Case Number: 2011-1039-F

FOIA MARKER

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Document ID: 9405323				
Stack: V	Row: 44	Section: 4	Shelf: 5	Position: 2

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NSC/RMO PROFILE

RECORD ID: 9405323
RECEIVED: 01 JUL 94 08

TO: BERGER

FROM: SCHWARTZ
CLARKE

DOC DATE: 01 JUL 94
SOURCE REF:

KEYWORDS: HAITI
IMMIGRATION
REFUGEES

PERSONS:

SUBJECT: DISCUSSION PAPER ON HIV & WAIVERS FOR REFUGEES

ACTION: NOTED BY LAKE
DUE DATE: 05 JUL 94 STATUS: C

STAFF OFFICER: SCHWARTZ
LOGREF:

FILES: PA
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
NSC CHRON

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSJEB CLOSED BY: NSASK DOC 1 OF 1

LIMITED OFFICIAL USE

ACTION DATA SUMMARY REPORT

DOC	ACTION OFFICER	CAO	ASSIGNED	ACTION REQUIRED
001	BERGER	Z	94070511	FOR INFORMATION
001		X	94091515	NOTED BY LAKE

NATIONAL SECURITY COUNCIL

Nancy —
Really need to move
pkg 5343 —
Letter for Hazel O'Leary
to carry to Rao.
She leaves DC at 9 am
tomorrow so letter
would need to be
autopenned tonight.

B

make sure RR
sets copy of
signed letter in
record.

NATIONAL SECURITY COUNCIL

August 4, 1994

NOTE FOR MARY EMERY

THROUGH: EXECUTIVE SECRETARY

FROM: MARCIA NORMAN [for ERIC SCHWARTZ]

Attached is a replacement page 2 for the information paper (5323Redo) forwarded yesterday. Paragraph 2 on the second page reads "about 70 HIV- . . ." It has been changed to read, "about 185 HIV- . . . ."

Please substitute the new page. Thank you.

Attachment
Tab I Replacement Page 2

package was returned was returned to WHO at 4:45 PM Thursday. Wes

National Security Council
The White House

rec'd 8/3 8:50pm

PROOFED BY: _____ LOG # 5323 Redo

URGENT NOT PROOFED: _____ SYSTEM (PRS) NSC INT

BYPASSED WW DESK: _____ DOCLOG SP A/O _____

	SEQUENCE TO	HAS SEEN	DISPOSITION
Reed	1	JWR	
Kenney			
Itoh			
Soderberg	2	M sent back	
Berger	3		
Lake	4	Natl Sec Advisor has seen	
Situation Room			
West Wing Desk	5	SP 8/4	
NSC Secretariat	6		N

A = Action	I = Information	D = Dispatch	R = Retain	N = No Further Action

cc: VP McLarty Other _____

Should be seen by: _____
(Date/Time)

COMMENTS:

DISPATCH INSTRUCTIONS:

Ex Sec's Office has details

National Security Council
The White House

PROOFED BY: _____ *LOG #* 5343

URGENT NOT PROOFED: _____ *SYSTEM* ~~PRS~~ *NSC* *INT*

BYPASSED WW DESK: _____ *DOCLOG* ~~1811~~ *A/O* _____

	SEQUENCE TO	HAS SEEN	DISPOSITION
Reed	1	JWR	A
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Soderberg	2		
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Situation Room			
West Wing Desk	3	MA 7/6	A TO PODESTA
NSC Secretariat			

A = Action	I = Information	D = Dispatch	R = Retain	N = No Further Action

cc: VP McLarty Other _____

Should be seen by: _____
(Date/Time)

COMMENTS: CC TL on road

DISPATCH INSTRUCTIONS:

EXECSEC HAS OBSC

National Security Council
The White House

rec'd 7/1 7pm

PROOFED BY: AL LOG # 5323

URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT

BYPASSED WW DESK: _____ DOCLOG _____ A/O _____

once

	SEQUENCE TO	HAS SEEN	DISPOSITION
Reed			
Kenney	1		A
Itoh			
Soderberg			
Berger	2		
Lake			
Situation Room			
West Wing Desk	3		
NSC Secretariat			
Schwartz	4		Per request

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc: VP McLarty Other _____

Should be seen by: _____
(Date/Time)

COMMENTS:

CC: NS ✓

8/2

DISPATCH INSTRUCTIONS:

— Eric Schwartz requested this be EXECSEC has DBSC returned.

1

OFFICIAL USE ONLY

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

5323REDO

8/4 → to Eric Schwartz see notes (S)

July 1, 1994

INFORMATION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: RICHARD A. CLARKE

FROM: ERIC SCHWARTZ

SUBJECT: Discussion Paper on HIV and Waivers for Refugees

Attached is a copy of a revised HIV information paper.

This issue will be heating up very shortly. NPR and the Washington Post have already reported on it, and if we don't take a decision shortly, there is a chance we will be sued by advocates for the Haitians.

I suggest we have a conversation after you have reviewed the memorandum.

Attachment
Tab I Information Paper

8/4 Your reaction? Do we need to put this to President? (S)

8/4 I think so - in reduced/simplified form. (S)

OFFICIAL USE ONLY

APPROVED REFUGEES WHO TEST POSITIVE FOR THE HIV-VIRUS

HIV AND WAIVERS FOR REFUGEES

Congress mandated last year that HIV infection is a communicable disease of public health significance. Under the Immigration and Nationality Act (INA), aliens with such diseases -- which are generally designated administratively rather than through legislative action -- are not permitted entry unless the Attorney General, in her discretion, chooses to waive this ground of excludability. In the case of refugees, waivers may be granted for humanitarian purposes, to ensure family unification or for public interest reasons.

To have INS consider a waiver request for a refugee, the applicant, pursuant to an INS 1988 policy directive, must establish that, as a result of entry --

1. The danger to the public health of the US would be minimal.

2. The possibility of the spread of the disease would be minimal.

3. There would be no cost incurred by any level of government agency without prior consent (i.e., private or public sponsors would voluntarily commit to assume all medically related costs).

THIRD WAIVER REQUIREMENT -- PRIVATE SPONSORSHIP (COST)

These three waiver requirements were identical to those established by regulation in 1988 for undocumented aliens in the US who were eligible for legalization under the 1986 Immigration Reform and Control Act. In that context, the third requirement (voluntary sponsorship) made sense, as all legalization applicants were physically in the US and subject to the public charge provisions of the Immigration and Nationality Act.

However, refugees, by virtue of their status, are exempt by federal law from public charge requirements applied to other immigrants. But in practice, the third filing requirement of the INS policy directive applies public charge requirements to refugees who test positive for the HIV virus (and other communicable diseases) and wish to file for a waiver of their excludability.

THE PROBLEMS THIS CREATES

The third waiver requirement creates three sorts of problems, both with respect to Haiti and worldwide. (All applicant-refugees with communicable diseases face the following problems in theory; however, the numbers are only significant with respect to those applicants who are HIV-positive.)

1. The 29 HIV-positive Haitians who were approved as refugees in Jamaica face the prospect of being warehoused at Guantanamo.

2. HIV-positive applicants who are approved at in-country processing programs in Haiti and elsewhere (Cuba, Vietnam, FSU) face the prospect of being denied US entry after we have determined that they have good reason to fear persecution in their own country. (While this problem exists to a limited extent worldwide, the major concern is Haiti. Over the past two years in Haiti, we have accumulated about 70 HIV-positive applicants -- some of whom we consider to be at serious risk of persecution -- who have not yet been able to satisfy the third waiver requirement.)

3. HIV-positive applicants who are in countries of temporary safe haven and are approved for US refugee status cannot get into the US.

The first two problems are the most critical.

INS RECOMMENDATION

The INS recommends eliminating worldwide the third filing requirement -- i.e., voluntary public or private sponsorship -- regarding the waiver for entry of refugees with communicable diseases. INS makes the following arguments:

- This would allow entry of refugees who test HIV-positive, as most HIV-sufferers could meet the first two requirements of the policy. (Again, while this change would also affect applicant-refugees with other communicable diseases, the implications would be significant only with respect to HIV-positive applicants.)

- By not eliminating the first two requirements of the waiver, we will respond to public health concerns embodied in the Congress's decision to mandate that HIV be included as one of the "communicable diseases of public health concern."

- Removal of the third requirement for filing a waiver would not result in automatic admission of refugees who test positive for HIV. In order to be granted, HIV cases would still have to meet one of the statutory waiver requirements: humanitarian purposes, family unity or the public interest. We could still deny HIV-positive refugees who do not meet these requirements.

PUBLIC HEALTH SERVICE (PHS) POSITION

The Public Health Service of HHS supports the INS proposal and would note that current policy discriminates against HIV-sufferers in two ways. First, per capita public costs for HIV-positive refugees are less than such public health costs for other refugees with medical problems such as cancer, heart disease, etc. Because those diseases have not been listed as communicable and of public health significance, however, refugees with those illnesses are not excluded from entry. Moreover, PHS does not believe that HIV should have been placed on the list of communicable diseases in the first place. As a general matter, decisions on which diseases are on the list are made by the Centers for Disease Control and not by congressional fiat.

DEPARTMENTS OF STATE AND DEFENSE

State endorses the INS recommendation and argues such action would uphold important principles of refugee protection. DoD has no objection to the INS recommendation and believes the intent should be to avoid holding refugees in a DoD facility solely because they are HIV-positive.

NUMBERS INVOLVED AND COSTS

INS estimates that, of the some 120,000 refugees to which we provide entry each year, there probably are no more than several hundred (and less than 500) approved refugee applicants who test HIV-positive. Not all would submit waiver requests and not all among the waiver applicants would be approved on the merits (i.e., would merit a waiver on humanitarian, family unity or public interest grounds).

PHS estimates that the annual costs for HIV sufferers without active AIDS is about $10,000 and that the lifetime costs for caring for HIV sufferers is about $100,000. If we assume entry of about 200 HIV sufferers each year, the $10,000 estimate amounts to about $2 million per year for each group of new entrants. However, it is worth noting that these costs are lower per capita than the costs for other diseases suffered by refugees, that some refugees will obtain private health care at no cost to the states and that we already provide federal aid for medical assistance to refugees through HHS's Office of Refugee Resettlement.

HANDLING THE POLITICS OF A DECISION TO CHANGE POLICY IN THIS AREA

A change in policy in this area will clearly be controversial. There may, however, be ways to mitigate the adverse political reaction. In particular, we could --

- Enhance our efforts at supervision of the HIV-positive population in the areas of medical care, HIV-counseling and follow-up notification to receiving health centers.

- Seek, to the maximum extent possible, resettlement outside Florida for HIV-positive refugees.

- Publicize our current efforts to provide assistance to impacted communities (such as our $19 million in assistance to Jackson Memorial Hospital and Dade County, Florida).

OTHER OPTIONS

Eliminating the voluntary sponsorship requirement, the option recommended by State, Justice and PHS, is not the only alternative. Identified below are three other options that maintain stricter bars to entry for HIV-positive refugees. Each, however, has very serious drawbacks.

1. Do not permit entry unless all HIV-positive refugees can meet all the waiver requirements.

The advantage of this option is that it avoids most of the political problems of entry of HIV-positive refugees who do not have guarantees of medical sponsorship.

The problem with this option is that it would maintain the discriminatory treatment accorded HIV-sufferers. Those approved in our in-country programs would be consigned to continuing risks in their country of origin. There is every likelihood that some approved applicants will be detained, tortured or killed. Finally, this option would result in a long-term, approved refugee population (of 29 persons) at Guantanamo, which has already been the subject of NOR and Washington Post reports. Keeping HIV-positive refugees at Guantanamo would also result in litigation.

2. Test all refugee applicants for HIV before granting them refugee interviews and require that those who are HIV-positive demonstrate an ability to meet the waiver requirement before giving them a refugee interview.

The advantage of this option is that you do not create a population of HIV-positive approved refugees who are prevented from traveling to the United States because they do not have medical sponsorship.

The problem with this option is that obtaining private medical sponsorship is a long and difficult process that can involve coordination with local care-givers and a good deal of paperwork. It is probably unrealistic to ask refugee applicants to work out such arrangements prior to a refugee determination. It may also be difficult to ask potential private sponsors (who are few and far between) to commit to sponsorship of individuals before knowing whether they have obtained refugee status.

Moreover, we would be breaking new ground by excluding from consideration for refugee status persons with medical conditions. This would conflict with our general principle of looking at the refugee claim rather than the medical condition. Unless applied to others with costly medical problems, it would constitute discriminatory treatment against HIV-sufferers.

Finally, this option would not by itself solve the problem of the HIV-positive refugees who are in the pipeline.

3. Do not change the waiver requirement, but request that the Attorney General consider paroling in the 29 HIV-positive approved refugees from Guantanamo.

The advantage of this option is that it would solve your Guantanamo problem (and forestall HIV-related litigation) while providing entry for only a small number of HIV-positive persons.

However, it would be difficult to justify bringing in the Guantanamo Haitians and not accepting those in Haiti, especially since those in Haiti are at much greater risk. In addition, this option has most of the problems of option #1. It would maintain the discriminatory treatment accorded HIV-sufferers. For those approved in our in-country programs, we would also be consigning them to continuing risks in their country of origin.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

July 1, 1994

INFORMATION

MEMORANDUM FOR SAMUEL BERGER

THROUGH: RICHARD A. CLARKE ESR RC

FROM: ERIC SCHWARTZ ES

SUBJECT: Discussion Paper on HIV and Waivers for Refugees

Attached is an HIV Discussion Paper that has been cleared interagency (State, DOD, HHS and INS).

Although White House Counsel received a copy from its contacts at Justice and DPC Staff has seen a version of the memo, I have not yet requested comments from other EOP offices (DPC, Intergovernmental Affairs, AIDS Policy Office). I wanted to check with you first.

I await your instructions on whether to request comment from other White House offices, on what you want to do with the memo, and on what modifications you would like me to make.

Concurrences by: Jamie Baker & for JB

Attachment
Tab I Discussion Paper

APPROVED REFUGEES WHO TEST POSITIVE FOR THE HIV-VIRUS

HIV AND WAIVERS FOR REFUGEES

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- Enhance our efforts at supervision of the HIV-positive population in the areas of medical care, HIV-counseling and follow-up notification to receiving health centers.

- Seek, to the maximum extent possible, resettlement outside Florida for HIV-positive refugees.

- Publicize our current efforts to provide assistance to impacted communities (such as our $19 million in assistance to Jackson Memorial Hospital and Dade County, Florida).

- Commit additional assistance from Justice Department's Immigration Emergency Fund, HHS's Office of Refugee Resettlement and/or the State Department's Refugee Admissions Program (though State would oppose use of its monies for these purposes).