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NSC/RMO PROFILE

RECORD ID: 9404093
RECEIVED: 24 MAY 94 16

TO: ITOH

FROM: JUKES, J

DOC DATE: 24 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: 27 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: _____

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ACTION DATA SUMMARY REPORT

RECORD ID: 9404093

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 ROSSIN
001
001 SCHWARTZ
001

Z 94052416 PREPARE MEMO ITOH TO JUKES
Z 94052419 ACTION TRANSFERRED
Z 94052419 PREPARE MEMO ITOH TO JUKES
X 95011810 NFAR PER SCHWARTZ

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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
SCHWARTZ

FOR CONCURRENCE
CLARKE
HALPERIN
ROSNER
ROSSIN

FOR INFO
FEINBERG

COMMENTS:

Records Management
SEE comments
on attached.
Eric

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DOC 1 OF 1

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LOGREF:

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NSCP:

CODES:

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

FOR ACTION

~~ROSSIN~~

FOR CONCURRENCE

CLARKE
HALPERIN
ROSNER
SCHWARTZ

FOR INFO

FEINBERG

COMMENTS:

*Return to ~~ROSSIN~~ -
Rec'd management - in light
of policy change,
have requested a different letter.*

*Please transfer action
to Eric Schwartz.
Dr Larry Rossin
5/24/94*

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DOC 1 OF 1

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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

5 PAGES
4093

May 24, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2806

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)
Assistant Director for Legislative Reference

OMB CONTACT: Ingrid SCHROEDER (395-3883)
Secretary's line (for simple responses): 395-3454

**SUBJECT: STATE Proposed Report RE: HR 3663, Haitian
Refugee Fairness Act**

DEADLINE: NOON May 27, 1994

**COMMENTS: The attached State report on HR 3663 was previously
circulated on May 3rd under LRM #I-2604. The reports are
identical. After the Administration announced the new Haitian
policy State withdrew their report from the clearance process,
but has now resubmitted the report for clearance.**

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
Joe Pipan
Margaret Shaw
Chris Edley
Jennifer Palmieri

Bob Danus
Clarissa Cerda
Donsia Strong
Karen Hancox
Ken Schwartz
Bruce Sasser



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.

-2-

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.

-3-

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