

FOIA MARKER

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Original OA/ID Number: 1633				
Document ID: 9705114				
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NSC/RMO PROFILE

RECORD ID: 9705114
RECEIVED: 23 JUL 97 12

TO: AGENCIES

FROM: BERGER

DOC DATE: 22 JUN 98
SOURCE REF:

KEYWORDS: HUMAN RIGHTS
HUMANITARIAN ASSISTANCE

REFUGEES
CUBA MIGRATION

PERSONS:

SUBJECT: BURDEN SHARING FOR MIGRANT OPERATIONS AT GUANTANAMO & OTHER OVERSEAS
FACILITIES

ACTION: BERGER SGD MEMO TO AGENCIES

DUE DATE: 29 JUL 97 STATUS: C

STAFF OFFICER: BUSBY

LOGREF: 9706246

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

ALLEN
BUSBY
DELAURENTIS
NSC CHRON
SCHWARTZ

COMMENTS: _____

DISPATCHED BY (B) DATE 6/22 BY HAND W/ATTCH

OPENED BY: NSGP

CLOSED BY: NSTSM

DOC 3 OF 3

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DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By NARA, Date 4/11/16
2011-1031-F

~~CONFIDENTIAL~~
ACTION DATA SUMMARY REPORT

RECORD ID: 9705114

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001	X	97092415	SYSTEM ACTION NOT SENT FORWARD
001	X	97092415	ACTION COMPLETED BY E-MAIL
001	Z	98061919	REOPEN / FOR FURTHER ACTION
002 BERGER	Z	98062215	FOR SIGNATURE
003	X	98062218	BERGER SGD MEMO TO AGENCIES

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

003	980622	ALBRIGHT, M
003	980622	RENO, J
003	980622	COHEN, W
003	980622	DALEY, W
003	980622	LEW, J
003	980622	SHELTON, H

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National Security Council
The White Houseto Hqs
w/rel 6/28
@ 4:00pm

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LOG #

5114

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DISPOSITION

Cosgriff

Rice

Davies

Kerrick

Steinberg

Berger

Situation Room

West Wing Desk

Records Mgt.

A = Action

I = Information

D = Dispatch

R = Retain

N = No Further Action

cc:

COMMENTS:

98 JUN 15 PM 3:28

to State + OMB

Exec Sec Office has diskette

8-25

97 #

National Security Council
The White House

to H6
6/16/98
@ 4:00pm

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LOG #

5114

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SEQUENCE TO

INITIAL/DATE

DISPOSITION

Cosgriff

Rice

Davies

Kerrick

Steinberg

Berger

Situation Room

West Wing Desk

Records Mgt.

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② 6/15

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TMP 6.22

6

⑥ 6/22

[Signature]
D

A = Action

I = Information

D = Dispatch

R = Retain

N = No Further Action

cc:

COMMENTS:

98 JUN 15 PM 3:26

to State + OMB

Exec Sec Office has diskette

885

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

5114

THE WHITE HOUSE

WASHINGTON

June 22, 1998

MEMORANDUM FOR THE SECRETARY OF STATE
THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
THE SECRETARY OF COMMERCE
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Burden-Sharing for Migrant Operations at
Guantanamo and Other Overseas Facilities (U)

The Secretary of Defense has raised with me his concerns about the burdens borne by the Department of Defense in the funding and management of migrant operations at Guantanamo Bay Naval Base and at other overseas military bases. Although agencies have discussed how to better share these burdens, final agreement on a new arrangement has not yet been achieved. In the interest of moving this process forward, after extensive consultations at the staff level, I would like to propose the following burden-sharing scheme regarding migrant operations at Guantanamo and other overseas facilities as they relate to both Cubans and non-Cubans. (U)

1. Cubans

As you know, our current policy requires that we interdict and screen Cuban migrants who depart Cuba by sea or enter our base unlawfully. Those migrants who establish a credible fear of persecution or present other issues requiring further investigation are taken to Guantanamo for processing. Defense has established and continues to maintain a facility to house and provide for the everyday needs of these migrants. The Department of Justice, through the Immigration and Naturalization Service, has been responsible for providing the staff and resources to determine whether these migrants require protection. The Department of State has been responsible for facilitating the resettlement of those migrants who are deemed to require protection. (C)

Until we have the ability to repatriate Cubans from U.S. soil, we will continue to need a migrant facility at Guantanamo for a small number of Cubans. We believe that the Department of Justice has the greatest expertise in detaining migrants and thus should have lead responsibility for managing this facility.

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Classified by: Samuel R. Berger

Reason: 1.5 (d)

Declassify On: 07/25/07

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E.O. 13526

White House Guidelines, September 11, 2006

By W NARA, Date 9/11/11

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(This may include contracting with an outside entity.) Justice would bear all incremental costs associated with operating and maintaining such a facility. (C)

Because many of the migrants at the facility have been deemed to meet the international refugee definition and are awaiting resettlement in a third country, we believe that the Department of State, which is ordinarily responsible for assisting and providing protection to overseas refugees, should bear the cost of maintaining these migrants. State will also continue to be responsible for facilitating the resettlement of these individuals in third countries. (C)

We further propose that, because of the terms under which we lease Guantanamo from the Cuban government and its status as a naval base, the Department of Defense continue to support the infrastructure on which the facility depends (e.g., water, electricity, roads, etc.). Given the sensitivity of the U.S. presence at the base, we also believe that the Department of Defense should continue to be responsible for maintaining the overall security of the facility. This includes continuation of current arrangements regarding security at the perimeter of the facility. Defense and Justice will discuss how best to manage the immediate security of the migrants inside the facility. (C)

2. Non-Cubans

The management and funding of interdicted non-Cuban cases has posed serious challenges for the interagency process in recent years. The recent enactment of expedited removal procedures, however, provides us with greater flexibility than existed previously. As we have done in the past, we should first seek the prompt return of interdicted migrants to their country of origin or to the flag-state of the vessels transporting them, with adequate safeguards to ensure against return of refugees. In the event that these migrants cannot be returned to either such country, they will ordinarily be brought into the United States for processing under expedited removal procedures. Nevertheless, before such a decision is made, consideration should be given to litigation risks, the availability of detention space and adjudication resources, and the effect of such a decision on our overall immigration policy. (C)

In cases where agency representatives determine that it is not feasible or advisable to bring the migrants to the United States, it may be necessary to bring them temporarily to Guantanamo or another overseas facility. Again, because of Justice's detention expertise and experience, we recommend that Justice be primarily responsible for establishing and maintaining a facility for such migrants (through contingency arrangements, if necessary). Justice would also be responsible for conducting any necessary screening of the migrants. As with the proposed Cuban facility,

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~~CONFIDENTIAL~~

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Defense would provide the necessary infrastructure for the operation as well as overall security. State would be charged with facilitating the resettlement of any persons found to require protection and with the repatriation of those migrants found not to require protection. (C)

It is important to note that these proposed arrangements are not intended to apply to mass migrations. In such cases, the Administration will draw upon the resources of various relevant agencies, including the Department of Defense, as the President deems appropriate. (U)

We believe this proposed burden-sharing scheme begins to address, in a manner that is consistent with the mandates of each of your agencies, the concerns that have been raised. We suggest that agency representatives meet to define with greater specificity the arrangements described above. We welcome your thoughts and reactions. (U)

Samuel R Berger

Samuel R. Berger
Assistant to the President
for National Security Affairs

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

NATIONAL SECURITY COUNCIL
DISTRIBUTION RECEIPT

LOG 9705114
DATE 22 JUN 98

SUBJECT: BURDEN SHARING FOR MIGRANT OPERATIONS AT GUANTANAMO & OTHER OVERSEAS
DOCUMENT CLASSIFICATION: ~~CONFIDENTIAL~~

EXTERNAL DISTRIBUTION:	DATE	TIME	SIGNATURE
MS. MADELEINE ALBRIGHT 7TH FLOOR 2201 C STREET, NW WASHINGTON, DC DEPARTMENT OF STATE	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX +1</u>
MS. JANET RENO VIA OFC OF INTELLIGENCE POLICY ROOM 3305, MAIN JUSTICE 10TH & CONSTITUTION AVE, NW WASHINGTON, DC DEPARTMENT OF JUSTICE	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>
MR. WILLIAM S. COHEN VIA EXECUTIVE SECRETARY ROOM 3E880 PENTAGON WASHINGTON, DC DEPARTMENT OF DEFENSE	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>
MR. WILLIAM M. DALEY VIA EXECUTIVE SECRETARIAT ROOM 5516 14TH & CONSTITUTION AVE, NW WASHINGTON, DC 20230 DEPARTMENT OF COMMERCE	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>
MR. JACK LEW VIA ROOM 238 OLD EXECUTIVE OFFICE BLDG OFFICE OF MANAGEMENT & BUDGET	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>1</u>
GENERAL H. HUGH SHELTON ROOM 2E873 PENTAGON DEPT OF DEFENSE JOINT CHIEFS OF STAFF	_____	_____	_____ PRINT LAST NAME: _____ COPY: <u>VIA FAX</u>

DATE, TIME, SIGN THE RECEIPT AND RETURN TO: NSC RECORDS MGNT, ROOM 379 OEOB

PAGE 01 OF 01 PAGES

TIME OF TRANSMISSION:

TIME OF RECEIPT:

WHITE HOUSE SITUATION ROOM

PRECEDENCE:

X

IMMEDIATE
PRIORITY
ROUTINE

RELEASER: _____

DTG: _____

MESSAGE NO: _____

CLASSIFICATION: ~~CONFIDENTIAL~~

PAGES: 4
(Including Cover)

FROM: NSC West Wing Desk TMA
(NAME)

(202) 456-9425
(PHONE NUMBER)

WH Situation Room
(ROOM NO.)

MESSAGE DESCRIPTION: Burden-sharing for Migrant Operations
at Guantanamo + Other overseas Fac- NSC LOG# 5114

TO (AGENCY)

DELIVER TO

DEPT/ROOM NO.

PHONE NUMBER

State

Secretary of State

Justice

The Attorney General

Defense

Secretary of Defense

Commerce

Secretary of Commerce

JCS

Chairman of the JCS

REMARKS:

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

5114

June 15, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ SB *EW*

FROM: SCOTT BUSBY SB

SUBJECT: Burden-sharing in Migrant Operations

Last year, in response to concerns raised by the Department of Defense, you informally circulated to Secretaries Cohen and Albright a draft memorandum proposing a burden-sharing framework for migrant operations. We received comments from DoD and State and have had extensive discussions on this issue with staff from these agencies as well as the Department of Justice. The attached revised proposal represents our best effort to resolve the competing interests of these agencies.

The critical elements of the proposal are:

- Justice will assume lead responsibility for managing overseas migrant facilities, including the one at Guantanamo;
- State will reimburse Justice for the costs associated with maintaining migrants deemed to require protection; and
- Defense will be responsible for providing infrastructural support and maintaining overall security at these facilities.

All agencies have been consulted on this proposal and we anticipate all will accept or acquiesce in its basic contents.

Concurrence by: Jeff DeLaurentis, Chuck Allen

RECOMMENDATION

SB for

That you forward the attached memorandum.

Attachment

Tab I Memorandum on Burden-Sharing in Migrant Operations

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE SECRETARY OF STATE
THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
THE SECRETARY OF COMMERCE
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Burden-Sharing for Migrant Operations at
Guantanamo and Other Overseas Facilities (U)

The Secretary of Defense has raised with me his concerns about the burdens borne by the Department of Defense in the funding and management of migrant operations at Guantanamo Bay Naval Base and at other overseas military bases. Although agencies have discussed how to better share these burdens, final agreement on a new arrangement has not yet been achieved. In the interest of moving this process forward, I would like to propose the following burden-sharing scheme regarding migrant operations at Guantanamo and other overseas facilities as they relate to both Cubans and non-Cubans. (U)

1. Cubans

As you know, our current policy requires that we interdict and screen Cuban migrants who depart Cuba by sea or enter our base unlawfully. Those migrants who establish a credible fear of persecution or present other issues requiring further investigation are taken to Guantanamo for processing. Defense has established and continues to maintain a facility to house and provide for the everyday needs of these migrants. The Department of Justice, through the Immigration and Naturalization Service, has been responsible for providing the staff and resources to determine whether these migrants require protection. The Department of State has been responsible for facilitating the resettlement of those migrants who are deemed to require protection. (C)

Until we have the ability to repatriate Cubans from U.S. soil, we will continue to need a migrant facility at Guantanamo for a small number of Cubans. We believe that the Department of Justice has the greatest expertise in detaining migrants and thus should have lead responsibility for managing this facility.

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Classified by: Samuel R. Berger

Reason: 1.5 (d)

Declassify On: 07/25/07

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By *[Signature]* NARA, Date *4/11/16*

2011-1031-F

(This may include contracting with an outside entity.) Justice would bear all incremental costs associated with operating and maintaining such a facility. (C)

Because many of the migrants at the facility have been deemed to meet the international refugee definition and are awaiting resettlement in a third country, we believe that the Department of State, which is ordinarily responsible for assisting and providing protection to overseas refugees, should bear the cost of maintaining these migrants. State will also continue to be responsible for facilitating the resettlement of these individuals in third countries. (C)

We further propose that, because of the terms under which we lease Guantanamo from the Cuban government and its status as a naval base, the Department of Defense continue to support the infrastructure on which the facility depends (e.g, water, electricity, roads, etc.). Given the sensitivity of the U.S. presence at the base, we also believe that the Department of Defense should continue to be responsible for maintaining the overall security of the facility. This includes continuation of current arrangements regarding security at the perimeter of the facility. Defense and Justice will discuss how best to manage the immediate security of the migrants inside the facility. (C)

2. Non-Cubans

The management and funding of interdicted non-Cuban cases has posed serious challenges for the interagency process in recent years. The recent enactment of expedited removal procedures, however, provides us with greater flexibility than existed previously. As we have done in the past, we should first seek the prompt return of interdicted migrants to their country of origin or to the flag-state of the vessels transporting them, with adequate safeguards to ensure against return of refugees. In the event that these migrants cannot be returned to either such country, they will ordinarily be brought into the United States for processing under expedited removal procedures. Nevertheless, before such a decision is made, consideration should be given to litigation risks, the availability of detention space and adjudication resources, and the effect of such a decision on our overall immigration policy. (C)

Representatives
In cases where ~~the interagency~~ determines that it is not feasible or advisable to bring the migrants to the United States, it may be necessary to bring them temporarily to Guantanamo or another overseas facility. Again, because of Justice's detention expertise and experience, we recommend that Justice be primarily responsible for establishing and maintaining a facility for such migrants (through contingency arrangements, if necessary). Justice would also be responsible for conducting any necessary screening of the migrants. As with the proposed Cuban facility,

Defense would provide the necessary infrastructure for the operation as well as overall security. State would be charged with facilitating the resettlement of any persons found to require protection and with the repatriation of those migrants found not to require protection. (U)

It is important to note that these proposed arrangements are not intended to apply to mass migrations. In such cases, the Administration will draw upon the resources of various relevant agencies, including the Department of Defense, as the President deems appropriate. (U)

We believe this proposed burden-sharing scheme begins to address, in a manner that is consistent with the mandates of each of your agencies, the concerns that have been raised. We suggest that the interagency meet to define with greater specificity the arrangements described above. We welcome your thoughts and reactions. (U)

representatives

Samuel R. Berger
Assistant to the President
for National Security Affairs

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE SECRETARY OF STATE
THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
THE SECRETARY OF COMMERCE
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

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after extensive consultations at the staff level,

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Classified by: Samuel R. Berger

Reason: 1.5 (d)

Declassify On: 07/25/07

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E.O. 13526

White House Guidelines, September 11, 2006

By *AM* NARA, Date *9/11/16*

201-1031-8

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NSC/RMO PROFILE

RECORD ID: 9705114
RECEIVED: 23 JUL 97 12

TO: AGENCIES

FROM: BERGER

DOC DATE: 22 JUN 98
SOURCE REF:

KEYWORDS: HUMAN RIGHTS
HUMANITARIAN ASSISTANCE

REFUGEES
CUBA MIGRATION

PERSONS:

SUBJECT: BURDEN SHARING FOR MIGRANT OPERATIONS AT GUANTANAMO & OTHER OVERSEAS
FACILITIES

ACTION: ORIGINAL EDITS RETURNED TO NSC/RMO DUE DATE: 29 JUL 97 STATUS: C

STAFF OFFICER: BUSBY

LOGREF: 9706246

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

ALLEN
BUSBY
DELAURENTIS
NSC CHRON
SCHWARTZ

COMMENTS: _____

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DOC 3 OF 3

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E.O. 13526
White House Guidelines, September 11, 2006
By W NARA, Date 4/11/16
2016 10M-F

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ACTION DATA SUMMARY REPORT

RECORD ID: 9705114

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001		X	97092415	SYSTEM ACTION NOT SENT FORWARD
001		X	97092415	ACTION COMPLETED BY E-MAIL
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003		X	98102016	ORIGINAL EDITS RETURNED TO NSC/RMO

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

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003	980622	ALBRIGHT, M
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003	980622	COHEN, W
003	980622	DALEY, W
003	980622	LEW, J
003	980622	SHELTON, H

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Staff Officer

Busby, you need

to sign memo. Schwartz

needs to sign & your

concurrences need to sign

as well. Also need (3) copies with original. Thank you.

ACTION

MEMORANDUM FOR SAMUE

THROUGH: ERIC

FROM: SCOTT

SUBJECT: Burde

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Tab I

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requested & package has
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Vicky - This ~~memo~~ memo 8/14/98 its.
was signed by SRB +
went out on June 22.

You can derkey here
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out the file.

Scott

Vicky - This ~~memo~~ memo 8/14/98
was signed by SRB +
went out on June 22.
You can derkey these
versions of doc + close
out the file. Scott

5-22-98

| Scott,
Change made as
requested + package has
been done in final. |

mary

Staff Officer

Busby, — You need
to sign memo. Schwartz
needs to sign + your
concurrences need to sign
as well. Also need (3)
copies with original. Thank you.
www.

May 21, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Burden-sharing in Migrant Operations

Last year, in response to concerns raised by the Department of Defense, you informally circulated to Secretaries Cohen and Albright a draft memorandum proposing a burden-sharing framework for migrant operations. We received comments from DoD and State and have had extensive discussions on this issue with staff from these agencies as well as the Department of Justice. The attached revised proposal represents our best effort to resolve the competing interests of these agencies.

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All agencies have been consulted on this proposal and we anticipate all will accept or acquiesce in its basic contents.

Concurrence by: Jeff DeLaurentis, Chuck Allen

RECOMMENDATION

That you forward the attached memorandum.

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Tab I Memorandum on Burden-Sharing in Migrant Operations

MEMORANDUM FOR THE SECRETARY OF STATE
THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
THE SECRETARY OF COMMERCE
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Burden-Sharing for Migrant Operations at
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The Secretary of Defense has raised with me his concerns about the burdens borne by the Department of Defense in the funding and management of migrant operations at Guantanamo Bay Naval Base and at other overseas military bases. Although agencies have discussed how to better share these burdens, final agreement on a new arrangement has not yet been achieved. In the interest of moving this process forward, I would like to propose the following burden-sharing scheme regarding migrant operations at Guantanamo and other overseas facilities as they relate to both Cubans and non-Cubans. (U)

1. Cubans

As you know, the absence of an agreement between Cuba and the United States permitting the return of Cuban migrants who reach U.S. soil has required that we interdict and screen Cuban migrants at sea. Those migrants who establish a credible fear of persecution or present other issues requiring further investigation are taken to Guantanamo for processing. Defense has established and continues to maintain a facility to house and provide for the everyday needs of these migrants. The Department of Justice, through the Immigration and Naturalization Service, has been responsible for providing the staff and resources to determine whether these migrants require protection. The Department of State has been responsible for facilitating the resettlement of those migrants who are deemed to require protection. (C)

Until we have an agreement permitting the return of Cuban migrants from U.S. soil, our policy requires that we continue to have a migrant facility at Guantanamo for a small number of Cubans. We believe that the Department of Justice has the

~~CONFIDENTIAL~~

Classified by: Samuel R. Berger

Reason: 1.5 (d)

Declassify On: 07/25/07

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By W NARA, Date 4/11/16

201-1034-P

greatest expertise in detaining migrants and thus should have lead responsibility for managing this facility. (This may include contracting with an outside entity.) Justice would bear all incremental costs associated with operating and maintaining such a facility. (C)

Because many of the migrants at the facility have been deemed to meet the international refugee definition and are awaiting resettlement in a third country, we believe that the Department of State, which is ordinarily responsible for assisting and providing protection to overseas refugees, should bear the cost of maintaining these migrants. State will also continue to be responsible for facilitating the resettlement of these individuals in third countries. (C)

We further propose that, because of the terms under which we lease Guantanamo from the Cuban government and its status as a naval base, the Department of Defense continue to support the infrastructure on which the facility depends (e.g, water, electricity, roads, etc.). Given the sensitivity of the U.S. presence at the base, we also believe that the Department of Defense should continue to be responsible for maintaining the overall security of the facility. This includes continuation of current arrangements regarding security at the perimeter of the facility. Defense and Justice will discuss how best to manage the immediate security of the migrants inside the facility. (C)

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Justice would also be responsible for conducting any necessary screening of the migrants. As with the proposed Cuban facility, Defense would provide the necessary infrastructure for the operation as well as overall security. State would be charged with facilitating the resettlement of any persons found to require protection and with the repatriation of those migrants found not to require protection. (C)

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Samuel R. Berger
Assistant to the President
for National Security Affairs

RE-DO

5114

May 21, 1998

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Burden-sharing in Migrant Operations

See one copy

Last year, in response to concerns raised by the Department of Defense, you informally circulated to Secretaries Cohen and Albright a draft memorandum proposing a burden-sharing framework for migrant operations. We received comments from DoD and State and have had extensive discussions on this issue with staff from these agencies as well as the Department of Justice. The attached revised proposal represents our best effort to resolve the competing interests of these agencies.

The critical elements of the proposal are:

- Justice will assume lead responsibility for managing overseas migrant facilities, including the one at Guantanamo;
- State will reimburse Justice for the costs associated with maintaining migrants deemed to require protection; and
- Defense will be responsible for providing infrastructural support and maintaining overall security at these facilities.

All agencies have been consulted on this proposal and we anticipate all will accept or acquiesce in its basic contents.

Concurrence by: Jeff DeLaurentis, Chuck Allen

RECOMMENDATION

That you forward the attached memorandum.

Attachment

Tab I Memorandum on Burden-Sharing in Migrant Operations

May 19, 1998

E - Redo based
on your comments
+ my recent
discussion w/
agencies.

-SB

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Burden-sharing in Migrant Operations

Last year, in response to concerns raised by the Department of Defense, you informally circulated to Secretaries Cohen and Albright a draft memorandum proposing a framework for sharing the burden of operating the migrant facility at Guantanamo Bay Naval Base and those that might be used to handle other migration flows. We received comments from DoD and State and have had extensive discussions on this issue with staff from these agencies as well as the Department of Justice. The attached proposal represents our best effort to resolve the competing interests of these agencies.

Concurrence by: Jim Dobbins, Jamie Baker

RECOMMENDATION

That you forward the attached memorandum.

Attachment

Tab I Memorandum on Burden-Sharing in Migrant Operations

The critical elements

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MEMORANDUM FOR THE SECRETARY OF STATE
THE ATTORNEY GENERAL
THE SECRETARY OF DEFENSE
THE SECRETARY OF COMMERCE
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Burden-Sharing for Migrant Operations at
Guantanamo and Other Overseas Facilities (U)

The Secretary of Defense has raised with me his concerns about the burdens borne by the Department of Defense in the funding and management of migrant operations at Guantanamo Bay Naval Base and at other overseas military bases. Although agencies have discussed how to better share these burdens, final agreement on a new arrangement has not yet been achieved. In the interest of moving this process forward, I would like to propose the following burden-sharing scheme regarding migrant operations at Guantanamo and other overseas facilities as they relate to both Cubans and non-Cubans. (U)

1. Cubans

As you know, the absence of an agreement between Cuba and the United States permitting the return of Cuban migrants who reach U.S. soil has required that we interdict and screen Cuban migrants at sea. Those migrants who establish a credible fear of persecution or present other issues requiring further investigation are taken to Guantanamo for processing. Defense has established and continues to maintain a facility to house and provide for the everyday needs of these migrants. The Department of Justice, through the Immigration and Naturalization Service, has been responsible for providing the staff and resources to determine whether these migrants require protection. The Department of State has been responsible for facilitating the resettlement of those migrants who are deemed to require protection. (C)

Until we have an agreement permitting the return of Cuban migrants from U.S. soil, our policy requires that we continue to have a migrant facility at Guantanamo for a small number of Cubans. We believe that the Department of Justice has the

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Reason: 1.5 (d)
Declassify On: 07/25/07

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By *W* NARA, Date *9/11/16*
1011-1034-F

greatest expertise in detaining migrants and thus should have lead responsibility for managing this facility. (This may include contracting with an outside entity.) Justice would bear all incremental costs associated with operating and maintaining such a facility. (C) *should*

Because many of the migrants at the facility have been deemed to meet the international refugee definition and are awaiting resettlement in a third country, we believe that the Department of State, which is ordinarily responsible for assisting and providing protection to overseas refugees, bear the cost of maintaining these migrants. State will also continue to be responsible for facilitating the resettlement of these individuals in third countries. (C)

We further propose that, because of the terms under which we lease Guantanamo from the Cuban government and its status as a naval base, the Department of Defense continue to support the infrastructure on which the facility depends (e.g, water, electricity, roads, etc.). Given the sensitivity of the U.S. presence at the base, we also believe that the Department of Defense should continue to be responsible for maintaining the overall security of the facility. This includes continuation of current arrangements regarding security at the perimeter of the facility. Defense and Justice will discuss how best to manage the immediate security of the migrants inside the facility. (C)

2. Non-Cubans

The management and funding of interdicted non-Cuban cases has posed serious challenges for the interagency process in recent years. The recent enactment of expedited removal procedures, however, provides us with greater flexibility than existed previously. As we have done in the past, we should first seek the prompt return of interdicted migrants to their country of origin or to the flag-state of the vessels transporting them, with adequate safeguards to ensure against return of refugees. In the event that these migrants cannot be returned to either such country, they will ordinarily be brought into the United States for processing under expedited removal procedures. Nevertheless, before such a decision is made, consideration should be given to litigation risks, the availability of detention space and adjudication resources, and the effect of such a decision on our overall immigration policy. (C)

In cases where the interagency determines that it is not feasible or advisable to bring the migrants to the United States, it may be necessary to bring them temporarily to Guantanamo or another overseas facility. Again, because of Justice's detention expertise and experience, we recommend that Justice be primarily responsible for establishing and maintaining a facility for such migrants (through contingency arrangements, if necessary).

Justice would also be responsible for conducting any necessary screening of the migrants. As with the proposed Cuban facility, Defense would provide the necessary infrastructure for the operation as well as overall security. State would be charged with facilitating the resettlement of any persons found to require protection and with the repatriation of those migrants found not to require protection. (C)

It is important to note that these proposed arrangements are not intended to apply to mass migrations. In such cases, the Administration will draw upon the resources of various relevant agencies, as the President deems appropriate. (U)

We believe this proposed burden-sharing scheme begins to address, in a manner that is consistent with the mandates of each of your agencies, the concerns that have been raised. We suggest that the interagency meet to define with greater specificity the arrangements described above. We welcome your thoughts and reactions. (U)

Samuel R. Berger
Assistant to the President
for National Security Affairs

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NSC/RMO PROFILE

RECORD ID: 9705114
RECEIVED: 23 JUL 97 12

TO: BERGER

FROM: BUSBY

DOC DATE: 23 JUL 97
SOURCE REF:

KEYWORDS:

PERSONS:

SUBJECT: MIGRANT ORPERATION AT GUANTANAMO

ACTION: ACTION COMPLETED BY E-MAIL

DUE DATE: 29 JUL 97 STATUS: C

STAFF OFFICER: BUSBY

LOGREF: 9706246

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
Busby

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSGP

CLOSED BY: NSVJD

DOC 1 OF 1

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E.O. 13526
White House Guidelines, September 11, 2006
By *W* NARA, Date *4/11/16*
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ACTION DATA SUMMARY REPORT

RECORD ID: 9705114

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001
001

X 97092415 SYSTEM ACTION NOT SENT FORWARD
X 97092415 ACTION COMPLETED BY E-MAIL

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E-mailed to Rob -
7/25 @ 720

talk to Vicki
Darnes
Monday

E-mailed to Rob -
7/25 @ 720

~~talk to Vicki~~
James
Monday

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~~CONFIDENTIAL~~

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

5114

July 25, 1997

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM:

^{SB} SCOTT BUSBY/ERIC SCHWARTZ 

SUBJECT:

ABC Lunch: Migrant Operations at Guantanamo

We propose you either distribute or brief the substance of the attached memorandum at Monday's ABC lunch. The memorandum responds to concerns recently raised by Secretary Cohen regarding the burdens borne by the Department of Defense in funding and managing migrant operations at Guantanamo Bay Naval Base. It proposes a new responsibility-sharing arrangement for these operations as they relate to both Cuban and non-Cuban migrants.

Cubans: The memorandum proposes that DoD transfer care and maintenance responsibilities to State. Because State provides assistance to refugees overseas, tagging State with this responsibility makes sense, as the Cubans on Guantanamo are made up largely of persons who have been deemed to be in need of protection. This allocation would relieve DOD of a significant management burden without significantly disadvantaging State -- which could obtain contract services for most activities. Moreover, the costs are relatively modest, estimated at about \$1 million per year or less.

Non-Cubans: For other migrants, the memorandum proposes that DOJ fund care and maintenance at Guantanamo. Because Justice is concerned with law enforcement, this allocation also makes sense, as most of the non-Cuban migrant cases do not involve protection issues, but rather alien smuggling. The memorandum also notes that new expedited removal legislation -- which provides for more streamlined processing at ports of entry -- provides us with greater flexibility to bring interdicted applicants into the United States for processing. It proposes that we seek to make use of that provision when feasible. This willingness to make use of the new authority will be welcomed by DoD, as it offers an alternative to Guantanamo.

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Attached proposal: While most of the attached proposal should be acceptable to agencies, State may not be enthusiastic about the transfer of Cuban care and maintenance responsibilities from DoD to State. While State may argue that this is an operation more appropriately funded by law enforcement funds, you can reply that we would only be seeking State support for a refugee-like population.

Concurrence (in substance) by: Fulton Armstrong

ES
for

RECOMMENDATION

That you sign the attached memorandum at Tab I.

Attachments

Tab I Talking Points

Tab II Memorandum Regarding Migrant Operations at Guantanamo

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THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE SECRETARY OF THE TREASURY
THE ATTORNEY GENERAL
DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Migrant Operations at Guantanamo (U)

The Secretary of Defense has recently raised with me his concerns about the burdens borne by the Department of Defense in the funding and management of migrant operations at Guantanamo Bay Naval Base. Although the interagency has discussed how to better share these burdens, final agreement on a new arrangement has not yet been achieved. In the interest of moving this process forward, I would like to propose the following burden-sharing scheme regarding migrant operations at Guantanamo as they relate to both Cubans and non-Cubans. (U)

1. Cubans

As you know, the absence of an agreement between Cuba and the United States permitting the return of Cuban migrants who reach U.S. soil has required that we interdict and screen Cuban migrants at sea. Those migrants who establish a credible fear of persecution or present other issues requiring further investigation are taken to Guantanamo for further processing. Since the implementation of our new Cuban interdiction policy in May 1995, the number of Cuban migrants at Guantanamo has ranged as high as 65. Defense has established and continues to maintain a virtually permanent facility to house and provide for the everyday needs of these migrants. The Immigration and Naturalization Service has been responsible for providing the staff and resources to determine whether these migrants require protection. The Department of State has been responsible for facilitating the resettlement of those migrants who are deemed to require protection. (C)

Until we have an agreement permitting the return of Cuban migrants from U.S. soil, our current policy requires that we continue to have a migrant facility at Guantanamo for a small number of Cubans. We note that the majority of these migrants

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are either awaiting refugee-like screening or have been deemed to meet the international refugee definition, and are being held not for law enforcement, but rather for protection purposes. Given those circumstances, we propose that the cost of maintaining these individuals (estimated at \$1 million or less per annum) be borne by the Department of State, which is ordinarily responsible for assisting overseas refugees, through contractual arrangements with governmental and non-governmental entities as appropriate. We further propose that, because of the terms of the lease agreement regarding Guantanamo and its status as a naval base, the Department of Defense continue to support in significant ways the operation of the migrant facility, such as through provision and maintenance of infrastructure for the facility (water, roads, hard structures that may be on-site, etc.) and through ensuring security of the facility. Lastly, we recommend that Justice, through the Immigration and Naturalization Service, continue to provide the staff and resources to determine whether the Cubans brought to Guantanamo require permanent protection. (C)

2. Non-Cubans

The management and funding of interdicted non-Cuban cases has posed serious challenges for the interagency process in recent years. The recent enactment of new expedited removal procedures, however, provides us with greater flexibility than existed previously. As we have done in the past, we should first seek the prompt return of such migrants to their country of origin or to the flag-state of their vessels, with adequate safeguards to ensure against return of *bona fide* refugees. If this is not possible or appropriate, we propose that ordinarily we seek to bring such migrants to the United States for processing under the new procedures. Nevertheless, decisions on doing so will have to first take into account litigation risks, the availability of detention space and adjudication resources on U.S. soil, and the effect of such a decision on our overall deterrence message. (C)

In cases where the interagency determines that it is not feasible or advisable to bring the migrants to the U.S., it may be necessary to bring them temporarily to Guantanamo. Because these cases almost always involve alien smuggling efforts, and have more of a law enforcement than a refugee protection character, we propose that Justice be primarily responsible for funding and managing these operations. Thus, Justice would be responsible for establishing and maintaining a facility for such migrants (through contingency arrangements, if necessary). Justice would also be responsible for conducting any necessary screening and repatriating those migrants who are found not to warrant protection. As with the proposed Cuban facility, Defense would provide the necessary infrastructure for the operation as well as overall security. State would be charged with facilitating the transport or resettlement of any persons found to require protection. (C)

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It is important to note that these proposed arrangements are not intended to apply to mass migrations. In such cases, I expect that the Administration will continue to rely primarily on the resources of Defense with assistance from other agencies as appropriate.

We believe this proposed burden-sharing scheme begins to address, in a manner that is consistent with the mandates of each of your agencies, the concerns that have been raised. We suggest that the interagency meet to finalize the arrangements described above. We welcome your thoughts and reactions. (U)

Samuel R. Berger
Assistant to the President
for National Security Affairs

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ABC POINTS
Migrant Operations at Guantanamo

- Want to respond to concerns Bill raised on burden-sharing at Guantanamo, and propose a new responsibility-sharing arrangement that has already been discussed in the interagency.
- [Distribute memorandum if you think appropriate, or simply brief orally.]
- As I understand it, there are two concerns: Cuban migrants, whose care and maintenance are provided by DOD, and non-Cuban migrants, for whom there have been various *ad hoc* funding arrangements.
- With respect to Cubans, I'd like to propose DOD transfer of care and maintenance responsibilities to State.
- This seems appropriate, as State provides assistance to refugees overseas, and the Cubans on Guantanamo are made up largely of persons who have been deemed to be in need of refugee protection.
- This would relieve DOD of a burden without significantly disadvantaging State - which could obtain contract services for most activities.
- Moreover, the costs are relatively modest, estimated at about \$1 million per year or less, and could be borne easily with refugee monies.
- For other, non-Cuban migrants - often involved in alien smuggling, a law enforcement issue -- I will propose to Janet Reno that DOJ fund care and maintenance at Guantanamo.
- Finally, DOD would continue to provide infrastructure and security.

[You may be asked by Cohen about build-up of interdicted Cubans at Guantanamo who are need of protection - there are now about 65, although 5-10 will soon depart. To avoid the magnet effect, we have sought third country resettlement for these people, and have had some success with Bolivia and Costa Rica. You should press Madeleine to ratchet up the diplomatic effort to obtain resettlement agreements with other countries.]

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Reason: 1.5 (d)

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By *W* NARA, Date *9/16/16**101-1034-F*