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NSC/RMO PROFILE

RECORD ID: 9706246
RECEIVED: 16 SEP 97 14

TO: BERGER

FROM: COHEN, W

DOC DATE: 09 SEP 97
SOURCE REF: 01212

KEYWORDS: CUBA MIGRATION
MILITARY BASES

DEFENSE POLICY
CM

PERSONS:

SUBJECT: REPLY RE POLICY CONCERNS W/ NSC DRAFT MEMO ON MIGRANT OPERATIONS AT
GUANTANAMO BAY

ACTION: SEE 9705114 FOR FINAL ACTION

DUE DATE: 22 SEP 97 STATUS: C

STAFF OFFICER: BUSBY

LOGREF: 9705114

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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E.O. 13526
White House Guidelines, September 11, 2006
By W NARA, Date 9/11/06
201-1034-F

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ACTION DATA SUMMARY REPORT

RECORD ID: 9706246

DOC ACTION OFFICER

001 BUSBY
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CAO ASSIGNED ACTION REQUIRED

Z 97091614 PREPARE MEMO FOR BERGER
X 98062519 SEE 9705114 FOR FINAL ACTION

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Records

There should be combined
+ closed out as soon
as SRB signs the memo
Sent forward under 5114.
Thx.

Scott Busby

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

FOR ACTION
BUSBY

FOR CONCURRENCE
BELL
BOUCHARD
DELAURENTIS
SEATON

FOR INFO
DAVIS
DOBBINS
RAGAN
SCHWARTZ

COMMENTS:

See 9705114 Final action

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By W NARA, Date 4/11/16
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THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1000

6246

SEP 9 1997

Mr. Samuel R. Berger
Assistant to the President for National Security Affairs
The White House

Dear Mr. Berger,

Attached (Enclosure 1) are our policy concerns on the NSC draft memorandum of July 25th that addresses migrant operations at Guantanamo Bay. Our specifically recommended changes to the text of the draft memorandum are also provided (Enclosure 2).

We appreciate the efforts evident in the NSC's latest draft to address DoD's concerns, including that the State Department would assume management and funding responsibility for the holding of Cuban migrants at Guantanamo Naval Base. However, we continue to have significant policy concerns. These are summarized below.

We believe that any new interagency policy should address migrant processing not only at Guantanamo, but also at Wake Island or any other offshore site where DoD may be called upon to provide support to migrant operations.

The new policy should make clear that the appropriate agency (State or Justice) will bear all incremental costs associated with any offshore migrant facility, to include augmentation of overall base security forces when necessary.

DoD's role in security at Guantanamo and at any other facility should be limited to providing overall security for the base to support its normal operations, while the security of migrants and the internal perimeter of the migrant facility will be provided by State or Justice (or their designated contractor).

In the event non-Cuban migrants cannot be returned from the interdicting vessel to their country of origin or the flag-state of their vessel, we recommend they be brought into the United States for processing under the new Expedited Removal procedures.

We understand your staff is awaiting these comments prior to drafting another paper for formal interagency coordination.

Sincerely,

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2011-1031-F M 7/11/16

Enclosure(s):

1. DoD Policy Concerns on NSC Draft "Migrant Operations at Guantanamo Bay"
2. DoD Recommended Changes to NSC Draft "Migrant Operations at Guantanamo Bay"

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Subj: DoD Policy Concerns on NSC Draft "Migrant Operations at Guantanamo"

Our specific policy concerns are as follows:

(C) With regard to migrant processing operations in general:

- One fundamental point that we believe merits emphasis is that any new arrangements for migrant processing and interagency responsibilities should cover not only facilities at Guantanamo Bay, but also at any other offshore sites where DoD may be asked to provide support to migrant operations. This would ensure that if, for example, Chinese and/or other migrants are interdicted in the Pacific and brought to Wake Island, another USG agency (such as Justice) should assume funding and management responsibility similar to that proposed for the State Department at Guantanamo Bay.

(C) With regard to Cuban migrant processing at Guantanamo Bay:

- The draft should make clear that the State Department will bear all incremental costs associated with the migrant facility, while DoD will continue to support infrastructure (such as roads, utilities) necessary for the Naval Base overall. Incremental costs could include: augmentation of DoD security forces; maintenance and repair of water delivery systems that exclusively service migrant facilities; maintenance and replacement of tents and tent structures; and morale and welfare items for migrants (televisions, fitness equipment, etc.).
- Regarding security, and in line with the Joint Staff's view, the draft should clarify that DoD will provide overall security to support normal base operations, while the security of the migrants and the internal perimeter of the migrant facility will be provided by State (or its designated contractor). This revision is essential, since migrant security has always been the largest drain on DoD personnel. If augmentation of base security forces is required because the migrant population exceeds the capacity of existing base security, the incremental costs of this augmentation would be passed to the appropriate agency.

(C) With regard to non-Cuban migrant processing:

- The draft should indicate that in the event that migrants cannot be returned from the interdicting vessel to their country of origin or the flag-state of their vessel, they will normally be brought into the United States for processing under the new Expedited Removal procedures. This revision emphasizes that non-Cuban migrants will be brought into the U.S. if they cannot be returned immediately, and is intended to alleviate previous situations where migrants stay at GTMO for several weeks because the flag state promises to take them on an uncertain date which the interagency believes will be imminent.
- The language also should make clear that in such cases bringing non-Cuban migrants into the U.S. should be the usual approach, rather than stating that the USG will "seek to bring" them in, which implies prolonged interagency discussion each time.

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- The language also should make clear that in such cases bringing non-Cuban migrants into the U.S. should be the usual approach, rather than stating that the USG will "seek to bring" them in, which implies prolonged interagency discussion each time.
- Decisions on whether or not to bring non-Cuban migrants to the U.S. soil should be based primarily on actual court injunctions. An actual court injunction should be the only valid reason not to bring people into the U.S. Availability of detention space and adjudication resources on the part of INS should not be used as a rationale. Having sought and finally received Expedited Removal authority, the INS should have the responsibility for finding the funds and detention space to exercise this authority.
- It is also important that the NSC paper consider the risk posed by the operation of facilities at GTMO whose purposes (i.e., processing non-Cuban migrants) may not be consistent with the terms of the 1903 Lease agreement between the US and Cuba.

~~(C)~~ *Regarding mass migrations:*

- We are concerned by the draft's clear implication that DoD will be the primary responsible agency in mass migrations. We would not object to reference that the resources of various relevant agencies could be made available, on a case-by-case basis, while the mission (and funding) responsibility would remain with agencies other than DoD. This change preserves Administration flexibility in addressing mass migrations. However, notwithstanding the potential for a sizable DoD role, DoD should remain a supporting agency in what essentially is a law enforcement operation.

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Subj: DoD Recommended Changes to NSC Draft "Migrant Operations at Guantanamo"

- ✓ 1. Page 1, introductory paragraph, second to last line, add after Guantanamo "and other offshore locations,".
- No 2. Page 1, at the end of first paragraph, add following sentence "Any consideration of the establishment of permanent facilities at the Guantanamo Naval Base must be consistent with the 1903 Lease Agreement between the United States and Cuba."
- ✓ 3. Page 2, first paragraph (on Cubans), the draft should make clear that the State Department will bear all incremental costs associated with the migrant facility, while DoD will continue to support infrastructure (such as roads, utilities) necessary for the Naval Base overall. On the security issue, the draft should clarify that DoD will provide overall security for the base, while the security of the migrants and the internal perimeter of the migrant facility will be provided by State (or its designated contractor). These changes would be addressed in part by replacing the sentence that begins "We further propose that, . . ." with "We further propose that, because of Guantanamo's status as a naval base, the Department of Defense only support those activities directly related to the overall operation of the base, such as support infrastructure (water, roads, etc.) and through ensuring overall security of the facility."
- ✓ 4. Page 2, second paragraph, (Non-Cubans): Following the sentence on safeguards for bona fide refugees, the next sentence should be replaced with: "In the event that these migrants cannot be returned from the interdicting vessel to their country of origin or the flag-state of their vessel, they will normally be brought into the United States for processing under the new procedures."
- no 5. Page 2, second paragraph, last sentence, should be revised to read: "Nevertheless, decisions on doing so will have to take into account injunctions against the use of the new procedures".
- yes 6. Page 2, third paragraph, first sentence should be revised to read: "In cases where migrants are not brought to the U.S., it may be necessary to bring them temporarily to an offshore location." The second to last sentence beginning "As with the proposed Cuban facility...", should explain that DoJ will pay incremental costs for this facility, and be responsible for security of the migrants and the facility's internal perimeter.
- ✓ 7. Page 3, first paragraph, the last sentence should be revised to read: "In such cases, I expect that the Administration will draw upon the resources of various relevant agencies, as the President deems appropriate."

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