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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. petition	Personally Identifiable Information [partial] (1 page)	10/00/1994	b(6)

COLLECTION:

Clinton Presidential Records
Counsel Office
Marvin Krislov
OA/Box Number: 7049

FOLDER TITLE:

Cuban Refugee Petitions

2011-1039-F

jml497

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



U.S. Department of Justice

Executive Secretariat

Washington, D.C. 20530

1/17/95

TO: Agency Liaison Office
The White House

FROM: Yvonne Williams
White House Liaison
Information Management Staff

SUBJECT: White House Correspondence

The attached White House Referred Correspondence is being returned without action by the department for the following reason(s):

_____ Not a DOJ issue

_____ Insufficient address or phone number

_____ Correspondence should be re-routed to: _____

✓ OTHER: PER CIVIL DIV., NO RESPONSE NECESSARY
PETITION FROM CUBAN REFUGEES

If you have any questions on this piece of correspondence, please call me or Lonnie Hedlund at 514-2063. Thank you for your continued cooperation.



U.S. Department of Justice
Office of the Deputy Attorney General

Washington, D.C. 20530

December 14, 1994

TO: Exec Sec
FROM: Dennis Corrigan

Please refer to Ed Kneedler with
copy to George Philips in CIV.

129402195

THE WHITE HOUSE

WASHINGTON

December 8, 1994

The Honorable Jamie Gorelick
Deputy Attorney General
Department of Justice
Washington, D.C. 20530

Dear Ms. Gorelick:

The enclosed document was received in the White House Counsel's Office. I am forwarding this document to your office for any appropriate action and handling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marvin Krislov", written in a cursive style.

Marvin Krislov
Assistant Counsel to the President

Enclosure

25

Legal Counsel

Man

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

IN RE:
THE CUBANS RAFTERS DETAINEES et Al.
PETITIONERS
vs
MR. WILLIAM JEFFERSON CLINTON
PRESIDENT OF THE UNITED STATES
RESPONDENT

PROOF OF SERVICE

I, ALFONSO E. OVIEDO-REYES, do swear or declare that on this
date, November 28th, 1994, pursuant to Supreme Court Rules 29.3
and 29.4, I have served the attached MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS and AFFIDAVIT, and PETITION FOR WRIT OF
MANDAMUS AND PROHIBITION on each party to the above proceeding, or
that party's counsel, and on every other person required to be
served by depositing an envelope containing the above documents in
the United States

1 Mail, properly addressed to each of them and with first-class
2 postage prepaid.

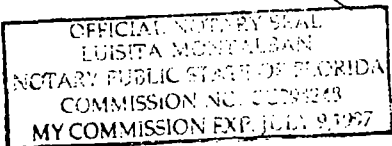
3
4 The names and addresses of those served are as follows:

5
6 Mr. WILLIAM JEFFERSON CLINTON
7 PRESIDENT OF THE UNITED STATES
8 THE WHITE HOUSE
9 WASHINGTON, D.C.

10
11
12
13
14 ALFONSO E. OVIEDO-REYES
15 AFFIANT
16 FLORIDA BAR NO. 0478172
17 8370 W. FLAGLER STREET, #110
18 MIAMI, FLORIDA 33144
19 (305) 221-6433
20

21
22 Subscribed and Sworn to Before me this 28th day of November
23 of 1994.

24
25
26
27 Notary Public in and for
28 Dade County, State of Florida



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

IN RE THE CUBANS RAFTERS DETAINEES
PETITIONERS

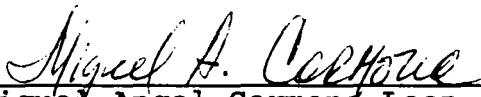
VS

MR. WILLIAM JEFFERSON CLINTON
PRESIDENT OF THE UNITED STATES

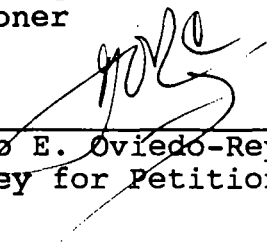
RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioners, asks leave to file the attached petition for a Writ of Mandamus and a Writ of Prohibition, without prepayment of costs and to proceed in forma pauperis. Petitioner's affidavit in support of this motion is attached hereto.



Miguel Angel Carmona Leon
Petitioner



Alfonso E. Oviedo-Reyes
Attorney for Petitioners

AFFIDAVIT IN SUPPORT OF A MOTION FOR LEAVE TO PROCEED IN

FORMA PAUPERIS

I, MIGUEL ANGEL CARMONA LEON, being duly sworn, depose and say, that I am the Petitioner in the above entitled case, that in support of my propety I am unable to pay the costs of this case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? NO
 - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
 - b. If the answer is no, state the date of your last employment and amount of the salary or wages per month which you received.

I am a Cuban rafter, who entered the United States on 8-18-94, and I am detained at the Krome Detention Center. I believe that as all others in my predicament, I have no money with me or funds of any kind available to pay for the required fees.

2. Have you received within the past twelve monhts any income from any business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends or other sources? NO
 - a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account?
NO
 - a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishing and clothing)? NO
 - a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

All my family is in Cuba, my wife and two daughters; and if anything they are expecting my help when, and if, I am able to work and send them money and other aid.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Miguel A. Carmona
Miguel Angel Carmona Leon
Affiant

Subscribed and sworn to before me this 20th day of November of 1994.

Paul
Notary Public



No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

IN RE THE CUBANS RAFTERS DETAINEES et al.

PETITIONERS

vs

MR. WILLIAM JEFFERSON CLINTON
PRESIDENT OF THE UNITED STATES

RESPONDENT

PETITION FOR PEREMPTORY WRITS
OF MANDAMUS AND OF PROHIBITION.

ALFONSO OVIEDO-REYES, ESQ
FLORIDA BAR NO. 0478172
8370 W. FLAGLER STREET, #110
MIAMI, FLORIDA 33144
(305) 221-6433

QUESTIONS PRESENTED:

1. Whether the Cubans rafters rescued or interdicted by the United States Coast Guard Service in the international waters of the Florida Straits and outside Cuban territorial waters, presently detained under the orders of the President of the United States, Mr. William Jefferson Clinton, issued on or about August 20th of 1994; are refugees pursuant to Article 1 of the United Nations Convention on the Status of Refugees and relating Protocol.

and if so,

a) can and should a Writ of Prohibition be issued against President Clinton to prevent him, in any manner whatsoever, from returning such refugees to Cuba; pursuant to Article 33 of the said United Nations Convention on the Status of Refugees and relating Protocol.

and

b) can and should a Writ of Mandamus be issued ordering President Clinton to release those refugees from detention and to immediately process them for admission into the United States pursuant to Articles 25, 26, 31 and 40 of the United Nations Convention on the Status of Refugees and relating Protocol.

in the alternative,

2. If the Cuban rafters are found to be refugees under the United Nations Convention on the Status of Refugees and its relating Protocol;

whether the Presidential Order of August the 20th of 1994, concerning the Cuban rafters above mentioned, who are placed in indefinite detention under "Presidential directives" is in abuse of discretion; as it intends to supersede the powers of discretion vested by an Act of Congress, under the Cuban Refugee Adjustment Act, on the person of the Attorney General of the United States "to parole Cuban refugees into the United States at the Attorney General's Discretion"; and the Presidential Order is capricious, arbitrary, in abuse of discretion and contrary to law.

and if so,

a) can and should a Writ of Mandamus should be issued ordering President Clinton to release the Attorney General's discretion to parole the Cuban rafters refugees from detention, and to order the Attorney General to immediately admit the refugees in Presidential custody and control, into the United States pursuant to the Cuban Refugee Adjustment Act of 1966.

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- Appendix A Copy of an I.N.S. "boiler plate" Reply Memorandum to a request for "parole" made on behalf of the Cuban Rafter Refugees in Detention under the President's Order of August 20th, 1994.
- Appendix B Copy of the newspaper report of the Miami Herald written by Mr. David Lawrence and Mr. Roberto Soares, which is evidence of the results that the order of the President has caused.
- Appendix C Copy of the United Nations Convention relating to the Status of Refugees and relating Protocol.

CASES

Marbury vs. Madison.

1 Cranch 137, 2 L. Ed. 60 (1803) 4, 5, 8.

STATUTES

U.S. Constitution 7, 8, 10, 12, 25, 26, 27, 41, 48.

United Nations Convention relating to the Status of Refugees and Relating Protocol

.. 5, 7, 8, 9, 12, 18, 20, 25, 26, 27, 30, 31, 32, 34, 41, 44, 46.

Article 1 7, 8, 9, 42.

Article 9 (Protocol) 25.

Article 16 35, 43.

Article 26 30.

Article 31 30.

Article 33 33, 34.

Article 40 7, 9, 41, 44.

Public Law No. 89-732, 80 Stat. 1161 (Cuban Refugee Adjustment Act)

..... 5, 8, 10, 14, 18, 20, 26, 49.

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2011-1039-F
jm1497

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1
2 Honorable Court:

[001]

3 Come now the Petitioners, Alfonso E. Oviedo-Reyes, Attorney at Law
4 admitted to practice in the State of Florida since June 20th of
5 1985, and in the Republic of Nicaragua since August 16th of 1974;
6 an individual American Citizen; and on behalf and as attorney pro
7 hac vice and next friend of the Cuban Rafter Refugees: Miguel
8 Angel Carmona Leon, Date of Birth (b)(6)
9 Handcuff #000784844, Camp Juliette, Cabaña 2, Guantanamo Naval
10 Base, Cuba; Jose Maria Sanchez Orta, 84 years old in Guantanamo (in
11 extreme illness) and his son Jose Luis Ley Sanchez, M.D.; Jose
12 Maria Ley Olivera; Carlos Alexis Mendoza Moreno, Angel Guerra,
13 Lazaro Perez, Jose Luis Suarez, Orlando Diaz Acosta, Humberto Lopez
14 Alvarez, Jose Espinoza, Juan Carlos Rondon, Juan Carlos Pedroza
15 (all detained in Guantanamo) and all the over 32,000 Cuban rafters
16 refugees detained at Guantanamo, Panama, Krome Detention Center in
17 Miami, Florida, Port Isabel Detention Center, Texas; and all others
18 in that class who are otherwise are and have been for over seventy
19 days in the physical custody and control of President of the United
20 States as Commander in Chief of the Armed Forces of the United
21 States of America, and who were rescued in the high seas in or near
22 the Florida Straits by the U.S. Coast Guard in an humanitarian
23 efforts made by the Coast Guard to save their lives; hereinafter
24 called "the rafters"; who are now in permanent and indefinite
25 detention at places under U.S. control, such as the Guantanamo
26 Naval Base (Cuba), in the Canal Zone of the Republic of Panama, the

1 Krome Detention Center in Miami, Florida, the Port Isabel Detention
2 Center, Texas and any other unknown places; on the Order issued by
3 the President of the United States of on or about the 20th of
4 August of 1994, and by his command, executed by the Members of his
5 Cabinet, at the President's leisure and with his full knowledge,
6 approval and consent.

7
8
9 I, the undersigned Attorney, will sign this Petition for and on
10 behalf of all of the members of the class of the Cuban rafters in
11 detention by the Order of 8-20-1994, of the President of the United
12 States of America Mr. William Jefferson Clinton to the Armed Forces
13 of the United States of America and in the custody and control of
14 the Commander in Chief of such forces, the President of the United
15 States; as they are unavailable to do so for themselves and I do
16 not have access to them.

17
18 THE ORDER OF THE PRESIDENT
19

20 Pursuant to the Rules of the Supreme Court 20.3, copy of the
21 Judgment or Order in respect of which the Writ is sought has to be
22 appended to this Petition; however, in the case at hand, the Order
23 against which the Writ is sought is a verbal Order of the President
24 of the United States, which was given on or about the 20th day of
25 the month of August of 1994 to the Members of his Cabinet, who
26 executed the order.

1 However, in Appendix A a copy of an I.N.S. "boiler plate" Reply
2 Memorandum to requests for "parole" made on behalf of the Cuban
3 Rafter's Refugees shows how all Cuban nationals entering the U.S. at
4 this present time without proper documentation are held in
5 indefinite detention by the I.N.S. "under Presidential Directives"
6 (not under the Attorney General's Discretion, as the Cuban Refugee
7 Adjustment Act requires.)

8
9 The verbal Order of the President contained the following commands,
10 to wit:

11
12 a) It ordered the Department of Defense to instruct the United
13 States Coast Guard Service to stop bringing to the mainland
14 territorial U.S., the Cuban rafters refugees rescued in the Florida
15 Straits and in the high seas, outside the territorial waters of
16 Cuba; and instead to take them all to the Guantanamo Naval Base, in
17 Cuba; also in the control of the Department of Defense and the
18 Armed Forces of the United States.

19
20 b) It ordered the Attorney General of the United States Ms. Janet
21 Reno, to deny parole to all the new rafters taken after his Order,
22 to deny them refugee status, and to place them into detention at
23 the Guantanamo Naval Base, a territory under U.S. control. The
24 Order took away the discretion of parole to Cubans entering the
25 U.S. vested by law on the Attorney General.

1 c) It ordered the Department of State of the United States to begin
2 negotiations with the government of the Republic of Cuba for the
3 return of the Cuban rafters refugees, rescued from international
4 waters outside Cuba, and detained at the Guantanamo Naval Base.
5 Such Agreements have been reached pursuant to the Order of the
6 President, and several rafters refugees have been returned to Cuba
7 under those agreements.

8
9 d) It ordered All Members of the Cabinet to whom the command
10 concerned; that the detainees were going to be held incomunicados
11 and indefinitely at the "safe heavens" of the Guantanamo naval
12 base, or at such other places as they were later relocated.

13
14 Those are the main points of the Presidential Order.

15
16 In Marbury vs Madison, this Supreme Court exercised its
17 extraordinary powers for the Issuance of Writs on behalf of several
18 judges who could not take the oath of office because they were
19 denied the delivery of their appointments that had been signed on
20 the last day of the Presidency of Mr. John Adams; and the new
21 President Thomas Jefferson, ordered his new Secretary of State, Mr.
22 James Madison, to withhold the delivery of the appointment that had
23 been signed and seal by former President Adams.

24
25 Marbury and several other beneficiaries of the appointments issued
26 by Adams, sought a Writ of Mandamus in the Supreme Court to compel

1 Madison to deliver their commissions. This Supreme Court ordered
2 Madison to show cause, why the mandamus should not be issued and
3 the case was set for argument in the 1802 Term.
4

5 As in Marbury, we find ourselves in the case at hand, that there
6 are "commanded omissions" contained in the Order of the President.
7 Just as Jefferson told Madison to withhold the delivery of the
8 appointments; Mr. Clinton has told Ms. Reno, his Attorney General,
9 to withhold "parole" into the United States to the Cuban rafters
10 refugees and to withhold giving them the status of refugees, as had
11 been the policy of the U.S. up until 8-20-1994, the moment of his
12 Order; and he ordered the Armed Forces to hold them in his custody.
13

14 That part of his order implies a change in American Foreign Policy
15 that has been in place for the last 35 years; a change of such
16 nature cannot originate on the power of the Attorney General alone,
17 but requires the direct command of the President of the United
18 States.
19

20 The Order also implies a violation to the United Nations Convention
21 on the Status of Refugees and relating Protocol, and a violation of
22 the Cuban Refugee Adjustment Act of 1966, which allows the Attorney
23 General to parole Cubans coming into the United States "at the
24 Attorney Generals discretion", discretion that should be used
25 reasonable.
26

1 But in this case the actions of President Clinton and of Ms. Reno,
2 his Attorney General are arbitrary, capricious, in abuse of
3 discretion, and contrary to law because if the Cuban rafters
4 refugees were treated differently from all other refugees coming
5 from this Hemisphere, it was because they come from a contiguous
6 territory, the special circumstances of violation of Human Rights
7 in Cuba, the history of the relations between Cuba and the U.S.
8 since Cuba obtained independence from Spain and because our laws
9 ordered such treatment.

10
11 The Order concerning the Cuban Rafters Refugees was given by the
12 President himself, as that Order cannot come from any one else, as
13 no member of the Cabinet has the power to issue such Order on his
14 own, or in combination with other members of the Cabinet. The
15 actions taken in the case at hand, emanated from and could only
16 come from, the authority of the President of the United States.

17
18 Attached as "Appendix B" please find the newspaper report of the
19 Miami Herald written by Mr. David Lawrence and Mr. Roberto Soares,
20 which is evidence of the results that the Order of the President
21 has caused.

22
23 JURISDICTION
24

25 The Supreme Court of Justice of the United States of America has
26 jurisdiction over this matter on the grounds that Cubans rafters

1 fleeing the Island of Cuba, "once out of the territorial waters of
2 Cuba" and "fearing return to Cuba on grounds of political
3 persecution", are presumed by the Laws of the United States of
4 America contained in the Article One of the United Nations
5 Convention for the Status of Refugees and its Relating Protocol,
6 Laws of the Land, to be Political Refugees; and matters concerning
7 the violation of the legal rights of Political Refugees are within
8 the jurisdiction of the Court, particularly, when the violation of
9 those rights is effected massively by an Official of the Government
10 of the United States, who is its first and highest Public Official
11 our President and Commander in Chief of the Armed Forces of the
12 U.S.

13
14 While the U.S. Constitution may, or may not, apply to the rafters;
15 to confer upon them basic U.S. constitutional rights, the above
16 mentioned U.N. Convention relating to the Status of Refugees and
17 relating Protocol do in fact apply to them. (Article 40 of said
18 Convention). This case is not a matter of illegal immigration, of
19 poor people searching for work; this is a case where people have
20 risked their lives and everything they had, to search for freedom.
21 By our Laws, we deal in a very different manners with regards to
22 either problem.

23
24 The Presidential Order regarding the Cuban Rafters Refugees is a
25 violation to the United Nations Convention on the Status of
26 Refugees and relating Protocol, and a violation of the Cuban

1 Refugee Adjustment Act of 1966, which allows the Attorney General
2 to parole Cubans coming into the United States "at the Attorney
3 Generals discretion", discretion that should be used reasonable.
4 But in this case such discretion is being grossly abused by the
5 Presidential Order of August 20th of 1994, that has tried to divest
6 the discretion of the Attorney General and to put in its place the
7 Presidents own discretion.

8
9 "The very essence of Civil Liberty certainly consists on the right
10 of every individual to claim the protection of the laws, whenever
11 he receives an injury. One of the first duties of government is to
12 afford that protection. The government of the United States has
13 been emphatically termed a government of laws, and not of men. It
14 will certainly cease to deserve this high appellation, if the laws
15 furnish no remedy for the violation of a vested legal right".
16 (Marbury vs. Madison 1 Cranch 137, 2 L. Ed. 60 (1803)).
17

18 Under the Constitution of the United States Art. III, the President
19 of the United States is a public official from whom any individual
20 (Marbury) can demand the performance of his ministerial duties in
21 accordance to law. In this case, these Cuban rafters refugees have
22 a vested right to be declared refugees under Article 1 of the
23 United Nations Convention relating to the Status of Refugees and
24 Relating Protocol, and as individuals they, as well as we on their
25 behalf, can come before this Court to seek a Writ against a Public
26 Official that by his Order has, in abuse of his discretion,
27 violated such vested right.

28
29 FACTS OF THE CASE
30

31 1. Now, and for a period of over ninety days, the President of the

1 United States keeps and has kept in his custody and control over
2 32,000 Cuban rafters refugees in detention camps at the Guantanamo
3 Naval Base in Cuba; and has transported some of them to the
4 Republic Panama and others to the Krome, Florida and Port Isabel,
5 Texas Detention Centers, and other places in U.S. control and whose
6 international relations is in the care of the U.S.

7
8 2. Taking such custody of those rafters, and locating them in
9 territories over which the United States has control, has placed
10 the President in a position to inevitably treat them under the
11 guidelines set by Article 40 of the United Nations Convention
12 relating to the Status of Refugees and its Relating Protocol, as
13 the Rafters satisfy the definition of Article One of the said
14 Convention. If the President would have in his custody and
15 control, Iraqi prisoners of War in Kuwait or Saudi Arabia; he would
16 have to abide by the Geneva Convention on the Treatment of
17 Prisoners of War, and treat them as such. Likewise in this case, by
18 having the Rafters in his custody and control in places under U.S.
19 control; a people whom he has not declared invaders or prisoners of
20 War; and who are prima facie political refugees; he has to abide by
21 the rules of the United Nations Convention relating to the Status
22 of Refugees.

23
24 3. The Cuban "rafters", in fact and at Law, have been and are
25 political refugees ab initio. This presumption is particularly
26 true in the case of the Cuban "rafters", who for over 30 years have

1 been granted, by the U.S., the treatment of political refugees
2 after being rescued at sea in the Florida Straits in their flight
3 to liberty and freedom from the abominable tyranny of the Cuban
4 despot Fidel Castro.

5
6 In the past, and up until about ninety days ago, this rafters were
7 recovered from the high seas and transported by the U.S. Coast
8 Guard to the territorial United States of America, "paroled as
9 refugees" into the U.S. by the Immigration and Naturalization
10 Service, by delegate authority of the Powers of Discretion vested
11 by law upon the Attorney General, until after one year of physical
12 presence allowed them to adjust their status to that of a Legal
13 Permanent Resident of the U.S. under the Cuban Refugee Adjustment
14 Act.

15
16 4. The special treatment given to the Cuban rafters was not done by
17 accident; nor as a kind and gentle exercise of the discretionary
18 powers in foreign affairs given by our Constitution to the U.S.
19 Presidents that preceded Mr. Clinton (and to Mr. Clinton himself
20 during his administration up until August 20th of 1994); but as
21 fair and just compliance with the laws of the United States
22 relating to Cuban rafters.

23
24 5. The Cuban "rafters" are the epitome and the prototype of what a
25 political refugee is. Thousands of "rafters" paid with their lives
26 their journey to freedom in order to obtain that classification for

1 all of them. They enter such class of refugees ab initio, at the
2 moment they embark on those flimsy rafts, exit Cuban waters, and
3 enter the perils that the Florida Straits are famous for. No
4 "Economic Refugee" or "Illegal Immigrant" would undertake such
5 risks to his life for the betterment of his economic conditions.
6 The success rate of their journey has been estimated at 50%.

7
8 6. It is paramount to the Rule of Law in the United States that a
9 President should follow the Laws of this Country in all of his
10 actions, whether in the United States or abroad, and in particular
11 it is of the utmost importance that the treatment of refugees be
12 handled with the highest degree of care.

13
14 7. In terms of numbers there is no "Cuban Illegal Immigration
15 Crisis", all of the 32,000 Cuban rafters detainees do not amount to
16 ten days of the Illegal Immigrants successfully crossing the
17 Mexican American Border into the U.S., without detention by the
18 I.N.S. This number comes from the I.N.S. own public admissions.
19 This is a staged crisis, only geared to local Florida State
20 politics where the Governor's race was at stake, and where this
21 "crafted issue" and the opportunity was in fact politically
22 expedient to affect the spirit of the voters in Florida, who
23 naturally feared a "flood of Cuban illegal immigrants".

24
25 There are really no special circumstances surrounding the decision
26 of President Clinton to reverse all of our laws regarding the

1 treatment of the Cuban Rafter Refugees, except for political
2 interest. If the President would have had the statesmanship to
3 answer Castro's gambit, he would not have the over 32,000 people he
4 now has in his hands. Now, no other country wants to take them, not
5 even Castro wants to take them back.

6
7
8 DIFFERENCES WITH OTHER REFUGEES OF THE WORLD.
9

10 In the case of the Haitians, refugees who were in the most similar
11 conditions to the Cubans, namely interdicted at sea and detained in
12 Guantanamo for a long period of time; the Bush and Clinton
13 Administrations presented the issue "that some of the Haitian
14 refugees were economic refugees and therefore were not under the
15 protection of the United Nations Convention on the Status of
16 Refugees, or the U.S. Constitution because they had not reached the
17 territory of the United States and hence were not entitled to any
18 benefits under U.S. asylum laws".

19
20 The issue was debatable in the Haitian case, because at all times,
21 the United States had an Embassy and a Consulate open for business
22 in Port au Prince, Haiti; and full diplomatic relations were in
23 existence. But even then, our U.S. Courts found for the Haitians
24 and allowed them access to the Courts and gave them the protection
25 of our Asylum laws; and their cases were decided on a case by case
26 basis, because some of them had real asylum merits.

1 Further, the Haitian political situation had only changed 3 years
2 ago, when a military coup d'etat deposed President Jean Bertrand
3 Aristide (not 35 years as in the Cuban case). The major similarity
4 then, is that both the Cubans and the Haitians in flight from
5 oppression and persecution, were picked up in the high seas by the
6 U.S. Coast Guard in a humanitarian effort to save lives.

7
8 But a further analysis of the Cuban case requires the observation
9 of the following differences:

10
11 1. The U.S. Embargo on Cuba and the Torricelli Act. The United
12 States has had an economic embargo in place against Cuba for over
13 30 years, recently reinforced and strengthen by the U.S. Congress.
14 No such U.S. embargo was ever issued against Haiti, it was the
15 United Nations who briefly and recently imposed one, to which the
16 United States subscribed and which is already over.

17
18 The U.S. embargo on Cuba has had some impact on the Cuban Tyranny,
19 but it has also had the ill effect to weaken the Cuban People to
20 the point were they do not revolt and only think of escaping in a
21 suicidal journey.

22
23 2. No Diplomatic or Consular Relations. The United States has not
24 had an Embassy or a Consular Office open in Cuba for the last 35
25 years. Instead, in Haiti the United States had an Embassy and a
26 Consulate in Port au Prince, open for business even at the time of

1 the invasion a few weeks ago; and full diplomatic relations are and
2 were in existence at all times.

3
4 3. The Cuban Adjustment Act of 1966 (about to reach its third
5 decade) has given the natives and citizens of Cuba the right to
6 obtain Permanent Residence in the United States after one year of
7 physical presence in this country, for those who enter under the
8 parole of the Attorney General or by legal entry. This law was
9 given by Congress in consideration of the tyrannical conditions
10 that affects that Island nation since the inception of the Castro
11 regime. Haitians never had that kind of status recognition of
12 their internal political problems. Nor has any other Latin
13 American country received that treatment.

14
15 4. Even the kind of boats used by the Haitians, in frail
16 equilibrium when overloaded; were hundreds of times more seaworthy
17 than those flimsy rafts, made of tire chambers, pieces of wood and
18 bathtubs, used by the Cubans; hence the enormous difference of
19 their respective risks in their voyages to freedom and the
20 inordinately high number of Cuban rafters that died in the Straits
21 of Florida.

22
23 5. The U.S. Neutrality Act has been strictly enforced against Cuban
24 Exiles for years preventing them from any efforts to fight for
25 freedom and democracy. The Nicaraguan Contras did get help; America
26 helped the Salvadoran Democracy to survive the communist attack

1 designed by Castro. But the Cubans instead are placed in prison if
2 they try to take weapons to their Country to fight for freedom.
3 This has given the Cuban Dictator an added advantage in the
4 repression of its own people as he fears no reprisals or uprisings,
5 or help from abroad to those who would rebel inside Cuba.

6
7 6. The United States and Cuba are contiguous neighbors; no other
8 refugees at the present time can claim such condition. Haiti has
9 land borders with the Dominican Republic. Such border makes their
10 claim for asylum weaker than in the case of the Cubans.

11
12 7. Finally, the United States always, consistently, and through
13 Democratic and Republican administrations has denounced the
14 violations of human rights that the Castro regime has perpetrated
15 against the people of Cuba.

16
17 Such consistency in American policy for a period of over three
18 decades, denies President Clinton the newly made and farfetched
19 allegations that some of the Cubans rafters may in fact be economic
20 refugees.

21
22 While some other Cubans coming to America, by means other than the
23 rafts, may have to show persecution on the grounds of their
24 political opinions to obtain asylum; the rafters are refugees by
25 the sheer risk of their lives in their flight to freedom and were
26 recognized such status since the first rafter arrived from Cuba to

1 the U.S. during the Castro "Proletarian Dictatorship".

2

3 The standing of both sovereigns, Cuba and the United States, one
4 against the other, is so far apart and their differences are so
5 profound and consistent, that even if a person in Guantanamo would
6 say, among other things, that he wants to come to the United States
7 to improve his economic conditions in life, he will still have to
8 be considered a political refugee because of the political and
9 diplomatic conditions that exist between Cuba and the United States
10 of America, and the risks he took does not stand to reason that
11 would had been assumed by an Economic Refugee. Cuba is one of the
12 few "official enemies" the U.S. has, and the closest.

13

14 8. The Clinton administration seems to be afraid of being called
15 racist, because they would show a treatment to the Cubans,
16 different from that given to the Haitians, with the charge that it
17 is because of the color of their skin. We submit to this High
18 Court, that there are many Cubans rafters, about half of them, in
19 detention that are black, of African roots; who should neither
20 merit special treatment or be refused any right because of the
21 color of their skin. The only legal considerations for their cases
22 should be their country conditions with regard to the respect of
23 Human Rights, their relations of that country with the United
24 States and the manner of their escape.

25

26 9. But even those political refugees from my native Nicaragua, and

1 others from elsewhere, who have come to the United States fleeing
2 persecution; understand that the conditions and oppression that the
3 Cubans endure in their native island makes the Cuban situation,
4 privileged as to asylum in the U.S. and entirely different from any
5 other in this hemisphere and in the world.

6
7 10. The burden of proof to show that Cubans rafters fleeing Cuba,
8 found in the high seas, are now "Economic Refugees" is on President
9 Clinton.

10
11 AN ACT OF WAR
12

13 Since the times of the Assyrians, the Greeks and the Romans; all
14 Sovereigns of Kingdoms or Republics, had always the duty to protect
15 the borders of their territories. That duty is two fold: a) to
16 protect against invasions, peaceful or military, into their
17 sovereignty; and b) to keep their own subjects from invading
18 another sovereigns territory, to avoid that neighbor the need to
19 defend and declare war.

20
21 That is why the orderly flow of subjects of one nation, entering
22 another happens only with the permission, expressed or implied, of
23 both Countries.

24
25 Up to August of 1994 the U.S. Coast Guard used to rescue Cuban
26 rafters in the Florida Straights who escaped the tyrannical regime

1 of Fidel Castro in Cuba, and transported them to the United States.
2 The U.S. Immigration and Naturalization Service granted to them
3 "parole as refugees" under the delegate authority of the U.S.
4 Attorney General, to remain in the United States until such time,
5 one year later, when they could adjust their status to become
6 Permanent Residents of the United States.

7
8 This was done pursuant to the United Nations Convention relating to
9 the Status of Refugees and its relating Protocol in combination
10 with the law commonly known as the Cuban Refugee Adjustment Act of
11 1966. Both this laws are still in full force and effect.

12
13 On or about the first week of August 1994 the Cuban dictator Fidel
14 Castro decided to cause an invasion into the United States; he said
15 that he would open the borders of Cuba to all those who wanted to
16 escape the island of Cuba to seek freedom elsewhere. In the
17 oppressive conditions and tyrannical repression under which he
18 maintains the peoples of Cuba, Castro knew that an invasion would
19 ensue. He had the Mariel prior experience; nevertheless, he again
20 challenged the United States of America.

21
22 This act, which from the first moment should had been interpreted
23 by our President as an Act of War against the United States by the
24 Cuban government, was in fact interpreted against the weaker of the
25 parties involved, "the rafters", the men, women, children and
26 elderly who decided to seek their freedom even at the expense of

1 their own life in the Florida Straights. However, the President
2 did not treat them as "invaders"; nor did he delivered them back to
3 the Cuban shores in the hours following their interdiction; nor
4 did he declare them "Prisoners of War".

5
6 But, by express orders of the President of the United States "the
7 rafters", legitimate political refugees among which are some of the
8 most recognized internal political opponents of Castro, were no
9 longer brought to the territorial United States; but instead were
10 taken to the military base at Guantanamo, Cuba; where never before
11 the number of refugees swelled so bad as to maintain over 40,000
12 people, counting the Haitians that were already in detention there.

13
14 The present living conditions of the rafters are so bad, that no
15 convicted criminal in the United States, no matter how foul his
16 crime; is placed in such, or even remotely akin, conditions.

17
18
19 HOW WILL THE ISSUANCE OF THE WRIT WILL COME IN THE AID OF THE
20 APPELLATE JURISDICTION OF THE SUPREME COURT OF THE U.S. AND
21 WHICH ARE THE EXCEPTIONAL CIRCUMSTANCES PRESENT TO WARRANT
22 THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS, AND WHY
23 ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM
24 ANY OTHER COURT. RULE 20.1

25
26 a. HOW THE ISSUANCE OF THE WRIT WILL AID THE APPELLATE
27 JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

28
29 The Appellate Jurisdiction of the Supreme Court will be aided by
30 the issuance of the Writs requested, because if the rights of the

1 Cuban rafters as set forth in this Petition, are found to be
2 meritorious by this Court, it will resolve in one case, thousands
3 of future possible cases that may later be litigated and would
4 reach this Court; as the laws that are violated or breached by the
5 Order of the President are a treaty of the United States, namely
6 the United Nations Convention relating to the Status of Refugees
7 and relating Protocol, and a U.S. Public Law the Cuban Refugee
8 Adjustment Act.

9
10 That treaty has the level of a constitutional law, and the Act is
11 a Public Law of the United States; the cases that will ensue to
12 protect the rights of 32,000 Cuban refugees would eventually reach
13 in great numbers by way of appeals, the level of the United States
14 Supreme Court. However, if the Writs are issued, it will save not
15 only the Supreme Court's time but many other lower Courts docket
16 and time, without a terrible waste of the taxpayers dollars.

17
18 If the Court makes it clear, by issuing the Writs, that the Cuban
19 rafters are refugees; this issue shall not be brought again before
20 this Court or in any other Federal Court unless a drastic change in
21 our laws takes place, either by the Denunciation of the United
22 Nations Convention relating to the Status of Refugees and relating
23 Protocol or by a change made by Congress in the Cuban Refugee
24 Adjustment Act.

25
26 But there are further reasons why this Court will be aided in its

1 appellate jurisdiction by taken cognizance now of the issue that
2 would later come before it in many Appeals.

3
4 The public interest of the people of the United States of America
5 demands that this Court does not let the faith of 32,000 people
6 linger "ab eternum" without a decision. And there is also the small
7 problem of the hundreds of millions of dollars of the Tax Payers
8 monies that are being irreversibly spent in having 32,000 people in
9 custody, without need or justification.

10
11 The reputation of the United States of America as a Nation under
12 the Empire of the Law, is also at stake in this case. We are the
13 leaders in the world for Human Rights and for the Rights of
14 Refugees. Our present handling of the Cuban rafters will put us to
15 shame next time we dare even talk in an International Forum about
16 Human and Refugee Rights. Our behavior in this case is not too far
17 from that of Mr. Hussein's of Iraq.

18
19 The laws for the protection of Refugees are so fundamental that
20 they come directly to us through our judeo-Christian tradition from
21 the gospel of Christ, "to protect the persecuted". For over 30
22 years we had done so with the Cuban refugees and without any
23 changes in our laws or in the conditions of either country; our
24 President suddenly has turned around and decides against all odds
25 to punish the Cuban rafters for daring to escape from Castro.

1 The longer this matter revolves around Appeals and Motions the more
2 irreparable the damages to the reputation of the United States
3 becomes. We are a country of Laws and not of men; and we must show
4 that to the world.

5
6 Your discretion in the use of your powers to issue Writs is, by
7 Law, to be used sparingly. This is a case where the conditions are
8 met for the Supreme Court to exercise its Powers of Writ to show
9 the World how the Empire of the Law truly exists in America.

10
11 b. WHICH ARE THE EXCEPTIONAL CIRCUMSTANCES PRESENT TO WARRANT
12 THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS

13
14 First of all, the matter at hand involves 32,000 people; that
15 are vested refugees in the present custody and control of the
16 President of the United States; without having being given the
17 status of refugees as they should. The most terrible wrong of this
18 case is that the rafters have not even been told that they have
19 that status. If they knew that, they would not try to escape from
20 their American Guardians back to Cuba, as almost 400 of them have
21 done, some loosing life or limbs.

22
23 It is not just the fate of a few dozens or hundreds of people, in
24 terms of numbers, it is the fate of an entire nation. Over 100
25 children have been born to the refugees while in detention and over
26 250 detainee women are pregnant.

1 These people had come to the U.S. for decades and were granted a
2 refugee status. The Order of the President of the United States
3 against which the Writ is sought changed all that in a single act,
4 without a single change in our laws or in the conditions of
5 oppression in Cuba; his act abuses his discretion.

6
7 The damages caused to the Cuban Rafter Refugees, both in
8 psychological trauma and in actual pain and suffering are
9 unwarranted, unnecessary and irreparable.

10
11 "Nobody would want to see their mother, father, children or
12 even a neighbor, in such situation" says the Miami Herald
13 newspaper report.

14
15 However, the critical time factor in this case sets a constraint
16 that is insurmountable, as the damages mentioned in this Petition
17 will further grow to become immense and further irreparable.

18
19 Our Presidents have made errors before, such as the Japanese
20 Interments during World War II, and our Court System is this
21 Country's conscience, as you right such wrongs. Why wait until 30
22 years from now to indemnify the grandchildren of the Cuban rafters
23 for the violation of their vested rights as refugees and all the
24 unnecessary pain and suffering they are enduring? If you issue the
25 Writs now, no such actions will come to haunt future Supreme
26 Courts.

1 c. WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR
2 FROM ANY OTHER COURT. RULE 20.1

3
4 If we would appear making this Petition before a Federal Court in
5 Miami, the Judge may or may not grant a Writ we ask for, and we may
6 or may not appeal the decision; but the U.S. Government will appeal
7 if the Writ is issued, on the grounds of Lack of Jurisdiction, and
8 we both would go the Appeal Court. The Appeal Court will take
9 months, if not years to resolve this matter, and then it will
10 inevitably come before this Court. In the meantime the damages
11 that we enumerate in this Petition, become irreparable.

12
13 I am not afraid of imposing the burden on this Court to take the
14 duty that is now, by virtue of my Petition, in front of you as
15 Justices of the Supreme Court; I feel that as an Attorney it is my
16 moral imperative to seek the protection of refugees. We need to
17 protect the refugees under our laws, so that our children and
18 grandchildren will not become pilgrims themselves. And we need to
19 do it without hesitation and swiftly. Justice delayed is no justice
20 at all; and in this Case all Lower Courts cannot render the clear
21 and final decision required under the emergency presented by the
22 clear circumstances of this case.

23
24 This is the reason why it is in the public interest of the people
25 of the United States of America that this Supreme Court will use
26 its discretionary powers to issue the writ in this case.

1

2 The government will argue that releasing 32,000 people into the
3 United States will cause tremendous inconveniences. That, I say, is
4 the price we have to pay for our lack of fortitude when it comes to
5 international affairs, and our lack of a militant attitude toward
6 democracy. We have kept democracy to ourselves, but in truth, we
7 have to do more to share that gift with the rest of mankind, as we
8 should with Cuba.

9

10 If the United Nations Convention relating to the Status of Refugees
11 is not to be an effective law of our Country, of swift and clear
12 application; then it should denounced as set forth in Article 9 of
13 Protocol of the United Nations Convention relating to the Status of
14 Refugees. But it is of the utmost importance that our laws for the
15 protection of Refugees not only be kept in full force and effect,
16 but that they be reinforced and ratified by this Court, so that the
17 United States may have the moral authority to preach to the rest of
18 the World how the American way is the fair, just, civilized, humane
19 and human way.

20

21

22 THE DUTIES OF THE PRESIDENT OF THE UNITED STATES

23

24 Article II of the United States Constitution declares the President
25 of the United States to be the Commander in Chief of the Armed
26 Forces who are presently holding the Cuban rafters refugees. The

1 United States Constitution also makes the duty of the President of
2 the United States to take care that the laws be faithfully
3 executed; and Article III of the United States Constitution grants
4 this Supreme Court the power to interpret the laws and jurisdiction
5 to issue a Peremptory Writ of Mandamus against the President, when
6 the President as a Public Official fails to discharge his
7 ministerial duties in accordance to the Laws.

8
9 Among his ministerial duties is the conduction of foreign policy.
10 In such ministry, the Presidents of the United States for decades
11 recognized the Cubans refugee rafters rescued in the high seas,
12 outside Cuba, as political refugees. All Attorney Generals before
13 Ms. Janet Reno used their discretion reasonably and paroled the
14 rafters into the United States pursuant to Public Law No. 89-732,
15 80 Stat. 1161. Now, by the Orders of the President of the United
16 States the Attorney General has not paroled the Cuban rafters, who
17 by definition are political refugees when interdicted in
18 international waters, and not labeled as either invaders or
19 prisoners of war. The discretion of Ms. Reno is not unfettered and
20 she is grossly abusing it, at the orders of the President, as her
21 failure to act is in direct conflict with the United Nations
22 Convention relating to the Status of Refugees that defines the
23 rafters as political refugees. Appendix B shows that the Cuban
24 Rafters Refugees are detained indefinitely awaiting "Presidential
25 Directives"; without any further instruction and the discretion of
26 the Attorney General is not even mentioned.

1 The laws of the United States relating to the Status and Conditions
2 of the Cuban rafters have not changed, and to the contrary the
3 embargo against Cuba has been strengthen by our Congress.

4
5 Presently, a law suit against several officers of the United States
6 and Members of the Presidential Cabinet has been filed before
7 Federal Judge in Miami, Florida. The Judge temporarily stopped the
8 refoulement of Cubans to Cuba taking place by means of negotiations
9 between Cuba and the United States. But the Court of Appeals has
10 partially reversed the order of Judge Atkins, and the return of the
11 refugees is possible to the Government. We ask this Court to order
12 a Temporary stay of the return until it decides this Petition.

13
14 However, we submit to this Supreme Court that when people have a
15 vested right to be classified as refugees; the Cuban rafters, as
16 individuals not as U.S. Citizens, have the right to obtain the
17 discharge of a ministerial duty by the President of the United
18 States of America, namely to be treated as refugees, as they were
19 for decades and as defined by the United Nations Convention
20 relating to the Status of Refugees and Relating Protocol; rights
21 that do not come to them from the U.S. Constitution, but from the
22 said Convention. Nevertheless, they as individuals, can ask this
23 Court through me, for a Peremptory Writ of Mandamus and of
24 Prohibition to the President of the United States as he is the only
25 person that with one order can reverse the entire situation created
26 also with a single order.

1
2 The President just has to restore the status of things back to the
3 state where they were before the act of war made the Cuban autocrat
4 Fidel Castro against the United States; act which he misjudged and
5 now punishes the victims of the satrap in detention camps for an
6 indefinite period.

7
8 When the laws of the United States have not changed, and to the
9 contrary, when the economic embargo against Cuba has been tighten
10 by an act of Congress; the President of the United States is
11 erroneously and unlawfully discharging his ministerial duties in
12 regards to the treatment of the Cuban refugees rafters, in a very
13 cruel and awkward manner. President Clinton, who has achieved many
14 foreign policy triumphs, does not need this blemish on his record.
15 In one single act he can clean the slate, and make these rafters
16 the last we have to take into the United States. I pray to him to
17 do it.

18
19 BREACH OF THE DUTIES OF THE PRESIDENT.

20
21 The Order of the President of the United States of America has
22 breached the discharge of his ministerial duties as follows:

23
24 1. He has refused to recognized the Cuban rafters as the political
25 refugees that they are; even in the face of the obvious reality of
26 an ACT OF WAR made by Fidel Castro and the fact that for over three

1 decades the rafters have been treated as political refugees by all
2 American Presidents, including himself, in a reasonable exercise of
3 discretion of their Attorney Generals to paroled them into the
4 U.S.; and now denies them all the rights that the our laws give in
5 their protection.

6
7 2. He has refused to recognized the Cuban rafters as the political
8 refugees that they are; and has placed them in an indefinite
9 detention, in living conditions that are sub-human and inadequate,
10 and in places (the Guantanamo naval base or the jungles of Panama)
11 that were never designed to sustain and support such large amounts
12 of people.

13
14 3. Further, he has refused to recognized the Cuban rafters as the
15 political refugees that they are; and has transferred eight
16 thousand of them to the jungles of Panama, to another place that
17 had to be cleared of jungle vegetation, just before the tents to
18 house the rafters were set up.

19
20 Allegations are made by this Administration that this people are
21 living just as our troops would be in tents. Such allegation is
22 false; since the equipments, jungle training and supplies that our
23 troops have, are not provided to the rafters.

24
25 4. The President has refused to recognize the Cuban rafters as the
26 political refugees that they are; and has refused the refugees

1 access to Court by denying them access to Attorneys to represent
2 them, and denying them the right to file petitions to the Courts
3 for Political Asylum or for anything else by themselves or through
4 others in any way.

5
6 5. The President has refused to recognize the Cuban rafters as the
7 political refugees that they are; and has denied them freedom of
8 movement within the American territory as all Presidents in the
9 past have done with Cuban rafters since the Cuban rafters situation
10 began decades ago. Again, they did not do so by accident or their
11 personal magnanimity; but as ordered by Article 26 of the U.N.
12 Convention on the Status of Refugees and the relating Protocol.

13
14 6. Article 31 of the U.N. Convention on the Status of Refugees and
15 the relating Protocol orders that no penalties shall be imposed on
16 the refugees because of their illegal entry into a neighboring
17 territory. President Clinton is in fact punishing these refugees in
18 restricting their movements since by this time he should had
19 allowed them to come to join their families and friends; which
20 would had cost the U.S. taxpayer a fraction of the cost of
21 detaining them.

22
23 7. The President has refused to recognize the Cuban rafters as the
24 political refugees that they are; and has by means of coercive and
25 extremely harsh living conditions, by trickery and by false
26 promises made through Members of his Cabinet; has tried to enticed

1 the Cuban rafters in detention in Guantanamo and elsewhere to
2 return to Cuba, where the President's agents have falsely promised
3 the Refugees the obtention of Immigrant Visas to come to the United
4 States; even in the face of the clear denial from Mr. Ricardo
5 Alarcon, the spokesman for the Cuban satrap Fidel Castro, that Cuba
6 will not allow the use of such visas to rafters. One has to be
7 extremely insensitive, not to see that the return of the rafters to
8 Cuba will be paid with their blood; again.

9
10 In the absence of having labeled the rafters with a nomenclature
11 other than "detainees"; and not as invaders or prisoners of war,
12 the President failed in the discharge of his duties in violation of
13 the United Nations Convention relating to the Status of Refugees an
14 Relating Protocol.

15
16
17 ATTEMPT BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
18 TO RETURN OR "REFOULEMENT" THE RAFTERS TO CUBA.

19
20 Now, and for a period of over ninety days, the President of the
21 United States has kept and continuous to keep in his custody and
22 control 32,000 Cuban rafters refugees at the detention camps in
23 Guantanamo, Cuba; and has transported some of them to the Republic
24 Panama and others to the Krome, Florida and Port Isabel, Texas
25 Detention Centers. This critical time factor, puts him light years
26 away from the idea that he has no duty of scrutiny on the reasons

1 why the Cuban rafters were out of their Country and in their way to
2 the U.S., and that he can shut his eyes and ears to their condition
3 of Political Refugees.

4
5 When an American President holds people in such manner and for such
6 a long period of time, he has the duty to apply American Law,
7 namely the U.N. Convention on the Status of Refugees to all of his
8 acts with regards to such people, regardless of where they are, and
9 the treatment of Refugees requires the highest degree of care; far
10 greater than that owed to Prisoners of War.

11
12 The Clinton administration has publicly announced that it reached
13 accords and agreements with the tyrannical regime of Fidel Castro,
14 in which 20,000 visas per year will be used for Cubans who reside
15 in Cuba; but has specifically, at the request of Mr. Castro, denied
16 access to those visas to those who sought freedom by fleeing from
17 his oppression and persecution through means of the use of rafts in
18 the Florida Straights.

19
20 Now, the Spokesmen of the State Department for the Clinton
21 Administration, has announced to the public and to "the rafters"
22 detainees in Guantanamo, that if they want to obtain the benefits
23 of the visas that the State Department has negotiated with the
24 Cuban government, they should return to Havana to apply for such
25 visas. This statements are not only false, but cruel; since the
26 State Department knows that the rafters gave up everything they had

1 in Cuba to seek freedom. They have no homes to return to, no jobs,
2 and they are not even eligible to obtain food in Cuba any longer as
3 they are branded as traitors by the "Cuban Revolution".
4

5 How could they survive until they would obtain a visa to come to
6 the U.S.? But it is even more cruel when the Clinton
7 Administration has already negotiated and admitted to Castro that
8 "the Rafterers" will not receive such visas. At least that is the
9 boast of Castro's spokesman Mr. Alarcon.
10

11 The United States Attorney General, Janet Reno, clearly said that
12 "No Cuban rafter now in Guantanamo will come the United States".
13

14 These statements, added to the precarious and sub-human living
15 conditions that the rafters are been subjected to, are in fact
16 violating the United Nations Convention on the Status of Refugees
17 which in Art. 33 specifically states:
18

19 "Prohibition of Expulsion or Return ("Refoulement")
20 No Contracting State shall expel or return ("refouler") any
21 refugee in any manner *whatsoever* to the frontiers of
22 territories where his life or freedom would be threatened on
23 account of his race, religion, nationality, membership of a
24 particular social group or political opinion.
25 2. The benefit of the present provision may not, however, be
26 claimed by a refugee whom there are reasonable grounds for
27 regarding as a danger to the security of the country in which
28 he is, or who, having been convicted by final judgment of a
29 particularly serious crime, constitutes a danger to the
30 community of that country.
31

32 The text does not says a refugee "in its territory"; and prevents
33 that no manner whatsoever may be used to effect the return of the

1 Refugee to the place where they claim persecution from.

2
3 The aggregate actions of President Clinton, of his Cabinet Members
4 and his Agents; tantamount to coercion and trickery, to circumvent
5 and violate the words of the treaty and the spirit of the law
6 contained in the United Nations Convention on the Status of
7 Refugees and its Relating Protocol. In fact, he already breached
8 this duty, as many refugees have in desperation returned to Cuba.

9
10 The Castro tyranny is of such obscure and evil design that the it
11 dwarfs in its cruelty the atrocities perpetrated by any tyrant in
12 a larger country, his evil deeds surpass those of any other despot
13 in the history of mankind.

14
15 The law orders President Clinton to avoid in any manner whatsoever
16 the return of Cubans escaping persecution to the island of Cuba.
17 He has breached his duties, and by a very subtle subterfuge is
18 trying to entice the refugees to return to Cuba to petition there
19 for an immigrant visa to the United States. Very few among the
20 detainees have accepted or even consider such alternative, but that
21 offering coupled with the living conditions to which the rafters
22 have been submitted, are in fact a violation of the prohibition
23 against refoulement in Article 33 of the United Nations Convention
24 on the Status of Refugees.

25
26 Now, some of the rafters at Guantanamo are trying to swim back to

1 Cuba to evade the conditions of their detention and they are again
2 facing great perils to escape. Such agony explains why their
3 living conditions are in fact also a form of "refoulement" or
4 return.

5
6 The United Nations Convention also provides in Article 16 that
7 these refugees should have access to the Courts of the United
8 States, and this right has been systematical denied by the Clinton
9 Administration, by even refusing to accept applications for asylum
10 at the Guantanamo base, from Cuban rafters.

11
12 NEED FOR SPEEDY RESOLUTION OF THIS MATTER

13 IS IN THE PUBLIC INTEREST
14

15 What moves the Cuban rafters to cross the Florida Straits simply
16 cannot be "the promise to improve their economic lot"; this would
17 never be motive enough to face such high risks. Only the natural
18 human desire to live in freedom and liberty can be sufficient to
19 justify that venture. Our Founding Fathers would tell us so.

20
21 It was just this month that the United States suffered a vote
22 against it in the United Nations, by most countries of the world,
23 condemning the United States for its economic embargo against Cuba.
24 Even President Jean Bertrand Aristide, who thanks to an embargo was
25 replaced as President in Haiti, voted against the United States. He
26 must have his reasons; and such is the nature and the ingratitude

1 of humans. But that is also why the U.S. is so great; because it
2 upholds its principles, even when others jeer at us for fear or for
3 envy.

4
5 Cuba, a country that has refused for years Human Rights inspections
6 from the United Nations to inquire into its atrocities, is being
7 hailed; and the United States is condemned for the economic embargo
8 against Cuba. The contradiction is obvious, and politics in that
9 particular form is dirty.

10
11 But it is in this High Court where we search for the recognition
12 that the Cuban rafters cannot be made pawns to the international or
13 local politics of the moment; that they were political refugees at
14 the time that they embarked their rafts and came out of their
15 island nation, and they should be treated as political refugees.
16 The President of the United States must be told that he is mistaken
17 in negotiating the rafters return to Cuba with Fidel Castro.

18
19
20 What will happen to the rafters if they return to Cuba is very well
21 known, to the people of the United States and to the world; they
22 will not get jobs, they will not get housing, they will not even
23 get back the food rationing card, and they will be submitted to
24 public acts of repudiation. Even their families left behind are
25 already the targets of the wrath of the despot. That is the destiny
26 awaiting those rafters who would return. How can we, Americans, do

1 such thing to them?

2
3 I am all for an orderly form of immigration into the U.S. and for
4 a real control of our borders, but a rising tide of xenophobia
5 promoted by demagogues is damaging the social fabric of the United
6 States ; this Supreme Court may want to show the world that we live
7 by our laws and not by the political mood of the moment instigated
8 by a few puny souls. Our nation stands for freedom, and tests such
9 as this case, can show mankind that we are ready to stand for it at
10 whatever price necessary.

11
12 PETITION IN FORMA PAUPERIS
13

14 This petition is filed on behalf of all the Cubans rafters detained
15 at the Guantanamo Naval Base, Panama and other places, the
16 undersigned attorney is unable to pay for the costs of the filing
17 fees or the printing of the copies necessary in regular petitions
18 or applications. One forma pauperis is filed by Miguel Angel
19 Carmona Leon, and is applicable to all the other members of the
20 rafters class as they are in the same conditions of poverty.

21
22 This attorney clearly states to the Court that at this present time
23 he does not have the necessary moneys to finance his trip to
24 appear before this Court for a hearing, and is filing in forma
25 pauperis the present application.

1 If this petition is not granted by this Supreme Court, please do
2 not condemn this Attorney or the rafters in Court Costs or
3 attorneys fees, as we file this petition in forma pauperis, and
4 neither I or any of the rafters have money to pay for the printing
5 of the brief or the filing of the fees, let alone pay Court costs
6 or Attorneys Fees.

7
8 Please consider that I file this Petition because I hate for the
9 United States to be paraded around the International Human Rights
10 Committees and Courts of the World, with cause; by people who are
11 either desperate or against democracy and the United States of
12 America.

13
14 You must be aware that I have no political motivation or ill will
15 against Mr. Clinton; that I have applauded him when I felt that he
16 deserved praise, (I have correspondence from him to show for that),
17 but that I am also asking of him to fulfill the duties of his
18 Office in accordance with our laws and on behalf of those who,
19 cannot be ignored and are not being heard.

20
21 SPECIAL INTEREST OF THE RELATOR
22

23 I am a Nicaraguan native and a former Asylee in the United States,
24 who escaped persecution from my native country, and received a
25 grant of asylum in the United States. Once a refugee, always a
26 refugee; I consider myself part of this class and feel it is my

1 duty as a Human Being, as an American Citizen by choice, and as an
2 Attorney; to demand from the President of the United States of
3 America the performance and discharge of his ministerial duties, in
4 a manner coherent with the laws of the United States. Laws and
5 treaties, which if anything, have been reinforced against the Cuban
6 autocrat; and which have life, liberty and the pursuit of happiness
7 as the paramount of all humans wants and needs.

8
9 The United States did help the Nicaraguan Contras by furnishing
10 weapons, advise and supplies in their fight for freedom, and God
11 bless America for it; for Nicaragua is moving slowly but surely to
12 democracy. Even in spite of the Cuban Dictators wishes against that
13 development.

14
15 The United States helped the Haitians, by removing General Cedras
16 from his position of power. The U.S. helped Kuwait to survive as
17 a Nation from the attack of another tyrant.

18
19 But the Cubans have not received any such help. To the contrary,
20 they are prevented from taking weapons into Cuba. That is why the
21 rafters deserve to be recognized as the political refugees that they
22 are; and obtain as they did in the past the most benign and most
23 favorable treatment as political refugees.

24
25 If I was once officially declared a political refugee in the U. S.;
26 each and every one of the over 32,000 rafters in the President's

1 present custody and control at Guantanamo and elsewhere, deserve 10
2 times over that classification.

3
4 My father had the privilege to serve in the United Nations
5 Secretariat under the orders of Mrs. Roosevelt, whom he remembers
6 at Lake Success promoting and supporting human rights and the
7 rights of refugees at all times after World War II. We all
8 remember the young men and women of our Armed Forces who have
9 fought all around the world for freedom and democracy and for the
10 human rights of those who suffered oppression and persecution.

11
12 How can we let all that work and sacrifice go by the wayside? The
13 progress made in matters of human and refugee rights means too much
14 to mankind, for now and into the future; and cannot be lost for the
15 misgivings of "politicos" who played with the xenophobic fears of
16 the voters, our natural fear of strangers; and one small error in
17 the judgment of our own President.

18
19 The special interest that this Relator is the raising of my single
20 voice for the over 32,000 who endure the pain and suffering that,
21 thanks to God Almighty, I was not subjected to, but can fully
22 understand.

23
24 NO ALTERNATIVE OR ADEQUATE REMEDY AT LAW OR IN EQUITY EXISTS.

25
26 The law suit that on behalf of the rafters was filed in a Federal

1 Court in Florida, asked Federal Judge Atkins to recognize that as
2 far as the application of the U.S Constitution, Guantanamo is part
3 of the territory of the United States. The Government's argument is
4 that Guantanamo is part of Cuba's territory under a lease to the
5 United States, and therefore it does not apply.

6
7 Both things are true, but if a U.S. marine who is guarding the
8 Cuban rafters would be injured or killed by a rafter; what law will
9 be applied to the Cuban? Most likely, American Law; under the
10 present set of conditions, as the refugees are not being treated in
11 accordance with the U.N. Convention.

12
13 The application of U.S. Constitution and its First Amendment in
14 Guantanamo; in the case of the Cuban rafters, is in fact a
15 secondary issue when compared to the application of the U.N.
16 Convention relating to the Status of Refugees. Article 40 clearly
17 sets its applicability to Guantanamo and to any other place where
18 the Rafters may be placed where they are under U.S. control.

19
20 The Due process of the first Amendment would require that the
21 rafters be allowed to file individual asylum applications. Judge
22 Atkins ruled that the U.S. Constitution applies in Guantanamo; but
23 the Government appealed Judge Atkins's decision, and time will run
24 for months or years for the massive amount of people that is
25 awaiting for a decision of an issue that is not the core of their
26 situation.

1 Once the rafters were at sea and outside the country of Cuba they
2 were refugees, because they fit all the other "refugee"
3 definitional requirements in Article One of the Convention. Why
4 should the rafters aspire to qualify as asylees, when they are
5 already refugees? Article One of the United Nations Convention
6 relating to the Status of Refugees and the relating Protocol define
7 them as such.

8
9 32,000 rafters that are suffering at this time needlessly, require
10 the immediate attention of this Court; if the arguments of this
11 former asylee are correct. The Public Interest of the people of the
12 United States of America demands it.

13
14 America has been put to shame in international human rights
15 committees and courts, and the costs of processing 32,000 asylum
16 applications, that will be obviously will have to be granted in
17 most cases, is a staggering waste of the taxpayers monies.

18
19 While it is true that some agents of Fidel Castro may have come and
20 join the ranks of the rafters, and that they should be excluded; it
21 is also true that we pay good salaries to the good men and women
22 who serve in the many U.S. intelligence services. They will sort
23 them out, as their duty is the security of the U.S. That is, if
24 they have not yet sorted them out in Guantanamo.

25
26 Only this Court can provide the speedy remedy required.No other

1 Court can act with such speed and finality on such an important
2 issue. The rafters should continue to be treated by the United
3 States of America as they had been for the last 35 years.

4
5 VENUE
6

7 The President of the United States, as Commander in Chief of the
8 Armed Forces holds in his custody and control 32,000 Cuban rafters
9 refugees in the detention camps at Guantanamo, Cuba; and has
10 transported some of them to the Republic of Panama and others to
11 the Krome, Florida and Port Isabel, Texas Detention Centers. These
12 rafters have neither been declared invaders or prisoners of war by
13 President Clinton.

14
15 The United Nation Convention on the Status of Refugees and its
16 relating Protocol, in its entirety applies to them; and in its
17 Article 16 has granted the "rafters" as political refugees, the
18 right of Access to the Courts; and as attorney and the next friend
19 of these Cuban rafters refugees and all others in their class, the
20 undersigned appears before this Court in order to request
21 Peremptory Writs of Mandamus and of Prohibition to Mr. William
22 Jefferson Clinton, President of the United States of America
23 ordering him to show cause why he is not performing his ministerial
24 duties according to the laws and treaties of the United States, by
25 failing to treat the Cuban rafters in his custody and control as
26 political refugees, and why he is negotiating their return to Cuba.

1 He is our highest Executive Official and we submit that only this
2 Supreme Court has venue to issue a Writ of Mandamus and of
3 Prohibition to him under the facts of this case, as the rafters are
4 not in the territorial United States of America to make venue
5 determinable otherwise; however, so long as they are in his hands,
6 even if relocated to the far side of the moon, this Supreme Court
7 has jurisdiction and venue, by virtue of Article 40 of the United
8 Nations Convention relating to the Status of Refugees.

9
10 DAMAGES
11

12 The damages that the actions of Mr. William Jefferson Clinton, the
13 President of the United States and Commander in Chief of the Armed
14 Forces, have caused by his failure and refusal to recognize the
15 Cuban rafters as the political refugees that they are; and blame
16 the ACT OF WAR of Fidel Castro on them, are the following:

17
18 1. The pain and suffering endured by 32,000 Cuban rafters, living
19 in the sub-human and harsh conditioning in which they are presently
20 placed in detention with their lives and health is in great risk;
21 who after sustaining the trauma of their escape, have received the
22 tremendous blow of renewed despair, imprisonment and indefinite
23 confinement. If the Mariel Boatlift Refugees in 1980, had been
24 detained until such time as they could had been returned to a Cuba
25 freed from Castro, we would still have them in detention. Why make
26 these Cuban rafters suffer unnecessarily?

1 If they were not declared by the President invaders, or prisoners
2 of war; what are they? They are the same political refugees that
3 three months ago received the treatment accorded to them by the
4 U.S. Presidents for over three decades abiding by the laws and
5 treaties of the United States of America.

6
7 2. The tax payers of the United States have and are sustaining
8 damages of countless millions of dollars, that by now exceed the
9 amount of Two Hundred Million Dollars; amount that will continue to
10 grow because of the cost of detaining, feeding and maintaining the
11 Cuban rafters in detention.

12
13 Should these people had been recognized by our President as the
14 political refugees that they are; and granted the treatment that
15 was given to the Cuban rafters before them three months ago; by now
16 they would all have jobs and would be productive and sustaining
17 themselves with the aid of their families and friends in the U.S.;
18 at a fraction of the cost to our Treasury.

19
20 3. But the most serious damage that has been sustained is that the
21 hand at the helm of our Nation that was caught by surprise and did
22 not recognized an Act of War made against the United States by the
23 Cuban Autocrat; and our pilot has been confused to the point where
24 he has decided to punish the victims in order to negotiate with the
25 criminal government of Cuba, predator of his own people, and of
26 millions of others in Latin American, Africa and around the world.

1 What moral authority will the President of the United States have
2 to tell the Serbs to treat their Muslims prisoners in a humane way,
3 if in violation of our laws and treaties, he treats the Cuban
4 rafters as he is doing? We must undo that mistake immediately, and
5 I pray the President to do it in a brave and single act.

6
7 PRAYER FOR SPECIFIC RELIEF
8

9 It is incumbent upon the President of the United States to apply
10 the United Nations Convention on the Status of Refugees and
11 Relating Protocol to those peoples in his custody and control as
12 Commander in Chief found to be Political Refugees. The state of
13 confrontation between Cuban and the United States of America is of
14 such degree that a person fleeing from Cuba is and has been
15 recognized as a political refugee in the United States since such
16 state of affairs began 35 years ago.

17
18 Interdiction in the high seas of Cuban rafters or of any other
19 vessel is a legitimate right of the United States in the exercise
20 of its foreign policy. However, when those who are rescued or
21 interdicted in the high seas are found to be, people who are
22 immediately identifiable as political refugees because of the
23 political situation between the United States and their country of
24 origin (Cuba), the treatment of those refugees is to be immediately
25 determinate by the United Nations Convention in the Status of
26 Refugees. President Clinton has unjustly, and in abuse of his

1 discretion, refused to do this in spite of countless petitions on
2 him to do so.

3
4 The flight of Cuban rafters was stopped by Castro when the
5 President of the United States threaten to interpret the actions of
6 the Cuban government as acts of war against the United States. But
7 in the moment he blinked, he had his hands full with over thirty
8 two thousand Cuban rafters who we had to rescue or interdict in the
9 high seas outside Cuba, in order to save their lives.

10
11 Our President is only human and he has the right to blink, but with
12 a more able team of assistants this mess would had been avoided;
13 next time he is threatened with an act of War, I am sure he will
14 know who and where to kick.

15
16 Now, the Cuban government has again begun to enforce the regular
17 and ordinary duties of each sovereign state to have an orderly exit
18 of its own citizens from its border into the neighboring
19 territories, but, there are over 32,000 souls who are in the
20 custody and control of the President of the United States of
21 America whose faith must be determined immediately.

22
23 This relator prays these Supreme Court to consider the pain and
24 suffering of 32,000 humans presently detained at the Guantanamo
25 Naval Base and at all other places where the President has
26 relocated them, and the risk that such detention imposes on their

1 lives and health, and the enormous expense to the American tax
2 payers that such detention is costing; to review this matter in its
3 merits, and if found proper and just, without further hearings to
4 issue the Peremptory Writ of Mandamus and of Prohibition against
5 the President. The Writs may, at your discretion, be issued to
6 bring them immediate relief.

7
8 If this Supreme Court believes that our interpretation of the Law
9 is correct; we pray that in one act, a judgment and an execution,
10 without any hearings, to proceed and let the President of the
11 United States know what the law is. If the President of the United
12 States should be ordered by this Supreme Court to release the
13 refugees, no shame will be brought upon the President or the
14 Presidency; to the contrary, he will be teaching by his example to
15 all future Presidents and to all other democracies in the World
16 that when the U.S. Supreme Court rules, he vows in obedience to the
17 Rule of Law as ordered by our Constitution.

18
19 President William Jefferson Clinton, must Show Cause to this
20 Supreme Court why these Cuban refugee rafters; found outside their
21 own country and fleeing persecution for their political opinions;
22 in the absence of any changes in American law or treaties and in
23 the absence of any changes in the tyrannical regime of Cuba, and in
24 the worsening of the political repression in Cuba, and the
25 strengthening of the embargo by the United States; can now be
26 considered returnable to Cuba. In case he fails to show a justified

1 cause, We request the issuance of a Writ of Prohibition to the
2 President not to return, in any manner whatsoever, the Cuban
3 Rafters Refugees to Cuba.

4
5 President William Jefferson Clinton, must Show Cause to this
6 Supreme Court why these Cuban refugee rafters; found outside their
7 own country and fleeing persecution for their political opinions;
8 in the absence of any changes in American law or treaties and in
9 the absence of any changes in the tyrannical regime of Cuba, and in
10 the worsening of the political repression in Cuba, and the
11 strengthening of the embargo by the United States; should not be
12 considered, as in the past, political refugees and let in into the
13 United States of America at once. In case he fails to show a
14 justified cause, We request the issuance of a Writ of Mandamus to
15 the President to release the Cuban Rafters Refugees into the United
16 States at once.

17
18 In the alternative, President William Jefferson Clinton, must Show
19 Cause to this Supreme Court why these Cuban refugee rafters;
20 rescued or interdicted outside their country of Cuba and fleeing
21 persecution for their political opinions; in the absence of any
22 changes in American law, in particular the Cuban Refugee Adjustment
23 Act of 1966 and in the absence of any changes in the tyrannical
24 regime of Cuba, and in the worsening of the political repression in
25 Cuba, and the strengthening of the embargo by the United States;
26 should not be paroled, as in the past, as refugees and let into the

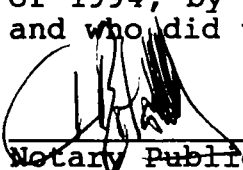
1 United States of America at once. In case he fails to show a
2 justified cause, we request the issuance of a Writ of Mandamus to
3 the President to release the discretionary authority of the
4 Attorney General to parole the Cuban Rafter Refugees into the
5 United States at once.

6 Respectfully submitted,

7 
8
9 Alfonso Oviedo-Reyes
10 Attorney at Law,
11 Florida Bar #0478172
12 8370 West Flagler Street, #110
13 Miami, Florida 33144
14 (305) 221-6433
15

16 STATE OF FLORIDA
17 COUNTY OF DADE
18

19 Sworn to and subscribed before me on this 28th day of November
20 of 1994, by ALFONSO OVIEDO-REYES, who is personally known to me,
21 and who did take oath.
22

23 
24
25 Notary Public
26

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. SEPT 24, 1995
POWERED THRU GENERAL DIS. 1977

APPENDIX A



United States Department of Justice
Immigration & Naturalization Service

Krome Service Processing Center
18201 Southwest 12th Street
Miami, Florida 33194

Roberto Exley,
780 NW Lejeune #427
Miami, FL 33128

Date:

10/24/94

Re:

Dear

This responds to your letter requesting parole for the above named person detained at Krome.

At the present time, only minor children and their parents, and other cases in which extremely compelling or unusual circumstances exist, are currently being released from detention. We are required by Presidential directive to detain all other Cuban nationals, and no instructions concerning their possible parole have been received at this time. We are therefore unable to take action upon any request other than those which fall into the categories described above.

You will be advised when further information is received and action on your request is possible. There is no need to contact this office.

Sincerely,

Constance K. Weiss,
Officer in Charge



United States Department of Justice
Immigration & Naturalization Service

Krome Service Processing Center
18201 Southwest 12th Street
Miami, Florida 33194

Roberto Crodoz, attorney
780 N.W. Le Jeune Rd. #127
Mia. Fl. 33126

Date: *10/17/94*

Re:

Dear *Mr. Crodoz*:

This responds to your letter requesting parole for the above named person detained at Krome.

At the present time, only minor children and their parents, and other cases in which extremely compelling or unusual circumstances exist, are currently being released from detention. We are required by Presidential directive to detain all other Cuban nationals, and no instructions concerning their possible parole have been received at this time. We are therefore unable to take action upon any request other than those which fall into the categories described above.

You will be advised when further information is received and action on your request is possible. There is no need to contact this office.

Sincerely,

Constance K. Weiss
Constance K. Weiss,
Officer in Charge



United States Department of Justice
Immigration & Naturalization Service

Krome Service Processing Center
18201 Southwest 12th Street
Miami, Florida 33194

October 7, 1994

Roberto A Godoy
780 NW Le Jeune Rd
Suite 427
Miami, FL 33126

RE:

Dear Mr./Ms. Godoy:

This regards your recent correspondence concerning

We have received your inquiry; however, at this time no decision has been reached concerning the general release criteria for the Cuban population detained here. Only minor children and their parents, and other cases in which extremely unusual circumstances exist, are currently considered for release. You will be advised when further information is available. In the interim, please do not contact this office.

Sincerely,

Christine F. Weiss
Christine F. Weiss,
Director in Charge



United States Department of Justice
Immigration & Naturalization Service

Krome Service Processing Center
18201 Southwest 12th Street
Miami, Florida 33194

10-06-74

RE:

Dear Mr./Ms. *Grady*:

This regards your recent correspondence concerning

We have received your inquiry; however, at this time no decision has been reached concerning the general release criteria for persons detained here. Only cases in which extremely unusual circumstances exist are currently considered for release. You will be advised when further information is available. In the interim, please do not contact this office.

Sincerely,

Constance K. Weiss
Constance K. Weiss,
Officer in Charge

(102)

APPENDIX B

VIEWPOINT

The Herald

SECTION
SUNDAY,
OCTOBER 16, 1994

M

D BRQ PB



DAVID LAWRENCE Jr. / Herald Staff

SEEKING A BETTER LIFE: For all the good U.S. intentions and resources, life in the camps is a long way from normalcy and comfort.

AT GUANTANAMO

A PLEA FOR HOPE —AND FREEDOM—



DAVID LAWRENCE JR.
PUBLISHER



ROBERTO

Herald Publisher David Lawrence Jr. and El Nuevo Herald Publisher Roberto Suarez, seeking firsthand impressions of the refugee situation, just returned from the U.S. base at Guantanamo. Here is their report:

GUANTANAMO — Maybe we ought to give you the headlines first:
■ The U.S. military is conducting itself honorably in a tough challenge for which it had little time to get ready: the care of tens of thousands of refugees.

■ The situation in Guantanamo is slowly improving. Still, you would not want a member of your own family to live like this, or anyone else's family either.

■ The most important headline: The United States simply must figure out a way to give people there hope and, finally, freedom. Food and medical care do not furnish enough sustenance for human beings.

Now, for the stories...

Complaints everywhere

He was about to depart for the less-crowded facilities in Panama. Why did he want to go? "The water is better," he said. Among all the reasons he might have given, that answer was surprising. Indeed, it made no sense at first. But we soon learned that every drop of water on the base comes — warm — from above-ground pipes via a desalination plant. (Were the plant below ground and a leak to occur, every bit of water might be lost before the problem was fixed.) Another reason to head for Panama: "I think," Milian said, "I might get to the United States more quickly."

Estrella Salinas Suarez, a hairdresser from west of Havana, wanted us to know that she had "great faith" that she would be going to the United States "very quickly." At her side was her son, Sohosiys, 1½ years old, recovering from bronchitis.

We met Mrs. Suarez and her son outside the hospital. It is portable, temporary, tented — and, in its own way, impressive. That hospital and eight camp satellite clinics are staffed by 200 Cuban doctors and nurses, all rafters until a few weeks ago, as well as U.S. military medical personnel. For all the ail-



DAVID LAWRENCE Jr. / Herald Staff

LONGS TO GO TO THE U.S.: Estrella Salinas Suarez and her 18-month-old son, Sohosiys.

At Guantanamo, a plea for hope, freedom

GUANTANAMO, FROM 1M

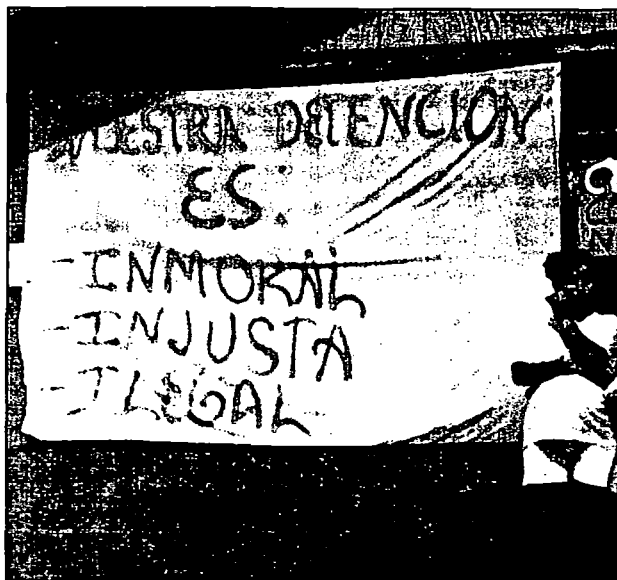
care for all. Medical people still see up to 2,000 people a day. The first patients they saw, explains Lt. Col. Miguel Ramirez, in charge of the medical operations, suffered from sunburn, rashes, dehydration. All the effects of a broiling, bestial journey over water. Now they see patients with chronic diseases — diabetes, bronchitis, high blood pressure, heart conditions. "Not a whole lot of malnutrition," said the colonel, "but not a whole lot of fat people either." The colonel believes that the quality of medical care in Cuba was once pretty good, but is significantly diminished.

In that hospital we talked with Dr. Octavio Vasconcello, a 28-year-old pediatrician from Camaguey Province. He was four days on a boat before being picked up by the Coast Guard. His timing was on the brink of being splendid. But he was picked up just hours after President Clinton said no more Cubans could come this route to the United States. "I trust the U.S. to give me a chance," he said. Then he returned to help another patient.

For all the good people, all the good intentions, all the resources of the United States, life in the camps is a long way from normalcy and comfort.

The military works like hell to get enough portable toilets, and then falls down in getting them emptied quickly enough. There are not yet enough interpreters. Everybody lives in a tent with dust for a floor. Family members live together, only flimsy curtains separating them from each other or from other families. Camp residents believe the medicine either isn't right or doesn't come frequently enough. They don't like the food, but most will allow that it's getting better. (Cubans are handling much of the cooking now.) You feed tens of thousands of people a day, and you're going to rely on a lot of rice — 16 tons a day, to be exact. Distribution of everything remains a significant challenge.

Within a week, the military promises, there will be daily latrine cleaning, more specialized milk supplies for babies with



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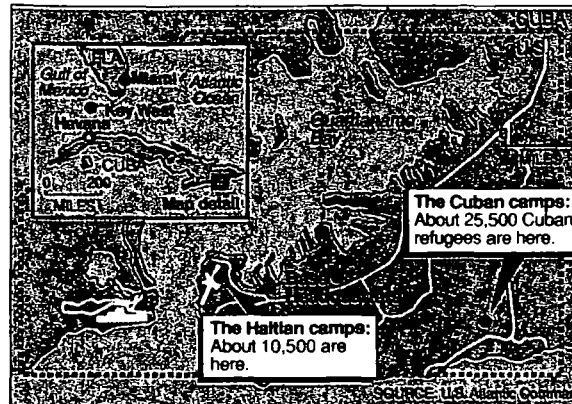
A MESSAGE: A detainee stands by a sign in Spanish that says, "Our detention is immoral, unjust and illegal."



DAVID LAWRENCE Jr. / Herald Staff

A HAITIAN BABY: More than a hundred births since mid-July.

GUANTANAMO BAY U.S. NAVAL BASE



Geography: A 45-square-mile inlet of the Caribbean in the southeastern Cuba province of Oriente, 400 air miles from Miami. The Guantanamo Bay U.S. Naval Base includes more than 9,000 acres of adjoining waters.

History: Christopher Columbus entered the bay on his second New World trip in 1494. During the Spanish-American War in 1898, the United States captured and fortified much of the outer harbor and used it as an anchorage for U.S. warships. The United States obtained the right to maintain a naval base at Guantanamo Bay through a 1903 agreement with the Republic of Cuba. In 1934, that agreement was superseded by a treaty that reaffirmed the U.S. right to lease the site. Each year, the United States sends rent checks of \$4,085 to Havana, but Castro doesn't cash them.

Resources: Since 1964, when Castro cut off the water supply, a desalination plant has provided the base drinking water. Power for the base is generated by a diesel-fueled plant.

Troops: More than 10,000 from the Army, Navy, Air Force, Marines and Coast Guard, plus 2,000 civilians.

GUANTANAMO REFUGEE POPULATIONS		
Cubans*	Male	Female
16 to 30	10,327	2,680
Unaccompanied children	64	4
Haitians*	Male	Female
16 to 30	6,552	1,831
Unaccompanied children	612	261

SOURCE: U.S. military, Herald wire services.

A-016

JEFF DIONISE, FOREST GRANTHAM / KRT and The Herald

that President Jean-Bertrand Aristide is not only back home — but safe.

Jean Wilner Alexis, age 38, a carpenter, has been living in a tent in Guantanamo since July 11. He says he has been treated fine by the U.S. military. "If I am treated like this in Haiti, it would be fine." But he's holding off on going back now. "I just need to see what happens."

The Haitian camps seem calm. Because the United States has been about this for more than three months now, the facilities for the Haitians are better than those of the later-arriving Cubans. Their food distribution system is fully worked out. The medical care is clearly superior to what was available in Haiti. (There have been more than a hundred births since mid-July.) The tents have flooring; moreover, the terrain is often higher than in the Cuban camps. That means less dust. Should the rains come — and they haven't yet in this, the rainy season — many of the Cuban camps would become a mud-bath.

Were significant numbers of Haitians to return home, it would ease the situation considerably for the Cubans. The military already has its eye on moving Cuban families to this area.

The brass says it fully expects most Haitians to go home in the next month. The military thinks that still might leave somewhere between 750 and 2,500 Haitians who might resist going back — ever. The military says it doesn't yet know what to do about that. Clearly, simply preferring to stay in Guantanamo won't be acceptable at some point. But when might that be? Even assuming a reasonably functioning democracy in Haiti, and even a reasonable commitment to personal safety, no one wants a scene where Haitians are physically forced to return.

Most moving rendition

Some moments in the camps, particularly the Cuban camps because those there now have no home anywhere, were almost emotionally overcoming. You did not need to be of Cuban heritage to experience it. Anyone with a heart and a soul would be

CALL TELEHERALD TO HEAR LIZBET

To hear Lizbet Martinez play *The Star-Spangled Banner* and the Cuban national anthem on her



The military works like hell to get enough portable toilets, and then falls down in getting them emptied quickly enough. There are not yet enough interpreters. Everybody lives in a tent with dust for a floor. Family members live together, only flimsy curtains separating them from each other or from other families. Camp residents believe the medicine either isn't right or doesn't come frequently enough. They don't like the food, but most will allow that it's getting better. (Cubans are handling much of the cooking now.) You feed tens of thousands of people a day, and you're going to rely on a lot of rice — 16 tons a day, to be exact. Distribution of everything remains a significant challenge.

Within a week, the military promises, there will be daily latrine cleaning, more specialized milk supplies for babies with digestive problems, more complete phone service, daily newspaper delivery, more recreation possibilities, regular mail service, and by Nov. 1, package delivery service.

Do all that, and still it could finally never be enough.

The phrase "concentration camp" has been used by some critics, but what we saw could not fairly be called such if your image is of World War II, the Nazis, and atrocities. For one example, we saw hundreds of military people and not one weapon. But it is true that people are kept within the camps, and the camps are separated by barbed wire. This is a village, actually many villages, created under intense pressure and almost overnight. Without some sense of discipline, some boundaries of territory and behavior, this place wouldn't be fit for anyone. In the words of Col. Douglas Redlich, the officer in charge of the Cuban camps: "We need order just to provide food and water. If we let people roam around, we simply couldn't do it. We'd simply have chaos."

Increasingly, the military is relying on the camps to furnish the leadership. Thus encouraged, the Haitians have elected their own camp leaders; so have the Cubans. (Col. Redlich emphasized that he and others have told those in the camps: "This is your

Increasingly, the military is relying on the camps to furnish the leadership.



DAVID LAWRENCE Jr. / Herald Staff

A HAITIAN BABY: More than a hundred births since mid-July.

CALL TELEHERALD TO HEAR LIZBET

To hear Lizbet Martinez play *The Star-Spangled Banner* and the Cuban national anthem on her violin, call TeleHerald at 373-4636 in Dade or 527-4636 in Broward and enter category code 5440. Lizbet, age 11, lives with her parents at a Cuban refugee camp at Guantanamo.



DAVID LAWRENCE Jr. / Herald Staff

SONGS OF FREEDOM: Lizbet Martinez, 11, plays her violin.

tent, your camp, your little city. You select the leaders. We select no one.") From these camps now are coming not only the cooks, but the teachers, the carpenters, the craftsmen generally, the camp monitors.

A recommendation for the president

It is unhealthy for people to live without a sense of hope.

We would urge the president of the United States to figure out a way to get these people out of there. The White House announcements Friday — speaking to unaccompanied children, those over 70 years of age, and those chronically ill — furnish a good start. But the fact of the matter is that this is not a good place long term for anyone, beginning with children. There are 3,000 accompanied children

in the Cuban camps alone. Start with them, and their families. Our country has pledged that 20,000 Cubans will be able to come each year. Use some of those visas here. Make sure there are sponsors.

Fidel Castro will be toppled who knows when. But let's not build a solution waiting on that.

Neither of us heard one hint from anyone, even those most vehement in their passion, that the U.S. military is treating anyone badly. To the contrary, we frequently heard compliments about the military. Dr. Alina Galguera Muñoz, a doctor in Havana now working as a teacher in the camp, emphasized, "It's not a matter of mistreatment, but of a need for hope."

We spoke to the colonel in charge of the Cuban camps and 25,500 people, and later we spoke to his boss, the general in

charge of everything. Both emphasized that their jobs were to carry out policy, not set it. Still, what they said was most revealing.

Col. Redlich: "I'm not into politics, but if it were up to me, I'd probably give them visas. There are an awful lot of good people here."

Brig. Gen. Michael Williams: "There's no doubt a great deal of human misery in these camps. We try to make sure people don't feel like prisoners, but of necessity we have to control the situation." (He noted that almost half the Cubans are young, single men — "the people with the least to lose, no family or children, the [group] most likely to boil over.") He said, "You don't see MPs with guns. They don't need them. These are not enemies."

"We know these people are here because they want some-



THE SOLDIER, THE DOCTOR: Col. Douglas Redlich and Dr. Octavio Vasconcello.



thing better.

"My common sense tells me that in the long term, we simply must have a safety valve."

"Most of us feel desperately sorry for these people. I know I do."

He was convincing. What we saw and heard reinforced that.

The Haitian situation

We'll know in the next few days whether the more than 10,000 Haitians at Guantanamo are inclined to go home anytime soon.

In the weeks following U.S. intervention in Haiti a month ago, a few thousand Haitians went back. Now, though, very few are signing up to return. Haitian camp leaders, elected by their peers, advise: Wait and see if democracy sticks. Make sure

that still might leave somewhere between 750 and 2,500 Haitians who might resist going back — ever. The military says it doesn't yet know what to do about that. Clearly, simply preferring to stay in Guantanamo won't be acceptable at some point. But when might that be? Even assuming a reasonably functioning democracy in Haiti, and even a reasonable commitment to personal safety, no one wants a scene where Haitians are physically forced to return.

Most moving rendition

Some moments in the camps, particularly the Cuban camps because those there now have no home anywhere, were almost emotionally overcoming. You did not need to be of Cuban heritage to experience it. Anyone with a heart and a soul would be deeply moved.

In Camp Alpha, we were surrounded by hundreds of people. Some brought names and addresses of relatives in Miami or Hialeah or elsewhere in these United States; some had no more address than "somewhere in the United States." We were their link to family. Feverishly, they thrust letters or scraps of paper at us, or insisted that we write down the names and addresses. It was then our obligation, which we will fulfill, to get those messages to their relatives.

Recalling columnist Liz Balmaseda's recent front-page piece in *The Herald*, we closed our visit by asking to see Lizbet Martinez, age 11. Her mother is a dentist; her father drove a tractor-trailer, and daughter Lizbet plays the violin. First, she played *The Star-Spangled Banner*. It was simply the most moving rendition either of us ever heard. We asked for one more, and then one more, and then another: *The Battle Hymn of the Republic*. *How Great Thou Art*. *Ave Maria*. The Cuban national anthem. She closed with *Amigos Para Siempre* (*Friends for Always*). It seemed most appropriate.

We will not forget, Lizbet.

David Lawrence
Jeff Dionise

A.O16

JEFF DIONISE, FOREST GRANTHAM / KRT and The Herald

APPENDIX C

CONVENTION RELATING TO THE STATUS OF REFUGEES

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950

ENTRY INTO FORCE: 22 April 1954, in accordance with article 43.

PREAMBLE

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1

DEFINITION OF THE TERM "REFUGEE"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

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(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2

GENERAL OBLIGATIONS

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3

NON-DISCRIMINATION

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4

RELIGION

The Contracting States shall accord to refugees within their territories

treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5

RIGHTS GRANTED APART FROM THIS CONVENTION

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6

THE TERM "IN THE SAME CIRCUMSTANCES"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7

EXEMPTION FROM RECIPROCITY

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8

EXEMPTION FROM EXCEPTIONAL MEASURES

With regard to exceptional measures which may be taken against the person,

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property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9

PROVISIONAL MEASURES

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10

CONTINUITY OF RESIDENCE

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of his Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11

REFUGEE SEAMEN

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II

JURIDICAL STATUS

Article 12

PERSONAL STATUS

1. The personal status of a refugee shall be governed by the law of the

country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13

MOVABLE AND IMMOVABLE PROPERTY

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14

ARTISTIC RIGHTS AND INDUSTRIAL PROPERTY

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15

RIGHT OF ASSOCIATION

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16

ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III

GAINFUL EMPLOYMENT

Article 17

WAGE-EARNING EMPLOYMENT

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18

SELF-EMPLOYMENT

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19

LIBERAL PROFESSIONS

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV

WELFARE

Article 20

RATIONING

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21

HOUSING

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22

PUBLIC EDUCATION

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23

PUBLIC RELIEF

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24

LABOUR LEGISLATION AND SOCIAL SECURITY

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

- (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
- (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V
ADMINISTRATIVE MEASURES

Article 25

ADMINISTRATIVE ASSISTANCE

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26

FREEDOM OF MOVEMENT

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27

IDENTITY PAPERS

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

TRAVEL DOCUMENTS

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with

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respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29

FISCAL CHARGES

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30

TRANSFER OF ASSETS

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31

REFUGEES UNLAWFULLY IN THE COUNTRY OF REFUGE

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

EXPULSION

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33

PROHIBITION OF EXPULSION OR RETURN ("REFOULEMENT")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34

NATURALIZATION

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall

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in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

- (a) The condition of refugees,
- (b) The implementation of this Convention, and
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36

INFORMATION ON NATIONAL LEGISLATION

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37

RELATION TO PREVIOUS CONVENTIONS

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII

FINAL CLAUSES

Article 38

SETTLEMENT OF DISPUTES

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39

SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be reopened for signature

at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40

TERRITORIAL APPLICATION CLAUSE

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41

FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any

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other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42

RESERVATIONS

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43

ENTRY INTO FORCE

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44

DENUNCIATION

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45

REVISION

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46

NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) Of declarations and notifications in accordance with section B of article 1;
- (b) Of signatures, ratifications and accessions in accordance with article 39;
- (c) Of declarations and notifications in accordance with article 40;
- (d) Of reservations and withdrawals in accordance with article 42;
- (e) Of the date on which this Convention will come into force in accordance with article 43;
- (f) Of denunciations and notifications in accordance with article 44;
- (g) Of requests for revision in accordance with article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

PROTOCOL RELATING TO THE STATUS OF REFUGEES

The Protocol was taken note of with approval by the Economic and Social Council in resolution 1186 (XLI) of 18 November 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966. In the same resolution the General Assembly requested the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol

ENTRY INTO FORCE: 4 October 1967, in accordance with article VIII.

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I

GENERAL PROVISION

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and. . ." and the words ". . . as a result of such events", in article 1 A(2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B(1)(a) of the Convention, shall, unless extended under article 1 B(2) thereof, apply also under the present Protocol.

Article II

CO-OPERATION OF THE NATIONAL AUTHORITIES WITH THE UNITED NATIONS

1. The States Parties to the present Protocol undertake to co-operate with

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the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:

- (a) The condition of refugees;
- (b) The implementation of the present Protocol;
- (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III

INFORMATION ON NATIONAL LEGISLATION

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV

SETTLEMENT OF DISPUTES

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V

ACCESSION

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI

FEDERAL CLAUSE

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph I, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the

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obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;

(b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent states, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII

RESERVATIONS AND DECLARATIONS

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII

ENTRY INTO FORCE

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth

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instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX

DENUNCIATION

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X

NOTIFICATIONS BY THE SECRETARY-GENERAL OF THE UNITED NATIONS

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI

DEPOSIT IN THE ARCHIVES OF THE SECRETARIAT OF THE UNITED NATIONS

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above.