

# WITHDRAWAL SHEET

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. letter	Edward Schmults to James Baker re: Cubans. 2p.	2/26/82	<del>PS</del>
2. letter	Edwin Harper to Stanley Morris re: Cubans. 2p.	2/20/82	<del>PS</del>
3. letter	Harper to Morris re: Cubans. 2p.	2/20/82	<del>PS</del>
4. briefing paper	re: Ft. Chaffee Operations. (p. 1); 2p.	n.d.	<del>PS</del>
5. briefing papers	re: DOJ issues. 2 copies. 10p. "Detention Facility" (2p), "Federal Prison Construction" (3p), + copy of each paper	n.d.	<del>PS</del>
6. briefing paper	re: Federal Prison and Alien Detention Policy. (p. 3); 3p.	n.d.	<del>PS</del>
7. briefing paper	duplicate of item 4. (p. 1); 2p.	n.d.	<del>PS</del>
8. briefing paper	duplicate of item 6. (p. 3), 3p.	n.d.	<del>PS</del>
9. briefing paper	duplicate of item 4. (p. 1); 2p.	n.d.	<del>PS</del>

CB 10/19/00

### RESTRICTION CODES

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

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

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

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

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

THE WHITE HOUSE  
WASHINGTON

January 26, 1982

MEMORANDUM FOR JAMES BAKER  
ED MEESE

FROM: CRAIG L. FULLER

SUBJECT: CUBAN STOWAWAYS

You have raised a question concerning Cuban Stowaways at the senior staff meeting recently. Attached is a briefing from Justice on the matter and press guidance from State.

State and Justice both indicate that no policy changes have occurred with regard to our handling of stowaways.

My suggestion is to have the Cabinet Council on Legal Affairs hold a briefing on several aspects of refugee policy as soon as the CCLA is finalized. Stowaway procedures could then be reviewed with the appropriate departments and staff present.

\_\_\_agree, schedule for CCLA presentation

other:

cc: Richard Darman  
David Gergen

Attachment

057806CA  
1130  
IM  
00032  
F3017  
F3011  
PR016

# Memorandum

Subject

Cuban Stowaways

Date

January 25, 1982

Kenneth Cribb  
Office of Cabinet  
Administration

From David Hiller  
Special Assistant to  
the Attorney General

Recently, two Cuban stowaways arrived in the United States, both of whom claimed political asylum. One of them, Mr. Rodriguez-Hernandez, who arrived January 13, 1982, was returned to Cuba, after it was determined by INS officials that he was not entitled to asylum in the United States. In accordance with immigration laws and regulations, Mr. Rodriguez-Hernandez was not permitted to enter the United States, but because there was concern for his safety on board the Panamanian vessel upon which he arrived, he was detained in INS custody in Miami. Under the Immigration Act, a stowaway is not entitled to a formal exclusion hearing or to an appeal from the decision of the INS District Director to exclude him. The INS District Director denied the asylum application in part on the basis of an advisory opinion from the Department of State but Mr. Rodriguez-Hernandez had not established a "well-founded fear of persecution," as is required under the 1980 Refugee Act. Arrangements were made by the State Department for Mr. Rodriguez-Hernandez' return to Cuba, and he was flown back to Havana on January 15. On January 19, Cuban officials informed the State Department that Mr. Rodriguez-Hernandez has been released and will not be prosecuted. We have informed the Cubans that our Government will be following the treatment afforded this man in the future.

The other stowaway, Ms. Nunez, also has applied for asylum. Her case is being held in abeyance pending further review by the Departments of Justice and State.

I have attached some press guidance prepared by State concerning the Rodriguez-Hernandez case. If we can provide any further information, please do not hesitate to call upon us.

January 20, 1982

STATE DEPARTMENT PRESS GUIDANCE ON DEPORTED CUBAN

Q. Do you have anything on the Cuban stowaway returned to Cuba Friday?

A. On the evening of January 19, Cuban officials informed our interest section in Havana that Rodriquez has been released and will not be tried.

Q. Was this a result of some action by the United States?

A. I won't speculate about motivation for Cuban action; however, our interest section in Havana did inform the Cubans that the U.S. Government will be following the treatment afforded this man on his return.

Q. When was that?

A. I don't have that.

Q. Did the U.S. make any concessions, agreements or offer any quid pro quo to Cubans?

A. Absolutely not. The U.S. simply expressed concern over treatment to be afforded this man.



Q. Did the State Department recommend denial of asylum to Rodriguez, and on what grounds?

A. Pursuant to the Refugee Act of 1980, and under established procedures with INS, the State Department reviewed the request for asylum and rendered to INS its advisory opinion that the applicant had failed to establish a well founded fear of persecution upon return to Cuba.

Q. Why was Rodriguez returned to Cuba?

A. INS determined that he lacked a legal basis for remaining in the U.S. and ordered that he be excluded. At the request of INS and as a part of our normal diplomatic function, the State Department asked Cuba to take him back and it did.

Q. Were there no options other than returning him to Cuba once his asylum was denied?

A. That should be addressed to INS whose responsibility it is to decide what to do with someone lacking legal basis for remaining in the U.S.

Q. Isn't this the first time a Cuban has been returned to Castro Cuba by the U.S.?

A. He is the only Cuban who has been returned to Cuba since enactment of the 1980 Refugee Act, which applied the same standards to requests for asylum regardless of nationality of applicant. We have tried to return other Cubans, who are excludable under U.S. law but Cuba has so far refused to take them back.

Q. Are you referring to criminals and other persons excludable under U.S. law who came to the U.S. from Mariel in 1980?

A. Yes.

Q. The tens of thousands of other Cubans who entered in the Mariel boatlift have been allowed to remain. How come?

A. The refusal of the Cuban government to allow their return left no alternative but to allow such persons to remain in the U.S. with some sort of regularization of their status. Accordingly, legislation was proposed that would extend special entrant status to eligible persons who arrived before a certain date, thereby giving them legal basis for remaining.


- Q. From the treatment of Rodriguez he was not a criminal and from some of what you have said, this does seem to represent a change in Administration policy. Is that so?
- A. The policy has not changed. Last July, in hearings before the Senate subcommittee on immigration and refugee matters, Administration officials clearly stated policy to be in accordance with the Immigration and Nationality Act, to detain and exclude aliens arriving in the U.S. without documentation who are found inadmissible to this country, regardless of their nationality (July 30 by the Attorney General, July 31 by Assistant Secretary Enders). As it happens, Rodriguez is the first Cuban known to have come directly from Cuba and have entered the U.S. illegally since the July statement.

THE WHITE HOUSE

WASHINGTON

January 27, 1982

MEMORANDUM FOR JAMES A. BAKER, III

FROM: Jim Cicconi   
SUBJECT: Cuban Stowaway

Suggest DOJ paper within one week on:

1. what is our policy on Cuban arrivals (not just stowaways);
2. why the recent stowaway was returned;
3. DOJ analysis on whether the decision was consistent with the law and with our policy; and
4. what steps need to be taken, if any, as a result of #3 above.

Reason: Press Office (Pete R.) says this is not going away, press is still on it.

High-ups in DOJ have also told me that if someone gets ahold of the returned stowaway's asylum application, we will be very hard-put to explain (Freedom of Info).

THE WHITE HOUSE  
WASHINGTON

January 28, 1982

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Craig L. Fuller

SUBJECT: Cuban Stowaways

The White House has indicated that a procedural review is underway in the wake of the recent return of a Cuban stowaway. As part of that review, a desire has been expressed for a fact paper that would address the following points:

1. What is our current policy on Cuban arrivals (including, but not limited to, stowaways);
2. Why the recent stowaway was returned to Cuba;
3. In the opinion of the Justice Department, was the decision to return the stowaway consistent with the law and with our policy; and
4. What steps might be desirable as a result of the answer to #3 above.

Any other factual information relevant to the subject and the above questions would also be helpful.

It would be appreciated if this fact paper could be forwarded to the Office of Cabinet Affairs by Friday, February 5, 1982.

THE WHITE HOUSE  
WASHINGTON

11/11/81  
2/5/82  
HAT

February 2, 1982

MEMORANDUM TO JAMES A. BAKER III  
MICHAEL K. DEEVER  
EDWIN MEESE III

FROM: RICHARD S. WILLIAMSON *Rich*

SUBJECT: HAITIAN/CUBAN SITUATION IN DADE COUNTY AND  
SOUTHERN FLORIDA

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A few days ago this issue was raised at Senior Staff meeting. Attached is some background material on the matter. As you will note, the problems are acute. Further, there are unwarranted, but nonetheless damaging, racial overtones.

I suggest that we cannot take a posture of benign neglect on this issue.

Attachment

cc: Craig Fuller  
Richard Darman

THE WHITE HOUSE

WASHINGTON

February 2, 1982

MEMORANDUM FOR RICHARD S. WILLIAMSON

FROM:

J. STEVEN RHODES *Steve*

SUBJECT:

IMPACT OF CUBAN/HAITIAN ENTRANTS ON  
DADE COUNTY AND SOUTH FLORIDA

Southern Florida and Dade County, in particular, have experienced substantial dislocation as a function of the Cuban and Haitian refugees. Approximately 100,000 Cuban and 25,000 are still located in Dade County. This concentration of refugees has caused dislocation to Dade County in the following areas, specifically:

- 1) Cash Benefits and AFDC
- 2) Health
- 3) Education
- 4) Criminal Justice

I have attached a copy of an analysis prepared by the Intergovernmental Coordinator in Dade County that details the above-mentioned items. Additionally, I have attached a copy of an earlier memo to you that was raised at a senior staff meeting regarding proposed regulation changes by the Department of Health and Human Services.

I spoke to Merritt Stienheim, the County Manager for Dade County this morning. He has again expressed their desire to work with us to resolve their problems.

## MEMORANDUM

ATTACH. 2

TO Dewey Knight  
Asst. County Manager

DATE November 12, 1981

FROM Eileen Maloney  
Intergovernmental Coordinator

SUBJECT Impact of Cuban/Haitian Entrants  
on Services Provided by Metro-Dade  
County

*Eileen Maloney*

Pursuant to your request below are bullets identifying the fiscal impact of Cuban and Haitian Entrants on Metropolitan Dade County. These impact statements are compiled from reports prepared by: Dade County Public Schools, Department of Human Resources, Health Department, Criminal Justice Council, and the Community Action Agency. Following these impact statements is a fiscal analysis of past, present and future costs and additional attachments.

Cash Benefits Information

- As of September 30, 1981 30,153 entrants were receiving cash assistance under Fascell/Stone.
- As of September 30, 1981 6,408 entrants were receiving AFDC.
- The total entrants receiving cash assistance as provided under Fascell/Stone as of September 30, are 36,561.
- 77 percent of the entrants receiving cash assistance as of 9/30/81 were Cubans.
- 23 percent of the total entrants receiving cash assistance of 9/30/81 were Haitians.
- Approximately 17.5 percent of the total entrants receiving cash assistance as of 9/30/81 are eligible for AFDC.
- The maximum payment for a family of four is \$230.00/mo.
- The maximum payment for an individual is \$111.00/mo.

Health

- Jackson Memorial has spent \$18.2 million for refugee services from the 10/1/79 through 8/31/81. Approximately \$12.3 million has been reimbursed leaving an outstanding balance of \$6 million still awaiting reimbursement.
- Since October 1, 1979 inpatient services at Jackson have averaged \$1,757 per Haitian patient.
- Since 10/1/79 inpatient services at Jackson averaged \$3,567 per Cuban patient.
- In 1979-80, there were 7,775 births at Jackson Memorial Hospital, of which 899 deliveries were to Haitian mothers or 12 percent of total deliveries.
- Jackson Memorial Hospital estimates there will be 8,500 deliveries in FY 80-81 of which 1,450 will be to Haitian mothers or 17 percent.
- 30 percent of the diagnosed tuberculosis cases in Dade County are Haitians.
- In 1981, 30 percent of the patients in the Health Department's Maternal Health Program were refugees/entrants.
- 24 percent of the Health Department's WIC recipients are Haitians.
- The percentage of refugees served by the Health Department's Child Health Program has increased from negligible levels prior to 1978 to 18.2% of pediatric patients in 1981.



- Two of Dade County's Public Health Units exceed 35% in the proportion of Haitian patients they serve.
- The Health Department inspects the Krome Avenue facility twice weekly to review the adequacy of housing and safety of food and water.
- The Department of Human Resources, Office of Health Services has spent \$143,364 between January 1981 and September 1981 for services in their program areas.
- Of the total costs incurred between January 1981 - September 1981, 40 percent has been incurred by the South Dade Community Health Center. This represents 1,663 patient visits by Cubans and Haitians during that stated time period. Services include general medicine, emergency mental health and dental.
- 20 percent of the total costs incurred by the Office of Health Services have been for nursing home care equal to 465 patient days between January 1981 - September 1981.
- 20 percent of the total costs incurred by the Office of Health Services has been in the Comprehensive Alcohol Program. 92 percent of that cost is for residential treatment.

#### Education\*

- Dade County Public Schools estimate that approximately 16,937 Cuban and Haitian students will require educational services during the 1981-82 school year.
- At an average cost of \$976 per pupil Dade County Public schools expect their 1981-82 school year costs to exceed \$16.5 million.
- Of the total 1981-82 school year costs the largest percentage of expenditure will be in direct instruction and pupil housing.
- Dade County Public Schools have had to absorb a non-English speaking population that is larger than 96% of the school districts in the U.S.
- In addition to the costs for services to Cuban and Haitian students Dade County Public schools estimate that approximately 12,500 other students of limited English proficiency will require comparable programs and services. These students represent a wide range of ethnic, national and linguistic backgrounds from the Caribbean and South America to Europe, Africa and the near and Far East.
- The new refugee student population represents approximately one-third the number of students in Oakland School District in California and the Buffalo District in New York.

\*This material was compiled based upon the Dade County Public Schools Report Entitled "Programs and Services Provided New Cuban/Haitian Students, Projected Supplementary Costs, Trends and Needs for Federal Legislation", September 15, 1981, and testimony presented by Paul Bell, Associate Superintendent of Dade County Public Schools.

#### Criminal Justice

- Between April 21, 1980 and January 30, 1981, Dade County, seven local cities and one State agency incurred \$5,310,733 of criminal justice related expenses for Cuban/Haitian entrants. Of that \$3,058,670 has been approved for reimbursement, leaving an outstanding balance of \$2,252,063.
- It is estimated that the Dade County Police Department will incur \$1.5 million over and above normal operating costs attributable to Cuban/Haitian entrants between February 1, 1981 and September 30, 1981.
- It is estimated that the courts will incur \$260,008 of costs related to Cuban/Haitian entrants between the period of February 1, 1981 and September 30, 1981.
- Of the total costs incurred by the courts 54 percent is for case processing costs with an average of 71 felony cases being processed monthly.
- 40 percent of the total court costs are incurred for Judicial support, i.e. interpreter fees, expert witness fees, Court appointed attorneys, etc.

COST BREAKDOWN FOR COUNTY SERVICES  
TO CUBAN/HAITIAN ENTRANTS

Type of Service/Institution	Past Costs 1/10-12/80	Present Costs 1/81-9/81	Future Costs 10/81-9/82
Jackson Memorial Hospital	\$ 5,547,053 <sup>(1)</sup> (10/1/79-9/30/80)	\$12,502,477 <sup>(1)</sup> (10/20-9/81)	\$14,215,317
Health Department	\$ 1,648,000 <sup>(2)</sup>	\$ 2,132,232 <sup>(2)</sup>	\$ 2,713,392
Dept. of Human Resources- Office of Human Development	\$ 139,963 <sup>(3)</sup>	\$ 369,400	\$ 475,397
Dept. of Human Resources Office of Health Services	\$ 238,788 <sup>(4)</sup>	\$ 143,364	\$ 178,524
Dade County Corrections & Rehabilitation	\$ 1,972,082 <sup>(5)</sup>	\$ 1,110,224	\$ 1,881,720
Metro-Dade Police Dept.	\$ 1,084,006 <sup>(6)</sup>	\$ 1,500,000	\$ 2,542,500
Metro-Dade County Courts	\$ 251,209 <sup>(7)</sup>	\$ 260,008	\$ 440,784
Dade County Medical Examiner	\$ 53,618 <sup>(8)</sup>	\$ 55,200	\$ 93,600
Dade County Welfare	\$ 5,000 <sup>(9)</sup>	-0-	See below <sup>(10)</sup>
Sub Total	\$10,939,719	\$18,072,905	\$22,541,234
Less receipts	\$ 9,316,766	\$ 6,754,623	0
Total	<u>\$ 1,622,953</u>	<u>\$11,318,282</u>	<u>\$22,541,234</u>

- (1) Jackson Memorial Hospital has received \$12,280,869 in reimbursement to date leaving a balance of \$5,768,661. This does not include the potential \$2 million advance recently negotiated.
- (2) Health Department received \$1,375,000 in Federal reimbursement for 1980 and \$20,807 in 1981.
- (3) 1980 costs were reimbursed under Title V of Refugee Education Assistance Act of 1980.
- (4) 1980 costs were reimbursed under Title V of Refugee Education Assistance Act of 1980.
- (5) \$1,540,241 has been approved for reimbursement.
- (6) \$258,800 has been approved for reimbursement.
- (7) \$180,346 has been approved for reimbursement.
- (8) \$31,575 has been approved for reimbursement.
- (9) 1980 costs were reimbursed under Title V of Refugee Education Assistance Act of 1980.
- (10) If the proposed regulations are adopted and all 30,153 entrants currently receiving general assistance under Title V of the Refugee Education Act of 1980 were eliminated from the program the County's potential liability at the Welfare Department for one month @ \$136.00/client would be \$4,100,808.

CC: Sergio Pereira, Asst. County Manager  
Willaim Talbert, Exec. Asst. to County Manager  
Tony Ojeda, Asst. to County Manager  
Gary Dellapa, OMB  
Hall Tennis, County Manager's Office  
Silvia Unzueta, County Manager's Office

THE WHITE HOUSE

WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

DATE: February 8, 1982

NUMBER: 044251CA

C.O.B., Thursday,  
DUE BY: February 11, 1982

SUBJECT: Cuban Stowaways

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input type="checkbox"/>	Baker	<input type="checkbox"/>	<input type="checkbox"/>
Vice President	<input type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input type="checkbox"/>
State	<input type="checkbox"/>	<input type="checkbox"/>	Anderson	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input type="checkbox"/>	<input type="checkbox"/>	Clark	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input type="checkbox"/>	Darman (For WH Staffing)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input type="checkbox"/>	<input type="checkbox"/>	Jenkins	<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input type="checkbox"/>	Gray	<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input type="checkbox"/>	<input type="checkbox"/>	Beal	<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input type="checkbox"/>	<input type="checkbox"/>	Harper	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor	<input type="checkbox"/>	<input type="checkbox"/>	Cicconi	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Counsellor	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input type="checkbox"/>	CCNRE/Boggs	<input type="checkbox"/>	<input type="checkbox"/>
CEA	<input type="checkbox"/>	<input type="checkbox"/>	CCHR/Carleson	<input type="checkbox"/>	<input type="checkbox"/>
CEQ	<input type="checkbox"/>	<input type="checkbox"/>	CCCT/Kass	<input type="checkbox"/>	<input type="checkbox"/>
OSTP	<input type="checkbox"/>	<input type="checkbox"/>	CCFA/McLaughry	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	CCEA/Porter	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	CCLA/Uhlmann	<input checked="" type="checkbox"/>	<input type="checkbox"/>

REMARKS:

This paper was requested as a result of recent stowaway incidents. Issues that need to be reviewed should be identified and scheduled for discussion at a meeting of the CCLP. May we have comments by Thursday, February 11, please.

RETURN TO:

Craig L. Fuller  
Assistant to the President



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

February 5, 1982

MEMORANDUM FOR: Craig Fuller  
Office of Cabinet Affairs

FROM: William French Smith *WFS*  
Attorney General

SUBJECT: Cuban Stowaways

By a memorandum of January 26, you requested a paper covering certain questions raised by the recent return of a Cuban stowaway.

Cuban nationals for many years have arrived in the United States by various means. Although many have come with immigrant visas, many more have come since Castro without documentation. It was in fact the policy of the Kennedy and Johnson Administrations openly to invite Cubans to flee to the United States. These persons were admitted through a discretionary grant of "parole" by the Attorney General. In most cases persons thus paroled were later permitted to become permanent resident aliens and then citizens, in accord with the Cuban Refugee Act of 1966.

Subsequent legislation has made clear that the parole authority of the Attorney General is strictly confined to extraordinary cases, such as medical emergency. Thus, persons who now come to the United States without visas can legally remain only if they establish a claim of asylum.

Under the Refugee Act of 1980, asylees must satisfy the same standard as refugees, i.e., that they have "a well-founded fear of persecution" if returned to their homeland. The law makes no distinction between Communist and non-Communist countries, and requires that asylum determinations be made on a case-by-case basis.

Until the asylum claim can be resolved, a person trying to enter the country without documentation is detained, like the Haitians, although exceptions are made under the law for rapid disposition of stowaway cases, in order to discourage the practice. Specifically, stowaways may be summarily removed from the United States without a formal exclusion hearing or opportunity to appeal.

Where a claim of asylum is made by a stowaway, the claim is decided by the INS District Director, in part on the basis of advice from the Bureau of Human Rights and Humanitarian Affairs at the State Department. To expedite the decision, the State Department advice is conveyed by telephone, in accordance with standard operating instructions. In the meanwhile, the stowaway may be removed from the vessel if the atmosphere on board makes it appropriate, or where the departure of the vessel is imminent. If the claim is denied before the vessel departs, the stowaway is retained on board.

The case of Andres Rodriguez-Hernandez, and the four questions set out in your memorandum should be considered in the light of this history and procedure.

1. Our current policy concerning Cuban arrivals is governed by the Immigration and Nationality Act and the Refugee Act of 1980. Under these laws, as noted above, anybody who arrives without a visa will be returned unless they establish a claim of political asylum. Stowaways receive the more summary treatment I have described. Thus, for example, many of the Mariel Cubans detained in federal facilities have been denied asylum and would be returned to Cuba if possible.

2. The stowaway was returned because the INS District Director determined, on the advice of the State Department, that he had not established an asylum claim. Because the case involved a stowaway, the advice from State was conveyed by telephone. Contrary to INS and Justice operating procedures for consideration of unusual or complex cases and those with international implications, the matter was not reported to the INS Central Office or Justice Department officials. Rodriguez' removal from the country aboard a charter aircraft was arranged by INS and the State Department. State has informed us that the Government of Cuba released Rodriguez and will not prosecute him.

3. The record developed does not permit a conclusive determination as to whether the asylum claim was invalid. The facts presented required, at a minimum, further inquiry. The failure to report the matter to the INS Central Office and to higher officials within the State Department precluded such review.

Concerning policy, that of the Justice Department in all cases is to apply the law, including immigration law, fairly and accurately. To do so in an asylum case requires a careful assessment of the facts in a given case, in the context of the conditions

in a particular country. Denial of asylum to Cubans who cannot in fact establish a well-founded fear of persecution in Cuba would be consistent with our policy of discouraging mass migrations to the United States, like the Mariel boatlift, of people who may be motivated by economic conditions.

4. The Justice Department and INS are taking steps to guarantee that unusual or difficult cases receive appropriately high-level consideration. We are also pursuing an internal inquiry into the handling of the Rodriguez case to determine whether particular corrective steps, including personnel action, may be appropriate. Operating procedures in stowaway cases are being reviewed to insure that asylum determinations are not made summarily and without opportunity for a thorough consideration of colorable claims. In that regard, the cases of three stowaways who arrived since Rodriguez are instructive.

The three stowaways, of whom two were Cuban and one was Costa Rican, arrived on a boat from Costa Rica. The two Cubans, who had been in Costa Rica for about two years, applied for asylum. Because questions requiring review were raised that could not be answered prior to their vessel's sailing, they were removed from the vessel. Their asylum applications have been sent to the State Department for review, and no action will be taken pending that review. One of the Cubans is the wife of a lawful permanent resident of the United States and has, in accordance with INS procedures, been paroled into the sponsorship of her husband. The other Cuban is being detained in INS custody pending a determination of his request for asylum. The Costa Rican stowaway did not apply for asylum, and remained in the custody of the carrier until it left the United States, again in accordance with lawful INS procedures.

The Justice Department, INS, and the State Department are jointly reviewing asylum practices and policies to insure their lawfulness, fairness, and consistency.

THE WHITE HOUSE  
WASHINGTON

January 28, 1982

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Craig L. Fuller *CLF*

SUBJECT: Cuban Stowaways

The White House has indicated that a procedural review is underway in the wake of the recent return of a Cuban stowaway. As part of that review, a desire has been expressed for a fact paper that would address the following points:

1. What is our current policy on Cuban arrivals (including, but not limited to, stowaways);
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It would be appreciated if this fact paper could be forwarded to the Office of Cabinet Affairs by Friday, February 5, 1982.



THE WHITE HOUSE

WASHINGTON

February 13, 1982

MEMORANDUM FOR ED MEESE  
~~JIM BAKER~~

FROM: CRAIG L. FULLER 

SUBJECT: Cuban Stowaways

You have asked for a review of the way in which the administration handles stowaway cases in light of recent situations in which Cubans entered this country.

The Justice Department has responded with the report which is attached. At this point, I plan to follow-up on the matter in a month for possible review within the Cabinet Council on Legal Policy. At that time, DOJ will have completed a more extensive study of how stowaway cases might better be dealt with. OMB and OPD concur and their statements are attached.

If you wish further information or expedited handling, let me know.

cc: Dick Darman

Attachments





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

February 5, 1982

MEMORANDUM FOR: Craig Fuller  
Office of Cabinet Affairs

FROM: William French Smith *WFS*  
Attorney General

SUBJECT: Cuban Stowaways

By a memorandum of January 26, you requested a paper covering certain questions raised by the recent return of a Cuban stowaway.

Cuban nationals for many years have arrived in the United States by various means. Although many have come with immigrant visas, many more have come since Castro without documentation. It was in fact the policy of the Kennedy and Johnson Administrations openly to invite Cubans to flee to the United States. These persons were admitted through a discretionary grant of "parole" by the Attorney General. In most cases persons thus paroled were later permitted to become permanent resident aliens and then citizens, in accord with the Cuban Refugee Act of 1966.

Subsequent legislation has made clear that the parole authority of the Attorney General is strictly confined to extraordinary cases, such as medical emergency. Thus, persons who now come to the United States without visas can legally remain only if they establish a claim of asylum.

Under the Refugee Act of 1980, asylees must satisfy the same standard as refugees, i.e., that they have "a well-founded fear of persecution" if returned to their homeland. The law makes no distinction between Communist and non-Communist countries, and requires that asylum determinations be made on a case-by-case basis.

Until the asylum claim can be resolved, a person trying to enter the country without documentation is detained, like the Haitians, although exceptions are made under the law for rapid disposition of stowaway cases, in order to discourage the practice. Specifically, stowaways may be summarily removed from the United States without a formal exclusion hearing or opportunity to appeal.

Where a claim of asylum is made by a stowaway, the claim is decided by the INS District Director, in part on the basis of advice from the Bureau of Human Rights and Humanitarian Affairs at the State Department. To expedite the decision, the State Department advice is conveyed by telephone, in accordance with standard operating instructions. In the meanwhile, the stowaway may be removed from the vessel if the atmosphere on board makes it appropriate, or where the departure of the vessel is imminent. If the claim is denied before the vessel departs, the stowaway is retained on board.

The case of Andres Rodriguez-Hernandez, and the four questions set out in your memorandum should be considered in the light of this history and procedure.

1. Our current policy concerning Cuban arrivals is governed by the Immigration and Nationality Act and the Refugee Act of 1980. Under these laws, as noted above, anybody who arrives without a visa will be returned unless they establish a claim of political asylum. Stowaways receive the more summary treatment I have described. Thus, for example, many of the Mariel Cubans detained in federal facilities have been denied asylum and would be returned to Cuba if possible.

2. The stowaway was returned because the INS District Director determined, on the advice of the State Department, that he had not established an asylum claim. Because the case involved a stowaway, the advice from State was conveyed by telephone. Contrary to INS and Justice operating procedures for consideration of unusual or complex cases and those with international implications, the matter was not reported to the INS Central Office or Justice Department officials. Rodriguez' removal from the country aboard a charter aircraft was arranged by INS and the State Department. State has informed us that the Government of Cuba released Rodriguez and will not prosecute him.

3. The record developed does not permit a conclusive determination as to whether the asylum claim was invalid. The facts presented required, at a minimum, further inquiry. The failure to report the matter to the INS Central Office and to higher officials within the State Department precluded such review.

Concerning policy, that of the Justice Department in all cases is to apply the law, including immigration law, fairly and accurately. To do so in an asylum case requires a careful assessment of the facts in a given case, in the context of the conditions

in a particular country. Denial of asylum to Cubans who cannot in fact establish a well-founded fear of persecution in Cuba would be consistent with our policy of discouraging mass migrations to the United States, like the Mariel boatlift, of people who may be motivated by economic conditions.

4. The Justice Department and INS are taking steps to guarantee that unusual or difficult cases receive appropriately high-level consideration. We are also pursuing an internal inquiry into the handling of the Rodriguez case to determine whether particular corrective steps, including personnel action, may be appropriate. Operating procedures in stowaway cases are being reviewed to insure that asylum determinations are not made summarily and without opportunity for a thorough consideration of colorable claims. In that regard, the cases of three stowaways who arrived since Rodriguez are instructive.

The three stowaways, of whom two were Cuban and one was Costa Rican, arrived on a boat from Costa Rica. The two Cubans, who had been in Costa Rica for about two years, applied for asylum. Because questions requiring review were raised that could not be answered prior to their vessel's sailing, they were removed from the vessel. Their asylum applications have been sent to the State Department for review, and no action will be taken pending that review. One of the Cubans is the wife of a lawful permanent resident of the United States and has, in accordance with INS procedures, been paroled into the sponsorship of her husband. The other Cuban is being detained in INS custody pending a determination of his request for asylum. The Costa Rican stowaway did not apply for asylum, and remained in the custody of the carrier until it left the United States, again in accordance with lawful INS procedures.

The Justice Department, INS, and the State Department are jointly reviewing asylum practices and policies to insure their lawfulness, fairness, and consistency.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

FEB 11 1982

MEMORANDUM FOR: CRAIG FULLER  
FROM: ED HARPER *EH*  
SUBJECT: Cuban Stowaways

Overall, we agree with the points raised in the Attorney General's memo. While we do not believe the stowaway issue requires immediate Cabinet Council attention, the memo does raise issues about immigration procedures and status, especially with regard to Cubans, that may require clarification, reassessment or decision. These issues include:

Opportunities for Remaining Legally in the U.S. The Attorney General states that those who arrive without visas can legally remain only if they establish an asylum claim. However, other opportunities may exist. Some aliens as relatives of U.S. citizens or permanent resident aliens may be eligible to adjust status to that of permanent resident alien. Alternatively -- often for political and diplomatic reasons -- Justice could grant extended voluntary departure (as was done for Ethiopians in the mid 70's) that would allow indefinite residence; or extended parole as was done for the Mariel Cubans. Limiting status options to asylum sets a stringent threshold for legal residence and creates significant ramifications if deportation is not practical.

Distinction Between Stowaways and Other Illegal Aliens. The Immigration and Nationality Act treats illegal aliens and stowaways differently on the issue of opportunities for hearings and status review.

Section 235(b) provides that every alien... except as ... provided ... in section 273(d) who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer.

Section 273(d). The provisions of section 235 for detention of aliens for examination before special inquiry officers and the right of appeal provided for in section 236 shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the U.S. except temporarily for medical treatment or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such aliens from the U.S.

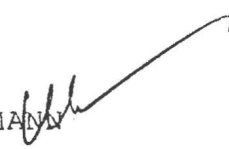
Although the law provides for summary review of stowaways it does allow regulations for discretionary action by the Attorney General. We would urge Justice to reassess its procedures for dealing with stowaways to determine the appropriate occasion for summary procedures, especially for cases where diplomatic implications are likely.

Administration Position on Excludable Cubans. Even with adherence to sound procedures for status review, the Administration still faces the issue of whether to attempt return of Cubans who are found to be excludable. The matter is timely, given the 1,211 Mariel Cubans who through the course of INS hearings have been deemed excludable and have received final orders of exclusion. (Although a court-order has enjoined return of any Cuban to Cuba, Justice recently appealed the order before the 11th Circuit. The Department is optimistic that the order will be repealed.) If this group is not returned to Cuba or another country, the nature of their status in the U.S. remains an issue. The Administration's proposed legalization of Cubans and Haitians would not apply since the legislation does not waive mental retardation, insanity or criminal records as a basis for exclusion.

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

February 11, 1982

FOR: CRAIG FULLER  
FROM: MICHAEL M. UHLMANN   
SUBJECT: Cuban Stowaways

I do not believe that the issue merits CCLP consideration at this time.

The Attorney General's memorandum of February 5 correctly describes the general law applicable to such situations (which no one really quarrels with) and provides a glimpse into the confusing real-world circumstances in which these episodes occur. The worst that appears to have happened is that Rodriguez' plight was not brought to the attention of Main Justice/INS.

As an internal inquiry is now underway, all that we need do, I think, is to ask for the results of that inquiry and some assurance that procedures have been established to preclude a similar recurrence. I can put it on a "tickler" list for a report, say, in a month.

cc: Martin Anderson

## Discuse w/ TAB

- Pres is committed to at least a degree
- Haig predicting new refugee flow from Caribbean (result of Cent Am prob & Cuban actio as well as econ diff.)
- throw newly arrived refugees into Prisons for processing?



*Call Schmeltz*

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

The Deputy Attorney General

Washington, D.C. 20530

February 26, 1982

3/1 → Ciccconi  
JAB has not seen

Honorable James A. Baker III  
Chief of Staff and Assistant  
to the President  
The White House  
Washington, D. C. 20500

Dear Jim:

I am sure you recall our meeting on January 19, 1982 to discuss our Department's role in carrying out a quick and effective phase out of the Ft. Chaffee responsibilities for housing the Cuban population.

As you know, after we cleared away the HHS-DOJ haggling by bringing in the Bureau of Prisons all Cubans in detention were removed from the State of Arkansas. This was accomplished well ahead of schedule and without incident.

As a part of our agreement, we sought a commitment for continuous support for a detention center which Dave Stockman agreed to last summer. At the meeting, we all recognized that the solution would put great additional pressure on our already overcrowded federal prison system. Thus we also sought a commitment to support Congress' efforts to establish a new prison in Arizona. As you can appreciate, it is difficult for us to oppose the establishment of such a prison when we are 17 percent over capacity in the prisons and are adding an additional 480 Cubans. You may recall that even with the new prison the total cost of our Ft. Chaffee solution was less than any other option available.

Therefore, you will no doubt understand the distress the Attorney General and I felt when we received the attached letter from Ed Harper suggesting both of these were open issues. I am enclosing the paper which we submitted at the meeting. It makes clear what our needs were for carrying out the desires of the President to resolve the Ft. Chaffee problem.



In my view, we implemented our part of the bargain and a "deal is a deal." We would hope that OMB can be prevailed upon to carry out its part. Bill and I will be happy to discuss this if it is a problem. Thanks for your help.

Sincerely,

Edward C. Schmults  
Deputy Attorney General

Attachment

cc: Edwin Harper  
Deputy Director  
Office of Management and Budget

Annelise Anderson  
Associate Director for  
Economics and Government  
Office of Management and Budget



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

FEB 20 1982

2/23 Jim

Fyi, then I'll  
put in JAB's reading  
file

Mr. Stanley E. Morris  
Associate Deputy Attorney General  
Washington, D.C. 20530

Dear Mr. Morris:

I would like to take this opportunity to respond to your letter of February 4, in which you state the Department's understanding of agreements reached on Ft. Chaffee, and to provide our understanding of the issues you raise.

Ft. Chaffee Close-out

We appreciate the speed in which Justice relocated the Cubans at Ft. Chaffee. We understand that the close-out--including inventory, equipment disposal, and repairs--will be completed by April 1.

Transfer of P.L. 96-422, Section 501(c) Authorities to the Attorney General

We understand that Justice and the Department of Health and Human Services (HHS) will agree on overall policy and operational guidelines pertaining to Section 501(c) activities applicable to 1982 and 1983. We are awaiting receipt of those agreements.

Alien Permanent Detention Center

While Jim Baker recalls agreement to a new detention center OMB is asking that the Department rejustify its 1982 supplemental request to fund a new detention facility. Cuban-Haitian detention needs have changed notably since funds were agreed to in the fall of 1981. The Haitian flow is dramatically reduced and prospects for facilitated hearings are good. Now that the Cubans are housed in Bureau of Prisons (BoP) facilities, an Immigration and Naturalization (INS) detention center, which offers neither community resettlement nor institutional care is not an efficient long-term custody solution. Moreover, INS has not demonstrated, in our view, the ability to operate a well-managed detention facility, especially on a large scale.


The Executive Office views BoP custody as a cost-effective alternative to a separate facility that would prevail pending resettlement, placement, or deportation of the Cubans in custody. Thus, we disagree with the Department's view that the transfer of Cubans to BoP facilities should be an interim step pending establishment of a permanent detention facility.

Construction of Federal Correctional Institution in Phoenix

In your letter, you state that the Department believes that OMB and the White House have approved construction of a \$22 million Federal prison in Phoenix, Arizona. Jim Baker and I do not recall agreeing to the approval of this project. We recognize that the Congress earmarked planning and site acquisition funds for this facility in the FY 1982 Continuing Resolution. Before we can agree, we would like to review an in-depth analysis prepared by the Department demonstrating the need for a new prison facility, especially a facility in Arizona as opposed to other sites, such as Florida.

I hope that this correspondence clarifies our view of issues and agreements attendant with transfer of Section 501(c) responsibilities to Justice. Please let me know if you disagree.

Sincerely,



Edwin L. Harper  
Deputy Director

cc: James A. Baker, III ✓

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

FEB 20 1982

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Washington, D.C. 20530

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Sincerely,

Edwin L. Harper  
Deputy Director

cc: James A. Baker, III

## Termination of Ft. Chaffee Operations

- Termination of Ft. Chaffee operations is the major priority at this time. Plan was to transfer population of 400 Cubans from Ft. Chaffee and 300 Cubans from other facilities to proposed detention facility at Glasgow, Montana. Earliest activation date for Glasgow facility is March/April, 1982.
- Projected costs for Glasgow are quite high. Due to its geographical location and the intensive nature of proposed mental health, medical and vocational rehabilitation programs, the annual cost is \$33.8 million or approximately \$48,000 per Cuban.
- Department has an interim alternative to Glasgow if greater speed is required in closing Ft. Chaffee and costs must be reduced. Within three weeks, the entire population of Ft. Chaffee can be screened and transferred to appropriate facilities in the Bureau of Prisons (BoP). Mentally-ill Cubans would be transferred to the Medical Center in Springfield, Missouri, anti-social Cubans to the USP Atlanta, Georgia, and the balance to the INS Detention Center in El Paso, Texas and/or other BoP facilities.
- The alternative would be faster and millions of dollars less expensive. It can be implemented within three weeks at an annual cost of \$8.5 million compared to \$33.4 million for Glasgow. The \$8.5 million is comprised of \$6 million in operating expenses, \$1 million for contracts with PHS and ORR and \$1.5 million for Cuban resettlement expenses.
- The proposed solution of using BoP facilities must also be examined in the context of inmate population levels which currently exceed physical capacity by 14%. The overcrowding is due to several factors including more vigorous prosecution policies and longer sentences and the current detention of approximately 2,000 Cubans and Haitians in BoP facilities. These pressures make it imperative to increase our Federal prison capacity by constructing a Federal Correctional Institution with a 360 bed capacity in Phoenix, Arizona. Congress has already earmarked planning and site acquisition funds in FY 1982 for the Phoenix FCI. The Department believes that approximately \$22 million should be added to the FY 1983 budget for construction of this facility
- Long-term alien detention requirements also dictate establishment of a detention facility such as that proposed at McAlester, Oklahoma. The President proposed this facility in the March budget amendments for FY 1982. Due to reconciliation difficulties, the Congress deleted this funding "without prejudice." Department believes it is essential to again request \$35 million for this facility and has submitted a FY 1982 supplemental to OMB.
- In summary, our proposal will permit Ft. Chaffee to be closed sooner and can be implemented at less cost. Even with the addition of construction funds for a new Federal prison, the total cost will still be less than the option based on opening a Glasgow facility. Attached is a chart which summarizes the costs of all these items which are currently potential increases to the DoJ FY 82 and 83 budget levels and demonstrates the potential cost tradeoffs if the DoJ option to Glasgow is accepted.



FY 1983 Cost for Transfer of Section 501(c) Authorities to DOJ  
Comparison of Estimates Including and Excluding Glasgow Facility  
(In millions of dollars)

	FY 1983			FY 1984	
	Initial DOJ/HHS Estimate	OMB Estimate	DOJ Alternative Option	Glasgow	DOJ Alt.
<u>Costs for Section 501(c)</u>					
<u>Authorities</u>					
Fort Allen.....	\$4.4	\$4.1	\$4.1	\$4.1	\$4.1
Krome North.....	7.8	6.2	6.2	6.2	6.2
Glasgow.....	45.7	33.4	-0-	33.4	-0-
PHS/ORR Prog. Mgmt.....	1.5	1.0	1.0	1.0	1.0
Grants and Contracts...	25.6	14.0	14.0	14.0	14.0
Bureau of Prison Costs.	N/A	N/A	8.5 <sup>b</sup>	N/A	8.5
St. Elizabeths Hosp....	N/A	N/A	1.6 to 7.1 <sup>c</sup>	N/A	1.6 to 7.1
Subtotal.....	85.0	58.7 <sup>a</sup>	35.4 to 40.9	58.7	35.4 to 40.9
<u>Construction of Federal</u>					
<u>Correctional Institu-</u>					
<u>tion (FCI) in Phoenix,</u>					
<u>Arizona.....</u>					
	N/A	N/A	22.0	-0-	0 <sup>d</sup>
TOTAL.....	85.0	58.7	57.4 to 62.9	58.7	35.4 to 40.9
<u>Construction of McAlester</u>					
<u>Permanent Detention</u>					
<u>facility in FY 1982....</u>					
	35.0	35.0	35.0		

<sup>a</sup>OMB reduced initial estimates of \$85 million by \$26.3 million. Most significant reductions were in premium pay rates for medical/mental health at Glasgow and reduced grants and contracts for care of mentally ill Cubans in state facilities and half-way houses.

<sup>b</sup>Includes \$6 million and 100 positions for operating expenses, \$1 million for contracts for vocational rehabilitation projects and \$1.5 million for Cuban resettlement expenses. Estimate does not include approximately 65 Cubans currently at St. Elizabeth's Hospital at annual cost of \$7.1 million.

<sup>c</sup>Approximately 65 Cubans are currently receiving treatment at St. Elizabeths Hospital and would have been transferred to Glasgow. Without the Glasgow facility, the costs for these individuals could range from \$1.6 million (cost at Springfield Medical Center) to \$7.1 million (current annual cost rate at St. Elizabeths Hospital).

<sup>d</sup>Estimated annual operating costs for Phoenix FCI with 360 bed capacity - \$6 million and 160 positions would begin in FY 1985.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

March 9, 1982

MEMORANDUM FOR JIM CICCONI

FROM:

ANNELISE ANDERSON

A handwritten signature in cursive script, reading "Annelise Anderson".

SUBJECT:

DETENTION FACILITY IN PHOENIX, ARIZONA

Attached are materials prepared by the  
Office of Management and Budget for the meeting  
on a detention center and prison in Phoenix,  
Arizona.

Ed Harper already has his copy.

Attachments



## Department of Justice Issues

### Detention Facility

#### ° Cuban-Haitian Detention Needs Have Changed.

At the time the detention center was first discussed, our projection of detention needs for Cubans and Haitians was more extensive. INS was, at one time, estimating an accumulated Haitian detention population of 9,000 by March, 1982 compared to the 2,000 currently in detention (1,400 in Krome and Ft. Allen). Many believe that interdiction has been an effective deterrent. At the same time, Judge Spellman (Judge Hasting's replacement) in Florida has been more cooperative -- identifying 250 lawyers from the Dade County Bar to provide counsel to Haitians in exclusion and deportation hearings in the interim until the case on the requirement for counsel is resolved. Prospects are good for continued facilitated hearings and return of aliens to Haiti. Thus Haitian detention needs in the future are unlikely to require long-term custody.

#### ° Ft. Chaffee is No Longer a Problem.

Now that Ft. Chaffee is closed and the Cubans are housed in Bureau of Prisons (BoP) facilities pending resettlement, an INS detention center is not needed to solve the Ft. Chaffee program. It can be argued that BoP facilities offer only an interim location, but an INS detention center that offers neither community resettlement nor institutional care is not an appropriate long-term custody solution for the Cubans.

#### ° INS Detention Management Capability is Questionable.

INS has not demonstrated, in our view, the ability to operate a well-managed detention facility, especially on a large scale. BoP may be the more appropriate place for operating the detention program. If BoP took over the program, the primary issue is to project the size and composition of the BoP population and the facilities that are necessary.

#### ° Expanding Detention Capability Encourages Longer Stays.

It can be argued that more detention capacity is necessary to effectively implement employer sanctions and increased enforcement. We believe we should see how the legislative proposal progresses and down-play the role of detention facilities as enforcement support. Apprehensions are most efficient when INS encourages aliens to leave voluntarily in which case departures occur within 24-48 hours of apprehension. Expanding detention capacity may encourage INS to detain aliens longer in order to justify the facility's need--often entailing deportation proceedings--when voluntary departure would be simpler.

° A Detention Facility Does Not Bear On Potential Refugee Flows.

The uncertainty in El Salvador and other Caribbean countries poses a threat of new groups of entrants. However, it should be noted that U.S. refugee and immigration policy is oriented to orderly entry processes from refugee camps or Consular offices overseas not to housing entrants here in detention centers. Therefore, a detention camp(s) is not needed if a policy decision is made to accept refugees from Caribbean countries, since the refugees would be processed overseas and arrive in the U.S. with a pre-arranged sponsorship.

## Department of Justice Issues

### Federal Prison Construction

#### ° Unclear That a New Prison is Needed.

In considering whether a new prison is needed, aside from its location, prison population size and characteristics, prison capacity, and future trends should be considered. As of January 19, there were 27,535 prisoners in our Federal prison system which has a planned capacity of 23,583. Thus the system is almost 17% over capacity. But this alone does not tell you much. The Bureau of Prisons (BoP) can operate its prisons at more than optimum capacity and does so frequently. For example, the planned (physical) capacity for the detention space in the Miami Federal Correctional Institution is 96; as of January 19, there were 385 inmates there. Petersburg, a medium security prison, has 753 inmates with a physical capacity of 492. What happens in overcrowded situations is that prisoners are double-bunked and some day rooms and recreational areas may be converted to bedspace. It is not an ideal situation, but it is workable.

Aside from the 200 bed-jail in Tuscon that BoP will open in February, 345 more spaces will be made available by the end of 1982 or sometime in 1983 as present expansion of existing facilities is completed.

BoP has not provided any recent analysis to us of prison population trends. BoP officials believe that the Federal prison population will reach 30,000 during the next 3 years because of shifts in parole policy and more Federal prosecution of violent criminals. While this may be accurate, we have not seen the analysis to support this.

We know that of the 27,535 prisoners in Federal prisons, 850 are prisoners from various states, and 3,310 are unsentenced individuals. These include Cubans and Haitians (around 2,000) and U.S. Marshals Service pretrial detainees. The problem the Marshals are having in finding jail space may get worse, and we may have the Cubans for the next 10 years. Then again, we may not. Furthermore, we may decide to reduce the number of State prisoners we are willing to hold rather than overcrowd our facilities. A decision to build a prison should be based on trends, not only on what exists today.

Another area that should be considered when deciding to build a prison is the available alternatives. BoP does have an alternative way to relieve overcrowding up to a point--the use of halfway houses or contract community treatment centers (CTC's) as they are called. In FY 1976, only 851 prisoners were in CTC's on a daily basis. By 1979, the average daily population had grown to 2,500. In FY 1982, because of budget cutbacks, this number will drop to 1,500 and will grow to only 1,800 in FY 1983. It might be more cost beneficial to pump another \$11 million in FY 1982 and \$8.2 million in FY 1983 into the CTC program to bring the CTC daily population up to 2,500, than to build a new prison.

° Alternative Federal Prison Sites.

If it is determined that a new prison is needed, it seems that Florida is the location for it. A quick glance at Federal court statistics shows that two circuits far outnumber the other eleven in terms of activity, the Fifth and the Ninth. There is more of a justification to build a Federal prison in the Fifth Circuit (Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and the Canal Zone) than in the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Marianas). Specifically, statistics for the Southern Florida District indicate the best justification for any prison. The following are some relevant statistics:

Circuit	Felony cases commenced		Total # of defendants		Total # of defendants convicted and sentenced		Average sentence length (monthly)	
	1980	1981	1980	1981	1980	1981	1980	1981
Fifth	4,402	4,892	8,832	10,183	7,299	8,087	50.0	51.6
Ninth	3,733	3,978	7,643	7,691	5,400	5,715	42.9	49.1
<u>District</u>								
S.Fla.	569	699	835	1,680	656	1,008	47.3	42.3
Ariz.	466	541	815	714	515	495	34.1	46.4

Although it is difficult to pinpoint just when a prison is justified, we do not think the proportion of defendants sentenced for more than 3 years in Arizona justifies a new prison there. The 1980 data show that, of the 515 defendants convicted and sentenced in the Arizona Federal District, 232 were sentenced to regular imprisonment (as opposed to split sentences of jail and probation, youth corrections cases, and indeterminate sentences), 147 of these were sentenced for a year or more in prison, and only 84 of the 147 were sentenced to 3 years or more. In 1981, of 495 defendants convicted and sentenced in the Arizona Federal District, 173 were sentenced to regular imprisonment, 124 were sentenced to a year or more, and only 70 of the 124 were sentenced to 3 years or more.

There are inmates in Federal prisons right now who are from Arizona, of course. But we do not know how many there are or how many will still be in prison 3 years from now, which is the length of time it takes to build a prison. Prisoners are generally eligible for parole after having served one-third of their sentences.

The most frequent Federal felony cases prosecuted in Southern Florida are drugs, immigration, and fraud, in that order. For Arizona, the most frequently prosecuted cases are immigration, drugs and other (includes perjury, bribery, gambling, etc., but not major crimes such as robbery, burglary, homicide, or auto theft).

The Miami Federal Correctional Institutional has now been designated a Metropolitan Correctional Center and houses more detainees than sentenced prisoners. Besides the Miami prison, there are two other Federal prison facilities in Florida, the Tallahassee Federal Correctional Institution, which currently houses 689, and the Eglin camp which houses 330. There are two Federal facilities in Arizona, Safford camp, which houses 286, and the Florence Detention Center, which houses 139. A Federal jail in Tucson will open soon to house about 200.

Building a prison anywhere in Florida, or in a nearby state, is more reasonable than building a prison in the Southwest or California. Drug traffic and violent crime have shifted to the southeastern United States.

## Department of Justice Issues

### Detention Facility

#### ◦ Cuban-Haitian Detention Needs Have Changed.

At the time the detention center was first discussed, our projection of detention needs for Cubans and Haitians was more extensive. INS was, at one time, estimating an accumulated Haitian detention population of 9,000 by March, 1982 compared to the 2,000 currently in detention (1,400 in Krome and Ft. Allen). Many believe that interdiction has been an effective deterrent. At the same time, Judge Spellman (Judge Hasting's replacement) in Florida has been more cooperative -- identifying 250 lawyers from the Dade County Bar to provide counsel to Haitians in exclusion and deportation hearings in the interim until the case on the requirement for counsel is resolved. Prospects are good for continued facilitated hearings and return of aliens to Haiti. Thus Haitian detention needs in the future are unlikely to require long-term custody.

#### ◦ Ft. Chaffee is No Longer a Problem.

Now that Ft. Chaffee is closed and the Cubans are housed in Bureau of Prisons (BoP) facilities pending resettlement, an INS detention center is not needed to solve the Ft. Chaffee program. It can be argued that BoP facilities offer only an interim location, but an INS detention center that offers neither community resettlement nor institutional care is not an appropriate long-term custody solution for the Cubans.

#### ◦ INS Detention Management Capability is Questionable.

INS has not demonstrated, in our view, the ability to operate a well-managed detention facility, especially on a large scale. BoP may be the more appropriate place for operating the detention program. If BoP took over the program, the primary issue is to project the size and composition of the BoP population and the facilities that are necessary.

#### ◦ Expanding Detention Capability Encourages Longer Stays.

It can be argued that more detention capacity is necessary to effectively implement employer sanctions and increased enforcement. We believe we should see how the legislative proposal progresses and down-play the role of detention facilities as enforcement support. Apprehensions are most efficient when INS encourages aliens to leave voluntarily in which case departures occur within 24-48 hours of apprehension. Expanding detention capacity may encourage INS to detain aliens longer in order to justify the facility's need--often entailing deportation proceedings--when voluntary departure would be simpler.

° A Detention Facility Does Not Bear On Potential Refugee Flows.

The uncertainty in El Salvador and other Caribbean countries poses a threat of new groups of entrants. However, it should be noted that U.S. refugee and immigration policy is oriented to orderly entry processes from refugee camps or Consular offices overseas not to housing entrants here in detention centers. Therefore, a detention camp(s) is not needed if a policy decision is made to accept refugees from Caribbean countries, since the refugees would be processed overseas and arrive in the U.S. with a pre-arranged sponsorship.

## Department of Justice Issues

### Federal Prison Construction

#### ° Unclear That a New Prison is Needed.

In considering whether a new prison is needed, aside from its location, prison population size and characteristics, prison capacity, and future trends should be considered. As of January 19, there were 27,535 prisoners in our Federal prison system which has a planned capacity of 23,583. Thus the system is almost 17% over capacity. But this alone does not tell you much. The Bureau of Prisons (BoP) can operate its prisons at more than optimum capacity and does so frequently. For example, the planned (physical) capacity for the detention space in the Miami Federal Correctional Institution is 96; as of January 19, there were 385 inmates there. Petersburg, a medium security prison, has 753 inmates with a physical capacity of 492. What happens in overcrowded situations is that prisoners are double-bunked and some day rooms and recreational areas may be converted to bedspace. It is not an ideal situation, but it is workable.

Aside from the 200 bed-jail in Tuscon that BoP will open in February, 345 more spaces will be made available by the end of 1982 or sometime in 1983 as present expansion of existing facilities is completed.

BoP has not provided any recent analysis to us of prison population trends. BoP officials believe that the Federal prison population will reach 30,000 during the next 3 years because of shifts in parole policy and more Federal prosecution of violent criminals. While this may be accurate, we have not seen the analysis to support this.

We know that of the 27,535 prisoners in Federal prisons, 850 are prisoners from various states, and 3,310 are unsentenced individuals. These include Cubans and Haitians (around 2,000) and U.S. Marshals Service pretrial detainees. The problem the Marshals are having in finding jail space may get worse, and we may have the Cubans for the next 10 years. Then again, we may not. Furthermore, we may decide to reduce the number of State prisoners we are willing to hold rather than overcrowd our facilities. A decision to build a prison should be based on trends, not only on what exists today.

Another area that should be considered when deciding to build a prison is the available alternatives. BoP does have an alternative way to relieve overcrowding up to a point--the use of halfway houses or contract community treatment centers (CTC's) as they are called. In FY 1976, only 851 prisoners were in CTC's on a daily basis. By 1979, the average daily population had grown to 2,500. In FY 1982, because of budget cutbacks, this number will drop to 1,500 and will grow to only 1,800 in FY 1983. It might be more cost beneficial to pump another \$11 million in FY 1982 and \$8.2 million in FY 1983 into the CTC program to bring the CTC daily population up to 2,500, than to build a new prison.



° Alternative Federal Prison Sites.

If it is determined that a new prison is needed, it seems that Florida is the location for it. A quick glance at Federal court statistics shows that two circuits far outnumber the other eleven in terms of activity, the Fifth and the Ninth. There is more of a justification to build a Federal prison in the Fifth Circuit (Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and the Canal Zone) than in the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Oregon, Washington, Guam, and the Northern Marianas). Specifically, statistics for the Southern Florida District indicate the best justification for any prison. The following are some relevant statistics:

	Felonv cases commenced		Total # of defendants		Total # of defendants convicted and sentenced		Average sentence length (monthly)	
	1980	1981	1980	1981	1980	1981	1980	1981
<u>Circuit</u>								
Fifth	4,402	4,892	8,832	10,183	7,299	8,087	50.0	51.6
Ninth	3,733	3,978	7,643	7,691	5,400	5,715	42.9	49.1
<u>District</u>								
S.Fla.	569	699	835	1,680	656	1,008	47.3	42.3
Ariz.	466	541	815	714	515	495	34.1	46.4

Although it is difficult to pinpoint just when a prison is justified, we do not think the proportion of defendants sentenced for more than 3 years in Arizona justifies a new prison there. The 1980 data show that, of the 515 defendants convicted and sentenced in the Arizona Federal District, 232 were sentenced to regular imprisonment (as opposed to split sentences of jail and probation, youth corrections cases, and indeterminate sentences), 147 of these were sentenced for a year or more in prison, and only 84 of the 147 were sentenced to 3 years or more. In 1981, of 495 defendants convicted and sentenced in the Arizona Federal District, 173 were sentenced to regular imprisonment, 124 were sentenced to a year or more, and only 70 of the 124 were sentenced to 3 years or more.

There are inmates in Federal prisons right now who are from Arizona, of course. But we do not know how many there are or how many will still be in prison 3 years from now, which is the length of time it takes to build a prison. Prisoners are generally eligible for parole after having served one-third of their sentences.

The most frequent Federal felony cases prosecuted in Southern Florida are drugs, immigration, and fraud, in that order. For Arizona, the most frequently prosecuted cases are immigration, drugs and other (includes perjury, bribery, gambling, etc., but not major crimes such as robbery, burglary, homicide, or auto theft).

The Miami Federal Correctional Institutional has now been designated a Metropolitan Correctional Center and houses more detainees than sentenced prisoners. Besides the Miami prison, there are two other Federal prison facilities in Florida, the Tallahassee Federal Correctional Institution, which currently houses 689, and the Eglin camp which houses 330. There are two Federal facilities in Arizona, Safford camp, which houses 286, and the Florence Detention Center, which houses 139. A Federal jail in Tucson will open soon to house about 200.

Building a prison anywhere in Florida, or in a nearby state, is more reasonable than building a prison in the Southwest or California. Drug traffic and violent crime have shifted to the southeastern United States.

Meeting  
next wk

JAB  
EA  
Annelise  
Schmidt  
Stan Morris  
Robby?

Harper, Annelise

re (1) Aug Prison  
(2) Perm. Det Ctr  
in Okla.

Aug Prison

- was on duty  
passed out
- we said we need  
of BOP & about  
Cubans - They were  
already 10% over



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

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The Deputy Attorney General

Washington, D.C. 20530

March 10, 1982

TO:     ✓ James A. Baker, III  
          Chief of Staff and Assistant to the President

          Edwin L. Harper  
          Assistant to the President for Policy Development

          Annelise Anderson  
          Associate Director for Economics and Government

          James W. Cicconi  
          Special Assistant to the Chief of Staff

FROM:   Edward C. Schmults  
          Deputy Attorney General

The attached paper on Federal Prison and Alien Detention Policy is provided as background for our 3:00 meeting today.

Attachment

cc: Associate Attorney General  
     Stanley E. Morris, Associate Deputy Attorney General

## FEDERAL PRISON AND ALIEN DETENTION POLICY

(Department of Justice funding proposal of January 19, 1982-copy attached.)

Policy Goals: Administration goal is to provide sufficient space to house Federal offenders and alien detainees in support of our policies to:

- . support prosecution and maximum sentencing for Federal offenders;
- . enforce the immigration laws and detain illegal aliens pending their deportation.

Problems: Federal Prison System (FPS) is currently 17 percent over capacity. FPS is housing 2,364 aliens (400 Cubans absorbed February 1982), of which 1,636 are in the Southeast Region.

If Cubans/Haitians are excluded, FPS is 7.6 percent over capacity system-wide;

-3.4 percent over capacity in Western Region

-4.7 percent under available capacity in Southeast Region.

Approximately 600 Arizona inmates are housed outside of Arizona; if they were included, the Western Region would be 22.7 percent over capacity.

The Bureau of Prisons (BoP) is projecting an annual increase in potential prison population of 5.7 percent and by 1985 would be 20 percent over capacity.

Administration is under constant Congressional pressure to relieve overcrowding in prisons and to remove Haitians from Miami.

Krome North needs to be available for short-term detention and processing.

The Immigration and Naturalization Service's (I&NS) detention facilities are filled to capacity, approximately 1,800 exclusive of Fort Allen, Puerto Rico. Longer-term detention requirements will continue.

In many instances, I&NS has had to curtail its enforcement efforts because of the unavailability of adequate detention space.

A very real possibility exists for other major movements of illegal entrants from Central America and the Caribbean into the United States during the next several years.

A new permanent detention facility would allow the Department to enforce its illegal alien detention policy more equitably nation-wide.

A new detention facility which can be expanded easily is consistent with the Administration's Mass Immigration Emergency Plan.

Solutions:

1. OMB Proposals to date—\$68 million.

Construct long-term I&NS detention facility—(\$35 million) to house Haitians and other aliens requiring longer-term detention in future.

House Cubans at Glasgow, Montana (\$33.4 million).

Effect.

Make space available for I&NS short-term detention and allow I&NS to resume active enforcement posture.

Absorb prisoner increases and reduce prison population growth --reverse policy to prosecute vigorously.

Ignore Congressional pressures to reduce overcrowding in prisons.

2. Department of Justice Response (\$72 million).

Construct Federal prison in Arizona--(\$22 million) to relieve Western Region overcrowding and relieve pressure from absorption of Cubans.

Absorb Cubans in BoP facilities--(\$15 million). Pressure will be relieved when Arizona prison is constructed.

Construct alien detention facility (\$35 million) to house remaining Haitians and other future longer-term detainees. Potential savings of over \$4 million if constructed on existing FPS property. This facility could be managed and operated by BoP.

Effect.

Provides support related to implementation of Administration prosecution and immigration policies. Make space available for I&NS short-term detention and allow I&NS to resume active enforcement posture.

Relieve Western Region overcrowding and reduce pressure from absorption of Cubans when Arizona facility is constructed.

Make space available for I&NS short-term detention and allow I&NS to resume active enforcement posture.

Discussion:

Given the problems previously outlined, DOJ recommends both a new detention facility to house illegal entrants requiring longer-term detention and a new prison facility in the Southwest. The population in the Federal Prison System, which is currently over capacity even without the Cubans and Haitians, is expected to continue increasing.

Alien detention requirements are not expected to diminish in the future. Regardless of the Haitian population, further influxes of illegal aliens can be expected and this Administration should be prepared to deal with its future detention requirements. Fort Allen, Puerto Rico will not be available beyond August 1982, and the Krome North facility which can house only 500 detainees is needed for short-term detention and processing.

I&NS estimates that several thousand additional illegal aliens could be detained pending their deportation if space were available. It becomes difficult to carry out our policies without adequate space to house prisoners and illegal aliens.

Although the decline in Haitians entering the country has diminished the need to establish an emergency facility such as Fort Drum, the long-term requirements have not changed.

A solution must be found to the overcrowding in our prisons and the alien detention problems in Florida. Otherwise, we will continue to experience severe political and judicial pressure which could easily erode any gains we have so far achieved.

For example, DOJ is currently negotiating for an extension of our Fort Allen lease agreement with the Governor of Puerto Rico. Unless there is clear movement toward solving the long term space problem for Haitians in the U.S., it is unlikely that an extension of the lease can be negotiated.

DOJ proposal would be accomplished essentially at the same cost as OMB's original proposal (currently before Congress) which would have addressed only the Cuban problem and I&NS' long-term detention needs.

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PBS/ORR Prog. Mgmt.....	1.5	1.0	1.0	1.0	1.0
Grants and Contracts...	25.6	14.0	14.0	14.0	14.0
Bureau of Prison Costs...	N/A	N/A	8.5 <sup>b</sup>	N/A	8.5
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Subtotal.....	85.0	58.7 <sup>a</sup>	35.4 to 40.9	58.7	35.4 to 40.9
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## Termination of Ft. Chaffee Operations

- Termination of Ft. Chaffee operation is the major priority at this time. Plan was to transfer population of 400 Cubans from Ft. Chaffee and 300 Cubans from other facilities to proposed detention facility at Glasgow, Montana. Earliest activation date for Glasgow facility is March/April, 1982.
- Projected costs for Glasgow are quite high. Due to its geographical location and the intensive nature of proposed mental health, medical and vocational rehabilitation programs, the annual cost is \$33.8 million or approximately \$48,000 per Cuban.
- Department has an interim alternative to Glasgow if greater speed is required in closing Ft. Chaffee and costs must be reduced. Within three weeks, the entire population of Ft. Chaffee can be screened and transferred to appropriate facilities in the Bureau of Prisons (BoP). Mentally-ill Cubans would be transferred to the Medical Center in Springfield, Missouri, anti-social Cubans to the USP Atlanta, Georgia, and the balance to the INS Detention Center in El Paso, Texas and/or other BoP facilities.
- The alternative would be faster and millions of dollars less expensive. It can be implemented within three weeks at an annual cost of \$8.5 million compared to \$33.4 million for Glasgow. The \$8.5 million is comprised of \$6 million in operating expenses, \$1 million for contracts with PHS and ORR and \$1.5 million for Cuban resettlement expenses.
- The proposed solution of using BoP facilities must also be examined in the context of inmate population levels which currently exceed physical capacity by 14%. The overcrowding is due to several factors including more vigorous prosecution policies and longer sentences and the current detention of approximately 2,000 Cubans and Haitians in BoP facilities. These pressures make it imperative to increase our Federal prison capacity by constructing a Federal Correctional Institution with a 360 bed capacity in Phoenix, Arizona. Congress has already earmarked planning and site acquisition funds in FY 1982 for the Phoenix FCI. The Department believes that approximately \$22 million should be added to the FY 1983 budget for construction of this facility.
- Long-term alien detention requirements also dictate establishment of detention facility such as that proposed at McAlester, Oklahoma. The President proposed this facility in the March budget amendments for FY 1982. Due to reconciliation difficulties, the Congress deleted this funding "without prejudice." Department believes it is essential to again request \$35 million for this facility and has submitted a FY 1982 supplemental to OMB.
- In summary, our proposal will permit Ft. Chaffee to be closed sooner and can be implemented at less cost. Even with the addition of construction funds for a new Federal prison, the total cost will still be less than the option based on opening a Glasgow facility. Attached is a chart which summarizes the costs of all these items which are currently potential increases to the DoJ FY 83 and 82 budget levels and demonstrates the potential cost tradeoffs if the DoJ option to Glasgow is accepted.

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THE WHITE HOUSE  
WASHINGTON

6/14/82

TO: *Jim Cicconi*

FROM: Richard A. Hauser

FYI ✓

Comment \_\_\_\_\_

Action \_\_\_\_\_



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.

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