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Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Domestic Policy Council

Series/Staff Member: Stephen Warnath

Subseries:

OA/ID Number: 9578

FolderID:

Folder Title:

Cuban/Haitian Mass Migration etc. [4]

Stack:

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Row:

99

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3

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5

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1

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Apr-1996 10:20am

TO: Stephen C. Warnath

FROM: Debra J. Bond
 Office of Mgmt and Budget, OIRA

CC: Daniel J. Chenok
CC: Wendy A. Taylor

SUBJECT: INS Rule on Cubans/Haitians

We are currently reviewing an Immigration and Naturalization Service regulation on the effect of parole on Cuban and Haitian nationals resettlement assistance eligibility. The rule amends current INS regulations to clarify that Cuban and Haitian nationals who were paroled into the United States since October 1991 are to be considered to have been paroled in a status that makes them eligible for assistance under section 501 of the Refugee Education Assistance Act of 1980. The clarification is needed to make sure these aliens are not incorrectly denied benefits.

INS is promulgating this rule at the request of HHS. HHS was contacted by Senator Bob Gramm of Florida due to his concern that certain Cuban/Haitian parolees were not properly identified as entrants which could exclude them incorrectly from benefits. HHS requested this regulation to clarify that (1) certain Cuban/Haitian nationals are to receive benefits regardless of how their entry documents were stamped and (2) to reaffirm their existing policy of the past 10 years. Until this issue is resolved, the Office of Refugee Resettlement in HHS will continue to withhold state funding.

Due to the immigration legislation on the Hill, we are checking with you to see if DPC has any interests or objections to this rule. HHS and INS believe this is merely a technical rule clarifying existing policy and will thus be a very quiet rule. However, due to the recent regulatory reform included in the debt ceiling bill, all final rules must be sent to the Hill potentially exposing the rule to further congressional oversight. We are still gathering information on whether this clarification could be made in a notice in the Federal Register and not in a regulation. Please advise me as soon as possible due to the pressure we are receiving from HHS to clear the regulation. Thank you for your assistance.

MAY-05-1995 18:43 FROM OFA/ACF

TO

94569240 P.02

TO: NSC

DATE: May 4, 1995

From: Lavinia Limon

FLORIDA BRIEFING MATERIAL**1. Estimated No. of New Arrivals to Florida**

Throughout FY 94, the stream of rafters was the highest since the Mariel boatlift of 1980. 13,000 rafters [parolees] and 4,000 C/H refugees were admitted. In August, as the large influx continued to grow, the President altered the policy towards rafters, especially Cuban rafters offering them safe haven in Guantanamo and Panama. 30,000 plus Cubans and 14,000 Haitians were detained.

An agreement with Cuba was reached whereby the United States would allow 20,000 plus immigrants into the country each year in exchange for Cuba paroling its borders and discouraging any exodus by boat. Depending on the status granted, many of these Cubans will be eligible for ORR programs. Some of these Cubans have begun to arrive. We anticipate 20,000 Cubans will arrive that will be eligible for ORR funded programs this fiscal year.

As of May 1, 1995 10,249 Cubans and Haitians have been paroled into the US from GTMO and Panama. Another 1,074 were paroled from Krome and Port Isabella. Another 21,000 remain at GTMO with approximately 5,000 to be paroled under medical, elderly, or minor and accompanying migrants categories. Upon depletion of these parole categories, single males will begin to arrive, probably beginning in August.

These numbers are in addition to the normal refugee flow of non-Cuban/Haitian groups and the anticipated arrivals under the Cuban accord. In the first quarter of this fiscal year, approximately 800 refugees were resettled in the State. Assuming continuous flow, slightly more than 3,000 refugees will be admitted.

There were 1,500 Haitians admitted directly from Haiti thus far this fiscal year. No further arrivals are expected.

Our best estimate at this time for arrivals this year are calculated as follows:

10,000	paroled from GTMO thus far
1,000	paroled from Krome/Port Isabella
10,000	additional parolees this FPY from GTMO
1,500	Haitian refugees already arrived
2,500	refugees from other countries projected
20,000	Cubans paroled from Havana

45,000 total OF THESE, 80% OR 36,000 ARE EXPECTED TO REMAIN IN FLORIDA

2. Impact on Schools

Historically, ORR has funded Dade Co. Public Schools [DCPS] for the education of eligible refugee/entrant students, the only school in the nation to receive such funds. These are basic education services per the county formula of \$funds/students. For the past few years, FL DOE and DCPS has taken a part of the funds to purchase state-of-the-art interactive language labs. With the FY 94 award, the remaining schools with significant refugee/entrant populations will receive such labs. In the FY 94 proposal, the DCPS identified 13k children that had enrolled in the school system in the past five years that were born in Cuba or Haiti.

Classrooms are full but Associate Superintendent Nelson Diaz reported in the Miami Herald on May 3 that schools can smoothly process the 3,000 kids from GTMO assuming they are received gradually over time. Concern has been raised about State funds for ESOL. In FY 94, \$9 million was awarded to the school system.

In FY 95, funds are not specifically earmarked for Dade Co. Schools, however, special earmarked funds of \$18.2 million are available to the State to address the impact of new arrivals.

3. Impact on Hospitals

Jackson Memorial Hospital [JMH] in FY 94 was awarded \$10.6 million for medical services rendered to eligible entrants and refugees. With the \$6m supplemental awarded in FY 94, an additional \$2 million was awarded to JMH. Cubans medevaced out of Guantanamo are usually admitted to JMH. The CRS/DOJ report of May 1, 1995 lists as many as 135 medical evacuations, and 1,554 "Adult Medical" parolees. According to CRS, all medical, elderly, and minors should be paroled by July. There are an estimated 2,500 such cases in the pipeline. The criteria for qualifying under this category is broadly used and many of the cases are not serious in nature. Nonetheless, the demands on Jackson Memorial are likely to climb sharply.

The proposed Targeted Assistance notice for FY95 does not specifically earmark funds for DCPS nor Jackson Memorial Hospital. However, slightly more than \$18 million (roughly the amount previously earmarked for JMH and DCPS) will be made available to the State of Florida to award to counties impacted by the influx of Cuban/Haitian parolees/entrants.

Overview of Service Delivery System:

Under TA, State awards funds under formula allocation for employment, day care, criminal justice [w/employment]. Most funds in Dade County go through the State to the South Florida Employment Training Consortium which subcontracts with local service providers. Earmarked JMH goes through FL DHRS; Dade Co Schools through FL DOE. Social service funds are awarded by the State through a competitive bid procedure.

For FY 94, the State was awarded \$5.2m for social services, \$3m for TAG formula, \$600k in discretionary awards, and \$19 million earmarked funds under the Targeted Assistance program. This was based on arrival data for FY 94 estimated at 14,000. An additional \$6 million of supplemental Targeted Assistance was awarded to increase the service delivery system in Dade County, principally for employment services and health care at the end of the fiscal year to address the impact of arrivals last summer.

For FY 95, \$6.5m is proposed for social services based on the 3 yr population of 37,151. The State has questioned the arrival numbers and ORR is reviewing arrival data as it will for all States and will make the appropriate adjustments as warranted.

Resettlement agencies report the huge lines for services at employment agencies. Jobs are tighter, not only due to influx, but to considerable number of undocumented aliens who are hired on temporary basis from informal street corner network. Situation is not likely to improve with large numbers projected under the Cuban agreement. Fortunately, unemployment has dropped from 8.4% last year to 5.4% in Dade County. The 15,000 single males are considered readily employable as most are semi-skilled and skilled workers. Employment services will need to be increased to assist Cubans to become employed quickly. A doubling of service capacity for employment services seems reasonable.

PROJECTED NEEDS:

In addition to the federally reimbursed cash and medical assistance, social services will need to be boosted to address the impact primarily in Dade County. Specifically, funds should be made available for medical services for refugees/entrants once their 8 mo. eligibility period expires, schools, and employment services. Flexibility in proposing services is recommended as the specific service needs in respective communities will have to be assessed.

ARRIVALS FY 94: EST. 14,000	TOTAL FY 94 SS/TA FUNDING:	\$33 M
ARRIVALS FY 95: EST. 36,700	TOTAL PROJ SS/TA FY 95:	\$28 M
	RECOMMENDED: ADDL:	\$25 M

FEDERAL ASSISTANCE FOR REFUGEE (AND CUBAN/HAITIAN) RESETTLEMENT
FY 94

	FY 94 US estimates	Grants to Florida
Refugee cash, medical assistance, State Administration	\$225,279,951	\$16,000,000
Social Services Formula	70,681,700	5,231,221
Targeted assistance Formula	25,457,300	3,036,839
Earmark for Cuban/ Haitian	19,000,000	19,000,000
Special Reprogramming	--	6,000,000
Total	\$340,418,951	\$49,268,060

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

NATIONAL SECURITY COUNCIL	From: MORTON HALPERIN To: STEVE WARMATH Agency:
17th & Penn, N.W. Washington, D.C. 20506	Fax Number: 67028 Date/Time: 5/8 No. of pages to follow: 12
Did you get a complete, clear transmission? If not, please call: (202) 456-9241	Message: FOR 12:15 MTC

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

11-Apr-1995 08:02pm

TO: Stephen C. Warnath

FROM: Carol H. Rasco
Economic and Domestic Policy

CC: Jeremy D. Benami

SUBJECT: Repatriation memo

I do agree with option 2....it seems to me, however, that perhaps we have to have Leon and others he indicates involved in a political vet before a final decision is made...does Angell agree with us on need to involve Leon and/or has he discussed with Leon?

Thanks.



THE GOVERNOR OF THE STATE OF FLORIDA

May 5, 1995

LAWTON CHILES

The Honorable William J. Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

The Joint Agreement between the United States and Cuban governments on Cuban migration represents a difficult but necessary step to ensure that America will govern its own immigration policy and that Florida is well protected against another massive wave of uncontrolled migration from Cuba. As I have publicly expressed, this new policy forces Cuba to control its borders, preventing hundreds of thousands of potential rafters from risking their lives at sea and making landfall in Florida.

I am mindful of the fact that Cubans arriving under this policy from Guantanamo Bay will be eligible for certain benefits and counted against an already established limit set under the September 9, 1994 accord. This is as it should be. I also must insist, on behalf of Florida, that the federal government make every effort to resettle as many of these people as possible outside of Florida. These individuals should be required to have both family contacts and sponsorship in Florida before resettlement in Florida is permitted. If these support mechanisms are not present, the entry process must stop. In order for this policy to be truly responsive to Florida's needs, the federal government must substantially enhance available resources to minimize the cumulative impact upon our state and local communities.

Last summer, your Administration responded to my call for supplemental refugee assistance funds to enable Florida to respond to the needs of thousands of Cubans and Haitians who were granted entry in 1994. The \$6 million supplement to Florida provided critically needed resources for our public hospitals, school districts and service providers to care for the new arrivals. The unique profile of the group of individuals who could ultimately gain entry into Florida through this policy will very likely pose correspondingly unique challenges for our local communities. In order to protect Florida's taxpayers from shouldering the burden of any costs associated with implementation of this new policy, I implore you to direct that our state be properly compensated — through the Refugee Assistance Act, the Federal Immigration Emergency Fund and in other appropriate ways.

I am concerned that, in the face of budgetary constraints and cuts being advocated in Washington, the actual level of refugee assistance will be insufficient to adequately cover the significant number of new arrivals Florida has recently received related to this policy. The larger population of entrants needing services from Florida's state and local governments must compel an increased allocation of assistance. Toward that critical end, data banks maintained by the Office of Refugee Resettlement in Health and Human Services must accurately reflect all entrants whose arrivals have been supervised by the Immigration and Naturalization Service, State Department or the voluntary agencies. Florida should not be penalized because of delays in getting updated numbers into the system.

The Honorable William J. Clinton
Page Two
May 5, 1995

Other relevant concerns you should be aware of include:

- Funding formulas for refugee assistance do not accurately reflect needs. Currently, the formulas are based on a three-year cycle of data that often does not match the actual level of imminent need in Florida. Clearly, this is an area where you can make certain Florida receives equitable treatment now.
- Social services funding under the Refugee Assistance Act is insufficient. At the present time, funding does not provide for the necessary level of services required by our existing refugee population. The certainty of that population's increase, assured by your new policy, must carry a substantial increase in social services resources. Given the impact of this policy refinement, we must be able to develop responsive programs which take into account current conditions in Florida.
- Current levels of targeted assistance funding are inadequate. Despite the \$6 million supplement provided to Florida, the new policy will dramatically increase demand and therefore total resources required.
- Florida's AFDC and Medicaid state match has unexpectedly increased. The state contribution to these programs will inevitably grow due to the assistance required by individuals who have been paroled into Florida from Guantánamo Bay. These state contributions will divert limited funds away from other priorities in Florida. It is imperative that we receive reimbursement for those increased contributions.

I would strongly suggest the establishment of a joint federal/state working group to assess the practical application and impact of this policy. It should be empowered to recommend necessary adjustments in the policy's implementation, requiring authority and resources beyond traditional lines of refugee assistance.

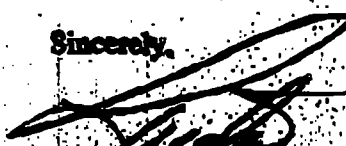
Beyond these elements, I would commend to your attention pending initiatives that I have proposed to maximize opportunities for federal/state cooperation, such as Florida's already successful Criminal Alien Removal Program. Our residents would find a measure of true relief in action that transfers to federal custody the several hundred hardened, violent alien criminals who arrived in Florida via the Mariel boatlift of 1980. I have asked Attorney General Janet Reno and Immigration and Naturalization Service Commissioner Doris Meissner to approve and expedite implementation of this proposal.

I appreciate your active consideration of these serious issues and our critical needs. I intend to more fully detail our concerns about the processing of these arrivals in letters being prepared to Attorney General Janet Reno and Health and Human Services Secretary Donna Shalala.

Again, on behalf of the people of Florida, I thank you for your attention and consideration. We continue to actively support your policy direction in this sensitive area.

With kind regards, I am

Sincerely,



LAWTON CHILES

LC/m/s/cw

HHS PROJECTED FUNDING REQUIREMENTS FOR FLORIDA FY 95

Estimation of Number of Immigrants

10,000	paroled from Guantanamo thus far
1,000	paroled from Krome/Port Isabella
10,000	additional parolees this FY from Guantanamo
1,500	Haitian refugees from other countries projected
20,000	Cubans paroled from Havana
<u>45,000</u>	Total (of these 80% or 36,000 will most likely remain in Florida)

Projected Needs

In addition to the federally reimbursed cash and medical assistance, social services will need to be boosted to address the impact primarily in Dade County. Specifically, funds should be made available for medical services for refugees/entrants once their eighth month eligibility period expires, schools, and employment services. Flexibility in proposing services is recommended as the specific service needs in respective communities will have to be addressed.

Arrivals	FY 94	14,000	Total Target Assistance	\$33M
Arrivals	FY 95	36,000	Total Target Assistance	\$28M
			Recommended Additional For FY 95	\$25M

CUBAN MIGRATION TO FLORIDADISCUSSION MEMORANDUMDATA

- Under the September 1994 agreement, the U.S. had committed to admit at least 20,000 Cubans a year.
- Pursuant to the new arrangement, figures over the next three years will remain the same. However, in FY 95 there will be approximately 3,000 additional Cubans admitted to the U.S., and, in FY 96, an additional 7,000. These will be almost exclusively adult males.

I. What Additional Costs Will Florida Incur as a Result of the Agreement?

- Given the demographics of the group, this added influx will not result in additional educational costs compared to what was anticipated under the September agreement, nor is it expected to cost the State much in terms of its share of AFDC or medicaid. (Indeed, the number of children expected to be admitted in FY 96 will almost certainly diminish because of the simultaneous decrease in the number of admissions from Cuba and the new practice of returning migrants to Cuba).
- Instead, the migrants will qualify for refugee cash and medical assistance from the Office of Refugee Resettlement (ORR) for their first eight months in the U.S., which is fully federally funded. (HHS estimates that it will be able to maintain the current eight months of assistance despite the additional influx). After the first eight months, of course, migrants eligible for AFDC or Medicaid could access those funds, of which the state must cover its share.
- There will be additional costs in terms of other human social services needs (e.g., employment services, orientation, health, language training, criminal justice, etc.). Based on a very preliminary assessment by HHS, we can assume the order of magnitude will be about \$15-20 million.
- Parolees also will need reception and placement services, especially if we want them to be dispersed to locations other than Florida. However, these costs (roughly \$1,000 per capita) are currently borne by the Community Relations Services. While we will have to address the issue of funding, this will not represent additional costs to Florida.

II. Does Florida Require Additional Assistance?

Governor Chiles will be requesting additional aid for refugee assistance (which will be covered by ORR), to cover for the state's share of AFDC (which will not increase as a result of the recent accord given the demographics of the group), and for social services (which is a real cost and which HHS is assessing).

Florida already receives a disproportionate share of federal assistance for refugees/entrants. This results from several facts:

- Unlike all other nationalities, Cuban and Haitian parolees are eligible for refugee program assistance and services (which are totally federally funded) on the same basis as refugees.
- Florida is the prime beneficiary of federal targeted assistance to communities most heavily impacted by Cuban/Haitian arrivals (roughly \$19 million earmarked per year). The rest of targeted assistance is determined on a formula basis, depending on the number of refugees. (The only other State in the country to be allocated some of these funds is New York, with \$700,000). These funds typically are spent on education and health care.
- Finally, Florida received a special \$6 million allocation for services in September 94 in addition to the new arrival per capita given to all other states. This increased their core services money for refugees/parolees by 115%. The other 47 states that participate in the refugee program see Florida as having an unfair advantage - especially California which recently lost its earmark, and which receives a far greater share of illegal immigration than does Florida. (See attached data on federal assistance to Florida for Cuban/Haitians for FY 94, Tab B).

The decision to admit the 15,000 migrants at Guantanamo also is mitigated by the reduction in admissions from Cuba, and by the change in the demographic composition of entrants.

Still, Florida appears unpersuaded by the argument that costs will not increase very much given the reduction of entrants from Cuba -- both because many members appear not to have focused on the fact that we would be admitting 20,000 Cubans a year, and because those who had believe the state had not received adequate assistance to address the 20,000 admissions from Cuba per year agreed to last September in any event. Finally, they point out that the additional 10,000 migrants over the next year will add to the state's costs in terms of social services.

Moreover, a distinction with other states can be made in that the additional influx is a direct result of the United States' agreement with Cuba, as opposed to uncontrolled, illegal immigration.

(You should know that in the aftermath of the August 1994 influx, Governor Chiles submitted a request for federal assistance of about \$1 billion from the Immigration Emergency Fund. After reviewing the request, DOJ stated it was willing to provide \$1 million, a sum the Governor rejected).

III. Funding Options

1. HHS/Office of Refugee Resettlement could seek an FY 1995 supplemental and/or a budget amendment for the ORR FY 1996 request to provide Florida with additional assistance for social services due to recent Cuban arrivals. (There is a program designed for "unanticipated arrivals." The request could be for about \$20 million).

Governor Chiles and Senator Graham's offices have cautioned us against passing the buck to the Congress, and are looking for a more forward (and immediate) gesture from the Administration.

2. Use the Immigration Emergency Fund (IEF) of DOJ pursuant to a presidential declaration of an "immigration emergency" with respect to the Cuban arrivals and Congressional notification. A declaration triggered by the Cuban arrivals would be politically sensitive and might undermine the Administration's position that the decisions made with regard to Cuban paroles will ensure an orderly migration. Moreover, as our first disbursement to a state from IEF, it would likely draw the attention of states such as California, result in demands for increased immigration assistance from other states, and in a possible lawsuit from Governor Wilson. (You should note that, unlike the case of the smuggled migrants, there is no specific appropriation for this purpose).

On the other hand, this situation is distinguishable: The IEF is designed to provide funds for states or local governments that assist the Attorney General in the administration of U.S. immigration laws. In this instance, Florida would be assisting the AG in the implementation of a decision made by the federal government.

3. The Attorney General can request assistance from a State or local government in meeting urgent demands where the need for assistance arises from the presence of aliens, and she may provide funding to the state or local government from the IEF without a Presidential determination of an immigration emergency.

Under this scenario, the AG can provide a maximum of \$20 million in assistance in any fiscal year. Under this option, it could be announced that the President had discussed with the Attorney General the possibility of providing funds to Florida to assist in the implementation of the decision to parole in the Guantanamo migrants, agreed that exigent circumstances existed, and that the AG should exercise her discretion, in consultation with the Governor, to provide IEF funds to Florida.

FEDERAL ASSISTANCE FOR REFUGEE (AND CUBAN/HAITIAN) RESETTLEMENT
FY 94

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Refugee cash, medical assistance, State Administration	\$225,279,951	\$16,000,000
Social Services Formula	70,681,700	5,231,221
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Earmark for Cuban/Haitian	19,000,000	19,000,000
Special Reprogramming	--	6,000,000
Total	\$340,418,951	\$49,268,060

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

To Steve Wamath 6-7628
FR Lin

NATIONAL
SECURITY
COUNCIL

17th & Penn, N.W.
Washington, D.C.
20508

Did you get a complete
clear transmission? If
not, please call:

(202) 456-9241

From: *KA-834 Security*

To: *Lin Lin*

Agency: *OSI*

Fax Number: *505 850 0000*

Date/Time: *12/13/01*

No. of pages to follow: *5*

Message: *There is an urgent
document which has been
submitted for review.*

TCI

Negotiations of MOU - on going. Britain
should be resolved tonight

Issue 1,000 or 2,000

On ~~the~~ average 1,000 people on site

Harvest Sea

By July 4 opening

UNHCR

Guidelines

Barren -

reg

* adeq. opp for medical care + rest prior to processing
for guarantee of overnight stay

GTMO + Post Adjuvants

— Everything ready to start —

— HIV policy —

~~ONS Good~~

Set up for 2500 today

Can accommodate additional 2500 by 2012

Could go to 12,500

Hart - /- 3 mi limit

* Eric proposes interim practice of being /- 3 mi
+ taking to processing centers outside

~~1500 Bradley~~

~~2000~~
~~2000~~

No significant change in # of boats

Mtg / Gray, Lake, Talbot

I am holding Cabinet mtg on P's request to P.M.

There has not been agreement yet

C.G. anchoring off shore + taxi to shore
won't work in bad weather

State recommend Onatans if we want to get started
by the end of the month. [Branson]

Clarke legal complicat. - - U.S. Judge restraining order
+ 2 return

- High probability last time
of entry (30%) $\therefore$ magnet
- or live option / power
- / Grand Tusk - do accept
Conclusion to let put
land based (even if let
put in to big ship)

Justice - may it be as high level met at Guntano on boats
(Clarke is persuaded)

DoD contracting ^(\$m) for tents etc for processing
2 ships (1 Ukrainian ^{hosp ship} + 1 Commercial)
capacity 2-3,000 in two whs.

∴ Fall back is Guntano by 6/5

* INS has 40 named ~~person~~ / 48 hrs of notice
on 30 day tour + rotation cycle
kd add people with some constraint

(there are 10-20 others
who are capable + trained
but have not volunteered)

State - 100 available + trained

PHS + 8 auxiliary people need to be available

Eric N. talk / them

CRS need them for
MORO etc.

U.S. Marshalls - escort state-side for those / life threatening cond.

Clarke etc on Guntano

request surveying team to go to Turks + Caycos
+ on-shore camp for processing

Time 6/5 Target for system start-up
Location Granbury, State-side
Litigation risk
#: Assuming 2,000/wk

PEOPLE

IND	40	>	200 family units/day
STATE	100		

~~without~~ Suggesting using Ukrainian medical team
no

Post Adjudication Facility - Deemed migrants
Alternative: Court. or State-side facility

LOCATION?
If CONUS, effectively
precludes sending to
3rd country

INS Detention facilities are generally occupied by criminal aliens

* Trying to stay a way from Florida, maybe TX

- FOREIGN BASED
EMERGENCY:
Alternative: GO or CONUS (POD or otherwise)

3rd Country Resettlement

Christopher letter - no solid answers yet.

Monday - State mtg for deal / U.S. + T/C

PRESS

Press Liability - Need person to handle press in when Ukrain- boat arrives
~~Have~~ HITS from Military S. C.

Hired the ship for help

No press on board while refueling reconfigured

Say boat will prob. play some role, to no final
determinat has been made - role.

8 hrs between arrival of ship + taking ~~up~~
boat + signing lease

W.H. will provide Qs + As

FUNDING

Mtg on Monday

Issues:

Cost of land facility.

Is Ind costs reg? determinat

PHS wants to be reimbursed

Legal (part)

MPS - locating a foreign ^{sail} ~~boat~~ or yachts

use of force

Enforcement authority

Best measures for contracting

Refloating

Recognition flight - requires host-country consent
or a consent until 24hr
daytime only + 8

MPC Locat

request P call P.M. 7 Jan
- seek Jan. land based or docked facility

Taka + Kaycos - - want for surveying Alt

DDO is g^o ahead / movement for camp - ready
in 2 wks

Boats - Ukr. - 1000 bed

STAFF - Ins + State will be available 200/family day

PRESS - ^{W.H.} ~~W.H.~~ will circulate Q + A tonight

Press to be kept 7/ ship if possible

~~Bad Fund~~ - Mon.

Legal - Monday & add'l papers available.

Memo from Chao + Sullivan for Cutler + Co = Legislative

Here a set of principles — we would
like to support
+ stop / principles, as legislative
+ offer some

If we want legislative we would
need to work ~~in~~ — have develop
strategy.

Hopefully it won't get to that point.

President's letter

① Principles of legislative

② + Administrative by we will do anyway

Admin Stron 395-3914
Sullivan

Tamara - Comfort + ~~I~~^{for} Franco
capacity considering ventilation or Comfort

Comfort maxes at 1000 migrants

There are 1000 staff on board

It is staffed

ICS
AComm is adamantly opposed to using below deck space
for anyone that has ~~been~~ not been screened
history shows 50% communicative transmission rate if
put in closed air space

Med Jky will go to Girmo (It is no good for migrants -- it's a
dark hole - sanitation not adequate)
processing ^{cases} 100/day (family unit) only 1/3 of what hoped for

State recommends turning emphasis to GIRM now that
we are getting migrants in such large numbers

Gitmo

Processing to begin at Gitmo

[Interpreters must be 1:1 + capable of interpreting nuance, subtlety]

More processors going down Saturday

CAPACITY SCHEDULE

5000 m 7/2

7500 7/5

10,000 7/9

12,500 7/12

2000 TOTAL STAFF CAPACITY

1000 DOD ~~is~~ staff ^{used} for way 10,000

Check whether UNHCR people increased as everything is pushed up from 1 site to 3 sites.

3 requirements
INS recommends

HHS/PHS apparently supports

□ Get full file on HIV/Haiti

Q: \ is required to ~~make~~ enact new policy?

Bahamian
2 sites 2,000 capacity

Safe haven

GIRMO as safe haven - legal issues

If not then we do bring in (2).

- (a) GIRMO
- (b) 3rd country

* G HIV positive today

Need to send it up still + want to

N T
N T

EXECUTIVE OFFICE OF THE PRESIDE
EXECUTIVE OFFICE OF THE PRESIDE

04-Jul-1994 01:10pm

TO: (See Below)
FROM: Nancy L. Ward
Office of the Press Secretary
SUBJECT: P.D.Refugee Haiti7.2.94

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

July 2, 1994

Presidential Determination
No. _____

July 1, 1994

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Determination Pursuant to Section 2(c)(1) of the
Migration and Refugee Assistance Act of 1962, as
Amended

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that \$7,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of Haitian migrants. These funds are to be used for refugee processing, repatriation, resettle-ment, and assistance activities as well as related Department of State administrative expenses. A part of the funds may be contributed bilaterally to the governments in whose countries related operations are being conducted. These funds

may be contributed to foreign governments, international organizations, governmental, and nongovernmental agencies.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON

#

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TO: FAX (93472767,Bill McCarren)
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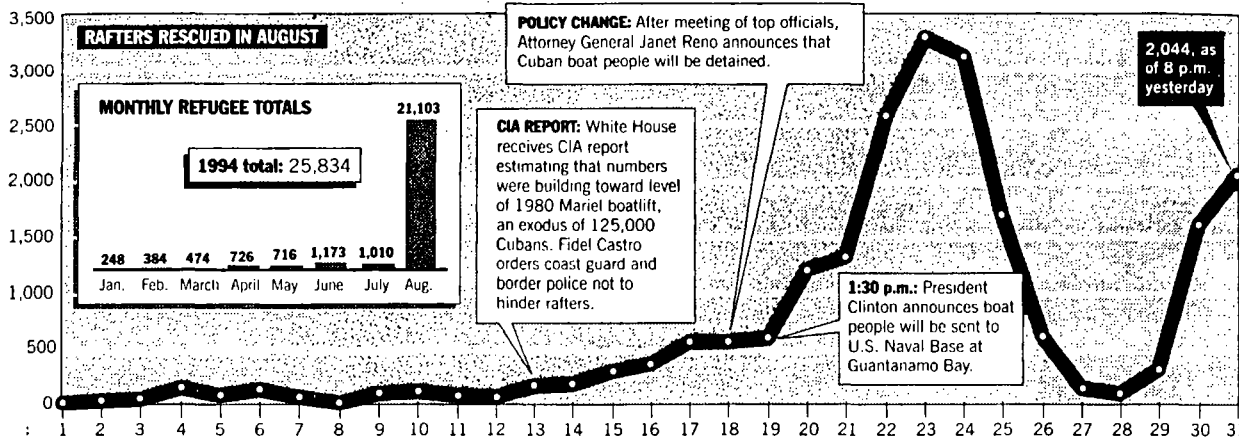
04-Jul-1994 01:44pm

TO: Kathryn J. Way
TO: Stephen C. Warnath

FROM: Carol H. Rasco
 Economic and Domestic Policy

SUBJECT: see attached FYI

HOW THE CUBAN REFUGEE CRISIS UNFOLDED



SOME OTHER KEY EVENTS

January-June 1994: Decline in Cuba's economy prompts hundreds of boat people to leave each month. In the first half of the year, a total of 3,721 are picked up at sea.

July 13, 26: Cubans hijack tugs and ferries to leave. The U.S. Coast Guard rescues 1,010 in July.

AUGUST

1: Havana radio program dwells on power outages, water and goods shortages.

3 and 4: More hijackings occur.

5: Rumors of another impending hijacking ignite anti-Castro riot in Old Havana's waterfront area.

10: Florida Gov. Lawton Chiles, facing a tough reelection campaign and non-Cuban residents' concerns about immigration, reviews state's emergency planning.

11: In Washington, agency officials weigh option of establishing safe havens, to dampen Cuban enthusiasm for defecting.

14: Five hundred Cubans board oil tanker in Havana port, are eventually coaxed off.

17: Chiles calls Attorney General Janet Reno to say he plans to quarantine Cubans.

20-31: After Clinton's announcement, an additional 18,344 Cubans leave, apparently unconvinced that ultimately they will be kept out of the United States.

26-27: United States, Cuba agree to hold talks on migration.

THE WASHINGTON POST

Ripple in Florida Straits Overturned U.S. Policy

Reno and Chiles Were Catalysts in Getting Administration to Slam the Door on Cuban Rafters



GOV. LAWTON CHILES

By Walter Pincus and Roberto Suro
Washington Post Staff Writers

In the late afternoon of Aug. 17, as the White House focused on resurrecting the crime bill, an urgent message arrived at the Justice Department from a top aide to Florida Gov. Lawton Chiles (D).

The governor, who was contending with fast-growing numbers of Cuban rafters arriving at Key West, warned Attorney General Janet Reno that he had a plan to circumvent more than 30 years of U.S. policy that welcomed all Cubans arriving in the United States as refugees. Using his executive powers, Chiles was going to declare an emergency the next morning and put incoming Cubans in quarantine at a state facility rather than allow them to be released into the streets of Miami.

Reno convinced national security adviser Anthony Lake that the administration had to move fast on the raf-

President Clinton had changed the policy himself rather than risk a confrontation with the Florida governor.

Chiles and Reno usually are not major players in foreign policy. But a reconstruction of how the Clinton administration handled the current crisis shows that they served as catalysts for a series of fast-paced responses and paved the way for the Cuban-American talks that begin today in New York City.

Domestic politics have always influenced foreign policy, but in this case widespread fears of uncontrolled immigration powerfully and overtly shaped the administration's decision making. With no overarching national goal like the fight against communism to enforce consistency, the events this summer show how long-standing policies are now subject to drastic change to meet the demands of the moment.

Early in August Clinton determined that "no new Mariel"—refer-



ATTORNEY GENERAL JANET RENO

THURSDAY, SEPTEMBER 1, 1994 A31

'No New Mariel' Became Watchword for Policy-Makers

CRISIS, From A31

ring to the 1980 boatlift in which 125,000 Cubans arrived in Florida—would serve as the guiding principle. Then on Aug. 13 a CIA report landed in the Oval Office that predicted a slow-motion Mariel in which the same number of rafters would arrive this year. Since then Clinton has remained bedeviled by the specter of Jimmy Carter, and the damning image of a president incapable of controlling the nation's borders.

The migration issue—how to keep the rafters out of Florida—immediately took precedence over the long-standing foreign policy question of how to deal with Cuban President Fidel Castro. And success until now has been measured by the results of policies in South Florida more than in Havana.

When Clinton ended the preferential treatment of Cuban refugees on Aug. 18, the new strategy flowed from the gambits that succeeded in halting the tide of Haitian boat people earlier this summer rather than any plans to hasten Castro's departure. And when he decided last weekend to negotiate with Castro, Clinton set an agenda that attempts to use immigration policy as a way to end the rafters' exodus.

Finally, although the administration developed its decisions step by step along a course that seems logical in retrospect, its public announcements attempted to send varied messages to several different audiences. These included the Cuban American community in Florida, the Cubans in Cuba, and only lastly the American public in general. As a result, the administration sometimes acted hastily in presenting its positions and created the impression of contradictory policy-making.

Clinton's simple call to prevent a new Mariel was translated for public consumption into a defiant statement repeated time and again that "Castro will not be allowed to dictate U.S. immigration policies."

Some administration officials came to regret that formulation when it became apparent that the only way to prevent an uncontrolled, Mariel-style exodus in fact was to drastically alter U.S. policies.

And, when the change was made Aug. 18, Reno rushed to announce the decision because she hoped to head off as many rafters as possible.

rather it was the exodus of Cubans heading to the United States in rafts and other makeshift vessels.

Another interagency meeting was called for Aug. 11 to discuss options. Officials of the Immigration and Naturalization Service offered an idea that had been percolating around their agency since the exodus of Haitian boat people had been successfully halted in early July. The Haitians had very quickly stopped when the administration announced that they would be protected as refugees in "safe havens," such as the U.S. Naval Base at Guantanamo Bay, Cuba, but that they would be denied any opportunity to reach the United States.

If it worked with the Haitians, why not the Cubans?

In the Haitian case, safe haven actually represented a more generous policy compared to the forced repatriations that had preceded it. But, State Department officials argued that in the Cuban case, safe haven would mean reversing 35 years of policy that had welcomed virtually all who fled Castro's regime.

Whatever special status the Cubans had enjoyed before, the number of rafters seem to grow inexorably to the point that welcoming them all was becoming politically untenable. And so, at the staff level a consensus developed around the idea of applying the safe haven concept to Cubans.

Unbeknown to U.S. officials meetings also were taking place in Havana that afternoon. The next day, Aug. 12, Castro secretly ordered Cuban authorities not to interfere with people trying to leave the island. The floodgates were open.

In Florida, the pressure on Chiles was growing. He recalled in an interview that he had considered announcing emergency measures Aug. 17 but decided against it for fear of catching the Clinton administration "flat-footed." Instead he had an aide call Washington and pass the word that Chiles planned to act the next day.

On the morning of Aug. 18, Chiles protested that the administration was in "denial" over the rafters and declared a state of emergency in Florida. However, he stopped short of imple-

menting his plan to call out the Florida National Guard and put the Cubans in camps of his own.

Almost immediately, White House press secretary Dee Dee Myers and Reno herself, in response to reporters' questions, said in Washington that Chiles was overreacting. The two did so, responding defensively, even though they knew a White House "principals meeting" to discuss Chiles's concerns was already on the schedule.

Hours later the meeting was convened with Lake as chairman and included Reno, Defense Secretary William J. Perry, Undersecretary of State Peter Tarnoff, Adm. William A. Owens, representing the chairman of the Joint Chiefs of Staff, and White House Chief of Staff Leon E. Panetta.

The switch to a safe haven policy quickly gained a consensus among the officials. As one participant recalled recently, "the change was necessary to protect a basic fundamental policy of no massive influx that looked like Mariel."

The administration's senior policy-makers had crossed a line. Immigration policy had become foreign policy.

Clinton approved the switch to a safe haven approach at about 7 p.m. with the understanding that he would disclose it the next day at a news conference. Officials then began the process of informing congressional leaders, drumming up support in the Cuban American community and developing plans to implement the decision.

Reno, however, became concerned that in the course of the next 12 hours, amid rumors of a changed U.S. policy, a flood of people might set off from Cuba. She sought and got White House permission to push up the announcement.

At 10:30 p.m., at a hurriedly prepared news conference in the White House briefing room, Reno announced that Cubans no longer would be accepted automatically into the United States, but instead would be detained. She offered few other details.

Having already begun a process of accommodation with the Cuban American community with its initial

"no new Mariel" policy, the administration continued on this course when the harsher treatment of Cuban refugees prompted protests in Miami. Congressional Republicans and most Florida Democrats also demanded that the new refugee policy had to be paired with further measures against the Cuban dictator.

Some of those measures had been cleared by top officials, and implementing procedures were being developed even as the president prepared for a 1:30 p.m. news conference. But once again the process of public announcement preceded the full development of policy.

At his news conference, Clinton reiterated the decision to halt the flow of Cubans and send them initially to the Guantanamo Bay Naval Base. But he ducked questions about taking stronger steps to overthrow Castro.

It was not until the next day, Saturday, Aug. 20, after an evening meeting at the White House between Clinton and Chiles accompanied by a delegation of Cuban American leaders, that the administration announced that it would tighten the economic embargo on Cuba with measures such as a limit on the dollars that U.S. residents can send relatives in Cuba. The new measures were announced the following morning in what was to be the third major policy pronouncement on Cuba in less than 40 hours.

Despite the policy change, the following week the number of rafters mounted until foul weather interrupted the exodus. Amid signs that the rafters were about to head to sea again on clearing skies, the administration last weekend agreed to enter talks with Cuba as long as the subject was limited to immigration.

For the Clinton administration, the negotiations that begin in New York today have one goal: to end the influx of rafters. Indeed, the administration repeatedly has said it has no intention of discussing the trade embargo or any of the other political and economic issues that have been the principal focus of foreign policy toward Cuba for the past 35 years.

Instead, she caught many members of the administration by surprise, going before the cameras unknown to most State Department officials and before any detailed explanation of the policy change could be developed.

"I was stunned to hear it when I woke up the next morning," said a key State Department expert who had no role in the decision. "It was a surprise to see how she talked the president in to letting her make that statement."

In extensive interviews conducted over the past week, officials of the White House and several agencies offered the following depiction of how the administration handled the events as they unfolded:

By early August, 5,700 Cuban refugees had arrived in Florida since the start of the year compared with the 3,600 for all of 1993. Administration officials understood that it was becoming a serious problem for Castro because during the course of the summer armed hijackers had seized several ferry boats.

On Aug. 5 there was the first anti-government riot since Castro took power in 1959, but in Washington the significance of these events in Cuba was read primarily in terms of the growing numbers of Cubans arriving in South Florida.

The intelligence assessments available to U.S. policy-makers that day portrayed Castro as a leader, under mounting pressure from the disaffection, disorder and violence he faced at home. But U.S. analysts did not believe he faced an imminent threat to his own survival. Under such circumstances in the past Castro had encouraged flight to the United States as an outlet for dissent.

As reports of the Aug. 5 rioting arrived from Havana, administration officials decided they needed to prepare a response. News of the disturbances had galvanized the Cuban American community in Florida with hopes that at last Castro's end was near. This aroused concern in Washington that the exiles in Miami again might take to their boats as they did in 1980.

At an interagency meeting convened that afternoon at the White House, officials from the Coast Guard, the Pentagon, and the State and Justice departments agreed to activate long-standing contingency plans to preempt any repeat of Mariel. For the most part the plans involved an aggressive public relations campaign to convince the Cuban American community not to set off in boats from Florida to rescue loved ones in Cuba.

Meanwhile in Havana, Castro boldly marched through the riot scene late that afternoon and blamed U.S. policies for both the disturbance and the growing numbers of people fleeing Cuba illegally. He then delivered a warning to the Clinton administration: "they either set things in order or we will stop guarding the U.S. coasts."

Clinton responded with a demand that resonated throughout the federal government: "No new Mariel." But, by early in the second week of August it became apparent that a Cuban American boatlift was not underway, but

THE WHITE HOUSE

WASHINGTON

May 8, 1995

TO: MORTON H. HALPERIN
FROM: STEPHEN C. WARNATH *scw*
CC: CAROL H. RASCO
SUBJECT: Language for the Cuban Migrant Memo

Please include the following in your memorandum to Leon regarding assistance to Florida for Cuban migrants:

DPC stresses that each option appears to pose significant political risks for the Administration on the Hill and outside of Florida. When the Administration represented to the American people several days ago that Cuban migrants will be "fully sponsored," most Americans probably accepted this as the President's assurance that these individuals would receive substantial private financial sponsorship as a prerequisite to coming to the United States. Moreover, utilizing emergency funds, even if by the Attorney General rather than the President, may appear at odds with the Administration's stating that it has successfully imposed an orderly and regulated legal immigration upon a huge uncontrolled boat migration. Others (particularly in California) may view this as unjustifiable preferential treatment for Florida, particularly when this orderly immigration, one where we have control of the timing and level of flow, is compared to the number of illegal crossers that California absorbs. DPC strongly recommends that these and any other relevant issues involved receive a full analysis and vetting from White House offices of Political Affairs, Legislative Affairs, Intergovernmental Affairs, and Public Liaison prior to any decision. If there are any legal issues involved, particularly concerning the Attorney General's use of these funds for this purpose -- Option 3 -- then Counsel's Office should be consulted, as well. DPC recommends that any meeting with Leon, if that is viewed as helpful, be held after this analysis is completed.

DPC opposes the recommendation in the present draft to use the IEF "non-declaration" funds (or any of the three options) until this analysis has been completed. This view is further supported because the agencies need to finalize their estimates of the level of funding needed by Florida. This decision cannot be based upon tentative agency estimates. Justice appears to share this concern as well based upon the last paragraph in the NSC background memo.

GTMO MIGRANT PROCESSING MEETING
June 6, 1995, 9:00 AM, RM. 476 OEOB
AGENDA

I. Parole from GTMO

-- Scheduled completion of current program (children,
medical)CRS, INS, JCS

-- Scheduled beginning of new program
(processing, order of admission).....CRS, INS, JCS

II. Ineligibles for Parole

-- Update on first group of ineligibles

-- Procedure for identification

-- Estimate of numbers

-- Standards for violent acts

-- Evidence required for prior criminal record

FOR: STEVE WARNATH

FAX: 67028

PLEASE EXPEDITE DELIVERY

Los Angeles Times

Don't Railroad Asylum

DATE: 07-17-96
PAGE: A-11

■ **Refugees:** An 11th-hour rescue is possible to repeal a cruel, unfair new law.

By **CHERI HO**

The young woman who came to our office seeking asylum had never before told anyone about the torture and sexual abuse that she suffered at the hands of military officials in Africa. She became so distraught when she tried to recount her past that she crouched down in a corner and wept, unable to continue the interview. The political activist from Eastern Europe was unable to speak about his incarceration and torture during his first interview. Fortunately, he was granted another, in which he painfully revealed his history of government-inflicted abuse.

As a former asylum officer with the Immigration and Naturalization Service, I am aware of many cases in which victims of torture and abuse had great difficulty relating their stories of violence, even under the most conducive circumstances.

Soon it will be even more difficult for such people to obtain protection in the United States, thanks to harsh immigration provisions in the Anti-Terrorism and Effective Death Penalty Act, set to take effect on Nov. 1. These provisions, which have nothing to do with terrorism, require all asylum seekers who enter the country with false or no documents to immediately make their case that they have a "credible fear" of persecution if returned to the land where the abuse took place. They will have to relate the details of the often traumatic and highly personal experiences of abuse and torture to a stranger, a U.S. government official charged with deciding whether they merit an asylum interview. The threshold is twofold: whether it is "more probable than not" that the individual is telling the truth, and if so, whether there is a "significant possibility" that a claim of persecution can be established.

Applicants will not have the right to seek counsel or to consult with others if it would delay the expedited process. If the asylum officer determines that the claim is not credible or legally sound, there will be no asylum interview and no appeal.

Asylum adjudication is complex and difficult work, and many factors can inhibit communication between the officer and the applicant. Asylum seekers arrive in the United States from a multitude of countries, cultures and backgrounds, heightening the possibility of misunderstanding. Body language, for instance, varies across cultures. The failure to make eye contact with an interviewer might be interpreted in this culture as a sign of dishonesty. In other cultures it is a sign of respect for authority.

Conceptions of time and the importance of dates also vary across cultures. An inability to identify dates or relate events in a chronological fashion may indicate only that the society has little use for these notions.

Attorneys working on asylum cases have—or used to have—many weeks to establish trust and piece together their clients' life stories. Asylum officers have one hour to build rapport, confirm relevant biographical information and elicit the details of the asylum claim. Under the new law, the initial interviews will take place on the spot, possibly lasting no more than several minutes.

I felt confident about the majority of my decisions, but there were times when I knew I was not hearing the full story. In those instances, it was a great relief to know that the asylum applicant would have another opportunity to present his or her claim in a hearing before an immigration judge, to obtain counsel and to have all of the procedural protections afforded in an adversarial proceeding. The anti-terrorism law has eliminated this system of checks and balances: there will be no hearing, no right to representation, no possibility of appeal.

When I became an asylum officer, I was told that I would be charged with identifying and protecting refugees, to ensure that no one would be returned to a country where he or she might face persecution. It is clear to me that expedited processing will increase the potential for error, while at the same time eliminating crucial safeguards.

Will the personnel who are empowered to reject asylum seekers be given sufficient training? Will they be given time to conduct thorough interviews, research country conditions and prepare reasoned decisions? Given the varying capabilities and sympathies of individual asylum officers, how will consistency be enforced nationally? How can we be assured that victims of severe trauma will be given a meaningful opportunity to relate the horror they experienced in their homelands?

This irrational law is contrary to our obligation to provide protection to victims of persecution, and it virtually ensures that genuine refugees will be expelled without a fair opportunity to present their claims. Sen. Dianne Feinstein (D-Calif.) voted for the amendment to the Senate immigration bill that would repeal expedited exclusion. The Senate bill, however, must be reconciled with a House version that would uphold summary exclusion. The conference committee, of which Feinstein is a member, is about to begin this process. She and the other committee members should not abandon the principles of refugee protection.

Cheri Ho is a staff attorney at the U.S. 9th Circuit Court of Appeals in San Francisco. The views expressed here are her own.

Who's a Nincompoop on Illegal Immigration?

To the Editor:

My dear friend Gov. Pete Wilson of California administered a 19-inch lecture (Op-Ed, July 11), explaining to me how only a constitutional nincompoop could be in favor of educating children of illegal immigrants.

The Governor's opinion rests squarely on the 10th Amendment's guarantee of states' rights. But he should keep reading until he finishes the 14th Amendment, too, where the Constitution says that a state has no right to "deny to any person within its jurisdiction the equal protection of the laws." And if the Constitution doesn't offer enough reason for Governor Wilson to educate these children, common sense does.

Governor Wilson actually brushed up against the real issue when he wrote about the Federal Government's willful failure to stop the flow of illegal immigrants into our states.

Last year, I wrote the appropriations bill that launched a doubling of the size of the United States Border Patrol. Before that, there were more police officers guarding Washington than patrol agents on the entire border of the United States.

The Immigration and Naturaliza-

tion Service has failed to do its job of barring illegal entry, deporting law-breakers and enforcing employer sanctions because of a lack of resources in the field and an absence of will in Washington. As Governor Wilson surely knows, states routinely refuse to share information that would help the Border Patrol locate and deport illegal immigrants.

The Federal Government and the states should work together to stop illegal immigration, to detain and deport those who break our laws. But we cannot use innocent children as scapegoats for our lack of leadership and will.

PHIL GRAMM

U.S. Senator from Texas
Washington, July 11, 1996

To the Editor:

Gov. Pete Wilson is wrong to suggest (Op-Ed, July 11) that the answer to the nation's immigration crisis is for each state to start setting its own policies regarding the treatment of illegal immigrants.

The legislation in question is a national solution to the national problem of illegal immigration. The House and Senate have passed bills that will add 5,600 new border patrol

and immigration investigators; extend from 3 years to 10 the ban on legal re-entry for illegals caught; require the Federal Government to reimburse states and local communities for the emergency medical assistance they provide to certain illegals; increase the penalties on alien smugglers, and streamline the deportation process.

The one major area of disagreement is the education of children of illegal immigrants. If this bill fails, we would lose our only chance for immigration reform this year. It's time to stop talking constitutional theory and start fulfilling our responsibility to keep the integrity of this nation's borders.

KAY BAILEY HUTCHISON
U.S. Senator from Texas
Washington, July 11, 1996

The Education 'Magnet'

To the Editor:

George J. Borjas ("Punish Employers, Not Children," Op-Ed, July 11) castigates Congress for its preoccupation with an amendment that would enable states to bar children of illegal immigrants from public schools.

That legislators are embroiled in this sorry debate is testament to the political power of the myth that large numbers of illegal immigrants are lured here by the "magnet" of free public education and other social services. Mr. Borjas's own writings have contributed to this myth, and he persists in arguing that cuts in education benefits "may well" reduce illegal entries and induce illegal immigrants to return to their home countries.

No evidence supports this theory of deterrence. But members of Congress, loath to offend business owners and individual homeowners who use immigrant labor, have seized upon it as a rationale for pursuing purely symbolic immigration control measures like the public education exclusion.

Having fed the climate of public opinion in which such wrong-headed, fiscally counterproductive measures can flourish, Professor Borjas and the politicians who have embraced his ideas now stand aside from the conflagration and chide Congress for failing to pursue alternative remedies. Such criticism is both too little and much too late.

WAYNE A. CORNELIUS
La Jolla, Calif., July 11, 1996
The writer is research director at the Center for U.S.-Mexican Studies, U. of California, San Diego.

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

Director, Human Rights, Refugees, and Humanitarian Affairs

**NATIONAL
SECURITY
COUNCIL**17th & Penn, N.W.
Washington, D.C.
20504Did you get a complete,
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not, please call:

(202) 456-9361

From: Eric P. Schwartz**To: Steve Warnath****Agency: DPC****Fax Number: 67028****Date/Time: 11 December 1995****No. of pages to follow: 4****Message: You are invited to a meeting. Please
review the attached and contact Kelly to clear you in
to the building.****RESEND**

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

December 8, 1995

MEMORANDUM TO STEVE WARNATH, DPC
CHARLES SYKES, State/PRM
DOUG STAFFORD, AID/BHR
STEVE COFFEY, State/DRL
WANDA NESBITT, State/H
MARK STEINBERG, JUSTICE
ROBERT BACH, INS
PHYLLIS COVEN, INS
DAVID MARTIN, INS
PAMELA BARRY, INS
LAVINIA LIMON, HHS
ENID SCHOETTLE, NIO

FROM ERIC SCHWARTZ, NSC Staff

SUBJECT Refugee Admissions Issues

You are cordially invited to a meeting to discuss refugee admissions issues. The meeting will be held on December 14, 1995 at 2:00 p.m. in the White House Situation Room.

We will discuss the following issues:

FY 1997 Admissions Program (State/PRM)

Status of the Lautenberg Amendment (INS/State/PRM)

Admissions issues in immigration legislation (H/INS
Legislative Affairs)

I have enclosed for your information the PD for the FY 1996 Refugee Admissions Program.

Please contact Kelly Letts at 202-456-9361 to let her know if you plan to attend and provide full name and date of birth so you can be cleared into the building. Thanks.

THE WHITE HOUSE

WASHINGTON

September 29, 1995

Presidential Determination
No. 95-48

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Presidential Determination on FY 1996 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

In accordance with section 207 of the Immigration and Nationality Act ("the Act") (8 U.S.C. 1157), as amended, and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 90,000 refugees to the United States during FY 1996 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 1996 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 90,000 funded admissions shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this determination and in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 1996 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in

2

section 101(e) of Public Law 100-202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa.....	7,000
East Asia.....	25,000
Former Soviet Union/Eastern Europe.....	45,000
Latin America/Caribbean.....	6,000
Near East/South Asia.....	4,000
Unallocated Reserve.....	3,000

The 3,000 unallocated numbers shall be allocated as needed. Unused admissions numbers allocated to a particular region within the 90,000 ceiling may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the judiciary committees of the Congress prior to any such use of the unallocated numbers or reallocation of numbers from one region to another.

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 1996 for the adjustment to permanent-resident status under section 209(b) of the Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest. 8,131 aliens were granted asylum during FY 1994 under section 208 of the Act.

In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 1996, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

3

- a. Persons in Vietnam
- b. Persons in Cuba
- c. Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the Federal Register.

William J. Clinton

cc: The Attorney General
The Secretary of Health and Human Services

SUMMARY OF PROPOSED ASYLUM REFORM REGULATIONS

Comprehensive new regulations have been proposed that will reform the political asylum system, as directed by President Clinton in July 1993. The centerpiece of the proposed regulations is to grant protection to legitimate refugees quickly and to refer claims that cannot be granted to an Immigration Judge (IJ). If the Immigration Judge does not grant the claim, and no other relief is appropriate, the hearing will result in an exclusion or deportation order.

The proposed system, coupled with substantial additional resources in FY 94 and requested in FY 95, will reduce application processing times from an average 18-24 months to six months or less. It will deter non-meritorious applications by reviewing all cases and deciding them quickly. The proposal was developed through extensive consultation within the Administration, among key congressional offices, and with a representative range of non-governmental immigration organizations. The essential elements are as follows:

Establishes a Streamlined, Timely Asylum System. Currently, an alien may pursue his asylum application before the INS Asylum Officer Corps (AOC) until receiving a decision, but if denied, he may restart the whole process before an IJ during the removal proceedings. This lack of integration contributes to duplication of effort, increasing backlog of cases and delays in reaching final decisions. Affirmative asylum processing - including INS processing and de novo adjudication by an IJ - now takes a minimum of 18 to 24 months. Under reform, INS and IJ procedures are expected to be completed in 180 days or less for all newly filed applications. The proposed regulations streamline the process by:

- o Granting asylum and work authorization within 60 days to meritorious cases and referring cases that cannot be granted to IJs;
- o Eliminating the preparation of detailed, time-consuming denials by asylum officers in cases where they do not grant asylum to applicants who have no legal immigration status. Instead, asylum applications from these individuals will be referred automatically, and mandatorily, to IJs for adjudication as part of exclusion or deportation proceedings;
- o Giving asylum officers discretion in conducting personal interviews. Certain cases lacking any merit will not be interviewed;
- o Eliminating the requirement that an asylum officer send the applicant a Notice of Intent to Deny (NOID), thereby eliminating the 30 day rebuttal period for challenges to the NOID;
- o Requiring the asylum officer, in cases where he has not granted asylum and the applicant lacks lawful status, to refer the application to an IJ at the same time the applicant is served with the charging document that initiates removal proceedings;

- o Eliminating the need in virtually all cases for asylum officers to determine whether "withholding of deportation" is an appropriate benefit after the denial of an asylum application. Under the proposed rule, asylum officers, in most cases, will not need to reach this issue because they will not be issuing asylum denials in exclusion or deportation cases. IJs will continue to determine whether withholding of deportation is appropriate in those cases;
- o Specifying that information contained in an asylum application may be used as a basis for removal proceedings before an IJ against otherwise deportable aliens;
- o Authorizing asylum officers and IJs to deny otherwise approvable claims on the ground that the applicant can be deported or returned to a country in which the alien would not face harm or persecution and would have access to full and fair procedures for determining the asylum claim in that country, in accordance with appropriate international agreements;
- o Discouraging applicants from filing claims before IJs that differ from the claims they filed before asylum officers by requiring that the original asylum application be forwarded to the IJ at the time the case is referred by the asylum officer.

Reduces Incentives to File for Asylum Solely to Obtain Work Authorization. Currently, an asylum applicant may apply for an Employment Authorization Document (EAD) at the time of filing. INS must grant work authorization if the asylum application is not frivolous or has not been adjudicated within 90 days of filing. Our analysis shows that many applicants are filing claims solely to obtain an EAD. Such filings increase both the backlog of cases to be adjudicated and the time before deserving applicants are granted asylum. The proposed regulations provide that work authorization will not be granted unless the original asylum application has been granted or is not decided within 180 days. This is a 90-day increase over the current waiting period for an interim EAD. The reforms place the burden upon INS and the IJs to adjudicate claims promptly within the 180-day period, since, by doing so, the need to adjudicate work authorization separately is avoided. Well-founded asylum applications are anticipated to be granted within 60 days of filing and employment authorized immediately for those applicants. An applicant who has been convicted of an aggravated felony will not be granted employment authorization. An applicant who previously obtained work authorization, but whose application for asylum or withholding of deportation is denied because of the conviction, shall have his work authorization terminated automatically as of the date of the denial.

Improves Communication With Department of State on Country Conditions. Asylum officers and the IJs will have access electronically to State Department information on detailed country conditions to assist them in making asylum decisions. INS and the IJs also may request specific information from the State Department on individual cases or specific country conditions. The State Department may, in its discretion, provide information available to it concerning individual cases. Under the proposed regulations, INS will not be required to wait 60 days, as now mandated, for the Department of State's discretionary advisory opinion before issuing a decision on each asylum application.

Requires A Filing Fee for Asylum and Initial Work Authorization Applications to Alleviate Increasing Costs. The proposed regulations institute a fee of \$130 for filing an asylum application. The proposed fee for initial applications for an EAD is \$60. Consistent with fees for non-asylum applications, these filing fees will be waived if the applicant is able to demonstrate that he is unable to pay. The estimated cost of adjudicating each asylum application is \$615. INS has avoided charging fees for asylum in the past by funding the program through a surcharge assessed on other immigration benefits. Funds collected through this surcharge are no longer sufficient to cover the asylum program and will be supplemented with funds collected through the fee.

Reduces Paperwork. The proposed regulations reduce asylum application paperwork in two primary ways. First, the Biographical Information Form (Form G-325A) is eliminated because the main asylum application (Form I-589) will be redesigned to request necessary information that is now sought in separate Form G-325A. Second, an applicant must submit only three, not the currently required four, copies of the asylum application, and any supporting material.

March 29, 1994

Date: 3/31/94

The Washington Post

Page: A30Column: 1

Asylum Without Abuses

MUCH OF THE anti-immigrant backlash sentiment that appears to be growing in this country is because of the financial burdens imposed on states—particularly those such as Florida, Texas and California—by increasing numbers of illegal aliens. But resentment is also fueled by the perception that foreigners are abusing generous political asylum laws and are allowed to enter or remain in the United States once they file petitions, no matter how weak their claims of persecution appear to be. In fact, asylum requests have tripled from 56,000 in 1991 to 150,000 last year. While claims are pending—processing now takes 18 to 24 months—applicants are given work permits, and most of them simply disappear into the general population. The backlog of cases is now 370,000, and it is growing because the practice of requesting asylum has proved to be such a successful way to get into this country and stay.

On Tuesday the Immigration and Naturalization Service, acting at the direction of President Clinton, announced a series of reforms in asylum procedures that will cut down on paperwork, greatly accelerate the process and make possible a serious effort to get at the backlog. That's good news. The number of INS asylum officers who make initial determinations in these cases will be increased from 150 to 334. The Justice Department will raise the number of immigration judges, who review adverse decisions by asylum officers, from 85 to 135. Total processing time will be reduced to a maximum of 180 days, with meritorious

claims handled in 60 days. And of critical importance, work permits won't be given automatically to all applicants, only to those granted asylum and those whose cases have not been decided within 150 days.

The proposed regulations would also impose for the first time a \$130 fee for asylum applicants. This change is controversial but must be viewed in context. With few exceptions, all petitions filed by immigrants—those, for example, involving visas, amnesty and citizenship—carry a fee. Until now, a surcharge on these fees has been used to process asylum applications at a cost of \$615 per case. Because 65 percent of all asylum applicants file only after they have been living and supporting themselves in this country for at least six months, an application fee is not unreasonable. Those who cannot pay can apply for a waiver.

These changes have been developed in consultation with immigrants' rights advocacy groups and relevant congressional committees, most of which are generally supportive. The real threat to the plan will probably come from those who favor more radical changes. In our view, though, it makes sense to implement these reforms now and measure their effectiveness before going any farther. The present system, with its widespread abuses, could not be allowed to continue. The new regulations should bring improvements without altering this country's fundamental commitment to provide asylum to those who genuinely qualify.

Nation's Political Asylum System Draws Criticism From Both Sides

Handling of Contrasting Cases Illustrates Inconsistency in Process

By William Branigin
Washington Post Staff Writer

After a four-month voyage for which smugglers charged him \$31,000, Gao Qiu arrived in New York with a false Japanese passport in April 1993. He requested political asylum based on the one-child family planning policies of his native China, was released by airport immigration officials and granted a work permit pending a decision on his case.

When Fauziya Kasinga showed up at Newark International Airport in December 1994 with a false British passport and claimed asylum based on her fear of ritual female circumcision in Togo, she was immediately detained and spent more than a year in a succession of jails.

The two cases with vastly different outcomes—the first largely unnoted and the second highly publicized—illustrate contrasting aspects of a hotly debated issue in America: political asylum.

Groups on opposite sides of the issue generally reflect a debate over the current levels of legal immigration.

Immigrants' rights supporters and other pro-immigration groups criticize the government for detaining asylum seekers who arrive illegally with claims later deemed legitimate.

Advocates of lower immigration levels argue, essentially, that too many are let in. Despite reform efforts by the Clinton administration, they say, the U.S. asylum system is out of control, overwhelmed by fraudulent claims and subject to increasing abuse because of an ever-expanding definition of persecution.

There is little dispute that the system is often arbitrary. Whether an illegally entering asylum seeker gets detained on arrival or "paroled" into the country often depends not on the merits of the claim, but on the availability of detention space.

The Immigration and Naturalization Service (INS) says it has no overall statistics on how many asylum seekers are detained and how many are released on arrival. But it is clear that thousands get into the country by making such claims, even though they may have arrived with false documents or none at all—having handed them off to smugglers aboard an aircraft.

Unlike refugees, who are screened by U.S. officials abroad and whose admissions are limited by annual quotas, asylum seekers are a self-selected



FILE PHOTO

GAO QIU

... was released after questioning

group not subject to any numerical limits. Because asylum, as opposed to refugee status, is granted to people on U.S. soil, an applicant must first reach the United States, which often depends on a smuggling ring's ingenuity, the payment of large bribes and fees en route and the quality of fake documents they rely on to get to the United States.

From about 3,000 applicants a year in the 1970s, the number of asylum seekers has risen sharply, exceeding 146,400 in fiscal 1994, 149,500 last year and 90,700 in the first six months of the current fiscal year, according to the INS. The totals include more than 147,400 cases under a special settlement for Central Americans, but exclude 20,000 to 50,000 "defensive" claims filed each year by people seeking to avoid deportation.

More than 486,500 asylum seekers are in a backlog waiting for their claims to be adjudicated. For all practical purposes, they are immigrants, although they are not counted as such under any of the admissions categories set by Congress. Many have been here for years and are considered unlikely ever to be deported, even if their claims are eventually rejected, because they have put down roots and can use other legal avenues to stay.

In some ways, the system's defects and contradictions are highlighted by the contrasting experiences of Gao Qiu and Kasinga.

The Togolese woman, who was 17 when she fled her West African homeland to avoid an arranged marriage and ritual circumcision, encountered some of the harshest treatment the immigration system has to offer.

She was sent to the notorious Esmor detention center in Elizabeth, N.J., where she says abusive guards shackled and isolated her and where, in June 1995, she was tear-gassed and beaten during a riot. Shipped to prisons in Pennsylvania after the privately run Esmor facility was shut down, Kasinga says she was strip-searched and locked up with common criminals before her ordeal ended with her release in April and the approval of her asylum claim last month.

Gao Qiu (pronounced Gow Chu), the son of a factory accountant, left his wife and child in his native Fujian Province in December 1992 and, steered by an alien-smuggling organization, passed through Hong Kong, London and three Latin American countries before landing at New York's John F. Kennedy International Airport with a forged passport identifying him as a Japanese student. There he claimed asylum.

After some perfunctory questioning, he was not only free to go, but was immediately eligible for a work-authorization document under rules that have since been changed.

Gao Qiu spent two days in New York, then was driven to Washington to work in a restaurant here. He soon became involved in a gang of recent Chinese immigrants—asylum claimants like himself—who preyed on other new Chinese arrivals in the District's Chinatown area. The gang would kidnap their countrymen and hold them in D.C. safe houses, often beating and torturing them, until their friends or families here or in China came up with thousands of dollars in ransom.

Agents of the FBI and the Washington district office of the INS broke up the ring in April 1994, arresting several gang members, including the lanky, bespectacled Gao Qiu, who was known by Chinese aliases meaning "Tall Guy" and "Four Eyes." After a trial last year in U.S. District Court here, he was sentenced to 11 years and three months in prison.

Interviewed in the D.C. jail before he was moved to a federal prison, Gao Qiu maintained his innocence, saying he was "betrayed" by a childhood friend who worked at the same restaurant and drew him into the ring. But



Fauziya Kasinga, who fled her homeland to avoid an arranged marriage and ritual circumcision, was immediately detained and spent more than a year in a succession of jails.

Gao Qiu, 29, acknowledged had come to the United States to work and improve his lot economically, rather than out of any oppressive family planning.

According to State Department officials, more than 90 percent of asylum claimants come from counties of Fujian Province where alien smuggling has become a industry, and the vast majority cases are judged to be fraudulent. An INS evaluator reported coming across hundreds of applications that used false language or listed the same New York address.

"All this abuses the system and wastes personnel and resources," a INS official said. Yet many unqualified claimants get through, he said, there is "tremendous pressure to reduce the backlog," and the easiest way to do so is to grant asylum.

In seeking to address problems with the asylum system, the Clinton administration has stopped automatically giving applicants work permits and has made it a major incentive for them to file claims by illegal aliens seeking asylum.

The administration also is looking to increase detention capacity by contracting with private firms to build a new facility in New York this year and reopen the former Esmor facility in New Jersey under new management in September. At the same time, the INS is moving to "revitalize" its 19-year-old asylum prescreening process.

PHOTOCOPY
PRESERVATION



Iya Kasinga, who fled her West African homeland to avoid an arranged marriage and ritual circumcision, was immediately detained and spent more than a year in a succession of jails before being granted asylum last month.

FILE PHOTO/RY BILL O'LEARY—THE WASHINGTON POST

Qiu, 29, acknowledged that he came to the United States "to" and improve his lot economically rather than out of any opposition to give family planning.

According to State Department officials, more than 90 percent of Chinese asylum claimants come from three counties of Fujian Province, where smuggling has become a cottage industry, and the vast majority of their cases are judged to be fraudulent. One evaluator reported coming across hundreds of applications that used identical language or listed the same New York address.

"All this abuses the system," tying personnel and resources, the official said. Yet many unqualified applicants get through, he said, because there is "tremendous pressure to reduce the backlog," and the easiest way to do so is to grant asylum.

In seeking to address problems with the asylum system, the Clinton administration has stopped automatically giving applicants work permits, which had become a major incentive for phony claims by illegal aliens seeking jobs. The administration also is working to increase detention capacity, contacting with private firms to open a new facility in New York this month and reopen the former Esmor center in New Jersey under new management in September. At the same time, the INS is moving to "revitalize" a four-year-old asylum prescreening program

aimed at making more consistent early decisions on who should be detained and who should be released while their claims are being decided, said INS general counsel David Martin.

"We don't want to use our detention space on people who are likely to prevail on their asylum claims," he said. "We'd rather use those beds for criminals." While the effort predates the Kasinga case, he acknowledged that her ordeal "has focused some attention on the desire of having a good asylum prescreening program."

But even as the government tries to detain more of those who arrive illegally with spurious claims, critics say, it keeps stretching the definition of persecution, which U.S. law says must be based on "race, religion, nationality, membership in a particular social group, or political opinion."

Under pressure from feminist, anti-abortion and gay rights groups, government agencies and immigration judges have ruled since 1994 that applicants may qualify for asylum based on declarations of homosexuality, assertions of women's rights, opposition to coercive birth control, fear of female circumcision and even spousal abuse in their home countries.

Potentially, say opponents of current immigration policies, the expanded asylum criteria could apply to hundreds of millions of women in China, Africa and various Muslim countries.

While no one expects a sudden mas-

sive influx, "there is no question that extending the grounds for asylum is going to give more people an opportunity to get into the United States," said Mark Krikorian, director of the Center for Immigration Studies and an advocate of lower immigration levels. "It's a sort of bait that we wave in front of people around the world" who might not otherwise qualify for admission.

"The system is still beyond broken," said Rep. Elton Gallegly (R-Calif.), a strong supporter of expedited removal procedures and other measures to deter illegal immigration. Of asylum seekers allowed into the country at the JFK and Miami international airports last year on condition they return for hearings on their claims, 94 percent were never heard from again, he said.

"Economic reasons are not a justification for asylum, yet that's what the overwhelming majority are coming here for," Gallegly said. "This is a great conduit to illegally enter the country."

Ultimately, the broadening of "victim status" and the growing numbers of claimants risk undermining public support for America's long-cherished asylum tradition, critics say.

"If the American people see this process as a sham," said Rosemary Jenks of the Center for Immigration Studies, "the end result is that eventually we're not going to have an asylum policy."

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The Boston Globe

A POLICY LOST AT SEA

Worldwide requests for asylum swamp
the immigration system

By Michael Rezendes

It seemed tragically fitting last week that President Clinton's policy on the thousands of Haitians setting out for the Florida coast was engulfed in chaos.

As Panama reneged on a promise to provide haven for up to 10,000 refugees, administration officials pushed forward with plans to send Haitians intercepted at sea to Antigua, Dominica and Grenada. But the ultimate fate of Haitians seeking asylum away from their blood-soaked land remains unclear.

The confusion is apt, considering that the administration has failed to devise either a persuasive response to military leaders in Port-au-Prince or a consistent policy toward Haitians embarking on the perilous journey to the United States.

In several respects, Haiti's military rulers present an isolated challenge to Clinton's floundering State Department. But the tide of Haitian refugees reflects a far-reaching crisis in the US Immigration and Naturalization Service, where a flood of applicants from nations spanning the globe has swamped the asylum system.

According to the INS, the number of asylum applications has climbed sharply, from 26,500 in 1980 to more than 143,000 in 1993. Agency officials are able to process only about 30,000 claims each year. And the resultant backlog — currently pegged at 282,000 cases — is expanding so rapidly that officials have given up processing all but the most recent applications. "Our policy right now is to not work the backlog at all," says Duke Austin, an INS spokesman. "It's last in, first out."

The implications of the disarray at INS are several. Long delays in the review process allow the system to be abused by those seeking to enter the United States for economic reasons rather than political considerations, which are limited to "a well-founded fear of persecution" because of race, religion, nationality or political affiliation.

Typically, Austin says, abuse of the system works like this: An illegal alien arriving in the United States by boat, by airplane or on foot, files an application for political asylum. If the claim is heard and rejected, an appeal is filed and the applicant, taking advantage of predictable delays, disappears into the nation's underground economy. "We have no capacity to look for people who don't show up for hearings," Austin says. "For all practical purposes, if you're in our backlog, the likelihood of us ever working on your case is minuscule."

INS officials say there is no way to know how many aliens have slipped into the country through holes in the asylum process. But they believe such abuse is common, pointing to smugglers of illegal Chinese immigrants who appeared to step up their activities last year, perhaps after learning how to take advantage of delays in the system.

Advocates for those seeking asylum say a significant portion of the INS backlog is attributable to mismanagement and underfinancing of the agency. But because confi-

Continued on Page 21

Continued from Page 20

sion within the INS hurts those with legitimate claims, often by greatly extending the half-dozen years it should take for someone granted asylum to become a US citizen. These advocates have joined with the INS to produce new regulations designed to cut

abuse and streamline the process.

Yet INS officials and advocates agree that the proposed changes not likely to improve management of the agency significantly without additional financing, which will be difficult to secure. And even with more money, the proposed regulations fail to address an array of increasingly urgent issues raised by the collapse of the asylum process.

First among these is the question of whether Americans living in an age of scarcity can afford to grant asylum to all those who are deserving. It is a question brought into especially sharp relief by Haiti, where the widespread brutality of the ruling military leaders may have given thousands of citizens a legitimate claim to having been persecuted.

Deborah Anker, coordinator of the Harvard Law School Immigration and Refugee Program, says Americans are bound – by international law and federal statute – to grant asylum to all those with a well-found-

ed fear of persecution in their native countries.

This legal obligation is based on the principle of nonrefoulement (after the French word *refouler*, which means to turn back), and is traced to the years after World War II. Before the war, Jews who had been denied asylum in various countries returned to Nazi lands, only to be slaughtered as part of Hitler's final solution. That prompted adoption of nonrefoulement in the 1951 United Nations Convention Relating to the Status of Refugees.

Until 1980, political asylum in the United States generally was granted to applicants from a limited number of countries, primarily those under communist governments or dictatorships at odds with US foreign policy. But with federal approval of the Refugee Act of 1980, Americans became obligated to grant asylum to all deserving comers, whatever their nationality.

Of course, Americans aren't the world's only citizens to wonder whether they are

able to provide political asylum – a fact amply demonstrated by Panama's action last week.

But Anker says that the US response to Haitian refugees has been especially chilling because, under Presidents Bush and Clinton, Haitians not only were blocked from entering the country but also were returned to the government they had fled – a direct violation of the principle of non-refoulement. "The United States has been taking refugees and returning them to a country where their freedom and safety is threatened," Anker says. "It's totally shameful and totally illegal."

Not quite. The US Supreme Court last year upheld the forcible repatriation of Haitians captured at sea, ruling that international and federal guarantees of political asylum need not apply in international waters. Nevertheless, whether the United States can afford to grant political asylum to all who are deserving is a question likely to bedevil the nation for years to come – in part because of new efforts to expand the definition of who is eligible.

Former President Bush, for example, said residents of China seeking to escape government policies limiting the number of children a family may bear should be considered for asylum. And Attorney General Janet Reno has said that gays and lesbians persecuted in other lands because of their sexual orientation might also find a haven in the United States.

Dan Stein, director of the Federation for American Immigration Reform, says calls to broaden the definition of persons eligible for asylum confuse political persecution with cultural repression. "The asylum groupies are trying to establish an elite system of immigration at a time when the purposes of asylum have to be trimmed back and much more narrowly defined," Stein says. "It's a point of pride that so many people want to come here, but many of the things people come here for will be ruined by overcrowding unless immigration and asylum are controlled."

Questions surrounding immigration and the moral obligation to provide political asylum are especially vexatious in a land founded in part by settlers seeking freedom from religious persecution. But advocates on both sides of the asylum divide – those who would expand the definition of eligibil-

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ity and those who would narrow it - agree that the most satisfactory resolution to concerns about asylum and immigration center on settling the political disputes at the root of today's refugee crisis.

In many corners of the globe that is easier said than done. In Bosnia, Rwanda and Cambodia, ingrained rivalries cutting across religious, ethnic and ideological lines have defied the best efforts of some of the world's most skilled diplomats. But in Haiti, where military gangsterism appears to be the cause of the current conflict, a settlement might have been easier to come by.

Four years ago, after decades of dictatorial rule, Haiti's contending factions agreed to settle their differences with a presidential election. Jean-Bertrand Aristide prevailed, winning 67 percent of the vote, and was promptly toppled by military officers loyal to Lt. Gen. Raoul Cedras. When neither Bush nor, after him, Clinton appeared willing to assist Aristide's return to power, military leaders pressed their advantage, political oppression spread and the number of refugees seeking passage to the United States surged.

Today, many of those fleeing Haiti say their hopes now rest with Clinton's recent attempts to force the nation's military leaders to step down. Says Steven Forester, a lawyer with Miami's Haitian Refugee Center: "Haitians don't want to come here. They want their president back."

Top 10 countries with people applying for asylum in 1993

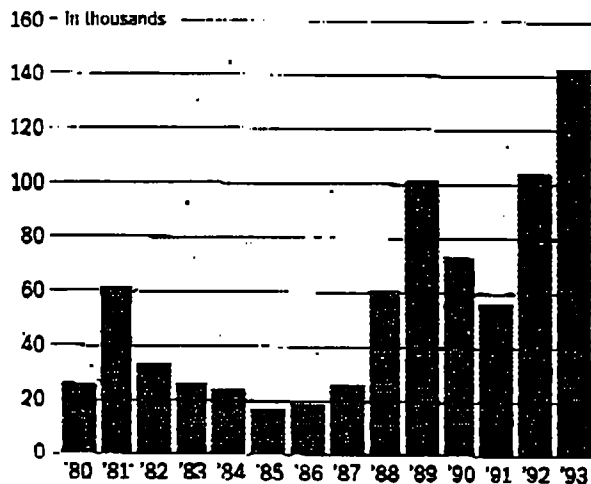
Guatemala	34,045
El Salvador	14,554
China	14,433
Haiti	10,858
Mexico	6,390
India	5,657
Soviet Union (former)	4,550
Pakistan	4,511
Philippines	3,932
Bangladesh	3,764
Total for all countries	
143,118	

RCE: US Immigration and Naturalization Service

Top 10 nations with approved asylum applications in 1993

Soviet Union (former)	590
Haiti	549
India	306
Yugoslavia	301
Ethiopia	285
China	245
Cuba	240
Syria	226
Iran	222
Romania	169
Total for all countries	
5,012	

Yearly asylum applications





*Draft testimony for the record only.
INS will not send a witness to this hearing.*

TESTIMONY OF

PHYLLIS A. COVEN

DIRECTOR OF INTERNATIONAL AFFAIRS

IMMIGRATION AND NATURALIZATION SERVICE

BEFORE

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHT

HEARING ON

VICTIMS OF TORTURE

**May 8, 1996
Rayburn House Office Building
Washington, D.C.**

Introduction

Mr. Chairman and Members of the Subcommittee, I am pleased to be able to submit testimony on the important topic of this hearing, "Victims of Torture." I regret that previously scheduled meetings in Mexico City precluded my direct participation.

The Office of International Affairs of the Immigration and Naturalization Service (INS) coordinates the adjudication of both asylum applications (submitted by people applying from within the United States) and refugee applications (submitted by people applying overseas). In making asylum or refugee determinations, INS decision makers often encounter survivors of torture. These victims sometimes come from countries where torture is a common experience. Some torture survivors report that they were subjected to systematic infliction of physical or psychological pain and suffering in order to gather information, to punish, or to intimidate.

I would like to begin by giving some background on how INS conducts refugee determinations generally, followed by a review of the extensive training INS adjudicators receive on issues such as torture. I will also spend a few moments reviewing with you other issues relating to torture and persecution.

General Background

Less than 2 months ago we celebrated the 16th anniversary of the Refugee Act, signed into law by

President Jimmy Carter on March 17, 1980. The Refugee Act brought the United States domestic law into symmetry with International law, and significantly changed how INS processed refugee and asylum applications.

The term "refugee" is defined as a person who is unable or unwilling to return to his or her country because of "persecution" or a "well-founded fear of persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion.[1] Torture is a form of "persecution" experienced by many refugee claimants.

[Footnote 1: The U.S. counterpart to the "refugee" definition contained in Article 1 of the 1951 Refugee Convention is section 101(a)(42) of the Immigration and Nationality Act (INA). Sections 207 and 208 of the INA provide for the admission of refugees and asylees, respectively. Article 33 in the Convention, the "nonrefoulement" provision, commits the signatories not to return persons to a country where their lives or freedom would be threatened. Its correlative in the INA is section 243(h) dealing with "withholding of deportation."]

Immigration officers located in 24 offices in Europe, Africa, Asia, Latin America and the Caribbean conduct refugee interviews of applicants seeking refugee resettlement in the United States. During Fiscal Year 1997, approximately 97,000 persons were admitted to the United States as refugees.

INS formed the Asylum Officer Corps in 1991 pursuant to the mandate of the 1990 Asylum Regulations which called for the creation of "a corps of professional Asylum Officers who are to receive special training in international relations and international law" INS Asylum Officers adjudicate the

asylum applications of those aliens who are already in the United States and are not in removal proceedings. Immigration judges of the Executive Office for Immigration Review consider asylum applications from aliens in exclusion or deportation proceedings.

In response to President Bill Clinton's immigration initiatives announced on July 27, 1993, the INS and the Department of Justice formulated a plan for comprehensive asylum reform. The plan is a collaborative effort developed after consultations with interested governmental and non-governmental groups and individuals, especially those involved in asylum issues. Attorney General Janet Reno signed the asylum reform regulations, which became effective on January 4, 1995. The aim of these new regulations is to make the United States' asylum system a model of fairness and efficiency, so that those deserving of protection can receive it quickly. Incentives for fraud and abuse have been minimized, and the system is fair and prompt.

For the first time, the resources necessary to do the job were secured by the Administration through the Violent Crime Control Act of 1994. That act resulted in the doubling of the authorized Asylum Officer positions from 150 to 325 and designated the source of funding for them. Our new Asylum Officers come from diverse backgrounds, some with prior government experience, others without; some with prior refugee experience, others without. All of them are selected because of their unique skills, cross-cultural sensitivity, and abilities to identify those applicants deserving of protection in the United States.

Torture Survivors: Training Of INS Adjudicators

All INS asylum and refugee adjudicators are given expansive training on issues relating to torture in

order to sensitize the adjudicators to the unique, humanitarian issues involved in such claims. This training covers such important areas as interview techniques, the effects of post-traumatic stress disorder on the ability to present testimony, and credibility findings. INS frequently invites speakers from Non-Governmental Organizations (NGOs) to participate in the training of INS Officers.

Interview Techniques: Torture

INS Officers are trained to be sensitive to persons who have experienced torture and to understand how the experience of torture can potentially inhibit persons from fully expressing an asylum claim. Officers learn that there are no limits to the human imagination regarding the variety of barbaric acts that can be inflicted on individuals. Torture can take many forms, including beatings, sensory deprivation (such as depriving the victim of sleep, light, or protection from the elements), electric shock, psychological torture, and sexual violence.

According to an excerpt from *"The Dilemma of Revictimization: Survivors of Torture Giving Testimony"* (an excerpt that is reviewed by all INS Asylum Officers):

The dynamics of the disorder are best understood by the interaction between two factors: the painful intrusive memories of the trauma, and the defenses used to ward off these memories. The questioning during investigations, hearings, etc. is an extremely emotional event for the survivor. The story is rarely recounted without an actual sensory reliving of the experience (physical pain, tastes, sounds, and smells). It is not simply a recollection of events.

INS Officers are authority figures and, from the applicant's point of view, foreign government

officials. All INS Officers must be culturally sensitive to the fact that every asylum applicant is testifying in a foreign environment and may have survived experiences that give him or her good reason to distrust persons in authority. The fear of encounters with government officials in countries of origin may carry over to countries of reception; and this fear may cause some asylum applicants to be initially timid and less than forthright at interviews. INS training on this issue is in conformity with guidance provided by the United Nations High Commissioner for Refugees: "A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case." (UNHCR Handbook at paragraph 198.)

Post-Traumatic Stress Disorder

Torture does not always leave only physical scars; it may leave psychological and emotional scars as well. Such trauma sometimes results in "Post-Traumatic Stress Disorder" or PTSD. Trauma may cause memory loss, distortion, or dissociation, and may cause other applicants to block certain experiences from their minds in order not to relive their horror by the re-telling.

INS officers are sensitized to the fact that a torture survivor suffering from PTSD may lose his or her composure when being interviewed. Officers are made aware of the effects of trauma on certain applicants, and the need to formulate interview strategy when confronted with an applicant who may be suffering from a trauma-related condition.

Credibility

INS Officers are also given careful training on the subject of credibility in the context of trauma-sufferers. For example, INS refugee adjudicators are trained that the demeanor of traumatized applicants can vary. Claimants having trauma related conditions might not behave in a manner that comports with their stories. People suffering from PTSD may appear numb or show emotional passivity when recounting past events of persecution. Some applicants may give matter-of-fact recitations of serious instances of mistreatment. In these and other cases, credibility does not hinge on the demeanor of claimants.

NGO Training of INS Officers

Recognizing the widespread use of torture and the problems encountered by survivors of torture, the number of treatment centers for victims of torture have increased around the world in recent years, and the mental health field is learning more about the psychology of victims of torture. There are several such centers in the United States, including:

- The Center for Victims of Torture in Minneapolis;
- The Marjorie Kovler Center for the Treatment of Survivors of Torture in Chicago; and,
- Survivors International in San Francisco.

INS invited the Center for Victims of Torture to give a presentation at the training of new INS Asylum Officers in November, 1995. The presentation was very well-received, and the Training Module prepared by the Center is now a permanent addition to INS training materials. INS has always invited NGO speakers to our training sessions for new Asylum Officers, and we will continue this practice in the future.

The Torture Convention

New international obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also provide for expanded protection in the U.S. for victims of torture. On October 21, 1994, President Clinton deposited the United States instrument of ratification for the Torture Convention with the Secretary General of the United Nations. For the United States, the Torture Convention entered into force on November 20, 1994. Under Article 3 of the Torture Convention, the United States has agreed not to "expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture." In giving advice and consent to ratification of the Convention, the Senate adopted understandings that clarify that Article 3 requires an alien to show that it is more likely than not that he or she would face torture.

Article 3 establishes protection from deportation that converges to some extent with the protection available in the asylum and withholding of deportation provisions of the Immigration and Nationality Act. Both asylum and withholding of deportation, however, are unavailable to persons who have themselves committed certain criminal or persecutive acts or who pose a danger to the national security. Further, a person may establish eligibility for asylum and withholding only based on harm inflicted on account of the specific grounds enumerated by the statute. These statutory forms of relief are not available to persons who fear harm because of other reasons.

While, as mentioned before, many fleeing torture can benefit from the asylum and withholding laws, the coverage of Article 3 of the Torture Convention is different -- in some senses broader and in other senses narrower -- than that of withholding and asylum. Article 3 is more limited than the asylum and

withholding laws in that torture is a strictly defined concept. Torture is an extreme and intentional infliction of suffering that does not include all threats to life or freedom or all persecution that might qualify as severe enough harm to warrant asylum or withholding of deportation. In other ways, however, the obligations of Article 3 are broader than those currently embodied by the statute. Unlike asylum and withholding, Article 3 enumerates no particular protected reasons for which torture must be inflicted. Rather, Article 3 prohibits the return of an alien to a country where he would be tortured for any reason. Further, unlike the withholding provision, Article 3 contains no exceptions from protection for criminal aliens or aliens who pose a danger to the national security. Thus, Article 3 may require the United States to protect an alien from deportation to a certain country when there is currently no statutory relief available.

Although there is currently no statutory provision to implement Article 3 of the Torture Convention, there is administrative authority to furnish protection under Article 3 where appropriate. In addition, the INS is in the process of developing uniform procedures to ensure that no person is returned to a country where he or she would face torture.

Other INS Achievements: Protection against Gender-Related Violence in The Last Year

INS has made other progress recently on issues relating to violence and persecution, most notably in the area relating to gender. Gender-related violence is a new and developing area in U.S. immigration law and procedure. Our achievements during the last twelve months in institutionalizing the protection of refugee and immigrant women from gender-related violence fall into two areas: 1) the publication of a new rule to protect the rights of women and children whose immigration status is linked to an abuser and 2) the release and implementation of gender guidelines for adjudicating asylum claims.

On March 26, INS Commissioner Doris Meissner announced the issuance of new interim regulations implementing the Violence Against Women provisions, signed into law by President Clinton as part of the 1994 Violent Crime Control Act. The new regulations allow abused alien spouses and children of U.S. citizens or lawful permanent residents to "self-petition" to become legal permanent residents. Abusive spouses of some alien women living in the United States have threatened to have them deported if they do not comply with the abusers' wishes. Abusers have refused to file relative petitions that would allow their spouses and children to apply for permanent residence. Others have threatened to withdraw petitions already filed.

The new regulations address this serious problem by preventing the abusive spouse from using the petitioning process as a means to control the alien spouse or child. This ensures that our immigration laws cannot be used to further violence against alien spouses and children and force these people to remain in abusive relationships. In short, battered alien women and children no longer have to depend on their abusers to become lawful permanent residents and can now seek legal status on their own.

INS Asylum Gender Guidelines

The INS Asylum Gender Guidelines were issued almost a year ago, on May 26, 1995. These guidelines are a collaborative effort developed after consultations with interested governmental and non-governmental organizations and individuals. A month after their release, we invited experts on gender related asylum claims, including instructors from the Harvard University Law School, a representative of the Canadian Immigration and Refugee Board, and representatives of the United States government, to help

us provide intensive training on this issue. Every Asylum Officer now receives four hours of specialized training on asylum claims involving gender-related violence.

We are particularly proud of our Gender Guidelines, both because we were only the second refugee processing country to implement such guidelines, and because we were able to work so closely with leading academic, governmental, and non-governmental human rights experts in the development of our guidelines and our training.

The Gender Guidelines provide Asylum Officers with substantive guidance on the cardinal principles of American asylum law that bear on gender-related asylum cases. The Guidelines do not enlarge or expand the grounds for asylum that were specified by Congress and the understanding the courts have reached about those grounds.

The Guidelines also identify procedural difficulties that women who have suffered gender-related violence may face in presenting their cases, and offer solutions to address their special needs. For example, INS recognizes that women who have been sexually assaulted may be unable to disclose these traumatic incidents to male interviewers, and therefore allows its Asylum Offices to assign female adjudicators when personnel resources permit. Similarly, the INS encourages the use of female interpreters for gender-related claims. Additionally, recognizing that women may be reluctant to discuss incidents of sexual violence in front of their children and male relatives, Asylum Officers are encouraged to provide women with the opportunity to be interviewed outside the hearing of other members of the applicant's family.

How The Public Can Help

The INS takes pride in knowing that the real progress we have made recently with respect to persons fleeing torture and other harm was achieved with the direct support and guidance of NGO and human rights monitoring communities in America. I would like to mention three ways in which we hope we can continue to rely on the support of the American public.

First, many torture survivors need *pro bono* or low-cost legal representation. There are many excellent community organizations, including the Lawyers Committee for Human Rights and many university law clinics, that offer specialized training to lawyers who are willing to provide *pro bono* representation to persons affected by torture or other violence.

Second, torture survivors and other applicants benefit greatly from the work of church and community-based groups. Volunteers without legal training are always welcome in these organizations and can make a tremendous difference in the lives of asylum claimants and others seeking relief under the immigration laws..

Lastly, the INS Resource Information Center is working to ensure that information concerning human rights violations is distributed regularly and systematically to all INS adjudicators. Such information may be produced by government agencies, such as the State Department, inter-governmental entities, such as the United Nations, or by non-governmental human rights monitoring organizations. We welcome all the information and support the human rights monitoring community is able to provide us on these issues.

Closing

In closing, I would like to say that INS has made real progress recently addressing the concerns of those in flight from torture and other harms.

In his farewell address on January 14, 1981, former President Jimmy Carter said that: "America did not invent human rights. In a very real sense...human rights invented America." In my view, the advances made by INS recognize and are grounded in the concept that President Carter expressed.

Thank you for the opportunity to testify on this significant topic.

LRM NO: 4338
FILE NO: 2280

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