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NSC/RMO PROFILE

RECORD ID: 9604988
RECEIVED: 19 JUL 96 10

TO: AGENCIES

FROM: SENS

DOC DATE: 22 JUL 96
SOURCE REF:

KEYWORDS: CUBA

REFUGEES

PERSONS:

SUBJECT: REPATRIATION OF THIRD COUNTRY NATIONALS FM GUANTANAMO

ACTION: HARMON SGD MEMO TO AGENCIES

DUE DATE: 23 JUL 96 STATUS: C

STAFF OFFICER: MALLEY

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
ARMSTRONG
BOYNTON
EXECSEC
MALLEY
NSC CHRON
SCHWARTZ
SPARKS

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSGP

CLOSED BY: NSMEC

DOC 2 OF 2

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ACTION DATA SUMMARY REPORT

RECORD ID: 9604988

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 LAKE	Z 96071918 FOR DECISION
001	X 96072516 LAKE APPROVED RECOM
002	X 96072516 HARMON SGD MEMO TO AGENCIES

DISPATCH DATA SUMMARY REPORT

<u>DOC</u>	<u>DATE</u>	<u>DISPATCH FOR ACTION</u>	<u>DISPATCH FOR INFO</u>
002	960722	BURNS, W	
002	960722	MCALEER, R	
002	960722	MCADAMS, J	
002	960722	WILSON, F	
002	960722	CREA, V	

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National Security Council
The White House

Rec'd
7/19 7:30 pm

4988

PROOFED BY: _____ LOG # _____
URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT ARS
BYPASSED WW DESK: _____ DOCLOG 2 A/O _____

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
<i>JD</i> Harmon	<i>1/4</i>	<i>JA/JA</i>	<i>A</i>
Dohse			
Sens			
Soderberg	<i>copy</i>		
Berger	<i>2</i>	<i>AN</i>	<i>NOTE</i>
Lake	<i>3</i>	<i>Not Sec Advisor has seen</i>	
Situation Room			
West Wing Desk	<i>5</i>	<i>7/22</i>	<i>D</i>
Records Mgt.	<i>6</i>		<i>AN</i>

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

cc:

COMMENTS:

FAXED OUT VIA WND

Exec Sec Office has diskette yes

Log # 4988

ADDITIONAL COMMENTS

Fm JB To N Date _____

I agree.

R

Fm _____ To _____ Date _____

Log # 4977

ADDITIONAL COMMENTS

Fm JB To N Date _____

I agree.

Q

Fm _____ To _____ Date _____

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

4988

July 22, 1996

MEMORANDUM FOR

MR. WILLIAM J. BURNS
Executive Secretary
Department of State

COL. F. C. WILSON, USMC
Secretary, Joint Staff

COL. ROBERT P. MCALEER
Executive Secretary
Department of Defense

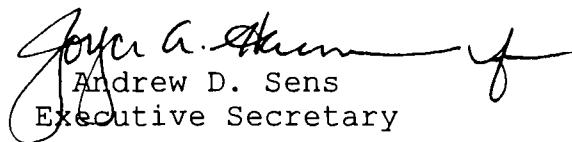
CAPTAIN V. S. CREA, USCG
Executive Assistant to the
Commandant (G-C)
U.S. Coast Guard

MR. JAMES G. MCADAMS, III
Counsel for Intelligence
Policy
Department of Justice

SUBJECT: Repatriation of Third-Country Nationals
 from Guantanamo

Agencies are requested to pursue the following course of action to address in an expeditious manner the issue of the four third-country nationals currently at Guantanamo:

1. Coast Guard will delegate to the Immigration and Naturalization Service (INS) the authority it has in this specific case to escort the four country nationals to their respective countries of origin. This procedure does not constitute a precedent applicable to future repatriation operations.
2. The State Department will bear the cost of transportation for the four third-country nationals. The cost of transportation for the escort will be borne by INS.


Andrew D. Sens
Executive Secretary

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

July 18, 1996

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ERIC SCHWARTZ *ES*
FROM: ROB MALLEY *RM*
SUBJECT: Repatriation of Third-Country Nationals
from Guantanamo

Background: Four third-country nationals currently are being held at Guantanamo -- two Indians, a Jordanian, and a Hungarian. They came from Cuba during the 1994 rafting crisis and have been at GTMO for roughly two years. Although they do not wish to return to their countries of origin, they have been found by INS not to have credible fears of persecution. The four are travel-ready.

The legal obstacle: All agencies involved assert that they lack the legal authority to repatriate migrants who were brought to Guantanamo. As a result, this issue has been mired in inter-agency discussions over the past several months. We asked OLC for an informal opinion on this issue; it concludes that the Coast Guard (CG) has the authority -- derived from President Bush's Executive Order -- to repatriate the migrants. However, CG disagrees with this interpretation, and in addition, does not want to set the dangerous precedent that it is responsible for repatriating all intercepted aliens. Given CG's position, OLC informs us that the process for having a formal OLC opinion issued could take several weeks.

Proposed course of action: Because of the significant amount of time the migrants have spent at GTMO, and because of the importance of reducing the population on the base prior to the onset of rafting season, we propose to address the underlying legal question at a later stage. For now, we would request the CG to delegate to the INS the authority it possesses in this specific case to repatriate the third-country nationals. To meet CG's concerns, we would specify that this course of action did not constitute a precedent for future cases. The inter-agency is comfortable with this course of action.

Concurrence by: Fulton Armstrong *FA*; John Sparks *JS*; Peter Boynton *PB*

RECOMMENDATION

That you authorize Andrew Sens to sign the attached memorandum.

Approve *AS* Disapprove

Attachment

Tab A Memorandum from Andrew Sens

TIME OF TRANSMISSION:

TIME OF RECEIPT:

WHITE HOUSE SITUATION ROOM

PRECEDENCE:

X

IMMEDIATE
PRIORITY
ROUTINE

RELEASER: _____

DTG: _____

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UNCLASSIFIED

MESSAGE NO: _____ CLASSIFICATION: _____ PAGES: _____
(Including Cover)
FROM: NSC WEST WING DESK (202) 456-9425 WH SITUATION ROOM
(NAME) (PHONE NUMBER) (ROOM NO.)

MESSAGE DESCRIPTION: Repatriation of Third-Country Nationals from
Guantanamo

NSC LOG # 4988

TO (AGENCY)	DELIVER TO	DEPT/ROOM NO.	PHONE NUMBER
State	Executive Secretary		
Defense	Executive Secretary		
Justice	Executive Secretary		
JCS	Secretary		
USCG	Executive Assistant		

REMARKS: