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RECORD ID: 9403507
RECEIVED: 04 MAY 94 17

TO: ITOH

FROM: JUKES, J

DOC DATE: 03 MAY 94
SOURCE REF:

KEYWORDS: HAITI
LEGISLATIVE REFERRAL

REFUGEES

PERSONS:

SUBJECT: STATE PROPOSED RPT RE HR-3663 HAITIAN REFUGEE FAIRNESS ACT

ACTION: NFAR PER SCHWARTZ

DUE DATE: 06 MAY 94 STATUS: C

STAFF OFFICER: SCHWARTZ

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO

COMMENTS: " *** DUE NOON 6 MAY 1994 *** "

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ACTION DATA SUMMARY REPORT

RECORD ID: 9403507

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 ROSSIN
001
001 SCHWARTZ
001

Z 94050417 PREPARE MEMO ITOH TO JUKES
Z 94050511 ACTION TRANSFERRED
Z 94050511 PREPARE MEMO ITOH TO JUKES
X 94122915 NFAR PER SCHWARTZ

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~~FOR ACTION~~
~~ROSSIN~~

FOR CONCURRENCE
CLARKE
HALPERIN
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SCHWARTZ

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FEINBERG

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~~recall, this kind of response became unnecessary~~
~~once policy change my recall to~~

NSC/S

TO ERIC SCHWARTZ FOR ACTION

Larry Rossin 5/5

COMMENTS: " *** DUE NOON 6 MAY 1994 *** "

Close file

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DOC 1 OF 1

I'm not sure what
happened w/ this. Given
the date, it may well
be that this letter
was killed in view of
the policy change
announced May 8.
I do not recall seeing
a reformulated letter,
however.

— EG 12/94

14 PAGES
3507EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

May 3, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2604

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202) 514-2141 - 217
DEFENSE - Samuel T. Brick, Jr. - (703) 697-1305 - 325
TRANSPORTATION - Tom Herlihy - (202) 366-4687 - 226
NSC - William H. Itoh - (202) 395-3723 - 249
NAVY - Captain John Hutson - (703) 695-5276 - 305

FROM: JAMES J. JUKES (for) *Jm*
Assistant Director for Legislative ReferenceOMB CONTACT: Ingrid SCHROEDER (395-3883)
Secretary's line (for simple responses): 395-3454SUBJECT: ~~STATE~~
~~TREASURY~~ Proposed Report RE: HR 3663, Haitian
Refugee Fairness Act

DEADLINE: NOON May 5, 1994

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:

Lin Liu

Harry Meyers

Don Gessaman

Phebe Vickers

~~Rodney Dent~~

Joe Pipan

Margaret Shaw

Chris Edley

Jennifer Palmieri

Bob Damus

Clarissa Cerda

Donsia Strong

Karen Hancock

Ken Schwartz

Bruce Sander



United States Department of State

Washington, D.C. 20520

Dear Mr. Chairman:

This letter is to respond to your request for views on H.R. 3663, the Haitian Refugee Fairness Act. This bill requires the affirmative determination that a person is not a refugee before he or she can be returned by the United States to his or her country of origin. The bill, if enacted into law, would have adverse consequences for the Administration's efforts to deal with the flow of persons from Haiti and would have a potentially significant impact on U.S. maritime operations worldwide. For these reasons as discussed in greater detail below, the Administration opposes H.R. 3663.

H.R. 3663 is problematic as a matter of law and logistics. First, Section 2 of the bill purports to reinterpret the treaty obligations of the United States under Article 33 of the Convention Relating to the Status of Refugees to apply to refugees outside the territorial boundaries of the United States. This interpretation goes far beyond the language and intent of the Refugee Convention. It would extend the scope of the Convention's application as understood by the Senate and the President at the time of U.S. accession. Further, it would expand the Convention's application by the United States and other countries since its adoption. In addition, the bill conflicts with a recent Supreme Court decision in Haitian Centers Council v. Sale. It is highly questionable whether changes to the interpretation of a treaty obligation can be made by legislation of this sort.

Second, the language is too broadly drawn. Prohibiting the return of any person who is outside the United States -- whether in the territory of another state, or located outside any state (e.g. on the high seas) or within the territorial waters of their home state -- to the territorial boundaries of their home country unless the United States Government first determines that the person is not a refugee would create enormous practical difficulties with substantial financial implications. This could require competent U.S. officials --

The Honorable
Lee Hamilton, Chairman,
Committee on Foreign Affairs,
House of Representatives.

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likely of the Immigration and Naturalization Service -- to be available anywhere in the world, on land or at sea, on a moment's notice to determine whether an individual is a refugee intended to be protected by this legislation, whether or not the individual claims to be a refugee. This has never been our practice, nor is it required under international law. Moreover, such a requirement raises the very real logistical question of what to do with these aliens in the meantime. It would appear to make U.S. officials responsible for safeguarding the safety and well-being of these persons on the seas or in a foreign country until a status determination can be made. This provision also conflicts with international law in so far as it fails to recognize the jurisdiction of other governments within their own territories. In addition, this requirement would also pose obvious security and logistical problems at U.S. military facilities overseas.

The legislation could be read to prohibit the Coast Guard and Navy from returning an individual rescued at sea to his or her home, or even another, much closer country. It could be interpreted to require a refugee determination by a United States official whether or not the rescued person made a claim to refugee status. This requirement would seriously interfere with the full range of Coast Guard and Navy operations at sea, including wide ranging search and rescue missions and cooperative international counter-drug operations. For example, a United States Government vessel on normal maneuvers would not be able to resume its assigned mission until after a refugee adjudication was made on any persons picked up at sea. The vessel might also be required to furnish transportation to the United States for those determined to be refugees. These delays and associated costs could be substantial.

In addition, the bill appears to suggest that even a determination by the United Nations High Commissioner for Refugees (UNHCR) or the competent authorities of another state would not relieve U.S. officials of this status determination responsibility, in areas outside the United States and potentially subject to the jurisdiction of another sovereign state.

We have additional concerns about other sections of the proposed bill, but in the interest of providing a prompt response we have confined our comments to the section to which the Department has greatest expertise.

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The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to submission of this report.

I hope that this information is useful to you. Please do not hesitate to contact me if we can be of further assistance.

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

103D CONGRESS
1ST SESSION

H. R. 3663

To reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States, designate Haiti under Temporary Protected Status, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mrs. MERR (for herself, Mr. GILMAN, Ms. BROWN of Florida, Mr. OWENS, Mr. MFUME, Mr. TOWNE, Mr. BUSH, Mrs. CLAYTON, Mr. SCOTT, Mr. LEWIS of Georgia, Mr. WATT, Mr. HILLIARD, Mr. ROMERO-BARCELÓ, Miss COLLINS of Michigan, Mr. FLAKE, Mr. TUCKER, Ms. WATERS, Mr. JEFFERSON, Mr. PAYNE of New Jersey, Mr. RANGEL, Ms. PELOSI, Mr. WYNN, Mr. JACOBS, Mr. FRANK of Massachusetts, Ms. EDDIE BEERICE JOHNSON of Texas, Mr. CONYERS, Mr. HASTINGS, Mr. FOGLIETTA, Ms. MCKINNEY, Mr. SERRANO, Mr. WASHINGTON, Mr. DE LUGO, Mr. OLYBURN, Mr. ENGEL, and Mr. DELLUMS) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

A BILL

To reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States, designate Haiti under Temporary Protected Status, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Haitian Refugee Fair-
3 ness Act".

4 **SEC. 2. ADHERENCE TO INTERNATIONAL LAW REQUIRE-**
5 **MENT OF NONREFOULEMENT.**

6 (a) **CONGRESSIONAL STATEMENT.**—It is the sense of
7 the Congress that Article 33 of the Convention Relating
8 to the Status of Refugees (done at Geneva, July 28,
9 1951), as applied under Article I of the Protocol Relating
10 to the Status of Refugees (done at New York, January
11 31, 1967), imposes an obligation upon states which are
12 party to the Protocol that applies wherever the states act
13 and without territorial limitation, and Congress reaffirms
14 that this Article 33 obligation applies to actions of the
15 United States with respect to individuals within and with-
16 out the territorial boundaries of the United States.

17 (b) **OBLIGATIONS OUTSIDE THE UNITED STATES.**—
18 The United States Government shall not return, cause to
19 be returned, or affect the movement in any manner which
20 results in returning, a national or habitual resident of a
21 country, who is outside the territorial boundaries of the
22 country of nationality or residence to the territory where
23 the individual's life or freedom would be threatened, and
24 no funds may be expended without respect to any such
25 return, unless the United States Government first deter-
26 mines in a manner that incorporates procedural safe-

3

1 guards consistent with internationally endorsed standards
2 and guidelines that such individual is not a refugee of such
3 country under Article 1 of the Convention Relating to the
4 Status of Refugees (done at Geneva July 28, 1951) as
5 applied under Article I of the United Nations Protocol Re-
6 lating to the Status of Refugees (done at New York, Janu-
7 ary 31, 1967) or a person designated under Article 33
8 of the Convention Relating to the Status of Refugees.

9 (c) OBLIGATIONS WITHIN THE TERRITORIAL WA-
10 TERS OF ANOTHER COUNTRY.—The United States Gov-
11 ernment shall not return, cause to be returned, or affect
12 the movement in any manner which results in returning,
13 a national or habitual resident of a country, who is within
14 the territorial waters of his or her country of nationality
15 or habitual residence, to the land frontier or territorial
16 land of the country of nationality or residence where the
17 individual's life or freedom would be threatened, and no
18 funds may be expended with respect to any such return,
19 unless the United States Government first determines in
20 a manner that incorporates procedural safeguards consist-
21 ent with internationally endorsed standards and guidelines
22 that if that individual were outside the territory of the
23 country of nationality or habitual residence such individ-
24 ual would not be a refugee of such country under Article
25 I of the Convention Relating to the Status of Refugees

1 (done at Geneva, July 28, 1951) as applied under Article
2 I of the United National Protocol Relating to the Status
3 of Refugees (done at New York), January 31, 1967) or
4 a person designated under Article 33 of the Convention
5 Relating to the Status of Refugees. This subsection shall
6 not constitute authority for conducting operations by the
7 United States Government within the territorial waters of
8 another country.

9 (d) LIMITATIONS.—The provisions of this section do
10 not apply to an individual if—

11 (1) such individual ordered, incited, assisted, or
12 otherwise participated in the persecution of any per-
13 son on account of race, religion, nationality, mem-
14 bership in a particular social group or political opin-
15 ion; or

16 (2) such individual, having been convicted by a
17 final judgment of an aggravated felony (as defined
18 in section 101(a)(43) of the Immigration and Na-
19 tionality Act), constitutes a danger to the commu-
20 nity of the United States.

21 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion shall be construed to impose new obligations on the
23 Government of the United States in its treatment of na-
24 tionals and habitual residents of a country at United
25 States diplomatic and consular missions in that country.

5

1 **SEC. 3. TEMPORARY PROTECTED STATUS FOR HAITIANS.**

2 (a) **DESIGNATION.**—

3 (1) **IN GENERAL.**—Haiti is hereby designated
4 under section 244A(b) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1254a(b)), subject to the
6 provisions of this section.

7 (2) **PERIOD OF DESIGNATION.**—Such designa-
8 tion shall take effect on the date of the enactment
9 of this Act and shall remain in effect for a period
10 of 24 months from the date of enactment of this Act
11 or until such time as the President certifies to Con-
12 gress that a democratically elected government is se-
13 curely in place in Haiti, whichever occurs later.

14 (b) **ALIENS ELIGIBLE.**—In applying section 244A of
15 the Immigration and Nationality Act pursuant to the des-
16 ignation under this section, subject to section 244A(c)(3)
17 of such Act, an alien who is a national of Haiti meets
18 the requirement of section 244A(c)(1) of such Act only
19 if—

20 (1) the alien has been continuously physically
21 present in the United States since November 17,
22 1993;

23 (2) the alien is admissible as an immigrant, ex-
24 cept as otherwise provided under section
25 244A(c)(2)(A) of such Act and is not ineligible for

1 temporary protected status under section
2 244A(c)(2)(B) of such Act; and

3 (3) the alien registers for temporary protected
4 status in a manner which the Attorney General shall
5 establish.

6 (c) **REGISTRATION FEE.**—Subject to section
7 244A(c)(3) of the Immigration and Nationality Act, the
8 Attorney General may provide for the payment of a fee
9 as a condition of registering an alien under subsection (b)
10 of this section.

11 **SEC. 4. REIMBURSEMENT FOR STATE AND LOCAL GOVERN-**
12 **MENT COSTS.**

13 Notwithstanding any other provision of law, the At-
14 torney General shall reimburse from funds authorized
15 under section 404(b)(1) of the Immigration and National-
16 ity Act, State and local governments for incremental costs
17 associated with Haitian nationals who are paroled into the
18 United States by the Immigration and Naturalization
19 Service under section 212(d)(5) of the Immigration and
20 Nationality Act.

7

1 SEC. 5. FUNDING FOR COMMUNITY RELATIONS SERVICE OF
2 THE UNITED STATES DEPARTMENT OF JUS-
3 TICE AND CUBAN/HAITIAN PRIMARY SECOND-
4 ARY MIGRATION PROGRAM FOR FISCAL
5 YEARS 1994, 1995 AND 1996.

6 (a) COMMUNITY RELATIONS SERVICE.—Of the funds
7 appropriated for the United States Department of Justice
8 for fiscal years 1994, 1995, and 1996, not less than
9 \$27,000,000 shall be made available in each fiscal year
10 to the Community Relations Service.

11 (b) CUBAN/HAITIAN PRIMARY SECONDARY MIGRA-
12 TION PROGRAM.—Of the funds referred to in subsection
13 (a), not less than \$6,000,000 in each of fiscal years 1994,
14 1995, and 1996 shall be used to provide primary and sec-
15 ondary resettlement services for Cubans and Haitians pa-
16 roled into the United States by the Immigration and Nat-
17 uralization Service under section 212(d)(5) of the Immi-
18 gration and Nationality Act.

19 SEC. 6. CUBAN/HAITIAN ENTRANT EMERGENCY FUND.

20 Section 404 of the Immigration and Nationality Act
21 (8 U.S.C. 1101, note.) is amended by adding at the end
22 the following new subsection:

23 "(c) CUBAN/HAITIAN ENTRANT EMERGENCY FUND.

24 "(1) AUTHORIZATION OF APPROPRIATIONS.—

25 There are authorized to be appropriated for fiscal
26 year 1994 and any subsequent fiscal year to a

8

1 Cuban/Haitian Entrant Emergency Fund to be es-
2 tablished in the Treasury, an amount sufficient to
3 provide for a balance of \$5,000,000 in such fund, to
4 be used to carry out the purposes described in para-
5 graph (8).

6 "(2) CONDITIONS FOR USE OF FUND.—Funds
7 which are authorized to be appropriated by para-
8 graph (1) shall be available whenever—

9 "(A) the number of Cubans and Haitians
10 paroled into the United States by the Immigra-
11 tion and Naturalization Service under section
12 212(d)5 of the Immigration and Nationality
13 Act in a single fiscal year has exceeded the esti-
14 mate made by the Attorney General as required
15 in paragraph (4), and

16 "(B) funds appropriated for the Cuban/
17 Haitian Primary/Secondary Resettlement Pro-
18 gram are inadequate to provide primary and
19 secondary resettlement services at the fiscal
20 year 1993 funding and service level.

21 "(3) _____. Funds which are authorized to be
22 appropriated by paragraph (1) shall be available
23 solely for the purpose of assisting with the process-
24 ing, placement and reception of Cubans and Hai-
25 tians paroled into the United States by the Immigra-

1 tion and Naturalization Service under section
2 212(d)(5) of the Immigration and Nationality Act.

3 "(4) ANNUAL ESTIMATION OF CUBAN AND HAI-
4 TIAN PAROLEES.

5 "(A) The Attorney General of the United
6 States shall submit each year, concurrent with
7 the President's annual budget request, an esti-
8 mate of the number of Cubans and Haitians
9 who are expected to be paroled into the United
10 States under section 212(d)(5) of the Immigra-
11 tion and Nationality Act in the next fiscal year.
12 Such estimate shall be made independently
13 from the budget request for any programs for
14 Cuban and Haitian parolees.

15 "(B) In determining the estimate required
16 by paragraph (4)(A), the Attorney General shall
17 take into consideration a number of factors, in-
18 cluding but not limited to—

19 "(i) previous experience and current
20 trends in the number of Cubans and Hai-
21 tians paroled into the United States under
22 section 212(d)(5) of the Immigration and
23 Nationality Act, and

24 "(ii) political circumstances and
25 trends in Cuba and Haiti."

○