicans as well as liberal Democrats who have been associated with refugee protection.

The first concern: procedural fairness

Going into the meetings, we knew that UNHCR was deeply suspicious of ship-board screening, and only agreed reluctantly to participate in screening of Haitians in Jamaican waters after we agreed to a wide range measures to ensure due process. These included detailed briefings of all Haitians on their rights to claim asylum, long interviews with written records that were subject to review by both INS and UNHCR, rest periods for claimants, etc.

Thus we were pleased when our UNHCR interlocutors told us that, in essence, they would be satisfied with (or more correctly, could at least stomach) our procedure if it included two elements: some review of initial determinations and some sort of personal interview of each interdicted Cuban, even if it was cursory in nature.

Review of initial determinations

In the first two cases of interdicted Cubans, INS officials in Washington reviewed the decisions made by INS officers on board the cutters, and we believe that this review procedure is workable (as long as we are not overwhelmed with numbers). Thus we felt comfortable telling UNHCR that we shared their concern on this issue and felt confident we could continue to satisfy it.

Personal interview

UNHCR would like something similar to what we already do for interdicted Chinese migrants: ask them why they left their country of origin. UNHCR would also have us ask them whether they felt they

had any reason to fear return. But if we feel this second question is too pointed, we could probably modify it and instead ask the claimant whether he or she had anything else they wanted to tell us.

Currently, interdicted Cubans who come forward to express fears of return are interviewed in any event. Because the Cubans are believed to be relatively well-educated and sophisticated, we suspect

that many (if not most) leaving by boat already know that they will be spoken to by a USG official on board the cutter. Thus we're not sure that providing this additional information will result in an unmanageable increase in claims by migrants that they fear return. In any case, we judge it to be a risk worth taking.

The second concern: standard for reviewing claims

We currently have instructed INS adjudicators not to return those who have credible claims that they will suffer persecution (as defined by the Refugee Convention) upon return, taking into account the existence of the in-country refugee processing program.

As we expected, UNHCR objected to this standard, arguing instead for us to protect anyone who had a well-founded fear of persecution in Cuba, without regard to the existence of the in-country program.

Our arguments and their responses

We argued to UNHCR that our process was protecting claimants from harm and, after all, this is what the Refugee Convention is designed to do. We said that anyone who we believed risked real harm during the pendency of their claim would not be returned and that, through our monitoring and Cuban fulfillment of guarantees against reprisals, we believed such persons were indeed protected during the period they used the in-country processing program.

UNHCR explained that they simply could not sanction a process that resulted in return of persons who had well-founded fears of persecution in their country of origin and that our concept of protection during the pendency of a claim was not an adequate substitute.

We then argued the following: because we are using a rather relaxed "credible fear" (rather than well-founded fear) standard, and because we are not returning anyone we felt would be at risk of serious harm during the pendency of their claim, we believed it very likely that we are not returning anyone who UNHCR would not have us return.

At the end of the day, UNHCR indicated that they did not care what words we used in developing our standard, but did feel that the High Commissioner needed to say that she felt our processing was meeting international standards -- that we were not returning persons likely to face persecution -- loss of life or freedom or other serious violations of their human rights due to their political opinions, race, religion, ethnicity or membership in a social group.

Where we came out

We emphasized that we believed our procedures were most adequate and appropriate and agreed to further discussions on this issue with UNHCR Washington. In particular, we agreed to discuss with UNHCR hypothetical case profiles to more clearly demonstrate who we would or would not protect outside of Cuba.

We believe that these discussions may indeed be successful, especially if we insist that UNHCR, in its evaluation of our methods,

apply a strict application of the Refugee Convention (so that, for example, a claimant with a speculative claim could be returned). If we still have a problem -- that is, if UNHCR still believes that our standard will not protect some who face persecution upon return, we believe that we should modify our process to meet their concerns.

To be sure, agreeing not to return anyone with a "credible fear of persecution in Cuba" without reference to the existence of in-country processing could result in some greater number of persons being kept on the cutters.

At the same time, we are already not returning anyone who we think might be persecuted during the tendency of their claim (which could be many months or longer). Thus the additional numbers who would not be returned would include only the universe of Cubans who 1) are interdicted, 2) do not risk any harm during the pendency of their claim, but 3) have a well-founded fear that they will be persecuted sometime thereafter or have suffered severely in the past. This may not be a very large universe.

Moreover, if we continue to emphasize that interdicted Cubans will not be assured of U.S. resettlement, if we do not publicize any change in procedure and if we strictly apply the Refugee Convention and Protocol on the cutters (which we are not doing in the in-country program), we might further mitigate any increase resulting from this modification.

Under this scenario (as under the current procedure), we would vigorously urge UNHCR to assist in third country resettlement of Cubans who are not returned from the cutters.

Time-line for decisions

Although Mrs. Ogata does not meet with members until June 7, she will be in Washington next week for meetings with the Administration. We thus believe we ought to have closure on these issues no later than Tuesday of next week.

RECOMMENDATIONS

1. Procedural fairness

That we continue to provide INS Washington review of cases that INS officers on cutters believe should be returned.

That we add to the presentation provided to Cubans a question that asks why the migrant has left Cuba and which makes it clear that he or she may come forward to express a fear of return.

2. Standard of review

That we discuss with UNHCR-Washington case profiles with the goal of convincing them that we are adequately meeting their concerns.

That, if that effort is not successful, we modify our procedures as described above.

MS Mail

DATE-TIME 26 May 95 09:29

FROM Schwartz, Eric P.

CLASSIFICATION ~~CONFIDENTIAL~~

SUBJECT Subject: Cubans try to return to the homeland [~~CONFIDENTIAL~~]

TO

Atkin, Timothy J.
Bass, Peter E.
Beers, Rand R.
Brown, Dallas
Cicio, Kristen K.
Clarke, Richard A.
Cooper, Kathleen H.
Eddy, Randolph P.
Emery, Mary C.
Hall, Wilma G.
Halperin, Morton H.
Kammerer, Kelly C.
Lennon, John E.
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.
Tyler, John T.
Veit, Katherine M.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

Please pass to Sandy:

Yesterday, Cuban maritime authorities transferred to Coast Guard between 5 and 10 Cuban nationals who had sailed into Cuban waters on a U.S. vessel and who appeared to be U.S. residents. After the transfer, INS determined that these Cubans were "parolees" who had been in the U.S. for less than a year. Apparently they wished to return to Cuba to be with their families and had tried to do so by boat, but Cuban authorities said they were obliged to return the migrants to US authorities. (It's unclear whether that is true, but Coast Guard took custody anyway, as Coast Guard did not have all the details and thought the migrants might be permanent residents in the U.S.)

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E.O. 13526

White House Guidelines, September 11, 2006

M 1011-1039-P
Date 3/28/16

(FYI: Having left the U.S. as parolees, the migrants lost their entitlement to stay, but that is beside the point as they apparently don't want to stay.)

The decision of the interagency last night was as follows: INS was to counsel them and, in particular, reaffirm that they wish to return to Cuba. If so, arrangements will be made with Cuban authorities to return them.

M S M a i l

DATE-TIME 30 May 95 09:52
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT Haitian UAMs [UNCLASSIFIED]

TO Andricos, George M.
Atkin, Timothy J.
Beers, Rand R.
Brown, Dallas
Clarke, Richard A.
Cooper, Kathleen H.
Danvers, William C.
Eddy, Randolph P.
Fetig, James L.
Funches, Christina L.
Halperin, Morton H.
Kammerer, Kelly C.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Mitchell, Calvin A.
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.
Tyler, John T.
Wozniak, Natalie S.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY
NY Times op ed on Haitian UAMs.

[[HAITI105.DOC : 2320 in HAITI105.DOC]]

ATTACHMENT
FILE DATE 30 May 95 9:50

ATTACHMENT
FILE NAME HAITI105.DOC

NY Times had an op ed on Saturday very critical of our policy on
unaccompanied minors. I had spoken to the guy for about 20 minutes

and thus was especially annoyed that he didn't even allude to facts I had presented in defense of the policy. I wrote the following and presented to Phyllis Oakley at State/PRM to do with what she pleased. (If there is a response, it should come from State.)

Bob Herbert's piece on Haitian unaccompanied minors at Guantanamo ("Suffering the Children", May 27, 1995) was inaccurate and irresponsible, and unfairly maligned many caring and committed social service workers trying to deal humanely with a complicated and compelling issue.

The United States Government has one goal for these children: to resolve their cases in a manner that meets their "best interests" as determined by child welfare experts associated with the UN High Commissioner for Refugees. In general, this means that children should be reunited with their parents or closest relatives. Because the parents of most of these children live in Haiti, this has meant that large numbers of children have indeed been returned to their country of origin.

However, Mr. Herbert's claim that we are engaged in "the wholesale return of the kids to Haiti" is nonsense. If, after a careful review process, the UNHCR psychologist and other social service professionals determine that the closest family members reside in the United States, or if it is otherwise determined that return to Haiti is not appropriate, the child will be resettled in the United States with suitable sponsorship. In fact, U.S. resettlement has occurred in many instances and will continue where appropriate.

Nowhere in Mr. Herbert's diatribe does he explain or even allude to these basic facts. What is particularly disturbing about Mr. Herbert's piece is that he made these allegations after being briefed in detail by an Administration official about the policy. Not only did he completely discount our statements, but he also appears to have made no effort to seek the views of the UN High Commissioner for Refugees on this issue.

To be sure, we recognize the humanitarian implications of prolonged stay at the Guantanamo by these minors, most of whom are between the ages of 16 and 18. For this reason, we are committed to ensuring that all of the children will be able to leave Guantanamo by July 1. At that point, we do expect there to be some young people whose cases are still unresolved. These children will not be returned to Haiti, but will be permitted to enter the United States where efforts to reunite them with family members or ensure other suitable sponsorship will be continued.

This is a difficult humanitarian issue that merits careful scrutiny

from the press and public. However, no interest is served by the ill-founded allegations reflected in Mr. Herbert's essay.

M S M a i l

DATE-TIME 05 June 95 09:41
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT Subject: RE: Cuba Provision in Immigration Bill [UNCLASSIFIED]
TO Halperin, Morton H.
Schwartz, Eric P.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

Alex, of course, was just speaking for himself. His personal view is that we would not object to the Senate bill as currently drafted.

From: Halperin, Morton H.
To: Malley, Robert; Schwartz, Eric P.
CC: /R, Record at A1
Subject: RE: Cuba Provision in Immigration Bill [UNCLASSIFIED]
Date: Monday, June 05, 1995 09:29 AM

I am not sure that I understand what Alex is proposing. There will be a letter giving the administration view of the bill and each provision. If we like the provision we should say so or at least agree that we are not objecting.

From: Malley, Robert
To: Halperin, Morton H.; Schwartz, Eric P.
CC: /R, Record at A1
Subject: RE: Cuba Provision in Immigration Bill [UNCLASSIFIED]
Date: Monday, June 05, 1995 09:24 AM

I spoke to Alex Aleinikoff this morning. The bill makes an exception for the GTMO and parole from Cuba. His view is we like the bill (since it preserves what we need), but probably do not want/need to be out front on it. Given this, he also thinks we need not state today that we would not be using the Act for those arriving illegally - we should wait for the legislative change. Eric, I was going to call Seth on this, but let me know if you wanted to follow up. (I'd be glad to)

From: Halperin, Morton H.
To: Malley, Robert; Schwartz, Eric P.
CC: /R, Record at A1
Subject: FW: Cuba Provision in Immigration Bill [UNCLASSIFIED]
Date: Monday, June 05, 1995 08:32 AM

I would like us to be able to say that we object to repeal because we need it for the GTMO migrants and for those who come legally from Cuba but would like to be able to say that the AG would not use for those arriving illegally. This is what we discussed before, I think. Eric, would you try to clear with Justice and State and with Rick. Let me know if you encounter any resistance.

From: Andricos, George M.

To: Halperin, Morton H.; Malley, Robert; Schwartz, Eric P.

CC: /R, Record at A1; Cooper, Kathleen H.; @LEGISLAT-Legislative Affairs

Subject: Cuba Provision in Immigration Bill [UNCLASSIFIED]

Date: Saturday, June 03, 1995 03:01 PM

Mort, Eric, Rob,

The Senate Judiciary Immigration subcommittee will mark up Tht Immigrant Control and Financial Responsibility Act, S 269, on Thursday, June 8. The draft committee bill has a provision repealing(with some exceptions) the Cuba Adjustment Act. I will put a copy of this provision in your mail boxes on Monday morning. Could you please take a look at it and let me know what our position on it should be? Sen Kennedy has offered to help us on it if need be.

I understand that OMB may be circulating a revised Justice letter on the bill on Monday afternoon for clearance. You might want to be on the lookout for it, as will I.

Thanks,
Mike

M S M a i l

DATE-TIME 06 June 95 13:35
FROM Malley, Robert
CLASSIFICATION UNCLASSIFIED
SUBJECT Cuban migration [UNCLASSIFIED]
TO Halperin, Morton H.
Schwartz, Eric P.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

I tried my hand at an answer to Ros' question:

[[ROSMIG.DOC : 3378 in ROSMIG.DOC]]

**ATTACHMENT
FILE DATE** 6 June 95 13:33

**ATTACHMENT
FILE NAME** ROSMIG.DOC

President Clinton said he would end the practice of directly returning Haitians without determining whether they qualified for refugee status, and that is what he did. In the same spirit, Cuban migrants rescued at sea while trying to enter the United States will not be directly returned to Cuba. Instead, they will be screened, genuine refugees will not be returned, and the treatment of Cubans who are returned will be closely monitored by the U.S. Interests Section in Havana.

The initial results of the policy announced on May 2 are positive. The number of Cubans seeking to reach the United States illegally by sea has been reduced significantly. U.S. Interests Section personnel have been able to carefully and individually monitor the situation of those who have been returned. And Cubans in Cuba have been able to use our generous program of legal immigration to come to the United States.

M S M a i l

DATE-TIME 06 June 95 14:08
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT ASAP: CONCURRENCE REQUESTED [UNCLASSIFIED]
TO Blacker, Coit D.
Cooper, Kathleen H.
Drew, Samuel N.
Feinberg, Richard E.
Halperin, Morton H.
Kammerer, Kelly C.
Lennon, John E
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Rice, Susan E.
Roth, Stanley O.
Tyler, John T.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY [[4317.DOC : 3612 in 4317.DOC]]
**ATTACHMENT
FILE DATE** 6 June 95 14:7
**ATTACHMENT
FILE NAME** 4317.DOC
4317

June 6, 1995

INFORMATION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: RICHARD CLARKE

FROM: ERIC SCHWARTZ

SUBJECT: Meeting with Sadako Ogata, UN High Commissioner for Refugees; Wednesday, June 7, 2:40 pm

Background

Mrs. Ogata is in her second term as UN High Commissioner for Refugees. She has been consistently friendly to the U.S. over the years, balancing strong defense of refugee principles with pragmatism. A frank and forthright activist, Mrs. Ogata is a strong leader who is comfortable on the world stage. She has already met with Secretary Perry, Deputy Secretary Talbott and Undersecretaries Wirth and Tarnoff, and will be meeting with Attorney General Reno and many members of Congress this week.

Points to Make

- ù Reaffirm our commitment to humanitarian assistance in general and UNHCR in particular.

Despite sharp reductions in the international affairs accounts in the FY '96 budget request, we have generally held the line on refugee assistance and resettlement (about \$700 million), emergency food aid (PL 480 Title II, about \$800 million) and disaster assistance (\$200 million). Moreover, there is support in Congress for maintaining adequate levels of assistance in these areas.

- ù Emphasize that our May 2 policy announcement on Cuba was designed to regularize further the migration relationship while ensuring protection for those with good reason to fear return to Cuba.

UNHCR does not object to return of economic migrants to Cuba, but has had concerns about the fairness of our ship-board procedures to identify those who might risk harm upon return and who thus merit protection from repatriation. We have told Mrs. Ogata that we will accommodate UNHCR's principal concerns, including review of denied cases (INS officials in Washington will review decisions of their adjudicators aboard the cutters); informing the interdicted migrants that they may speak to INS officers if they have fears about return; and ensuring that the standard we use in adjudicating claims is consistent with the Refugee Convention and Protocol. We have promised UNHCR a paper on these issues, but Mrs. Ogata -- despite UNHCR's understandable discomfort about ship-board processing -- seems satisfied with the commitments we have made.

- ù Seek Mrs. Ogata's views on the future of humanitarian assistance in the former Yugoslavia.

While Mrs. Ogata has indicated privately that changes in the UNPROFOR mandate would cause UNHCR to review its ability to operate in the former Yugoslavia, her inclination would probably be to keep UNHCR on the ground as long as possible. You might want to ask her about current conditions for her staff in Bosnia as well as her major concerns regarding UNPROFOR deployment.

Other issues that you may want to raise:

Rwanda: status of the UNHCR operation in Zaire.

The Former Soviet Union: UNHCR efforts to encourage governments to develop orderly and humane migration practices within the region.

Other issues she may raise:

Haitian unaccompanied minors: we continue to work with UNHCR in seeking dispositions that meet the "best interests" of the children. We expect to end the process by June 30 and to permit U.S. entry for those children for whom "durable solutions" have not been found.

USG policy on interdiction (e.g., Chinese, Haitians): we recognize our obligation to not to return those who would face harm upon return and are currently developing generalized procedures to deal this important issue.

Concurrences by: Mort Halperin, Susan Rice, Nelson Drew, Richard Feinberg,
Chi
p Blacker, Stanley Roth

M S M a i l

DATE-TIME 07 June 95 18:31
FROM Malley, Robert
CLASSIFICATION **** NO CLASSIFICATION ****
SUBJECT Subject: RE: Cuban Adjustment Act [Confidential]
TO Bass, Peter E.
Cicio, Kristen K.
Emery, Mary C.
Hall, Wilma G.
Veit, Katherine M.
CARBON_COPY Halperin, Morton H.
TEXT_BODY

Please pass to Sandy:

Background:

Under the Cuban Adjustment Act, any Cuban paroled into the United States may be adjusted to permanent resident status by the Attorney General after one year of presence in the US. Traditionally, this has been used to regularize the situation of Cubans who came to the US through irregular means (e.g, by raft) who we obviously did not wish to deport. Therefore, they were paroled and, after a year, saw their status adjusted.

The Simpson Bill:

Simpson's bill would repeal the Act. Cubans paroled into the United States would find themselves in limbo, legally in the US but not permanent residents. Given that we are paroling large numbers of Cubans from GTMO and Havana, that would create serious problems. The Simpson bill carves out an exception for these Cubans, but it is not large enough. Justice will propose language to make sure we cover all parolees from GTMO, Panama, and Havana.

The more general question is, assuming technical fixes to cover the parolees, whether we would support repeal of the Act. Repealing the Act would mean that we would treat Cubans who come to the US irregularly in the same manner as we do other migrants, and ultimately seek to deport them to Cuba (if they do not qualify for asylum). On the other hand, if the Act were maintained, it would be up to the AG's discretion whether or not to adjust the status of Cubans who entered the US.

Administration Position:

The initial Justice draft response stated that we did not oppose repeal of

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E.O. 13526

White House Guidelines, September 11, 2006

By *W* NARA, Date *3/26/10*

201-1039-F

the Act. However, it is Rick Nuccio's view that that would be a mistake: It would further antagonize the Cuban-American community and specifically runs against the wishes of Senator Graham. His view, which we share, is that although we could live with repeal of the Act, it is not in our interest to come out in favor of its repeal at this time. Instead, we should say that we oppose repeal (as the current Justice response says). If, as currently is expected, the Act nonetheless is repealed, we could live with it (so long as the technical fixes are made). If it is not repealed, circumstances would dictate whether we wish to continue adjusting the status of Cubans or, assuming it is possible, deport them to Cuba.

You should note that in the past the AG has consistently stated that we did not favor repeal of the Act.

From: Cicio, Kristen K.

To: Schwartz, Eric P.

CC: /R, Record at A1; Malley, Robert; Rocha, Victor M.; @NSA - Nat'l Security Advisor; @GLOBAL - Global Affairs

Subject: FW: temporary agricultural workers [UNCLASSIFIED]

Date: Wednesday, June 07, 1995 06:06 PM

Eric,

Sandy noted..."oppose Kyl amendment - favor reinventing current program (HA2) to address some concerns of Western growers"

Eric/Rob - Sandy wants to discuss Cuban immigration amendment. Please call.

Kris

From: Schwartz, Eric P.

To: @NSA - Nat'l Security Advisor

CC: /R, Record at A1; Rocha, Victor M.

Subject: temporary agricultural workers [UNCLASSIFIED]

Date: Wednesday, June 07, 1995 04:57 PM

Sandy:

Did anything come of the Panetta meeting on the subject issue that Manuel or I should know about?

Eric

M S M a i l

DATE-TIME 08 June 95 11:16
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT [UNCLASSIFIED]
TO Kreczko, Alan J.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY
FYI, memo to Sandy on Cuban migration
[[CUBA74.DOC : 2818 in CUBA74.DOC]]
**ATTACHMENT
FILE DATE** 8 June 95 11:15
**ATTACHMENT
FILE NAME** CUBA74.DOC

May 30, 1995

ACTION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: RICHARD CLARKE/MORT HALPERIN

FROM: ERIC SCHWARTZ

SUBJECT: Meetings in Geneva: Screening of Cubans

Political Context

Mrs. Ogata will be in Washington tomorrow and next week and will face pressures from Members of Congress and the press to comment on our Cuba interdiction policy. If the issues below are unresolved during her visit, she has told us she will say that UNHCR and the USG are in consultations; if we can bring the issues to closure, Mrs. Ogata will be more forthcoming.

UNHCR concerns

UNHCR was quite reasonable in our Geneva discussions, taking positions (such as acceptance of shipboard processing) that demonstrated considerable flexibility. However, concerned as they are about the impact of our migration policies on European efforts to limit the right of asylum, UNHCR has three bottom lines.

First, they believe that cases of interdicted Cubans who are denied protection outside Cuba should be reviewed by a second authority. We told them we were already reviewing denied cases in Washington and would expect to continue to do so. This seemed to satisfy them.

Second, they believe that interdicted Cubans need to be informed of their right to come forward if they have concerns about return. INS has proposed language to add to the current script in which the Cubans would be told that if they have concerns they want to raise with a USG official, they may do so confidentially. We (Mort, Eric and INS) think we can add this to the script provided to the migrants and believe it will not result in an unmanageable increase in claims.

Third, they want Mrs. Ogata to be able to say she is satisfied we aren't returning refugees. We think our standard (which is based on the UN Handbook on Procedures and Criteria for Determining Refugee Status) does protect those at risk of serious harm upon return. However, UNHCR is concerned that by directing INS adjudicators to take account of the in-country system in making their determinations, we in principle permit return of some bonafide refugees -- e.g., the Cuban who we conclude might not risk persecution during the several months (or more) it takes to process the claim, but who we think would be persecuted if forced to remain in Cuba indefinitely. This is surely a small number of people, but UNHCR is concerned about the principle.

We believe there are two ways to try to accommodate UNHCR's concern.

First, we could maintain our current INS guidance but tell INS officials to let Washington know if they think that, in a particular case, implementation of the guidance threatens to result in the return of a genuine refugee. In such a case, we could protect the individual from return.

Second, we could eliminate reference to the in-country program in the guidance to INS. INS would, however, continue to take account of Cuban assurances against reprisal and U.S. monitoring of returnees in assessing whether the claimant has a credible fear of a

threat to his life or freedom or of serious abuses due to race, religion, nationality, membership in a social group or political opinion.

Mort and Dick favor the first option because they fear that the second option, even it isn't publicly announced, might open the door to a large number of claims. If we assert we are respecting the Refugee Convention, that should be enough for UNHCR.

Eric and INS favor the second option, implementation of which need not be publicly announced. They argue that it will not significantly change current INS procedures or standards but will win us valuable support from the UNHCR. Also, the first option (favored by Mort and Dick) has political downsides: it will require continued (and possibly prolonged) discussion with UNHCR on individual cases -- to ensure them that, despite our guidance, we are not returning refugees. If UNHCR is not happy with what it sees, such consultation might well result in additional UNHCR demands. Moreover, because the first option requires further consultations (and does not bring us to closure), Mrs. Ogata is likely to be rather noncommittal in her comments while she is here. Finally, we note that we have not had large outflows and we could later tighten the guidance if need be.

RECOMMENDATIONS/OPTIONS

1. On Issue I (review of decisions) and Issue II (informing Cubans they may speak to USG officials): that you approve our moving forward on these issues as described above.

Approve _____ Disapprove _____ [SANDY APPROVED]

2. On Issue III (standard of review): that you choose one of the options below.

_____ Option 1 (Mort and Dick favor): Maintain current INS guidance, but tell adjudicators to let Washington know if it appears guidance will result in return of refugee in a particular case; tell UNHCR that we are not returning bonafide refugees.

_____ Option 2 (Eric and INS favor): Change guidance to eliminate reference to in-country process; INS officials can still take account of USG monitoring of returnees and Cuban Government guarantees against reprisal.

_____ Option 3: do not make any revisions in procedure; endure UNHCR and congressional criticism that we may be returning some genuine refugees.
[SANDY CHOSE OPTION 1]

M S M a i l

DATE-TIME 29 June 95 10:13
FROM Schwartz, Eric P.
CLASSIFICATION UNCLASSIFIED
SUBJECT Haitians at Guantanamo [UNCLASSIFIED]

TO Andricos, George M.
Atkin, Timothy J.
Bass, Peter E.
Beers, Rand R.
Brown, Dallas
Cicio, Kristen K.
Clarke, Richard A.
Cooper, Kathleen H.
Danvers, William C.
Eddy, Randolph P.
Emery, Mary C.
Fetig, James L.
Hall, Wilma G.
Halperin, Morton H.
Kammerer, Kelly C.
Lennon, John E
Lindsey, Wanda
Longoria, Michael A.
Lorin, Matthew E.
Malley, Robert
Mitchell, Calvin A.
Norman, Marcia G.
Rice, Susan E.
Roundtree, Beverly J.
Schwartz, Eric P.
Sheehan, Michael A.
Simon, Steven N.
Tyler, John T.
Veit, Katherine M.
Wozniak, Natalie S.

CARBON_COPY NO CC's on THIS MESSAGE

TEXT_BODY

I understand that Tony will be appearing before TransAfrica and that the President will be in the Miami area.

Haitians at Guantanamo may come up at each forum and this guidance should suffice.

I don't know who is preparing what paper for whom, so I have sent this to

several offices. Please make appropriate use of it.

[[HAITI107.DOC : 2566 in HAITI107.DOC]]

**ATTACHMENT
FILE DATE**

29 June 95 9:59

**ATTACHMENT
FILE NAME**

HAITI107.DOC

Background on Unaccompanied Minors Who Remain at Guantanamo

In cooperation with UNHCR, we have conducted "best interest of the child" determinations that have resulted in both return to Haiti for some unaccompanied minors and entry to the U.S. for others. We also committed to ending the procedure by June 30 -- the end of this week. At this point, we expect nearly all the minors who remained in Haiti at the beginning of this week -- about 125 -- to enter the U.S. by week's end. This is generally because we have not been able to find parents or close relatives in Haiti.

By bringing these Haitian children into the U.S., we will meet the concerns of a number of advocacy groups and the Congressional Black Caucus.

Points: Unaccompanied Haitian Minors at Guantanamo

ù We plan to move all the unaccompanied minors, except for a small number who are on medical hold, out of Guantanamo by the end of the day on Thursday, June 29.

ù This week, we will be permitting U.S. entry, with suitable sponsorship, for over 100 minors -- this represents nearly all of the minors who remained at Guantanamo at the beginning of this week.

ù We have sought to resolve the disposition of the minors in a humane manner consistent with international practice and in cooperation with the UN High Commissioner for Refugees.

ù Where we have determined that the child's parents or closest relatives lived in Haiti, the child has generally been reunited with his or her family members in Haiti.

ù In other cases -- including the 100 coming to the U.S. this week -- we have permitted U.S. resettlement.

Points: Other Haitians at Guantanamo

ù A small number of Haitian adults will be paroled into the United

States with suitable sponsorship -- in most cases these Haitians experienced severe trauma in Haiti during the period of military rule and INS determined that returning them to Haiti would be inappropriate and unreasonable.

ù By Friday, June 30, the only Haitians who remain on Guantanamo will be those on medical hold, a majority of whom will be repatriated after their treatment is completed.

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