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Office of the Attorney General
Washington, D. C. 20530

August 27, 1981

31 AUG 1981

File

MEMORANDUM FOR:

Rudolph Giuliani
Associate Attorney General

Doris Meissner
Acting Commissioner, INS

Frank Hodsoll
Deputy Assistant to the President

Richard Hauser
Deputy Counsel to the President

Michael Guhan
National Security Council

Nick Schowengerdt
U.S. Coast Guard

Kevin McIntyre
Department of State

Ted Briggs
Department of State

David Small
Office of the Legal Advisor
Department of State

Carol Williams
Office of Legal Counsel

FROM:

David Hiller *DH*
Special Assistant to
the Attorney General

SUBJECT:

Interdiction of Undocumented Aliens:
Presidential Proclamation and
Executive Order

There is attached the latest revised drafts of the decision memorandum to the President, the Presidential Proclamation and Executive Order concerning interdiction. OMB has circulated these materials for formal agency clearance by the close of business Friday, August 28, 1981.

Thank you.



Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM FOR: The President

FROM: The Attorney General

SUBJECT: Interdiction of Illegal Aliens Arriving
in the United States by Sea.

As part of the Administration's recently announced immigration and refugee policy, you asked that I seek necessary legal authority to conduct a limited program of intercepting illegal aliens traveling to the United States by sea. It is the opinion of the Office of Legal Counsel, with which I concur, that existing Presidential authority is adequate to support the cooperative program now being negotiated with the Government of Haiti. That authority will be clarified and strengthened by the legislation we will submit to Congress in September. In view of the urgency of the situation in south Florida caused by continuing illegal migration, we propose that you authorize the Secretary of State, the Secretary of Transportation, and the Attorney General to proceed with a program of limited interdiction at this time.

There are attached a Presidential Proclamation and Executive Order authorizing and directing that a program of interdiction be undertaken in cooperation with foreign governments. The Proclamation is necessary to invoke the Presidential authority on which the program depends. It contains a finding that the continued "illegal migration by sea to the southeast United States is detrimental to the national interest, suspends the entry of such illegal migrants, and directs the Secretary of State, the Secretary of Transportation, and the Attorney General to take necessary actions. The Executive Order implements the Proclamation.

RECOMMENDATION

The Secretary of State, the Secretary of Transportation, and the Attorney General recommend that you sign the attached Proclamation and Executive Order, authorizing a limited program of interdicting illegal alien traffic by sea.

Approve _____

Disapprove _____

PROCLAMATION TO AUTHORIZE HIGH SEAS INTERDICTION
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The ongoing illegal migration of persons to the United States is a serious national problem, and one to which I have given much attention. Recently, the Attorney General, on behalf of the Administration, presented to the Congress a series of administrative and legislative measures intended to deal comprehensively with this problem. A particularly difficult aspect is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeast United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service, and have threatened the welfare and safety of communities in that region.

Accordingly, after discussion with the governments of affected foreign countries and with agencies of the Executive Branch of our government, I have determined that new and effective measures to curtail these unlawful arrivals are necessary. In this regard, I have determined that international cooperation to intercept vessel trafficking in these illegal migrants is a necessary and proper means of insuring the effective enforcement of our laws.

Now, therefore, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sec-

tions 212(f) and 215(a)(1) of the Immigration and Nationality Act, to protect the sovereignty of the United States, and in accordance with cooperative agreements with certain foreign governments, do proclaim that:

(1) The entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the United States. Such entry is hereby suspended and shall be prevented through interdiction by the United States Coast Guard of certain vessels suspected of carrying such aliens.

(2) The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative agreements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

(3) The Secretary of Transportation shall instruct the Coast Guard to stop and board United States vessels, vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph 2 and Article 4 of the Convention on the High Seas, 1958, and vessels of foreign nations with which we have agreements authorizing such actions, suspected of carrying illegal aliens to the United States; and to make inquiries of those on board, examine documents and take such actions as are necessary to establish the registry, condition and destination of the vessel and the status of those on board the vessel. When these measures suggest that an offense against United States immigration laws, or an offense under appropriate laws of a foreign country with which we have an agreement to assist is being committed,

the Coast Guard shall return the offending vessel and passengers to the country from which they came; provided, however, that no person who is a refugee, who has proper immigration documents, or who is otherwise entitled to proceed will be returned without his consent. These actions are authorized to be undertaken outside the territorial waters of the United States.

(4) The Attorney General, in cooperation with the Secretary of State and the Secretary of Transportation, shall take whatever steps are necessary to ensure the fair enforcement of our laws relating to immigration and the strict observance of our obligations to those who genuinely flee persecution in their homeland.

(5) Funds appropriate to carry out the proclamation and accompanying orders shall be made available.

IN WITNESS THEREOF, I have hereunto set my hand this _____ day of August, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and fifth.

EXECUTIVE ORDER

Direction Relating to the Interdiction of Illegal Aliens

By the authority vested in me as President by the Constitution and statutes of the United States, including sections 212(f) and 215(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(f) and 1185(a)(1)), and in view of the continuing problem of migrants coming to the United States, by sea, without necessary entry documents, upon which I based my August ____ Proclamation ____, it is hereby ordered that, as of the effective date of this Order:

1-101. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative agreements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

1-102. The Secretary of Transportation shall instruct the Coast Guard to stop and board United States vessels, vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph 2 and Article 6 of the Convention on the High Seas, 1958, and vessels of foreign nations with which we have agreements authorizing such actions, suspected of carrying illegal aliens to the United States; and to make inquiries of those on board, examine documents and take such actions as are necessary to establish the registry, condition and destination of the vessel and the status of those on board the vessel. When these measures suggest that an offense against United States immigration laws, or an offense under appropriate laws of a foreign country with which we have agreement to assist is being committed, the

Coast Guard shall return the offending vessel and its passengers to the country from which they came; provided, however, that no person who is a refugee, who has proper immigration documents, or who is otherwise entitled to proceed will be returned without his consent. These actions are authorized to be undertaken outside the territorial waters of the United States.

1-103. The Attorney General, shall, in cooperation with the Secretary of State and the Secretary of Transportation, take whatever steps are necessary to ensure the fair enforcement of our laws relating to immigration and the strict observance of our obligations to those who genuinely flee persecution in their homeland.

1-104. Funds appropriate to carry out the proclamation and accompanying orders shall be made available.

1-105. This Order shall be effective immediately.

MEMORANDUM

September 16, 1981

TO: Ed Harper
Glenn Schleede
Annelise Anderson

FROM: Mike Horowitz

RE: Haitian Refugees

*File
Horowitz
Antidote*

The Immigration and Naturalization Service is facing a budget crisis over the arrival of 1000 to 1500 Haitian refugees every month. Administration policy is to warehouse them in detention facilities and then to exclude them after hearings, including determinations on asylum claims. Unfortunately, a small coterie of Haitian defense lawyers has contrived to tie the exclusion process up in knots, preventing their exclusion and transportation back to Haiti. The cost to the taxpayer in fiscal 1982 merely to operate three detention facilities for Haitians is conservatively estimated at \$70 million — and the cost rises with every day and every boatload.

I believe that the present procedural tangle reflects a managerial problem similar to that faced in California during the President's term as Governor when California was faced with a sudden need to process 100,000 welfare appeals per year.

In 1970, the California Welfare Rights Organization adopted a calculated "spring offensive" to frustrate Governor Reagan's welfare reform by tying up the administrative hearing process — and temporarily succeeded. The state broke the offensive by using modern case management techniques, increasing hearing personnel, and providing full and speedy due process for all claimants.

I believe that many of the same techniques can be brought to bear to solve the Haitian problem. The individual exclusion cases are not complex; most involve the same issue — the political situation in Haiti. Only the volume of the cases and the difficulty of providing full procedural due process have stood in the way of rapid exclusion of illegal immigrants not entitled to asylum, and their transportation back to Haiti.

The Haitian Refugee Center, largely funded by the World Council of Churches, has adopted a political strategy (similar to that of the Welfare Rights Organization) of tying up the system with class action suits and procedural delays in order to generate

pressure on the Administration to resettle the Haitians in the United States with official immigration status.

The response of INS has been to attempt mass processing of Haitians, leading courts to enjoin deportations and exclusions on the ground that Haitians "were unable to adequately present their claims for asylum, and were deprived of full and fair consideration of that which they did present." Haitian Refugee Center v. Civiletti, 503 F. Supp. 442. I agree that the courts have overstepped their bounds in these cases, but INS will continue to face injunctions, restraining orders, and habeas writs until it adopts the opposite strategy: to smother claimants with due process.

My proposal is to concentrate our resources on the exclusion process, i.e., expanding the number of judges, court personnel, and interpreters. Most important, we should provide lawyers at government expense to represent the refugees. The lack of counsel for the Haitians has been the principal bottleneck in the process. Only five or six attorneys nationwide are prepared to represent the refugees at hearings, and they will handle only about three cases a week. Yet, only the presence of zealous counsel for the Haitians will persuade the courts that the Haitians' rights have been fully honored and their claims fully presented. Without counsel, the courts can be expected to continue discovering due process violations at every turn. By giving the refugees all the due process in the world — and fast — we can avoid our problems with the courts, and spare ourselves the budgetary and political problems involved in massive detention centers.

The decision to build a new detention facility in Glasgow, Montana may have been made (at an annual cost of over \$36 million, and in the face of charges that exposure of tropical dwellers to the freezing temperatures of Montana is literally brutal), but it is a temporary solution at best. Without efficient exclusion procedures, our detention camps will be full again by spring. The present policy is the worst of all possible options. We create inhumane and politically unpopular quasi-concentration camps, and produce a new fugitive class of undocumented aliens. Unless we are to change our immigration policy and admit the Haitians as refugees, the only long-range solution is to get fair exclusion hearings underway, with enough due process to withstand court challenges.

At the meeting last Friday, INS officials showed real enthusiasm for this approach. The Deputy Commissioner, Al Nelson, who was a California welfare official when the similar problem arose and

was solved in the early 1970's, appears able and willing to cooperate.

I have talked informally with Ron Zumbrun, director of the Pacific Legal Foundation. Zumbrun headed up the California welfare reform effort, and agrees that the Reagan California model is applicable to this situation. Zumbrun is well known to the President and Ed Meese and could provide invaluable aid and expertise.

Estimates of lawyers, judges, and staff needed for this approach may vary, but one thing is clear: for the price of the Glasgow facility for one year, we could provide every Haitian man, woman, and child all the legal assistance they could use — and settle their cases once and for all.

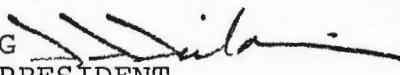
There is one principal legal question affecting this approach: whether provision of government-paid attorneys for Haitian claimants would require INS to provide attorneys for every illegal entrant at Kennedy Airport or the Mexican border. I believe — and INS agrees — that the answer is "no." Establishment of the exclusion hearings program could be accompanied by INS findings that the Haitian case is unique, because of the crisis situation in terms of numbers, the extraordinary need for expedition, the inability of uncounselled Haitians to present their case, and the close questions of fact and law concerning the validity of Haitian asylum claims. In any event, INS referred this question to the Office of Legal Counsel of the Justice Department.

This process was well underway following our Friday meeting, when the Attorney General called INS on Tuesday to inform them that, as a policy matter, he had decided that the United States would not pay for lawyers for Haitian refugees, and that he would not permit the Office of Legal Counsel even to consider the legal question of INS' authority to do so. I have given my opinion of the policy implications of this decision, and feel strongly that this decision is not one for the Attorney General alone.

I will be meeting with Annelise Anderson with a view to referring this matter to ELH.

THE WHITE HOUSE
WASHINGTON
September 22, 1981

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT
AND STAFF SECRETARY

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Executive Order Entitled
"Interdiction of Illegal Aliens" and
Proposed Proclamation Entitled "High
Seas Interdiction of Illegal Aliens"

We have reviewed the referenced documents and the authority of the President, through their issuance, to direct the Coast Guard to interdict vessels, principally Haitian, transporting aliens in violation of the laws of either the United States or a foreign country with which we have a cooperative arrangement. The documents are legally proper, and, while the President's authority in this area is neither well-defined nor free from question, the better view, as expressed by the Office of Legal Counsel, is that the President has the requisite legal authority to initiate the proposed interdiction operation.*/

The principal statutory provision relied upon in support of the President's authority is 8 U.S.C. §1182(f). This Section authorizes the President to "suspend the entry of all aliens or any class of aliens as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." There is some question whether this statute was intended to apply to illegal aliens, given that their entry by definition already is "suspended," and if it was so intended, whether it can be construed to authorize interdiction at as great a distance from the United States as the Windward Passage, some 500-600 miles from the U.S. border. Questions of the same kind emerge where there is reliance upon the authority of the Attorney General "to

*/

It should be noted that the Department of Justice's view as to the strength of the President's authority to authorize interdiction has evolved from an earlier position and recommendation that clarifying legislation should be sought to remove any doubt as to the President's authority, to its current position that sufficient legal bases exist under present law. It is our understanding that the President's tentative decision to proceed with an interdiction program was predicated upon the Department of Justice's earlier position.

control and guard the boundaries and borders of the United States," 8 U.S.C. §1103(a). The legislative history is silent on these particular questions, but it does reflect apprehension on the part of some of the drafters to delegate any authority to the President to suspend entry of aliens, other than in times of war or emergency. The concerns raised by these questions are allayed in large part, however, by the unqualified grant of authority to the President ultimately decided upon by the Congress.

In addition to the statutory authority, support for interdiction can be found in the President's implied Constitutional powers, specifically his powers to exclude aliens and his powers over foreign affairs. The State Department apparently has negotiated an arrangement with the Government of Haiti providing for cooperative enforcement of Haitian and United States immigration and emigration laws. Because immigration has historically been regarded as an area over which Congress has plenary authority and because the extent of the President's independent authority over immigration is not clear, opponents may contend that the President is acting where he has the least authority and that such acts constitute a usurpation of Congressional power. The interdiction becomes increasingly defensible, however, when the implied grant of power is coupled with the statutory support for the interdiction. The interdiction can thus be cast as an exercise of well-recognized Constitutional authority reaffirmed by statute, the strongest posture from which the President can act.

In summary, while there are questions concerning the President's power to authorize the proposed interdictions, he appears to have the necessary authority. Accordingly, we have no objection, from a legal standpoint, to the President's signing the Proposed Executive Order and Proclamation. Because of the likelihood of an immediate court challenge, however, we recommend that the decision, as a matter of policy, receive careful consideration.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1Name of Correspondent: Richard G. Dorman☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Executive Order and proclamation re:
interdiction of illegal aliens**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CV Holland</u>	ORIGINATOR	<u>8110918</u>			<u>1 / 1</u>
<u>CV AT 04</u>	Referral Note: <u>D</u>	<u>8110918</u>		<u>S</u>	<u>81109121</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>

ACTION CODES:

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 C - Comment/Recommendation
 D - Draft Response
 F - Furnish Fact Sheet
 to be used as Enclosure

I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
 S - For Signature
 X - Interim Reply

DISPOSITION CODES:

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17 SEP 1981 RAA- for PFF sin

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/17 ACTION/CONCURRENCE/COMMENT DUE BY: 9/22/81
 SUBJECT: EXECUTIVE ORDER & PROCLAMATION RE INTERDICTION OF ILLEGAL ALIENS

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	JAMES	☐	☐
MEESE	☐	☒	MURPHY	☐	☐
BAKER	☐	☒	NOFZIGER	☐	☐
DEAVER	☐	☒	WILLIAMSON	☒	☐
STOCKMAN	☐	☐	WEIDENBAUM	☐	☐
ALLEN	☒	☐	CANZERI	☐	☐
ANDERSON	☒	☐	FULLER (For Cabinet)	☒	☐
BRADY	☐	☐	HICKEY	☐	☐
DOLE	☒	☐	HODSOLL	☒	☐
FIELDING	☒	☐	MC COY	☐	☐
FRIEDERSDORF	☒	☐	CEQ	☐	☐
GARRICK	☐	☐	OSTP	☐	☐
GERGEN	☒	☐	USTR	☐	☐
HARPER	☐	☐	ROGERS	☐	☐

Remarks:

Could you please give me your comments/edits by c.o.b.
 Tuesday, September 22?

Thank you.

Richard G. Darman
 Deputy Assistant to the President
 and Staff Secretary
 (x-2702)



U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

16 SEP 1981

The President,

The White House,

My dear Mr. President:

I am herewith transmitting a proposed Executive order entitled "Interdiction of Illegal Aliens" and a proposed Proclamation entitled "High Seas Interdiction of Illegal Aliens."

This proposed order and proclamation were submitted by the Department of Justice, after consultation with the Departments of State and Transportation. They have been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The proposed Executive order is approved as to form and legality.

Respectfully,

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

SEP 12 1981



U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

16 SEP 1981

MEMORANDUM

Re: Proposed Executive order entitled
Interdiction of Illegal Aliens and
Proposed Proclamation entitled High
Seas Interdiction of Illegal Aliens

The attached proposed Executive order and Proclamation were submitted by the Department of Justice, after consultation with the Departments of Transportation and State. They have been forwarded for the consideration of this Department as to form and legality by the Office of Management and Budget with the approval of the Director.

The proposed Executive order and Proclamation are designed to permit the Coast Guard to interdict vessels engaged in the transport of aliens in violation of the law of either the United States or a country with which we have an arrangement. The legal issues raised by this proposed interdiction have been discussed in memoranda issued by this Office. See Memorandum for the Attorney General from Assistant Attorney General Olson, August 11, 1981; Memorandum for the Associate Attorney General from Assistant Attorney General Olson, August 5, 1981. The proposed Executive order and Proclamation, which were drafted by this Department, have been reviewed by affected agencies, including the Departments of State, Transportation and Defense, and revised to reflect their concerns.

The proposed Executive order and Proclamation are acceptable as to form and legality.

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

EXECUTIVE ORDER

INTERDICTION OF ILLEGAL ALIENS

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), in view of the continuing problem of migrants coming to the United States, by sea, without necessary entry documents, and in order to carry out the suspension and interdiction of such entry which have concurrently been proclaimed, it is hereby ordered as follows:

Section 1. The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing illegal migration to the United States by sea.

Sec. 2. (a) The Secretary of the Department in which the Coast Guard is operating shall issue appropriate instructions to the Coast Guard in order to enforce the suspension of the entry of undocumented aliens and the interdiction of any defined vessel carrying such aliens.

(b) Those instructions shall apply to any of the following defined vessels:

(1) Vessels of the United States, meaning any vessel documented under the laws of the United States, or numbered as provided by the Federal Boat Safety Act of 1971, as amended (46 U.S.C. 1451 et seq.), or owned in whole or in part by the United States, a citizen of the United States, or a corporation incorporated under the laws of the United States or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted

nationality by a foreign nation in accord with Article 5 of the Convention on the High Seas of 1958 (U.S. TIAS 5200; 13 UST 2312).

(2) Vessels without nationality or vessels assimilated to vessels without nationality in accordance with paragraph (2) of Article 6 of the Convention on the High Seas of 1958 (U.S. TIAS 5200; 13 UST 2312).

(3) Vessels of foreign nations with whom we have arrangements authorizing the United States to stop and board such vessels.

(c) Those instructions to the Coast Guard shall include appropriate directives providing for the Coast Guard:

(1) To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action.

(2) To make inquiries of those on board, examine documents and take such actions as are necessary to establish the registry, condition and destination of the vessel and the status of those on board the vessel.

(3) To return the vessel and its passengers to the country from which it came, when there is reason to believe that an offense is being committed against the United States immigration laws, or appropriate laws of a foreign country with which we have an arrangement to assist; provided, however, that no person who is a refugee will be returned without his consent.

(d) These actions, pursuant to this Section, are authorized to be undertaken only outside the territorial waters of the United States.

Sec. 3. The Attorney General shall, in consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, take whatever steps are necessary to ensure the fair enforcement of our laws relating to immigration and the strict observance of our international obligations concerning those who genuinely flee persecution in their homeland.

THE WHITE HOUSE

, 1981

HIGH SEAS INTERDICTION OF ILLEGAL ALIENS

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

The ongoing migration of persons to the United States in violation of our laws is a serious national problem detrimental to the interests of the United States. A particularly difficult aspect of the problem is the continuing illegal migration by sea of large numbers of undocumented aliens into the southeastern United States. These arrivals have severely strained the law enforcement resources of the Immigration and Naturalization Service and have threatened the welfare and safety of communities in that region.

As a result of our discussions with the Governments of affected foreign countries and with agencies of the Executive Branch of our Government, I have determined that new and effective measures to curtail these unlawful arrivals are necessary. In this regard, I have determined that international cooperation to intercept vessels trafficking in illegal migrants is a necessary and proper means of insuring the effective enforcement of our laws.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including Sections 212(f) and 215(a)(1) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(f) and 1185(a)(1)), in order to protect the sovereignty of the United States, and in accordance with cooperative arrangements with certain foreign governments, and having found that the entry of undocumented aliens, arriving at the borders of the United States from the high seas, is detrimental to the interests of the United States, do proclaim that:

The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens.

IN WITNESS WHEREOF, I have hereunto set my hand this
day of , in the year of our Lord
nineteen hundred and eighty-one, and of the Independence of
the United States of America the two hundred and sixth.

Reagan Orders Refugees Halted On the High Sea

He Directs Coast Guard to Escort Aliens Home

By United Press International

WASHINGTON, Sept. 29 — President Reagan issued an executive order today authorizing the Coast Guard to intercept and turn around ships on the high seas that are suspected of carrying illegal immigrants.

The order is aimed at Haitians, according to a spokesman for Senator Paula Hawkins of Florida. And certain of the measures described for carrying out the order dealt specifically with Haitians.

Previously, the Coast Guard could challenge vessels suspected of carrying illegal aliens only after they entered United States territorial waters.

"The entry of undocumented aliens from the high seas is hereby suspended and shall be prevented by the interdiction of certain vessels carrying such aliens," the President said in a White House proclamation.

A Justice Department spokesman said the new Coast Guard authority included permission to fire weapons if a Haitian vessel did not respond to a call to halt for inspection.

But a spokesman, Thomas Stewart, said it was doubtful the weapons would be needed, because a Coast Guard cutter could get the attention of a small boat "with a fire hose."

Protection for Political Exiles

A White House official said no "refugees" fleeing political persecution in their homelands would be turned back on the high seas. The Coast Guard is authorized to ask the Haitians whether they are political refugees and examine any documents they may have.

A spokesman in the office of Senator Hawkins said the measure was "aimed at the Haitians," adding, "The problem was with Haitians at the moment. Cubans aren't coming in."

The Presidential proclamation said that the orders had been released "in accordance with cooperative arrangements with certain foreign governments." It said that the Government was issuing the order after finding that "the entry of undocumented aliens arriving at the

Continued on Page A28, Column 6

PRESIDENT ORDERS HAITIANS REJECTED

Continued From Page A1

borders of the United States from the high seas is detrimental to the interests of the United States."

White House and Justice Department officials have been negotiating for months with the Haitian Government to curb the flow of illegal immigrants into Florida.

Mr. Reagan's new executive order gives the Coast Guard the authority to do these things:

¶ "To stop and board defined vessels, when there is reason to believe that such vessels are engaged in the irregular transportation of persons or violations of United States law or the law of a country with which the United States has an arrangement authorizing such action."

¶ "To make inquiries of those on board, examine documents and take such actions as are necessary to establish the registry, condition and destination of the vessel and the status of those on board."

¶ "To return the vessel and its passengers to the country from which it came, when there is reason to believe that an offense is being committed against the United States immigration laws, provided that no person who is a refugee will be returned without his consent."

Only Outside Territorial Waters

It stated the actions "are authorized to be undertaken only outside the territorial waters of the United States."

The executive order further orders "strict implementation of our international obligations concerning those who genuinely flee persecution in their homeland."

Mr. Stewart said at the Justice Department, "The Coast Guard has authority to follow its normal boarding procedure." But he added officers were unlikely to fire weapons.

Mr. Stewart said one Coast Guard cutter would be stationed near Haiti at all times. Two Immigration officers will be on board and two interpreters who can speak the Haitian Creole dialect.

"We have discovered by talking to thousands of Haitians that they are very frank in saying they want to come to the U.S. to get a job," Mr. Stewart said. "It's a very rare one who says he's coming because he wants to escape the Government of Haiti."

A Thousand Now Detained

There are 1,062 Haitians detained at a former missile base, known as Krome North, on the edge of the Florida Everglades. The base, officials say, was designed for 530 people.

The overcrowding has forced the United States Immigration and Naturalization Service to send 800 Haitians to Fort Allen, a former naval base, in Puerto Rico. Smaller groups have been sent to Federal facilities in Lake Placid, N.Y.; Otisville, N.Y.; Brooklyn; Morgantown, W.Va.; Lexington, Ky.; and Big Springs, N.Y.

Bodies on the Beach

There is a lesson in the grim sight of those 33 dead Haitians on a Florida beach. Frank Jean, a weak and bleary-eyed survivor, spelled it out yesterday: "Deaths will not discourage others. They will take the chance."

Then why does the Reagan Administration persist in its clumsy policy of interdiction, complete with walrus courts — kangaroo courts at sea? Can it truly believe that people willing to brave weeks of danger in little boats to get out of Haiti will be deterred by a Coast Guard patrol?

Deep down, the answer must be no. Indeed, the Administration has now proposed a wholly different approach. The details are unsatisfactory, but this approach is right. By providing an effective deterrent, it can prevent new tragedies — but only if Congress acts promptly.

The United States has no good answer to the larger Haitian problem, any more than it can answer the problem of poor and oppressed people all over the world. Millions want to come here but America cannot take them all. We must decide, on the basis of some standard of choice, which to admit.

At present the standard is fear. Aliens seeking asylum from persecution may stay; they are deemed refugees. But those seeking economic opportunity may not; they are deemed gate-crashers. To let them stay would be unjust to millions elsewhere waiting patiently to come in legally.

This standard is painfully unsatisfying, especially for Haiti. How callous and legalistic to have to choose between degrees of desperation, between people who are desperately afraid and people who are desperately poor. Yet a choice must be made and no one has yet devised a fairer basis. The practical issue is where, and how, this political-or-economic test is applied.

The Administration resorts to walrus courts at sea because the Haitian cases have become a legal morass on land. About 2,500 are already backed up and, pending appeals, none can be concluded. Months, even years go by — sending an unmistakable signal back to Haiti: *If you can make it to the United States, you won't be sent back, at least not for a long time.*

Governmental frustration is thus inevitable. Yet interdiction is a clumsy antidote. It is so clumsy, in fact, that it seems intended mainly to show impatient Floridians that this Administration, by George, knows how to act.

The direct solution is to ask Congress to clear away the legal morass and set up a simpler administrative system. The Administration has now done that, proposing special asylum hearing officers. Yet the proposal is appallingly crude. The officers would not be independent; they would come from the Immigration Service, whose sensitivity is suspect. And in place of seemingly endless appeals, there would be no appeals whatsoever.

Both objections can be easily met. It wouldn't cost one more cent if the new asylum hearing officers were made answerable to an independent board. And the board itself could serve as a forum for at least some kind of appeal.

Most important, such a board could quickly work off the backlog of cases and deal promptly with new ones. Speed is important; at this moment, justice delayed is tragedy invited. As more and more boat people are shipped back to Haiti, they will transmit a new signal: *Even if you survive the perilous trip, unless you can make a strong case for asylum, they'll send you right back.*

That is not an ideal message, not while Haiti remains so cruel a home for so many people. But at least it would discourage false hopes. At least it would deter death at dawn in the Florida surf.

PRESERVATION COPY



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

June 14, 1982

TO: Richard A. Hauser
Deputy Counselor to the
President

FROM: Stan Morris
Associate Deputy Attorney General

Per our telephone conversation this
afternoon, enclosed is the release issued today
regarding Haitians.



Office of the Attorney General
Washington, D. C. 20530

June 11, 1982

MEMORANDUM TO: Alan Nelson, Commissioner
Immigration and Naturalization Service

FROM: William French Smith *WFS*
Attorney General

SUBJECT: Haitian Detention and Hearings

The first year and a half of this Administration have witnessed considerable improvement in the enforcement of our nation's long-neglected immigration laws. The President has sought and obtained substantial increases in the law enforcement resources of the Immigration and Naturalization Service, and under your guidance, the management and organization of these resources have been significantly enhanced. Additionally, we have submitted to the Congress and are hopeful of early passage of the most far-reaching immigration reforms to be considered in the last fifteen years. Finally, we have taken administrative steps to ensure that existing laws are firmly and fairly enforced.

Among these laws is one requiring that undocumented excludable aliens coming to the United States be detained until it is decided through a hearing whether they legally can enter. This law, like others intended to stop illegal migration, was seriously neglected in the past. Instead, aliens were released into local communities, even though these communities were seriously burdened, and even though many who were released never returned for their hearings. Not surprisingly, all of this caused more, not less, illegal immigration.

To correct this, the Administration began again to detain undocumented aliens, as required by law. This is done even-handedly with aliens of all countries. Exceptions are made where humanitarian considerations dictate, as where minor children or persons requiring medical attention are involved. These considerations are and should be viewed

sympathetically. Already, in the case of the Haitians, some 600 persons have been released for humanitarian reasons.

The statutory policy of detention is critical to the fair and firm enforcement of our immigration laws. Generally, it guarantees prompt administration of the law. In most cases an alien is detained only briefly, usually a few days, before it is decided whether he can stay. Regrettably, however, the Haitians have continued in detention considerably longer than other groups because most of them have filed claims for political asylum here, and because litigation brought on their behalf has stalled already slow processing of their cases. Under current court orders, each Haitian in custody is required to be represented by counsel in connection with the asylum hearings.

We have taken every possible step to get these hearings moving. Federal District Judge Eugene Spellman and I have requested the assistance of the Dade County Bar Association in obtaining free legal services for the Haitians on an emergency basis. Through this pro bono lawyer program supervised by Judge Spellman, already some 200 Haitians are being represented and hearings in their cases have begun. This program can and will be expanded. Moreover, the legislation we have proposed will reform and expedite the cumbersome procedures that now are so strained.

But until the Congress enacts these needed reforms, all interested parties must take additional steps to provide timely and fair hearings to determine the Haitians' right to remain in the United States or be returned to Haiti. To this end, I believe it is appropriate to consider for parole, on an experimental basis, persons now in detention in cases where parole would ensure timely processing of their cases. The purpose of the detention policy thus can be fulfilled while at the same time permitting us to deal practically and fairly with the unique situation of the Haitians now in prolonged detention.

Accordingly, I authorize and ask that you promptly consider for parole all detained Haitians who are represented by individual counsel and who satisfy the conditions set forth below. Parole should be granted only for those for whom proper sponsorships are arranged and who can meet whatever conditions to ensure appearance at their hearings are deemed necessary. Counsel should be required to undertake and continue representation in good faith and in a timely manner after parole.

Parole should be authorized only if the following conditions have been met:

1. Counsel has acted with reasonable promptness and has agreed to adhere to the schedules of appearances as may be established by the District Court and Immigration Court.
2. A responsible sponsor is available to ensure assistance for the applicant in the community.
3. There are reasonable assurances of appearance at subsequent hearings. This would include consideration of all relevant factors including:
 - a. undertaking by applicant, counsel, and sponsor to ensure appearance;
 - b. community ties such as close relatives with known addresses;
 - c. posting of reasonable bond where deemed appropriate;
 - d. agreement to reasonable conditions (such as periodic reporting on whereabouts) where appropriate.

Not all factors need necessarily be present. Reasonable discretion should be applied.

Hearings should be promptly set for those paroled. Statistics on "no shows" should be carefully maintained. Those found excludable should be returned to detention pending return to Haiti or appeal. Appeals should be expedited to the extent practicable.

The program should be carefully explained to all detainees, counsel and sponsors. The District Court should be requested to oversee the presentation of information pertinent to this program.

This program should be commenced on an experimental basis as soon as possible. It is my expectation that substantial additional numbers of lawyers will become available to facilitate this program as it proves workable. However, the overall performance of the program should be monitored closely to determine whether parole is either impeding the hearing process or encouraging further illegal immigration into the United States. In either event, we would consider discontinuing the program.

This program is being established to resolve a particular problem resulting from the extended detention of the Haitians and may be modified or discontinued in the event that these procedures do not bring about the desired result of expedited hearings or if they are abused by any parties or organizations. This program applies only to those Haitians who are now in detention and not to other aliens.

Please convey our intentions with regard to this program to Judge Spellman prior to its initiation and announcement. Naturally, this program will be carried out consistent with any applicable orders of the Court.

I am satisfied that this exercise of my parole authority for humanitarian reasons will enhance the just and timely administration of our laws.



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, JUNE 14, 1982

AG
202-633-2018

Attorney General William French Smith announced today that he will consider for parole for humanitarian reasons undocumented aliens from Haiti who have counsel and have not been found excludable from the U.S. A number of these Haitians have been held in custody by the Federal government for a significant period of time.

This action is intended to help speed the legal hearings for all of the detained undocumented Haitians, many of whom have requested political asylum in the United States, the Attorney General said.

"I am satisfied that this exercise of my parole authority for humanitarian reasons will enhance the just and timely administration of our laws, and is in the public interest", Smith said.

At the same time, the Attorney General said the government will continue firm enforcement measures, including detention of undocumented arrivals and interdiction of alien smugglers, to prevent illegal aliens from entering the United States.

Smith said parole will be considered for those who meet a set of guidelines that include representation by counsel and a responsible community sponsor. In addition, all parties--counsel, sponsor, alien--will have to ensure the alien's appearance at legal hearings.

At present, about 1,910 undocumented Haitians are in custody--some 483 at the Krome facility in Miami, some 725 at Fort Allen in Puerto Rico, and the remainder at other facilities throughout the nation.

It appeared that many of those who would be first eligible for parole are now at Krome. The program will be implemented at the earliest possible time.

About 200 Haitians at Krome are now represented by attorneys in a pro bono lawyer program supervised by U.S. District Judge Eugene Spellman of Miami. Several hundred Haitians at other facilities are also represented by counsel. Hearings before immigration judges have begun in most of these cases.

The Attorney General said he had requested the assistance of the Dade County Bar Association and other local bar associations in providing free legal services to the Haitians, and he was hopeful that the program could be expanded promptly.

Smith noted that legislation now before the Congress will reform and speed the current cumbersome hearing procedures for persons seeking asylum.

"But until the Congress enacts these needed reforms," Smith said, "all interested parties must take additional steps to provide timely and fair hearings to determine the Haitians' right to remain in the United States or be returned to Haiti."

By paroling those represented by attorneys, he said, the government hopes that more attorneys will volunteer to represent the Haitians. In turn, as more attorneys become available, this will speed up the hearing process.

"The purpose of the detention policy thus can be fulfilled while at the same time permitting us to deal practically and fairly with the unique situation of the Haitians now in prolonged detention," Smith said.

In most cases involving illegal aliens from any country, detention is brief until it is decided whether the alien can remain in the U.S., Smith said.

"Regrettably, however, the Haitians have continued in detention considerably longer than other groups because most of them have filed claims for political asylum here, and because litigation brought on their behalf has stalled already slow processing of their cases," Smith said.

"Under current court orders, each Haitian in custody is required to be represented by counsel in connection with exclusion hearings."

There was no immediate estimate of how many Haitians might eventually become eligible for parole.

The Attorney General said that the Federal government will not change its policy of firm enforcement against illegal aliens entering the country. The program to interdict boats carrying illegal aliens from Haiti to the U.S. will continue--as will the policy of holding in custody those who attempt to enter the country without documents.

The Attorney General said the parole program will be experimental and is intended to speed the hearing process and provide some relief for the Haitians. Thus, he would consider discontinuing it if experience shows that the hearing process is being impeded or if further illegal immigration is being encouraged.

Prior to the program announced today, Smith said, the Justice Department had already paroled nearly 700 Haitians, on a case-by-case basis, for humanitarian reasons. These cases include those with close relatives who can confer immigration benefits, minor children, and those with medical problems.

#

I would like to speak to you this afternoon about a particularly difficult aspect of our country's immigration situation -- the undocumented migration from Haiti -- and to tell you of the steps the Administration is taking to deal with this situation.

The Haitian migration is only part of a much larger problem. This country has neglected to enforce our immigration laws. As a result, we have lost control of our borders. This Administration is committed to enforce its laws -- firmly and fairly -- so that all people who choose to come here, from whatever nation, will do so in accordance with our laws.

The Administration has submitted to the Congress, and we are hopeful of passage this summer, far-reaching immigration reforms. But in the meanwhile, we have taken administrative steps to ensure that existing laws are effectively enforced.

Among these laws is one requiring that undocumented excludable aliens coming to the United States be detained until it is decided through a hearing whether they legally can enter. This law, like others intended to stop illegal migration, was seriously neglected in the past.

To correct this, the Administration began again to detain undocumented aliens, as required by law. This is done even-handedly with aliens of all countries. Exceptions are made where humanitarian considerations dictate, as where minor children or persons requiring medical attention are involved. These considerations are and will continue to be viewed sympathetically. Already, in the case of the Haitians, some 700 persons have been released for humanitarian reasons.

The statutory policy of detention is critical to the fair and firm enforcement of our immigration laws. Generally, it guarantees prompt administration of the law. In most cases an alien is detained only briefly, usually a few days, before it is decided whether he can stay. Regrettably, however, the Haitians have continued in detention considerably longer than other groups because most of them have filed claims for political asylum here, and

because litigation brought on their behalf has stalled already slow processing of their cases.

We have taken every possible step to get these hearings moving. Attorney General Smith and Federal District Judge Eugene Spellman have requested the assistance of the Dade County Bar Association in obtaining free legal services for the Haitians on an emergency basis. Through this pro bono lawyer program supervised by Judge Spellman, already some 200 Haitians are being represented and hearings in their cases have begun. This program can and will be expanded. Moreover, the legislation we have proposed will reform and expedite the cumbersome procedures that now are so strained.

But until the Congress enacts these needed reforms, all interested parties must take additional steps to provide timely and fair hearings to determine the Haitians' right to remain in the United States or be returned to Haiti. To this end, we believe it is appropriate to consider for parole, on an experimental basis, persons now in detention in cases where we can otherwise ensure timely processing of their cases. The purpose of the detention policy thus can be fulfilled while at the same time permitting us to deal practically and fairly with the unique situation of the Haitians now in detention.

Accordingly, the Attorney General has authorized and asked that the INS promptly consider for parole all detained Haitians who are represented by individual counsel and who satisfy the conditions set forth below. Parole will be granted only for those for whom proper sponsorships are arranged and who can meet whatever conditions to ensure appearance at their hearings are deemed necessary. Counsel will be required to undertake and continue representation in good faith and in a timely manner after parole.

This program will be commenced on an experimental basis as soon as possible. The overall performance of the program will be monitored closely to determine whether parole is either impeding the hearing process or encouraging further illegal immigration into the United States.

The Attorney General has determined that this exercise of his parole authority for humanitarian reasons will enhance the just and timely administration of our laws.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 14, 1982

FOR: RICHARD A. HAUSER
KAREN K. KWIATT
GENNY MURRAY ✓
DIANNA G. HOLLAND
SHELBY STRUDWICK
PETER J. RUSTHOVEN
MICHAEL LUTTIG
ALICE WILSON
H.P. GOLDFIELD
SUZIE DIETZ
JANE KRATOVIL

FROM: DAVID B. WALLER. *DW*

Your share of the hail and farewell party held last Thursday comes to \$6.25. I would appreciate receiving that amount at your earliest convenience. Thank you.

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THE WHITE HOUSE
WASHINGTON

6/30/82

TO: *Ruth Williamson*

FROM: Richard A. Hauser

FYI ☒ _____

Comment _____

Action _____



JUN 29 1982

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

June 25, 1982

TO: Dick Hauser
Deputy Counselor to the
President

FROM: Stan Morris
Associate Deputy Attorney General

As I promised.

Attachment



UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D.C. 20536

PLEASE ADDRESS REPLY TO

OFFICE OF THE COMMISSIONER

AND REFER TO THIS FILE NO.

CO 893.1-C

23 JUN 1982

Mr. Clarence M. Pendleton, Jr.
Chairman, United States Commission
on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D. C. 20425

Dear Mr. Pendleton:

I have been asked to respond to your May 21, 1982 letter to the President, expressing concern for undocumented Haitian immigrants in the United States.

Where aliens come to the United States without entry documents, our laws draw a rational line between those who may stay and those who may not. Those who can establish a well-founded fear of persecution in their homelands due to race, religion or nationality are granted asylum and may stay in the United States. Those who seek economic betterment must apply for visas to enter our country under the quota system established by statute. Such a line may often be seen as harsh and unsatisfactory to those not allowed to remain in the United States. But it is necessary. The sad fact is that the United States cannot accept all who would like to come.

You stated that it has been alleged that Haitians have been systematically denied asylum due to prejudging of their claims. This allegation is simply not true. All asylum claims are determined on a case-by-case basis as required by law. General reports on conditions in a particular country may at times be considered as part of the relevant background in deciding an individual claim. In each case, however, the particular evidence presented as to whether the claimant has a well-founded fear of persecution is critical. Thus, although processing of Haitian asylum claims has been painfully slow due to legal challenges, seven Haitian asylum claims have been granted so far in fiscal year 1982.

The charges of racism and varying standards to which you refer are similarly without substance. I cannot debate here the merits of the pending litigation you mention. You should know, however, that both cases concern procedures and practices that are no longer in effect. New guidelines on both processing and parole were issued quite some time ago.

The Administration's decision to return to a policy of detaining aliens who attempt to enter our country without documents until their cases are processed is but a part of our overall enforcement effort. Under the law, detention is the general rule, and release is permitted only in certain cases. The decision to enforce the detention mandate applies nationwide to all aliens similarly situated. Of the 953,000 illegal aliens in all categories apprehended by the Immigration and Naturalization Service in fiscal year 1981, 260,000 were detained. The overwhelming majority were not Haitian. The policy is carried out under uniform and fair guidelines concerning parole in special circumstances. Nearly 700 Haitians have been paroled under these guidelines since the policy was instituted last August.

However, we share the concern you express about the unexpected length of time some Haitians have been detained. For most detained aliens, stays in detention are short. But, legal challenges brought on behalf of the Haitians have stalled the processing of their cases and the attorneys required to represent them have been lacking. We have taken every possible step to get the hearings moving through a pro bono attorney program and proposed legislation to reform and expedite the cumbersome procedures now in effect.

Given the unique situation of the Haitians in prolonged detention, the Attorney General has now authorized consideration of parole for those with counsel when certain conditions are met. Parole will be granted only for those for whom responsible sponsorships are arranged and who can meet additional conditions deemed necessary to ensure their appearance at hearings. INS is beginning to review cases to determine those who meet the criteria such as having counsel respond promptly in accordance with court schedules, the posting of bond, if appropriate, and the existence of community ties. These parole procedures unique to Haitians currently in detention are being commenced on an experimental basis due to the unanticipated length of their detention, and do not apply to other nationalities or future Haitian illegal entrants.

The statutory policy of detention is critical to the fair and firm enforcement of our immigration laws. The Haitian cases will now move forward promptly if more attorneys participate in the representation program established by District Court Judge Spellman, local bar associations, the Attorney General, and the INS. Through this laudable effort, as well as consideration of parole for current detainees represented by counsel, we can process these cases fairly and expeditiously. Given your keen interest, I request you personally to encourage community and church groups to assist in finding additional counsel and appropriate sponsorships.

With regard to the legislation now pending in the Congress to reform the adjudicatory procedures under the immigration laws, I believe your stated concerns are considerably misplaced. The Administration strongly supports these much-needed procedural changes. Our current procedures, which are

painstakingly complex and elaborate, have virtually broken down under the weight of dramatically increasing caseloads. Affording multiple opportunities for administrative and judicial review, they are neither workable nor required by fundamental fairness. The Simpson-Mazzoli legislation would guarantee a fair administrative hearing before an independent immigration judge, with the right to assistance of counsel, and an administrative appeal to the new U.S. Immigration Board. Judicial review of final orders of deportation would continue in the Courts of Appeals. Moreover, the legislation expressly preserves the general habeas corpus jurisdiction of the Federal courts in all cases, which was in fact the basis of the District Court's jurisdiction in Laissez-Moi Vagile v. Sava, cited by you as an example of appropriate judicial review. In sum, I am confident that these procedures, including limited opportunity for judicial review, will permit the fair and timely administration of the law that we all desire.

Our immigration laws apply to people of all nationalities and races and must be fairly enforced as to all. While firm enforcement of our laws and control of our borders is vital to our national interest, we are not unmindful of the fact that such enforcement must be fair and humane as well. We strive to achieve both of these goals.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan C. Nelson". The signature is fluid and cursive, with the first name "Alan" being more prominent than the last name "Nelson".

Alan C. Nelson
Commissioner